

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re :
:
AEROCENTURY CORP., *et al.*, : Chapter 11
:
Debtors.¹ : Case No. 21-10636 ()
:
: (Joint Administration Requested)
-----X

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO PAY AND HONOR CERTAIN
(A) PREPETITION WAGES, BENEFITS, AND OTHER COMPENSATION
OBLIGATIONS, (B) PREPETITION EMPLOYEE BUSINESS EXPENSES, AND
(C) WORKERS' COMPENSATION OBLIGATIONS; (II) AUTHORIZING BANKS
TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO
SUCH OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

The debtors and debtors in possession in the above-captioned case (collectively, the “Debtors”) hereby submit this motion (the “Motion”) for entry of an interim order (the “Interim Order”) and a final order (the “Final Order”), substantially in the forms annexed hereto as **Exhibit A** and **Exhibit B**, respectively, pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”): (i) authorizing, but not directing, the Debtors: (a) to pay their employees (collectively, the “Employees”) and Hans Middelkoop d/b/a AviaConsult International (“Avia”)² accrued prepetition wages, salaries, and other accrued compensation (collectively, the “Employee Claims”); (b) to reimburse Employees for prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of

¹ The Debtors in these chapter 11 cases, along with the last four digits of their federal employer identification number, are: AeroCentury Corp. (3974); JetFleet Holding Corp. (5342); and JetFleet Management Corp. (0929). The Debtors’ mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.

² Any reference herein to Avia as an “employee” is for the purpose of convenience only, and shall not be construed as a determination by the Debtors that Avia is in any way an employee of or independent contractor for the Debtors.



business (the “Employee Expenses”); (c) to pay all related prepetition payroll taxes and other deductions (the “Employee Withholdings”); (d) to honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors’ employee benefits programs, plans, and policies (collectively, the “Employee Benefits”), as described below; (e) to honor the Debtors’ worker’s compensation policies (the “Workers’ Compensation Program”); and (f) to the extent that any of the foregoing programs are administered, insured, or paid through a third-party administrator or provider, to pay any prepetition claims of such administrator and provider in the ordinary course of business to ensure the uninterrupted delivery of payments or other benefits to the Employees (the “Employee Administrator Obligations” and, collectively with the Employee Claims, the Employee Expenses, the Employee Withholdings, and the Employee Benefits, the “Employee Obligations”); and (ii) authorizing the Debtors’ banks and other financial institutions (the “Banks”) to honor and process related checks and electronic transfers. In support of this Motion, the Debtors rely on the *Declaration of Harold M. Lyons in Support of Chapter 11 Petitions and First-Day Applications* (the “First Day Declaration”),³ which was filed contemporaneously with this Motion and is incorporated herein by reference. In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this Motion 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

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. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

BACKGROUND

A. General Background

3. On the date hereof (the “Petition Date”), each of the Debtors commenced a bankruptcy case (collectively, the “Chapter 11 Cases”) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in the Chapter 11 Cases, and no request has been made for the appointment of a trustee or examiner.

4. Additional factual background relating to the Debtors’ business, capital structure, and the commencement of the Chapter 11 Cases is set forth in further detail in the First Day Declaration.

B. The Employee Claims

5. As of the Petition Date, the Debtors’ workforce consists of seven full-time Employees and one part-time employee (collectively, the “Employees”). The Employees are all employed by Debtor JetFleet Management Corp. (“JMC”). The Debtors’ last prepetition payroll occurred on March 25, 2021 and covered the pay period from March 16, 2021 through and including March 31, 2021.

6. The Debtors' Employees are paid semi-monthly on the fifteenth of the month and on the last business day of the month. The Debtor's aggregate gross semi-monthly payroll for their Employees is approximately \$67,000.

7. The Debtor's payroll is funded in gross to Paychex, Inc., the Debtor's third-party payroll administrator (the "Payroll Processor"), two business days before each pay date, and the Payroll Processor is responsible for distributing net pay to the Employees from the Payroll Processor's own account. Depending on the particular services provided in a given month, the Debtors pay the Payroll Processor approximately \$325 per month for administrative services and fees associated with processing payroll. As of the Petition Date, the Debtors do not believe that they owe any amounts to the Payroll Processor on account of prepetition services. However, to the extent any amounts are owed to the Payroll Processor on account of prepetition services, the Debtors herein seek authority to pay such amounts in the ordinary course of business.

8. As of the Petition Date, the Debtors do not believe that any amounts remain outstanding on account of accrued prepetition wages and salaries owed to the Employees (the "Unpaid Wage Obligations"). However, to the extent any Unpaid Wage Obligations are owed to the Employees, the Debtors seek authority herein to pay the Unpaid Wage Obligations; *provided, however*, that no Employee will be paid in excess of \$13,650 (the "Statutory Cap") on account of any Unpaid Wage Obligations unless required by applicable state law or further order of the Court.

9. Additionally, the Debtors have retained the services of Avia, who services the Debtors' aircraft located in Europe. These are the same type of services that are provided by the Debtors' own employees domestically. Primarily, Avia's employees provide on-site services to the Debtors' aircraft located in Europe, which services include, among other things, maintenance and transportation/repossession services. Without the services of Avia, the Debtors would be unable to

service their aircraft in Europe. In addition, Avia is reimbursed for actual expenses incurred. As of the Petition Date, the Debtors do not believe they owe any amounts to Avia. However, to the extent any amounts are owed to Avia on account of prepetition services, the Debtors herein seek authority to pay such amounts in the ordinary course of business.

C. Employee Expenses

10. Prior to the Petition Date, the Debtors directly or indirectly reimbursed their Employees for certain expenses incurred in the scope of their employment on behalf of the Debtors (the “Employee Expenses”). The Employee Expenses are incurred in the ordinary course of the Debtors’ business and include, without limitation, expenses for meals, travel, automobile mileage, and other business-related expenses. All such expenses are incurred with the applicable Employee’s understanding that he or she will not be held personally responsible for these costs and that the amounts will be reimbursed or paid by the Debtors in accordance with the Debtors’ reimbursement policies. In all cases, reimbursement is contingent on the Debtors’ determination that the charges are for legitimate and reimbursable business expenses.

11. Many Employees initially incur the Employee Expenses using personal credit cards or funds and subsequently seek reimbursement from the Debtors. The Debtors have a policy whereby the Employees seek reimbursement, or file expense reports for, the Debtors’ payment of Employee Expenses. These expenses are ordinary course expenses that the Employees incur in performing their job functions.

12. Prior to the Petition Date, certain Employees used a corporate credit card issued by American Express (the “AMEX Cards”) for business expenses, including supplies, travel, and entertainment, and to make payments to certain of the Debtors’ vendors. The AMEX Cards are held in each Employee’s name, and the Employees holding the AMEX Cards may be held personally liable for unpaid balances. To ensure that no individual Employee incurs liability on

account of unpaid obligations under the AMEX Card, the Debtors seek authority, but not direction, to pay any prepetition obligations that may have accrued but have not yet been paid on account of the AMEX Card, and further request authority to continue using the AMEX Card in the ordinary course postpetition.

13. It is difficult for the Debtors to determine the exact amount of Employee Expenses outstanding as of the Petition Date because, among other things, the Employees may have expenses that they have yet to submit for reimbursement. On average, over the past year, the Debtors have paid approximately \$10,000 per month on account of the Employee Expenses, the majority of which are incurred on the AMEX Cards. The Debtors estimate that, as of the Petition Date, approximately \$7,000 in Employee Expenses remain unpaid.

14. Absent authority to pay the Employee Expenses, the Employees could be obligated to bear such amounts out of their personal funds. The Debtors therefore seek authority to pay all outstanding Employee Expenses and to continue the foregoing policy with respect to all Employees during the pendency of the Chapter 11 Cases.

D. Employee Withholdings

15. The Debtors routinely deduct certain amounts from Employees' compensation that represent earnings that judicial or government authorities or the Employees have designated for deduction, including, for example, various federal, state and local income, Federal Insurance Contribution Act ("FICA") and other taxes, support payments and tax levies, savings programs contributions, benefit plans insurance payments and other similar payments, and forwards those amounts to various third-party recipients. In addition, the Debtors are responsible for remitting, for their own account, various taxes and fees associated with payroll pursuant to the FICA and federal and state laws regarding unemployment and disability taxes.

16. On average, over the past year, the Debtors have withheld approximately \$50,000 per month in Employee Withholdings. As of the Petition Date, the Debtors do not believe that any amounts are outstanding on account of the Employee Withholdings. The Debtors seek authority to deduct Employee Withholdings in the ordinary course of business and remit Employee Withholdings to the appropriate third parties, including, without limitation, amounts determined to be related to the period prior to the Petition Date.

E. Employee Benefits

17. In the ordinary course of business, the Debtors provide certain of their Employees, directly or indirectly, with a number of Employee Benefits, including but not limited to: (a) a range of medical, dental, vision, long and short-term disability, life and accidental death insurance coverage, and flexible spending accounts (collectively, the “Health Care Programs”); (b) vacation, holiday, and sick leave benefits (collectively the “Vacation and Leave Policies”); and (c) a 401(k) retirement savings plan (the “Retirement Plan” and, together with the Health Care Programs, the Vacation and Leave Policies, and the Retirement Plan, the “Employee Benefits Programs”). Employee contributions for the Employee Benefits Programs, where applicable, are processed through payroll deductions from the participating Employees.

18. By this Motion, the Debtors seek authority, but not direction, to: (i) continue to provide certain of the Employee Benefits Programs in the ordinary course of business postpetition, as set forth below; (ii) continue to honor obligations under certain of the Employee Benefits Programs, including any premiums and administrative fees, as set forth below; and (iii) pay amounts owed under certain of the Employee Benefit Programs to the extent that they remain unpaid as of the Petition Date. Each of the Employee Benefit Programs are discussed below.

(i) Health Care Programs

19. *Medical Insurance Program.* The Debtors offer a medical and prescription drug program (the “Health Plan”) to their full-time Employees, which is administered by CaliforniaChoice Benefit Administrators, Inc. (“CalChoice”). The Debtors pay all of the Health premiums for participating Employees and their dependents, which amounts to approximately \$17,600 per month. As of the Petition Date, the Debtors do not believe that any amounts are accrued but unpaid in connection with the Health Plan. However, to the extent any amounts are owed under the Health Plan, the Debtors hereby seek authorization to pay any prepetition amounts in respect of the Health Plan and to continue to pay postpetition costs with respect thereto during the pendency of the Chapter 11 Cases.

20. *Dental Insurance Program.* The Debtors offer a fully-insured dental program (the “Dental Plan”) to the Employees, which is administered by MetLife, Inc. The Debtors pay 100% of the participating Employees’ premiums and 80% of their dependents’ premiums for the Dental Plan, with the participating Employees paying the balance. The Debtors’ monthly spend on account of the Dental Plan is approximately \$830. As of the Petition Date, the Debtors do not believe that any amounts are accrued but unpaid in connection with the Dental Plan. However, to the extent any amounts are owed under the Dental Plan, the Debtors hereby seek authorization to pay any prepetition amounts in respect of the Dental Plan and to continue to pay postpetition costs with respect thereto during the pendency of the Chapter 11 Cases.

21. *Vision Insurance Program.* The Debtors offer vision insurance to the Employees through VSP Vision Care (the “Vision Plan”). The Debtors pay 100% of the participating Employees’ premiums and 80% of their dependents’ premiums for the Vision Plan, with the participating Employees paying the balance. The Debtors’ monthly spend on account of the Vision Plan is approximately \$180. As of the Petition Date, the Debtors do not believe that any amounts

are accrued but unpaid in connection with the Vision Plan. However, to the extent any amounts are owed under the Vision Plan, the Debtors hereby seek authorization to pay any prepetition amounts in respect of the Vision Plan and to continue to pay postpetition costs with respect thereto during the pendency of the Chapter 11 Cases.

22. *Life, Disability, and Related Insurance Coverage.* The Debtors provide their Employees with company-funded short-term and long-term disability insurance, accidental death and dismemberment insurance, and basic life insurance, which are all offered through Guardian Direct Insurance. The Debtors pay 100% of the costs of these benefits, which amount to approximately \$1025 per month. The Debtors hereby seek authority to pay any outstanding prepetition amounts that may be owed in connection with these benefits and to continue providing these benefits in the ordinary course during the pendency of the Chapter 11 Cases.

23. *Statutory Temporary Disability Insurance.* The Debtors operate in California, which offers certain statutory temporary disability benefits. Depending on the quarter, the Debtors pay approximately up to \$4,500 on account of such benefits. As of the Petition Date, the Debtors do not believe that any amounts are accrued but unpaid in connection with these statutory benefits. However, to the extent any amounts are owed for statutory disability payments, the Debtors seek authorization to pay any prepetition amounts that may be owed in connection with these statutory benefits and to continue providing the same in the ordinary course during the pendency of the Chapter 11 Cases.

24. *Health Reimbursement Plan.* The Debtors offer full-time Employees a health reimbursement plan (an “HRP”) for various health and dependent care expenses. The HRP is administered by JMC. The Debtors contribute approximately \$300 per month to the HRP for each full-time Employee. The Debtors hereby seek authorization to pay any prepetition amounts that

may be owed in connection with the HRP, and to maintain the program in the ordinary course during the pendency of the Chapter 11 Cases.

(ii) Vacation and Sick Leave Policies

25. *Vacation Time.* Vacation time (“Vacation”) accrues at a rate of two days per month, with a maximum amount of 48 days. A limited number of unused vacation days can be carried over for one subsequent calendar year, subject to an aggregate cap of 48 Vacation days attributable to any year (inclusive of prior-year carry-overs). At separation of employment, Employees are entitled to receive payment for any Vacation that had accrued or carried over from a prior year, but had remained unused for the year in which the separation occurred.

26. *Sick Leave.* The Debtors provide paid accrued sick time (“Sick Leave”) to eligible Employees. The amount of Sick Leave that the Debtors offer accrues at a rate of one day per month. The maximum amount of Sick Leave that the Debtors offer with respect to any single Employee is twelve days and, per California law, only six days of unused Sick Leave may be carried over to the next year. Employees are not paid for unused sick days upon termination of employment or retirement, and the Debtors therefore do not make any cash payments on account of the Sick Leave policy unless otherwise required under applicable state law.

27. As of the Petition Date, the Debtors estimate that approximately \$220,000 is accrued but unpaid in connection with the Vacation and Leave Policies.

28. Subject to the Court’s approval of the requested relief, the Debtors intend to comply with their policies and applicable state law with respect to the Vacation and Sick Leave policies. By this Motion, the Debtors seek authorization, but not direction, to continue their Vacation and Leave Policies during the pendency of the Chapter 11 Cases and to honor, in the ordinary course of business, all unused time accrued under such policies prior to the Petition Date.

(iii) Retirement Plan

29. The Debtors maintain the Retirement Plan, administered by Peery & Associates (“Peery”) and sponsored by JMC, through which qualified and participating Employees may defer a portion of their salary to help meet their financial goals and accumulate savings for their future in a 401(k) account. The Debtors pay Peery approximately \$2,500 annually to administer the Retirement Plan. The Retirement Plan is funded by Employee contributions, and the Debtors provide a match at the end of the calendar year. On average, the Debtors deduct approximately \$8,000 per month on behalf of employee contributions. Additionally, the Debtors’ match is discretionary and has been paid towards the end of the plan year, typically in mid-December. Depending on the success of the company in a given year, the Debtors’ contribution to the Retirement Plan can range from approximately \$3,000 to \$5,000 per year per Employee.

F. Workers’ Compensation Program

30. Under applicable state law, the Debtors are required to maintain workers’ compensation insurance programs to provide their Employees with workers’ compensation insurance coverage for claims arising from or related to their employment with the Debtors (the “Workers’ Compensation Program”). To implement the Workers’ Compensation Program, the Debtors utilize a broker, Marsh McLennan (the “Broker”) to secure the best rates for their Workers’ Compensation Program. Through the Broker, the Debtors have obtained a workers’ compensation policy from The Hartford/Hartford Fire Insurance Company. The annual cost of the Hartford policy is approximately \$7,000 (paid in installments). The Workers’ Compensation Policy was recently renewed, and a payment of \$905.10 was made on March 25, 2021. The Debtors do not believe that any amounts will become due and owing under the Workers’ Compensation Program during the first twenty-one days of these chapter 11 cases.

31. For the claims administration process in the Chapter 11 Cases to operate as efficiently as possible, and to ensure that the Debtors comply with state law, it is necessary that the Debtors obtain authority to continue to maintain the Workers' Compensation Program in the ordinary course of business, and to pay prepetition amounts related thereto, including, without limitation, any payments for workers' compensation claims, deductibles, retentions, premiums, and other amounts required in connection with the program as such amounts become due in the ordinary course during the pendency of the Chapter 11 Cases.

32. The Debtors' workforce is critical to the success of these Chapter 11 Cases. The Debtors' roster of Employees is very lean, and, during these Chapter 11 Cases, each Employee will be responsible for his or her ordinary responsibilities, along with attending to the additional work that comes with running a successful chapter 11 process. The loss of any of the Debtors' employees would disrupt the Debtors' operations and these chapter 11 cases, and would be a significant hardship on the Debtors' ability to run stabilize its business and administer these Chapter 11 Cases. Accordingly, due to the importance of each of the Employees, and as set forth below, the Debtors seek to honor all of the Employee Obligations.

RELIEF REQUESTED

33. The Debtors hereby request entry of the Interim Order and Final Order authorizing, but not directing, the Debtors, in their sole discretion: (i) to pay Employee Obligations (including any Employee Administrator Obligations or amounts owed to Avia) subject to the caps set forth in the Interim Order and the Final Order; and (ii) to honor and continue in the ordinary course of business until further notice the Employee Benefits and the Workers' Compensation Program.

34. The Debtors also request that the Court authorize the Banks, when requested by the Debtors, in their discretion, to honor and process any checks or electronic transfers drawn on the

Debtors' bank accounts to pay any prepetition obligations described herein, whether such checks or other requests were submitted prior to or after the Petition Date, provided that sufficient funds are available to make such payments. The Debtors further request that the Banks be authorized to rely on the Debtors' designation of any particular check or electronic transfer request as approved pursuant to this Motion.

BASIS FOR RELIEF

A. The Court Should Authorize, but not Direct, the Debtors, in Their Discretion, to Pay or Otherwise Honor the Employee Obligations.

35. The Debtors seek the relief requested herein because any delay in paying or otherwise honoring any of the Employee Obligations could severely disrupt the Debtors' relationship with, and irreparably impair the morale of, the Employees at a time when their continued dedication, confidence, cooperation, and services are most critical to the Debtors and the success of the Chapter 11 Cases. The Debtors face the risk that their ability to maximize the value of their estates may be severely jeopardized if the Debtors are not immediately granted authority to pay the Employee Obligations. Granting the relief requested in this Motion on the grounds set forth below will allow the Debtors to maximize value during the Chapter 11 Cases.

36. Pursuant to section 507(a)(4) of the Bankruptcy Code, each Employee may be granted a priority claim for:

allowed unsecured claims, but only to the extent of \$13,650 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for –

- (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
- (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services, for the debtor in the ordinary course of the debtor's business if, and only if,

during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor

11 U.S.C. § 507(a)(4).

37. Likewise, under section 507(a)(5) of the Bankruptcy Code, Employees may ultimately be granted a priority claim for:

allowed unsecured claims for contributions to an employee benefit plan –

- (A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor’s business, whichever occurs first; but only
- (B) for each such plan, to the extent of –
 - (i) the number of employees covered by each such plan multiplied by \$13,650; less
 - (ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

11 U.S.C. § 507(a)(5).

38. The Debtors believe that a substantial portion, if not all, of the relief requested herein is within the statutory caps of sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtors, therefore, would be required to pay these claims in full before any of the Debtor’s non-priority general unsecured obligations may be satisfied. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries, and commissions, and certain allowed unsecured claims for contributions to an employee benefit plan). Thus, granting the relief requested herein will not prejudice general unsecured creditors.

39. Even if a particular claim is not entitled to priority, payment is nonetheless justified under section 105(a) of the Bankruptcy Code and the well-established “doctrine of necessity.” The

Court's power to utilize the doctrine of necessity in chapter 11 cases derives from the Court's inherent equity powers and its statutory authority 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). The United States Supreme Court first articulated the doctrine of necessity over a century ago in *Miltenberger v. Logansport Railway Company*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See id.* at 309–14. The modern application of the doctrine of necessity is largely unchanged from the Court's reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581–82 (3d Cir. 1981) ("[I]n order to justify payment under the 'necessity of payment' rule, a real and immediate threat must exist that failure to pay will place the [debtor's] continued operation . . . in serious, jeopardy.").

40. The doctrine of necessity permits the Court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor "cannot survive" absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *see also In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.").

41. The Employees and the personnel of Avia perform critical functions for the Debtors, and their knowledge, skills, and service are essential to the success of the Chapter 11 Cases. The Debtors staff a very lean workforce, and without the continued service and dedication of the Employees and access to Avia's employees, it will be difficult, if not impossible, for the Debtors

to maximize the value of their assets in the Chapter 11 Cases. The Debtors, therefore, believe it is necessary to pay and/or honor the prepetition Employee Obligations to maintain employee morale and a focused workforce during this critical time, which will allow the Debtors to avoid any interruptions to their efforts to maximize the value of their estates for the benefit of all stakeholders.

B. The Court Should Authorize the Banks to Honor and Process the Debtor's Payments on Account of the Employee Obligations.

42. The Debtors represent that it has sufficient funds to pay the amounts described herein in the ordinary course of business. As a result of the commencement of the Chapter 11 Cases and in the absence of an order of the Court providing otherwise, the Debtors' checks and electronic fund transfers in respect of the Employee Obligations may be dishonored or rejected by financial institutions. Under the Debtor's cash management system, the Debtors can readily identify checks or transfers as relating directly to payment of Employee Obligations. Accordingly, the Debtors believe that prepetition checks and transfers other than those for Employee Obligations will not be honored inadvertently. The Debtors submit that any Bank should be authorized to rely on the representations of the Debtors with respect to whether any check drawn or transfer request issued by the Debtors prior to the Petition Date should be honored pursuant to this Motion.

43. For the reasons set forth above, the Debtors submit that the relief requested herein is in the best interests of the Debtors, their estates, and their creditors, and, therefore, should be granted.

IMMEDIATE RELIEF IS NECESSARY

44. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the petition date requires the debtor to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003(b). The Debtors believe that,

among other things, the success of the Chapter 11 Cases will require the continued focus and dedication of the Employees, as any deterioration in Employee morale or the loss of the Employees' services will have an adverse impact on the Debtors' ability to maximize value through the Chapter 11 Cases. Thus, if the relief requested herein is not granted, the failure to satisfy the Employee Obligations would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF ANY APPLICABLE STAY

45. The Debtors also request that the Court waive 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 set forth throughout this Motion, any delay in paying the Employee Obligations would be detrimental to the Debtors, their estates, and their creditors. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

46. To implement the foregoing immediately, the Debtors also respectfully request a waiver of the notice requirements of Bankruptcy Rule 6004(a), to the extent they are applicable.

RESERVATION OF RIGHTS

47. Nothing in the Interim Order, the Final Order, or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy

Code or an admission as to the validity of any claim against the Debtors and their estates, (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action, or (iv) shall be construed as a promise to pay a claim.

NOTICE

48. The Debtors will provide notice of this motion to: (i) the United States Trustee for the District of Delaware; (ii) the holders of the twenty (20) largest unsecured claims against the Debtor; (iii) counsel to the prepetition lender; (iv) the United States Attorney's Office for the District of Delaware; (v) the Internal Revenue Service; (vi) the United States Securities and Exchange Commission; (vi) the Payroll Processor; and (viii) any party that requests service pursuant to Bankruptcy Rule 2002. Notice of this motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required or necessary.

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CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other relief as is just and proper.

Dated: March 29, 2021
Wilmington, Delaware

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

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

	-X	
	:	Chapter 11
In re	:	
	:	Case No. 21- <u>10636</u> ()
AEROCENTURY CORP., <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors. ¹	:	
	:	Re: Docket No. _____

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY AND HONOR
CERTAIN (A) PREPETITION WAGES, BENEFITS, AND OTHER COMPENSATION
OBLIGATIONS; (B) PREPETITION EMPLOYEE BUSINESS EXPENSES; AND
(C) WORKERS' COMPENSATION OBLIGATIONS; (II) AUTHORIZING BANKS TO
HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH
OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")² of the Debtors for the entry of interim and final orders, pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor, or otherwise satisfy certain of the Employee Obligations, including amounts and obligations related to the period prior to the Petition Date, and continue certain of their Employee Benefits in the ordinary course of business; (ii) continue the Workers' Compensation Program and honor obligations related thereto, regardless of when accrued; and (iii) authorizing Banks to honor and process related checks and electronic transfers; and upon consideration of the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and this Court

¹ The Debtors in these chapter 11 cases, along with the last four digits of their federal employer identification number, are: AeroCentury Corp. (3974); JetFleet Holding Corp. (5342); and JetFleet Management Corp. (0929). The Debtors' mailing address is 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the First Day Declaration, as applicable.

having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having determined that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having determined that venue of the Chapter 11 Cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; 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. Objections to entry of an order granting the Motion on a final basis must be filed by _____, 2021, at 4:00 p.m. (ET) and served on: (i) the Debtors at 1440 Chapin Avenue, Suite 310, Burlingame, CA 94010; (ii) proposed co-counsel to the Debtors, (a) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Joseph M. Barry, Esq. (jbarry@ycst.com), Ryan M. Bartley, Esq. (rbartley@ycst.com), and Joseph M. Mulvihill, Esq. (jmulvihill@ycst.com), and (b) Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019-9601, Attn: Lorenzo Marinuzzi, Esq. (lmarinuzzi@mofo.com) and Erica J. Richards, Esq. (erichard@mofo.com); (iii) counsel to the prepetition lender, Vedder Price P.C., 222 North LaSalle Street, Chicago, Illinois 60601, Attn: Neil Poland (npoland@vedderprice.com) and David L. Kane, Esq. (dkane@vedderprice.com); the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Linda Casey, Esq. (linda.casey@usdoj.gov); and (v) counsel to any statutory committee appointed in the Chapter 11 Case. A final hearing, if required, on the Motion will be held on _____, 2021, at _____.m. (ET). If no

objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

3. Upon entry of this Interim Order, the Debtors are authorized, but not directed, to pay and/or honor (including to any third parties that provide or aid in the monitoring, processing or administration of the Employee Obligations), in their sole discretion, the Employee Obligations as and when such obligations are due, including any amounts owed to Avia, in an amount not to exceed \$200,000, in the aggregate absent further order of this Court; *provided, however*, that notwithstanding any other provision of this Interim Order, no payments on account of any individual Employee (or individual employed by Avia) shall exceed the amounts set forth in section 507(a)(4) of the Bankruptcy Code, and *provided further* that, absent entry of the Final Order or further order of this Court, no amounts under the Vacation and Leave Policies shall be paid at termination of employment unless such amounts, including any amounts above the \$13,650 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code, are a result of cash payment for unpaid amounts under the Vacation and Leave Policies that is required to be paid under applicable state law.

4. Subject to paragraph 3, the Debtors are authorized, but not directed, in their sole discretion, to honor and continue the Employee Benefits that were in effect as of the Petition Date; *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefits under section 365(a) of the Bankruptcy Code.

5. The Debtors are hereby authorized, but not directed, to continue the Workers' Compensation Program, in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to pay any workers' compensation claims, third-party

administrator fees, deductibles, retentions, premiums, and other amounts required in connection with the Workers Compensation Program as such amounts become due in the ordinary course during the pendency of the Chapter 11 Cases, regardless of when accrued.

6. The Debtors may pay and remit any and all Employee Withholdings, whether these relate to the period prior to or after the Petition Date.

7. Subject to the amounts set forth in section 507(a)(4) and 507(a)(5) of the Bankruptcy Code, the Banks shall be and hereby are authorized to receive, process, honor and pay all prepetition and postpetition checks and fund transfers on account of the Employee Obligations that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Banks are prohibited from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Employee Obligations. The Debtors are hereby authorized to issue new postpetition checks or effect new postpetition fund transfers on account of the Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

8. Notwithstanding any other provision of this Interim Order, any Bank may rely on the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and any Bank that honors a prepetition check or other item drawn on any account that is the subject of this Interim Order (i) at the direction of the Debtors, (ii) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (iii) as a result of an innocent mistake made despite the above-described protective measures, shall not be liable to the Debtors or their estates on account of such prepetition check or other item being honored postpetition.

9. Any party receiving payment from the Debtors is authorized to rely upon the representations of the Debtors as to which payments are authorized by this Interim Order.

10. Nothing in the Motion or this Interim Order or the relief granted (including any actions taken or payments made by the Debtors pursuant to the relief) shall (i) be construed as a request for authority to assume any executory contract under section 365 of the Bankruptcy Code; (ii) waive, affect or impair any of the Debtors' rights, claims or defenses, including, but not limited to, those arising from section 365 of the Bankruptcy Code, other applicable law and any agreement; (iii) grant third-party beneficiary status or bestow any additional rights on any third party; or (iv) be otherwise enforceable by any third party.

11. The Debtors shall not make any payments in excess of the amounts set forth in section 507(a)(4) and 507(a)(5) of the Bankruptcy Code, absent further order of this Court.

12. Nothing in this Interim Order shall authorize the Debtors to pay any payments to or on behalf of "insiders" (as defined by section 101(31) of the Bankruptcy Code) that would violate section 503(c) of the Bankruptcy Code. Accordingly, nothing herein approves any bonus and/or severance program under section 503(c).

13. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

14. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

15. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Interim Order shall be effective immediately and enforceable upon its entry.

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

EXHIBIT B

Proposed Final Order

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

	X	
	:	Chapter 11
In re	:	
	:	Case No. 21- <u>10636</u> ()
AEROCENTURY CORP., <i>et al.</i> ,	:	
	:	(Jointly Administered) Re:
Debtors. ¹	:	
	:	Docket Nos. ____ & ____
	X	

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY AND HONOR CERTAIN
(A) PREPETITION WAGES, BENEFITS, AND OTHER COMPENSATION
OBLIGATIONS; (B) PREPETITION EMPLOYEE BUSINESS EXPENSES; AND
(C) WORKERS' COMPENSATION OBLIGATIONS; (II) AUTHORIZING BANKS TO
HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH
OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")² of the Debtors for the entry of interim and final orders, pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (i) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor, or otherwise satisfy certain of the Employee Obligations, including amounts and obligations related to the period prior to the Petition Date, and continue certain of their Employee Benefits in the ordinary course of business; (ii) continue the Workers' Compensation Program and honor obligations related thereto, regardless of when accrued; and (iii) authorizing Banks to honor and process related checks and electronic transfers; and upon consideration of the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and this Court

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² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the First Day Declaration, as applicable.

having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having determined that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having determined that venue of the Chapter 11 Cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; 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. Upon entry of this Final Order, the Debtors are authorized, but not directed, to pay and/or honor (including to any third parties that provide or aid in the monitoring, processing or administration of the Employee Obligations), in their sole discretion, the Employee Obligations, including any amounts owed to Avia, as and when such obligations are due, in an amount not to exceed \$200,000, in the aggregate absent further order of this Court; *provided, however*, that notwithstanding any other provision of this Final Order, no payments to any Employee shall exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code unless such amounts above the \$13,650 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code are a result of cash payment for unpaid amounts under the Vacation and Leave Policies that is required under applicable state law.
3. Subject to paragraph 2, the Debtors are authorized, but not directed, in their sole discretion, to honor and continue the Employee Benefits that were in effect as of the Petition Date; *provided, however*, that such relief shall not constitute or be deemed an assumption or an

authorization to assume any of such Employee Benefits under section 365(a) of the Bankruptcy Code.

4. The Debtors are hereby authorized, but not directed, to continue the Workers' Compensation Program, in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to pay any workers' compensation claims, third-party administrator fees, deductibles, retentions, premiums, and other amounts required in connection with the Workers Compensation Program as such amounts become due in the ordinary course during the pendency of the Chapter 11 Cases, regardless of when accrued.

5. The Debtors may pay and remit any and all Employee Withholdings, whether these relate to the period prior to or after the Petition Date.

6. The Banks shall be and hereby are authorized to receive, process, honor and pay all prepetition and postpetition checks and fund transfers on account of the Employee Obligations that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Banks are prohibited from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Employee Obligations. The Debtors are hereby authorized to issue new postpetition checks or effect new postpetition fund transfers on account of the Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

7. Notwithstanding any other provision of this Final Order, any Bank may rely on the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and any Bank that honors a prepetition check or other item drawn on any account that is the subject of this Final Order (i) at the direction of the Debtors, (ii) in a good-faith belief

that this Court has authorized such prepetition check or item to be honored, or (iii) as a result of an innocent mistake made despite the above-described protective measures, shall not be liable to the Debtors or their estates on account of such prepetition check or other item being honored postpetition.

8. Any party receiving payment from the Debtors is authorized to rely upon the representations of the Debtors as to which payments are authorized by this Final Order.

9. Nothing in the Motion or this Final Order or the relief granted (including any actions taken or payments made by the Debtors pursuant to the relief) shall (i) be construed as a request for authority to assume any executory contract under section 365 of the Bankruptcy Code; (ii) waive, affect or impair any of the Debtors' rights, claims or defenses, including, but not limited to, those arising from section 365 of the Bankruptcy Code, other applicable law and any agreement; (iii) grant third-party beneficiary status or bestow any additional rights on any third party; or (iv) be otherwise enforceable by any third party.

10. The Debtors shall not make any payments in excess of the amounts set forth in section 507(a)(4) and 507(a)(5) of the Bankruptcy Code, absent further order of this Court.

11. Nothing in this Final Order shall authorize the Debtors to pay any payments to or on behalf of "insiders" (as defined by section 101(31) of the Bankruptcy Code) that would violate section 503(c) of the Bankruptcy Code. Accordingly, nothing herein approves any bonus and/or severance program under section 503(c).

12. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

13. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

14. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Final Order shall be effective immediately and enforceable upon its entry.

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