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 in Possession other than the Participation  
 Debtors<sup>1</sup>*

*Proposed Counsel to the Participation Debtors*

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

	)	
In re:	)	Chapter 11
	)	
Voyager Aviation Holdings, LLC <i>et al.</i> ,	)	Case No. 23-11177 (JPM)
	)	
Debtors. <sup>2</sup>	)	(Joint Administration Requested)
	)	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM  
 AND FINAL ORDERS (I) AUTHORIZING THEM TO (A) CONTINUE  
 COMPENSATION AND BENEFITS PROGRAMS, AND (B) SATISFY  
 PREPETITION OBLIGATIONS ON ACCOUNT OF COMPENSATION  
 AND BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

By this motion (the “Motion”), Voyager Aviation Holdings, LLC and its proposed jointly administered debtors and debtors in possession (collectively, the “Debtors”) seek entry of interim

<sup>1</sup> “Participation Debtors” means, collectively, Aetios Aviation Leasing 1 Limited, Aetios Aviation Leasing 2 Limited, Panamera Aviation Leasing XII Designated Activity Company, and Panamera Aviation Leasing XIII Designated Activity Company.

<sup>2</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and



and final orders (the “Interim Order” and “Final Order,” respectively) authorizing them to (a) maintain, and continue to honor the Compensation and Benefits Programs (as defined below) in effect on the Petition Date in the ordinary course of business, and (b) pay and honor their prepetition obligations on account of their Compensation and Benefits Programs. In support of the requested relief, the Debtors rely on the *Declaration of Robert A. Del Genio, Chief Restructuring Officer of Voyager Aviation Holdings, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), which is being filed contemporaneously herewith and is incorporated herein by reference, and respectfully state as follows.<sup>3</sup>

### **Background**

1. On the date hereof (the “Petition Date”), each Debtor commenced a case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) by filing a voluntary petition for relief in this Court (the “Chapter 11 Cases”). The Debtors have requested the joint administration of their chapter 11 cases.

2. The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these cases, and no committees have yet been appointed or designated.

3. The Debtors, together with their non-Debtor affiliates (collectively, the “Company”), are a privately owned aviation investor and full-service global aircraft leasing platform operating in the highly competitive multinational aircraft leasing industry. The

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Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

<sup>3</sup> Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.

Company's main leasing operations are led out of Dublin, Ireland, and the Company has corporate offices in Stamford, CT. It currently has a small team of 13 full-time employees split between Europe and the U.S. As of the Petition Date, the Company owned 18 aircraft, most of which are widebody aircraft and 16 of which are currently on lease to 7 airline customers.

4. As further described in the First Day Declaration, the Debtors have commenced these chapter 11 cases to consummate a sale of substantially all of the Company's assets (the "Azorra Transaction") to Azorra Explorer Holdings Limited (the "Purchaser"). The Azorra Transaction is the culmination of months of strategic planning and negotiations, including evaluating various alternatives, extensively marketing the Company's assets, and heavily negotiating transaction terms. The Debtors have entered into a restructuring support agreement with respect to a prearranged chapter 11 plan (the "Plan") supported by the Company's largest stakeholder, to implement the Azorra Transaction.

5. After years of managing difficult headwinds, the Azorra Transaction and the Plan together provide the best opportunity for the Company to maximize value for creditors across its capital structure.

6. Further information regarding the Debtors' business, capital structure, the circumstances leading to the commencement of the Chapter 11 Cases, and the facts and circumstances supporting the relief requested in this Motion is set forth in the First Day Declaration.

### **Relief Requested**

7. The Debtors seek (i) authorization to (a) maintain the Compensation and Benefits Programs in the ordinary course of business, and (b) pay and honor their obligations on account of the Compensation and Benefits Programs and (ii) certain related relief. A proposed form of the

Interim Order is attached to this Motion as **Exhibit A-1** and a proposed form of the Final Order is attached to this Motion as **Exhibit A-2**.

8. The Debtors also request that a hearing (the “Final Hearing”) be scheduled for the Court to consider the relief sought in the Motion on a final basis.

9. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363, 507(a), and 541(b)(1) of the Bankruptcy Code, rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”).

### **Jurisdiction and Venue**

10. This 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 Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by this 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. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

11. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **The Debtors’ Workforce**

12. The Debtors currently employ approximately 13 individuals (the “Employees”) on a full-time, salaried basis. Eight of the Employees are based in the United States, four are based in Ireland, and one Employee currently resides in Spain. All Employees are employed either by VAH or VAMI, as applicable.

13. In addition, depending on their business needs, the Debtors supplement their workforce with independent contractors and/or consultants (collectively, the “Independent Contractors”). As of the Petition Date, the Debtors regularly utilize the services of six Independent Contractors. Five of the Independent Contractors are based in Ireland and one is based in the U.S.

14. The Employees and Independent Contractors perform various critical functions, including accounting, administrative support, accounts payable, and billing operations. The Employees and Independent Contractors are intimately familiar with the Debtors’ business, processes, and systems, possess unique skills, experience, knowledge, and understanding of the Debtors’ operations and infrastructure, or have developed relationships that are essential to the Debtors’ business. These individuals are among the Debtors’ most valuable assets as they are not easily replaced and their skills are essential to the effective operation of the Debtors’ business and critical to the success of these Chapter 11 Cases and completion of the Azorra Transaction. Without the continued, uninterrupted services of the Employees and Independent Contractors, the Debtors’ business operations would be halted, the administration of their estates would be severely disrupted, and the completion of the Azorra Transaction would be jeopardized to the detriment of all stakeholders.

#### **Compensation and Benefits Programs**

15. The Debtors maintain various compensation and benefits programs and pay administrative fees, premiums, and certain other costs in connection therewith, including, without limitation, Employee Compensation, Independent Contractor Compensation, Payroll Service Fees, Deductions, Payroll Taxes, Reimbursable Expenses, Manager and Director Compensation, Bonus Programs, and the Employee Benefits Programs (each as defined herein and, collectively, the “Compensation and Benefits Programs”).

16. Certain prepetition amounts on account of the Compensation and Benefits Programs were payable as of the Petition Date, and certain other prepetition amounts will become payable during the period between the Petition Date and the Final Hearing (the “Interim Period”). The Debtors estimate that there is approximately \$6,000 of prepetition obligations on account of the Compensation and Benefits Program that is outstanding as of the Petition Date and will become due in the Interim Period. However, as described below, there may be other outstanding prepetition obligations on account of the Compensation and Benefits Program that come due during the Interim Period.

### **I. Employee Compensation**

17. In the ordinary course of business, the Debtors pay wages, salaries, and other compensation, as applicable, to their Employees (collectively, the “Employee Compensation”). U.S. Employees’ salaries are paid semi-monthly on the last business day on or before the 15<sup>th</sup> and the last business day of every month.<sup>4</sup> All other Employees are paid monthly on the last business day on or before the 15<sup>th</sup> of every month.<sup>5</sup> On average, the Debtors pay, in the aggregate, approximately \$250,000 in Employee Compensation each month.

18. The Debtors do not believe that they owe any Employee Compensation as of the Petition Date. However, out of an abundance of caution, the Debtors seek authority to pay all Employee Compensation, whether incurred pre- or postpetition, and to continue to pay Employee Compensation in the ordinary course of business.<sup>6</sup>

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<sup>4</sup> The Debtors paid U.S. Employee Compensation through the end of July 2023 prior to the Petition Date.

<sup>5</sup> As discussed below, the Debtors use third-party service providers to administer payroll payments through direct deposit. Accordingly, a portion of the last payroll, which has been withdrawn from the Debtors’ accounts, may not have been received by the Employees prior to the Petition Date. The Debtors request authority to honor all such amounts in the ordinary course as having been paid prepetition.

<sup>6</sup> For the avoidance of doubt, the Debtors are not seeking to make any payments to any Insider (as defined below) on account of Employee Compensation incurred pre-petition in excess of the priority wage cap established under section 507(a)(4) of the Bankruptcy Code.

## **II. Independent Contractor Compensation**

19. The Debtors pay an aggregate amount of approximately \$200,600 per month to Independent Contractors (the “Independent Contractor Compensation”).<sup>7</sup> The Independent Contractors are critical to the operation of the Debtors’ business. The Debtors rely on the Independent Contractors in most cases to complete discrete accounting projects or provide administrative services in furtherance of the Debtors’ business that are not economically feasible to fill on a full- or part-time basis. The Debtors anticipate that they will owe approximately \$6,000 on account of Independent Contractor Compensation as of the Petition Date, all of which will come due during the Interim Period. The Debtors seek authority to pay all Independent Contractor Compensation, whether incurred pre- or postpetition, and to continue to pay Independent Contractor Compensation in the ordinary course of business.

20. For the avoidance of doubt, the Debtors are not seeking to make any payments to any individual on account of any prepetition Employee Compensation or Independent Contractor Compensation in excess of the priority wage cap of \$15,150 established under section 507(a)(4) of the Bankruptcy Code.

## **III. Payroll Service Fees**

21. The Debtors outsource the administration of Employee Compensation for U.S. Employees to Automatic Data Processing (“ADP”) and for European Employees to BDO Global (“BDO”). ADP and BDO administer the funds made available by the Debtors on account of

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<sup>7</sup> The five Independent Contractors located in Ireland are contracted through Pivotal. The Debtors make payments on behalf of those Independent Contractors directly to Pivotal. Pivotal is paid a fixed fee at the beginning of each month based on an estimate of services to be provided and receives an additional “true-up” payment at the end of the month based on the actual amount of services provided. There is one Independent Contractor located in the U.S. that is contracted through Robert Half. The Debtors make payments on behalf of that Independent Contractor directly to Robert Half. Robert Half is paid on an hourly basis at the end of each week for services provided the prior week.

Employee Compensation through direct deposit and remit Payroll Taxes (as defined below) to the applicable taxing authorities. The Debtors pay BDO approximately €1,200 each quarter in service fees (the “Payroll Service Fees”). The fee to ADP for payroll administration is included in the ADP Admin Fee, as described below, that the Debtors pay on a semi-monthly basis. The Payroll Service Fees are paid in arrears. As of the Petition Date, the Debtors estimate that they owe approximately €400 on account of prepetition Payroll Service Fees to BDO, which will come due in October 2023. The Debtors request authority to pay any prepetition amounts owed in connection with the Payroll Service Fees, and to continue paying Payroll Service Fees going forward, in the ordinary course of business.

#### **IV. Deductions and Payroll Taxes**

22. During each payroll period, the Debtors deduct certain amounts from Employees’ gross pay (the “Deductions”), including, without limitation, deductions for pre-tax and after-tax deductions pursuant to certain Employee Benefits Programs as discussed herein, which the Debtors remit to the appropriate third-party recipients. The average amount of Deductions withheld every month from Employee Compensation (excluding amounts deducted on account of other withholdings) is approximately \$15,800. As of the Petition Date, the Debtors believe that all withheld Deductions have been remitted. However, out of an abundance of caution, the Debtors request authority to forward any unremitted prepetition Deductions to the appropriate recipients.

23. In addition, the Debtors are required by law to (i) withhold amounts from Employees’ gross pay related to, among other things, federal, state and local income taxes, including Social Security and Medicare taxes (or the equivalent in Ireland) for remittance to the applicable taxing authorities and (ii) pay additional amounts associated with federal and state unemployment insurance (collectively, the “Payroll Taxes”). Every month, the Debtors remit or pay, as applicable, approximately \$143,300, in the aggregate, on account of the Payroll Taxes.

The Debtors do not believe that they owe any amounts on account of Payroll Taxes as of the Petition Date.

24. To the extent that any of the Deductions or Payroll Taxes withheld prepetition may not have been forwarded or paid, the Debtors seek authority to forward or pay, as applicable, any such Deductions and Payroll Taxes to the appropriate third-party recipients, as well as to continue to forward or pay, as applicable, the Deductions and Payroll Taxes in the ordinary course of business.

#### **V. Reimbursable Expenses**

25. The Debtors reimburse Employees and Independent Contractors for certain allowed expenses incurred on behalf of the Debtors in the scope of their employment, such as business travel, meals, company cellular phones, relocation, postage and delivery, printing, office and computer supplies, publications, subscriptions, and other miscellaneous expenses (the “Reimbursable Expenses”).

26. Reimbursable Expenses must be reasonable in amount and necessary to the performance of the relevant tasks. The Debtors estimate that they pay approximately \$5,000 per month on account of Reimbursable Expenses. Employees submit requests for reimbursement through Concur, an expense management and travel booking platform. The Debtors pay Concur a monthly service fee of approximately \$1,400.

27. As of the Petition Date, the Debtors do not believe that they owe any amounts to Concur or on account of Reimbursable Expenses. However, there may be other outstanding Reimbursable Expenses related to the prepetition period that Employees or Independent Contractors have not yet submitted for reimbursement, and the Debtors seek authority to pay any such amounts if and when they are submitted for reimbursement in the ordinary course, as well as

to continue to make payments to Concur and on account of Reimbursable Expenses in the ordinary course of business.

## **VI. Manager and Director Compensation**

28. Voyager Aviation Holdings, LLC (“VAH”) is governed by a five-member board of managers, of which one seat is currently vacant. Three of the members (each, a “Manager”) receive compensation of \$25,000 per Manager each quarter (the “VAH Board Fees”), and one Manager serves as the Executive Chairman and receives monthly compensation of approximately \$65,000 each month for his increased duties and responsibilities as Executive Chairman (the “Executive Chair Compensation”).<sup>8</sup>

29. Voyager Aviation Management Ireland Designated Activity Company (“VAMI”) is governed by a four-member board of directors (each, a “Director”). Two of the Directors, one of which is an Employee, do not receive any compensation in connection with their role as Directors. The Debtors use a Corporate Service Firm (as defined below) to appoint the remaining two Directors and pay the Corporate Service Firm for the fees associated with these Directors.

30. For each of the other Debtor entities, the Debtors utilize corporate service firms (the “Corporate Service Firms”) to appoint the independent directors and managers that serve on the boards. The Debtors pay all fees and related costs in connection with these directors and managers directly to the Corporate Service Firms (the “Manager and Director Fees”). The Debtors estimate that they pay approximately \$210,000 each year on account of the Manager and Director Fees.

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<sup>8</sup> The Executive Chairman has provided notice of his resignation and his last day as Executive Chairman will be August 6, 2023. Thereafter, he will serve solely as a Manager.

31. In addition, all Managers and Directors are entitled to expense reimbursement for all reasonable and documented out-of-pocket travel expenses incurred in connection with their duties (together with the VAH Board Fees, Executive Chair Compensation, and the Manager and Director Fees, the “Manager and Director Compensation”). No Employee receives Manager and Director Compensation. The Debtors do not believe that they owe any amounts on account of prepetition Manager and Director Compensation. The Debtors request authority, once the Final Order has been entered, to honor any obligations owed on account of Manager and Director Compensation, whether incurred pre- or postpetition, and to continue paying Manager and Director Compensation in the ordinary course of business.

## **VII. Bonus Programs**

32. The Debtors maintain certain bonus programs for their Employees, such as the Quarterly Bonus Program, the Referral Bonus Program and the Discretionary Retention Pool (each as defined below and, collectively, the “Bonus Programs”). The Bonus Programs are critical to the Debtors’ ability to motivate, reward, and retain their Employees and are integral to the Debtors’ operations going forward.<sup>9</sup>

33. For the avoidance of doubt, the Debtors are not seeking authorization to pay any bonuses that would violate or implicate section 503(c) of the Bankruptcy Code to an “insider” (as that term is defined in section 101(31) of the Bankruptcy Code, the “Insiders”) under the Bonus

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<sup>9</sup> In addition to the Bonus Programs described below, the Debtors also offer a “Long-Term Incentive Plan” for certain members of their management. Although the Debtors believe that plan is consistent with section 503(c) of the Bankruptcy Code, they are not seeking approval of such plan in the Motion, but reserve the right to request authority to continue that program (or to seek approval of new retention or incentive programs) at a later date. Prior to the Petition Date, the Board approved accelerated payments under the Long-Term Incentive Plan for certain individuals as well as a transaction incentive bonus in an aggregate amount of \$4,606,326. These bonuses were accelerated to incentivize the Employees to continue to perform under the stressful conditions associated with a marketing process for the sale of the Debtors’ assets. These payments were in exchange for the release of certain contractual obligations and are subject to clawback under certain circumstances.

Programs, without further order of this Court. The Debtors will seek approval of any Insider bonus or incentive programs, if any, under separate motion under section 503(c) of the Bankruptcy Code.

34. All Employees receive a quarterly bonus, meant to incentivize Employees to perform at a high level, thus maximizing the value of the Debtors' business (the "Quarterly Bonus Program"). Each Employee's quarterly bonus is based upon a fixed percentage of their base salary. Payments under the Quarterly Bonus Program are subject to clawback under certain circumstances. The Debtors pay approximately \$420,000 each quarter on account of the Quarterly Bonus Program. The Debtors do not believe that they owed any amounts on account of the Quarterly Bonus Program on the Petition Date. The next payment under the Quarterly Bonus Program will be in or around October 2023.

35. The Debtors also offer a referral bonus of \$5,000 to U.S. Employees and €4,000 to European Employees who refer candidates for employment if such candidates are ultimately hired by the Debtors and remain employed for at least six (6) months (the "Referral Bonus Program"). The Debtors do not believe that they owe any amounts on account of the Referral Bonus Program as of the Petition Date.

36. In addition, the Debtors maintain a discretionary retention pool (the "Discretionary Retention Pool") to provide management the flexibility to make minor retention payments to non-Insider Employees without seeking approval from the required board committee(s) for each payment (although any payment equal to or in excess of \$50,000 requires approval of the compensation committee). The total payments from the Discretionary Retention Pool cannot exceed \$300,000, and pool availability expires upon certain conditions, and no later than December 31, 2023. Insiders are not entitled to receive any payments from the Discretionary Retention Pool. The Debtors do not believe that they owe any amounts from the Discretionary

Retention Pool on the Petition Date. Although it is very difficult for the Debtors to estimate accurately how much of the Discretionary Retention Pool will become payable following the Petition Date, the Debtors seek the authority to continue to pay amounts under the Discretionary Retention Pool at their reasonable discretion up to the maximum amount of \$300,000, in order to (1) address critical retention issues as they arise, (2) retain valuable non-Insider Employees and (3) preserve employee morale as the Debtors seek to implement the Azorra Transaction.

37. The Debtors seek authority, subject to entry of the Final Order, to pay the bonuses under the Bonus Programs, regardless of whether such bonuses were earned pre- or postpetition, and to continue to pay such bonuses in the ordinary course of business.

### **VIII. Employee Benefits Programs**

38. The Debtors maintain a number of benefits programs, including (i) the Health Insurance Program, (ii) the Insurance Benefits, (iii) the Workers' Compensation Program, (iv) the Employee Leave Benefits, (v) the Retirement Plans, (vi) the Miscellaneous Benefits Programs, and (vii) the Irish Statutory Severance Entitlement (each as defined below and, collectively, the "Employee Benefits Programs").

#### **A. Health Insurance Programs**

39. The Debtors offer full-time Employees the opportunity to receive a number of health benefits, including participation in the Health Plans and the Flexible Spending Programs (each as defined below and, collectively, the "Health Insurance Programs").

##### **1. Health Plans**

40. All full-time U.S. Employees have the opportunity to enroll in a medical plan (the "U.S. Medical Plan"), administered by UnitedHealthcare/Oxford, which provides coverage for, among other things, prescription drugs and doctor visits. The Debtors pay approximately 100% of the monthly U.S. Medical Plan premiums.

41. The Debtors also offer U.S. Employees a dental plan (the “U.S. Dental Plan”), administered by Guardian Dental, which covers, among other things, preventive services, as well as orthodontia, with a \$5,000 annual maximum limit. The Debtors pay 100% of the monthly U.S. Dental Plan premiums.

42. U.S. Employees may enroll in a vision plan (the “U.S. Vision Plan” and together with the U.S. Medical Plan and the U.S. Dental Plan, the “U.S. Health Plans”), administered by VSP, which covers one routine eye exam per year, plus discounts on eyewear and contact lenses. The Debtors pay approximately 100% of the monthly U.S. Vision Plan premiums. The Debtors pay approximately \$25,000 each month on account of the U.S. Health Plans.

43. The Health Plans for Employees in the United States also include coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”) for post-termination healthcare. The Debtors have in the past agreed to pay or reimburse COBRA premiums for terminated Employees, as determined by the Debtors in their discretion, the average monthly cost of which is approximately \$4,000 (the “Post-Termination Health Benefits”). The Debtors seek authority to continue to provide Post-Termination Health Benefits to terminated Employees, in their discretion, in the ordinary course of business.

44. Irish Employees may enroll in a medical plan through Irish Life Health and a dental plan through DeCare (together the “Irish Health Plans” and, together with the U.S. Health Plans the “Health Plans”). The Debtors pay approximately \$3,000 each month on account of the Irish Health Plans.

45. The Debtors estimate that they spend, in the aggregate, approximately \$32,000 on account of the Health Plans each month. The Debtors do not believe that they owe any amounts on account of the Health Plans as of the Petition Date. However, out of an abundance of caution,

the Debtors seek authority to pay all amounts due on account of the Health Plans, whether incurred pre- or postpetition, and to continue to honor these obligations in the ordinary course.

46. The Debtors provide flexible spending accounts for their U.S. Employees (collectively, the “Flexible Spending Programs”). The first is a flexible spending account allowing all eligible Employees to contribute pre-tax dollars to an account available for payment of essential health care expenses that are not covered (in whole or in part) by the Health Plans. The second program is a dependent care flexible spending account, into which Employees contribute pre-tax dollars for payment of eligible expenses, including, without limitation, child care and elder care. The Flexible Spending Programs are administered through ADP and are funded entirely by the participating Employees. The Debtors do not contribute to the Flexible Spending Programs, and the Employee contributions to the Flexible Spending Programs are held in trust for the Employees and are accordingly not property of the Debtors’ estates.

**B. *Insurance Benefits***

47. The Debtors provide Employees with certain insurance benefits, including life insurance, accidental death and dismemberment insurance, and short- and long-term disability coverage (collectively, the “Insurance and Disability Benefits”). The Insurance and Disability Benefits are provided through (i) MetLife for U.S. Employees and (ii) Irish Life for Irish Employees. The Debtors pay one hundred percent (100%) of the Insurance and Disability Benefits premiums for U.S. Employees, the monthly cost of which is approximately \$2,500 per month. The Debtors pay one hundred percent (100%) of the Insurance and Disability Benefits premiums for Irish Employees, the yearly cost of which is approximately \$30,000. The Debtors do not believe that they owe any amounts on account of the Insurance and Disability Benefits as of the Petition Date. The Debtors thus request authority to continue the Insurance and Disability Benefits and to pay obligations thereunder in the ordinary course of business.

**C. *Workers' Compensation Program***

48. The Debtors provide workers' compensation insurance to their Employees at the statutorily-required level (the "Workers' Compensation Insurance"), which is administered by New Hampshire Insurance Company (the "Workers' Compensation Provider"). In addition, the Debtors make payments on account of Workers' Compensation Insurance directly to Washington State, which requires workers' compensation insurance be provided by a state fund. The cost of the Workers' Compensation Insurance is included in the ADP Admin Fee, as described below, that the Debtors pay on a semi-monthly basis. The Debtors thus believe they do not owe any amounts on account of the Workers' Compensation Insurance as of the Petition Date. The Debtors thus request authority to continue the Workers' Compensation Program and to pay any related obligations in the ordinary course of business.

**D. *Paid Leave, Holiday Entitlement and Leaves of Absence***

49. The Debtors offer paid leave for, among other things, vacation days, family illness, and personal days (collectively, the "Paid Leave"). Employees in the U.S. may accrue twenty (20) to thirty (30) days of Paid Leave depending on their years of service. European Employees receive twenty five (25) to thirty-two (32) days of Paid Leave depending on their years of service. Employees may carry over up to five (5) days of Paid Leave to the first quarter of the next calendar year. Paid Leave accrues monthly and is made available from the start of employment. When an Employee's employment with the Debtors ends for any reason except termination for cause, accrued but unused Paid Leave is included in the Employee's final paycheck.

50. As of the Petition Date, the Debtors estimate that there is approximately \$215,000 on account of accrued and unused Paid Leave. The Debtors expect that the Employees that remain will continue in their current positions until they transfer employment in connection with the

Azorra Transaction and anticipate that the majority of the Paid Leave will be used by Employees in the ordinary course.

51. The Debtors also provide all Employees with paid holidays, during which Employees are not required to work and are paid their base rate of pay (the “Holiday Entitlement”). If a European Employee is unable to take all or part of their Holiday Entitlement during the year, unused Holiday Entitlement can be accrued and carried over to the following year. Any Holiday Entitlement that is carried over and not taken within 15 months of the end of the year in which it accrued is lost. The Debtors expect that the Employees that remain will continue in their positions until they transfer employment in connection with the Azorra Transaction and will take their Holiday Entitlement in the ordinary course.<sup>10</sup>

52. The Debtors seek authority to pay any prepetition amounts owed in connection with Paid Leave and Holiday Entitlement and continue to honor their obligations on account of Paid Leave, Holiday Entitlement and Leaves of Absence in the ordinary course of business.

**E. *Retirement Benefits***

**1. *401(k) Plan***

53. The Debtors offer eligible U.S. Employees the opportunity to participate in a 401(k) plan (the “401(k) Plan”) administered by ADP. Each pay period, the Debtors deduct each Employee’s contribution to the 401(k) Plan (up to the maximum limit set by the Internal Revenue Code) (the “Employee 401(k) Contributions”). The Debtors also make payroll deductions for the repayment of loans that Employees previously took against their 401(k) Plan accounts (the “401(k) Loan Payments”). The Debtors hold these amounts in trust until they are remitted to ADP. There

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<sup>10</sup> The Debtors also allow Employees to take certain other leaves of absence (the “Leaves of Absence”), such as parental and child care leave, jury duty, voting leave, personal leave, compassionate care leave, and bereavement leave. The Debtors do not accrue any amounts for the Leaves of Absence, and Leaves of Absence are not reflected as a liability on the Debtors’ balance sheet.

is typically a lag time of approximately 2 weeks between the time that the Debtors deduct Employee 401(k) Contributions from the Employees' payroll and when the amounts appear in the Employees' 401(k) Plan accounts. The Debtors estimate that each month they deduct, in the aggregate, approximately \$11,000 and \$1,100, from Employees' paychecks on account of the Employee 401(k) Contributions and 401(k) Loan Payments, respectively.

54. The Debtors match Employee 401(k) Contributions dollar-for-dollar up to six percent (6%) of each Employee's base salary per pay period (the "Company 401(k) Contributions"). The Debtors estimate that they pay approximately \$6,100 each month on account of the Company 401(k) Contributions. In 2022, the Debtors paid approximately \$73,000 on account of the Company 401(k) Contributions.

55. The Debtors believe that they do not owe any amounts on account of the Company 401(k) Contributions as of the Petition Date. Nonetheless, out of an abundance of caution, the Debtors request authority to pay any outstanding prepetition amounts owed in connection with the Company 401(k) Contributions and to continue honoring such obligations as they come due in the ordinary course, as well as to continue administering the Employee 401(k) Contributions and the 401(k) Loan Payments.

56. The Debtors pay ADP a semi-monthly fee of approximately \$1,200 associated with administering U.S. payroll and a variety of the Employee Benefits Programs for the U.S. Employees (including the Flexible Spending Programs, Workers Compensation Insurance, and the 401(k) Plan (collectively, the "ADP Admin Fees"). As of the Petition Date, the Debtors estimate that there are no accrued but unpaid ADP Admin Fees. However, to the extent there are any amounts outstanding relating to the prepetition period, the Debtors seek authority to remit or pay such amounts and pay the ADP Admin Fees in the ordinary course of business.

## 2. *Irish Pension Plan*

57. The Debtors sponsor a pension plan for Employees in Ireland (the “Irish Pension Plan”, and together with the 401(k) Plan, the “Retirement Benefits”). Each pay period, the Debtors contribute 10% of each Irish Employee’s base salary to the Irish Pension Plan (the “Employer Pension Contribution”), which historically amounted to approximately \$11,700 per month. Employees are not required to make contributions to the Irish Pension Plan, but they can make voluntary contributions, subject to certain limits for tax relief purposes based on age (the “Employee Pension Deductions”). The Employee Pension Deductions have historically amounted to approximately \$3,800 per month. The Debtors do not believe that they owe any amounts on account of the Employer Contributions as of the Petition Date.

58. Law Debenture Master Trust is the Trustee for the Irish Pension Plan and Mercer is administrator for the Irish Pension Plan. The Debtors pay Mercer a quarterly service fee of €1,665 (the “Pension Admin Fees”). As of the Petition Date, the Debtors estimate that they owe approximately €600 on account of prepetition Pension Admin Fees, which will come due in September 2023. The Debtors request authority to pay any prepetition amounts owed in connection with the Irish Pension Plan, including the Pension Admin Fees, and to continue administering the Irish Pension Plan and honoring their obligations thereunder as they come due in the ordinary course.

### F. *Miscellaneous Benefit Programs*

59. The Debtors also provide certain additional benefit programs including a fitness reimbursement program (the “Fitness Reimbursement Program”), a charitable matching program (the “Charitable Matching Program”), and a tuition assistance program (the “Tuition Assistance Program”) (collectively, the “Miscellaneous Benefit Programs”). Under the Fitness Reimbursement Program, Employees can receive a reimbursement for 50% up to \$300 per year

for eligible gyms. Under the Charitable Matching Program, the Debtors match (i) U.S. Employees' eligible charitable contributions of \$25 or more with a maximum of \$500 per Employee per calendar year and (ii) European Employees' eligible charitable contributions of €25 or more with a maximum of €500 per Employee per calendar year. Under the Tuition Assistance Program, the Debtors provide eligible Employees with access to a tuition assistance at no cost to the Employees. The Debtors believe that there are no accrued but unpaid amounts related to the Miscellaneous Benefit Programs as of the Petition Date. However, to the extent there are any such amounts outstanding, the Debtors seek authority to pay such amounts and to continue the Miscellaneous Benefit Programs in the ordinary course of business.

**G. *Irish Statutory Severance Entitlement***

60. Irish Employees that have been employed by the Debtors for two or more years are entitled to redundancy/severance pay (the "Irish Statutory Severance Entitlement"). The Irish Statutory Severance Entitlement is equal to two weeks' pay for every year of service, and one additional week of pay, with a cap of up to €600 per week.

61. The Debtors' ability to pay severance has been critical to maintaining Employee morale and loyalty in Ireland. The Irish Statutory Severance Entitlement provides Irish Employees with stability and an incentive to continue working through these Chapter 11 Cases and beyond. Increased instability in the Debtors' workforce would undermine the Debtors' ability to maintain business continuity and to continue operations. In addition, the Irish Statutory Severance Entitlement is required under Irish law.

62. The Debtors believe that they do not owe any amounts on account of the Irish Statutory Severance Entitlement as of the Petition Date. However, out of an abundance of caution, the Debtors seek authority to make payments on account of the Irish Statutory Severance Entitlement regardless of whether they accrued pre- or postpetition.

### **Basis for Relief**

#### **I. The Debtors are Authorized to Continue their Compensation and Benefits Programs Postpetition.**

63. As an initial matter, the Debtors believe that maintaining their Compensation and Benefit Programs and making any payments related thereto postpetition fall within the ordinary course of their business and are therefore authorized by section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The Debtors believe that any action to supplement, modify, extend, or reduce any of the Compensation and Benefits Programs is likewise in the ordinary course. Accordingly, the Debtors have included a request to continue the Compensation and Benefits Programs going forward out of an abundance of caution.

#### **II. The Debtors Should be Authorized to Pay Any Prepetition Obligations Relating to the Compensation and Benefits Programs.**

64. The Debtors also seek authority to pay or otherwise honor prepetition obligations on account of the Compensation and Benefits Programs. The Court may grant this authority under section 363(b) of the Bankruptcy Code, which 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). Section 363(b) permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification).

65. Thus, where debtors are able to “articulate some business justification, other than the mere appeasement of major creditors,” courts in this circuit have authorized them to make such payments under section 363(b) of the Bankruptcy Code. *See In re Windstream Holdings Inc.*, 614

B.R. 441, 456 (S.D.N.Y. 2020) (citing *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989)) (finding that there must be a sound business justification to justify payment of prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims for suppliers). The business judgment rule—a common formulation of the “sound business purpose” requirement—is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *See, e.g., Off. Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Once the debtor articulates a reasonable basis for its business decisions, “courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this District consistently have declined to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and have upheld a board’s decisions as long as such decisions are attributable to any “rational business purpose.” *Integrated*, 147 B.R. at 656 (quoting *CRTF Corp. v. Federated Dep’t Stores*, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)).

66. There is ample business justification for paying and otherwise honoring obligations under the Compensation and Benefits Programs because failure to do so would have a severe impact on the day-to-day operations of the Debtors’ businesses, potentially jeopardizing the Azorra Transaction. The Debtors’ business cannot function without the Employees and Independent Contractors. A significant portion of the value of the Debtors’ business is tied to their workforce, as demonstrated by the Azorra Transaction, and cannot be replaced without significant time and

effort—effort that might not be successful while the Debtors are in bankruptcy and will affect the ability to consummate the Azorra Transaction. Absent the payment or honoring of the Compensation and Benefits Obligations, the Debtors may experience declining productivity, significant turnover and general instability. At this critical time, the Debtors cannot risk demoralizing their workforce.

67. Most of the Employees and Independent Contractors rely on the Debtors’ satisfying their obligations under the Compensation and Benefits Programs to meet their daily living expenses. Consequently, Employees and Independent Contractors will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations under the Compensation and Benefits Programs. Continuing ordinary course benefits will also help maintain employee morale and minimize the adverse effect of the commencement of these cases on the Debtors’ business operations.

68. In addition, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, a debtor in possession is authorized to operate its business while maintaining “a fiduciary duty to act in the best interest of the estate as a whole, including its creditors, equity interest holders and other parties in interest.” *LaSalle Nat’l Bank v. Perelman*, 82 F. Supp. 2d 279, 292 (D. Del. 2000). *See also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“upon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee”). Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Indeed, Bankruptcy Rule 6003 implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where

doing so is “necessary to avoid immediate and irreparable harm.” Accordingly, postpetition payment of prepetition claims may be authorized where, as here, such payment is critical to preserving the going-concern value of the Debtors’ estates.

69. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code and/or the doctrine of necessity. Section 105(a) codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”) when essential to the continued operation of a debtor’s business. *In re Ionosphere Clubs*, 98 B.R. at 176. A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition [sic] debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Id.* (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)).

70. Similarly, under this longstanding “doctrine of necessity” or “necessity of payment” doctrine, a bankruptcy court may exercise its equitable power to allow a debtor to pay critical prepetition claims that are not explicitly authorized by the Bankruptcy Code. *See In re CoServ*, 273 B.R. at 497 (authorizing payment of certain prepetition claims pursuant to “doctrine of necessity”). Preservation of the estate is often most critical and extremely difficult early in chapter 11 cases. For that reason, where failure to make payments of certain essential prepetition claims threatens to disrupt a debtor’s efforts to confirm a chapter 11 plan, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay such claims in light of the paramount goal of chapter 11: “facilitating the continued operation and rehabilitation of the debtor . . . .” *In re Ionosphere Clubs*, 98 B.R. at 176.

**III. Certain Claims on Account of the Compensation and Benefits Programs Are Entitled to Priority Treatment Under the Bankruptcy Code.**

71. Section 507(a)(4)(A) of the Bankruptcy Code affords priority status to claims for “wages, salaries, or commissions, including vacation, severance, and sick leave pay,” that are “earned within 180 days before” the date on which a debtor’s chapter 11 case is commenced, up to the amount of \$15,150 per individual. *See* 11 U.S.C. § 507(a)(4)(A). Similarly, section 507(a)(5) grants priority to claims for contributions to certain employee benefit plans, up to \$15,150 per individual, minus the aggregate amount paid under section 507(a)(4) to employees covered by the benefit plan. *See* § 507(a)(5). To be confirmed, a chapter 11 plan must provide for payment in full of these priority claims. *See* § 1129(a)(9)(B).

72. Many of the prepetition obligations on account of the Compensation and Benefits Programs fall within the scope of section 507(a)(4) and section 507(a)(5), respectively. Thus, granting the majority of the relief sought herein should only affect the timing of payments to Employees and should not negatively affect recoveries of general unsecured creditors. In fact, payment of the Compensation and Benefits Programs at the outset of the Chapter 11 Cases enhances value for the benefit of all stakeholders.

**IV. Payment of Certain Obligations on Account of the Compensation and Benefits Programs Is Required by Law.**

73. Moreover, some of the requested relief is mandated by law. For instance, the Deductions and Payroll Taxes are held by the Debtors in trust for payment to taxing authorities, such as the Social Security Administration. As such, those withheld amounts are likely not property of the Debtors’ estates under section 541(d) of the Bankruptcy Code. *See, e.g., Begier v. IRS*, 496 U.S. 53, 57–60 (1990) (holding that payment of trust fund taxes is not subject to avoidance because such funds are not debtor’s property); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994) (holding that wages required to be withheld by state law are held in

trust for the taxing authority); *Shank v. Wash. State Dept. of Rev. (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that sales tax collected by sellers from customers is a “trust fund” tax); *DeChiaro v. N.Y. State Tax Comm’n*, 760 F.2d 432, 435 (2d Cir. 1985) (same). Indeed, a constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question. *See In re Integrated Health Servs., Inc.*, 344 B.R. 262, 270 (Bankr. D. Del. 2006).

74. The Bankruptcy Code excludes from the estate any equitable interest in property where “the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . .” 11 U.S.C. § 541(d). Because the Debtors do not have an equitable interest in the funds held on account of Deductions or “trust fund” taxes under non-bankruptcy law, section 541 excludes any equitable interest to those funds from the Debtors’ estates. Accordingly, the Debtors request that the Court authorize them to transmit prepetition Deductions and Payroll Taxes to the proper payees in the ordinary course of business.

**V. The Requested Relief Is Consistent with 503(c).**

75. Out of an abundance of caution and in an effort to provide comfort to the Employees given the uncertainty attendant to a company operating in chapter 11, the Debtors request authority to continue the Bonus Programs and the Irish Statutory Severance Entitlement. Neither the Bonus Programs nor the Irish Statutory Severance Entitlement implicate sections 503(c)(1) or 503(c)(2) of the Bankruptcy Code because no payments thereunder will be made to any Insider. *See* 11 U.S.C. § 503(c)(1)-(2). Compensation plans commenced within the ordinary course of business that do not implicate section 503(c)(1) are governed by the business judgment standard of section 363 of the Bankruptcy Code. *See In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 801 (Bankr. D. Del. 2007). Additionally, the Bonus Programs and the Irish Statutory Severance Entitlement do not implicate section 503(c)(3) of the Bankruptcy Code because they were commenced within the

ordinary course of the Debtors' business. *Cf.* 11 U.S.C. § 503(c)(3) (prohibiting certain payments "outside of the ordinary course of business"). Moreover, to the extent that section 503(c)(3) of the Bankruptcy Code is implicated, the Bonus Programs and the Irish Statutory Severance Entitlement are well justified by the facts and circumstances of these cases and do not seek to make any pre-petition or post-petition payments to any Insider.

76. Courts in this jurisdiction have often granted the relief sought in the Motion. *See, e.g., In re Voyager Digital Holdings, Inc., et al.*, No. 22-10943 (MEW) (Bankr. S.D.N.Y. July 8, 2022) [ECF No. 233] (order authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re GTT Commc'n, Inc.*, Case No. 21-11880 (MEW) (Bankr. S.D.N.Y. November 30, 2021) [ECF No. 146] (same); *In re Grupo Posadas S.A.B. de C.V.*, Case No. 21-11831 (SHL) (Bankr. Nov. 17, 2021) [ECF No. 73] (same); *In re GBG USA Inc.*, Case No. 21-11369 (MEW) (Bankr. S.D.N.Y. September 1, 2021) [ECF No. 149] (same); *In re Lakeland Tours, LLC*, Case No. 20-11647 (JLG) (Bankr. S.D.N.Y. Aug. 13, 2020) [ECF No. 111] (same); *In re Jason Indus. Inc.*, Case No. 20-22766 (RDD) (Bankr. S.D.N.Y. July 27, 2020) [ECF No. 135] (same); *In re Frontier Commc'ns Corp.*, Case No. 20-22476 (RDD) (Bankr. S.D.N.Y. May 26, 2020) [ECF No. 365] (same).

77. The Debtors have substantial business justification for continuing the Bonus Programs and the Irish Statutory Severance Entitlement in the ordinary course of business, including (i) maintaining Employee morale, (ii) disincentivizing Employees to pursue other employment opportunities, and (iii) reassuring Employees that the Debtors intend to honor their obligations to Employees. The Debtors believe that the costs associated with the Bonus Programs and the Irish Statutory Severance Entitlement, to the extent any are incurred postpetition, would

greatly outweigh the potential negative consequences of failing to do so, including the hiring of replacement employees on a short-term, temporary basis.

78. For the reasons stated above, continuation of the Bonus Programs and the Irish Statutory Severance Entitlement is critical and necessary to assuage Employees fears and motivate them to achieve the Debtors' chapter 11 objectives. Accordingly, the requested relief should be approved.

#### **VI. The Court Should Direct Financial Institutions to Honor Authorized Payments.**

79. To facilitate implementation of the above-requested relief, the Debtors request that the Court authorize all applicable financial institutions to receive, process, honor, and pay any and all checks drawn or electronic fund transfers from their accounts, whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are expressly identified by the Debtors as relating directly to the authorized payments related to the Compensation and Benefits Programs. The Debtors also seek authority to issue postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of these Chapter 11 Cases.

80. The Debtors believe that they 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 and the anticipated authorization to use cash collateral. In addition, through the Debtors' existing cash management system, the Debtors believe that checks or other transfer requests can be readily identified as an authorized payment on account of Compensation and Benefit Programs, and the Debtors are prepared to assist their banks by confirming whether particular transfers are authorized by an order granting this Motion. 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, but not direct, all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests related to the relief requested in this Motion.

**VII. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate Here.**

81. Section 362(a) of the Bankruptcy Code stays “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .” 11 U.S.C. § 362(a)(1). Section 362(d) of the Bankruptcy Code, however, permits a debtor to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1).

82. The Debtors believe that the requisite “cause” exists to modify the automatic stay, under section 362(d) of the Bankruptcy Code, to permit Employees to proceed with their workers’ compensation claims in the appropriate judicial or administrative forum because staying them from proceeding could have a detrimental effect on the financial well-being and morale of their Employees and ultimately lead to departure of certain Employees who are critical to the Debtors’ operations. Such departures could cause a severe disruption in the Debtors’ businesses to the detriment of all stakeholders. Employees’ claims will be pursued in accordance with the Workers’ Compensation Programs and their recoveries, if any, will be limited to the proceeds from the applicable insurance policies. All other claims, including any relating to matters covered by other insurance programs, will remain subject to the automatic stay.

### **Reservation of Rights**

83. Nothing contained herein is or should be construed as: (a) an implication or admission as to the validity of any claim against the Debtors or a waiver of the obligation of any claimant to file a proof of claim, (b) a promise to pay any claim or a waiver of the Debtors' or any other party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action, (d) a concession by the Debtors that any lien (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved), or (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code or as affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to the Court's order approving the relief sought herein is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

### **Motion Practice**

84. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Bankruptcy Rule 9013-1(a).

### **The Debtors Have Satisfied Bankruptcy Rule 6003(B)**

85. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549-50 (Bankr. S.D. Fla. 2008) (holding that Bankruptcy Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). The Second Circuit has interpreted the language "immediate and irreparable

harm” in the context of preliminary injunctions. In that context, the Second Circuit has instructed that irreparable harm “‘is a continuing harm which cannot be adequately redressed by final relief on the merits’ and for which ‘money damages cannot provide adequate compensation.’” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quoting *N.Y. Pathological & X-Ray Labs., Inc. v. INS*, 523 F.2d 79, 81 (2d Cir. 1975)). Furthermore, the “harm must be shown to be actual and imminent, not remote or speculative.” *Id.*; *see also Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1998). The Debtors submit that, for the reasons set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

#### **Waiver of Bankruptcy Rules 6004(A) and 6004(H)**

86. The Debtors also request that the Court waive the notice requirements under Bankruptcy Rule 6004(a) and the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve the value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable, as the exigent nature of the relief sought herein justifies immediate relief.

#### **Notice**

87. The Debtors will provide notice of this Motion to (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Required Consenting Noteholders, Clifford Chance US LLP; (d) counsel to the Aircraft Facility Lenders; (e) counsel to the Indenture Trustee of the Secured Notes; (f) counsel to the Purchaser, Paul, Weiss, Rifkind, Wharton &

Garrison LLP and Pillsbury Winthrop Shaw Pittman LLP; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) the Office of Foreign Assets Control of the United States Department of Treasury; (j) the United States Attorney's Office for the Southern District of New York; (k) the office of the attorneys general for the states in which the Debtors operate; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). The Debtors respectfully submit that, in view of the facts and circumstances, such notice is sufficient, and no other or further notice need be provided.

**No Previous Request**

88. No prior request for the relief sought in this Motion has been made to this or any other court.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Interim Order, substantially in the form attached hereto as **Exhibit A-1**, (ii) schedule the Final Hearing, (iii) at the Final Hearing, enter the Final Order, substantially in the form attached hereto as **Exhibit A-2**, and (iv) grant such other relief as is just and proper.

Dated: July 27, 2023  
New York, New York

/s/ Lauren C. Doyle

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**Exhibit A-1**

**Proposed Interim Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Chapter 11
	)	
Voyager Aviation Holdings, LLC <i>et al.</i> ,	)	Case No. 23-11177 (JPM)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Pending)

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**INTERIM ORDER (I) AUTHORIZING  
THE DEBTORS TO (A) CONTINUE COMPENSATION  
AND BENEFITS PROGRAMS AND (B) SATISFY PREPETITION  
OBLIGATIONS ON ACCOUNT OF COMPENSATION AND  
BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned cases seeking (i) authorization to (a) continue their Compensation and Benefits Programs in the ordinary course of business and (b) pay and honor all prepetition obligations on account of the Compensation and Benefits Programs and (ii) certain related relief, all as more fully set forth in the Motion; and the Court having reviewed the Motion and the First Day Declaration and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court, if any (the “Hearing”); and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

<sup>2</sup> Capitalized terms used but not defined in this Interim Order have the meanings given to such terms in the Motion or in the First Day Declaration, as applicable.

and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); (c) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) due and proper notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates and is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest; and upon all of the proceedings had before the 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 Debtors are authorized, but not directed, to maintain, honor, and fulfill all of the Compensation and Benefits Programs in effect on the Petition Date (and satisfy all postpetition obligations thereunder, including all administrative and processing fees related thereto), as such programs may be modified, amended, or supplemented from time to time in the ordinary course of the Debtors' business.
3. The Debtors are also authorized, but not directed, to maintain, honor, and fulfill all prepetition obligations on account of the Compensation and Benefits Programs; *provided* that, during the Interim Period, the amount paid to any individual Employee or Independent Contractor shall not exceed \$15,150.
4. Notwithstanding anything herein to the contrary, any modifications to the Compensation and Benefits Programs remain subject to the rights of the Purchaser and the

obligations and restrictions of Sellers and the Group Companies (as defined in the Purchase Agreement) under the Purchase Agreement.

5. Nothing herein shall be deemed to authorize the payment of any amounts that violate section 503(c) of the Bankruptcy Code, *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code under a separate motion at a later time.

6. Nothing herein shall be deemed to authorize the payment of any amounts under the Bonus Programs or any other bonus or incentive payments to Employees without further order of this Court.

7. The Debtors are authorized, but not directed, to pay any accrued but unused Paid Leave and Holiday Entitlement to any Employee whose employment terminates postpetition where the failure to do so would result in a violation of applicable federal, state, or foreign law.

8. The Debtors are authorized to forward any unpaid amounts on account of Deductions, Payroll Taxes, or any other funds collected on behalf of a third party to the appropriate taxing authorities or other recipients in accordance with the Debtors' prepetition policies and practices.

9. Pursuant to section 362(d) of the Bankruptcy Code, (i) Employees are authorized to proceed with their workers' compensation claims, if any, in the appropriate judicial or administrative forum, and the Debtors are authorized to take all steps necessary and appropriate with respect to the resolution of any such claims, and (ii) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (ii) are waived, *provided* that such claims are pursued in accordance with the Workers' Compensation Program and recoveries, if any, are limited to the proceeds from the applicable insurance policy.

10. Notwithstanding anything in this Interim Order, the Debtors are not authorized to accelerate any payments not due and payable before the Final Hearing.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of obligations on account of the Compensation and Benefit Programs are authorized to receive, process, honor and pay all such checks and electronic payment requests when presented for payment (to the extent of funds on deposit), 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.

12. The Debtors are authorized to issue postpetition checks or effect new funds transfers on account of the unpaid obligations associated with the Compensation and Benefits Programs to replace any prepetition checks or funds transfer requests that may be lost or dishonored or rejected as a result of the commencement of these Chapter 11 Cases.

13. Nothing contained herein is intended or should be construed to grant administrative priority status to any claim on account of any Compensation and Benefits Programs that does not already exist pursuant to the Bankruptcy Code.

14. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, approving the use of cash collateral (the "Cash Collateral Order") and any budget in connection with any such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

15. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, shall constitute or be construed as (a) an

implication or admission as to the validity of any claim against the Debtors or a waiver of the obligation of any claimant to file a proof of claim, (b) a promise to pay any claim or a waiver of the Debtors' or any other party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action, (d) a concession by the Debtors that any lien (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved), or (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code or as affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to the Court's order approving the relief sought herein is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

16. All time periods set forth in this Interim Order or in compliance with the Case Management Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

17. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

18. Under the circumstances of the Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

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

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order.

21. The Final Hearing on the Motion shall be held on \_\_\_\_\_, 2023 at \_\_\_\_:\_\_\_\_ [a.m./p.m.] (prevailing Eastern Time). Any objections or responses to the entry of the Proposed Final Order shall be filed and served upon counsel for the Debtors and the U.S. Trustee so as to be received by [4:00 p.m.] (prevailing Eastern Time) by no later than seven days before the Final Hearing (the “Objection Deadline”). If no objections or responses are filed and served by the Objection Deadline, the Court may enter a final order without any further notice of a hearing.

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

New York, New York

Dated: \_\_\_\_\_, 2023

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HONORABLE JOHN P. MASTANDO III  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A-2**

**Proposed Final Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	Chapter 11
	)	
Voyager Aviation Holdings, LLC <i>et al.</i> ,	)	Case No. 23-11177 (JPM)
	)	
Debtors. <sup>1</sup>	)	(Joint Administration Requested)

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**FINAL ORDER (I) AUTHORIZING  
THE DEBTORS TO (A) CONTINUE COMPENSATION  
AND BENEFITS PROGRAMS AND (B) SATISFY PREPETITION  
OBLIGATIONS ON ACCOUNT OF COMPENSATION AND  
BENEFITS PROGRAMS, (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned Debtors for entry of a final order: seeking (i) authorization to (a) continue their Compensation and Benefits program in the ordinary course of business and (b) pay and honor all prepetition obligations on account of the Compensation and Benefits Programs and (ii) certain related relief, all as more fully set forth in the Motion; 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 New York, dated as of January 31, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

<sup>2</sup> Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Motion.

with Article III of the United States Constitution and this Court having found that venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and of the opportunity to be heard at the hearing thereon were appropriate under the circumstances and that no other notice need be provided; and this Court having reviewed the Motion and the First Day Declaration and having heard the statements and argument in support of the relief requested at a hearing, if any, before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at any 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 as set forth herein.
2. The Debtors are authorized, but not directed, to maintain all of the Compensation and Benefits Programs in effect on the Petition Date (and satisfy all postpetition obligations thereunder, including all administrative and processing fees related thereto), as such programs may be modified, amended, or supplemented from time to time in the ordinary course of the Debtor’s business.
3. The Debtors are also authorized, but not directed, to pay all prepetition obligations on account of the Compensation and Benefits Programs and to continue the Compensation and Benefits Programs and maintain funding in the ordinary course of business.
4. The Debtors are authorized, but not directed, to pay any accrued but unused Paid Leave and Holiday Entitlement to any Employee whose employment terminates postpetition where the failure to do so would result in a violation of applicable federal, state, or foreign law.
5. The Debtors are authorized, but not directed, to continue to pay all postpetition obligations on account of the Compensation and Benefits Programs and to otherwise continue such

programs in accordance with the Debtors' prepetition policies and practices, and as such may be modified, amended, or supplemented from time to time, in the ordinary course of business.

6. Notwithstanding anything herein to the contrary, any modifications to the Compensation and Benefits Programs remain subject to the rights of the Purchaser and the obligations and restrictions of Sellers and the Group Companies (as defined in the Purchase Agreement) under the Purchase Agreement.

7. Nothing herein shall be deemed to authorize the payment of any amounts that violate section 503(c) of the Bankruptcy Code, *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code under a separate motion at a later time.

8. The Debtors are authorized to pay, in the ordinary course of business, all postpetition costs and expenses incidental to the Compensation and Benefits Programs, including all administrative and processing costs and payments to third parties.

9. The Debtors are authorized to forward any unpaid amounts on account of Deductions, Payroll Taxes, or any other funds collected on behalf of a third party to the appropriate taxing authorities or other recipients in accordance with the Debtors' prepetition policies and practices.

10. Pursuant to section 362(d) of the Bankruptcy Code, (i) Employees are authorized to proceed with their workers' compensation claims, if any, in the appropriate judicial or administrative forum in accordance with the Workers' Compensation Program, and the Debtors are authorized to take all steps necessary and appropriate with respect to the resolution of any such claims, and (ii) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (i) are waived, *provided* that such claims are pursued in accordance with the Workers'

Compensation Program and recoveries, if any, are limited to the proceeds from the applicable insurance policy. Nothing contained herein is intended or should be construed to grant administrative priority status to any claim on account of any Compensation and Benefits Programs that does not already exist pursuant to the Bankruptcy Code.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of obligations on account of the Compensation and Benefit Programs are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment (to the extent of funds and deposit), 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.

12. The Debtors are authorized to issue postpetition checks or effect new funds transfers on account of the unpaid obligations associated with the Compensation and Benefits Programs to replace any prepetition checks or funds transfer requests that may be lost or dishonored or rejected as a result of these Chapter 11 Cases.

13. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, approving the use of cash collateral (the "Cash Collateral Order") and any budget in connection with any such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

14. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed (i) an admission as to the amount of, basis for, or validity of any claim against the Debtors; (ii) a waiver of the Debtors' or

any other party's right to dispute any claim; (iii) a promise or requirement to pay any particular claim; (iv) an admission that any particular claim is of a type described in the Motion; (v) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (vi) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (vii) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

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

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

17. The Debtors are authorized to take all actions that are necessary and appropriate to effectuate the relief granted in this Final Order.

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

New York, New York  
Dated: \_\_\_\_\_, 2023

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HONORABLE JOHN P. MASTANDO III  
UNITED STATES BANKRUPTCY JUDGE