

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	
)	Chapter 11
)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	Case No. 23-90054 (CML)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

**DEBTORS’ EMERGENCY MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS
TO HONOR AND CONTINUE THEIR EMPLOYEE COMPENSATION
AND BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 4:00 p.m. (prevailing Central Time) on February 1, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on February 1, 2023, at 4:00 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez’s conference room number is 590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez’s homepage. The meeting code is “JudgeLopez”. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Lopez’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion (this “Motion”):²

Relief Requested

1. The Debtors request that the Court entered the attached order (the “Order”) (a) authorizing the Debtors to honor and continue their employee compensation and benefits programs and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

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

4. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 1075-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

² On January 31, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Capitalized terms used but not otherwise defined in this Motion have the meanings ascribed to them in the *Declaration of Michael Neyrey, Chief Executive Officer of IEH Auto Parts Holding LLC, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed concurrently with this Motion.

The Debtors' Workforce

5. As of the Petition Date, the Debtors employ approximately 3,477 employees in the United States (the "Employees"), of whom approximately 2,813 are hourly (the "Hourly Employees") and approximately 664 are salaried (the "Salaried Employees").

6. In addition to the Employees, from time to time, the Debtors employ independent contractors (the "Contractors"), either directly or through staffing agencies (collectively, the "Temporary Staffing Agencies"), to assist in the distribution centers or otherwise in corporate departments to complete discrete projects on both a short- and long-term basis. The Debtors currently utilize Temporary Staffing Agencies to provide certain of the Debtors' Contractors. The Contractors are a critical supplement to the efforts of the Debtors' Employees.

7. The Debtors' Employees perform a variety of critical functions, including administrative, accounting, supervisory, consultant, management, sales, among others. The Debtors must retain their Employees' skills and their knowledge and understanding of the Debtors' infrastructure, operations, and customer relations to effect a successful reorganization and maximize creditors' recoveries.

8. The Debtors' Employees and Contractors rely on their compensation and benefits for their daily living needs and to support their families. If the Debtors are not permitted to continue to meet and sustain their payroll and benefits obligations as set forth herein, the Debtors' workforce will be materially and negatively impacted, which the Debtors expect would affect productivity and retention and, in turn, threaten a successful reorganization.

Employee Compensation and Benefits Programs

9. The Debtors seek to minimize the personal hardship the Employees could suffer if prepetition Employee-related obligations are not paid when due or as expected. The Debtors also seek to maintain stability in their workforce during the administration of these chapter 11 cases.

To do so, the Debtors seek to pay prepetition employee-related obligations when due or as expected. Nonpayment of employee compensation and benefits could severely undermine morale and impose real hardship on the Employees, generate doubts about the stability of the Debtors and their prospects while in chapter 11, and create a significant risk of attrition.

10. The Debtors seek authority to pay and honor certain prepetition obligations for, among other items: wages, salaries, certain bonuses, severance payments, and other compensation; federal, state, and local withholding taxes and other amounts withheld; employee health benefits, insurance benefits, and all other employee benefits that the Debtors have historically provided in the ordinary course of business (collectively, and as more fully described herein, the “Employee Compensation and Benefits Programs”), and to pay all costs incident to the foregoing.

11. The Debtors also seek authority to pay the Reimbursable Expenses, and to pay any amounts due to the Contractors and Temporary Staffing Agencies. The Debtors request confirmation of their right to modify, change and discontinue any of the Employee Wages and Benefits and the policy related to the Reimbursable Expenses, and to implement new Employee Wages and Benefits in the ordinary course of business during these chapter 11 cases in their sole discretion without the need for further Court approval.

I. Employee Compensation.

A. Wages.

12. In the ordinary course of business, the Debtors incur payroll obligations for their employees’ salaries, wages, overtime, and other obligations (collectively, the “Wages”). Employees are paid one week in arrears, on a bi-weekly basis, every other Friday. The next pay date is February 10.

13. The Debtors' historical average bi-weekly gross payroll is approximately \$5,400,000.00 for the Employees. Payroll is made by direct deposit through electronic transfer of funds directly to Employees' bank accounts or via paper check or a pay card.³

14. As of the Petition Date, the Debtors estimate that they owe approximately \$3,387,537.00 on account of accrued and unpaid Wages (the "Unpaid Wages"), substantially all of which will come due within the first 15 days of these chapter 11 cases. Additional Unpaid Wages may be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees.

15. The Debtors seek authority to pay their Employees any Unpaid Wages in the ordinary course of business and consistent with past practice, and to continue paying the Wages on a postpetition basis in the ordinary course of the Debtors' business.

B. Temporary Staffing Obligations.

16. On average, the Debtors spend approximately \$300,000.00 in Contractor pay on a monthly basis (the "Temporary Staffing Obligations"). The Temporary Staffing Obligations are paid through the Debtors' accounts payable department. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Temporary Staffing Obligations is approximately \$147,423.37, approximately all of which will become due and owing within the first 30 days of these chapter 11 cases. The Debtors seek authority to pay the Temporary Staffing Obligations owed on account of services already rendered, and to continue paying the Temporary Staffing Obligations on a postpetition basis in the ordinary course of the Debtors' business.

³ The Debtors pay only 62 Employees via paper check.

C. Withholding Obligations.

17. During each applicable pay period, the Debtors are required to or have agreed to deduct certain amounts from certain Employees' paychecks, including, without limitation: pre-tax and after-tax deductions payable pursuant to certain of the employee benefit plans discussed herein (such as an Employee's share of the cost of health care benefits, 401(k) contributions, insurance premiums, health savings account and flexible spending contributions, legally ordered deductions, and other miscellaneous deductions), as well as deductions for individual insurance programs selected by the Employees (collectively, the "Deductions"), and to forward such amounts to various third-party recipients. On a monthly basis, approximately \$500,000.00 is deducted in the aggregate from Employees' paychecks on account of the Deductions.

18. In addition to the Deductions, certain federal and state laws require that the Debtors withhold certain amounts from Employees' gross pay related to: (a) federal, state and local income taxes; (b) social security taxes; and (c) Medicare taxes, for remittance to the appropriate federal, state, or local taxing authority (collectively, the "Employee Payroll Taxes"). The Debtors must then match certain of the Employee Payroll Taxes from their own funds and pay additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes, based on a percentage of gross payroll (the "Employer Payroll Taxes" and, together with the Employee Payroll Taxes, the "Payroll Taxes"). The Payroll Taxes are generally processed by the Payroll Processor (as defined herein) and forwarded to the appropriate federal, state, and local taxing authorities at the same time as the Employees' payroll checks are disbursed. On a monthly basis, the average obligations on account of Payroll Taxes is approximately \$1.5 million.

19. Due to the commencement of these chapter 11 cases, some of the accrued but unpaid Deductions and Payroll Taxes (collectively, the "Withholding Obligations") were deducted from Employees' earnings, but may not have been forwarded to the appropriate third-party

recipients prior to the Petition Date. The Debtors seek authority to pay in a manner consistent with historical practice any unpaid Withholding Obligations and to continue to honor the Withholding Obligations in the ordinary course during the administration of these chapter 11 cases.

D. Reimbursable Expenses.

20. The Debtors routinely reimburse Employees for certain business expenses and other qualifying expenses incurred in carrying out their employment responsibilities, including, but not limited to, expenses for personal automobile usage, cell phone usage, and other qualifying business-related expenses (collectively, the “Reimbursable Expenses”). For example, employees who use their personal vehicle for business-related activities and travel more than 5,000 miles per year are enrolled in a program, whereby such employees receive a monthly allowance (processed as a reimbursement) comprised of (i) a fixed amount dependent on the make and model of the vehicle and (ii) a variable amount based on mileage. This specific Reimbursable Expense is processed through a third party, MOTUS, which the Debtors fund each month. The average monthly cost to the Debtors for employee car allowance is approximately \$615.00. Similarly, employees who routinely use a personal cell phone for business-related matters receive a \$50.00 per month cell phone allowance, which the Debtors pay to such employees’ through payroll. The average monthly cost to the Debtors for employee cell phone allowance is approximately \$8,300.00. For other Reimbursable Expenses in excess of \$50.00, Employees must obtain authorization from their supervisors for reimbursement. Employees pay for incurred Reimbursable Expenses by using a personal credit card or cash. Employees then submit expense reports with receipts through the system ExpenseNet to request reimbursement, and if approved in accordance with internal policies and procedures, the Reimbursable Expenses are processed and paid through the Debtors’ payroll. On average, the Debtors incur approximately \$120,000.00 per month in such Reimbursable Expenses. Without continued reimbursement of the Reimbursable

Expenses, Employees relying on these benefits would be saddled with additional costs, causing personal financial hardship.

21. To streamline the process of paying expenses incurred by certain Employees on the Debtors' behalf, the Debtors have implemented a program through which certain banks issue company credit cards for business use (the "Employee Credit Card Program"). Amounts charged to these company credit cards are billed directly to the Debtors. The Debtors, therefore, further request authority, in their sole discretion, to continue the Employee Credit Card Program, and to continue paying all amounts due in connection therewith, whether such amounts became due before or after the Petition Date.⁴

22. To avoid harming Employees who incurred the Reimbursable Expenses, the Debtors request authority to pay the Reimbursable Expenses.

E. Payroll Processing Fees.

23. The Debtors utilize ADP (the "Payroll Processor") to administer certain payroll processing, Deductions, and Withholding Obligations (collectively, the "Payroll Services"). The Payroll Processor also calculates the amounts owed for certain external deductions and Payroll Taxes each applicable payroll period. Prior to the respective payday, the Debtors submit a gross payroll amount to the Payroll Processor who in turn withholds and remits such external deductions and Payroll Taxes as required or agreed upon. The Debtors are then provided with a detailed accounting of the External Deductions and Payroll Taxes. The Payroll Processor then processes paper checks or direct deposit transfers for the Wages to each Employee into the respective

⁴ The Employee Credit Card Program is also addressed in the *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue to Operate Their Cash Management Systems, (II) Honor Certain Prepetition Obligations Related Thereto, (III) Maintain Existing Business Forms, and (IV) Continue to Perform Intercompany Transactions*, filed contemporaneously herewith.

Employee's bank account. In addition, the Payroll Processor remits the Payroll Taxes and external deductions to the applicable taxing authorities or applicable third-party payees, respectively.

24. The Debtors pay ADP an average of \$68,000.00 per month for payroll fees (the "Payroll Fees"). Failure to pay the Payroll Fees could lead to delayed disbursement of Employee Compensation and related benefits to the detriment of the Employees and the Debtors' operations. The Debtors seek authority to pay the Payroll Fees in the ordinary course and consistent with past practice and to continue Payroll Services in the ordinary course during the administration of these chapter 11 cases.

II. Employee Benefits Programs.

25. The Debtors offer certain Employees (collectively, the "Eligible Employees") the opportunity to participate in a number of insurance and benefit programs, including medical, dental, and vision insurance as well as additional employee benefits consistent with industry practices (collectively, the "Employee Benefits Programs").

26. The Debtors seek authority to pay any unpaid amounts due with respect to the Employee Benefit Programs and continue to provide the Employee Benefit Programs to Employees in the ordinary course during the administration of these chapter 11 cases. The Employee Benefit Programs are described in greater detail below.

A. Health Insurance Benefits.

27. The Debtors offer Eligible Employees and their dependents the opportunity to participate in a number of health benefit plans, including (a) two high deductible medical plan options, administered by Blue Cross Blue Shield of Alabama (collectively, the "Medical Plans"); (b) a dental plan through Delta Dental (the "Dental Plan"), and (c) two vision plans through VSP Choice Network (the "Vision Plans" and, together with the Medical Plans and Dental Plan, the "Health Insurance Benefits"). Employees and their dependents have come to rely on the Health

Insurance Benefits. Without the Health Insurance Benefits, Employees would be forced to either forgo health benefit coverage completely or obtain potentially expensive out-of-pocket insurance coverage, which would likely adversely affect Employee morale and lead to employee turnover.

28. The Debtors offer Eligible Employees the Medical Plans to choose from, including two self-insured medical plans and a prescription drug plan, administered through Express Scripts, Inc. The Dental Plan provides coverage primarily for preventative and diagnostic care. The Debtors also offer their Eligible Employees the option to participate in the Vision Plans, which are self-insured. Generally, Eligible Employees contribute 70% of the premiums in exchange for coverage. The Debtors contribute 30% of the premiums to provide the Health Insurance Benefits.

29. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), former Employees (the “COBRA Participants”) may continue insurance coverage under the Medical Plans, Dental Plan, and Vision Plans, as administered by HealthEquity (the “COBRA Benefits”). More specifically, COBRA Participants are entitled by law to continue to receive COBRA Benefits for up to 18 months, and in some instances up to 36 months, following termination of employment. The Debtors’ approximate COBRA costs are \$13,000.00 per year.

30. The Debtors request authorization to pay or remit all outstanding prepetition amounts incurred on account of the Health Insurance Benefits and to continue paying the Health Insurance Benefits on a postpetition basis in the ordinary course of business and consistent with prepetition practices.

B. Health Savings Account.

31. Employees who participate in the high-deductible Medical Plans may contribute a portion of their compensation into a health savings account administered by HealthEquity (the “Health Savings Account” or “HSA”). Employees may make pre-tax contributions (collectively, the “HSA Deductions”) to their HSA through Deductions to cover reimbursements of amounts

paid for qualified medical expenses under the high-deductible Medical Plans up to the maximum amount permitted by the Internal Revenue Service. The applicable Employee is responsible for the monthly administrative fee, but the Debtors offer to match up to \$800 to an Employee's HSA on an annual basis.

32. The Debtors request authorization out of an abundance of caution, to (a) remit any prepetition HSA Deductions to the extent necessary and to (b) continue honoring their obligations under the HSA, including with respect to the Debtors' annual contributions, on a postpetition basis in the ordinary course of business and consistent with prepetition practice.

C. Flexible Spending Accounts.

33. To allow Eligible Employees to set aside pre-tax income to be used for qualified expenses, the Debtors provide Employees with a flexible spending (reimbursement) account option to make pre-tax contributions through Deductions to pay for certain health and welfare needs, administered through HealthEquity (collectively, the "FSAs"). The FSAs cover (a) eligible health care expenses such as co-pays, deductibles, and co-insurance for prescription drug expenses and over-the-counter items, and (b) dependent care expenses related to care for dependents while Employees or their spouses/partners work or attend school. The Debtors deduct from Wages on account of Employee contributions to their respective FSA on a monthly basis (the "Employee FSA Deductions"). The Debtors pay a monthly administrative fee per participant on account of the FSAs.

34. The Debtors seek authority to remit any outstanding prepetition amounts on account of the FSAs, including any administrative costs, and to continue paying for the FSAs on a postpetition basis in the ordinary course of business and consistent with prepetition practices.

D. Life and Accidental Death and Dismemberment Insurance.

35. The Debtors provide primary life and accidental death and dismemberment insurance coverage, administered through New York Life, to the Eligible Employees (the “Basic Life and AD&D Insurance”), at no cost to the Eligible Employees.⁵ The Basic Life and AD&D Insurance provides benefits based on an Employee’s base annual salary.

36. Employees may also purchase supplemental life insurance (the “Supplemental Life Insurance,” together with the Basic Life and AD&D Insurance, the “Life and AD&D Insurance”). The Supplemental Life Insurance provides incremental coverage. The Supplemental Life Insurance may also cover an Employee’s spouse and children.

37. As of the Petition Date, the Debtors estimate they owe approximately \$51,568.20 on account of the Life and AD&D Insurance. The Debtors request the authority to continue providing the Life and AD&D Insurance in the ordinary course of business and consistent with past practices.

E. Disability Benefits.

38. The Debtors provide Eligible Employees with short-term disability benefits through New York Life (the “Short-Term Disability Benefits”). Under the Short-Term Disability Benefits program, in the event of a qualified non-work-related illness or injury to an Employee, such Employee is entitled to a percentage of weekly earnings for a specified period of time. The Debtors pay for the Short-Term Disability Benefits, with no costs to the Eligible Employees.

39. Employees may also elect to purchase long-term disability insurance through New York Life (the “Long-Term Disability Benefits,” and together with the Short-Term Disability Benefits, the “Disability Benefits”). Under the Long-Term Disability Benefits program,

⁵ Eligible Employees may purchase Basic Life and AD&D Insurance for dependents at group-negotiated rates.

Employees are entitled to, among other things, continuation of a percentage of base monthly salary in the event of a qualified, non-work-related illness or injury until the disability ends or the Employee reaches the retirement age, whichever comes first. This benefit occurs after the exhaustion of any Short-Term Disability Benefits.

40. As of the Petition Date, the Debtors do not believe that they owe any amounts on behalf of the Disability Benefits but, out of an abundance of caution, request authority to pay outstanding amounts due and continue providing the Disability Benefits in the ordinary course of business.

F. Retirement Plans.

41. The Debtors maintain retirement savings plans for the benefit of their Employees who satisfy the requirements of section 401(k) of the Internal Revenue Code, administered through CapTrust (the "401(k) Plan"). The 401(k) Plan allows for automatic pre-tax salary deductions of eligible compensation up to the limits set forth by the Internal Revenue Code. The Debtors do not pay 401(k) matching contributions.

G. Employee Vacation Time and Sick Leave.

42. The Debtors provide vacation time to their Employees as a paid time-off benefit ("Vacation Time"). Vacation benefits vary based on the Employee's location and position. Vacation Time is earned based on time worked and, when used, Employees are paid at their regular hourly or salaried rates. Vacation Time begins to accrue on February 1 of each year and Employees must use their earned Vacation Time by January 31st of the following year, or forgo the opportunity to use it. The Debtors typically do not pay Employees for any earned, but unused, Vacation Time upon termination.

43. The Debtors seek authority to continue the Vacation Time benefits in the ordinary course. For the avoidance of doubt, the Debtors do not seek to pay Paid Time Off to any Employee.

H. Non-Insider Employee Bonus Program.

44. The Debtors employ a bonus program (the “Bonus Program”) to incentivize performance results and sale targets. The Bonus Program includes monthly and quarterly bonus opportunities, depending on the program and employee position, and employees who fall within the Bonus Program are eligible either for the monthly *or* the quarterly bonus.

45. In total, 524 employees are eligible for monthly bonuses. Of those 524, only some will end up receiving a monthly bonus based on an individual employee’s performance results. The monthly bonuses are based on margin achievements and the next regularly scheduled monthly bonus payment is February 24, 2023. No employee receiving a monthly bonus is an insider and, as of the Petition Date, the accrued amount owed to any employee for a monthly bonus is below the current \$15,150.00 cap under 11 U.S.C. § 507(a)(4).

46. Only 126 employees are in positions that are eligible to receive quarterly bonuses. As with the monthly bonuses, not all 126 employees will earn quarterly bonuses based on an individual employee’s sales targets. The quarterly bonuses are really more akin to commission payments as the bonuses are earned in prior quarters and strictly based on prior quarter sales targets. The next quarterly bonus will be paid on March 10, 2023. The employees that will receive the quarterly bonus are not insiders. These bonuses make up 20–40% of the employees’ total compensation and since 2021 have ranged anywhere from \$12,000–\$65,000. It is possible that three employees receiving quarterly bonuses will be over the \$15,150.00 cap. Payment of the bonuses are critical to ensuring the Debtors meet their compensation obligations. Employees receiving the quarterly bonuses are squarely focused on driving sales and operations for certain stores and any threat to the pre-petition Bonus Program could threaten the Debtors’ sales and financial performance at a critical juncture, which could severely impact the Debtors’ chapter 11 process.

47. All bonuses are earned upon payment and employees forfeit their bonuses if they leave or are terminated prior to payment. Therefore, all bonuses paid under the Bonus Program will actually be *earned* postpetition and are not subject to the cap under 11 U.S.C. § 507(a)(4) and could potentially expose the Debtors to administrative expense claims if not paid. Out of an abundance of caution, however, the Debtors request authority to continue their established prepetition Bonus Program and pay all accrued amounts due as of the Petition Date.

I. Non-Insider Severance Practices.

48. It is the Debtors' historical practice to enter into severance agreements with certain terminated Employees, which agreements provide for continuous salary payments equal to one (1) week of severance for every year of service for full-time employees that were employed for at least one (1) year (the "Severance Practices").

49. The Severance Practices provide tangible benefits to the Debtors. As a condition to receiving a severance payment, each Employee must execute either a non-compete or release agreement, whereby the terminated Employee agrees to, among other things: (a) not work for a competitor for a discrete amount of time; (b) release any claims held against the Debtors; and (c) not disclose confidential information.

50. As of the Petition Date, the Debtors are paying severance to approximately 38 former employees, pursuant to severance agreements. None of these former employees are insiders and only one is owed amounts over the \$15,150 wage cap under 11 U.S.C. §§ 507(a)(4). That employee is owed \$20,598.17.

51. The Debtors believe that the Severance Practices help to reduce time and expense in connection with defending potential claims by former Employees. The Debtors seek authority to continue the Severance Practices on a postpetition basis in the ordinary course of business and consistent with prepetition practices. For the avoidance of doubt, the Debtors are not seeking and

will not make any severance payments to any Employees that qualify as “insiders” under the Bankruptcy Code without seeking further relief from the Court.

J. The Fringe Benefits Programs.

52. In addition to the foregoing, the Debtors provide various other benefit programs (collectively, the “Fringe Benefit Programs”) as part of the overall compensation package for their Employees. The Fringe Benefit Programs include the employee assistance program and employee discounts. By this Motion, the Debtors seek authority to pay any outstanding prepetition amounts owed on account of the Fringe Benefit Programs and to continue the Fringe Benefit Programs on a postpetition basis in the ordinary course of business and consistent with prepetition practices.

Basis for Relief

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

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

53. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the obligations pursuant to the Employee Compensation and Benefits Programs to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than \$15,150 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. The payment of the obligations arising under the Employee Compensation and Benefits Programs at this time enhances the value

of the estate for the benefit of all interested parties. Given the Debtors' chapter 11 filing, finding, attracting, and training new qualified talent would be extremely difficult and would most likely require higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees.

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

54. The Debtors seek authority to pay the Withholding Obligations to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' Wages. Certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' Wages on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Further, federal and state laws require the Debtors to withhold certain tax payments from Employees' Wages and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672, 7501(a). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request authorization to transmit the Withholding Obligations to the proper parties in the ordinary course of business.

II. Payment of the Employee Compensation and Benefits Is Warranted Under Section 363(b)(1) of the Bankruptcy Code and the Doctrine of Necessity.

55. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so.⁶ Courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the pre-plan satisfaction of a prepetition claim."⁷

⁶ *See In re Ionosphere Clubs, Inc.*, 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).

⁷ *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

56. Courts also may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business.⁸

57. Payment of the obligations arising under Employee Compensation and Benefits Programs represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying prepetition wages, employee benefits, and similar obligations will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption. The Debtors believe that without the relief requested herein, Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Debtors' workforce, thereby hindering the Debtors' ability to operate their business and, likely, diminishing stakeholder confidence in the Debtors' ability to successfully reorganize. The loss of valuable Employees and resulting need to recruit new personnel (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on stabilizing their business operations. There can be no doubt that the Debtors must do their utmost to retain their workforce by, among other things, continuing to honor all wage, benefits, and related obligations, including the prepetition obligations pursuant to the Employee Compensation and Benefits Programs.

⁸ See *Ionosphere Clubs*, 98 B.R. at 176 (holding that a court may authorize payments of prepetition obligations under section 105(a) of the Bankruptcy Code pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity")).

58. In addition, the majority of Employees rely exclusively on the Employee Compensation and Benefits Programs to satisfy their daily living expenses. Consequently, Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor their obligations related thereto. Failure to satisfy such obligations will jeopardize Employee morale and loyalty at a time when Employee support is critical to the Debtors' businesses. If this Court does not authorize the Debtors to honor their various obligations under the insurance programs described herein, Employees will not receive health coverage and, thus, may be obligated to pay certain health care claims that the Debtors have not satisfied. The loss of health care coverage will result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need such Employees to perform their jobs at peak efficiency. Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at this critical juncture.

59. The Debtors request that the Court authorize the Debtors to pay any prepetition amounts accrued and unpaid on account of the Employee Compensation and Benefits Programs and to continue the Employee Compensation and Benefits Programs on a postpetition basis in the ordinary course of business and consistent with past practices.

Emergency Consideration

60. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm," and Bankruptcy Local Rule 9013-1(i). An immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. The failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the

Debtors' operations at this critical juncture and imperil the Debtors' restructuring. The Debtors have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

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

61. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

62. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition Lender; (d) counsel to the proposed DIP Lender; (e) the Office of the United States Attorney for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the Environmental Protection Agency; (j) other governmental agencies having a regulatory or statutory interest in these cases; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice need be given.

The Debtors request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
Dated: February 1, 2023

/s/ Veronica A. Polnick

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*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Veronica A. Polnick

Veronica A. Polnick

Certificate of Service

I certify that, on February 1, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Veronica A. Polnick

Veronica A. Polnick

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
)	
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	Case No. 23-90054 (CML)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. ____

**ORDER (I) AUTHORIZING THE DEBTORS
TO HONOR AND CONTINUE THEIR EMPLOYEE COMPENSATION
AND BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon the (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to honor and continue their employee compensation and benefits programs and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); that it may enter a final order consistent with Article III of the United States Constitution; that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were

¹ The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity’s federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors’ service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

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

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

1. The Debtors are authorized to continue or modify, change, or discontinue the Employee Compensation and Benefits Programs and to honor and pay, in the ordinary course and in accordance with the Debtors' prepetition policies and prepetition practices, any obligations on account of the Employee Compensation and Benefits Programs, irrespective of whether such obligations arose prepetition or postpetition; provided that, the Debtors will provide notice to the U.S. Trustee and any statutory committee of any material changes to Employee Compensation and Benefits Programs or of any new programs, policies, and benefits.

2. The Debtors are authorized to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

3. The Debtors are authorized, but not directed, to pay any amounts due on account of Reimbursable Expenses and the Fringe Benefit Programs.

4. Notwithstanding anything else contained herein, (a) any relief granted herein, including any payment to be made or authorization contained hereunder, shall be subject in all respects to the terms and conditions of, including all requirements imposed upon the Debtors under, any interim or final order of the Court in these chapter 11 cases approving the postpetition secured financing facility and authorizing the use of cash collateral (as may be modified, amended

or supplemented, the “DIP Orders”) (including, without limitation, the budget required in connection therewith)) the DIP Term Sheet, and the DIP Documents (each as defined in the DIP Orders) approved therein and (b) to the extent there is any inconsistency between the terms and conditions of such DIP Orders or DIP Documents and any action taken or proposed to be taken hereunder, the terms and conditions of such DIP Orders, the DIP Term Sheet, or DIP Documents shall control.

5. Debtors shall not pay any amounts to “insiders” of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code under any bonus, incentive or retention plan without seeking authority from the Court.

6. The Debtors are authorized, but not directed, in their discretion to continue the Bonus Program and the Severance Practices and to pay and honor any amounts related to the Bonus Program and the Severance Practices in the ordinary course of business and consistent with past practices. Before making any payments on account of the Bonus Program and the Severance Practice in excess of \$50,000 to any individual, the Debtors shall provide five (5) days’ advance notice to the U.S. Trustee and any statutory committee appointed in these chapter 11 cases of (a) the title of the recipient, (b) the amount of the payment to such recipient, and (c) the proposed payment date.

7. Notice of the Motion is deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

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

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

Dated: _____, 2023

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE