

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

In re:)	
)	Chapter 11
BLITZ U.S.A., Inc., <i>et al.</i> , ¹)	
)	Case No. 11-[] ()
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS
TO PAY CERTAIN PREPETITION CLAIMS OF (A) CRITICAL VENDORS
AND (B) LIEN CLAIMANTS AND (II) GRANTING CERTAIN RELATED RELIEF**

Blitz U.S.A., Inc. ("**Blitz**") and certain of its affiliates, as debtors and debtors in possession (collectively, the "**Debtors**"), file 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**"), (i) authorizing, but not directing, the Debtors to pay certain prepetition claims (a) of Critical Vendors (as defined herein) and (b) of Lien Claimants (as defined herein) in the ordinary course of business as such claims come due and (ii) scheduling a final hearing (the "**Final Hearing**") to consider entry of the Final Order. In support of the Motion, concurrently herewith, the Debtors submit the *Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**") and respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and F3 Brands LLC (2604). The location of the Debtors' corporate headquarters and the Debtors' service address is: 404 26th Ave. NW Miami, OK 74354.



Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “*Court*”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

3. The statutory bases for the relief requested herein are sections 105(a), 363, 507(a)(2), 1107(a), and 1108 of title 11 of the United States Code (the “*Bankruptcy Code*”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “*Local Bankruptcy Rules*”).

Introduction

4. As described in the First Day Declaration, the Debtors are the industry leader in portable fuel containment. Since its inception as the supplier of the traditional, olive-drab jerry can to the U.S. military throughout World War II, Blitz U.S.A., Inc. and its predecessor companies have evolved into the producer of the best fuel containment products in the world. Today, the red plastic jerry can is an American icon. With its global headquarters in Miami, Oklahoma, the Debtors employ approximately 250 employees and achieve annual sales of approximately \$80 million. Through end of fiscal year 2011, the Debtors generated \$80 million in revenue and \$6 million in EBITDA.

5. Notwithstanding their industry leading position and time-tested product line, the Debtors have recently become the subject of over 35 pending lawsuits alleging, among other things, certain product deficiencies. Despite the Debtors’ firm belief that their products are safe and free of deficiencies, on the date hereof (the “*Petition Date*”), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code to address the challenges posed

by the overwhelming pending litigation. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. 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. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases.

Relief Requested

6. By this Motion, the Debtors seek entry of interim and final orders authorizing, but not directing, the Debtors to pay certain Critical Vendor Claims and Lien Claims (each as defined herein) as follows²:

- a. Critical Vendor Claims: The Debtors seek authority to pay, in their discretion, the prepetition claims of certain vendors that are critical to the Debtors' operations, as more fully described herein (the "***Critical Vendor Claims***") up to \$1.3 million on an interim basis, and up to \$2 million on a final basis.
- b. Lien Claims: The Debtors seeks authority to pay, in their discretion, the prepetition claims of certain lien claimants that are critical to the Debtors' operations, as more fully described herein (the "***Lien Claims***") up to \$520,000 on a final basis.

The Debtors' Prepetition Claims

7. The fuel containers that the Debtors manufacture are the culmination of a highly-choreographed product development, purchasing, manufacturing and delivery system. The Debtors rely on a variety of third parties throughout their supply chain to ensure that their business runs smoothly and efficiently, including: (a) vendors that supply raw materials and other components used in the Debtors' manufacturing process (the "***Critical Vendors***"); (b)

² The below caps are based on the Debtors' current accounts payable information. Certain adjustments and reconciliations will be necessary to account for those invoices that have been issued for the different Critical Vendors and Lien Claimants, but not yet received by the Debtors as of the Petition Date. Accordingly, the Debtors reserve the right to request an adjustment of the caps prior to or at the final hearing on the Motion.

independent contractors and maintenance companies that maintain and repair the Debtors' manufacturing equipment and facilities (the "*Materialmen*"); and (c) commercial freight carriers that deliver the finished products to the Debtors' customers (the "*Shippers*," and together with the Materialmen, the "*Lien Claimants*").

I. Critical Vendors.

A. Identification of Critical Vendors

8. The Debtors, with the assistance of their advisors, have spent significant time reviewing and analyzing their books and records and consulting operations management and purchasing personnel to identify certain critical business relationships and/or suppliers of goods and services the loss of which could immediately and irreparably harm their businesses, shrink their market share, reduce their enterprise value and/or significantly impair their going-concern viability. As part of this process, the Debtors considered a variety of factors, including, without limitation:

- a. whether a particular vendor is a "single source" supplier;
- b. whether there are alternative vendors who can provide requisite volumes of similar goods or services on better (or equal) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- c. whether the Debtors have sufficient inventory to continue operations while a replacement vendor, if any, can be found;
- d. whether the failure to pay amounts owed would cause the Debtors to incur higher costs or cause the Debtors to lose significant sales or future revenue;
- e. whether an agreement exists that would compel the vendor to maintain its commercial relationship with the Debtors and, if so, whether the enforcement thereof could be accomplished in a timely and cost-efficient manner without unduly disrupting the Debtors' business;

- f. whether certain governmental regulations, quality specifications or other requirements prevent the Debtors from obtaining a vendor's products or services from alternative sources;
- g. whether a vendor meeting the foregoing criteria is able or likely to refuse to ship products to the Debtors postpetition if its prepetition balances are not paid; and, finally
- h. whether certain vendors may be entitled to request an administrative expense priority claim under section 503(b)(9) of the Bankruptcy Code to the extent they delivered, and the Debtors received, goods within the twenty day period prior to the Petition Date.

B. Description of the Debtors' Critical Vendors

9. The Critical Vendors constitute a small portion of the Debtors' trade vendors by both number and dollar amount. Specifically, the prepetition trade amount owed to Critical Vendors represents approximately 40% of the Debtors' total prepetition trade obligations of approximately \$5.5 million. Moreover, the Debtors estimate that, as of the Petition Date, they owe the Critical Vendors approximately \$545,000 in the aggregate for goods received by the Debtors within the 20 days of the Petition Date (approximately 27% of the prepetition Critical Vendor claims), which amounts will be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code. The Critical Vendors are generally vendors of raw materials used in the Debtors manufacturing process and producers of certain finished components used in the Debtors' products.

10. By way of example, the Debtors purchase a variety of primary raw materials from suppliers who, due to the scale and highly-regulated nature of the Debtors' operations, are uniquely able to meet the Debtors' needs. For example, resin (a form of high-density plastic) is the principal raw material in the Debtors' manufacturing process. The Debtors purchase the vast majority of their raw resin from several critical resin suppliers (the "*Resin Suppliers*"). The Resin Suppliers are each certified by the American Society for Testing and Materials ("*ASTM*")

to provide resin suitable for use in gasoline containers and other automotive products. The process for qualifying resin suppliers is both costly and lengthy. In addition, several of the Resin Suppliers supply such a great percentage of the Debtors' raw resin, that the other certified resin suppliers do not have the capacity to meet the Debtors' needs. For instance, just one supplier of base resin currently supplies 80% of the Debtors total base resin requirements. Although the Debtors purchase base resin from two other certified suppliers, these other suppliers do not have the capacity to supply the Debtors with the volume of resin that they require. Moreover, Resin Suppliers provide product to the Debtors at a large savings compared to other suppliers. Re-sourcing this resin would be unduly costly to the Debtors' estates. Because resin is the most critical component of the Debtors' manufacturing process and re-sourcing the Resin Suppliers would be costly and cause lengthy production delays, absent the relief requested herein, the Debtors would be forced to resource most of their supply of resin to the significant detriment to their estates. Without access to a sufficient quantity of resin, the Debtors' entire manufacturing enterprise would shut down, irreparably harming the Debtors' relationships with their key customers and diminishing the value of their bankruptcy estates.

11. By way of further example, another principal product needed to finish the Debtors' gas cans is a pouring spout which the Debtors attach to the body of the fuel container at the end of the production process. The Debtors purchase these spouts from just one supplier (the "*Spout Supplier*"). To manufacture the spouts, the Spout Supplier uses proprietary molds which the Debtors created specifically for their gas cans. Without similar molds, no other supplier could produce pouring spouts to the Debtors' specifications. Because the Spout Supplier has possession of the Debtors' molds, the Debtors fear that, absent payment, the Spout Supplier may refuse to relinquish control of the molds. In such a scenario, it would be very difficult, time

consuming and costly to recreate the needed molds. Even if replacement molds could be created, the process of re-sourcing the pouring spouts with another supplier would cause an undue delay in the Debtors' operations.

12. Finally, in addition to suppliers of "primary" product components, the Debtors also purchase certain ingredients to enhance the texture, functionality and appearance of their products. For instance, the Debtors purchase coloring agents from a particular sole-source supplier. The chemicals that comprise these coloring agents not only give the Blitz cans their famous red color, but also contain certain chemicals that help each gas can withstand exposure and cracking. These ingredients are subject to specific government regulations that must be approved in the same lengthy approval process used to evaluate the Debtors' resin. Re-sourcing new suppliers of these materials would be costly and would cause considerable delay in the Debtors manufacturing process, rendering the Debtors unable to produce, and consequently sell, its products to its customers at this critical time.

13. While certain of the Debtors' Critical Vendors are subject to long term supply contracts, and the Debtors ultimately anticipate assuming those contracts, the Debtors cannot afford any interruption in the supply of raw materials and other products needed to manufacture their gas cans. Despite the protections offered by the automatic stay under the Bankruptcy Code, certain Critical Vendors may still refuse to provide product to the Debtors postpetition if their prepetition claims are not paid. Enforcing the automatic stay against these Critical Vendors would take time, causing a disruption in the Debtors operations. Therefore, the Debtors are seeking authorization to pay the prepetition obligations owed to the Critical Vendors notwithstanding the existence of supply contracts.

14. By the Motion, the Debtors seek authority to pay, in their sole discretion based on their business judgment, up to \$1.3 million to Critical Vendors on account of their prepetition claims on an interim basis (the “*Interim Critical Vendor Cap*”)³ and up to a maximum aggregate amount of \$2.0 million to Critical Vendors on account of their prepetition claims on a final basis (the “*Final Critical Vendor Cap*”). The Debtors seek authority to pay prepetition amounts owed to the vendors specifically described herein, in addition to any other Critical Vendors that the Debtors decide, in their business judgment, must be paid in order to preserve the value of the Debtors’ estates for the benefit of the Debtors’ creditors, subject to the caps set forth herein.

II. Lien Claimants.

15. In addition to the Critical Vendors, the Debtors also rely heavily on their Lien Claimants - service providers who make sure the Debtors’ operations run efficiently and with minimal interruption. The Lien Claimants generally (though not exclusively) consist of independent contractors and maintenance companies that maintain and repair the Debtors’ processing equipment, manufacturing facilities and commercial freight carriers that deliver the finished products to the Debtors’ customers.

16. Although the Debtors generally make timely payments to all of the Lien Claimants, some may not have been paid for certain services rendered prior to the Petition Date. Notwithstanding the automatic stay under section 362 of the Bankruptcy Code, if not paid, (a) the Materialmen may have the right under applicable non-bankruptcy laws to perfect materialmans’, mechanics’, artisans’ or other liens against the Debtors’ property, and (b) the Shippers may have the right to assert certain possessory liens on goods in their possession to

³ While the amount of prepetition claims ultimately owed to the Critical Vendors is \$2.0 million, the Debtors believe they can manage their trade relationships through a final hearing on the Motion if they are provided access to the Interim Critical Vendor Cap.

secure payment of the charges and/or expenses incurred by them in connection with the transportation of such goods. Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.⁴ As a result, the Debtors anticipate that certain Lien Claimants may assert and/or perfect liens or refuse to perform their ongoing obligations with the Debtors—including installation, servicing and warranty obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' equipment, parts or inventory, mere possession (and retention) of the Debtors' goods by the Lien Claimants has the potential to severely disrupt the Debtors' operations.

17. As of the Petition Date, the Debtors estimate that the Lien Claimants have aggregate prepetition claims of approximately \$520,000. The Debtors propose to pay and discharge, on a case-by-case basis and in their discretion and judgment, those prepetition claims of Lien Claimants that have given or could give rise to liens against the Debtors' property, regardless of whether the Lien Claimants have already perfected the liens. Specifically, the Debtors seek authority to pay up to a maximum aggregate amount of \$520,000 to Lien Claimants on account of their prepetition claims on a final basis (the "*Lien Claimant Cap*"). The Debtors are not seeking to make payments to Lien Claimants on an interim basis.

Basis For Relief

I. Ample Authority Exists to Support Paying the Critical Vendor and Lien Claims.

18. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See*,

⁴ See 11 U.S.C. § 546(b)(1)(A) (a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection").

e.g., *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor's business); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 363(b) and 105(a) of the Bankruptcy Code.

19. Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).

20. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor's business and, in particular, where

nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors' business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

21. In addition to the authority granted a debtor in possession under sections 363(b) and 105(a) of the Bankruptcy Code, courts have developed the "doctrine of necessity" or the "necessity of payment" rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor's reorganization, *see Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding that the court was not "helpless" to apply the rule to supply creditors where the alternative was the cessation of operations), including the United States Court of Appeals for the Third Circuit, which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

22. In *In re Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating that a court may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding 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 have been paid”); *In re Just for Feet*, 242 B.R. at 824-25 (noting that debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

23. The necessity of payment doctrine is designed to foster the rehabilitation of a debtor in reorganization cases, which courts have recognized is “the paramount policy and goal of Chapter 11.” *In re Ionosphere Clubs*, 98 B.R. at 176; *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.”); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code”, but “[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”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation”); 3 COLLIER ON BANKRUPTCY ¶ 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

24. Courts in this district have granted similar relief with respect to the treatment of critical vendor claims in other Chapter 11 cases to the relief being requested herein. *See, e.g., In re Friendly Ice Cream Corp.*, Case No. 11-13167 (Bankr. D. Del. Oct. 6, 2011); *In re*

Appleseed's Intermediate Holdings LLC, Case No. 11-10160 (Bankr. D. Del. Feb. 23, 2011); *In re OTC Holdings Corp.*, Case No. 10-12636 (Bankr. D. Del. Sept. 17, 2010); *In re Am. Safety Razor Co., LLC*, Case No. 10-12351 (Bankr. D. Del. Aug. 23, 2010). Relief to pay lien claimants similar to that requested herein has also been granted in recent Chapter 11 cases in this jurisdiction. *See, e.g., In re Friendly Ice Cream Corp.*, Case No. 11-13167 (Bankr. D. Del. Oct. 6, 2011); *In re Local Media Insight Holdings, Inc.*, Case No. 10-13677 (Bankr. D. Del. Nov. 19, 2010); *In re Visteon Corp.*, Case No. 09-11786 (Bankr. D. Del. June 1, 2009); *In re Flying J Inc.*, Case No. 08-13384 (Bankr. D. Del. Feb. 4, 2009); *In re Hines Horticulture, Inc.*, Case No. 08-11922 (Bankr. D. Del. Aug. 22, 2008).

25. The Debtors submit that the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates and is therefore justified under section 363(b), as well as under section 105(a) of the Bankruptcy Code and Bankruptcy Rule 6003. For the reasons set forth below, paying the Critical Vendor Claims and Lien Claims will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption.

II. Payment of the Critical Vendor Claims and Lien Claims Benefits These Estates.

26. The relief requested herein is appropriate and warranted under each of the above-described standards. The authority to satisfy the Critical Vendor Claims and Lien Claims in the initial days of these cases without disrupting their operations will send a clear signal to the marketplace, including key suppliers and customers, that the Debtors are willing and, importantly, able to conduct business as usual during their chapter 11 cases.

27. The Debtors' operations also require the seamless coordination of many unrelated third-parties at every stage in the supply chain. Collectively, the Debtors' supply chain ensures that the Debtors receive all of the raw materials, products, and supplies necessary to operate their

businesses and provide their customers with the high-quality fuel containers expected under the Debtors' brand. Any significant disruption in the Debtors' supply chain, such as a vendor halting delivery of certain necessary goods and/or services, could result in the Debtors' not having sufficient raw materials, products, and supplies to operate their businesses. Such a result could cause a devastating impact on the Debtors' businesses and significantly impair their restructuring efforts.

28. In addition, absent approval of the relief sought herein, notwithstanding the protection of administrative priority, certain Critical Vendors may have little incentive to continue to provide the Debtors with trade credit postpetition. Indeed, vendors concerned about the Debtors' financial condition might start demanding, among other things, accelerated payment, cash-in-advance or cash-on-delivery prior to agreeing to provide the Debtors with goods or services in an effort to reduce exposure. Any further contraction would be detrimental to the Debtors, their estates and their creditors. In contrast, the preservation of working capital through the retention or reinstatement of trade credit, in sufficient amounts and on favorable terms, will help the Debtors conserve liquidity, stabilize their business operations and facilitate their return to profitability. Indeed, payment of certain Critical Vendor Claims and Lien Claims could help further preserve cash by saving the cost associated with evaluating and litigating potential reclamation claims, suits and other distracting motions, which could prolong these chapter 11 cases and increase administrative expenses to the detriment of maximizing value for the benefit of all stakeholders.

29. Moreover, certain Lien Claimants may be entitled under applicable non-bankruptcy law to perfect liens against the Debtors' property and/or assert certain possessory liens on the Debtors' goods, merchandise, or finished products in their possession

(notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. As described above, under section 362(b)(3) of the Bankruptcy Code, the act of perfecting or asserting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.⁵ As a result, the Debtors anticipate that certain of the Lien Claimants may assert and/or perfect liens, simply refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' inbound inventory or outbound products, mere possession or retention could severely disrupt the Debtors' operations.

III. Paying the Critical Vendor Claims and Lien Claims Now Will Not Affect Creditor Recovery.

30. The relief requested herein will not affect the recovery of creditors in these chapter 11 cases. In instances where the amounts owed to Lien Claimants is less than the value of the goods that could be held to secure a Lien Claim, such parties are arguably fully-secured creditors of the Debtors' estates. In such situations, payment now only provides such parties with what they would be entitled to receive under a plan of reorganization, only without any interest costs that might otherwise accrue during these chapter 11 cases.

31. Likewise, Critical Vendors who sold goods to the Debtors that were delivered and received by the Debtors (or their agents) within 20 days of the Petition Date are entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code on account of such claims. Here, the Debtors estimate that, as of the Petition Date, they owe the Critical Vendors approximately \$545,000 in the aggregate for goods received by the Debtors within the 20 days of

⁵ See 11 U.S.C. § 546(b)(1)(A) (a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection").

the Petition Date, or approximately 27% of the Final Critical Vendor Cap. Thus, a significant portion of the amounts owed to the Critical Vendors as of the Petition Date are on account of goods that are essential to the operation of the Debtors' businesses and will have been received by the Debtors within the 20 days of the Petition Date. Furthermore, Critical Vendors may hold claims arising under agreements that, if executory, the Debtors intend to assume during these cases. Given that both must be paid in full under the respective provisions of the Bankruptcy Code — the former to confirm a chapter 11 plan and the latter in connection with assumption — payment of such claims now is a matter of timing only.

32. The relief requested herein is based upon the recognition that uncertainty on the part of Critical Vendors with respect to payment of their prepetition claims could incite them to terminate their relationship with the Debtors, or condition postpetition transactions on contracted credit terms or otherwise less favorable trade terms, which could significantly disrupt the Debtors' operations and impair their liquidity. In contrast, by paying certain prepetition trade claims now, at the beginning of these cases, the Debtors would get the benefit of the goods and services provided by such Critical Vendors without jeopardizing a favorable commercial relationship and risking operational disruption.

**Cause Exists to Authorize the Debtors' Financial Institutions
to Honor Checks and Electronic Fund Transfers.**

33. The Debtors have sufficient funds to remit the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor in possession financing and cash collateral. Also, under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests,

other than those relating to authorized payments, will not be honored inadvertently and the Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

34. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001). As described above, and in the First Day Declaration, the continuity and viability of the Debtors' business operations relies heavily on the uninterrupted delivery of essential raw materials, products and supplies. The failure of any vendor to deliver essential raw materials, products, or supplies or to render services to the Debtors would have immediate and detrimental consequences to their businesses and would decrease value to the detriment and prejudice of all of the Debtors' stakeholders. The Debtors cannot risk even the perception that their business will offer anything but the highest level of product quality and quantity for the duration of these chapter 11 cases. Moreover, it is the Debtors' business judgment that continuation of their positive relationship with the Critical Vendors and Lien Claimants is critical to their continued operations and greatly increases the likelihood of a successful reorganization.

35. Accordingly, to the extent that the Debtors are required to make any payments related to prepetition obligations with respect to the Critical Vendors and Lien Claimants, the

Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of such obligations.

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

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

Notice

37. The Debtors have provided notice of the Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the agent for the Debtors' proposed postpetition secured lenders; (d) counsel to the agent for the Debtors' prepetition secured lenders; (e) the Internal Revenue Service; and (f) any party that may have a particular interest in this motion. As this Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Bankruptcy Rule 9013-1(m). In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: November 9, 2011
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

A handwritten signature in blue ink, appearing to be 'D. DeFranceschi', is written over a horizontal line.

Daniel J. DeFranceschi (DE No. 2732)

Michael J. Merchant (DE No. 3854)

Julie A. Finocchiaro (DE No. 5303)

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*Proposed Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

BLITZ U.S.A., Inc., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 11-[] ()
)
) (Joint Administration Requested)
)

**INTERIM ORDER (I) AUTHORIZING, BUT NOT DIRECTING, DEBTORS
TO PAY CERTAIN PREPETITION CLAIMS OF (A) CRITICAL VENDORS
AND (B) LIEN CLAIMANTS AND (II) GRANTING CERTAIN OTHER RELIEF**

Upon the motion (the “*Motion*”)² of Blitz U.S.A., Inc. (“*Blitz*”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”), for entry of an interim order (the “*Interim Order*”) (i) authorizing, but not directing, the Debtors to pay certain prepetition claims (a) of Critical Vendors and (b) of Lien Claimants in the ordinary course of business as such claims come due; (ii) authorizing financial institutions to receive, process, honor, and pay all checks presented for payment and electronic payment requests related to the foregoing; and (iii) scheduling a final hearing (the “*Final Hearing*”) to consider entry of the Final Order; and upon the Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of the Debtors’ Chapter 11 Petitions and First Day Motions (the “*First Day Declaration*”); and the Court having found that: (i) the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (ii) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; (iii) the relief requested in the Motion is in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and F3 Brands LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 404 26th Ave. NW Miami, OK 74354.

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

the best interests of the Debtors' estates, their creditors and other parties in interest; (iv) notice of the Motion was adequate and appropriate under the circumstances; and (v) no other or further notice need be provided; and the Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before the Court (the "**Hearing**"); and the 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 the Court having found that relief requested in the Motion is necessary to prevent immediate and irreparable harm; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED THAT:

1. The Motion is granted as set forth herein on an interim basis pursuant to this Order until such time as the Court conducts a final hearing on this matter (the "**Final Hearing Date**").

2. The Final Hearing Date shall be _____, ____ at ____:____.m. prevailing Eastern Time. Any objections or responses to entry of the final order shall be filed on or before seven business days prior to the Final Hearing Date and served on parties in interest as required by the Local Rules.

3. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, on a case-by-case basis, the Critical Vendor Claims in an aggregate amount not to exceed \$1.3 million during the interim period from the date of this Order until the date that a final order is entered in this matter.

4. Nothing herein shall impair the Debtors' ability to contest, without prejudice, in their sole discretion, the validity and amounts of any claim obligations owed to the Critical Vendors.

5. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the prepetition or postpetition obligations are authorized to honor checks presented for payment and all fund transfer requests made by the Debtors related to such obligations to the extent that sufficient funds are on deposit in such accounts.

6. The Debtors are authorized to issue postpetition checks or to make additional electronic payment requests with respect to payment of a Critical Vendor Claim in the event prepetition checks or electronic payment requests are dishonored or rejected.

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

8. The requirements set forth in Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by the contents of the Motion.

9. Notwithstanding Bankruptcy Rule 6004(h) the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: _____, 2011
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

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

In re:

BLITZ U.S.A., Inc., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 11-[_____] (____)
)
) (Joint Administration Requested)
)

**FINAL ORDER (I) AUTHORIZING, BUT NOT DIRECTING, DEBTORS
TO PAY CERTAIN PREPETITION CLAIMS OF (A) CRITICAL VENDORS
AND (B) LIEN CLAIMANTS AND (II) GRANTING CERTAIN OTHER RELIEF**

Upon the motion (the “*Motion*”)² of Blitz U.S.A., Inc. (“*Blitz*”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”) for entry of a final order (the “*Final Order*”) (i) authorizing, but not directing, the Debtors to pay certain prepetition claims (a) of Critical Vendors and (b) of Lien Claims in the ordinary course of business as such claims come due; (ii) authorizing financial institutions to receive, process, honor, and pay all checks presented for payment and electronic payment requests related to the foregoing; and (iii) scheduling a final hearing (the “*Final Hearing*”) to consider entry of the Final Order; and upon the Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of the Debtors’ Chapter 11 Petitions and First Day Motions (the “*First Day Declaration*”); and the Court having found that: (i) the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (ii) venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. § 1408; (iii) the relief requested in the Motion is in the best interests of the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and F3 Brands LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 404 26th Ave. NW Miami, OK 74354.

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

Debtors' estates, their creditors and other parties in interest; (iv) notice of the Motion was adequate and appropriate under the circumstances; and (v) no other or further notice need be provided; and the Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before the Court (the "*Hearing*"); and the 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 any objections to the relief requested herein having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED THAT:

1. The Motion is granted as set forth herein on a final basis.
2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, on a case-by-case basis, the Critical Vendor Claims in an aggregate amount not to exceed \$2 million.
3. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, on a case-by-case basis, the Lien Claims in an aggregate amount not to exceed \$520,000.
4. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the prepetition or postpetition obligations are authorized to honor checks presented for payment and all fund transfer requests made by the Debtors related to such obligations to the extent that sufficient funds are on deposit in such accounts.
5. Nothing herein shall impair the Debtors' ability to contest, without prejudice, in their sole discretion, the validity and amounts of any claim obligations to the Critical Vendors or Lien Claimants.

6. The Debtors are authorized to issue postpetition checks or to make additional electronic payment requests with respect to payment of a Critical Vendor Claim or Lien Claim, in the event prepetition checks or electronic payment requests are dishonored or rejected.

7. The requirements set forth in Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by the contents of the Motion.

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

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

Dated: _____, 2011
Wilmington, Delaware

United States Bankruptcy Judge