

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Chapter 11
CHAPARRAL ENERGY, INC., et al., Case No. 20-____ (____)
Debtors. (Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WORKFORCE OBLIGATIONS, (B) CONTINUE WORKFORCE PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS, AND (C) PAY WITHHOLDING AND PAYROLL RELATED TAXES, (II) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND FUND TRANSFERS, AND (III) GRANTING RELATED RELIEF

Chaparral Energy, Inc. and its subsidiaries that are debtors and debtors in possession (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases"), hereby move (this "Motion") for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B (respectively, the "Interim Order" and the "Final Order"), granting the relief described below. In support thereof, the Debtors refer to the contemporaneously filed Declaration of Charles Duginski in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration") and further represent as follows:

JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the

1 The Debtors in these cases, along with the last four digits (or five digits, in cases in which multiple Debtors have the same last four digits) of each Debtor's federal tax identification number, are: CEI Acquisition, L.L.C. (1817); CEI Pipeline, L.L.C. (6877); Chaparral Biofuels, L.L.C. (1066); Chaparral CO2, L.L.C. (1656); Chaparral Energy, Inc. (90941); Chaparral Energy, L.L.C. (20941); Chaparral Exploration, L.L.C. (1968); Chaparral Real Estate, L.L.C. (1655); Chaparral Resources, L.L.C. (1710); Charles Energy, L.L.C. (3750); Chestnut Energy, L.L.C. (9730); Green Country Supply, Inc. (2723); Roadrunner Drilling, L.L.C. (2399); and Trabajo Energy, L.L.C. (9753). The Debtors' address is 701 Cedar Lake Boulevard, Oklahoma City, Oklahoma 73114.



Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 362(d), 363(b), 363(c), 507(a), 541, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Local Rule 9013-1(m).

BACKGROUND

4. On August 16, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions in this Court commencing the Chapter 11 Cases. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

5. The Debtors commenced the Chapter 11 Cases to implement their comprehensive, prepackaged plan of reorganization (the “**Plan**”). The Plan is the result of extensive negotiations between the Debtors, their revolving lenders, and their unsecured noteholders, who have agreed on a comprehensive balance sheet restructuring that will reduce the Debtors’ debt burden and increase liquidity. Holders of more than 75% of the Debtors’ outstanding

revolving loans and more than 75% of the Debtors' outstanding unsecured notes have documented their support for the Plan and the Chapter 11 Cases by executing a restructuring support agreement prior to the Petition Date. Under the Plan, the Debtors will equitize all of their approximately \$300 million of unsecured notes, eliminating a significant portion of their prepetition debt, and convert the revolving loans into an exit facility. Importantly, the Plan contemplates that allowed general unsecured claims will remain unimpaired and be paid in full or "ride through" the Chapter 11 Cases.

6. Additional information about the Debtors, including their business operations, their capital structure and prepetition indebtedness, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration, which is incorporated herein by reference.

RELIEF REQUESTED

7. By this Motion, pursuant to sections 105(a), 362(d), 363(b), 363(c), 507(a), 541, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 6003, and Local Rule 9013-1(m), the debtors request entry of an interim order and final order authorizing (a) the Debtors, in their sole discretion, to pay, continue, and otherwise honor various prepetition workforce-related obligations (collectively, the "**Prepetition Workforce Obligations**") owing to or for the benefit of their approximately 102 full-time and part-time employees (collectively, with current members of the Debtors' Boards of Directors or similar governing bodies, the "**Employees**") and approximately eight independent contractors (the "**Independent Contractors**") and, together with the Employees, the "**Workforce**") for compensation, benefits, and expense reimbursements under various workforce-related plans, programs, policies, and agreements in effect prior to the Petition

Date (collectively, and as described in detail below, the “**Workforce Programs**”);² (b) the Debtors to continue the Workforce Programs and make payments in connection with the postpetition administration of the Workforce Programs in the ordinary course of business;³ (c) the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes relating the Prepetition Workforce Obligations, including, but not limited to, withholding taxes, social security taxes, and Medicare taxes; (d) the Debtors to continue to deduct and to transmit deductions from payroll checks as authorized by Employees and Independent Contractors, as required under any Workforce Program, or as required by law; (e) the Debtors to pay any prepetition and postpetition claims owing to the administrators of, or third-party providers under, their Workforce Programs as necessary to ensure the delivery of compensation, benefits, and expense reimbursements to their Employees and Independent Contractors; and (f) all banks to receive, process, honor, and pay all of the Debtors’ prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant hereto.

THE DEBTORS’ WORKFORCE AND WORKFORCE PROGRAMS

8. The Debtors’ ability to preserve their businesses and successfully reorganize is dependent on the expertise and continued enthusiasm and service of their Workforce. As of the Petition Date, the Debtors’ Workforce consisted of (i) approximately 102 Employees, including petrotechnical and business professionals in a variety of disciplines including

² By this Motion, the Debtors do not seek to assume or reject any Workforce Program to the extent that such Workforce Program is deemed to be an executory contract within the meaning of section 365 of the Bankruptcy Code. Moreover, the Debtors do not waive their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be authorized by applicable law.

³ The Debtors may separately request authorization to implement new postpetition retention, severance or similar employment protection programs designed to preserve employee morale, encourage continuing employment and otherwise ameliorate the effects on employees of these Chapter 11 Cases. Pending approval of any such postpetition programs, the prepetition programs will continue in the ordinary course, subject to the provisions of section 503(c)(2) of the Bankruptcy Code.

engineering, geology, land, financial, legal, and human resources; and (ii) approximately eight Independent Contractors, including geologists, telemetry and information technology support specialists, land administration specialists, procurement support, marketing support and consultants. Of the Debtors' Employees, 66 are located at the Debtors' headquarters in Oklahoma City, Oklahoma and the remainder work primarily in the field supporting the Debtors' oil and gas operations. In addition, approximately 74 Employees are salaried and approximately 28 Employees are hourly. Chaparral Energy, L.L.C., a Debtor in these Chapter 11 Cases and a wholly owned subsidiary of Chaparral Energy, Inc., employs the Debtors' entire Workforce. No Employee is represented by a union.

9. The Workforce performs a wide variety of functions critical to the administration of the Chapter 11 Cases, the Debtors' restructuring, and the operation of the Debtors' businesses. Their skills, knowledge, and understanding of the Debtors' operations and infrastructure are essential to preserving operational stability and efficiency. In many instances, the Workforce includes highly trained personnel who are not easily replaced.

10. In return for their valuable contributions, the Debtors offer their Workforce (i) direct compensation in the form of wages, salaries, holiday pay, paid time off, certain incentive and retention compensation, and other accrued compensation defined below; (ii) reimbursement of business, travel, and other reimbursable expenses; (iii) certain employee benefits such as medical and dental coverage, flexible spending accounts, basic term life insurance, accidental death and dismemberment insurance, short-term disability coverage, long-term disability coverage, wellness reimbursements, and severance; (iv) contributions to, and benefits under, a 401(k) savings plan and (v) workers' compensation.

11. Subject to the Court's approval of the relief requested herein, the Debtors intend to continue their Workforce Programs in the ordinary course of business during the pendency of the Chapter 11 Cases. Out of an abundance of caution, the Debtors request the right to modify, change, and discontinue any of their Workforce Programs and to implement new programs, policies, and benefits, in the ordinary course of business during the Chapter 11 Cases and without the need for further Court approval, subject to applicable law.

12. By this Motion, the Debtors seek authority to pay the aggregate prepetition amounts owed on account of the Workforce Programs set forth in the table below:

Section	Relief Sought	Interim Amount	Final Amount
A	Prepetition Workforce Compensation	\$712,300	\$5,011,925
B	Prepetition Employee Reimbursements	\$5,000	\$5,500
C	Employee Benefits	\$280,500	\$280,500
E	Payments to Administrators	\$50,000	\$50,000
	Total	\$1,047,800	\$5,347,925

13. The Debtors believe that, as of the Petition Date, only one Employee or Independent Contractor is owed any prepetition Wages or Independent Contractor Payments (each as defined below) in excess of the \$13,650 priority wage cap imposed by sections 507(a)(4) and (5) of the Bankruptcy Code.⁴

A. Prepetition Workforce Compensation

i. Employee Payroll and Payroll Deductions

14. The Employees are paid biweekly on Fridays (or on the preceding business day if these dates fall on a holiday). All employees are paid two weeks in arrears, so they receive their biweekly earnings two weeks after the last day of a pay period. The Debtors utilize Automatic

⁴ As a result of the Debtors' ordinary course schedule for the payment of Wages (i.e., biweekly, two weeks in arrears), the Debtors' CEO is owed base salary amounts approximately \$6,542 in excess of the \$13,650 statutory cap under sections 507(a)(4) and (5) of the Bankruptcy Code.

Data Processing, Inc. (“**ADP**”) for the administration of payroll for the Employees. The typical payroll paid to Employees on account of accrued wages, salaries, overtime and other compensation (excluding reimbursable expenses, paid time off, and amounts related to the 401(k) plan) (collectively, “**Wages**”) each pay period is approximately \$320,000 in the aggregate. The next payroll date is August 28, 2020.

15. In addition, in the ordinary course of their businesses, the Debtors make deductions from Employees’ paychecks for payments to third parties on behalf of Employees for various federal, state, and local income, FICA, and other taxes, court ordered garnishments, as well as for the 401(k) Plan (as defined and discussed below) and repayments for loans taken against the 401(k) Plan, flexible spending accounts⁵, benefit plans, insurance and other similar programs (collectively, the “**Deductions**”). The typical Deductions per each pay period from Employees’ paychecks amounts to approximately \$170,000 in the aggregate.

16. Employees may be owed certain prepetition amounts on account of regular compensation earned through the Petition Date. As such, the applicable Deductions have not yet been taken. Additionally, even where Deductions have been withheld from the applicable Employee’s paycheck, the Debtors may not yet have forwarded the Deductions to the various third parties to which the Deductions are required to be distributed.

17. Because the Debtors pay all their Employees in arrears for work performed two or more weeks prior to the Debtors’ normal biweekly payroll, such Employees often have a significant amount of unpaid Wages and other compensation that has accrued but is unpaid. Wages

⁵ The Debtors offer all of their Employees the opportunity to contribute, through pre-tax compensation deductions, to flexible spending accounts (“**FSAs**”) to be used for healthcare related expenses and dependent care expenses, subject to limits imposed by federal law. FSA deductions are made from Employees’ paychecks. In order to be reimbursed for these expenses, Employees must submit eligible claims to HSABank, which administers the claims under the FSAs and remits reimbursements to the Employees. HSABank makes these payments from FSAs maintained by the Debtors.

also may be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe should have been paid based on overtime calculations, which, upon resolution, may reveal that additional amounts are owed to such Employees. The Debtors estimate that, as of the Petition Date, accrued but unpaid Wages and other compensation, including the Deductions, total approximately \$605,000 (composed of \$396,000 owed to the Employees and \$209,000 attributable to the Deductions).

ii. Payroll Taxes

18. The Debtors are also required to make payments from their own funds on account of social security and Medicare taxes and to pay, based on a percentage of gross payroll (and subject to state-imposed limits), additional amounts to various taxing authorities for, among other things, state and federal unemployment insurance (the "Payroll Taxes"). The Payroll Taxes are generally processed and remitted to ADP for processing and forwarding to the applicable taxing authority at the same time the underlying payroll is funded. The Debtors estimate that, as of the Petition Date, accrued but unpaid employer Payroll Taxes total approximately \$47,300.

iii. Independent Contractors

19. In addition to the Employees, the Debtors also retain approximately eight Independent Contractors to perform a variety of tasks related to the Debtors' operations in the ordinary course of business. The Independent Contractors may provide services to the Debtors directly, or the Debtors may utilize the services of certain employment agencies in connection with engaging certain Independent Contractors. The Debtors do not pay Wages, withhold taxes or provide benefits or paid time off for the Independent Contractors. Instead, the Debtors make payments to Independent Contractors or their contracting agency based upon the relevant agreement. The Independent Contractors are generally paid on an hourly basis and they provide

the Debtors with invoices for their services (and generally are paid) biweekly. On average, the Debtors pay approximately \$70,000 per month in the aggregate to the Independent Contractors. As of the Petition Date, the Debtors estimate that accrued but unpaid amounts owed to the Independent Contractors total approximately \$60,000 (“**Independent Contractor Payments**”).

iv. Paid Time Off and Holidays

20. As part of their overall compensation, all Employees who work at least 30 hours per week (“**Regular Employees**”) are entitled to paid time off (“**PTO**”) plus 10 additional paid holidays per year.⁶ Regular Employees earn 120 to 240 hours of PTO per year, accruing proportionally each pay period, depending upon their professional experience or length of time in the industry. Typically, Employees may carry over up to 240 unused PTO hours from one calendar year to the next. Upon termination or retirement, Employees receive payment on account of any accrued and unused PTO hours, up to the maximum carryover hours. Employees who are terminated or resign are entitled to a cash payment in lieu of their accrued but unused PTO, subject to deduction for any amounts owed to the Debtors. The Debtors estimate that, as of the Petition Date, total accrued but unpaid PTO liability is approximately \$1,100,000. This amount is not a current cash payment obligation, as Employees are only entitled to cash payment for accrued and unused PTO if they leave the Debtors’ employment. Therefore, although the Debtors request authority to pay such accrued but unpaid PTO liability in the ordinary course of business as necessary following entry of the Final Order (unless required by applicable law to be paid earlier), no amounts will be due or owing to any Employee unless and until such Employee is no longer employed by the Debtors (assuming the Employee does not use his or her PTO).

⁶ The Debtors previously had a separate sick leave program which is no longer in effect. While certain Employees have carried over unused sick hours which had accrued under the legacy sick leave program, such Employees may only use such sick hours for FMLA qualifying leave and are not entitled to otherwise monetize such sick hours.

v. Non-Insider Bonus Plans and Supplemental Retention Program⁷⁸

21. In order to encourage and reward outstanding performance by Employees, maintain Employee morale and minimize attrition, the Debtors offer full-time Employees in good standing the opportunity to earn fixed quarterly cash bonuses under a bonus plan (the “**Bonus Plan**”) based on a percentage of the Employee’s salary.⁹ An Employee whose employment is terminated without cause will receive his or her bonus payment for the quarterly period of termination; an Employee whose employment is terminated voluntarily or for cause will not be eligible to receive any further bonus payments. All Employees who are not “**Insiders**” (as such term is defined in section 101(31) of the Bankruptcy Code) participate in the Bonus Plan. The Debtors’ estimate that the quarterly payments under the Bonus Plan are approximately \$509,000, with the next quarterly payment due between October 1, 2020 and October 15, 2020.

22. The Debtors also maintain a supplemental retention program for 19 Employees (none of whom are Insiders) identified by the Debtors’ management as critical to the Debtors’ operations (the “**Supplemental Retention Program**”). The Supplemental Retention Program consists of an \$800,000 pool and was established for ad hoc retention awards to the

⁷ In April 2020, the Debtors adopted a separate incentive program (the “**Insider Incentive Program**”) and retention program (the “**Insider Retention Program**”), which provided each Employee who is an Insider with a cash payment, subject to clawback under certain conditions. The Debtors believed that it was essential to implement these programs, and pay amounts thereunder, to such Insider Employees to run the Debtors’ business operations and to maximize value on behalf of the Debtors’ estates and stakeholders. The Debtors filed a Form 8-K dated April 17, 2020, with the SEC disclosing the implementation of the Insider Retention Program and Insider Incentive Program and the payments made thereunder. For the avoidance of doubt, the Debtors are not seeking any form of relief with respect to payments related to the Insider Retention Program or Insider Incentive Program in connection with this Motion.

⁸ In addition to the incentive and retention plans described herein, the Debtors are required to pay a non-Insider Employee a one-time retention award of \$30,000 in cash, which will become payable in October 2020. Subject to the entry of a Final Order, the Debtors seek to pay such Employee the retention cash award in the ordinary course.

⁹ Historically, the Employees received annual bonuses under an annual incentive measures program (the “**Legacy AIM Program**”), under which the Employees were eligible to earn awards based on individual and business targets. The Legacy AIM Program, along with certain other incentive programs, was replaced by the Bonus Plan in March 2020 with the goal of engaging and retaining Employees during a critical time for the Debtors and minimizing the impact of the restructuring process on the Debtors.

participating Employees. Payments under the Supplemental Retention Program will vest and be paid after a 12-month vesting period on April 27, 2021. An Employee whose employment is terminated without cause prior to the vesting date will receive his or her payment under the Supplemental Retention Program; an Employee who voluntarily resigns or is terminated for cause prior to the vesting date will not be eligible to receive any payment under the Supplemental Retention Program. The Debtors believe that the Supplemental Retention Program is necessary to reduce attrition among key Employees that are critical to the Debtors' operations.

vi. Legacy Incentive Programs

23. The Debtors previously had a cash incentive plan that was adopted in 2015 (the "**Legacy 2015 Incentive Plan**") and provided service-based cash incentive awards to non-Insider Employees.¹⁰ Each grant under the Legacy 2015 Incentive Plan vested in four equal tranches over four years. Of the grants that were made under the Legacy 2015 Incentive Plan in April 2017, one tranche of awards in the amount of \$268,125, owed to 39 Employees, becomes payable on August 31, 2020. Of the grants made under the Legacy 2015 Incentive Plan in September 2017, one tranche of awards in the amount of \$245,000, owed to 40 Employees becomes payable on September 1, 2020, and one tranche of awards in the amount of \$245,000, owed to 40 Employees becomes payable on September 1, 2021.¹¹

¹⁰ One Employee who was a non-Insider at the time of the grant under the Legacy 2015 Incentive Plan and subsequently became an Insider is entitled to an award under the Legacy 2015 Incentive Plan. The Debtors do not, by this Motion, seek to make a payment to such Employee in connection with the Legacy 2015 Incentive Plan.

¹¹ The Debtors also had a legacy management incentive plan from 2017 (the "**2017 MIP**"), which provided service, performance, or market-based equity incentive awards to both Insider and non-Insiders. Pursuant to the 2017 MIP, restricted stock units of Chaparral Energy, Inc. ("**RSUs**") were issued to certain non-Insider Employees and restricted stock awards ("**RSAs**") were issued to certain Employees. Depending on their position, certain Employees received awards that settle in cash while other Employees received awards that settle in stock. The Debtors do not, by this Motion, seek approval or authorization from the Court or any other relief with respect to the 2017 MIP.

24. The Debtors also had a long-term incentive plan that was implemented in 2019 (the “**Legacy 2019 Incentive Plan**” and together with the Legacy 2015 Incentive Plan, the Bonus Plan, and the Supplemental Retention Program, the “**Employee Incentive Programs”), pursuant to which certain cash-based incentive payments were granted to non-Insider Employees. The remaining cash incentive obligations under the Legacy 2019 Incentive Plan include \$623,500 in awards to 53 non-Insider Employees that vest on August 31, 2020.**

25. As of the Petition Date, 56 Employees are eligible to receive payouts under the Employee Incentive Programs. Given the large percentage of Employees covered by the Employee Incentive Programs, the Debtors believe that any interruption in payments pursuant to the Employee Incentive Programs could upset Employee morale or cause attrition, which could lead to severe disruptions to the Debtors’ operations. Subject to the entry of the Final Order, the Debtors seek to continue providing such benefits under the Employee Incentive Programs to non-Insiders in the ordinary course of business.

B. Prepetition Employee Reimbursements

i. Business Expenses

26. The Debtors, in the ordinary course of their business, reimburse Employees for a variety of ordinary, necessary, and reasonable business-related expenses that Employees incur within the scope of their job duties. These include expenses for business travel (including lodging, transportation, meals, and internet charges) and other general business-related expenses related to the discharge of an Employee’s duties. Employees are expected to use sound judgment and good business sense when incurring the expenses. In order to be reimbursed, an Employee must submit his or her receipts to the Employee’s manager for approval. The Debtors also reimburse Employees (or pay directly) for certain professional expenses, such as required continuing education expenses, professional license fees or dues, and subscriptions.

ii. Miscellaneous

27. The Debtors also offer certain other miscellaneous programs and benefits. For example, the Debtors offer Employees the ability to participate in a qualified educational assistance program to obtain professional education and certifications (the “**Education Program**”) and in wellness reimbursement programs (the “**Wellness Program**”). Under the Education Program, the Debtors provide reimbursement to Employees for reasonable educational expenses, including, but not limited to, tuition, books and certain required fees incurred in conjunction with job related courses at an accredited educational institution that are pre-approved by the Employee’s manager. In order to be reimbursed for the Education Program, an Employee must successfully complete the approved course with a passing grade and submit the Employee’s receipts to the Employee’s manager for approval. Under the Wellness Program, the Debtors provide reimbursement to Employees on account of their health club memberships, tobacco cessation programs, and weight management programs. In order to be reimbursed for the Wellness Program, an Employee must submit receipts and evidence that the Employee has participated in the qualifying program to the Employee’s manager for approval. The total amount of reimbursements paid under the Education and Wellness Programs for the 12 months ended June 30, 2020, was \$1,361 and \$1,816, respectively.

28. Although it is difficult for the Debtors to determine the exact amount of the reimbursement obligations outstanding at any particular time because of the generally unpredictable and irregular nature of Employees seeking payment pursuant to the reimbursement obligation policy, the Debtors believe that their total prepetition obligations in respect of Workforce reimbursements described in this Section B (the “**Reimbursement Obligations**”) will not exceed \$5,500 as of the Petition Date. The Debtors seek authority, but not direction, to pay all

prepetition amounts owed on account of the Reimbursement Obligations in the ordinary course of business and consistent with past practice.

C. Employee Benefits; Severance Payments

29. In the ordinary course of their businesses, the Debtors offer Employees and their eligible spouses and dependents various standard employee benefits, including, without limitation, (a) medical insurance, (b) dental insurance, (c) basic term life and accidental death and dismemberment insurance, (d) long-term and short-term disability insurance, (e) 401(k) plan and related types of benefits, (f) workers' compensation, (g) severance benefits, (h) COBRA benefits, and (i) miscellaneous other benefits provided to the Employees in the ordinary course of business (collectively, the "**Employee Benefits**"). As of the Petition Date, the Debtors were obligated to pay certain contributions to or provide benefits under such plans, programs, and policies.

i. Medical Insurance

30. The Debtors offer all Regular Employees the opportunity to obtain basic medical insurance, prescription drug coverage, vision care, and related benefits under a preferred provider organization plan (the "**PPO Plan**") administered by the Kempton Group Administrators Inc. ("**KGA**"). While the PPO Plan is administered by KGA, medical coverage is provided by Healthcare Highways and prescription drug coverage is provided by Southern Scripts.

31. Under the PPO Plan, eligible Employees and their family members have the choice to use providers within the network or to use providers outside the network (the latter option being subject to higher costs to the Employee). Currently, participating Employees pay premiums through payroll deductions, retained by the Debtors, of between approximately \$10 and \$140 depending on family coverage and whether the Employee participates in a program administered by the Debtors to promote Employee health and well-being. In addition, if an Employee completes a medical procedure with an authorized healthcare provider, the Employee is eligible to receive

cash reward equal to 10% of the amount billed, with a minimum reward of \$50 and maximum reward of \$1,000.

32. The Debtors are self-insured for medical benefits, including prescription drug coverage. Accordingly, after KGA determines the eligibility of, and applies the applicable discount to, invoices received from providers on account of Employee medical expenses, the Debtors are responsible for all eligible medical expenses of Employees participating in the PPO Plan remaining after the participating Employees pay any required deductibles or co-pays. The Debtors remit approved amounts to KGA, which distributes the payments to medical service providers.

33. The obligations that the Debtors incur on behalf of the Employees on account of the PPO Plan fluctuates based on the medical needs of the Employees but are typically approximately \$88,000 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$150,000 on account of the PPO Plan.

ii. Dental Insurance

34. The Debtors provide all Regular Employees with the option to enroll in a dental insurance plan administered by Delta Dental (“**Delta**” and the plans, the “**Delta Plans**”). Eligible Employees may enroll in their choice of two coverage options, either a ‘PPO’ plan with a low premium but a limited provider network, or a ‘Premier’ plan with higher premiums and a larger network of providers. Sixty Employees (and their dependents) receive up to \$1,000 in dental coverage per year through the Premier plan, which covers 100% of all eligible expenses for most preventive care, 30% or more of expenses relating to other dental care, and includes orthodontic benefits. Forty Employees (and their dependents) receive up to \$1,000 in dental coverage per year through the PPO plan, which covers 100% of all eligible expenses for most preventive care and 20% or more of expenses relating to other dental care, and includes orthodontic benefits.

Participating Employees pay a portion the premiums through payroll deductions remitted to Delta of up to \$43 depending on the plan selected and family coverage.

35. The Debtors pay the remainder of the premiums charged by Delta, which includes Delta's administration fees, to Delta on a semimonthly basis. The Debtors estimate that they historically pay approximately \$11,000 per month on account of such supplemental premiums and administration fees. As of the Petition Date, the Debtors estimate that they do not owe any amounts on account of premiums and administration fees to Delta on account of the Delta Plans.

iii. Life and Accidental Death and Dismemberment Insurance, Short-Term Disability Program, and Long-Term Disability Program

36. Employees receive, at the Debtors' cost, long-term disability ("**LTD**") insurance, accidental death and dismemberment ("**AD&D**") insurance, and life insurance under plans (the "**Health Benefits Programs**") administered by Cigna Health and Life Insurance Company ("**Cigna**"). Employees also receive, at the Debtors' cost, short-term disability ("**STD**") coverage.

37. Under the Debtors' STD program, if an Employee becomes disabled for at least seven (7) days, the Debtors pay benefits equal to seventy (70%) of the Employee's monthly base salary, up to a maximum of \$3,000 per week for a period of up to 12 weeks.

38. Under the Debtors' LTD insurance program (the "**LTD Plan**"), if an Employee becomes disabled for at least ninety (90) days, Cigna pays benefits equal to sixty (60%) of the Employee's monthly base salary, up to a maximum of \$12,000 per month for a period of up to sixty-five (65) months. The LTD Plan also provides the family of the Employee with benefits in the event of the Employee's death.

39. The Debtors also provide Regular Employees with group term life insurance and AD&D insurance in amounts equal to two times the Employee's annual salary, up to a

maximum of \$750,000, at no charge to Employees until retirement. Regular Employees may also purchase additional voluntary term life and AD&D insurance for themselves and their dependents at their own cost up to a maximum of \$500,000 for themselves, \$100,000 for their spouses, and \$10,000 for other dependents.

40. The Debtors pay the premiums for the Health Benefits Programs to Life Insurance Company of North America on behalf of Cigna each month. The premiums for any voluntary term life and AD&D insurance purchased by Employees are then deducted from the applicable Employee's paychecks and reimbursed to the Debtors. As of the Petition Date, the Debtors estimate that they owe approximately \$11,500 on account of STD and to Cigna on account of premiums under the Health Benefits Programs.

iv. 401(k) Plan

41. The Debtors sponsor a 401(k) retirement savings plan (the "**401(k) Plan**") for their Employees. The 401(k) Plan is administered by Fidelity Investments ("**Fidelity**"). Under the 401(k) Plan, an Employee may contribute a portion of his or her eligible earnings each year on a pre-tax basis to the 401(k) Plan, subject to limits imposed by federal law.¹² These contributions are deducted from the paychecks of participating Employees and held on the Employees' behalf until such amounts are paid to Fidelity Management Trust Company (the "**Trustee**") to be held in an account maintained by the Trustee on the Employee's behalf. In addition, the 401(k) Plan permits Employees to take loans against their individual 401(k) account, and the Debtors deduct loan payments from such Employee's paycheck and remit such amounts to the Trustee. Currently, approximately 100 Employees participate in the 401(k) Plan.

¹² Employees may also contribute all or a portion of this amount on a taxed basis to a Roth IRA.

42. The Debtors match Employee contributions up to 7% of the participating Employee's salary, subject to limits imposed by federal law. One-third of the Debtors' contributions vest annually at the end of each year that the Employee has remained employed by the Debtors over a three-year period, after which all contributions of the Debtors vest in full when made.¹³ The Debtors' matching contributions are paid directly to the Trustee for deposit into Employee accounts. The Debtors paid approximately \$654,000 in connection with matching contributions through the second quarter of 2020. As of the Petition Date, the Debtors estimate they owe approximately \$45,000 on account of matching contributions pursuant to the 401(k) Plan.

43. The Debtors' matching 401(k) contribution is a critical component of the Employees' compensation. Failure to make such payments would negatively impact morale and place undue hardship on Employees that could result in the loss of Employees during these Chapter 11 Cases. Further, failure to continue matching 401(k) contributions by Employees would result in the Debtors being out of compliance with the 401(k) Plan requirements. Accordingly, the Debtors request authority to make matching contributions under the 401(k) Plan in the ordinary course.

44. The Debtors' 401(k) committee oversees the 401(k) Plan and receives advice for investment decisions from Lockton Investment Advisors, LLC ("**Lockton**"). The Debtors pay Lockton fees of approximately \$8,500 per quarter for such services. In addition, the 401(k) Plan is audited annually in compliance with applicable law. The Debtors estimate that the cost of the 2020 audit, which is being performed by HoganTaylor, is \$23,000. The Debtors seek authority to pay all prepetition amounts owed to Lockton and HoganTaylor in the ordinary course

¹³ Accordingly, once an Employee has been employed for at least three years, all matching contributions vest immediately.

of business and consistent with past practice. As of the Petition Date, the Debtors estimate that the aggregate accrued but unpaid amounts owed to Lockton and HoganTaylor is approximately \$19,000.

v. Workers' Compensation¹⁴

45. Under the laws of the states in which they operate, the Debtors are required to maintain workers' compensation policies and programs, or participate in workers' compensation programs administered by state governments, to provide their Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors.

46. Employees are covered under a workers' compensation policy issued by CompSource Mutual ("CompSource") and Chubb Group ("Chubb"). Provisions under both policies include both workers' compensation and employers' liability coverage. Workers' compensation pays for lost wages, medical treatment, and indemnity for injuries an employee sustained while in the course of employment. Employers' liability covers liability arising out of the employees' work-related injuries that do not fall under the workers' compensation statute. The annual cost per year for workers' compensation coverage is approximately \$71,000. The programs are both guaranteed cost programs with no deductible but subject to year-end adjustments. Under both policies, upon the filing of a verified claim by an eligible Employee, CompSource or Chubb, as applicable, pays the claim amount directly to the Employee. The Debtors estimate that, as of

¹⁴ Contemporaneously with the filing of this Motion, the Debtors have filed the *Motion of Debtors For Entry of Interim and Final Orders (i) Authorizing Debtors to (a) Pay Their Prepetition Insurance Obligations, (b) Pay Their Prepetition Bonding Obligations, (c) Maintain Their Postpetition Insurance Coverage, and (d) Maintain Their Bonding Program, (ii) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers, and (iii) Granting Related Relief* (the "Insurance Motion"), which seeks, among other things, authority to use, maintain and enter into new insurance policies. The relief requested herein is not duplicative of the relief requested by the Insurance Motion.

the Petition Date, accrued but unpaid amounts owed in connection with providing the workers' compensation program total approximately \$50,000.

47. It is critical that the Debtors be permitted to continue their workers' compensation program and to pay outstanding prepetition claims, taxes, charges, assessments, premiums, and third-party administrator fees in the ordinary course of business because alternative arrangements for workers' compensation coverage would most certainly be more costly, and the failure to provide coverage may subject the Debtors and/or their officers to severe penalties. To facilitate the ordinary course handling of workers' compensation claims, the Debtors further request authority, in their sole discretion, to lift the automatic stay of section 362 of the Bankruptcy Code to allow workers' compensation claimants to proceed with their claims under the applicable insurance policy or program and to allow the Debtors or their insurance providers and/or third-party administrators to negotiate, settle and/or litigate workers' compensation claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

vi. Severance Program

48. As part of the Debtors' cost-saving initiatives, the Debtors reduced their workforce by 66 Employees in 2019 and 12 Employees in 2020. In connection with this recent reduction in force, the Debtors provided to terminated Employees severance packages in accordance with the Debtors' past practice (the "**Severance Program**"). From time to time the Debtors also provide certain bespoke severance benefits to Employees not related to a reduction in force, typically in exchange for a release in liability for the Debtors.

49. Accordingly, the Debtors believe that it is important that they have the flexibility to maintain their current practice of honoring their obligations under the Severance Program for Employee retention and morale. The Debtors seek to continue providing such benefits to non-Insiders in the ordinary course of business following entry of the Final Order. As of the

Petition Date, the Debtors estimate that the aggregate accrued and unpaid amount of such prepetition Severance Program obligations is approximately \$0.¹⁵

vii. COBRA

50. The Debtors offer qualifying terminated Employees the ability to continue insurance coverage under the PPO Plan and the Delta Plans and to continue participation in the FSAs, in accordance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). Qualifying terminated Employees are entitled by law to continue to receive these benefits for up to 18 months, and in some instances up to 36 months, following termination of employment. COBRA participants are generally responsible for paying all premium costs associated with the COBRA benefits (the “COBRA Premiums”). The Debtors are responsible to pay all eligible medical expenses of terminated Employees participating in COBRA that remain after the terminated Employees pays any required deductibles or co-pays (the “COBRA Benefits”).

51. Accordingly, the Debtors believe that it is important that they have the flexibility to maintain their current practice of honoring the COBRA obligations for Employee retention and morale. The Debtors seek to continue providing COBRA Benefits to former non-Insider Employees in the ordinary course of business. The obligations that the Debtors incur on behalf of the Employees on account of COBRA Benefits fluctuates based on the medical needs of the Employees but average approximately \$3,000 per month. As of the Petition Date, the Debtors

¹⁵ By this Motion, the Debtors are not requesting authority to make any severance payments (a) not permitted under section 503(c) of the Bankruptcy Code or (b) pursuant to a contract or offer letter.

estimate that the aggregate accrued and unpaid amount of such prepetition COBRA Benefits is approximately \$5,000, none of which is attributable to COBRA Premiums.¹⁶

viii. Honoring of Prepetition Benefits

52. As described above, certain of the Employee Benefits remained unpaid or unprovided as of the Petition Date because certain obligations of the Debtors under the applicable plan, program, or policy accrued either in whole or in part prior to the commencement of these Chapter 11 Cases, but will not be required to be paid or provided in the ordinary course of the Debtors' business until a later date. Because of the manner in which expenses are incurred and claims are processed under Employee Benefits, it is difficult for the Debtors to determine the extent of their obligations under the Employee Benefits outstanding at any particular time.

53. The Debtors request authority to pay or provide as they become due all prepetition Employee Benefits that have already accrued and that are described above, excluding severance payments. The Debtors estimate that the aggregate accrued amount of such prepetition Employee Benefits described in this Section C, excluding severance payments, is approximately \$280,500 as of the petition date.

D. Continuation of Workforce Programs Postpetition

54. The Debtors also request confirmation of their right to continue to perform their obligations with respect to all Workforce Programs, except as otherwise indicated herein. The Workforce Programs are essential to the Debtors' efforts to maintain Workforce morale and minimize attrition. The Debtors believe that the expenses associated with the Workforce Programs

¹⁶ By this Motion, the Debtors are not requesting authority to make any payments (a) not permitted under section 503(c) of the Bankruptcy Code or (b) pursuant to a contract or offer letter.

are reasonable and cost-efficient in light of the potential attrition, loss of morale, and loss of productivity that would occur if the Workforce Programs were discontinued.

55. Notwithstanding the foregoing, the Debtors reserve the right to evaluate all Workforce Programs and to make such modifications, including terminating any particular plan, program, or policy, as may be necessary or appropriate during the pendency of these cases.

E. Payments to Administrators

56. With respect to the Employee compensation and benefits described above, the Debtors contract with several vendors to administer and deliver payments or other benefits to their Employees (the “**Administrators**”). For example, the Debtors, in the ordinary course of business, contract with the following Administrators: (a) ADP in connection with payroll administration, background screening and invoicing, (b) KGA in connection with the administration of the PPO Plan and as underwriter of the Debtors’ insurance for catastrophic medical claims, (c) Life Insurance Company of North America on behalf of Cigna in connection with the administration of the STD Plan, LTD Plan, and AD&D insurance, and (d) Fidelity in connection with administering the 401(k) Plan.

57. The Debtors pay the Administrators’ fees and expenses incurred in connection with providing such services. As of the Petition Date, the Debtors estimate that the aggregate accrued but unpaid amounts owed to the Administrators is approximately \$50,000, which is also the approximate amount that is spent for such services each month.

58. In conjunction with the Debtors’ payment of Prepetition Workforce Obligations and continued performance under Workforce Programs, the Debtors believe that it is necessary to obtain specific authorization to pay any claims of the Administrators on a postpetition basis, including prepetition claims to the extent necessary to ensure uninterrupted delivery of certain benefits to the Workforce. The Debtors believe that the Administrators may fail to

adequately and timely perform or may terminate their services to the Debtors unless the Debtors pay the Administrators' prepetition claims for administrative services rendered and expenses incurred. A need to engage replacement Administrators postpetition likely would cause significant disruption to the payment of benefits and other obligations to the Workforce. Accordingly, the Debtors submit that the payment of claims owed to the Administrators is in the best interest of the Debtors' estates.

BASIS FOR RELIEF REQUESTED

A. Payment of the Priority Portion of Prepetition Workforce Obligations Should Be Authorized under Section 507(a) of the Bankruptcy Code

59. Pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, an individual's claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date, and claims against the Debtors for contributions to employee benefit plans arising from services rendered within 180 days before the Petition Date, are each afforded unsecured priority status for amounts up to \$13,650 per employee. 11 U.S.C. §§ 507(a)(4), (5).

60. The Debtors believe that many of their Prepetition Workforce Obligations constitute priority claims under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. To the extent such Prepetition Workforce Obligations constitute priority claims, the Debtors will be required to pay such claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B). Thus, granting the relief sought herein would only cause such Workforce claims to be paid in the initial stages of the Chapter 11 Cases, rather than at the plan confirmation stage.

61. Some Employee Benefit amounts are unknown pending submission of claims and, therefore, the Debtors do not know the exact amount due on account of each Employee for the prepetition period. To the extent that Employees are owed aggregate amounts in excess of

the priority cap, or amounts that are otherwise not entitled to priority status, the Debtors submit that payment of the Prepetition Workforce Obligations in such higher amounts or otherwise non-priority amounts is nonetheless justified under the authority discussed below.

B. The Proposed Payments are Appropriate Under Section 363 of the Bankruptcy Code

62. Payment of the Prepetition Workforce Obligations and continuation of the Workforce Programs is appropriate under sections 363(b)(1) and 105(a) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Debtors’ decisions to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986) (implicitly adopting the “sound business purpose” test of *Lionel Corp.* and requiring good faith); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business purpose” test in the *Abbotts Dairies* decision); *see also In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is “a good business reason”).

63. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, L.L.C. v. Selma Props. Inc. (In re Crystalin, L.L.C.)*, 293 B.R. 455, 463-64 (B.A.P. 8th

Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis in original, internal alterations and quotations omitted)). Courts require only that the debtors “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. at 153 (citations omitted); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); *In re Adelpia Commc’ns Corp.*, Case No. 02-41729, 2003 WL 22316543, at *31 (Bankr. S.D.N.Y. Mar. 4, 2003); *In re Lionel Corp.*, 722 F.2d at 1071. One purpose of section 363 of the Bankruptcy Code is to provide a debtor with the flexibility to engage in the ordinary course transactions required to operate its business without undue supervision by its creditors or the court. *See, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (“Section 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured creditors and others from dissipation of the estate’s assets.”) (citations omitted).

64. Moreover, section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to “enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1).

65. The Debtors submit that, to the extent that the use of property of the estate is implicated here, the relief requested in this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm, and is justified under section 363 of the Bankruptcy Code. Any delay in paying the Prepetition Workforce Obligations or failure to maintain the Workforce Programs and pay related administrative obligations will adversely impact the Debtors’ relationships with their Workforce and could irreparably impair

Workforce morale, dedication, confidence, and cooperation. The Workforce's support for the Debtors' restructuring efforts in the Chapter 11 Cases is critical to the success of those efforts. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably attend any decline in their Workforce's morale attributable to the Debtors' failure to pay the Prepetition Workforce Obligations.

66. Absent an order granting the relief requested in this Motion, members of the Workforce would undoubtedly suffer hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain members of the Workforce to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors would be undermined, perhaps irreparably, by the possibility that otherwise loyal members of the Workforce will seek other employment alternatives. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

67. In fact, numerous courts in this jurisdiction have granted relief similar to that requested herein. *See, e.g., In re Libbey Glass, Inc.*, Case No. 20-11439 (LSS) (Bankr. D. Del. June 2, 2020); *In re Exide Holdings, Inc.*, Case No. 20-11157 (CSS) (Bankr. D. Del. May 21, 2020); *In re Longview Power, LLC*, Case. No. 20-10951 (BLS) (Bankr. D. Del. May 18, 2020); *In re Boy Scouts of Am. & Del. BSA, LLC*, Case. No. 20-10343 (LSS) (Bankr. D. Del. Mar. 26, 2020); *In re Rentpath Holdings, Inc.*, Case. No. 20-10312 (BLS) (Bankr. D. Del. Mar. 10, 2020); *In re Emerge Energy Servs. LP*, Case No. 19-11563 (KBO) (Bankr. D. Del. Aug. 13, 2019); *In re White Star Petroleum Holdings, LLC*, Case No. 19-11179 (BLS) Bankr. D. Del. May 29, 2019); *In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 1, 2019); *In re Imerys Talc Am. Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. Feb. 13, 2019). The Debtors submit that the circumstances described herein warrant similar relief.

C. Payment of Certain of the Prepetition Workforce Obligations is Appropriate Under Section 541 of the Bankruptcy Code

68. The payment of the Employee contribution component of the 401(k) Plan or payment of other Deductions will not prejudice the Debtors' estates because such withholdings are derived from Employee funds and held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors' estates under section 541 of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 58-59 (1990). *See also In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1059 (3d Cir. 1993) (concluding that property that debtor holds in trust – either express or constructive – for another does not become property of the estate when the debtor files for bankruptcy, and stating that “Congress clearly intended the exclusion by section 541(d) to include not only funds held in express trust, but also funds held in constructive trust.”); *EBS Pension L.L.C. v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231 (Bankr. D. Del. 2000) (same). Moreover, payments that are critical to the retention and morale of the Debtors' Workforce actually add value to the estates because an unplanned reduction in Employee retention or productivity could have disastrous effects on any potential recoveries to unsecured creditors.

D. Section 105 of the Bankruptcy Code and the Doctrine of Necessity Support Payment of the Prepetition Workforce Obligations

69. Finally, the Debtors submit that payment of the Prepetition Workforce Obligations, maintaining the Workforce Programs and paying related administrative expenses is necessary and appropriate and is authorized under section 105(a) of the Bankruptcy Code pursuant to the “necessity of payment” doctrine, which “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

70. Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors' assets. See *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 236 (3d Cir. 2004) (citation omitted) (noting that section 105 of the Bankruptcy Code "has been construed to give a bankruptcy court 'broad authority' to provide equitable relief appropriate to assure the orderly conduct of reorganization proceedings"); *In re Nixon*, 404 F. App'x 575, 578 (3d Cir. 2010) (citation omitted) ("It is well settled that the court's power under § 105(a) is broad."); *In re Nortel Networks, Inc.*, 532 B.R. 494, 554 (Bankr. D. Del. 2015) (citations omitted) ("The Third Circuit has construed [section 105 of the Bankruptcy Code] to give bankruptcy courts 'broad authority' to provide appropriate equitable relief to assure the orderly conduct of reorganization proceedings, and to 'craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.'").

71. The Court's power to utilize the "doctrine of necessity" in the 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 more than a century ago, in *Miltenberger v. Logansport Ry. Co.*, 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.

72. The doctrine of necessity "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176;

see also In re Just for Feet, Inc., 242 B.R. at 826 (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993) (noting that courts grant debtors the authority to pay certain prepetition claims “where the payment is necessary to permit the effectuation of the rehabilitative purposes of the Bankruptcy Code”); *Official Comm. of Unsecured Creditors of Motor Coach Indus. Int’l v. Motor Coach Indus. Int’l (In re Motor Coach Indus. Int’l)*, Case No. 09-078-SLR, 2009 WL 330993, at *2 n.5 (D. Del. Feb. 10, 2009); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994).

73. The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in *In re StructureLite Plastics Corp.* indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” *In re StructureLite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988). The court stated that a “*per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, the Court is empowered to grant the relief requested herein.

74. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors’ estates and stakeholders. Absent this relief, the value of the Debtors’ estates will suffer, possibly precipitously. Consequently, the Debtors’ stakeholders will benefit if the requested relief is granted.

E. Cause Exists to Authorize the Debtors to Continue to Pay and/or Honor Any and All Workers' Compensation Obligations and to Authorize Current and Former Employees to Proceed with Outstanding Workers' Compensation Claims

75. It is imperative that the Debtors be permitted to continue to pay and/or honor any and all workers' compensation obligations, including all prepetition premiums, claims (including claim settlements), losses, and expenses in connection with the workers' compensation obligations, and to pay all costs and expenses associated with the workers' compensation program, including such costs and expenses related to administration, servicing, processing, adjusting, paying, and settling claims and losses under these programs.

76. It is crucial for Employee morale and for the Debtors' operations that the Debtors be able to continue to (a) pay workers' compensation benefits and (b) honor the workers' compensation obligations under the workers' compensation program described herein.

77. Section 362(a) of the Bankruptcy Code operates to stay, among other things: the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

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

11 U.S.C. § 362(d)(1).

78. To the extent that any current or former Employees hold claims pursuant to the workers' compensation program, the Debtors seek authorization under section 362(d) of the Bankruptcy Code to permit such current or former Employees, in the Debtors' sole discretion, to proceed with such claims in the appropriate judicial or administrative fora. The Debtors believe that cause exists to grant them authority to modify the automatic stay, where the Debtors deem it appropriate to do so, because staying such claims could have a detrimental effect on the financial

and medical well-being and morale of their Employees and lead to the departure of certain Employees. Such departures could cause a severe disruption in the Debtors' businesses, to the detriment of all parties in interest. To this end, the Debtors seek an order granting (a) relief from the automatic stay as it relates to current and former Employee claims under the workers' compensation program and (b) waiver of the corresponding notice requirements under Bankruptcy Rule 4001(d).

79. Pursuant to this Motion, the Debtors do not seek a waiver, termination or modification of the automatic stay with respect to any other claims.

F. Applicable Financial Institutions Should Be Authorized to Honor and Process Related Checks and Transfers

80. The Debtors also request that all applicable financial institutions be authorized to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before, on, or after the Petition Date and (b) rely on the Debtors' designation of any particular check as approved by the Proposed Orders.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

81. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. *See* Fed. R. Bankr. P. 6003(b). Based on the foregoing, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003(b) because the relief set forth in Exhibit A is necessary to avoid immediate and irreparable harm.

82. To the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14 day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors request in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the 14 day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

83. Nothing contained herein is intended or should be construed as, or deemed to constitute (a) an admission as to the amount, basis for, or validity of any agreement or claim against the Debtors under the Bankruptcy Code or applicable nonbankruptcy law; (b) a waiver or impairment of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of the type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

84. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the administrative agent for the Debtors' prepetition revolving credit facility; (c) counsel to the administrative agent for the Debtors' prepetition revolving credit facility; (d) the indenture trustee under the Debtors' 8.750% senior notes due 2023; (e) Stroock & Stroock & Lavan LLP and Young, Conaway, Stargatt & Taylor, LLP, as counsel to the ad hoc group of holders of the 8.750% senior notes due 2023; (f) the Internal Revenue Service; (g) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (h) the United States Attorney for the District of Delaware; (i) the Attorneys General for the states of Oklahoma and Texas; (j) counsel to Naylor Farms, Inc. and Harrel's LLC, as lead plaintiffs in the action captioned *Naylor Farms, Inc., individually and as class representative on behalf of all similarly situated persons v. Chaparral Energy, L.L.C.*, Case No. 11-00634 (W.D. Ok. 2011); (k) the parties included on the Debtors' consolidated list of twenty (20) largest unsecured creditors; (l) applicable financial institutions; and (m) any party that is entitled to notice pursuant to Local Rule 9013-1(m) (collectively, the "**Notice Parties**"). The Debtors submit that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: August 16, 2020
Wilmington, Delaware

/s/ Amanda R. Steele

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*Proposed Counsel for Debtors and
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EXHIBIT A

Proposed Interim Order

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

In re:)	
)	Chapter 11
CHAPARRAL ENERGY, INC., <i>et al.</i> , ¹)	Case No. 20-____ (____)
)	
Debtors.)	(Jointly Administered)
)	

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION
WORKFORCE OBLIGATIONS, (B) CONTINUE WORKFORCE PROGRAMS AND
PAY RELATED ADMINISTRATIVE OBLIGATIONS, (C) PAY WITHHOLDING AND
PAYROLL RELATED TAXES, (II) AUTHORIZING FINANCIAL INSTITUTIONS TO
HONOR AND PROCESS RELATED CHECKS AND FUND TRANSFERS, AND (III)
GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Chaparral Energy, Inc. and its subsidiaries that are debtors and debtors in possession (collectively, the “**Debtors**”) in the Chapter 11 Cases for entry of an interim order, pursuant to sections 105(a), 362(d), 363(b), 363(c), 507(a), 541, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rule 6003, and Local Rule 9013-1(m), authorizing (a) the Debtors, in their sole discretion, to pay, continue, and otherwise honor the Prepetition Workforce Obligations owing to the Workforce for the Workforce Programs; (b) the Debtors to continue the Workforce Programs and make payments in connection with the postpetition administration of the Workforce Programs in the ordinary course of business; (c) the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes relating the Prepetition Workforce Obligations, including, but not limited to, withholding taxes, social

¹ The Debtors in these cases, along with the last four digits (or five digits, in cases in which multiple Debtors have the same last four digits) of each Debtor’s federal tax identification number, are: CEI Acquisition, L.L.C. (1817); CEI Pipeline, L.L.C. (6877); Chaparral Biofuels, L.L.C. (1066); Chaparral CO2, L.L.C. (1656); Chaparral Energy, Inc. (90941); Chaparral Energy, L.L.C. (20941); Chaparral Exploration, L.L.C. (1968); Chaparral Real Estate, L.L.C. (1655); Chaparral Resources, L.L.C. (1710); Charles Energy, L.L.C. (3750); Chestnut Energy, L.L.C. (9730); Green Country Supply, Inc. (2723); Roadrunner Drilling, L.L.C. (2399); and Trabajo Energy, L.L.C. (9753). The Debtors’ address is 701 Cedar Lake Boulevard, Oklahoma City, OK 73114.

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

security taxes, and Medicare taxes; (d) the Debtors to continue to deduct and to transmit deductions from payroll checks as authorized by Employees and Independent Contractors, as required under any Workforce Program or as required by law; (e) the Debtors to pay any prepetition and postpetition claims owing to the administrators of, or third-party providers under, their Workforce Programs as necessary to ensure the delivery of compensation, benefits, and expense reimbursements to their employees and independent contractors; and (f) all banks to receive, process, honor, and pay all of the Debtors' prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant hereto; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the Notice Parties, under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration; and the Court having held a hearing on the Motion (the "**Hearing**"); and the Court having found that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003;

and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The final hearing to consider the relief requested in the Motion shall be held on _____, 2020, at __:___ .m. prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2020. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the final hearing.
3. The Debtors are authorized, but not directed, to pay or otherwise honor the Prepetition Workforce Obligations described in the Motion to, or for the benefit of, the Workforce, including the Independent Contractors, under the Workforce Programs in the ordinary course of business in an amount not to exceed \$1,047,800 in the aggregate without further order of the Court.
4. The Debtors are authorized, but not directed, to (a) continue each of the Workforce Programs, including but not limited to maintaining the Employee Benefits described in the Motion, in the ordinary course of business during the pendency of these cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of these cases, and (b) continue to fund and to make payments in connection with the costs of and the expenses incurred in the administration of any Workforce Program.
5. Subject to the cap set forth in paragraph 3 of this Interim Order, the Debtors are authorized, but not directed, to reimburse the Employees for all Reimbursement Obligations incurred prior to the Petition Date. In addition, the Debtors are authorized, but not directed, to

make direct payments to third parties owed amounts in connection with the Reimbursement Obligations.

6. Subject to entry of the Final Order granting the relief requested, the Debtors are authorized, but not directed, to continue the Employee Incentive Programs and Severance Program with respect to Employees who are not Insiders on a postpetition basis in the ordinary course of business; *provided* that nothing in this Interim Order shall authorize the Debtors to make any payments prohibited under section 503(c) of the Bankruptcy Code, including, for the avoidance of doubt, payment of any bonus or severance obligations to or on behalf of any Insider or violate or permit a violation of section 503(c) of the Bankruptcy Code.

7. Notwithstanding any other provision of this Interim Order and subject to entry of the Final Order granting the requested relief, nothing in this Interim Order shall authorize the Debtors to make any payment to, or on behalf of, any Employee or Independent Contractor on account of prepetition Wages or Independent Contractor Payments and other compensation obligations (excluding Reimbursement Obligations, PTO and holidays, and amounts related to the 401(k) Plan) in excess of the statutory caps set forth in sections 507(a)(4) and (5) of the Bankruptcy Code.

8. The Debtors are authorized, but not directed, to pay or otherwise honor the 401(k) Plan matching contribution obligations described in the Motion in the ordinary course of business in an amount not to exceed \$45,000 in the aggregate without further order of the Court.

9. Notwithstanding any other provision of this Interim Order and subject to entry of the Final Order granting the requested relief, nothing in this Interim Order shall authorize the Debtors to cash out unpaid PTO, unless applicable non-bankruptcy law requires such payment.

10. The Debtors are authorized, but not directed, to continue their workers' compensation programs and to pay any outstanding prepetition claims, taxes, charges, assessments, premiums, and third-party administrator fees arising under the workers' compensation policies and or programs in which they participate; *provided* that such payments shall not exceed \$50,000 prior to entry of the Final Order. In addition, the automatic stay of section 362 of the Bankruptcy Code is hereby lifted to allow workers' compensation claimants to proceed with their claims under the applicable insurance policy or program and to allow the Debtors' insurance providers and/or third-party administrators to negotiate, settle, and/or litigate workers' compensation claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

11. The Debtors are authorized, but not directed, to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to the Prepetition Workforce Obligations including, but not limited to, the Payroll Taxes, all withholding taxes, and insurance premiums, whether such taxes relate to the period before or after the Petition Date; *provided* that such payments shall not exceed \$256,300 prior to entry of the Final Order.

12. The Debtors are authorized, but not directed, to continue to deduct the Deductions as authorized by Employees and Independent Contractors, as required under any Workforce Program or as required by law.

13. The Debtors are authorized, but not directed to pay amounts of the Administrators, in connection with administering and delivering payments or other benefits to the Workforce for prepetition services rendered and claims for reimbursement based on prepetition disbursements made by the Administrators; *provided* that such payments shall not exceed \$50,000 prior to entry of the Final Order.

14. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtors under this Interim Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

15. Notwithstanding anything to the contrary in this Interim Order, the Debtors retain their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be required by applicable law.

16. Nothing in this Interim Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

17. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

18. Nothing in this Interim Order nor the Debtors' payment of claims pursuant to this Interim Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the validity of any claim against the Debtors on any ground, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third-party, (c) a waiver or impairment of any rights, claims or defenses of the Debtors' rights to dispute any claim on any

grounds, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Interim Order.

19. The requirements of Bankruptcy Rules 6003 and 6004(a) are satisfied by the contents of the Motion.

20. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Interim Order is hereby waived, and the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

21. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order.

22. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

EXHIBIT B

Proposed Final Order

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

In re:)	
)	Chapter 11
CHAPARRAL ENERGY, INC., <i>et al.</i> , ¹)	Case No. 20-____ (____)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION
WORKFORCE OBLIGATIONS, (B) CONTINUE WORKFORCE PROGRAMS AND
PAY RELATED ADMINISTRATIVE OBLIGATIONS, (C) PAY WITHHOLDING AND
PAYROLL RELATED TAXES, (II) AUTHORIZING FINANCIAL INSTITUTIONS TO
HONOR AND PROCESS RELATED CHECKS AND FUND TRANSFERS, AND (III)
GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of Chaparral Energy, Inc. and its subsidiaries that are debtors and debtors in possession (collectively, the “**Debtors**”) in the Chapter 11 Cases for entry of an final order, pursuant to sections 105(a), 362(d), 363(b), 363(c), 507(a), 541, 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rule 6003, and Local Rule 9013-1(m), authorizing (a) the Debtors, in their sole discretion, to pay, continue, and otherwise honor the Prepetition Workforce Obligations owing to the Workforce for the Workforce Programs; (b) the Debtors to continue the Workforce Programs and make payments in connection with the postpetition administration of the Workforce Programs in the ordinary course of business; (c) the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes relating the Prepetition Workforce Obligations, including, but not limited to, withholding taxes, social

¹ The Debtors in these cases, along with the last four digits (or five digits, in cases in which multiple Debtors have the same last four digits) of each Debtor’s federal tax identification number, are: CEI Acquisition, L.L.C. (1817); CEI Pipeline, L.L.C. (6877); Chaparral Biofuels, L.L.C. (1066); Chaparral CO2, L.L.C. (1656); Chaparral Energy, Inc. (90941); Chaparral Energy, L.L.C. (20941); Chaparral Exploration, L.L.C. (1968); Chaparral Real Estate, L.L.C. (1655); Chaparral Resources, L.L.C. (1710); Charles Energy, L.L.C. (3750); Chestnut Energy, L.L.C. (9730); Green Country Supply, Inc. (2723); Roadrunner Drilling, L.L.C. (2399); and Trabajo Energy, L.L.C. (9753). The Debtors’ address is 701 Cedar Lake Boulevard, Oklahoma City, OK 73114.

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

security taxes, and Medicare taxes; (d) the Debtors to continue to deduct and to transmit deductions from payroll checks as authorized by Employees and Independent Contractors, as required under any Workforce Program or as required by law; (e) the Debtors to pay any prepetition and postpetition claims owing to the administrators of, or third-party providers under, their Workforce Programs as necessary to ensure the delivery of compensation, benefits, and expense reimbursements to their employees and independent contractors; and (f) all banks to receive, process, honor, and pay all of the Debtors' prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant hereto; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the Notice Parties, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration; and the Court having granted interim relief on the Motion on [●], 2020 (D.I. [●]); and the Court having held, if necessary, a final a hearing on the Motion (the "**Hearing**"); and the Court having found that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and upon all

of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Debtors are authorized, but not directed, to pay or otherwise honor the Prepetition Workforce Obligations described in the Motion, to, or for the benefit of, the Workforce, including the Independent Contractors, under the Workforce Programs in the ordinary course of business.
3. The Debtors are authorized, but not directed, to (a) continue each of the Workforce Programs, including but not limited to maintaining the Employee Benefits described in the Motion, in the ordinary course of business during the pendency of these cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of these cases, and (b) continue to fund and to make payments in connection with the costs of and the expenses incurred in the administration of any Workforce Program.
4. The Debtors are authorized, but not directed, to reimburse the Employees for all Reimbursement Obligations incurred prior to the Petition Date. In addition, the Debtors are authorized, but not directed, to make direct payments to third parties owed amounts in connection with the Reimbursement Obligations.
5. The Debtors are authorized, but not directed, to continue the Employee Incentive Programs and Severance Program and pay COBRA obligations with respect to Employees who are not Insiders on a postpetition basis in the ordinary course of business; provided that, nothing in this Final Order shall authorize the Debtors to make any payments prohibited under section 503(c) of the Bankruptcy Code, including, for the avoidance of doubt, payment of any

bonus or severance obligations to or on behalf of any Insider or violate or permit a violation of section 503(c) of the Bankruptcy Code.

6. The Debtors are authorized, but not directed, to continue their workers' compensation programs and to pay any outstanding prepetition claims, taxes, charges, assessments, premiums, and third-party administrator fees arising under the workers' compensation policies and or programs in which they participate. In addition, the automatic stay of section 362 of the Bankruptcy Code is hereby lifted to allow workers' compensation claimants to proceed with their claims under the applicable insurance policy or program and to allow the Debtors' insurance providers and/or third-party administrators to negotiate, settle, and/or litigate workers' compensation claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

7. The Debtors are authorized, but not directed, to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to the Prepetition Workforce Obligations including, but not limited to, the Payroll Taxes, all withholding taxes, and insurance premiums, whether such taxes relate to the period before or after the Petition Date.

8. The Debtors are authorized, but not directed, to continue to deduct the Deductions as authorized by Employees and Independent Contractors, as required under any Workforce Program or as required by law.

9. The Debtors are authorized, but not directed, to pay amounts of the Administrators, in connection with administering and delivering payments or other benefits to the Workforce for prepetition services rendered and claims for reimbursement based on prepetition disbursements made by the Administrators.

10. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtors under this Final Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

11. Authorization to pay, and the payment of, any amounts on account of Prepetition Workforce Obligations shall not affect the Debtors' right to contest the amount or validity of any Prepetition Workforce Obligation, including without limitation, any amounts that may be due to any taxing authority.

12. Nothing in this Final Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

13. Notwithstanding anything to the contrary in this Final Order, the Debtors retain their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be required by applicable law.

14. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

15. Nothing in this Final Order nor the Debtors' payment of claims pursuant to this Final Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the validity of any claim against the Debtors on any ground, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third-party, (c) a waiver or impairment of any rights, claims or defenses of the Debtors' rights to dispute any claim on any grounds, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Final Order.

16. The requirements of Bankruptcy Rules 6003 and 6004(a) are satisfied by the contents of the Motion.

17. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Final Order is hereby waived, and the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

18. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Final Order.

19. Proper, timely, adequate, and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion or the entry of this Final Order shall be required.

20. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.