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

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No.: 22-____ ()

(Joint Administration Requested)

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO (A) PAY
PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, PAYROLL TAXES
AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE COMPENSATION
AND BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE
OBLIGATIONS, (II) AUTHORIZING APPLICABLE BANKS AND OTHER
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED
CHECKS AND TRANSFERS; AND (III) GRANTING RELATED RELIEF**

The debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned Chapter 11 cases (the “Chapter 11 Cases”) respectfully state the following in support of this motion (this “Motion”):

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”):

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artiliium Group Ltd. (f/k/a Artiliium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artiliium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.



(a) authorizing, but not directing, the Debtors, in their sole discretion, to (i) pay their outstanding Prepetition Employee Obligations (as defined below) and (ii) maintain their existing Employee Compensation and Benefits (as defined below); (b) authorizing applicable banks and other financial institutions to honor and process related checks and transfers; and (c) granting certain related relief, including scheduling a hearing to consider approval of the Motion on a final basis (the “Final Hearing”).

2. The Debtors seek the relief requested because any delay in paying any of the amounts (and associated costs) that may be owing under or related to the Employee Compensation Obligations and the obligations related to the Employee Benefits Programs incurred prior to the Petition Date (collectively, the “Prepetition Employee Obligations”) or in continuing to pay their Employee Compensation Obligations and provide their Employee Benefits Programs (together, the “Employee Compensation and Benefits”) as described herein in the ordinary course postpetition could jeopardize the Debtors’ relationships with the Employees and substantially disrupt the Debtors’ business operations at a critical time in the Debtors’ restructuring efforts to the detriment of all of the Debtors’ stakeholders. The Employees perform a wide variety of critical services for the Debtors, including manufacturing, engineering, research and development, sales, management, legal, finance, human resources, administrative and other roles, and their skills and knowledge of the Debtors’ infrastructure are essential. Moreover, the vast majority of the Employees rely exclusively on their compensation and benefits from the Debtors to pay their daily living expenses and support their families. Absent an order granting the requested relief, many of the Employees may, by necessity, seek other employment alternatives. Replacing the Employees would require significant time and expense, causing severe disruption and harm to the Debtors’ operations, and would be particularly challenging given these Chapter 11 Cases. Accordingly, in

order to ensure the uninterrupted operation of the Debtors' businesses, enable compliance with local laws outside of the United States, prevent undue harm to the Employees and maximize the value of the Debtors' estates, it is critical that the Debtors be authorized to pay the Prepetition Employee Obligations and to continue to honor and pay the Employee Compensation and Benefits.²

3. Nothing in the proposed Interim Order or Final Order authorizes the Debtors to make any payment or incur any obligation or liability that would violate section 503(c) of the Bankruptcy Code.

Jurisdiction and Venue

4. The United States Bankruptcy Court for the Southern District of New York (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

² By this Motion, the Debtors do not seek to modify the terms of any Prepetition Employee Obligations or Employee Compensation and Benefits. The Debtors do not waive the right to modify or terminate any Prepetition Employee Obligations or Employee Compensation and Benefits to the extent that such right exists under the terms of the Prepetition Employee Obligations or Employee Compensation and Benefits or as may be permitted or required by applicable law or further order of the Bankruptcy Court.

6. The bases for the relief requested herein are sections 105(a), 362, 363, 507, 1107, and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Bankruptcy Rule 6003.

Background

7. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these Chapter 11 Cases is set forth in the *Declaration of Laura W. Thomas in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously with this Application.³

8. The Debtors continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Application, the Debtors filed a motion requesting procedural consolidation and joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no committees have been appointed or designated.

Facts Specific to the Relief Requested

I. The Debtors’ Workforce

9. As of the Petition Date, the Debtors have approximately 78 employees⁴ in both full- and part-time positions, including salaried employees, administrative support staff, independent

³ Capitalized terms not defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

⁴ The Debtors and their non-debtor affiliates employ approximately 189 employees worldwide as of the Petition Date; however, this Motion does not address employees of the non-debtor entities. The Debtors previously entered into that certain Intercompany Services Agreement with certain of their non-debtor affiliates, pursuant to which the Debtors have agreed to pay for non-debtors’ costs of employing certain employees that the Debtors use (the “Intercompany Services Agreement”). As of the Petition Date, there are no amounts due and owing to such non-debtors pursuant to the Intercompany Services Agreement.

contractors and other personnel paid directly by the Debtors. Of these employees, approximately 55 are located outside of the United States (the “Non-U.S. Employees”) and approximately 23 are located in the United States (the “U.S. Employees” and, together with the Non-U.S. Employees, the “Employees”). The following table sets forth the number of Employees located in each jurisdiction where the Debtors operate.

Jurisdiction	Number of Employees
United States	23
Argentina	2
Belgium	35
Brazil	1
Colombia	1
Ecuador	1
Iran	2
Philippines	1
Portugal	3
Romania	1
Singapore	1
Spain	2
The Netherlands	3
Ukraine	1
United Kingdom	1

10. The Employees perform a wide variety of functions critical to the Debtors’ daily operations, the administration of these Chapter 11 Cases, and the Debtors’ successful restructuring. Many of the Employees are highly trained personnel who are not easily replaced, and their continued, uninterrupted services are critical to the Debtors’ ongoing operations and successful restructuring. The continued payment of compensation and benefits to the Employees in the ordinary course not only supports the stable operation of the Debtors’ businesses during these Chapter 11 Cases, but also enhances creditors’ recoveries by preserving the going-concern value of the Debtors’ estates.

II. Professional Employer Organizations

11. Many smaller and medium size companies outsource the responsibilities of human resource services, payroll, employee benefits and risk management to a professional employer organization (“PEO”). The Debtors⁵ have contracted with TriNet HR Corporation (“TriNet”) and JustWorks Employment Group LLC (“JustWorks”) and together with TriNet, the “PEOs”), each of which is a PEO. For the PEO to provide the aforementioned services, the PEO becomes the co-employer and leases the employees to the employer. A PEO differs from a staffing agency in that the employer retains the responsibility for hiring and firing of employees.

12. PEOs provide benefits for numerous employers, allowing them to use the combined size of all the employers they administer to obtain economic concessions normally reserved for very large employers. This larger size allows PEOs to provide better health insurance, disability insurance, 401k plans and other benefits at a lower cost. PEOs also use this economy of scale to shop for and obtain workers’ compensation insurance.

13. Here, certain of the Debtors are party to agreements with each of the PEOs under which each PEO is a co-employer of certain of the Debtors’ employees and provides the following human resources services in regard to such employees:

- i. Payroll: While certain of the Debtors fund payroll, the PEOs assume responsibility for payment of the payroll, including payment of wages, salaries, bonuses, commissions, and other earnings, related tax reporting and remittance, and processing of garnishment and wage deduction orders. The PEOs also remit the related taxes under PEO’s accounts as the administrative employer of record or on behalf of the Debtors in accordance with applicable law.
- ii. Benefits: The PEOs make available, sponsors, and administers benefit plans for certain of the Debtors’ employees subject to applicable law and the terms and conditions of those plans, as described in the plan documents and applicable carrier certificates, and based upon the

⁵ iPass, Inc. contracts with TriNet, and Pareteum North America Corp. contracts with JustWorks.

elections made with respect to such plans. Such benefit plans include medical, dental, vision, and other plans.

14. Payments to TriNet include an average of approximately \$1,200 in service fees per month. Payments to JustWorks include an average of approximately \$1,500 in service fees per month.

15. The applicable Debtors retain and exercise discretion and control over all of the employment decisions made in regard to their employees.

III. Employee Compensation Obligations

16. In the ordinary course of business, the Debtors incur a number of obligations in compensating the Employees for their services, including wages, salaries, deductions and payroll taxes, severance,⁶ expense reimbursement obligations, and commissions (collectively, and along with any related obligations and administrative expenses outlined or referenced in this Section III, the “Employee Compensation Obligations”).⁷ By this Motion, the Debtors request authority, but not direction, to pay certain prepetition amounts related to the Employee Compensation Obligations, through PEOs or directly, and to continue to pay the Employee Compensation Obligations on a postpetition basis in the ordinary course of business and pursuant to past practices, as discussed in greater detail below, in all cases, subject to the priority cap set forth in section 507(a)(4) of the Bankruptcy Code unless otherwise required by applicable law.

A. Unpaid Compensation

17. In the ordinary course of business, the Debtors make payroll payments by ACH bank transfer to either the Employees’ bank accounts or, where the Debtors use a PEO, a payment

⁶ As of the Petition Date, the Debtors do not believe they owe any amounts to the Employees on account of severance payments.

⁷ In addition to the Employee Compensation Obligations, through the PEOs, certain Employees are offered insurance plans and other employee benefits described in greater detail in Section IV below.

to the PEO. The Debtors engage the services of third-party processing vendors for payroll administration, including assistance with remitting tax payments and fulfilling reporting requirements, for which the Debtors pay aggregate monthly fees of approximately \$2,000. In addition, the Debtors utilize a third-party software company for its human resource information system (“HRIS”), for which the Debtors pay an aggregate monthly fees of approximately \$700. The table below provides the Debtors’ aggregate average gross monthly payroll amount and payment frequency in each jurisdiction where the Debtors operate.

Employee Category	Average Gross Monthly Payroll (USD)	Wages Payment Frequency
PEO	\$187,618	15 th and last day of each month
1099 Independent Contractors	\$137,985	15 th and last day of each month
Direct (Non-US) Employees	\$150,053	25 th of the month
Total	\$475,686 per month	-

18. The Debtors estimate that, as of the Petition Date, they owe approximately \$300,000 in accrued and unpaid prepetition wages and salaries to Employees, inclusive of employee payroll taxes and deductions related to benefit plans, all of which was earned within 180 days before the Petition Date (collectively, the “Prepetition Unpaid Compensation”), and request authority, but not direction, to pay such Prepetition Unpaid Compensation and to continue to pay wages, salaries and related compensation (any fees due to third parties in respect of payroll processing and HRIS software providers) in the ordinary course of business consistent with past practice during the postpetition periods, subject to the priority cap set forth in section 507(a)(4) of the Bankruptcy Code unless otherwise required by applicable law.

19. The Debtors do not believe that they owe Prepetition Unpaid Compensation to any Employee in excess of the cap under section 507(a)(4) of the Bankruptcy Code.

20. In accordance with Belgian legislation, certain holiday allowance amounts earned by Pareteum N.V. Employees in Belgium for the number of days worked for the period from January 1, 2021 until December 31, 2021 have accrued and are payable in June 2022. The Debtors estimate that they will owe approximately \$125,000 to the Pareteum N.V. Employees in Belgium with respect to these payments. In accordance with Netherland legislation, certain holiday allowance amounts earned by Pareteum Europe B.V. Employees in Belgium for the number of days worked for the period from January 1, 2021 until December 31, 2021 have accrued and are payable in May 2022. The Debtors estimate that they will owe approximately \$8,000 to the Pareteum Europe B.V. Employees in the Netherlands with respect to these payments. By this Motion, the Debtors request authority, but not direction, to pay such amounts as they become due in the ordinary course of business on a postpetition basis, subject to the priority cap set forth in section 507(a)(4) of the Bankruptcy Code unless otherwise required by applicable law.

B. Withholding and Deduction Obligations

21. The Debtors are required by law to withhold from Employees' wages, salaries and other compensation certain amounts related to federal, state and local income taxes and Social Security, Medicare and imputed taxes, as well as similar non-U.S. taxes, for remittance to the appropriate taxing authorities (the "Withholdings"). Further, the Debtors must match from their own funds certain U.S. taxes (such as Social Security and Medicare taxes) and pay, based on a percentage of gross payroll, additional amounts for federal and state taxes, such as unemployment and disability insurance, as well as any similar obligations under the laws of the various non-U.S. jurisdictions where the Debtors operate (the "Employer Payroll Taxes" and, together with the Withholdings, the "Payroll Taxes"). Excluding the impact of any temporary furloughs or pay reductions, the Debtors' ordinary Payroll Taxes are approximately \$8,000 on the fifteenth day and

last day of the month for the U.S. Employees and are approximately \$32,000 on a monthly basis in the aggregate for Non-U.S. Employees.

22. In addition to the Withholdings, the Debtors routinely deduct certain amounts from Employees' paychecks for child support and other garnishments and pre- and post-tax deductions payable pursuant to certain of the Employee Benefits Programs discussed below (including 401(k) plan contributions) (collectively, the "Deductions"). On average, the Debtors deduct approximately \$36,000 per payroll period from the paychecks of the Employees employed through PEOs, and approximately \$47,000 per monthly payroll from any direct Employees' paychecks.

23. The Debtors do not believe that there are any accrued Employer Payroll Taxes outstanding as of the Petition Date for PEO employees. However, the Debtors estimate that they will owe approximately \$25,000 in pre-petition accrued payroll taxes for Direct employees and therefore request court authority to pay such amounts. In addition, due to the commencement of these Chapter 11 Cases, certain prepetition Payroll Taxes and Deductions may not have been remitted or forwarded to the appropriate recipient before the Petition Date. The Debtors therefore request authority, but not direction, (a) to process, or to direct third parties to process, any unpaid or unremitted Payroll Taxes and Deductions as of the Petition Date and (b) to continue to honor and process, or to direct third parties to continue to process, Payroll Taxes and Deductions on a postpetition basis, in the ordinary course of business, in accordance with their prepetition practices.

C. Reimbursable Business Expenses

24. At any given time, the Debtors may have outstanding obligations to certain Employees for reimbursement of reasonable and customary out-of-pocket business expenses incurred on behalf of the Debtors in connection with their employment (the "Reimbursable Expenses"). The Reimbursable Expenses include travel expenses such as airfare, rental cars,

lodging, meals and entertainment and other ordinary business expenses. In 2021, the Debtors paid approximately \$36,000 to U.S. Employees and \$4,000 to Non-U.S. Employees in respect of Reimbursable Expenses. As of the Petition Date, the Debtors believe that they do not owe any Reimbursable Expenses. The Debtors pay these expenses through company-issued credit cards and direct reimbursement channels. By this Motion, the Debtors request authority, but not direction, to pay any unpaid prepetition Reimbursable Expenses and to continue to pay Reimbursable Expenses in the ordinary course of business on a postpetition basis, subject to the priority cap set forth in section 507(a)(4) of the Bankruptcy Code unless otherwise required by applicable law.

D. Commission Plan

25. The Debtors maintain the On-Target-Earnings (“OTE”) Sales Commission Plan (the “Commission Plan”), which is designed to reward top-performing Employees, none of whom are “insiders” of the Debtors as defined in section 101(31) of the Bankruptcy Code.⁸ The OTE was established for all eligible and enrolled salespersons, territory managers, and strategic account managers and is comprised of three components: (1) commission on personal target; (2) commission on the setup fee for new agreements; and (3) commission on the minimum monthly commitment for new agreements.

26. With respect to the first component, the Debtors assign a quarterly personal target to the applicable Employee based on actual collected cash (*i.e.*, invoices that have been sent and are paid in full). The commission is calculated three months after the quarter closing based on the actual collected cash received for sales made during the applicable quarter and paid within thirty

⁸ The Debtors’ insiders (as such term is defined in section 101(31) of the Bankruptcy Code) consist of the Debtors’ non-employee directors and all Employees designated as officers for purposes of section 16 of the Securities Exchange Act of 1934 in 2020 and during these Chapter 11 Cases.

days after the calculation. For example, the commission for sales made in the first quarter of 2021, to the extent collected in the second quarter of 2021, was calculated in third quarter of 2021 and paid within thirty days of the calculation date. As of the date of the Petition, the Debtors estimate do not believe they owe any amounts for commissions on personal targets calculated and payable prior to the Petition Date.

E. Severance Obligations

27. The Debtors provide eligible U.S. Employees and officers of the U.S. Debtors with certain benefits in the event of a qualifying termination of their employment, with the level of benefits depending on the Employee's position and, in certain cases, length of service. Severance generally ranges from one week of continued base salary to four weeks (the "U.S. Severance Benefits").

28. Non-U.S. Employees are eligible for varying levels of severance payments and benefits (together with the U.S. Severance Benefits, the "Severance Obligations") based on the policy or practice in place for the applicable jurisdiction or local applicable law, including severance pay of one month of base salary per year of service in the United Kingdom.

29. The Debtors believe that the Severance Obligations are especially critical to maintaining Employee morale during these Chapter 11 Cases. In particular, the Severance Obligations play a necessary role in incentivizing employees to continue employment with the Debtors until their services are no longer needed. The Severance Obligations provide former Employees with a crucial safety net as they search for additional employment opportunities after their services with the Debtors are complete. In addition, local labor laws and legal requirements in the various jurisdictions in which the Debtors operate outside of the United States often require the payment of severance.

30. The Debtors do not believe that they owe severance to former Employees in respect of prepetition terminations of employment. By this Motion and in the abundance of caution, the Debtors request the authority, but not the direction, solely as part of the Final Order, to pay any prepetition amounts or provide any continuation of health benefits owed to non-insider Employees on account of prepetition terminations and to continue to honor Severance Obligations incurred postpetition in the ordinary course of business; provided that the Debtors shall not pay any severance to an insider.

IV. Employee Benefits Programs and Related Obligations

31. In addition to the Employee Compensation Obligations discussed above, the PEOs offer eligible Employees a number of insurance and other benefits programs, including medical, dental and vision plans, life insurance, disability coverage, workers' compensation, an employee assistance program, and other employee benefits described in greater detail in this section IV, and the Debtors offer eligible Employees retirement and savings plans (collectively, the "Employee Benefits Programs"). By this Motion, the Debtors request authority, but not direction, to pay any prepetition amounts related to the Employee Benefits Programs, including, without limitation, any related obligations and administrative expenses, including as described below, and to continue the Employee Benefits Programs on a postpetition basis in the ordinary course of business, in accordance with their prepetition practices and as set forth herein, subject to the priority cap set forth in section 507(a)(4) of the Bankruptcy Code unless otherwise required by applicable law.

A. PEO Employees Health and Welfare Benefits

32. All Employees employed through the PEOs are offered certain health and welfare benefit plans through the PEOs.

33. Pareteum North America Corp. Employees. Through JustWorks, eligible Pareteum North America Corp. Employees are provided medical, dental, and vision benefits. Through

JustWorks, eligible Pareteum North America Corp. Employees are also provided teledoc virtual care, on demand primary care, and online mental health therapy (collectively, the “JustWorks Benefits”). In addition, JustWorks offers the option to contribute to a health savings account (“HSA”) for pre-tax healthcare expenses in connection with the high-deductible medical plans and the option to enroll in flexible spending account benefits (“FSA”) to cover eligible healthcare and dependent care expenses. The Debtors pay approximately 80% of the costs of the JustWork Benefits, and estimate that they pay approximately \$11,000 to JustWorks per month for JustWorks Benefits. As of the Petition Date, the Debtors do not owe any amounts for JustWorks Benefits.

34. iPass, Inc. Employees. Through TriNet, eligible iPass, Inc. employees are provided medical, dental, and vision benefits. In addition, TriNet offers accidental death and dismemberment, critical illness, hospital indemnity, and MetLife Legal benefits (the “TriNet Benefits”). The Debtors pay approximately 80% of the costs of the TriNet Benefits, and estimate that they pay approximately \$8,500 to TriNet per month for TriNet Benefits. As of the Petition Date, the Debtors do not owe any amounts for TriNet Benefits.

35. Workers’ Compensation. The Debtors provide U.S. Employees with workers’ compensation insurance coverage for claims arising from or related to their employment by the Debtors (the “Workers’ Compensation Obligations”).⁹ The Debtors pay annual premiums for the Workers’ Compensation Obligations in the amount of \$32,480. As of the Petition Date, Debtors

⁹ Concurrent with the filing of this Motion, the Debtors have filed the *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Satisfy Obligations Related to their Insurance Policies, (B) Renew, Supplement, Modify or Purchase Insurance Coverage, (C) Maintain the Surety Bonds (II) Authorizing Applicable Banks and Other Financial Institutions to Honor and Process Related Checks and Transfers and (III) Granting Related Relief*, in which the Debtors request that the Court authorize the payment of prepetition and postpetition insurance obligations, including Workers’ Compensation Obligations related to the Workers’ Compensation Program, in the ordinary course of business as they become due.

do not have any open workers’ compensation claims and do not owe any amounts on account of the annual premium.

B. Non-U.S. Employees Health and Welfare Benefits and Insurance

36. For Non-U.S. Employees, the Debtors generally contribute, on behalf of their respective Employees, to the statutory health and social insurance systems in the Non-U.S. jurisdictions where they operate, as applicable, as well as provide certain other health and welfare benefits as is customary in the applicable jurisdiction in the ordinary course or as provided for in a collective bargaining or other labor agreement, including as set forth in the table below (collectively, the “Non-U.S. Health and Welfare Benefits”):

Debtor	Health and Welfare Benefits¹⁰
Pareteum Asia Pte. Ltd.	Social insurance; skill development under the National Continuing Education Training System.
Pareteum Europe B.V.	Employee contributions to Statutory Social Insurances, and Disability Insurance. Direct employees are provided a paid holiday right. 8% holiday allowance paid in May each year, based on the amount of time worked in the preceding calendar year.
Pareteum N.V.	Pension: employee & company contribute Healthcare: company pays larger share of cost Meal Vouchers. 13th month salary paid in December: ~92% (based on earnings for calendar year). Statutory holiday allowance: ~92% of one month’s salary; reduced for days of leave taken in previous year; paid in June.

37. As of the Petition Date, the Debtors owe approximately \$61,000 in respect of the Non-U.S. Health and Welfare Benefits. By this Motion, the Debtors request the authority, but not the direction, to pay any prepetition accrued but unpaid amounts with respect to the Non-

¹⁰ Benefits marked with an asterisk are provided partially or wholly pursuant to applicable local law.

U.S. Health and Welfare Benefits and to continue to provide the Non-U.S. Health and Welfare Benefits in the ordinary course of business on a postpetition basis.

C. Vacation and Leave Policies

38. The Debtors provide Employees with varying vacation and paid and unpaid leave time depending on the jurisdiction where the Employee is located. Pareteum North America Corp. Employees are eligible for paid time off ranging from fourteen to twenty-five days, accrued weekly for Employees in California and monthly for Employees in other U.S. states, depending on the Employee’s years of service. Up to 5 days of any unused vacation time accrued by Pareteum North America Employees can be carried over for use during subsequent years. However, exceptions are permitted in certain circumstances. iPass, Inc. Employees are eligible for unlimited vacation days, which are not paid out upon termination of employment.

39. Upon a termination of employment, accrued and unused vacation days are paid out to U.S. Employees, other than iPass, Inc. Employees, in a lump sum. Outside of the United States, the Debtors provide the following paid vacation benefits, some of which are provided for pursuant to local law:

Non-U.S. Jurisdiction	Days of Paid Vacation Per Year or Other Benefit
Pareteum Europe B.V.	Employees receive a “13 th month” at the end of May each year, which amounts to one (1) month’s salary. This amount accrues during the year, but is not payable until termination or the end of May.
Pareteum N.V.	Employees receive a “13 th month” at the end of June each year, which amounts to slightly less (~92%) of one month’s salary. This amount accrues during the year, but is not payable until termination or the end of June.

40. As of the Petition Date, the Debtors estimate that they owe approximately \$86,000 in accrued and unused paid vacation time to U.S. Employees. This amount is not,

however, a current cash obligation, because Employees are only entitled to payment of accrued vacation time through termination in the event their employment is terminated. In addition, in certain non-U.S. jurisdictions, as well as in California, payment of accrued and unused vacation time upon a termination of employment is required by local applicable law.

41. Accordingly, the Debtors are requesting the authority, but not the direction, by this Motion to continue to provide vacation and paid leave to Employees in the ordinary course of business on a postpetition basis and consistent with past practice (the “Vacation and Leave Obligations”). Out of an abundance of caution, the Debtors request authority, but not direction, to pay the Employees any accrued and unpaid vacation obligations upon a termination of employment in accordance with the Debtors’ policies, subject to the priority cap set forth in section 507(a)(4) of the Bankruptcy Code unless otherwise required by applicable law.

D. Other Benefit Programs

42. Accordingly, the Debtors request the authority, but not the direction, to pay any prepetition amounts related to other benefit programs (the “Other Benefit Programs”) and to continue to provide the Other Benefit Programs in the ordinary course of business on a postpetition basis, subject to the priority cap set forth in section 507(a)(4) of the Bankruptcy Code unless otherwise required by applicable law.

E. Employee Savings and Retirement Plans

(i) ***U.S. Savings and Retirement Plans.***

43. 401(k) Plan. U.S. Employees may participate in the Debtors’ 401(k) defined contribution plan (the “401(k) Plan”) through Fidelity Management & Research Company (“Fidelity”). The Debtors do not offer matching of contributions to the Employees’ 401(k) Plans. The Employees’ 401(k) contributions are withheld from the funds that would be used for payments

to the PEO for wages based on a percentage elected by the Employee. The percentage elected is then debited from the Debtors' accounts by Fidelity. As of the Petition Date, the Debtors do not believe they are holding any of the Employees' 401(k) contributions. By this Motion and in the abundance of caution, the Debtors request the authority, but not the direction, to pay any prepetition and postpetition 401(k) Plan obligations, including employee 401(k) contributions, and any other amounts that become due with respect to the 401(k) Plan, including management and service fees, in the ordinary course of business and consistent with past practice.

(ii) Non-U.S. Savings and Retirement Plans.

44. As set forth in the table below, approximately 33 of the Debtors' Non-U.S. Employees participate in savings and retirement plans, including defined benefit pension plans, defined contribution pension plans and supplementary savings or retirement schemes (collectively, the "Non-U.S. Savings and Retirement Plans"). In certain Non-U.S. jurisdictions, the Debtors are required to contribute an amount equal to a percentage of each Employee's salary to the applicable pension plan pursuant to local law. The Debtors' approximate annual cost related to the Non-U.S. Savings and Retirement Plans is \$414,000, and the Debtors estimate that they owe approximately \$20,000 in respect of such plans as of the Petition Date. The Debtors seek authority, but not direction, to continue to pay and honor all of their obligations related to the Non-U.S. Savings and Retirement Plans as they become due in the ordinary course of their businesses, including amounts in respect of prepetition periods that may be owed and including any associated administrative, trustee or third-party vendor fees.

Basis for Relief

45. There are several bases under the Bankruptcy Code and other applicable law that support the relief requested in this Motion. Certain of the Prepetition Employee

Obligations are entitled to priority treatment pursuant to sections 507(a)(4), 507(a)(5) or 507(a)(8) of the Bankruptcy Code. Moreover, the Debtors are required by applicable state, federal and foreign law to make certain payments with respect to the Employee Compensation Obligations and maintain certain of the Employee Benefits Programs. Further, the Debtors may honor and pay the Employee Compensation and Benefits postpetition in the ordinary course of business in accordance with section 363(c) of the Bankruptcy Code. Finally, even if paying the Prepetition Employee Obligations and maintaining the Employee Compensation and Benefits postpetition were outside the ordinary course of business, doing so would be a sound exercise of the Debtors' business judgment under section 363(b) of the Bankruptcy Code and may be authorized under section 105(a) of the Bankruptcy Code.

V. Certain of the Prepetition Employee Obligations Are Entitled to Priority Treatment Under the Bankruptcy Code.

46. Pursuant to section 507(a)(4) of the Bankruptcy Code, each employee may be granted a priority claim for "wages, salaries, or commissions, including vacation, severance, and sick leave pay," up to an aggregate amount of \$15,150, earned within 180 days before the Petition Date. 11 U.S.C. § 507(a)(4). Likewise, under section 507(a)(5) of the Bankruptcy Code, claims on account of employee benefit obligations may also be granted priority status generally up to an aggregate amount of \$15,150 per employee, less the priority compensation paid pursuant to section 507(a)(4) or to other employee benefit plans under section 507(a)(5). 11 U.S.C. § 507(a)(5).

47. The Debtors believe that certain of the employee-related obligations they seek to pay with respect to the Prepetition Employee Obligations are entitled to priority status under section 507 of the Bankruptcy Code. Therefore, the Debtors would be required to pay these claims in full in order to confirm a plan of reorganization. *See* 11 U.S.C. § 1129(a)(9)(B)

(requiring payment of certain allowed unsecured claims for wages, salaries and commissions, including vacation, severance and sick leave pay, and certain allowed unsecured claims for contributions to an employee benefit plan). Thus, the Debtors believe that granting the relief requested herein with respect to the Prepetition Employee Obligations would only affect the timing of the payment of such amounts to the employees. Indeed, the Debtors submit that the payment of the Prepetition Employee Obligations as described herein enhances the value of the Debtors' estates for the benefit of all parties-in-interest.

48. Moreover, section 507(a)(8) of the Bankruptcy Code grants priority status to, among other things, unsecured claims of governmental units for (a) taxes required to be collected or withheld and for which the debtor is liable, in whatever capacity, and (b) under certain circumstances, employment taxes on wages, salaries or commissions. Thus, the Payroll Taxes would constitute priority claims under section 507(a)(8) of the Bankruptcy Code and must be satisfied before the payment of any general unsecured claims against the Debtors' estates. Accordingly, the payment of such Payroll Taxes pursuant to this Motion merely expedites the treatment afforded to such claims and is consistent with the priority scheme of the Bankruptcy Code.

VI. Certain Postpetition Employee Severance Obligations Are Entitled to Priority Treatment Under the Bankruptcy Code.

49. Certain of the Debtors' employees who may be entitled to severance may be terminated after the Petition Date. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, certain obligations arising after the commencement of the case, including "wages, salaries, and commissions," are considered allowed administrative expenses. 11 U.S.C. § 503(b)(1)(A). Courts in the Second Circuit "have found that employment-related benefits such as severance pay are forms of 'wages' which can be entitled to administrative expense priority if incurred during the

administration of a bankruptcy case.” *Supplee v. Bethlehem Steel Corp.*, No. 04-cv-2413GBD, 2006 WL 510335, at *2 (S.D.N.Y. Mar. 2, 2006). Additionally, courts in the Second Circuit generally use a two-part test to determine “whether a specific claim qualifies as an administrative expense under section 503(b)(1)(A): there must be a postpetition transaction, making it a transaction between a debtor-in-possession and the creditor; and second, the estate must receive a benefit from the transaction.” *See In re Grubb & Ellis Co.*, 478 B.R. 622, 624 (Bankr. S.D.N.Y. 2012). The Debtors submit that, because their employees’ severance payments may be considered earned at the time of the postpetition terminations, the severance payments may therefore be entitled to administrative expense priority under section 503(b) of the Bankruptcy Code. *See id.*, at 626 n.1 (“If the severance payments are earned at the time of the employee’s dismissal (which they generally are), then they are entitled to administrative expense priority.”); *see also In re Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey*, 160 B.R. 882, 890 (Bankr. S.D.N.Y. 1993) (noting Second Circuit law that severance pay arising from a postpetition termination of employment is entitled to an administrative priority); *In re Golden Distribs., Ltd.*, 152 B.R. 35, 36 (S.D.N.Y. 1992) (“The severance pay for terminated employees . . . is a cost of carrying on business, and constitutes an administrative expense when the severance occurs post-petition.”).

VII. Payment of Certain Prepetition Employee Obligations and Maintenance of Certain Employee Compensation and Benefits Are Required by Law.

50. In addition to the priority status accorded to certain of the Prepetition Employee Obligations under the Bankruptcy Code, the payment of certain Employee Compensation and Benefits is required by law and therefore necessary for the orderly and successful restructuring of the Debtors.

51. Specifically, the Payroll Taxes and Deductions represent employee earnings that governments (in the case of taxes), employees (in the case of voluntarily withheld amounts), and judicial authorities (in the case of garnishments) have designated for deduction from employees' paychecks. Federal, state, and foreign laws require the Debtors and their officers to remit certain tax amounts that have been withheld from their employees' paychecks. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also United States v. Rem*, 38 F.3d 634 (2d Cir. 1994) (recognizing that individual officers of a company may be held personally liable for failure to pay income taxes); *United States v. Landau*, 155 F.3d 93, 106 (2d Cir. 1998) (noting that "federal income and social security taxes . . . are held 'in trust' for the government"). Moreover, the Debtors do not believe that the amounts designated to be paid on account of the Payroll Taxes and Deductions are property of the Debtors' estates under section 541 of the Bankruptcy Code. *See* 11 U.S.C. § 541(b)(7) (providing that amounts withheld by employer from employee wages for payment as contributions to certain employee benefit, deferred compensation or health insurance plans are not property of the estate); § 541(d) (providing that property in which debtor holds only legal title and not equitable interest does not become property of the debtor's estate to the extent of any equitable interest not held by the debtor); *Begier v. IRS*, 496 U.S. 53, 66 (1990) (holding that withheld taxes are property held by the debtor in trust for another and, as such, not property of the debtor's estate). Because the Payroll Taxes and Deductions are not property of the Debtors' estates, these amounts are not subject to the normal bankruptcy prohibitions against payment. *See DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435 (2d Cir. 1985). The Debtors therefore request that the Court confirm that the Debtors may transmit, or cause to be transmitted, the Payroll Taxes and Deductions to the proper parties in the ordinary course of business.

52. Similarly, the Debtors are required to maintain the Workers' Compensation Obligations pursuant to applicable law in certain U.S. states. Moreover, unless provided otherwise in a collective bargaining agreement, California labor law requires an employer that maintains a paid vacation policy to provide payment for all unused vacation accrued at the time of an employee's termination of employment at the applicable employee's rate of pay at the time of termination. CAL. LAB. CODE § 227.3 (West 1976). Moreover, "[b]ecause paid vacation benefits are considered wages [under California law], such pay must be included in the employee's final paycheck."¹¹ Therefore, if the Debtors are not granted authority to continue to administer their vacation policy, the Debtors risk violating California law and face potential wage claims brought on behalf of former Employees by the California Division of Labor Standards Enforcement, further distracting the Debtors from their obligations in connection with these Chapter 11 Cases.

53. Lastly, local labor laws and legal requirements in certain jurisdictions in which the Debtors operate outside of the United States require the payment of various employee obligations, including pension obligations and severance. Additionally, the Debtors believe there is a risk that any disruption in the payment of compensation or benefits to the Non-U.S. Employees who are represented by unions, works councils or collective bargaining agreements could cause such employees or employee representatives to bring adverse legal proceedings against the Debtors in foreign countries. Accordingly, nonpayment of certain Employee Compensation and Benefits to Non-U.S. Employees could violate local labor laws or subject the Debtors to administrative and/or regulatory penalties.

¹¹ 3 Cal. Dep't of Indus. Relations, *Vacation*, https://www.dir.ca.gov/dlse/FAQ_Vacation.htm (last visited May 5, 2022); *see also* CAL. LAB. CODE § 201(a) (earned and unpaid wages are due and payable to an employee immediately at the time of discharge).

VIII. The Debtors May Honor and Pay the Employee Compensation and Benefits in the Ordinary Course of Business.

54. The ability to compensate employees in the ordinary course of business is necessary to the Debtors' restructuring efforts and consistent with section 363(c) of the Bankruptcy Code, which authorizes the continued operation of a business in the ordinary course by chapter 11 debtors. *See* 11 U.S.C. § 363(c)(1) (providing that, so long as "the business of the debtor is authorized to be operated under [section 1108 of the Bankruptcy Code] and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, 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. § 1108 (providing that a debtor-in-possession, as trustee, may operate the debtor's business unless a court orders otherwise); *see also* § 1107 (providing that a debtor-in-possession "shall have all the rights, other than the right to compensation under section 330 of [the Bankruptcy Code], and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of [the Bankruptcy Code], of a trustee serving in a case under [chapter 11]"). Accordingly, sufficient cause exists to allow the Debtors to maintain and pay the Employee Compensation and Benefits on a postpetition basis in the ordinary course of business.

IX. Payment of the Prepetition Employee Obligations and Maintenance of the Employee Compensation and Benefits Is Appropriate Under Sections 105(a), 363(b), 1107(a) and 1108 of the Bankruptcy Code.

55. 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., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (recognizing that courts have authorized the payment of prepetition obligations, including prepetition wages, in order to enable a successful reorganization); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (stating that section 363(b) provides a court with “broad flexibility” to authorize 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.

56. 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 & Def. 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). 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. 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 (holding that the debtor's payment of prepetition claims was necessary to protect its business and to ensure successful reorganization).

57. 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 pre-petition 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); *see also In re Just for Feet, Inc.*, 242 B.R. at 826 ("To invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is 'critical to the debtor's reorganization.'") (citing *In re Fin. News Network, Inc.*, 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)).

58. Courts in this district have recognized the "necessity of payment" doctrine. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. at 176 (recognizing "the existence of the judicial power to authorize a debtor in a restructuring case to pay pre-petition claims where such payment is essential to the continued operation of the debtor" and stating that the necessity of payment doctrine "permits immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid"); *In re Fin. News Network, Inc.*, 134 B.R. at 736 (stating that the doctrine of

necessity “stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization”).

59. The necessity of payment doctrine is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal 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, but not directing, 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”).

60. The relief requested in this Motion represents a sound exercise of the Debtors’ business judgment and is necessary for the preservation of the resources and going-concern values of their estates. Simply put, the services provided by the Employees on a daily basis are responsible for the ongoing business operations of the Debtors. The Employees and their families would be subject to significant financial hardship if the Debtors could not honor the Prepetition Employee Obligations and maintain the Employee Compensation and Benefits programs without interruption during the pendency of these Chapter 11 Cases. Moreover, at this

early stage of these Chapter 11 Cases, the Debtors simply cannot risk the substantial damage to their business that would inevitably result from any decline in the morale of their Employees attributable to the Debtors' failure to pay wages and salaries and continue employee benefits. Absent assurances that such employees will continue to be compensated in the ordinary course, the Debtors' employees may seek opportunities elsewhere, including at competitors of the Debtors. Losing valuable employees at this stage of the Debtors' restructuring efforts would have a direct and negative impact on the Debtors' abilities to sustain operations and maintain revenues, and, as a result, would depress creditor recoveries.

61. Particularly as normal business operations resume in accordance with state, local and foreign regulations promulgated as a result of the COVID-19 pandemic, it is essential to the Debtors' successful restructuring that the Employees remain engaged with the Debtors and perform their duties, and to accomplish this, it is vital that they be paid without interruption. 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.

62. Courts in this district have routinely granted relief similar to the relief requested herein, including during the COVID-19 pandemic. *See, e.g., Grupo AeroMéxico, S.A.B. de C.V.*, No. 20-11563 (SCC) (Bankr. S.D.N.Y. July 29, 2020) [Docket No. 201] (authorizing debtors to pay prepetition employee obligations as well as employee benefits obligations in the ordinary course); *In re Lakeland Tours, LLC*, No. 20-11647 (JLG) (Bankr. S.D.N.Y. Aug. 12, 2020) [Docket No. 111]; *In re Jason Indus., Inc.*, No. 20-22766 (RDD) (Bankr. S.D.N.Y. June 29, 2020) [Docket No. 40] (same); *LATAM Airlines Grp, S.A.*, No. 20-11254 (JLG) (Bankr. S.D.N.Y. June 26, 2020) [Docket No. 398] (same); *In re Avianca Holdings, S.A.*, No. 20-11133 (MG)

(Bankr. S.D.N.Y. June 17, 2020) [Docket No. 291] (same). The Debtors submit that similar relief is warranted in these Chapter 11 Cases.

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

63. 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 the Prepetition Employee Obligations or the Employee Compensation and Benefits drawn on the Debtors’ payroll and other applicable disbursement accounts, 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 the Prepetition Employee Obligations or the Employee Compensation and Benefits. 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 Employee Compensation and Benefits.

XI. The Court Should Authorize the Debtors to Continue to Pay and Comply with Workers’ Compensation Obligations and Modify the Automatic Stay Solely to the Extent Necessary for Employees to Proceed with Claims Under the Workers’ Compensation Insurance.

64. As noted above, the Debtors are requesting that they be permitted to continue to pay (and/or reimburse insurers and/or third-party administrators for) and comply with all Workers’ Compensation Obligations.

65. To the extent any current or former Employees of the Debtors hold claims under these workers’ compensation insurance policies, the Debtors request authorization under section 362(d) of the Bankruptcy Code, which permits a modification of the automatic stay for

“cause,” to permit such employees to proceed with such claims. The Debtors believe that cause exists to enter an order modifying the automatic stay because the stay of claims under these policies would have significant adverse financial and medical consequences for their Employees. Accordingly, the Debtors request that the automatic stay be modified solely to the extent necessary to allow current and former Employees of the Debtors to proceed with claims under their current and former workers’ compensation insurance policies in the appropriate judicial or administrative forum. The Debtors also request a waiver of the corresponding notice requirements of Bankruptcy Rule 4001(d).

Bankruptcy Rule 6003 Is Satisfied

66. 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. 2014) (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).

67. Immediate and irreparable harm would result if the relief requested herein is not granted. As described above, the Debtors face a risk of attrition of key employees if they are unable to honor the Prepetition Employee Obligations and maintain their existing Employee Compensation and Benefits programs. 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)

68. 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 payment of the Prepetition Employee Obligations and the maintenance of the Employee Compensation and Benefits are essential to prevent potentially irreparable damage to the Debtors' operations, value, and ability to reorganize.

Reservation of Rights

69. 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.

Motion Practice

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

Notice

71. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the U.S. Trustee; (b) counsel to the administrative agent under the DIP credit facility, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (c) counsel to the administrative agent under the Bridge Loan, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (d) counsel to the administrative agent under the Debtors' Prepetition Senior Notes, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com); (e) counsel to the administrative agent under the Junior Convertible Notes, Attn: Geoffrey van der Hauw (g.van.der.hauw@lexence.com); (f) counsel to

the Stalking Horse Bidders, (i) DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com), Shmuel Klahr (shmuel.klahr@us.dlapiper.com), Nadia Saleem (Nadia.Saleem@us.dlapiper.com), and Gregory Juell (gregory.juell@us.dlapiper.com) and (ii) Geoffrey van der Hauw (g.van.der.hauw@lexence.com); (g) the parties identified on the Debtors' consolidated list of 30 largest unsecured creditors; (h) the United States Attorney's Office for the Southern District of New York; (i) the Internal Revenue Service; (j) the United States Securities and Exchange Commission; (k) the attorneys general for the states where the Debtors conduct business operations; (l) the Federal Communications Commission; and (m) 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 given.

No Prior Request

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

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: May 15, 2022
New York, New York

PARETEUM CORPORATION, *ET AL.*
Debtors and Debtors in Possession
By their Proposed Counsel
TOGUT, SEGAL & SEGAL LLP,
By:

/s/ Frank A. Oswald
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Exhibit A

Proposed Interim Order

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

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No.: 22-____ ()

(Joint Administration Requested)

INTERIM ORDER

(I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, PAYROLL TAXES AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE COMPENSATION AND BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS; (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS; AND (III) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of the above-captioned 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 (i) pay the Prepetition Employee Obligations and (ii) maintain the Employee Compensation and Benefits and pay related administrative obligations, (b) authorizing applicable banks and other financial institutions to honor and process related checks and transfers and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated February 1, 2012; and that this Court may enter a final order consistent with Article III of the United States

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

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

Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 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 _____, and shall be served on: (a) the Debtors; (b) proposed counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119, Attn: Frank A. Oswald (frankoswald@teamtogut.com) and Brian F. Moore (bmoore@teamtogut.com); (c) counsel to any statutory committee appointed in these cases; (d) counsel to the administrative agent under the DIP credit facility, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) and Nadia Saleem (Nadia.Saleem@us.dlapiper.com); (e) counsel to the administrative agent under the Bridge Loan, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) and Nadia Saleem

(Nadia.Saleem@us.dlapiper.com); (f) counsel to the administrative agent under the Debtors' Prepetition Senior Notes, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) and Nadia Saleem (Nadia.Saleem@us.dlapiper.com); (g) counsel to the administrative agent under the Junior Convertible Notes, Attn: Geoffrey van der Hauw (g.van.der.hauw@lexence.com); (h) counsel to the Stalking Horse Bidders, (i) DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) and Nadia Saleem (Nadia.Saleem@us.dlapiper.com) and (ii) Geoffrey van der Hauw (g.van.der.hauw@lexence.com); and (e) the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn.: Susan A. Arbeit, Esq. (susan.arbeit@usdoj.gov). In the event no objections to entry of a 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 (a) pay the Prepetition Employee Obligations (either directly or to third parties for payment or remittance, as applicable), *provided* that, the Debtors shall not pay any Prepetition Employee Obligations that exceed the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code unless otherwise required by applicable law, (b) honor and continue their programs, policies and practices with respect to the Employee Compensation and Benefits in the ordinary course of business and in the same manner and on the same basis as the Debtors honored and continued such programs, policies and practices before the Petition Date, (c) forward or contribute all prepetition Payroll Taxes and Deductions relating to the Employee Compensation and Benefits and Director Compensation to the extent that such amounts have not yet been forwarded or contributed, and continue forwarding and contributing postpetition Payroll Taxes and Deductions relating to the Employee

Compensation and Benefits and Director Compensation to the appropriate third parties in the ordinary course of business, and (d) pay any prepetition amounts owed to third parties in respect of administrative or processing costs incidental to the payment or provision of the Employee Compensation and Benefits in the ordinary course of business, including in respect of the Commission Plans and the Severance Obligations.

4. For the avoidance of doubt, no payment to any Employee may be made pursuant to this Interim Order to the extent that it is a transfer in derogation of section 503(c) of the Bankruptcy Code. This Interim Order does not implicitly or explicitly approve of any bonus plan, incentive plan or other plan covered by section 503(c) of the Bankruptcy Code.

5. Pursuant to Section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Obligations in the appropriate judicial or administrative fora and the Debtors are authorized, but not directed, to continue the Workers' Compensation Obligations and pay all prepetition amounts (if any) relating thereto in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Obligations.

6. The Debtors are authorized, but not directed, to modify, change and discontinue any of the Employee Compensation and Benefits and to implement new Employee Compensation and Benefits in the ordinary course of business and pursuant to their past practices during these Chapter 11 Cases in their sole discretion without the need for further Court approval.

7. 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.

8. 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.

9. 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.

10. 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 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.

11. Nothing in this Interim Order should be construed as approving any transfer pursuant to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any request that could fall within section 503(c) of the Bankruptcy Code.

12. 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.

13. Notwithstanding any of the foregoing:

- iii. The Debtors shall provide seven (7) days’ notice of the prepetition Reimbursable Expenses to Notice Parties (this should include the U.S. Trustee and committee counsel), including the name and job title of each employee to be reimbursed and a description of each expense. The Debtors shall not reimburse any such Expense pending the resolution of a timely objection from any Notice Party;
- iv. The Debtors shall provide seven (7) days’ notice of any proposed prepetition payments under the Commission Plan, including the name and job title of each employee to be paid or awarded and the nature of the compensation. The Debtors shall not make any such payment pending the resolution of a timely objection from any Notice Party;
- v. The Debtors shall provide seven (7) days’ notice of any proposed prepetition severance payments, including the name and job title of each employee to be paid or awarded and the nature of the compensation. The Debtors shall not make any such payment pending the resolution of a timely objection from any Notice Party; and
- vi. The Debtors are not hereby authorized to allow or pay Severance Obligations to Insiders and may do so only by separate motion upon notice and a hearing. Prior to disbursing any post-petition Severance Obligations, the Debtors shall provide 21 calendar days’ notice (including job title, description of job duties, and amounts proposed to be paid) on a confidential basis to Notice Parties.

14. The requirements set forth in Local Rule 9013-1(b) are satisfied.
15. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.
16. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.
17. This Interim Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.
18. 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.

New York, New York

Dated: _____, 2022

THE HONORABLE [_____]
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Proposed Final Order

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

In re:

PARETEUM CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No.: 22-____ ()

(Joint Administration Requested)

FINAL ORDER

((I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, PAYROLL TAXES AND OTHER COMPENSATION AND (B) MAINTAIN EMPLOYEE COMPENSATION AND BENEFITS PROGRAMS AND PAY RELATED ADMINISTRATIVE OBLIGATIONS; (II) AUTHORIZING APPLICABLE BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS; AND (III) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² the above-captioned 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 (i) pay the Prepetition Employee Obligations and (ii) maintain the Employee Compensation and Benefits and pay related administrative obligations, (b) authorizing applicable banks and other financial institutions to honor and process related checks and transfers and (c) granting related relief; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this is a core proceeding pursuant to

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artilium Group Ltd. (f/k/a Artilium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artilium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

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

28 U.S.C. § 157(b); and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

2. The Motion is GRANTED on a final basis as set forth herein.

3. The Debtors are authorized, but not directed, to (a) pay the Prepetition Employee Obligations (either directly or to third parties for payment or remittance, as applicable), including amounts that exceed, in the aggregate, the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; (b) honor and continue their programs, policies, and practices with respect to the Employee Compensation and Benefits in the ordinary course of business consistent with the Debtors' past practices before the Petition Date, *provided* that no payment to any Employee shall be made pursuant to this Final Order to the extent that it is a transfer in derogation of section 503(c) of the Bankruptcy Code, and (c) forward or contribute all Payroll Taxes and Deductions relating to the Employee Compensation and Benefits and Director Compensation to the appropriate third parties in the ordinary course of business. This Final Order does not implicitly or explicitly approve any bonus plan, incentive or other plan covered by section 503(c) of the Bankruptcy Code.

4. The Debtors are authorized to pay all costs and expenses incidental to the payment of the Employee Compensation and Benefits, including all administrative, service and processing costs, and payments to outside professionals.

5. Pursuant to Section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Obligations in the appropriate judicial or administrative fora and the Debtors are authorized, but not directed, to continue the Workers' Compensation Obligations and pay all prepetition amounts (if any) relating thereto in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Obligations.

6. The Debtors are authorized, but not directed, to modify, change, and discontinue any of the Employee Compensation and Benefits and to implement new Employee Compensation and Benefits in the ordinary course of business and pursuant to their past practices during these Chapter 11 Cases in their sole discretion without the need for further Court approval.

7. 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.

8. 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.

9. 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.

10. 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 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.

11. Nothing in this Final Order shall be construed as approving any transfer pursuant to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any request that could fall within section 503(c) of the Bankruptcy Code.

12. 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.

13. Notwithstanding any of the foregoing:
 - i. The Debtors shall provide seven (7) days’ notice of the prepetition Reimbursable Expenses to Notice Parties (this should include the U.S. Trustee and committee counsel), including the name and job title of each employee to be reimbursed and a description of each expense. The Debtors shall not reimburse any such Expense pending the resolution of a timely objection from any Notice Party;
 - ii. The Debtors shall provide seven (7) days’ notice of any proposed prepetition payments under the Commission Plan, including the name and job title of each employee to be paid or awarded and the nature of the compensation. The Debtors shall not make any such payment pending the resolution of a timely objection from any Notice Party;
 - iii. The Debtors shall provide seven (7) days’ notice of any proposed prepetition severance payments, including the name and job title of each employee to be paid or awarded and the nature of the compensation. The Debtors shall not make any such payment pending the resolution of a timely objection from any Notice Party; and
 - iv. The Debtors are not hereby authorized to allow or pay Severance Obligations to Insiders and may do so only by separate motion upon notice and a hearing. Prior to disbursing any post-petition Severance Obligations, the Debtors shall provide 21 calendar days’ notice (including job title, description of job duties, and amounts proposed to be paid) on a confidential basis to Notice Parties.
14. The requirements set forth in Local Rule 9013-1(b) are satisfied.
15. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.
16. This Final Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

17. 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.

New York, New York

Dated: _____, 2022

THE HONORABLE [_____]
UNITED STATES BANKRUPTCY JUDGE