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

_____	X	
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , <sup>1</sup>	:	Case No. ____ ( )
	:	
Debtors.	:	Joint Administration Pending
	:	
_____	X	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO PAY  
PREPETITION CLAIMS OF FOREIGN VENDORS, (II) CONFIRMING  
ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING  
ORDERS, (III) AUTHORIZING APPLICABLE BANKS AND OTHER  
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED  
CHECKS AND TRANSFERS AND (IV) GRANTING RELATED RELIEF**

Garrett Motion Inc. and certain of its affiliated debtors and debtors-in-possession (collectively, the "Debtors") hereby submit this motion (this "Motion") for entry of an interim order, substantially in the form attached hereto as Exhibit A (the "Interim Order"), and a final order, substantially in the form attached hereto as Exhibit B (the "Final Order" and, together with

<sup>1</sup> The last four digits of Garrett Motion Inc.'s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://www.kcellc.net/garrettmotion>. The Debtors' corporate headquarters is located at La Pièce 16, Rolle, Switzerland.



the Interim Order, the “Orders”), pursuant to sections 105(a), 363, 503(b)(9), 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay prepetition claims of foreign vendors in an amount not to exceed \$153 million on an interim basis and \$305 million on a final basis, (b) confirming administrative expense priority of all undisputed obligations of the Debtors, in the Debtors’ sole discretion, arising from the postpetition acceptance of goods subject to Outstanding Orders (as defined below) and authorizing payment, in the ordinary course of business, of all such amounts when they come due and owing, (c) authorizing applicable banks and other financial institutions to honor and process related checks and transfers and (d) granting certain related relief, including scheduling a hearing to consider approval of the Motion on a final basis (the “Final Hearing”). The facts and circumstances supporting this Motion are set forth in the concurrently filed *Declaration of Sean Deason in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “Deason First Day Declaration”) and the *Declaration of Scott Tandberg in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “Tandberg First Day Declaration” and together with the Deason First Day Declaration, the “First Day Declarations”). In further support of the Motion, the Debtors respectfully state as follows:

### **Background**

1. Garrett Motion Inc. is a Delaware corporation established in 2018, with its headquarters located in Rolle, Switzerland. The Debtors design, manufacture and sell highly engineered turbocharger, electric-boosting and connected vehicle technologies.
2. On the date hereof (the “Petition Date”), each of the Debtors filed with the Court a voluntary petition for relief under the Bankruptcy Code. Each Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections

1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Motion, the Debtors filed a motion with the Court pursuant to Bankruptcy Rule 1015 seeking joint administration of the Debtors' cases (the "Chapter 11 Cases"). No creditors' committee has been appointed in these Chapter 11 Cases.

3. Additional factual background relating to the Debtors' businesses and the commencement of these Chapter 11 Cases is set forth in detail in the First Day Declarations.

### **Facts Specific to the Relief Requested**

#### **I. Foreign Vendors**

4. In the ordinary course of business, the Debtors incur various obligations to numerous foreign vendors that provide essential goods and services related to the operation of the Debtors' businesses (collectively, the "Foreign Vendors"). These Foreign Vendors include vendors located in diverse foreign jurisdictions, including in Europe, Asia, North America and South America. The Debtors believe that all or substantially all of the Foreign Vendors lack a material presence in the United States. Historically, the Debtors have paid the Foreign Vendors approximately \$120 million per month. The Debtors estimate that, as of the Petition Date, the aggregate amount of prepetition obligations owed to Foreign Vendors (collectively, the "Foreign Vendor Claims") is approximately \$305 million. By this Motion, the Debtors are seeking authority, but not direction, to pay an amount that shall not exceed \$153 million on an interim basis and \$305 million on a final basis on account of prepetition obligations owed to Foreign Vendors.

5. The Debtors and their non-debtor affiliates manufacture more than 86% of their products in low-cost countries, including in seven manufacturing facilities in China, India, Mexico, Romania and Slovakia. The Debtors and their non-debtor affiliates also own and operate approximately 13 production facilities outside of the United States, the largest of which

are in Mexico, Romania and Slovakia. While the Debtors have significant customer relationships and sales in the United States, the Debtors do not manufacture any of their products domestically. The Foreign Vendors provide crucial goods and materials to the Debtors that are consumed as part of their manufacturing operations around the world.

6. The Debtors are highly reliant on the Foreign Vendors to provide such goods and materials reliably and on time, including for example casting and machining materials, precision wheels and related hardware, electronic and actuation materials, parts and tools, equipment, information technology hardware and software, among others. The goods and materials provided by the Foreign Vendors are necessary for the operation of the Debtors' businesses. For the avoidance of doubt, by this Motion, the Debtors are not seeking to pay Foreign Vendor Claims owed to any Foreign Vendor with which the Debtors do not expect to have a continuing contractual or business relationship following such payment.

7. In addition, given the Debtors' global footprint, there are many foreign service providers located in jurisdictions outside the United States that perform services that are also vital to the Debtors' businesses. The Debtors rely on these foreign service providers to ensure their businesses operate efficiently and in accordance with applicable laws and regulations. Services provided by Foreign Vendors include inspecting and calibrating equipment, testing and engineering services, maintenance and repair of equipment, tools and facilities, dealing with customs and immigration matters, services to maintain the health and safety of workers and the public, environmental and waste management services, storage and warehousing services, freight forwarding, information technology maintenance and support services, utilities, and security services, among others.

8. The goods and services provided by Foreign Vendors are required for the Debtors' continued production of turbocharger, electric-boosting and connected vehicle

technologies for their original equipment manufacturer and aftermarket customers. In many cases, the Foreign Vendors are the only source or the most preferred source from which the Debtors can procure certain goods and services within a time frame and at a price that permit the Debtors to operate in the ordinary course. Many of the goods and services that the Debtors rely on are tailored to a specific customer's design or specification and undergo extensive testing to ensure compliance with customer requirements. The Debtors manufacture turbos for original equipment customers based on customer release schedules, which are normally provided on a weekly basis and can vary due to cyclical automobile production or inventory levels throughout the supply chain. As a result, original equipment customers expect suppliers (including the Debtors) to respond to customized and changing orders regularly, and often on an accelerated time frame.

9. Original equipment customers also maintain low inventories and therefore require product be delivered by suppliers "just in time" to meet complex production schedules and to keep their own production running smoothly. Because of the minimal inventory levels retained by the Debtors and their original equipment customers, combined with the short lead time to fulfill orders, even a minor breakdown in the supply chain, no matter how small, can have a rippling effect, halting the Debtors' manufacturing, and as consequence, the customer's finished product assembly. Moreover, in light of the global nature of the Debtors' Foreign Vendors, world events, including the ongoing COVID-19 pandemic, further narrow the margin for error in the Debtors' supply chain and increase the Debtors' reliance on the proximity of the Foreign Vendors to their production facilities.

10. On average, for any given customer-specific part, the Debtors typically spend 24 months working with many of their Foreign Vendors and their original equipment customers to conduct a rigorous, collaborative process of product design, extensive testing by the

Debtors prior to integration of a supplier's products into goods manufactured by the Debtors and back-end customer qualification (or stress testing) of the Debtors' product. Even for relatively "simple" parts, the entire process must be completed *prior* to beginning production and fulfilling shipments, and must also meet the customer's production schedule that itself is dependent on the harmonious integration of manufacturing and delivery schedules of other suppliers delivering their own parts. Often, this process must be repeated before the Debtors can substitute product from a new supplier into a customer's part, making such substitutions, if unplanned, impractical at best. Nearly all of the Debtors' facilities—as is standard throughout the Debtors' industry—maintain integrated manufacturing systems designed so that the Debtors receive goods on a "just in time" basis, and the failure to deliver goods on time for a specific original equipment customer could result in the assertion of monetary damages equivalent to the loss of production resulting from the failure to deliver the goods on time, which is measured as the cost of the vehicle. The coordination of Foreign Vendor goods and services is meticulously planned and essential for the proper operation of the Debtors' businesses.

11. Additionally, certain of the Foreign Vendors have precarious financial situations, heightened by the ongoing COVID-19 pandemic, some of which are highly dependent upon the Debtors for their continued viability and can ill afford any loss of operating revenue. Even certain Foreign Vendors with healthy and stable financial situations prior to the ongoing COVID-19 pandemic are now in precarious financial situations. The nonpayment of amounts owed to Foreign Vendors could result in a Foreign Vendor suffering work stoppages or other business disruption and might ultimately result in a Foreign Vendor ceasing operations altogether or filing local insolvency proceedings. If that were to occur, the Debtors may suffer damaging interruptions in their supply of essential goods and services while they seek to replace such

Foreign Vendor, which can be burdensome and expensive, if it can be achieved in the near term at all.

12. If the provision of goods and services from Foreign Vendors was interrupted, the Debtors may not be able to locate alternative sources for such goods and services on reasonable commercial terms, or at all, which would reduce the efficiency of the Debtors' operations and, in certain instances, could require the suspension of operations altogether. Even if another source were identified, the same rigorous and lengthy testing process required by the Debtors' original equipment customers would need to be completed prior to the integration of a new Foreign Vendor's product into goods manufactured by the Debtors, which would paralyze the Debtors' operations for an extended period of time and result in a failure to fulfill commitments to such customers. This would result in significant loss of value for the Debtors and may result in penalties assessed against the Debtors for the cost of any cessation of production at the original equipment customer.

13. The Foreign Vendors are likely to be skeptical of the United States bankruptcy process and unfamiliar with vendor requirements under chapter 11. Indeed, the Foreign Vendors may argue that they are not subject to the jurisdiction of the Bankruptcy Court or the provisions of the Bankruptcy Code that would otherwise protect the Debtors' assets and business operations. As a result, there is a heightened risk that a Foreign Vendor could sue or otherwise initiate legal actions against the Debtors in foreign courts to recover prepetition amounts owed to it if such Foreign Vendor's prepetition claim remains unpaid. If such Foreign Vendor was successful in obtaining judgments against the Debtors, such Foreign Vendor could seek to exercise post-judgment remedies, including withholding vital supplies or services from the Debtors. Accordingly, nonpayment of prepetition claims may cause the Foreign Vendors to delay shipment or to stop filling the Debtors' orders. The Debtors would have no practical

ability to remedy this situation absent payment of prepetition claims, and no way to otherwise mitigate any monetary penalties or reputational harm a failure to meet customer orders would give cause. The Debtors' global and interconnected business operations would be irreparably harmed to the detriment of their estates and their creditors.

14. In addition, the Debtors have a number of non-debtor affiliates located in foreign countries. If the Foreign Vendor Claims are not paid, the Foreign Vendors may take action against those non-debtor affiliates. Even if the worldwide automatic stay could be enforced, the automatic stay by itself would not serve to protect the assets of the Debtors' non-debtor affiliates, which could remain at risk of adverse action.

15. Further, there is a risk that foreign governmental authorities might either (a) seize the Debtors' assets in such countries, including, without limitation, parts and other goods destined for the Debtors' manufacturing plants or customers in the United States and abroad; or (b) seek civil penalties against the Debtors. Finally, the Debtors' directors and officers may be subject to lawsuits in certain foreign jurisdictions during the pendency of these Chapter 11 Cases on account of nonpayment.

16. The cumulative effect of such actions could have a severe adverse effect on the Debtors' businesses and be a significant distraction for the Debtors at a time when they should be focused on efforts to stabilize their post-petition business operations to successfully achieve their goals in these Chapter 11 Cases.

## **II. Outstanding Orders**

17. Prior to the Petition Date, and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (the "Outstanding Orders"). To avoid becoming general unsecured creditors of the Debtors' estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may



recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors' business operations, and given that goods delivered after the Petition Date are generally afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors, in the Debtors' sole discretion, arising from the postpetition acceptance of goods subject to Outstanding Orders and (b) authorizing the Debtors to pay such obligations in the ordinary course of business.

### **III. Trade Terms Conditions**

18. The Debtors propose to condition the payment of Foreign Vendor Claims on the agreement of the individual Foreign Vendor to continue supplying goods to the Debtors on terms that are consistent with the historical trade terms between the parties (the "Customary Trade Terms") or on trade terms otherwise acceptable to the Debtors.

19. The Debtors reserve the right to seek written acknowledgment of the Customary Trade Terms of a Foreign Vendor before paying the Foreign Vendor's claim. Similarly, for those Foreign Vendors who have agreed to provide goods to the Debtors on terms different from their Customary Trade Terms, the Debtors reserve the right to seek written acknowledgment of such terms on a case-by-case basis.

20. If a Foreign Vendor accepts a payment on account of a prepetition obligation of the Debtors (a "Vendor Payment") and thereafter fails to provide the Debtors with the requisite Customary Trade Terms, the Debtors seek the authority to declare that (a) any Vendor Payment received by such Foreign Vendor will be deemed an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (i) recover from the Foreign Vendor in the form of cash or goods or (ii) at the Debtors' option, apply against any

outstanding administrative claim held by such Foreign Vendor and (b) upon recovery of any Vendor Payment, the corresponding prepetition claim of the Foreign Vendor will be reinstated in the amount recovered by the Debtors, less the Debtors' reasonable costs to recover such amounts. In essence, the Debtors seek to return the parties to their respective positions immediately prior to entry of the Proposed Orders in the event a Foreign Vendor refuses to supply goods to the Debtors on Customary Trade Terms following payment of its Foreign Vendor Claim.

21. The Debtors also propose that all payments of Foreign Vendor Claims shall be applied first to the applicable Foreign Vendor's section 503(b)(9) claims. The Debtors reserve the right to negotiate new trade terms with any Foreign Vendor as a condition to payment of any Foreign Vendor Claim.

#### **Jurisdiction**

22. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rule 6003.

#### **Relief Requested**

23. By this Motion, the Debtors request entry of the Interim and Final Orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, (a) authorizing, but not directing, the Debtors to pay, in their sole discretion in the ordinary course of business, the Foreign Vendor Claims in an amount not to exceed \$153 million on an interim basis and \$305 million on a final basis, (b) confirming administrative expense priority of all undisputed obligations of the Debtors, in the Debtors' sole discretion, arising from the

postpetition acceptance of goods subject to Outstanding Orders, (c) authorizing applicable banks and other financial institutions to honor and process related checks and transfers and (d) granting certain related relief, including scheduling the Final Hearing. For the avoidance of doubt, pursuant to this Motion, the Debtors seek authority to pay amounts only as they come due in the ordinary course of business or as may be necessary to secure a Foreign Vendor's agreement to continue to conduct business with the Debtors on Customary Terms and shall not otherwise seek to accelerate payment of amounts that would not otherwise come due within the first 30 days of these Chapter 11 Cases.

### **Basis for Relief**

#### **I. Payment of Foreign Vendor Claims Is Appropriate Under Sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code.**

24. The relief requested is appropriate under sections 105(a), 363(b), 1107(a) and 1108 of the Bankruptcy Code. The Debtors are operating their businesses as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code, and they are therefore fiduciaries "holding the bankruptcy estate[s] and operating the business for the benefit of . . . [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor-in-possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.* Consistent with a debtor's fiduciary duties to preserve the estate, courts have authorized payment of prepetition obligations pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (stating that section 363(b) provides "broad flexibility" for a debtor to satisfy prepetition claims where supported by a proper business justification); *In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) ("Section 105(a) of the Code provides a statutory basis for the payment of pre-petition

claims.”). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ, L.L.C.*, 273 B.R. at 497.

25. Section 363(b) of the Bankruptcy Code empowers the Court to allow the debtor, in the exercise of its sound business judgment and after notice and a hearing, to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” See 11 U.S.C. § 363(b)(1); see also *Official Comm. of Unsecured Creditors of LTV Aerospace & Defense Co. v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143, 145 (2d Cir. 1992) (holding that a court may approve an application under section 363(b) upon a showing of a good business reason for the disposition); *Official Comm. of Unsecured Creditors v. Enron Corp. (In re Enron Corp.)*, 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). For a court to approve the use, sale or lease of estate property under section 363(b) of the Bankruptcy Code, the debtor must “articulate some business justification, other than mere appeasement of major creditors . . . .” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (holding that the debtor’s payment of prepetition claims was necessary to protect its business and to ensure successful reorganization). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted). Under this section, a court may authorize a debtor to pay certain prepetition claims. See *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175.

26. Additionally, section 105(a) of the Bankruptcy Code authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its

equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. Under section 105(a), the Court “can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992).

27. The necessity of payment doctrine is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy of Chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); *In re Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[A] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”).

28. Furthermore, certain of the Foreign Vendors that the Debtors are seeking authority to pay delivered goods and services in the ordinary course to the Debtors within the 20 days before the Petition Date and may be entitled to administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code. Payment to any Foreign Vendor on account of such deliveries at the onset of these Chapter 11 Cases, therefore, merely accelerates the timing of

payment and not the ultimate treatment of such claims. As administrative claims incurred in the ordinary course of business, the Debtors submit that they may pay such claims in accordance with their business judgment pursuant to section 363(c)(1) of the Bankruptcy Code.

Additionally, all creditors will benefit from the seamless transition of the Debtors' operations into chapter 11.

29. Replacing Foreign Vendors may not be feasible because, in many cases, a Foreign Vendor may be the only or preferred source from which the Debtors can procure essential goods and services. In certain cases, the Debtors' long-standing relationships with Foreign Vendors allow the Debtors to pay substantially discounted rates so long as the Debtors promptly pay these certain Foreign Vendors.

30. In light of the potential for serious and potentially irreparable consequences, the Debtors have determined, in the sound exercise of their business judgment, that payment of Foreign Vendor Claims is essential and that the relief requested should be granted. Allowing the Debtors to pay Foreign Vendor Claims as set forth herein is especially appropriate where, as here, doing so is consistent with the "two recognized policies" of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust Savs. Ass'n v. 203 N. LaSalle St. P'Ship.*, 526 U.S. 434, 453 (1999). Accordingly, for these reasons, and the supporting authority found in sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors submit that the relief requested is essential, appropriate, and in the best interests of their estates and should be granted.

31. Courts have properly relied on the broad authority granted under sections 105 and 363(b) to authorize debtors-in-possession to satisfy prepetition claims of foreign creditors in circumstances where, as here, the estate will obtain more value for all creditors or

avoid more harm by making the prepetition payments. *See, e.g., In re Avianca Holdings S.A.*, 20-11133 (MG) (June 9, 2020), D.I. 248; *In re Aegean Marine Petrol. Network Inc.*, 18-13374 (MEW) (Dec. 6, 2018), D.I. 150; *In re Ultrapetrol (Bahamas) Ltd.*, 17-22168 (RDD) (Mar. 8, 2017), D.I. 103 ; *In re Republic Airways Holdings Inc.*, 16-10429 (SHL) (Mar. 23, 2016), D.I. 199; *In re Chassix Holdings, Inc.*, 15-10578 (MEW) (Apr. 14, 2015), D.I. 277; *In re LodgeNet Interactive Corp.*, 13-10238 (SCC) (Feb. 27, 2013), D.I. 162; *In re Patriot Coal Corp.*, 12-12900 (SCC) (Aug. 2, 2012), D.I. 2556.

32. The relief requested herein is warranted due to the limitations of the enforceability of the automatic stay, the risk of Foreign Vendors exercising remedial rights, and the critical nature of the goods and services provided by the Foreign Vendors. Absent the uninterrupted receipt by the Debtors of the goods and services obtained from their Foreign Vendors, the Debtors' ability to operate their business will be jeopardized. Simply stated, payment of the obligations as proposed will assure the orderly operation of the Debtors' business and avoid costly disruptions and resulting significant loss of value and irreparable harm.

## **II. The Court Should Confirm that Outstanding Orders Are Administrative Expense Priority Claims and that Payment of Such Claims Is Authorized.**

33. Pursuant to section 503(b) of the Bankruptcy Code, most obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estate postpetition. See 11 U.S.C. § 503(b)(1)(A) (providing that the "actual [and] necessary costs and expenses of preserving the estate" are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809–10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, the granting of the relief sought herein with respect to the Outstanding Orders will not provide the suppliers with any

greater priority than they would otherwise have if the relief requested herein were not granted, and will not prejudice any other party in interest.

34. Absent the relief requested herein, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide the suppliers with assurance of such administrative priority. Any disruption to the continuous and timely flow of goods to the Debtors could result in substantial delays in the Debtors' operations, which could lead to dissatisfied customers and reduced sales. Accordingly, the Debtors submit that the Court should confirm the administrative expense priority status of all undisputed obligations of the Debtors, in the Debtors' sole discretion, arising from the postpetition acceptance of goods subject to Outstanding Orders and should authorize the Debtors to pay such obligations in the ordinary course of business.

**III. Cause Exists to Authorize Applicable Banks and/or Financial Institutions to Honor Checks and Electronic Fund Transfers.**

35. The Debtors further request that the Court authorize and direct all applicable banks and other financial institutions (the "Banks") to receive, process, honor, and pay any and all checks drawn or electronic funds transfers requested to pay Foreign Vendor Claims, whether such checks were presented prior to or after the Petition Date; *provided, however*, that such checks or electronic funds transfers are identified by the Debtors as relating directly to the authorized payment of Foreign Vendor Claims. The Debtors also seek authority to issue new postpetition checks, or effect new electronic funds transfers, on account of such claims to replace any prepetition checks or electronic funds transfer requests that may be dishonored or rejected as a result of the commencement of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any Foreign Vendor Claims.



**Bankruptcy Rule 6003 Is Satisfied**

36. In order for a debtor to obtain relief to make preplan payments within 21 days of the Petition Date, it must establish that making such payments satisfies the requirements mandated by Bankruptcy Rule 6003—namely, the relief requested is necessary to avoid “immediate and irreparable harm.” If a debtor’s prospect of reorganizing is threatened, or swift diminution in value of the debtor’s estate is likely absent the granting of the requested relief, immediate and irreparable harm likely exists. *See In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 469 (Bankr. S.D.N.Y. 2009) (finding that relief requested by the debtors was necessary to avoid irreparable harm to the debtors and their estates because such relief was essential for the continued operation of the debtors’ businesses).

37. Immediate and irreparable harm would result if the relief requested herein is not granted. Absent payment of these Foreign Vendor Claims, the Debtors’ risk interrupted access to goods and services necessary for their business.

38. Payment of Foreign Vendor Claims is essential to ensure that the Debtors can continue to operate. Failure to receive the requested relief during the first 21 days of these Chapter 11 Cases would severely disrupt the Debtors’ day-to-day operations, burden the Debtors’ estates and stymie the efforts of the Debtors to efficiently reorganize. For the reasons discussed herein, the relief requested is essential to the preservation of the value of the Debtors’ businesses, properties and assets and their ability to successfully prosecute these Chapter 11 Cases. Accordingly, the Debtors respectfully submit that they have satisfied Bankruptcy Rule 6003 as it relates to the relief requested herein.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

39. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the 14-

day stay under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until expiration of 14 days after entry of the order, unless the court orders otherwise.” For the reasons described above, the relief requested is essential to prevent potentially irreparable damage to the Debtors’ operations, value and ability to reorganize.

### **Reservation of Rights**

40. Nothing in this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors, their estates, or any other party to contest the validity, priority, or amount of any claim against the Debtors or their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against any third party; or (d) shall be construed as a promise to pay a claim or continue any applicable program postpetition, which decision shall be in the discretion of the Debtors. Any payment made pursuant to an order of the Court granting the relief requested herein is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors’ or any other party’s rights to subsequently dispute such claim.

### **Notice**

41. No creditors’ committee has been appointed in these Chapter 11 Cases. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to Citibank, N.A., as administrative agent under the DIP credit facility, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Ray C. Schrock, P.C. (ray.schrock@weil.com) and Candace M. Arthur, Esq.

(candace.arthur@weil.com); (c) counsel to JPMorgan Chase Bank, N.A., as administrative agent under the Debtors' prepetition credit facility, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038, Attn: Kristopher M. Hansen (khansen@stroock.com), Jonathan D. Canfield (jcanfield@stroock.com), Joanne Lau (jlau@stroock.com) and Alexander A. Fraser (afraser@stroock.com); (d) counsel to the ad hoc group of lenders under the Debtors' prepetition credit facility, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Steven A. Domanowski (sdomanowski@gibsondunn.com) and Matthew G. Bouslog (mbouslog@gibsondunn.com); (e) counsel to the ad hoc group of bondholders, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Matthew M. Roose (matthew.roose@ropesgray.com) and Mark I. Bane (mark.bane@ropesgray.com); (f) counsel to KPS Capital Partners, LP, as stalking horse bidder, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian M. Resnick (brian.resnick@davispolk.com) and Joshua Y. Sturm (joshua.sturm@davispolk.com); (g) the parties identified on the Debtors' consolidated list of 30 largest unsecured creditors; and (h) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be provided.

**No Prior Request**

42. No prior motion for the relief requested herein has been made to this or any other Court.

**Conclusion**

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Interim Order, substantially in the form attached hereto as Exhibit A, (b) enter the Final Order, substantially in the form attached hereto as Exhibit B and (c) grant such other and further relief as is just and proper.

Dated: September 20, 2020  
New York, New York

/s/ Andrew G. Dietderich  
Andrew G. Dietderich  
Brian D. Glueckstein  
Benjamin S. Beller  
Noam R. Weiss  
SULLIVAN & CROMWELL LLP  
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*Proposed Counsel to the Debtors*

**EXHIBIT A**

**Proposed Interim Order**

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

_____	X	
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , <sup>1</sup>	:	Case No. ____ ( )
	:	
Debtors.	:	Jointly Administered
	:	
_____	X	

**INTERIM ORDER (I) AUTHORIZING, BUT NOT DIRECTING, DEBTORS  
TO PAY PREPETITION CLAIMS OF FOREIGN VENDORS,  
(II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF  
OUTSTANDING ORDERS, (III) AUTHORIZING APPLICABLE BANKS AND  
OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED  
CHECKS AND TRANSFERS AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of Garrett Motion Inc. and certain of its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), for entry of an order (this “Interim Order”) (a) authorizing, but not directing, the Debtors, in their sole discretion to pay prepetition claims of foreign vendors (the “Foreign Vendor Claims”) in an amount not to exceed \$153 million on an interim basis (the “Interim Foreign Vendor Cap”); (b) confirming administrative expense priority of all undisputed obligations of the Debtors, in the Debtors’ sole discretion, arising from the postpetition acceptance of goods subject to Outstanding Orders and authorizing payment, in the ordinary course of business, of all such amounts when they come due and owing, (c) authorizing applicable banks and other financial institutions to honor and

<sup>1</sup> The last four digits of Garrett Motion Inc.’s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors’ corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

process related checks and transfers and (d) granting related relief; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and any objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay Foreign Vendor Claims in the ordinary course of business up to the Interim Foreign Vendor Cap; *provided*, that the Debtors shall not make any payments pursuant to this Interim Order to Foreign Vendors with which the Debtors do not expect to have a continuing contractual or business relationship following such payment.

3. The Debtors shall maintain a matrix summarizing payments made to Foreign Vendors pursuant to this Interim Order including (i) the name of each Foreign Vendor paid, (ii) the amount paid to each Foreign Vendor on account of its Foreign Vendor Claim and (iii) the goods or services such Foreign Vendor provides the Debtors. The matrix will be provided on a bi-weekly basis following the entry of this Interim Order to the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) and the advisors to any official committee appointed in these Chapter 11 Cases (the “Recipients”); *provided that* the matrix shall not be filed publicly and the Recipients shall keep the matrix confidential and shall not disclose any of the information in the matrix to any party, including, but not limited to, any member of any statutory committee, without the prior written consent of the Debtors.

4. In return for payment of the Foreign Vendor Claims in the ordinary course of business, each Foreign Vendor is hereby required to continue to provide goods and services to the Debtors on terms that are consistent with the historical trade terms between the parties or on such other terms as the Debtors may approve in their sole discretion (such terms, the “Customary Trade Terms”). The Customary Trade Terms shall apply for the remaining term of the Foreign Vendor’s agreement with the Debtors, as long as the Debtors agree to pay for such goods in accordance with such terms.

5. If any Foreign Vendor accepts payment on account of a Foreign Vendor Claim and thereafter does not continue to provide goods or services to the Debtors on Customary Trade Terms, any such payment shall be deemed an unauthorized avoidable postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (a) recover from the



Foreign Vendor in cash or goods or (b) at the Debtors' option, apply against any outstanding administrative claim held by such Foreign Vendor. Upon recovery by the Debtors, the claim shall be reinstated as a prepetition claim in the amount so recovered, less the Debtors' reasonable costs to recover such amounts. The Debtors are hereby authorized, but not directed, to obtain written verification before issuing payment to a Foreign Vendor that such Foreign Vendor will continue to provide goods and services to the Debtors on Customary Trade Terms for the remaining term of the Foreign Vendor's agreement with the Debtors; provided, however, that the absence of such written verification will not limit the Debtors' rights hereunder.

6. Should this Court determine that, by its conduct, any Foreign Vendor has violated the automatic stay, either (a) the payments made to such Foreign Vendor by the Debtors on account of any prepetition claim will be disgorged, plus attorneys' fees and interest accrued on such amount at the federal judgment rate or such other higher rate as this Court specifies, within three business days of entry of the order holding such Foreign Vendor in violation, or (b) the Debtors will setoff the amount of the payments made by any of the Debtors on account of any prepetition claim against any future payments to be paid to such Foreign Vendor.

7. Any party that accepts payment from the Debtors on account of a Foreign Vendor Claim shall be deemed to have agreed to the terms and provisions of this Interim Order.

8. The Debtors are authorized, but not directed, to treat any and all undisputed obligations of the Debtors, in the Debtors' sole discretion, arising from the postpetition acceptance of goods subject to Outstanding Orders as an administrative expense priority and pay, in the ordinary course of business, all such amounts when they come due and owing.

9. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition electronic fund transfers, in replacement of any checks or electronic fund transfers in respect of payments authorized by this Interim Order that are dishonored or rejected after the Petition Date.

11. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Interim Order.

12. In accordance with this Interim Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment

of the obligations described in the Motion are authorized, but not directed, to (a) receive, process, honor and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on or subsequent to the Petition Date, without any duty to inquire otherwise and without any liability for following the Debtors' instructions.

13. Nothing in the Motion or this Interim Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an agreement or obligation to pay any claims, a waiver of any claim or causes of action which may exist against any creditor or interest holder, an admission as to the validity of any lien satisfied pursuant to this Motion, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors or any other party or any claims or causes of action which may exist against any Foreign Vendor, or shall impair or limit the ability of the Debtors or any other party, to contest or seek relief under any section of the Bankruptcy Code in respect of the validity and amount of any payment made pursuant to this Interim Order.

14. Notwithstanding anything to the contrary contained in the Motion or this Interim Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and

authorizing the use of cash collateral (any such order, a “DIP Order”). To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Interim Order and the terms of any DIP Order, the terms of the DIP Order will govern.

15. The requirements set forth in Local Rule 9013-1(b) are satisfied.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

17. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

18. This Interim Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

19. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Interim Order.

20. The final hearing with respect to the relief requested in the Motion shall be held on \_\_\_\_\_, 2020 at \_\_\_\_\_ (prevailing Eastern Time) (the “Final Hearing”). Any objections or responses to entry of the proposed Final Order shall be filed on or before 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2020 and served on the following parties: (a) the Debtors, Garrett Motion Inc., 47548 Halyard Drive, Plymouth, MI, 48170, Attn: General Counsel; (b) proposed counsel to the Debtors, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004, Attn: Noam R. Weiss; (c) counsel to Citibank, N.A., as administrative agent under the DIP credit facility, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Ray C. Schrock, P.C. (ray.schrock@weil.com) and Candace M. Arthur, Esq. (candace.arthur@weil.com); (d) counsel to JPMorgan Chase Bank, N.A., as administrative agent under the Debtors’ prepetition credit facility, Stroock & Stroock & Lavan LLP, 180 Maiden

Lane, New York, NY 10038, Attn: Kristopher M. Hansen (khansen@stroock.com), Jonathan D. Canfield (jcanfield@stroock.com), Joanne Lau (jlau@stroock.com) and Alexander A. Fraser (afraser@stroock.com); (e) counsel to the ad hoc group of lenders under the Debtors' prepetition credit facility, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Steven A. Domanowski (sdomanowski@gibsondunn.com) and Matthew G. Bouslog (mbouslog@gibsondunn.com); (f) counsel to the ad hoc group of bondholders, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036, Attn: Matthew M. Roose (matthew.roose@ropesgray.com) and Mark I. Bane (mark.bane@ropesgray.com); (g) counsel to KPS Capital Partners, LP, as stalking horse bidder, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Brian M. Resnick (brian.resnick@davispolk.com) and Joshua Y. Sturm (joshua.sturm@davispolk.com); (h) counsel to any statutory committee appointed in these Chapter 11 Cases; (i) the Office of the United States Trustee for the Southern District of New York; and (j) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002.

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

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**

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

_____	X	
In re	:	Chapter 11
	:	
GARRETT MOTION INC., <i>et al.</i> , <sup>1</sup>	:	Case No. ____ ( )
	:	
Debtors.	:	Jointly Administered
	:	
_____	X	

**FINAL ORDER (I) AUTHORIZING, BUT NOT DIRECTING, DEBTORS  
TO PAY PREPETITION CLAIMS OF FOREIGN VENDORS,  
(II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF  
OUTSTANDING ORDERS, (III) AUTHORIZING APPLICABLE BANKS  
AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS  
RELATED CHECKS AND TRANSFERS AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of Garrett Motion Inc. and certain of its affiliated debtors and debtors-in-possession (collectively, the “Debtors”), for entry of an order (this “Final Order”) (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay prepetition claims of foreign vendors (the “Foreign Vendor Claims”) in an amount not to exceed \$305 million on a final basis (the “Final Foreign Vendor Cap”), (b) confirming administrative expense priority of all undisputed obligations of the Debtors, in the Debtors’ sole discretion, arising from the postpetition acceptance of goods subject to Outstanding Orders and authorizing payment, in the ordinary course of business, of all such amounts when they come due and owing, (c) authorizing applicable banks and other financial institutions to honor and process related

<sup>1</sup> The last four digits of Garrett Motion Inc.’s tax identification number are 3189. Due to the large number of debtor entities in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors’ corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

checks and transfers and (d) granting related relief; and this Court having entered the *Interim Order (I) Authorizing, But Not Directing, Debtors to Pay Prepetition Claims of Foreign Vendors, (II) Confirming Administrative Expense Priority of Outstanding Orders, (III) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers and (IV) Granting Related Relief* [D.I. [•]]; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and any objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in their sole discretion, to pay Foreign Vendor Claims in the ordinary course of business up to the Final Foreign Vendor Cap; *provided*, that the Debtors shall not make any payments pursuant to this Final Order to



Foreign Vendors with which the Debtors do not expect to have a continuing contractual or business relationship following such payment.

3. The Debtors shall maintain a matrix summarizing payments made to Foreign Vendors pursuant to this Final Order including (i) the name of each Foreign Vendor paid, (ii) the amount paid to each Foreign Vendor on account of its Foreign Vendor Claim and (iii) the goods or services such Foreign Vendor provides the Debtors. The matrix will be provided on a bi-weekly basis following the entry of this Final Order to the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) and the advisors to any official committee appointed in these Chapter 11 Cases (the “Recipients”); *provided that* the matrix shall not be filed publicly and the Recipients shall keep the matrix confidential and shall not disclose any of the information in the matrix to any party, including, but not limited to, any member of any statutory committee, without the prior written consent of the Debtors.

4. In return for payment of the Foreign Vendor Claims in the ordinary course of business, each Foreign Vendor is hereby required to continue to provide goods and services to the Debtors on terms that are consistent with the historical trade terms between the parties or on such other terms as the Debtors may approve in their sole discretion (such terms, the “Customary Trade Terms”). The Customary Trade Terms shall apply for the remaining term of the Foreign Vendor’s agreement with the Debtors, as long as the Debtors agree to pay for such goods in accordance with such terms.

5. If any Foreign Vendor accepts payment on account of a Foreign Vendor Claim and thereafter does not continue to provide goods or services to the Debtors on Customary Trade Terms, any such payment shall be deemed an unauthorized avoidable postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may either (a) recover from the

Foreign Vendor in cash or goods or (b) at the Debtors' option, apply against any outstanding administrative claim held by such Foreign Vendor. Upon recovery by the Debtors, the claim shall be reinstated as a prepetition claim in the amount so recovered, less the Debtors' reasonable costs to recover such amounts. The Debtors are hereby authorized, but not directed, to obtain written verification before issuing payment to a Foreign Vendor that such Foreign Vendor will continue to provide goods and services to the Debtors on Customary Trade Terms for the remaining term of the Foreign Vendor's agreement with the Debtors; provided, however, that the absence of such written verification will not limit the Debtors' rights hereunder.

6. Should this Court determine that, by its conduct, any Foreign Vendor has violated the automatic stay, either (a) the payments made to such Foreign Vendor by the Debtors on account of any prepetition claim will be disgorged, plus attorneys' fees and interest accrued on such amount at the federal judgment rate or such other higher rate as this Court specifies, within three business days of entry of the order holding such Foreign Vendor in violation, or (b) the Debtors will setoff the amount of the payments made by any of the Debtors on account of any prepetition claim against any future payments to be paid to such Foreign Vendor.

7. Any party that accepts payment from the Debtors on account of a Foreign Vendor Claim shall be deemed to have agreed to the terms and provisions of this Final Order.

8. The Debtors are authorized, but not directed, to treat any and all undisputed obligations of the Debtors, in the Debtors' sole discretion, arising from the postpetition acceptance of goods subject to Outstanding Orders as an administrative expense priority and pay, in the ordinary course of business, all such amounts when they come due and owing.

9. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition electronic fund transfers, in replacement of any checks or electronic fund transfers in respect of payments authorized by this Final Order that are dishonored or rejected after the Petition Date.

11. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Final Order.

12. In accordance with this Final Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized, but not directed, to (a) receive, process,

honor and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on or subsequent to the Petition Date, without any duty to inquire otherwise and without any liability for following the Debtors' instructions.

13. Nothing in the Motion or this Final Order, nor as a result of any payment made pursuant to this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an agreement or obligation to pay any claims, a waiver of any claim or causes of action which may exist against any creditor or interest holder, an admission as to the validity of any lien satisfied pursuant to this Motion, an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or a waiver of the right of the Debtors or any other party or any claims or causes of action which may exist against any Foreign Vendor, or shall impair or limit the ability of the Debtors or any other party, to contest or seek relief under any section of the Bankruptcy Code in respect of the validity and amount of any payment made pursuant to this Final Order.

14. Notwithstanding anything to the contrary contained in the Motion or this Final Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and authorizing the use of cash collateral (any such order, a "DIP Order"). To the extent of any

conflict (but solely to the extent of such conflict) between the terms of this Final Order and the terms of any DIP Order, the terms of the DIP Order will govern.

15. The requirements set forth in Local Rule 9013-1(b) are satisfied.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

17. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

18. This Final Order is immediately effective and enforceable,

notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

19. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Final Order.

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

\_\_\_\_\_  
United States Bankruptcy Judge