

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
Tuesday Morning Corporation, <i>et al.</i> , ¹	§	Case No. 20-31476-HDH-11
	§	
Debtors.	§	Joint Administration Requested

**DECLARATION OF BARRY FOLSE IN SUPPORT OF DEBTORS' CHAPTER 11
PETITIONS AND FIRST-DAY MOTIONS**

Pursuant to 28 U.S.C. § 1746, I, Barry Folse, hereby declare under penalty of perjury:

Introduction

1. The above-captioned debtors (collectively, the “Debtors”, “Tuesday Morning” or the “Company”) operate under the trade name “Tuesday Morning” and are one of the original “off-price” retailers specializing in providing unique home and lifestyle goods at bargain values. Since its founding in 1974, when Tuesday Morning operated its business from a rented warehouse in Dallas, Texas, Tuesday Morning has continued to expand its business. As of January 1, 2020, the Debtors operated 705 stores in 40 states. However, the Debtors have recently been confronted with one of the most serious challenges in Tuesday Morning’s 46-year history – the COVID-19 pandemic and the actions of government entities seeking to curtail it. To “flatten the curve” and otherwise blunt the spread of COVID-19, many federal, state, and local governments have ordered the closure of schools, parks, stores, restaurants, and other “non-essential” businesses, through “Shelter-in-Place” orders and other similar mandates. To address the operational challenges resulting from the government’s COVID-19 response and protect employees and customers, in

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Tuesday Morning Corporation (8532) (“TM Corp.”); TMI Holdings, Inc. (6658) (“TMI Holdings”); Tuesday Morning, Inc. (2994) (“TMI”); Friday Morning, LLC (3440) (“FM LLC”); Days of the Week, Inc. (4231) (“DOTW”); Nights of the Week, Inc. (7141) (“NOTW”); and Tuesday Morning Partners, Ltd. (4232) (“TMP”). The location of the Debtors’ service address is 6250 LBJ Freeway, Dallas, TX 75240.

March 2020 the Debtors closed all their stores, including the Debtors' two Distribution Centers (defined below), and the Debtors' corporate offices. Although the Debtors have reopened a majority of their locations and will continue to re-open in the coming weeks, the Debtors' current operations continue to be affected by the pandemic.

2. The Debtors' business model is focused entirely on in-store sales rather than online transactions. In fact, the Debtors' key customer base has historically been attracted to the unique "treasure-hunting" experience that Tuesday Morning provides its customers through its off-price business model, appealing no-frills store environment, and its diverse inventory mix. The impact of COVID-19, and in particular the closure of all of the Debtors' locations, has therefore created unprecedented financial and operational strain on the Debtors and their business, including a total cessation of new revenue for a period of time beginning in March 2020.

3. To address the disruption to their business and the related decline in revenue, the Debtors immediately began to implement cost-saving measures and to seek alternative sources of liquidity. For example, the Debtors furloughed a majority of their employees in the stores, the Distribution Centers, and the corporate office and significantly reduced capital expenditures. The Debtors also began negotiating with their landlords to obtain consensual agreements to permit the Debtors to defer the payment of rent until some period after the Debtors are able to fully re-open and re-commence normal business operations. The Debtors also explored the possibility of obtaining additional liquidity through emergency relief measures such as the CARES Act, but concluded that they did not qualify for meaningful relief under such programs.

4. Despite the Debtors' best efforts to control costs, conserve cash, and obtain additional funding, the impact of the pandemic has been devastating to the Debtors' financial status by cutting off the Debtors' revenues, diminishing the Debtors' assets, and significantly increasing

the Debtors' liabilities. To address the COVID-19-related damage suffered by the Debtors and preserve the going-concern value of their business, the Debtors are seeking relief from this Court to implement a reorganization or sale of the business.

Background

5. My name is Barry Folse. I am a Managing Director at the financial advisory firm AlixPartners, LLP ("Alix") and have worked as a turnaround consultant for over twenty years, including experience in the retail sector. I have substantial knowledge and experience as a restructuring advisor to distressed companies and in assisting distressed companies with stabilizing their financial condition, analyzing their operations, and developing an appropriate business plan to accomplish the necessary restructuring of their operations and finances. Specifically, I have advised among others, Hexion Chemical Company, Purdue Pharma, Mattress Firm, Linn Energy, LLC, Paragon Offshore Limited, BP, Radio Shack, BearingPoint, Hayes-Lemmerz, Fleming Companies, and Calpine. Alix has been engaged to act as financial advisor for the Debtors in their Chapter 11 Cases. I am the lead advisor for Alix in connection with this engagement.

6. Each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the U.S. Code (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court") on May 27, 2020. To minimize the adverse effects on their business, the Debtors also filed motions and pleadings seeking various types of "first day" relief (the "First Day Motions").

7. I am generally familiar with the Debtors' business operations, business and financial affairs, and books and records. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' operations and finances, information learned from my review of relevant documents, information supplied to me by other

members of the Debtors' management and their advisors, information compiled by members of my team, or my opinion based on my experience, knowledge, and information concerning the Debtors' operations and financial condition. I am authorized to submit this Declaration on behalf of the Debtors, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

8. This Declaration has been organized into five main sections as follows:

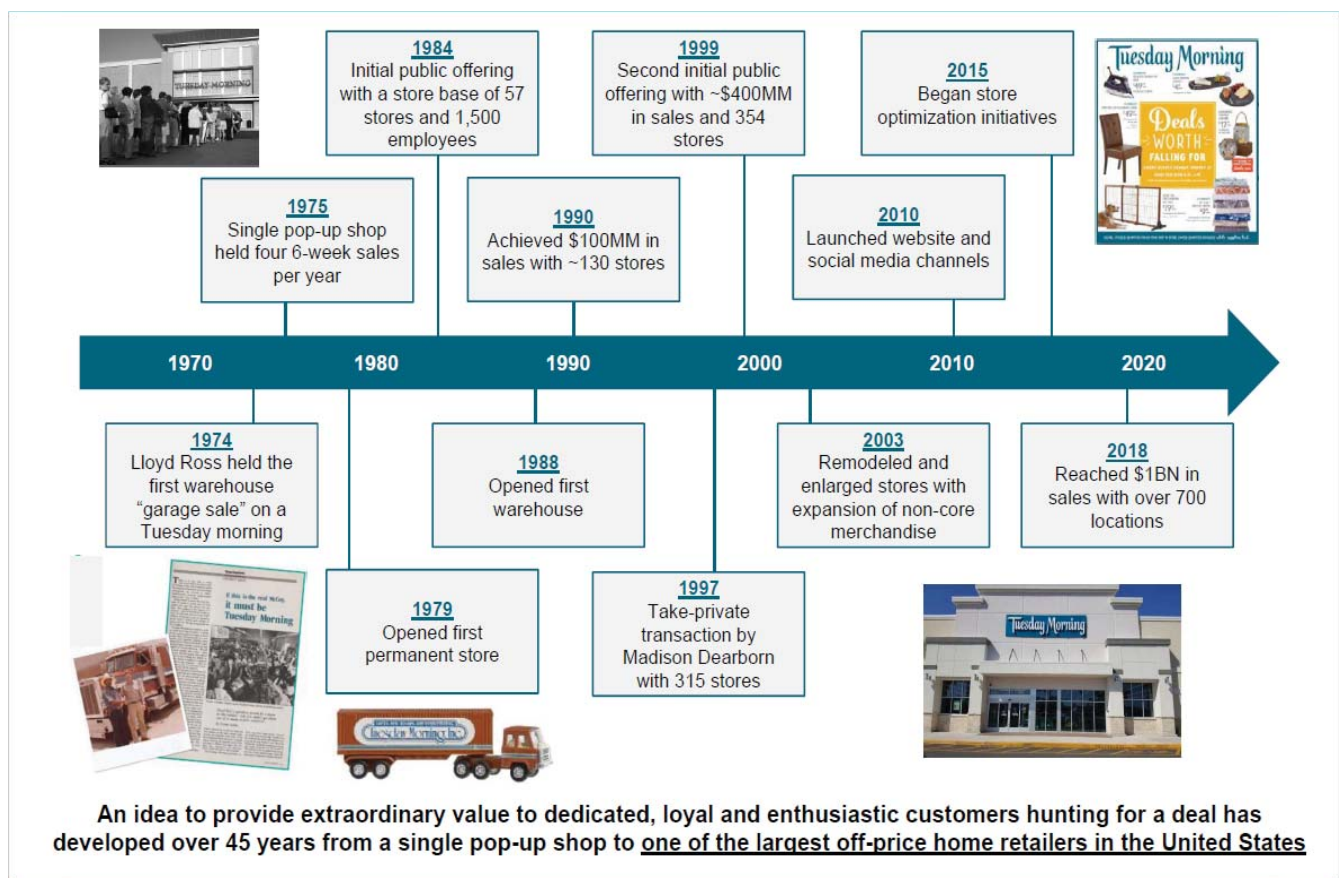
- Part I describes the Debtors historical background and business operations;
- Part II describes the Debtors' prepetition corporate and capital structure;
- Part III describes the circumstances and events leading to the filing of these Chapter 11 Cases;
- Part IV describes the Debtors' entry into the DIP Credit Agreement, and the Debtors' restructuring efforts;
- Part IV, including **Exhibit A** incorporated by reference herein, summarizes the relief requested in, and the evidentiary basis for the relief requested in the First Day Motions.

I. The Company's History and Business Operations

A. History

9. Tuesday Morning was founded in Dallas, Texas in 1974 by Lloyd Ross. Under the original business model, Mr. Ross purchased leftover inventory from name-brand manufacturers and retailers and then sold it from a single warehouse in Dallas in a "garage-sale" format. The first such sale was conducted on a Tuesday morning, because Mr. Lloyd considered that to be the first positive part of the week, and the name stuck even as the business grew beyond its original warehouse format. The business quickly expanded from the Tuesday morning "garage sale" format to a "pop-up shop" format with four six-week sales a year, to the establishment of the first permanent Tuesday Morning store location in 1979.

10. By 1984 the company had grown to 57 stores and was taken public for the first time. In 1997, the company had expanded to 315 locations and was acquired in a private acquisition by Madison Dearborn. Two years later in 1999, with 354 stores, Tuesday Morning again went public and has been publicly-traded ever since. Tuesday Morning currently trades on the NASDAQ under the trading symbol TUES. In addition to its stores, the Debtors also operate a primary distribution facility in Dallas, Texas (the “Dallas Distribution Center”) and a second distribution facility in Phoenix, Arizona (the “Phoenix Distribution Center” and together with the Dallas Distribution Center, the “Distribution Centers”). The Debtors’ corporate offices are located in Dallas, Texas.

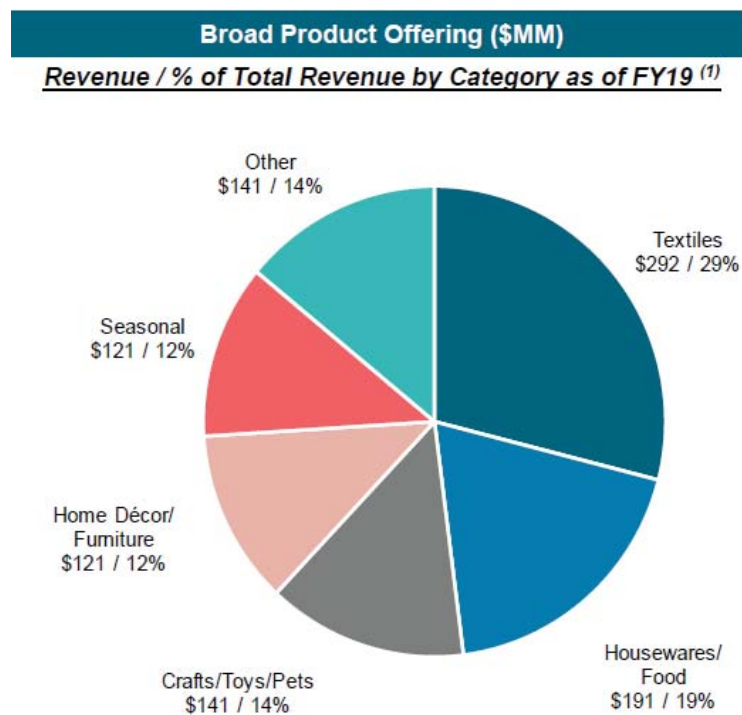


B. The Debtors' Business Operations

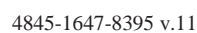
11. The Debtors operate one of the premier off-price retailers in the U.S. and specialize in selling high-quality products at prices generally below the prices in department stores, specialty shops, and online retailers. The Debtors' in-store inventory generally falls within the following key categories: upscale home textiles, home furnishings, housewares, gourmet food, toys, and seasonal décor. The Debtors' revenues come from direct in-store sales.

i. The Debtors' Business Model

12. The Debtors' business model is focused on making opportunistic inventory purchases from various sources including manufacturers, closeout sellers, and other retailers, and re-selling the inventory at discount prices. The Debtors are known in the industry as a reliable outlet for manufacturers, distributors, and other retailers who need to sell excess inventory resulting from manufacturing overruns, bankruptcies, order cancellations, or other unanticipated circumstances. The Debtors also direct-order certain of their products from manufacturers or secondary distributors.



14. As of January 1, 2020, the Debtors operated 705 stores in 40 states. The Debtors also have Distribution Centers in Phoenix and Dallas. The Debtors' largest store concentrations are in Texas (109), Florida (65), California (57), Virginia (34), Georgia (33), and North Carolina (29). The Debtors also operate 10 or more stores in each of the following states: Alabama, Arkansas, Arizona, Colorado, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, and Washington.



15. Through the Chapter 11 Cases, the Debtors intend to close and liquidate at least 133 underperforming locations and close the Phoenix Distribution Center.

iii. The Debtors' Supply and Distribution Chain

16. The Debtors have historically sourced approximately 80% of their inventory from U.S. vendors and the remaining 20% from foreign vendors. As an off-price retailer, the majority of the Debtors' inventory acquisitions are opportunistic. However, the Debtors have cultivated long-standing relationships with many key vendors and are at the top of their vendors' list for buyers in off-price transactions. The Debtors also direct-source a smaller percentage of their inventory from certain vendors. The Debtors' expert merchant team is responsible for keeping and maintaining relationships with key vendors and related parties. The Debtors' relationships with their key vendors, as well as the Tuesday Morning reputation in the market as a preferred off-price inventory buyer, is crucial to the Debtors' ongoing success.

17. Once inventory has been purchased, the Debtors rely on their distribution chain to facilitate inventory deliveries in a timely and cost-effective manner. In addition to the Debtors' two Distribution Centers in Dallas and Phoenix, the Debtors also contract with various third-party logistics providers (the "3PL Providers") that provide transportation and warehousing services, including 15 primary pool-point locations throughout the U.S. In recent years, approximately 40% of the Debtors' inventory has been shipped to and distributed through the Debtors' Distribution Centers and the remaining 60% has been shipped and distributed through 3PL Providers.

18. One of the Debtors' key initiatives in recent years has been improving supply-chain efficiency. Improving efficiency allows the Debtors to reduce costs and the time between inventory purchases and in-store placement. The Debtors' prepetition improvements in this area have further strengthened relationships with suppliers by simplifying the purchase and acquisition process and

incentivizing the Debtors' suppliers to come to the Debtors first to liquidate excess inventory. The Debtors anticipate that the planned reduction in store count will create further supply-chain efficiencies.

iv. The Debtors' Peak Sales and Distribution Seasons

19. Like many retailers, the Debtors' peak sales season generally occurs in the quarter ending in December. During the peak selling season, the Debtors experiences strong revenues that substantially exceed the Debtors' fixed and variable costs. The Debtors also have a peak distribution season which typically spans from June through November. During the peak distribution season, the Debtors are focused on sourcing, shipping, and warehousing key inventory to supply the increased customer demand during the peak selling season.

v. The Debtors' Cost Structure

20. Like most businesses, the Debtors' cost structure is comprised of certain fixed and variable costs. The Debtors' largest expense categories are employee-related costs, inventory costs, the costs of shipping and delivering inventory, and costs associated with the Debtors' real estate leases and similar arrangements. Other key expense categories include taxes, advertising, insurance, and other miscellaneous items. Due to the seasonal nature of the retail industry, the Debtors' costs fluctuate in certain key categories depending on the time of year.

1. Employee-Related Costs

21. The Debtors employ approximately 1,858 individuals on a full-time basis and 7,151 individuals on a part time basis. A majority of the Debtors' employees work at the Debtors' stores and a substantial number work at the Distribution Centers and the Debtors' corporate office. During the Debtors' peak sales season in November and December, the Debtors typically increase their employee headcount. Similarly, during the peak distribution season the Debtors typically

increase their employee headcount. The Debtors satisfy these seasonal needs by hiring a combination of part-time employees and temporary staff that are typically sourced through a staffing agency.

22. In addition to paying employee wages and salaries, the Debtors also contribute to a number of employee benefit plans providing medical, pharmacy, and other ancillary benefits to qualifying employees. The Debtors' payroll and other benefit obligations for their employees constitute one of the Debtors' largest expense categories.

2. Lease-Related Expense

23. Another of the Debtors' largest expense categories is the cost of leasing and otherwise renting space at the stores and the Phoenix Distribution Center.² The Debtors' average monthly lease obligations are approximately \$10 million per month. As previously discussed, the Debtors intend to close at least 133 underperforming locations. Those closures and the related reduction in monthly lease expenses will result in considerable cost savings for the Debtors business on a go-forward basis.

3. Inventory and Distribution Costs

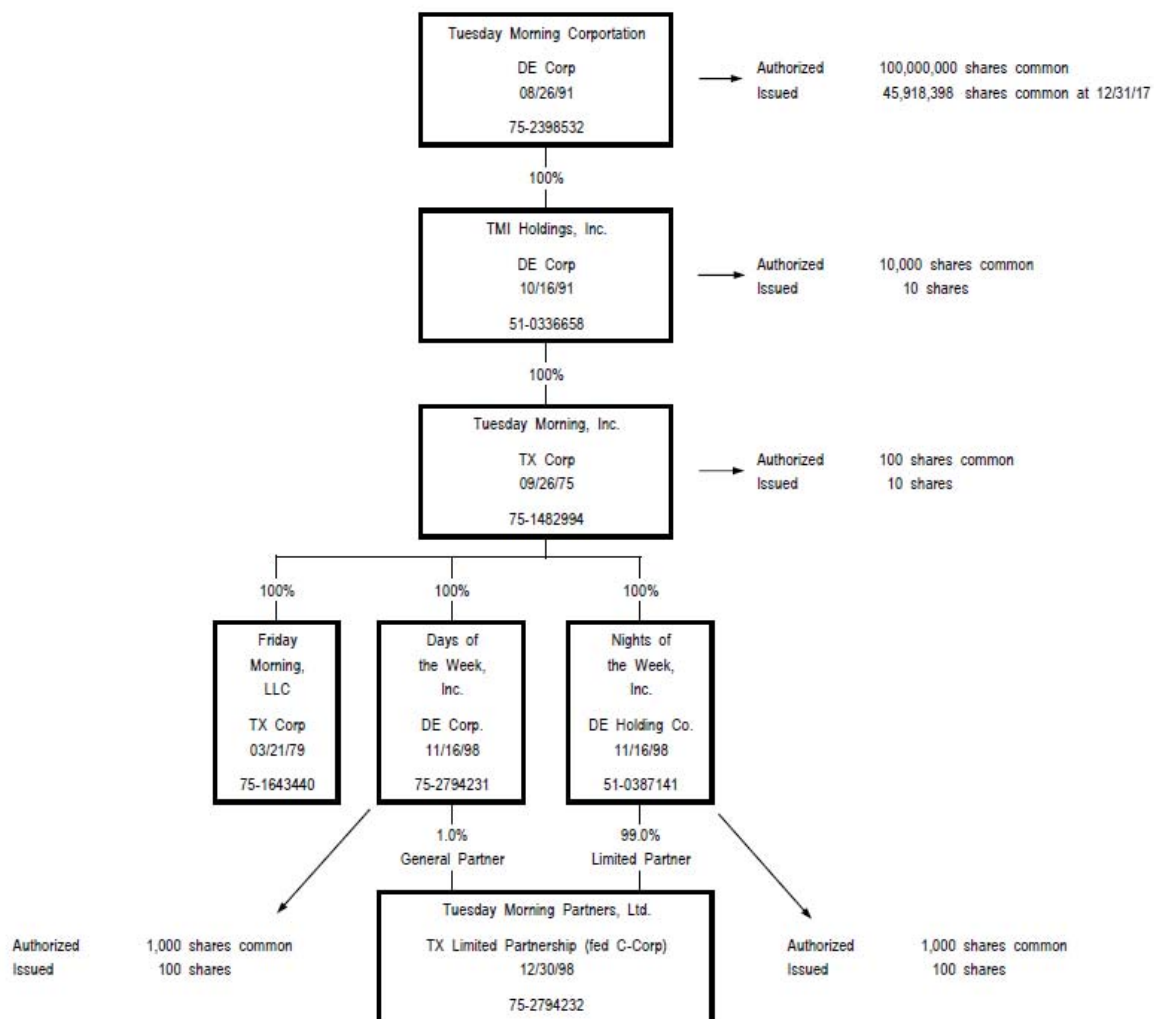
24. Other than employee-related costs and lease expenses, the Debtors' most significant expenses are the costs of acquiring and transporting inventory.

² The Debtors own their Dallas Distribution Center and the corporate headquarters.

II. The Debtors' Prepetition Corporate and Capital Structure

A. The Debtors' Corporate Structure and Common Stock

25. The chart below depicts the Debtors' current corporate structure. A brief summary of the operations of each of the Debtors is attached hereto as **Exhibit B**. The common stock in Debtor Tuesday Morning Corporation is traded on the NASDAQ under the symbol "TUES." As of the Petition Date, there were approximately 48 million outstanding shares of Tuesday Morning



common stock.

B. The Debtors' Key Assets

26. The Debtors' principal balance sheet assets are inventory, real property, and equipment. The Debtors own the real property, building, and equipment relating to the Dallas Distribution Center and their corporate offices in Dallas, Texas. The Debtors' other assets include cash, furniture, intellectual property, and other miscellaneous property. Because most of the Debtors' customer transactions are contemporaneous transactions using cash, check, and debit or credit cards, the Debtors do not have significant accounts receivable aside from credit card receivables. The Debtors also estimate that as of the end of fiscal 2019 they had net operating losses ("NOLs") and other tax credits in the amount of approximately \$100 million. The Debtors further estimate that they may generate additional NOLs, disallowed interest carryforwards, or other tax attributes in the 2020 and 2021 fiscal years (NOLs, together with certain other tax attributes, the "Tax Attributes"). These Tax Attributes may provide the potential for material future tax savings (including in post-emergence years) or other tax structuring possibilities in these Chapter 11 Cases.

C. The Debtors' Funded Debt Obligations

27. Tuesday Morning, Inc., as lead borrower, and each of the remaining Debtors, as guarantors,³ JPMorgan Chase Bank, N.A. ("JPM" or the "Prepetition Agent"), as administrative agent, JPM, Bank of America, N.A. ("BOA"), and Wells Fargo Bank, N.A. ("Wells" and together with JPM and BOA, the "Prepetition Secured Lenders"), as lenders, are party to that certain Credit Agreement originally dated as of August 18, 2015 and amended as of January 29, 2019 (as amended, the "Prepetition Credit Agreement"), which provides for a senior secured asset based

³ Each of the Debtors are parties, together with JPM, to that certain Guarantee and Collateral Agreement dated as of August 18, 2015 (the "Prepetition Guarantee"), pursuant to which the Debtors guaranteed the applicable Debtors' obligations under the Prepetition Credit Agreement.

revolving credit facility in an amount up to \$180,000,000 (collectively, the “Prepetition Revolving Credit Facility”). As of the Petition Date, total funded obligations under the Prepetition Revolving Credit Facility totaled \$47,947,700, including \$8,823,449 in letters of credit.

28. The Debtors’ obligations under the Prepetition Credit Agreement and the Prepetition Guarantee are secured by a first priority lien on, *inter alia*, the Debtors’ accounts receivable, cash, inventory, insurance, and general intangibles. The Debtors’ obligations under the Prepetition Credit Agreement and the Prepetition Guarantee are not secured by the Debtors’ owned real property, including the real property and improvements associated with the Dallas Distribution Center and the Debtors’ Corporate Offices.

29. On May 14, 2020, the Debtors entered into a limited forbearance agreement (the “Forbearance Agreement”) with the Prepetition Secured Lenders. The Prepetition Secured Lenders agreed to not exercise remedies under the Prepetition Credit Agreement and applicable law through May 26, 2020, based on an event of default resulting from the Debtors suspending their business operations and other events of default that may arise as a result of failing to meet certain obligations under the Prepetition Credit Agreement. Pursuant to the Forbearance Agreement, the Prepetition Secured Lenders permanently reduced the commitment from \$180 million to \$130 million and required certain additional prepetition payments, among other terms.

D. Prepetition Unsecured Obligations to Vendors and Landlords

30. In addition to the Debtors’ secured debt obligations under the Prepetition Revolving Credit Facility, the Debtors also owe significant unsecured debt obligations to many of their vendors and landlords. The Debtors estimate that various vendors, including merchandise vendors, freight carriers, and other providers of goods and services are owed in excess of \$91 million. The

Debtors also failed to remit a substantial portion of their April and May rent obligations and owe in excess of \$16 million to their various landlords.

III. Events Leading to Bankruptcy

31. The key driver for the filing of the Debtors' Chapter 11 Cases is the COVID-19 pandemic and its related fallout. The pandemic and related efforts to contain it have significantly affected consumer behavior and employee morale due to heightened health and safety concerns in customers, employees, and the general public. In March 2020, all of the Debtors' stores, along with the Debtors' Distribution Centers, the Debtors' Corporate Offices, and critical components of the Debtors' distribution chain, including certain facilities operated by the Debtors' 3PL Providers, were closed due to a combination of health and safety concerns for employees and customers, supply chain disruptions, and government rules and regulations intended to stop or otherwise slow the spread of COVID-19. In light of the COVID-19 related disruptions to the Debtors' operations, in March 2020 the Debtors determined it was necessary to close all of their facilities.



32. The impact of COVID-19 on the Debtors', their employees, their customers, and many of their vendors and other service providers has imposed unprecedented operational and

financial strains on the Debtors and their business. The Debtors do not have an online presence and rely exclusively on in-store sales and the fallout from COVID-19 resulted in a total cessation of new revenue beginning in March 2020. To address this precipitous decline in revenue the Debtors immediately began to implement cost-saving measures and to seek alternative sources of liquidity.⁴

33. Despite the Debtors' best efforts to control costs, conserve cash, and obtain additional funding, the impact of the pandemic has been devastating to the Debtors' financial status by cutting off the Debtors' revenues, diminishing the Debtors' assets, and significantly increasing the Debtors' liabilities.

A. Employee Furloughs

34. The near-cessation of business operations resulting from COVID-19 substantially decreased the Debtors' labor demands, and the Debtors furloughed most of their store employees, Distribution Center employees, and many employees employed in the Debtors' Corporate Offices. By furloughing over 95% of their employees, the Debtors were able to materially reduce their operating costs. However, the Debtors have still incurred, and continue to incur, significant COVID-19 related employee costs without the benefit of offsetting sales revenues. For example, even though the Debtors ceased operations during the month of March, the Debtors determined that it was critical to pay benefits for many of their employees through the end of March. The Debtors have also continued to incur costs and obligations in connection with various employee benefit plans, including insurance premiums, claims administration, and other administrative expenses, in order to keep the infrastructure in place to allow the Debtors' to quickly recommence operations.

⁴ Photo credit: <https://www.firstinsight.com/covid-19>.

B. Lease Issues

35. Rent on the majority of the Debtors' leases comes due at the commencement of each month and is applied to the month in which the rent is paid – i.e. a March 1 rent payment covers the Debtors' rent obligation for the month of March. The Debtors were current on their March lease obligations when the March closures occurred. By April 1, 2020, when the Debtors' April rent obligations generally became due, the Debtors had closed all of their leased locations.⁵ Moreover, by April 1, 2020, the Debtors, like many other retail businesses, were in a severe liquidity crisis due to the store closings and associated drop in revenues.

36. In an effort to maintain lines of communication with their landlords while reserving their rights under the leases and other applicable law, in early April, the Debtors reached out to their landlords and proposed the entry into consensual agreements that would allow the Debtors to defer payment of rent until some period after the Debtors were able to re-open and re-commence normal business operations. Upon receipt of negative feedback from several landlords regarding the proposed abatement, the Debtors offered to pay 50% of April rent in full satisfaction of April rent obligations to the landlords of 460 locations. The Debtors were able to reach agreements with 54 of their landlords regarding rent abatement. The Debtors were unable to reach a formal agreement with the remaining landlords and many of the landlords have sent notices of default and taken more aggressive measures such as filing lawsuits, attempting to lock the Debtors' out, or taking steps to terminate leases. This mounting pressure from landlords has become more intense leading up to the Petition Date. While the Debtors have not made the vast majority of their April

⁵ The Debtors believe they may not be obligated to remit certain rental obligations, or otherwise are entitled to legal protections or compensation with respect to rent due to the application of force majeure provisions in the leases and/or other applicable legal doctrines such as intervening impossibility, frustration of purpose, or takings.

and May rent payments, the Debtors have made full or partial payments of April and/or May rent to over 90 landlords.

C. Vendor Outreach

37. In an effort to conserve liquidity in the face of the COVID-19-related revenue losses, the Debtors have ceased a majority of new orders and new inventory acquisitions. The Debtors also substantially ceased payments to vendors on outstanding unpaid invoices. To preserve their relationships with key vendors the Debtors have continued to maintain lines of communication to the extent possible to keep their vendors informed of the Debtors' circumstances and to advise them that the Debtors are not making payments at this time in order to secure liquidity. The Debtors need greater visibility and need to get back to normal operations prior to making any payments.

D. Consideration of Emergency Funding Sources

38. In an effort to blunt the economic effects of the COVID-19 pandemic and the efforts to contain it, the U.S. Congress passed, and the President signed, the Coronavirus Aid, Relief, and Economic Security Act in late March 2020 (the "CARES Act"). Subsequently, the U.S. Federal Reserve announced the establishment of the Main Street Lending Program (the "MSLP") to support lending to small and medium-sized businesses.⁶ The Debtors have analyzed the requirements for borrowing under the MSLP and have determined that they are not able to satisfy certain of the requirements, and the limited available funding under the MSLP based on the Debtors' financials would be insufficient to satisfy the liquidity shortfall that the Debtors currently face.

⁶ The size of the Debtors' operations excluded them from participating in the Paycheck Protection Program administered by the Small Business Administration under the CARES Act.

E. Post-COVID-19 Reopening Process

39. On April 24, 2020, the Debtors reopened 140 locations with reduced operating hours. The Debtors have continued re-commencing operations on a rolling basis with modified operating hours as appropriate. Currently, the Debtors are operating 563 of their stores. The Debtors' current operations and procedures have been modified to address COVID-19 related concerns and to comply with applicable laws, government instructions, and best practices to promote the safety of customers and employees.

40. The Debtors intend to continue the reopening process as appropriate during the course of these Chapter 11 Cases and anticipate that all stores will reopen by June 15. Financial and economic experts anticipate that even as the COVID-19-related government restrictions on businesses and individuals are lifted, the economic recovery may be uneven and that business revenues could remain at relatively diminished levels for a protracted period of time. However, sales at reopened locations have been more robust than the Debtors anticipated, and in fact, since reopening, same-store sales have been 10% higher than sales during the same period in 2019. The better-than-expected sales have made the Debtors cautiously optimistic about the Company's ability to weather the pandemic and emerge from these Chapter 11 Cases well-positioned for continued success. The Debtors also anticipate that the recent economic distress could result in a greater-than-average pipeline of available off-price inventory and increased sales activity in their business segment. While challenges remain, the Debtors are committed to preserving value for all of their stakeholders through this process.

IV. Proposed Debtor-In-Possession Financing and Restructuring Alternatives

41. To address the COVID-19-related damage suffered by the Debtors and to preserve the going-concern value of their business, the Debtors are seeking relief from this Court to implement a reorganization or sale of the business in a manner that will be most beneficial to the

Debtors' various stakeholders. In furtherance of those objectives, the Debtors seek Court authorization to obtain debtor-in-possession financing. The Debtors require immediate access to additional liquidity to ensure that they are able to continue operating their business during these Chapter 11 Cases and thereby maximize the value of their estates.

A. DIP Financing

42. During March 2020, when it became apparent that the Debtors would likely need to close all of their operations and suffer the resultant significant decrease in revenue, the Debtors retained Alix and Haynes and Boone, LLP ("H&B") to advise them regarding the available options to preserve the value of their business and to weather the unprecedented challenges posed by the COVID-19 crisis. Shortly after retaining Alix and H&B, the Debtors engaged in discussions with the Prepetition Agent to discuss the Debtors' financial circumstances and to explore additional financing options.

43. In connection both with the Debtors' discussions with the Prepetition Agent and the effort to explore alternative sources of capital, the Debtors engaged Miller Buckfire, LLC ("Miller Buckfire") as their investment banker to assist in discussions and to explore alternative financing sources and alternative restructuring options. As more fully discussed in the *Declaration of James Doak in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 (I) Authorizing Debtors to (A) Use Cash Collateral on a Limited Basis and (B) Obtain Postpetition Financing on a Secured, Superpriority Basis, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (the "Doak Declaration"), the Debtors, with the assistance of their advisors, and in particular Miller Buckfire, undertook a comprehensive marketing process to solicit proposals to raise additional capital, including non-bankruptcy related financing as well as debtor-in-possession financing.

44. The Debtors also engaged in discussions with the Prepetition Agent and have reached an agreement pursuant to which the Prepetition Lenders will provide DIP financing to the Debtors. The terms of the proposed DIP financing are more fully described in the DIP Motion, in the Doak Declaration, and in Exhibit A hereto. The proceeds of the DIP Facility, together with the additional DIP proceeds that the Debtors may obtain through a second DIP loan, are sized to support the Debtors through the anticipated pendency of these Chapter 11 Cases.

45. Through the marketing process, the Debtors identified a number of prospective lenders that have expressed interest in providing DIP financing secured by senior liens in the Debtors' owned real property, including the real property and improvements associated with the Dallas Distribution Center and the Debtors' corporate offices (collectively, the "Unencumbered Property"). The Debtors are near terms on an agreement to receive DIP financing secured by senior liens in the Unencumbered Property. Once an agreement has been reached, the Debtors will file an appropriate motion with the Court.

B. Store Closure Sales

46. The Debtors' board and management have considered a number of strategic alternatives to address the Debtors' financial distress. As part of their analysis, the Debtors and their advisors have conducted a company-wide review of operational and sales performance and have identified an initial list of 133 locations that are relatively less productive. Through these Chapter 11 Cases, the Debtors intend to liquidate the existing inventory and other assets at less productive locations through store closing sales (the "Store Closing Sales"). After completing the Store Closing Sales, the Debtors intend to reject or otherwise assign the leases associated with the applicable underperforming locations. In addition to generating additional cash flow through the Store Closing Sales, the Debtors believe that the closures will result in additional cost savings in

the form of reduced rent, labor, and other administrative costs and will facilitate the further optimization of the Debtors' distribution chain.

C. Other Restructuring Alternatives

47. As these Chapter 11 Cases progress, the Debtors will continue to analyze and pursue an appropriate exit strategy and intend to investigate the possibility of confirming a chapter 11 plan of reorganization that would allow the Debtors to emerge as reorganized debtors. The Debtors, with the assistance of their professionals, will also consider other alternatives, including a sale of substantially all their assets through a sale under Bankruptcy Code § 363.

V. Evidentiary Basis for Relief Requested in the First Day Motions

48. Contemporaneously with the filing of this Declaration, the Debtors have filed a number of First Day Motions seeking relief to minimize the adverse effects of the commencement of these Chapter 11 Cases on their business and to ensure that their reorganization strategy can be implemented with limited disruptions to operations. Approval of the relief requested in the First Day Motions is critical to the Debtors' ability to continue operating their business with minimal disruption and thereby preserve value for the Debtors' estates and various stakeholders. I have reviewed each of the First Day Motions and I believe that the relief sought therein is necessary to permit an effective transition into chapter 11. I believe that the Debtors' estates would suffer immediate and irreparable harm absent the ability to enter into the DIP ABL Credit Agreement, make certain essential payments, and otherwise continue their business operations as sought in the First Day Motions. A description of the First Day Motions, the relief sought therein, and the facts in support of the same is set forth in **Exhibit A** attached hereto and incorporated herein by reference.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing *Statement of Background Information and Declaration of Barry Folse in Support of Debtors' Chapter 11 Petitions and First Day Motions* is true and correct.

Dated: May 27, 2020

By: /s/ Barry Folse.
Name: Barry Folse
Title: Managing Director, AlixPartners, LLP

EXHIBIT A

Evidentiary Support for First Day Motions

A. The DIP Motion

1. As part of the Debtors’¹ First Day Motions, the Debtors filed the *Debtors’ Emergency Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 (I) Authorizing Debtors to (A) Use Cash Collateral on a Limited Basis and (B) Obtain Postpetition Financing on a Secured, Superpriority Basis, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (the “DIP Motion”). Through the DIP Motion, the Debtors are requesting entry of interim and final orders seeking the following:

- (i) authorizing the Debtors to obtain a superpriority secured debtor-in-possession revolving credit facility of up to \$100,000,000 (the “DIP Facility,” the loan commitments thereunder based on availability and subject to terms acceptable to the DIP Lenders, as provided in the DIP Documents (as defined below), this Interim Order, and the Final Order (as defined below), as applicable, the “DIP ABL Loan Commitments”) composed of (A) an initial amount to be available upon entry of this Interim Order in an amount not to exceed \$50,000,000² (the “Interim DIP ABL Loans”) and (B) the remaining DIP ABL Loan Commitments, to be available upon entry of the Final Order (each funding of the revolving loans made under the DIP Facility, including the Interim DIP ABL Loans, collectively, the “DIP ABL Loans”), and each such funding shall be deemed to be a DIP ABL Loan advance under the DIP Documents, pursuant to the terms and conditions set forth herein and in that certain *Senior Secured Super Priority Debtor-in-Possession Credit Agreement* dated as of May 27, 2020 (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the “DIP ABL Credit Agreement”),³ by and among the Borrowers (as defined therein), the Guarantors (as defined therein), JPMorgan Chase Bank, N.A., as administrative agent (in such capacity, the “DIP Agent”), for itself and for and on behalf of the other lenders party thereto (collectively, including the DIP Agent, the “DIP Lenders”), and all other related agreements and documents;
- (ii) authorizing the Debtors to execute, deliver, and perform under the DIP ABL Credit Agreement and the other Loan Documents (as defined in the Prepetition Credit Agreement, but as may be modified by the DIP ABL Credit Agreement), the DIP Orders (as defined below), and all other related agreements and documents creating,

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Folsie Declaration and the applicable First Day Motion.

² Exclusive of outstanding letters of credit and applicable reserves.

³ A copy of the DIP ABL Credit Agreement is attached hereto as Exhibit 1 and incorporated herein as if set forth *in haec verba*.

evidencing, or securing indebtedness or obligations of any of the Debtors to the DIP Agent and the DIP Lenders on account of the DIP Facility or granting or perfecting liens or security interests by any of the Debtors in favor of and for the benefit of the DIP Agent, for itself and for and on behalf of the DIP Lenders, on account of the DIP Facility, as same now exists or may hereafter be amended, modified, supplemented, ratified, assumed, extended, renewed, restated, or replaced, and any and all of the agreements and documents currently executed or to be executed in connection therewith or related thereto, by and among any of the Debtors, the DIP Agent, and the DIP Lenders, in form and substance acceptable to the Agent, the Lenders, the DIP Agent and the DIP Lenders, the terms of which are referenced and incorporated herein as if set forth *in haec verba* (collectively, the “DIP Documents”);

- (iii) approving the terms and conditions of the DIP ABL Credit Agreement and the DIP Documents;
- (iv) authorizing the Debtors to use Cash Collateral (as defined below) of the DIP Agent, for itself and for and on behalf of the DIP Lenders, and JPMorgan Chase Bank, N.A., in its capacity as administrative agent (in such capacity, the “Prepetition Agent,” and in such capacity and in its capacity as the DIP Agent, collectively, the “Agent”) for itself and for and on behalf of the other lenders (collectively, including the Prepetition Agent, the “Prepetition Lenders,” and together with the DIP Lenders, collectively, the “Lenders”) under that certain *Credit Agreement* dated as of August 18, 2015, by and among, among others, the Debtors, the Prepetition Agent, and the Prepetition Lenders (as amended from time to time, the “Prepetition Credit Agreement”) in accordance with the terms and conditions set forth in the DIP Orders, including the Budget (as defined in the DIP Orders);
- (v) modifying the automatic stay of section 362 of the Bankruptcy Code (the “Automatic Stay”) to the extent provided herein;
- (vi) granting continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected first-priority priming liens on and security interests in the DIP Collateral (as defined below) to the DIP Agent, for itself and for and on behalf of the DIP Lenders, to secure all obligations and indebtedness of any of the Debtors to the DIP Agent and the DIP Lenders under the DIP Documents (the “DIP Obligations”);
- (vii) granting automatically perfected liens, security interests, and other adequate protection to the Prepetition Agent, for itself and for and on behalf of the Prepetition Lenders, with respect to their interests in the DIP Collateral and the Prepetition Lenders’ Collateral (as defined below);
- (viii) authorizing the indefeasible transfer of Cash Collateral to and for the benefit of the Agent, for itself and for and on behalf of the Lenders, as set forth herein;

- (ix) authorizing and directing the Debtors to transfer, or in any event to be deemed to have transferred, all cash and collections and receipts of cash by the Debtors from any source, including accounts, sale of property, loan advances (including any Qualifying DIP RE Facility (but not including DIP ABL Loan advances by the DIP Agent)), or refunds (excluding amounts reserved for the Carve-Out) to the Agent on each business day, which funds shall be applied, in each case, against the Prepetition Secured Indebtedness, which shall be deemed to have been refinanced and re-advanced as a DIP ABL Loan up to all outstanding Prepetition Secured Indebtedness (less an amount of \$500,000 which shall not be paid down by any source (including the sweeping procedure or Qualifying DIP RE Facility described herein and any advances thereunder) unless otherwise determined by Agent with a notice sent to the Debtors, but rather shall be retained by the Lenders and not subject to any liens under the DIP Facility or otherwise (the “Retained Prepetition Lenders’ Claim”));
- (x) scheduling the Final Hearing (as defined below) within thirty (30) days of the entry of the Interim Order and approving notice with respect thereto in accordance with Bankruptcy Rule 4001(c)(2); and
- (xi) waiving any applicable stay (including under Bankruptcy Rule 6004) with respect to the effectiveness and enforceability of the Interim Order and providing for the immediate effectiveness of the Interim Order.

2. The DIP Facility contemplates a gradual “roll-up” of the Prepetition Secured Indebtedness and provides the Debtors with the necessary liquidity to continue operating their business and fund the expenses of these Chapter 11 Cases through a revolving credit facility of up to \$100,000,000. Specifically, the DIP Documents provide that the Debtors shall transfer all cash and collections and receipts of cash by the Debtors from any source, including accounts, sale of property, loan advances, or refunds (excluding amounts reserved for the Carve-Out) to the Agent on each business day, which funds shall be applied, in each case, against the Prepetition Secured Indebtedness, which shall be deemed to have been refinanced and re-advanced as a DIP ABL Loan up to all outstanding Prepetition Secured Indebtedness (less an amount of \$500,000 which shall not be paid down unless authorized by the Agent).

3. The roll-up feature of the DIP Facility is justified under the circumstances because, among other things: (i) the Prepetition Lenders are consenting to the use of Cash Collateral; (ii)

the Prepetition Lenders, in their capacity as DIP Lenders, are agreeing to provide postpetition liquidity through the DIP Facility; and (iii) the roll-up will result in a decrease in aggregate Prepetition Secured Indebtedness.

4. The DIP Lenders require payment of an upfront fee equal to 2.00% of the stated principal amount of the DIP Facility payable to the DIP Lenders at the time of the closing of the DIP Facility (the “Upfront Fee”), fee equal to 0.50% per annum on daily average unused amount of the DIP Facility payable monthly in arrears (the “Unused Commitment Fee”), and customary letter of credit fees (the “Letter of Credit Fees” and together with the Upfront Fee and the Unused Commitment Fee, the “DIP Fees”).

5. The interest rate under the DIP Documents is, either (at the Debtors’ option), (a) a 3-month LIBO Rate (2.0% floor) + 3.00% per annum or (b) CBFR (2.0% floor) + 2.00% per annum, payable on each applicable Interest Payment Date, in cash, provided that no Interest Period may extend beyond the Maturity Date.

6. The DIP Documents also contain a number of Milestones, including (i) Milestones relating to the Qualifying DIP RE Facility, (ii) Milestones relating to the Contingent Liquidation Motion, and (iii) Milestones relating to the Plan/APA Milestone Date. I have reviewed and am familiar with the Milestones and I believe that the Milestones are reasonable under the circumstances. Based on my understanding of the Debtors’ finances, projections, and budget, I believe that the Debtors will be able to comply with the Milestones.

7. Though the DIP Motion, the Debtors are also seeking approval of Adequate Protection Liens and Adequate Protection Superiority Claims for the Prepetition Lenders. Under the circumstances and based on the Prepetition Agent’s willingness to consent to the Debtors’ use

of Cash Collateral, I believe that the Adequate Protection Liens and Adequate Protection Superpriority Claims are reasonable.

8. I understand that the Debtors have received a number of proposals to provide DIP financing secured by senior liens in the Debtors' real property and improvements associated with the Dallas distribution center and the Debtors' corporate office (the "Unencumbered RE"). The Debtors are near terms on an agreement to receive DIP financing secured by senior liens in the Unencumbered Property. Once an agreement has been reached, the Debtors will file an appropriate motion with the Court.

9. I believe that the Debtors' execution of the DIP Financing Agreement is an exercise of sound business judgment that warrants the Court's approval. The Debtors, in consultation with their advisors, undertook a detailed investigation of the Debtors' projected financing needs during the pendency of the Chapter 11 Cases, and determined that the Debtors would require post-petition financing to support their operational activities through the completion of the Chapter 11 process. Accordingly, the Debtors negotiated the DIP Facility with the DIP Lenders in good faith, at arm's-length, and with the assistance of outside counsel, to obtain the required post-petition financing on the best terms available to the Debtors.

10. Absent the DIP Lenders' willingness and ability to fund the DIP Facilities, the Debtors would likely run out of cash and would be forced to shut down their operations. Further, the DIP Facility provides a definite financing arrangement, which is particularly important in light of third-party lender's unwillingness to extend financing and the Debtors' need to fund ongoing operations. I believe that the certainty afforded by the DIP Facility—with respect to both its consensual nature as well as the likelihood of closing and the DIP Lender's support of the Debtors' restructuring efforts—is an additional reason to authorize it.

11. The Debtors' need to obtain credit pursuant to the DIP Facility is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to maintain business relationships with landlords, vendors, suppliers and customers, to pay its employees, and to otherwise finance operations requires the availability of capital from the DIP Facility, the absence of any of which would immediately and irreparably harm the Debtors, their estates, creditors and equity holders, and the possibility for a successful reorganization. The Debtors do not have sufficient available sources of working capital and financing to operate their business, provide adequate protection as required by the DIP Lenders for their consent to use Cash Collateral (as described in more detail below), maintain their properties and pay the administrative costs of these Chapter 11 Cases without the DIP Facility and authorized use of Cash Collateral.

12. Given their current financial condition, financing arrangements and capital structure, I believe that the Debtors are unable to obtain adequate financing from sources other than the DIP Lenders or on terms more favorable than the DIP Facility. The Debtors have been unable to obtain unsecured credit (other than trade credit) allowable under Bankruptcy Code § 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain adequate credit: (a) having priority over that of administrative expenses of the kind specified in Bankruptcy Code §§ 503(b), 507(a), and 507(b); (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien (other than with respect to the Debtors' Unencumbered RE); or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. I do not believe that adequate financing on a post-petition basis is otherwise available without granting the DIP Agent, for the benefit of itself and the DIP Lenders (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired

tangible and intangible property with the priorities set forth in the Interim Order, (2) Superpriority Claims and liens, and (3) the other protections set forth in the DIP Motion.

13. The DIP Fees, interest rate, and other provisions of the DIP Documents are reasonable under the circumstances represent the most favorable terms to the Debtors on which the DIP Lenders would agree to make the DIP Facility available. The Debtors considered the DIP Fees and interest rate when considering whether the DIP Facility constituted the best terms on which the Debtors could obtain the post-petition financing necessary to continue their operations and prosecute the Chapter 11 Cases. I believe that agreeing to payment of the DIP Fees and interest rate is in the best interests of the Debtors' estates, creditors and other parties in interest.

14. I believe that under the circumstances the other terms and conditions of the DIP Facility are fair and reasonable. Additionally, the proceeds under the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code and no consideration is being provided to any party to the DIP Facility other than as described herein.

15. I believe that the Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested in the DIP Motion, including authorizing the Debtors to use the Cash Collateral and to borrow funds under the DIP Facility, is not granted promptly. The commencement of the Chapter 11 Cases has already and will continue to significantly increase the demands on the Debtors' free cash as a result of, among other things, the costs of administering the Chapter 11 Cases and addressing key constituents' concerns regarding the Debtors' financial health and ability to continue operations in light of the Chapter 11 Cases. Indeed, unless the Court approves the Debtors' interim access to the DIP Facility funds, it is likely that the Debtors will run out of cash in the near term. Accordingly, the Debtors have an immediate need for access to liquidity to, among other things, permit the orderly continuation of the operation of their business,

to make payroll, and to satisfy other working capital and operation needs, all of which are required to preserve and maintain the Debtors' going concern value for the benefit of all parties in interest.

16. Accordingly, the Debtors, with the advice of their professional advisors, have determined in their sound business judgment that the DIP Facility provides a greater amount of financing on more favorable terms than any other reasonably available alternative. As noted above, I believe that the DIP Facility will provide the Debtors with access to the necessary liquidity, which the Debtors and their advisors have determined should be sufficient to support the Debtors' ongoing operations and through the completion of the proposed sale process and a reasonable period thereafter to conclude these proceedings in an orderly fashion. Thus, I believe that entering into the DIP Financing Agreements constitutes an appropriate and sound exercise of the Debtors' business judgment and should be approved by the Court.

B. Pre-Petition Wage and Benefits Motion

17. The Debtors also filed *Debtors' Emergency Motion for an Order (I) Authorizing the Debtors to (A) Pay Certain Prepetition Employee Wages, Other Compensation, and Reimbursable Employee Expenses, (B) Pay Certain Prepetition Independent Contractor and Temporary Staff Obligations, and (C) Continue Employee Benefits Programs and (II) Granting Related Relief* (the "Wage and Benefits Motion"). In the Wage and Benefits Motion, the Debtors seek authority under Bankruptcy Code §§ 105(a), 507(a)(4) and 507(a)(5) and Rule 6003 of the Federal Rules of Bankruptcy Procedure to pay certain prepetition obligations owed to either Employees (defined below) or those who provide employee benefits, to honor and continue Employee Obligations (as defined in the Wage and Benefits Motion) and to authorize and direct financial institutions to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to prepetition Employee Obligations.

18. As more fully described in the Wage and Benefits Motion, the Debtors seek authority to pay the following aggregate amounts on account of prepetition Employee Obligations:

Prepetition Employee Obligations	Estimated Amount
Prepetition Wage Obligations	\$4,450,000
Prepetition Temporary Staff Compensation	\$25,000
Unremitted Payroll Taxes and Deductions	\$1,235,000
Prepetition Payroll Processing Fees	\$5,000
Prepetition Reimbursable Expenses	\$65,000
Prepetition PTO	\$10,000
Prepetition Employee Benefits Programs Expenses	TBD ⁴

19. As of the Petition Date, the Debtors employed approximately 1,790 employees on a full-time basis and 6,806 individuals on a part time basis (collectively, the “Employees”). The Employees are responsible for the ongoing business operations of the Debtors. The Employees’ skills, knowledge and understanding with respect to the Debtors’ operations are essential to the effective reorganization of the Debtors’ financial affairs.

20. In addition to the Employees, the Debtors retain specialized individuals to complete discrete projects and fulfill certain duties (the “Independent Contractors” and “Temporary Staff”). As of the Petition Date, the Debtors retained three Independent Contractors. Because the Debtors’ Stores and Distribution Centers were closed due to the COVID-19 pandemic, and because the

⁴ As discussed in more detail below, the Debtor’s Medical Plan and certain of its Supplemental Benefit Plans are self-funded. As a result, there is a delay period between a claim being incurred and being submitted to the Debtor. Therefore, the amount of prepetition claims attributable to Employee Benefits such as the Medical Plan is unknown at this time.

Debtors are not currently operating during their peak seasons, the Debtors currently have few Temporary Staff. Provided the Stores and Distribution Centers are operating at near historical levels when applicable peak seasons arrive, the Debtors anticipate that they will hire significant numbers of additional Temporary Staff in the ordinary course of the Debtors' normal business operations. The Independent Contractors and the Temporary Staff are critical to the overall operation of the Debtors' business.

i. Wage Obligations and Employee Reimbursements

21. In the ordinary course of business, the Debtors pay their Employees' wages, salaries, and other compensation (excluding compensation under the Benefits Programs) (collectively, the "Wage Obligations"). The Debtors estimate that the accrued and unpaid prepetition Wage Obligations owed to Employees total \$4,450,000 (the "Prepetition Wage Obligations"). The Debtors do not believe that the Prepetition Wage Obligations owed to any one employee exceed \$13,650.

22. Pursuant to the Wages and Benefits Motion, the Debtors seek authority to pay the Prepetition Wage Obligations, subject to a cap of \$13,650 per Employee, and to continue to pay Wage Obligations in the ordinary course of the Debtors' business on a postpetition basis.

ii. Independent Contractor and Temporary Staff Compensation

23. The Debtors rely on Independent Contractors and Temporary Staff in the ordinary course of business. The Independent Contractors and Temporary Staff provide a range of services that are critical to the Debtors' operations. As of the Petition Date, the Debtors estimate that they do not owe any amount to Independent Contractors for services rendered prior to the Petition Date (the "Prepetition Independent Contractor Compensation") but owe \$25,000 on account of services rendered prior to the Petition Date by Temporary Staff (the "Unpaid Temporary Staff Compensation").

24. Pursuant to the Wage and Benefits Motion, the Debtors seek authority to pay the Unpaid Temporary Staff Compensation. The Debtors do not believe the amount owed to any individual will exceed the statutory cap of \$13,650.

iii. Reimbursable Business Expenses

25. Prior to the Petition Date and in the ordinary course of business, the Debtors reimbursed certain Employees for certain business expenses incurred in the ordinary course of their employment. This includes expenses relating to, among other things, mileage reimbursements, cell phone reimbursements, and a variety of miscellaneous expenses (the “Reimbursable Expenses”).

26. It is my understanding that all of the Reimbursable Expenses were incurred on behalf of the Debtors in connection with employment by the Debtors and in reliance upon the understanding that such expenses would be reimbursed. As of the Petition Date, the total amount owed is estimated to be approximately \$65,000 of Reimbursable Expenses.

iv. Unpaid Payroll Taxes

27. By law, employers are required to withhold amounts from employees’ wages that are related to federal, state, provincial, and local income taxes, including social security, Medicare taxes, and unemployment insurance, for remittance to the appropriate taxing authorities (collectively, the “Payroll Taxes”). In the aggregate, the accrued amount and unremitted prepetition Payroll Taxes total approximately \$965,000. During each applicable pay period, the Debtors also routinely withhold other amounts from certain Employees’ gross earnings, including garnishments, child support, and deductions related to various Employee Benefits Programs (defined below) (collectively the “Deductions” and, together with the Payroll Taxes, the “Payroll Taxes and Deductions”). In the aggregate, the accrued and unremitted prepetition Deductions total approximately \$270,000.

28. Pursuant to the Wage and Benefits Motion, the Debtors seek authority to remit and/or fund all unpaid or unremitted prepetition Payroll Taxes and Deductions (the “Unremitted Payroll Taxes and Deductions”), which total \$1,235,000, and to continue to forward Payroll Taxes and Deductions to the applicable third-party recipients in the ordinary course of business on a postpetition basis.

29. The Debtors’ Payroll is disbursed by ADP, LLC (“ADP”). On average, the Debtors pay ADP approximately \$2,000 per month for its services (the “ADP Administration Fees”). As of the Petition Date, the Debtors estimate that they owe approximately \$5,000 in ADP Administration Fees. The Debtors also use Ultimate Software Group (“Ultipro”) for payroll planning, time-keeping, and disbursing Payroll Taxes and Deductions. On average, the Debtors pay Ultipro approximately \$82,000 per month for this service (the “UltiPro Administration Fees”) and together with the ADP Administration Fees, the “Payroll Processing Fees”). As of the Petition Date, the Debtors estimate they do not owe UltiPro for any accrued unpaid prepetition UltiPro Administration Fees. Pursuant to the Wage and Benefits Motion, the Debtors seek authority to pay all accrued unpaid prepetition Payroll Processing Fees (the “Prepetition Payroll Processing Fees”).

v. Paid Time Off and Other Benefits

30. The Debtors provide paid time off (“PTO”), paid sick leave (“Sick Leave”), and other miscellaneous paid leave (“Other Paid Leave” and, together with the PTO and Sick Leave, “Paid Leave”) as more fully described in the chart below:

Employee Classification	Sick Leave Policy	PTO Policy	Other Paid Leave⁵
Full-Time (Store)	48 hours of Sick Leave received annually on Jan. 1 (prorated for new hires). Up to 24 hours may be rolled over. No cash payout on termination.	80 hours of PTO received annually on Jan. 1 (prorated for new hires). No rollover. No cash payout on termination (unless required by state law).	Bereavement. (up to 3 days paid leave).
Part-Time (Store, Dist. Ctrs., and Corporate)	N/A	N/A	N/A
Full-Time (California)	48 hours of Sick Leave received annually on Jan. 1 (prorated for new hires). Up to 24 hours may be rolled over (72 hour cap). No cash payout on termination.	80 hours of PTO received annually on Jan. 1 (prorated for new hires). Rollover of unused PTO permitted (160 hour cap). Accrued and unused PTO cashed out at termination.	Bereavement. (up to 3 days paid leave).
Part-Time (California)	After 30 days of employment in California, Employees accrue 1 hour of Sick Leave for each 30 hours worked (48 hour cap). Sick Leave is not paid out on termination.	N/A	N/A
Full-Time Salaried (Dallas Dist. Ctr.)	48 hours of Sick Leave received annually. No cash payout on termination.	PTO received annually on Jan. 1 as follows: 12-36 months employed (80 hours) (prorated for new hires); 37-84 months employed (120 hours); 85+ months employed (160 hours). No rollover. Accrued and unused PTO forfeited on termination.	Bereavement; (up to 3 days paid leave); 4 floating holidays. ⁶
Full-Time Hourly (Dallas Dist. Ctr.)	48 hours of Sick Leave received annually. No cash payout on termination.	PTO received annually on Jan. 1 as follows: up to 60 months employed (80 hours) (prorated for new hires); 61-120 months employed (120 hours); 121+ months employed (160 hours). No rollover. Accrued and unused PTO paid at termination (contingent on providing 2 weeks' notice and termination not for cause).	Bereavement; (up to 3 days paid leave); 2 floating holidays.
Full-Time Salaried (Phoenix Dist. Ctr.)	1 hour of Sick Leave for each 30 hours worked (48 hour cap).	PTO received annually on Jan. 1 as follows: 12-36 months employed (80 hours) (prorated for new hires); 37-84 months employed (120 hours); 85+ months employed (160 hours). No	Bereavement. (up to 3 days paid leave); 4

⁵ Not all forms of paid leave are included in this chart, including workers' compensation leave and other forms of paid leave that may be statutorily mandated.

⁶ Floating holidays eligible for use for holidays not celebrated by the company.

Employee Classification	Sick Leave Policy	PTO Policy	Other Paid Leave ⁵
		rollover. Accrued and unused PTO forfeited on termination.	floating holidays.
Full-Time Hourly (Phoenix Dist. Ctr.)	1 hour of Sick Leave for each 30 hours worked (48 hour cap). No cash payout on termination.	PTO received annually on Jan. 1 as follows: up to 60 months employed (80 hours) (prorated for new hires); 61-120 months employed (120 hours); 121+ months employed (160 hours). Accrued and unused PTO paid at termination (contingent on providing 2 weeks' notice and termination not for cause).	Bereavement. (up to 3 days paid leave); 2 floating holidays.
Corporate	48 hours of Sick Leave received annually. No cash payout on termination.	PTO received annually on Jan. 1 as follows: 12-36 months employed (80 hours) (prorated for new hires); 37-84 months employed (120 hours); 85+ months employed (160 hours). No rollover is permitted for Employees below the director level. For director-level Employees and above, all forms of paid-time off (vacation, sick, holidays, bereavement, etc.) are aggregated into an unlimited PTO program versus the traditional service-based vacation and sick leave programs. Accrued and unused PTO forfeited on termination.	Bereavement. (up to 3 days paid leave); 4 floating holidays.

31. As of the Petition Date, the Debtors estimate there is approximately \$10,000 in outstanding Paid Leave due to outstanding PTO cash payout obligations accrued prepetition. Through the Wage and Benefits Motion, the Debtors request authority to pay accrued Paid Leave to terminated employees consistent with the Debtors' past business practices.

vi. Non-Insider Employee Incentive Plans

32. Through the Wage and Benefits Motion, the Debtors also seek to pay non-insider Employees through the distribution center peak incentive plan (the "DC Peak Incentive Plan"), the quarterly sales incentive plan (the "Quarterly Sales Incentive Plan"), and the non-insider management plan (the "Non-Insider Management Incentive Plan") (each described below and collectively, the "Non-Insider Employee Incentive Plans"). The DC Peak Incentive Plan has three

tiers depending on the eligible Employees' performance in meeting specified financial and operation targets and is a critical component of ensuring maximum performance of the Debtors' Distribution Centers. The Debtors maintain the Quarterly Sales Incentive Plan for store managers, district managers, and regional vice presidents. The Debtors' primary source of revenue is store sales, and the Quarterly Sales Incentive Plan is a critical component of motivating key Employees to maximize sales at the store level.

33. The Debtors believe that the Non-Insider Management Incentive Plans align eligible Employees' interests with the operational and financial viability of the Debtors' business and ensures that critical Employees remain with the Debtors. Through the Wage and Benefits motion, the Debtors seek authority to pay any prepetition accrued and unpaid amounts under the Non-Insider Employee Incentive Plans in the ordinary course of business and consistent with past practice. The Debtors also request the authority to continue to implement and honor the Non-Insider Employee Incentive Plans in the ordinary course of business on a postpetition basis.

vii. Long-Term Management Incentive Plan

34. The Debtors also maintain a long-term incentive plan (the "LTI Plan") for certain Employees, including Insider Employees.⁷ The Debtors are not seeking payment of any payments to Insider Employees under the LTI Plan and will make any such requests pursuant to an appropriate pleading under Bankruptcy Code § 503(c). The Debtors believe that the LTI Plan aligns Employee interests to the longevity of the Debtors and ensure that critical Employees remain with the Debtors. The Debtors seek authority, but not direction, to pay any prepetition accrued and unpaid LTI benefits owing to non-insider Employees under the LTI Plan in the ordinary course of

⁷ The following seven Employees are officers of the Company and therefore qualify as "insiders" under Bankruptcy Code § 101(31)(B): Steve Becker, Stacie Shirley, Phillip Hixon, Trent Taylor, Bridgett Zeterberg, Catherine Davis, and Douglas Sullivan (collectively, the "Insider Employees").

business and consistent with past practice, and to continue to implement and honor the LTI Plan and pay LTI benefits to non-insider Employees in the ordinary course of business on a postpetition basis.

viii. Non-Insider Employee Severance Programs

35. In the ordinary course of business, the Debtors maintain a severance program for the benefit of certain insider and non-insider Employees. The Debtors are not seeking any relief through the Motion with respect to Insider Employee severance but are seeking relief with respect to the Debtors' non-insider Employee severance program (the "Non-Insider Employee Severance Program"). The Debtors generally provide eligible Employees with salary continuation equal to the number of weeks of severance, and outplacement benefits, where appropriate according to the following schedule:

Employee's Position	Weeks of Severance (Not Change in Control Period)	Weeks of Severance Change in Control Period
Vice President/Regional Vice President, Store Operations/Division Marketing Manager (VP)	26 weeks and 3 months outplacement	52 weeks and 3 months outplacement
Corporate Director/DC General Manager/Senior Buyer/Sr. Corporate Counsel	12 weeks regardless of Years of Service. 2 weeks for each additional Year of Service over 12 years. Not to exceed 24 weeks total	24 weeks of severance, regardless of Years of Services
Corporate Senior Manager/Corporate Manager/Buyer/Corporate Counsel/District Manager, Store Operations	2 weeks for each Year of Service with a minimum of 4 weeks. Not to exceed 12 weeks	2 weeks of severance for each Year of Service with a minimum of 8 weeks. Not to exceed 24 weeks
Corporate Supervisor/Corporate Individual Contributor/Planner/Assistant Buyer	1 week for each Year of Service with a minimum of 2 weeks. Not to exceed 12 weeks	same
Corporate Hourly Employee	2 weeks	same

36. The Debtors also have a separate severance benefit program for store managers and full-time and part-time associates in the event of a store closing (the “Store Closing Employee Severance Program” and together with the Non-Insider Employee Severance Program, the “Non-Insider Severance Programs”). Through the Motion, the Debtors request authority, but not direction, to continue the Non-Insider Severance Programs on a post-petition basis, including the payment of Non-Insider Severance Benefits,⁸ and further request authorization to amend and/or modify the Non-Insider Severance Programs and related Non-Insider Severance Benefits in their business judgment.

ix. Non-Employee Director Compensation

37. Certain of the Debtors maintain boards of directors that include non-Employee directors (or managers as applicable) (each a “Director”). As of the Petition Date, the Debtors' boards of directors include 7 non-Employee Directors on an aggregate basis. The non-Employee Directors, including the Chairman of the Board, are compensated according to the following schedule for non-employee directors (the “Director Compensation Plan”):

<u>Components of Non-Employee Director Compensation</u>	<u>Amount</u>
Board Service Annual Cash Compensation	
Board Member Retainer	\$60,000
Board Chair Retainer (premium)	\$65,000
Committee Service Annual Cash Compensation	
Audit Committee Chair Retainer	\$20,000
Audit Committee Member Retainer	\$10,000
Compensation Committee Chair Retainer	\$15,000
Compensation Committee Member Retainer	\$7,500
Nominating and Governance Committee Chair Retainer	\$10,000
Nominating and Governance Committee Member Retainer	\$7,500
Board Service Annual Equity Compensation	
Annual Grant of Restricted Stock (Board Service Retainer)	\$80,000
Annual Grant of Restricted Stock (Board Chair Retainer Premium)	\$60,000

⁸ Through the Motion the Debtors are not seeking authorization to pay accrued unpaid prepetition amounts owed under the Non-Insider Severance Programs but reserve the right to seek approval of such payments in subsequent pleadings.

38. The Directors are also entitled to reimbursement for out-of-pocket expenses incurred in attending Board and committee meetings and the Company's corporate governance guidelines also provide that Directors may retain outside legal and other professional advisors, at the Company's expense, to advise them in their roles as directors (collectively, the "Director Reimbursements"). The Debtors do not believe that there are any accrued and unpaid prepetition Director Reimbursements or obligations to non-Employee Directors under the Director Compensation Plan (not including the Nov. 2019 RSAs) (the "Prepetition Director Compensation").

39. Through the Wage and Benefits motion, the Debtors request authority to pay the Prepetition Director Compensation in the ordinary course of business on a postpetition basis. The Debtors also request authority, but not direction, to continue the Director Compensation Plan and to pay Director Reimbursements in the ordinary course of business on a postpetition basis. The Debtors further request authorization to amend and/or modify the Director Compensation Plan in the ordinary course of business on a postpetition basis.

x. Reimbursable Expenses

40. Prior to the Petition Date, and in the ordinary course of business, the Debtors reimbursed certain Employees for certain business expenses incurred in the ordinary course of their employment. Reimbursable expenses typically relate to, among other things, business travel, transportation, lodging, meals, cell phones, office supplies, dues and professional memberships, and other miscellaneous expenses (the "Reimbursable Expenses"). As of the Petition Date, the total amount of Reimbursable Expenses owed is estimated to be approximately \$65,000 (the "Prepetition Reimbursable Expenses").

xi. Employee Benefits Programs

41. The Debtors maintain and/or offer various employee benefits plans, policies, programs for health care, health savings, dental, vision, life, accidental death and dismemberment, long and short-term disability, accident/critical illness, pet coverage, disease management, and provide eligible Employees adoption and paternity benefits, and 401(k) benefits (collectively, the “Employee Benefits Programs”).

42. All full-time Employees and Employees that average over 30 hours per week in a 52-week period and have been employed by the Debtors for over 60 days are eligible to receive medical and prescription drug coverage (the “Medical Coverage”). The Debtors provide the Medical Coverage to Employees through a self-funded health plan (the “Medical Plan”) administered by United Healthcare (“UHC”) and backstopped by \$150,000 per occurrence stop-loss policy (the “Stop-Loss”) provided by Symetra. As of the Petition Date, a total of 1,790 Employees are covered under the Medical Plan. The Employee portion of the cost of the medical Plan is deducted each payroll period from the Employee’s pay.

43. Because of the nature of a self-funded plan, it is impossible to predict the amount of claims the Debtors will be required to pay for any given period. The Debtors’ total claim obligations under the Medical Plan during the twelve months preceding the Petition Date were \$7,800,000. The average monthly amount of claims under the Medical Plan during the twelve months preceding the Petition Date was approximately \$650,000.

44. The Debtors’ premium obligation under the Stop-Loss policy varies depending on the number of covered Employees. In the twelve months preceding the Petition Date, the Debtors’ annual Stop-Loss premium payment was approximately \$1,740,000 and its most recent Stop-Loss prepetition monthly premium was approximately \$145,000. Each month, the Debtors also pay a monthly administration fee to UHC for administering the Medical Plan (the “Medical Plan”).

Administration Fees”). The monthly Medical Plan Administration Fees are approximately \$50,000 per month. The Debtors use software provided by BenefitFocus to manage Employee enrollment and elections under the Medical Plan and certain other Employee Benefits Programs (the “Enrollment Software”). The Enrollment Software is critical to the operation and administration of the Benefits Programs. The Debtors’ licensing fees for use of the Enrollment Software total approximately \$4,300 per month.

45. The Debtors’ Employees rely on the Medical Coverage provided through the Medical Plan and it would be extremely disruptive to Employees’ personal lives and Employee morale if the Debtors did not honor prepetition obligations relating to the Medical Coverage, including the related costs and expenses associated with providing the Medical Coverage and administering the Medical Plan.

46. The Debtors seek authority, but not direction, to pay any prepetition amounts due and outstanding relating to the Medical Coverage, including prepetition claims that have accrued under the Medical Plan, Stop-Loss premiums, Medical Plan Administration Fees, and prepetition obligations relating to the Enrollment Software (collectively, the “Prepetition Medical Coverage Expenses”), and to continue to pay all such costs and expenses (the “Medical Coverage Expenses”) in the ordinary course of business on a postpetition basis.

xii. HSA and FSA

47. In addition to providing the Health Benefits, certain of the Debtors’ Employees also have flexible spending accounts for dependent and/or health care (the “FSA Accounts”) or health savings accounts (the “HSA Accounts” and, together with the FSA Accounts the “Medical Savings Accounts”).

48. Each year, the Debtors fund \$300 to the HSA Account of all Employees enrolled in a high deductible Medical Plan (the “Company HSA Contribution”). There are no outstanding

unfunded prepetition Company HSA Contributions. The HSA Accounts are administered through Optum Bank. The FSA Accounts are administered through a TaxSaver plan.⁹ The Debtors' monthly expenses relating to Employee Medical Savings Accounts total approximately \$3,000 (the "FSA Administration Fees"). The Debtors' accrued and unpaid prepetition FSA Administration Fees total approximately \$2,500.

xiii. Supplemental Benefits

49. In addition to coverage under the Medical Plan, the Debtors also provides certain Employees with the option to enroll in dental and vision insurance, life insurance, accidental death and dismemberment insurance, long-term disability through a company plan (the "Company LTD Plan") and a voluntary plan (the "Voluntary LTD Plan"), short-term disability insurance (comprised of the "Company STD Plans" and the "Statutory STD Benefits") (together with the Supplemental benefits described below, the "Supplemental Benefits"). Cigna provides the Dental Plan, VSP Vision Care provides the vision plan, Lincoln Financial provides coverage under a basic life and accidental death and dismemberment plan, and the employee-provided and voluntary short and long-term disability plans.

50. The Debtors also provide other Supplemental Benefits including providing full time Employees paid time off following the birth or adoption of a child ("Paternity Benefits"); a \$5,000 allowance toward the adoption of a child (the "Child Adoption Benefit"); the option to obtain pet insurance from Nationwide (the "Pet Insurance Program"); a diabetes disease management program for \$59 per month per participant (the "Diabetes Management Program"), a grandfathered individual long-term care benefit (the "Grandfathered LTC Benefits"), a voluntary critical illness

⁹ The Debtors' COBRA obligations are also administered through a TaxSaver plan.

and accident benefits plan (the “Accident and Critical Illness Plan”), and business travel insurance (the “Business Travel Insurance”).

51. The Debtors seek authority, but not direction, to pay any prepetition amounts due and outstanding relating to any of the Supplemental Benefits (collectively, the “Prepetition Supplemental Benefits Expenses”), and to continue to administer and otherwise pay the costs and expenses relating to providing the Supplemental Benefits in the ordinary course on a postpetition basis.

xiv. 401(k) Plan

52. The Debtors offer eligible Employees the opportunity to participate in a 401(k) plan (the “401(k) Plan”) managed by Milliman Benefits. The Debtors pay Milliman monthly administration fees (the “401(k) Administration Expenses”) and estimate that prepetition accrued and unpaid 401(k) Administration Expenses total \$25,000. The Debtors match 100% of Employees’ 401(k) contribution up to 4% of the Employees’ eligible compensation (the “401(k) Matching Contribution” and together with the 401(k) Administration Expenses, the “401(k) Expenses”). The Debtors estimate that their accrued and unpaid prepetition 401(k) Matching Contribution obligations total \$40,000. The Debtors seek authority to pay any accrued and unpaid prepetition 401(k) Expenses (the “Prepetition 401(k) Expenses”) and to otherwise continue to maintain the 401(k) Plan and continue to pay the 401(k) Expenses in the ordinary course on a postpetition basis.

xv. Honoring Obligations to Employees Will Benefit the Debtors and Their Estates

53. I do not believe that the total combined Wage Obligations, Reimbursable Expense obligations, and Health Benefits, owed to any one employee exceeds \$13,650 earned within the 180 days prior to the Petition Date.

54. In order to maintain the continuity of their business and to preserve the morale of their vital labor force, it is essential that the Debtors be permitted to pay the funds requested through the Wage and Benefits Motion. Any delay or disruption in providing employee compensation will likely destroy the Debtors' relationship with the Employees and irreparably impair workforce morale at the very time when the dedication, confidence, and cooperation of these individuals is most critical. I believe that the Debtors face the risk that their operations may be severely impaired if authority is not granted for the Debtors to make the payments described above. Moreover, I believe that maintaining a "business as usual" atmosphere will facilitate the Debtors' efforts to market their business as a going concern as more fully described above.

55. I also believe that the amounts represented by Pre-Petition Wages are needed by the Employees to enable them to meet their own personal obligations. Therefore, absent the relief requested in the Wage and Benefit Motion, I believe that Employees will suffer undue hardship and, in many instances, serious financial difficulties. Moreover, without the requested relief, I believe that the stability of the Debtors would be undermined by the potential threat that otherwise loyal Employees would seek other employment. Accordingly, on behalf of the Debtors, I respectfully submit that the Wage and Benefits Motion should be approved.

C. Cash Management Motion

56. Through the *Debtors' Emergency Motion for an Order (I) Authorizing Continued Use of Existing Business Forms and Records, (II) Authorizing Maintenance of Existing Corporate Bank Accounts and Cash Management System, (III) Authorizing Payment of Prepetition Costs and Fees Associated with Customer Credit and Debit Card Transactions and (IV) Waiving Certain U.S. Trustee Requirements* (the "Cash Management Motion") the Debtors are requesting, pursuant

to Bankruptcy Code §§ 105(a), 345(b), 363(c), 364(a), 1107 and 1108, the entry of an order:

- (i) authorizing the Debtors to continue using their existing business forms and records;
- (ii) authorizing the Debtors to maintain the Bank Accounts and Cash Management System (including as permitted under any interim and final orders authorizing the Debtors to obtain post-petition financing (collectively, the “DIP Financing Orders”) and in accordance with any budget approved in connection therewith (the “Budget”)); and (iii) granting the Debtors a waiver of certain bank account and related requirements of the Office of the United States Trustee for the Northern District of Texas (the “U.S. Trustee”) and Bankruptcy Code § 345(b) to the extent that such requirements are inconsistent with (a) the Debtors’ existing practices under the Cash Management System or (b) any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Chapter 11 Cases.

57. Prior to the Petition Date, in the ordinary course of business, the Debtors used a cash management system (the “Cash Management System”) to efficiently collect, transfer, and disburse funds generated by its business operations. The Cash Management System is comprised of the following 718 bank accounts (collectively, the “Accounts” or “Bank Accounts”): 296 accounts at Wells Fargo; 144 accounts at JPMorgan Chase Bank, N.A. (“Chase”); 84 accounts at Bank of America, N.A. (“BOA”); 4 accounts at International Bank of Commerce (“IBC”); 34 accounts at Branch Banking and Trust Company (“BB&T”); 17 accounts at BBVA Compass Bank (“BBVA Compass”); 7 accounts at Citizens Bank, N.A. (“Citizens”); 34 accounts at PNC Bank (“PNC”); 1 account at Community First National Bank (“Community”); 1 account at Banc First Corporation (“Banc First”); 12 accounts at KeyBank (“Key”); 1 account at Peoples Bank (“Peoples”); 11 accounts at Fifth Third Bank (“Fifth Third”); 56 accounts at Regions Bank (“Regions”); 15 accounts at US Bank, N.A. (“U.S. Bank”); 1 account at Hancock Bank and Trust

Company (“Hancock”). A list of the Debtors’ Store Depository Accounts is attached to the Cash Management Motion as Exhibit B, and a table listing the Debtors’ remaining Bank Accounts is attached as Exhibit C.

58. The Cash Management system is centered around a master collection account (the “TMI Master Concentration Account”) where the Debtors’ non-borrowed funds are collected and a master operating account (the “Master Operating Account”) where the funds in the TMI Master Concentration Account are swept and from which the Debtors’ disbursements are managed and directed. The Debtors maintain current and accurate records of all transactions processed through the Cash Management System. The Debtors’ Cash Management System is similar to those commonly employed by corporate retail enterprises of comparable size and complexity. The Debtors’ Cash Management System is summarized on Exhibit D of the Cash Management Motion.

59. Another integral component of the Debtors’ Cash Management System is the Debtors’ card processing system (the “Card Processing System”). The Debtors’ Card Processing System is critical to their operations and cash flows. The Debtors historically receive a majority of receipts through Credit and debit card sales processed through the Card Processing System pursuant to an agreement (the “Card Processing Agreement”) with Banc of America Merchant Services, LLC (the “Card Processor”). The Debtors estimate that approximately \$900,000 in accrued unpaid prepetition fees to the Card Processor and Visa, Master Card and Discover (the “Card Companies”) are outstanding. Because credit and debit card sales account for a significant percentage of the Debtors’ total sales, it is critical to the Cash Management System that there be no disruptions in these payments. Through the Cash Management Motion, the Debtors seek authority, but not direction, to pay all prepetition unpaid fees due to Card Processor and the Card

Companies and to continue such payments to the Card Processor and Card Companies in the ordinary course of business on a post-petition basis.

60. In addition to the Cash Management System and Bank Accounts, the Debtors use, in the ordinary course of their business, numerous business forms (including but not limited to checks, deposit slips, letterhead, contracts, purchase orders, and invoices). The Debtors have a supply of these forms on hand. It would be expensive, wasteful, and disruptive to the Debtors' business to destroy all of these forms and order new ones.

61. I believe that the Debtors' ability to maintain their existing Cash Management System is vital to ensuring the Debtors' seamless transition into bankruptcy. The Debtors' Cash Management System constitutes an ordinary course, essential business practice providing significant benefits to the Debtors including, among other things, the ability to (i) control funds, (ii) ensure the availability of funds when necessary, and (iii) reduce costs and administrative expenses by facilitating the movement of funds and the development of more timely and accurate account balance information. Any disruption of the Cash Management System could have a severe and adverse impact upon the Debtors' reorganization efforts.

62. The Debtors do not hold large amounts of cash in any of the Store Depository Accounts. The Debtors regularly transfer funds held in the Store Depository Accounts to the Intermediate Store Depository Accounts and subsequently to the TMI Master Concentration Account; therefore, the funds are not held in the Store Depository Accounts for extensive periods of time.

63. In light of the other significant strains on the Debtors' personnel and resources during the coming weeks, I am concerned about unnecessary delay and disruption to the Debtors' business and a delay in receipt of funds needed for the Debtors' operations if the Debtors are

required to make changes to the Cash Management System. In order to conduct the postpetition business, the Debtors need to be able to issue checks to vendors, service providers, employees, and other business partners. In my experience, opening new accounts and obtaining checks for those accounts will cause significant delay and disruption to the Debtors' business and a delay in receipt of funds needed for the Debtors' operations.

64. I believe that the Debtors' payroll obligations may be more efficiently met through its existing Cash Management System and its existing Payroll Accounts, and that requiring the establishment of a new payroll account would be unnecessary and disruptive to the Debtors' business. I also believe that the Debtors can pay their tax obligations most efficiently from the existing Tax Trust Accounts in accordance with their existing practices, and that the U.S. Trustee can adequately monitor the flow of funds into, between, and out of the Bank Accounts. I believe that the creation of new accounts designed solely for tax obligations would be unnecessary and inefficient. It is my understanding that with the current system, the Debtors are current on their payroll tax obligations and I anticipate that the Debtors will remain current on those obligations.

65. I believe that opening a new set of books and records would create unnecessary administrative burdens and hardship and would cause unnecessary expense, utilization of resources, and delay. The Debtors, in the ordinary course of their business, use many checks, invoices, stationery, and other business forms. By virtue of the nature and scope of the business in which the Debtors are engaged and the numerous other parties with whom they deal, the Debtors need to use their existing business forms without alteration or change. Printing new business forms would take an undue amount of time and expense. Fulfillment of the requirement would likely delay the payment of postpetition claims and negatively affect operations and the value of the Debtors' estates.

66. I believe that all parties in interest will be best served and the benefit to the Debtors' estates will be considerable by preserving business continuity and avoiding operational and administrative paralysis if the Debtors are permitted to maintain their existing Cash Management System. To the best of my knowledge, the Bank Accounts are in financially stable institutions insured by the Federal Deposit Insurance Corporation up to the applicable limit. The confusion that would result from requiring the Debtors to transition to new accounts could only work to the detriment of the Chapter 11 Cases. The Debtors and their professionals have already, or will shortly, inform their Banks that no checks issued prior to the Petition Date should be honored, except as otherwise provided by separate order of this Court. The Debtors will continue to maintain records respecting all transfers between and among the Bank Accounts so that all transactions can be ascertained after they have occurred. I believe that requiring the Debtors to further change their deposits and other procedures could result in harm to the Debtors, their estates, and creditors because such change would further disrupt the Cash Management System. Conversely, the Debtors' estates and creditors will not be harmed by the Debtors' maintenance of the status quo as modified by the relief requested herein because of the relatively safe and prudent practices already utilized by the Debtors.

67. A majority of the Debtors' revenues are generated from credit and debit card sales and the Debtors cannot survive without the ability to process credit and debit card transactions. Therefore, I believe that the success of the Debtors' Chapter 11 efforts is dependent upon, among other things, the ability to process customer credit and debit card transactions.

68. I do not believe that the Debtors can obtain the necessary services from any other vendors in a manner that would not be disruptive to the Debtors' business. I believe that the ability to pay fees relating to the Card Processing System, including any related pre-petition amounts, is

critical to the Debtors' successful prosecution of the Chapter 11 Cases. Any inability on the Debtors' part to continue to satisfy pre-petition obligations with respect to its Card Processing System would threaten the Debtors' ability to continue to accept credit cards, thereby disrupting customers' experience and potentially depriving the Debtors and their estates of significant revenue. Finally, I do not believe that the Debtors' estate and creditors will be harmed by the payment of prepetition charges relating to the Card Processing System. Accordingly, on behalf of the Debtors, I respectfully submit that the Cash Management Motion should be approved.

D. The Tax Motion

69. As part of the Debtors' First Day Motions, the Debtors also filed the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Assessments and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers Pursuant to Bankruptcy Code §§ 105(a), 363(b), 507(a)(8), and 541(d)* (the "Tax Motion"). Through the Tax Motion the Debtors are seeking entry of an order, pursuant to Bankruptcy Code §§105(a), 363, and 507(a)(8) authorizing, but not directing, the Debtors to pay various prepetition taxes, including prepetition sales and use taxes, prepetition property taxes, prepetition franchise and/or income taxes, import and customs duties taxes, and miscellaneous taxes such as gross receipts, commercial activities taxes, and business and operations taxes (collectively, the "Prepetition Taxes") to the appropriate taxing authorities (each a "Taxing Authority," and collectively, the "Taxing Authorities") in the ordinary course of business, on an unaccelerated basis, as such payments become due and payable and to the extent adequate funds are available to make such payments. A list of the Taxing Authorities is attached to the proposed order in the Tax Motion as Exhibit 1.

70. In the ordinary course of business, the Debtors incur, or collect, various taxes and remit such taxes to the Taxing Authorities. The Debtors have generally paid their undisputed Prepetition Taxes in a timely fashion in accordance with and subject to applicable grace periods, if any. As of the Petition Date, the Debtors estimate that approximately \$1 million in Sales and Use Taxes, \$250,000 in Franchise and Income Taxes, \$25,000 in Import and Customs Duties, \$300,000 in Licensing and Permit Obligations, and \$14,294 in Miscellaneous Taxes (each defined below) are due and owing to the Taxing Authorities relating to periods prior to the Petition Date, as well as certain additional amounts that will become due within thirty (30) days. Additionally, and as described in detail in the Tax Motion, the Debtors contract with Baker Tilly for services relating to the Sales and Use Taxes, and estimate they owe approximately \$6,000 to Baker Tilly (the “Baker Tilly Fees”) as of the Petition Date. Similarly, the Debtors contract with the property tax company, Marvin Poer, and estimate they owe approximately \$25,000 to Marvin Poer (the “Marvin Poer Fees”) as of the Petition Date.

71. The Debtors have franchise tax obligations (the “Franchise Taxes”) they must pay to the Taxing Authorities to remain in good standing and maintain the right to operate their business. The Franchise Taxes are assessed and due annually, and generally become delinquent during the following year. It is my understanding that under applicable laws, certain state or local authorities, or both, levy taxes based on the Debtors’ income (the “State and Local Income Taxes”) and together with the Franchise Taxes the “Franchise and Income Taxes”).

72. I have been informed that, in certain states, state and local authorities are entitled to statutory liens on the Debtors’ property located in, or subject to tax, in the respective state if these Income Taxes are not paid. Moreover, in certain states, it is my understanding that the Debtors’ directors and officers have personal liability for failure to timely pay these taxes. The

Debtors' tax professionals estimate that the Debtors owe \$250,000 in prepetition amounts with respect to Franchise and Income Taxes.

73. Certain Taxing Authorities require the Debtors to collect from its customers, and/or for the Debtors to pay as a customer, sales and use taxes that are based on a percentage of sales prices and other trust-fund taxes (the "Sales and Use Taxes"). In most cases, the Sales and Use Taxes are paid in arrears once collected. While it is difficult for the Debtors to estimate the precise amount of Trust Fund Taxes owed as of the Petition Date, as such taxes are taken into account in the invoices either generated by or paid by the Debtors, I have been informed that the Debtors estimate that \$1 million in Sales and Use Taxes is owed as of the Petition Date.

74. The Debtors' property taxes (the "Property Taxes") are assessed and become payable in the ordinary course of business and are calculated based on a statutorily-mandated percentage of property value for both real and personal property. Generally, Property Taxes are due annually, and the timing of payment of Property Taxes varies from jurisdiction to jurisdiction. Marvin Poer and the Debtors estimate that the Debtors owe approximately \$3,300,000 in Property Taxes as of the Petition Date.

75. The Debtors are also required to pay import and customs duties in the ordinary course of business (the "Import and Customs Duties"). The Debtors and their customs broker, Kuehne & Nagel USA ("Kuehne & Nagel") estimate that the Debtors owe approximately \$25,000 in Import and Customs Duties as of the Petition Date. Moreover, the Debtors are required to obtain certain licensing and permits from various jurisdictions in which they operate (the "Licensing and Permit Fees"). The Debtors utilize the services of CT Corporation System ("CT Corp") for assistance with compliance of Licensing and Permit Fees in exchange for monthly fees (the "CT Corp Fees") and together with the Licensing and Permit Fees (the "Licensing and Permit

Obligations”). The Debtors and CT Corp estimate that, as of the Petition Date, the Debtors owe approximately \$300,000¹⁰ in Licensing and Permit Obligations, which includes CT Corp Fees.

76. The Debtors also incur a variety of miscellaneous taxes, including, without limitation, gross receipts, commercial activities taxes, and business and operations taxes (the “Miscellaneous Taxes”). The Debtors typically remit these taxes as they become due, but they estimate approximately \$14,294 in Miscellaneous Taxes is outstanding as of the Petition Date.

77. Through the Tax Motion, the Debtors request authority, but not direction, to pay, in the normal course of the Debtors’ operations, any Prepetition Taxes and Fees that remain unpaid as of the Petition Date. Failure to pay prepetition Taxes and Fees may subject the Debtors’ estates to additional liens, penalties, and interest expenses.

78. In the event the Debtors have additional obligations to Taxing Authorities, I believe it will be costly and administratively burdensome for the Debtors’ management during the Chapter 11 Cases and will add an unnecessary distraction for the Debtors and this Court to address potential enforcement actions by Taxing Authorities. Therefore, I believe that it is in the best interests of the Debtors’ estates to limit the impact of the foregoing distractions by obtaining authorization, but not direction, to pay Prepetition Taxes as the Debtors deem appropriate in their business judgment. Accordingly, on behalf of the Debtors, I respectfully submit that the Tax Motion should be approved.

E. Insurance Motion

79. The Debtors also filed the *Debtors’ Emergency Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(c) Authorizing the Debtors to (I) Continue, Renew, or Supplement Insurance Policies, (II) Pay Insurance Premiums Thereon, (III) Continue, Renew, or*

¹⁰ The amount of unpaid CT Corp Fees is believed by the Debtors to be less than 10% of the unpaid Licensing and Permit Obligations.

Supplement the Surety Bond Program, and (IV) Granting Related Relief (the “Insurance Motion”).

Through the Insurance Motion, the Debtors are requesting, pursuant to Bankruptcy Code §§ 105(a) and 363(c), the entry of an order authorizing the Debtors (i) to continue, renew, or supplement the Insurance Policies in the ordinary course of business, (ii) to pay insurance premiums thereon, (iii) to continue, renew, or supplement the surety bond program, and (iv) to continue to pay premiums for the Insurance Policies in the ordinary course of business to the extent they may become due and payable on a post-petition basis according to the terms of the Insurance Policies.

80. In connection with the operation of their business, the Debtors maintains various insurance policies (each an “Insurance Policy,” and collectively the “Insurance Policies”), which the Debtors have obtained through third-party insurance providers (collectively, the “Insurance Providers”) including, without limitation, coverage for commercial property, workers’ compensation, general liability, automobiles, management liability, and umbrella insurance. The following is a summary of the Insurance Policies:

Carrier	Policy No.	Description	Policy Term	Premium	Coverage
Safety National Casualty Corp.	GLA4041811	General Liability	April 1, 2020 – April 1, 2021	\$178,975	\$1M
Continental Insurance Company	6046014506	Umbrella	April 1, 2020 – April 1, 2021	\$87,500	\$10M excess of primary
American Guarantee & Liability (Zurich)	AEC093913100	Excess Liability	April 1, 2020 – April 1, 2021	\$42,500	\$15M excess of \$10M
Ohio Casualty Insurance Co.	ECO2057802005	Excess Liability	April 1, 2020 – April 1, 2021	\$27,245	\$25M excess of \$25M
Safety National	LDC4041808	Workers’ Compensation	April 1, 2020 –	\$357,234	Statutory

Carrier	Policy No.	Description	Policy Term	Premium	Coverage
Casualty Corp.			April 1, 2021		
Safety National Casualty Corp.	PS4041809	Workers' Compensation Wisconsin	April 1, 2020 – April 1, 2021	\$1,629	Statutory
Washington Dept. of Labor & Industries	WA UBI No. 602086561 L&I Account ID: 450100	Workers' Compensation Washington	Quarterly ¹¹	\$42,260	Statutory
Ohio Bureau of Workers' Compensation	01015388	Workers' Compensation Ohio	July 1, 2019 – July 2, 2020	\$38,500 ¹²	Statutory
ACE American Insurance Co.	MAUD37433469005	Property	April 1, 2020 – April 1, 2021	\$332,000	\$125M
Starr Indemnity & Liability Co.	MASICNY0161US20	Stock Throughput/ Marine Cargo	April 1, 2020 – April 1, 2021	\$425,000	\$10M
Lloyds of London	B0507CG2001152	Excess Stock Throughput/ Marine Cargo	April 1, 2020 – April 1, 2021	\$102,375	\$35M excess of primary \$10M
Lloyds of London (Brit)	B0146CYUSA190120	Cyber/Network	April 1, 2020 – April 1, 2021	\$222,600	\$15M
Lloyds of London (Beazley)	W1854C190501	Excess Cyber	April 1, 2020 – April 1, 2021	\$94,500	\$10M excess of primary \$15M
Axis Insurance Co.	P00100033353501	Excess Cyber	April 1, 2020 – April 1, 2021	\$70,052	\$10M excess of \$10M

¹¹ Ohio and Washington have state-mandated workers' compensation requirements. The Debtors have separate policies with these monopolistic states.

¹² A recent premium audit for the July 1, 2018 – July 1, 2019 period was conducted by the State of Ohio. The audit found underreported payrolls for this period, resulting in an additional premium charge of \$43,335. An invoice has not been sent for this amount. The invoice is expected to be received within the next 60 days.

Carrier	Policy No.	Description	Policy Term	Premium	Coverage
Safety National Casualty Corp.	CA6675567	Automobile	April 1, 2020– April 1, 2021	\$41,585	\$1M
Illinois National Insurance Company (AIG)	01-602-80-36	Fiduciary	July 30, 2019 – July 30, 2020	\$5,400	\$5M
Beazley Insurance Company	V1F88A190301	Crime	July 30, 2019 – July 30, 2020	\$16,596	\$5M
Illinois National Insurance Company (AIG)	01-602-80-33	Primary D&O	July 30, 2019 – July 30, 2021	\$280,000	\$10M ¹³
Allied World Insurance Company (AWAC)	0305-5204	1st Excess D&O	July 30, 2019 – July 30, 2021	\$168,000	\$10M
Continental Casualty Company	596480250	2d Excess D&O	July 30, 2019 – July 30, 2021	\$90,000	\$10M
ACE American Insurance Co.	DOX G28420249 003	3d Excess D&O	July 30, 2019 – July 30, 2021	\$100,000	\$10M
Beazley Insurance Company	V23E8D190201	4th Excess D&O	July 30, 2019 – July 30, 2021	\$56,600	\$10M
Illinois National Insurance Company (AIG)	01-602-80-33	Primary D&O Tail Coverage	July 30, 2019 – July 30, 2021	\$418,497	\$10M
Allied World Insurance Company (AWAC)	0305-5204	1st Excess D&O Tail Coverage	July 30, 2019 – July 30, 2021	\$209,250	\$10M
Continental Casualty Company	596480250	2d Excess D&O Tail Coverage	July 30, 2019 – July 30, 2021	\$106,465	\$10M
ACE American Insurance Co.	DOX G28420249 003	3d Excess D&O Tail Coverage	July 30, 2019 – July 30, 2021	\$200,000	\$10M

¹³ The Debtors have the right to report "tail" claims for up to 6 years off of the D&O tower outlined in the Insurance Policy summary.

Carrier	Policy No.	Description	Policy Term	Premium	Coverage
Beazley Insurance Company	V23E8D190201	4th Excess D&O Tail Coverage	July 30, 2019 – July 30, 2021	\$113,200	\$10M
Federal Insurance Company (Chubb)	8250-1540	EPL	July 30, 2019 – July 30, 2020	\$74,801	\$1M
Hiscox Insurance Compny	UKA3011469.17	Special Crime	Oct. 7, 2017 – July 30, 2020	\$8,590	Omitted ¹⁴

81. The Debtors pay premiums to the Insurance Providers for coverage under the Insurance Policies (collectively, the “Insurance Premiums”). The Insurance Premiums are based upon a fixed rate established and billed by each Insurance Provider. The premiums for most of the Insurance Policies are determined annually and are paid at the inception of each policy. Because it is not always economically advantageous for the Debtors to pay the Insurance Premiums on all of the Insurance Policies on a lump-sum basis, in the ordinary course of the Debtors’ business, certain of the premium payments are financed through a premium financing agreement (the “Premium Financing Agreement”). The Debtors financed the premiums for the property, stock throughput (primary and excess), umbrella (all layers), and cyber (all layers) policies (the “Premium Finance Agreement Policies”).

82. The premiums under the Premium Financing Agreement total \$1,404,209.73. Under the Premium Financing Agreement, the Debtors made an initial down payment of \$280,841.95 and agreed to make ten (10) monthly payments of \$114,432.57 with an annual percentage rate (“APR”) of 4.05% starting May 1, 2020 and ending February 1, 2021. For the remaining Insurance Policies, the Debtors have a brokerage agreement with USI Insurance

¹⁴ This premium amount is for a three-year premium paid in full in 2017. Further details, including coverage, are omitted for the Debtors’ protection.

Services (“USI”). The Debtors remit premium payments on the remaining April Policies (the Safety National workers’ compensation, general liability, and automobile policies) and the July Policies (fiduciary, crime (all types), employment, and director and officer policies (all layers)) to USI for payment to the Insurance Providers.

83. Additionally, the Debtors pay USI approximately \$160,000 in annual brokerage services (the “USI Broker Fees”). As of the Petition Date, the Debtors believe there are no outstanding USI Broker Fees; however, the Debtors request the authority, but not direction, to pay remaining USI Broker Fees as they become due.

84. It is my understanding that the Debtors are current on all premium payments on the Insurance Policies, including those under the Premium Financing Agreement, as of the Petition Date, but it is also my understanding that amounts related to the Insurance Policies will become due during these Chapter 11 Cases. It is essential to the Debtors’ continued operation and reorganization efforts that the Debtors maintain the Insurance Policies on an ongoing and uninterrupted basis. The Insurance Policies provide a comprehensive range of coverage for the Debtors and their properties. I believe that allowing the Insurance Policies to lapse would expose the Debtors to substantial liability for any damages resulting to persons or property of the Debtors and others, and the Debtors would have to bear the costs and expenses of defense litigation.

85. It is my understanding that most, if not all, of the Debtors’ obligations under the Insurance Policies will constitute postpetition obligations of the Debtors’ estate; however, because certain of the Debtors’ obligations under the Insurance Policies may constitute prepetition claims, I believe that it is in the best interests of the Debtors and their estates to seek authorization from the Court to pay any prepetition obligations relating to the Insurance Policies.

86. The Debtors are also required by law to maintain workers' compensation and employees' liability coverage and do so under their workers' compensation program (the "Workers' Compensation Program"). As outlined in detail in the Insurance Motion, the Debtors have agreements with several third-party administrators to ensure the Workers' Compensation Program is up to date and that all claims are paid. The Debtors remit payment to the third-party administrators for their services (the "Third Party Administrative Fees"). As of the Petition Date, the Debtors estimate that there is a total of \$60,000 in unpaid Third Party Administrative Fees.

87. In the ordinary course of business, the Debtors are also required to provide surety bonds to certain third parties, often governmental units or other public agencies, to secure the Debtors' payment or performance of certain obligations (the "Surety Bond Program"). The premiums for the Surety Bonds are generally determined on an annual basis and are paid by the Debtors when the Surety Bond is issued or renewed. As of the Petition Date, the Debtors do not believe that they owe any amounts under the Surety Bond Program, whether as annual premiums or prepetition obligations. The following is a summary of the Surety Bonds:

Surety	Bond Number	Bond Amount	Obligee	Description	Premium	Renewal Date
Platte River Insurance Company	41394659	\$20,000.00	State of Nevada, Department of Taxation	Liquor Excise Tax Bond	\$300.00	9/26/2020
Platte River Insurance Company	41225002	\$30,165.00	Dominion Energy South Carolina	Utility Deposit Bond	\$603.00	1/16/2021
Platte River Insurance Company	41225002	\$1,500.00	East Caln Township	Shopping Cart Permit Bond	\$100.00	2/19/2021
Platte River Insurance Company	41219638	\$7,000.00	Paducah Power Systems	Utility Deposit Bond	\$100.00	2/24/2021
Platte River Insurance Company	41411325	\$8,215.00	City of Huntsville	Utility Deposit Bond	\$164.00	2/27/2021

Surety	Bond Number	Bond Amount	Obligee	Description	Premium	Renewal Date
Capitol Indemnity Corporation	CIC1906270	\$42,988.00	Dominion Energy Virginia	Utility Deposit Bond	\$860.00	4/2/2022

88. Through the Insurance Motion, the Debtors seek authority, but not direction, to continue and renew the Insurance Policies, including those related to the Premium Financing Agreement and Workers' Compensation Program, and to continue and renew the Surety Bonds. The nonpayment of any premiums or related fees under any of the Insurance Policies or Surety Bonds could result in one or more of the providers terminating their existing policies or bonds, declining to renew them, or refusing to enter into new insurance or bond agreements with the Debtors in the future. Such action could expose the Debtors and their estates to risks for which there is no insurance or bond coverage. The Debtors lack a legal mechanism to require their providers to continue providing coverage that the providers would not be obligated to provide absent payment of premiums by the Debtors.

89. To the extent the Debtors' Employees hold valid workers' compensation claims (the "Workers' Compensation Claims") under any relevant policies under the Workers' Compensation Program, prohibiting the Employees from proceeding with their Workers' Compensation Claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to their departure. I believe that any such departure, along with the general decline in morale that would be likely to occur amongst all Employees that became aware of the circumstances, could severely disrupt the Debtors' business to the detriment of all parties-in-interest. Therefore, I believe that the relief requested in the Insurance Motion is in the best interest of the Debtors' estates, their creditors, and all other parties-in-interest, and will enable the Debtors

to continue to operate their businesses in Chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Insurance Motion.

F. The Utilities Motion

90. The Debtors also filed the *Debtors' Emergency Motion for an Order Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit Account as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* (the "Utilities Motion") pursuant to which they are requesting pursuant to Bankruptcy Code §§ 105(a) and 366, the entry of an order (i) prohibiting the Utility Companies from altering or discontinuing service on account of unpaid prepetition invoices, (ii) approving deposit account or adequate assurance of payment, and (iii) establishing the procedures for resolving any disputes regarding requests for adequate assurance of payment

91. In the normal conduct of their business operations, the Debtors have relationships with many different utility companies and other providers (each a "Utility Company" and, collectively, the "Utility Companies") for the provision of electric, water, sewer, natural gas, trash removal, telephone, cellular telephone, internet services, and similar utility products and services (collectively, the "Utility Services") at their corporate headquarters, the Distribution Centers, and their Store locations. The Utility Companies include, without limitation, the entities set forth on the list attached to the Utilities Motion as Exhibit A.

92. To manage the Debtors' payments owed to several Utility Companies, the Debtors entered into a service agreement with ENGIE Insight Services, Inc. ("ENGIE"). Pursuant to this agreement, ENGIE receives, audits, processes, and pays 80% of the Debtors' electric, gas, water, sewer, natural gas, and recycling and waste removal utilities in exchange for a monthly fee. The

Debtors also have a service agreement with Teligistics, Inc. (“Teligistics”) for assistance with the Debtors’ telecommunications utilities in exchange for a monthly fee. Through the Utilities Motion, the Debtors seek authority, but not direction, to pay all service fees to ENGIE and Teligistics.

93. The average monthly amount owed to the Utility Companies in the aggregate is \$1.5 million. The Debtors owe certain amounts to Utility Companies as of the Petition Date for prepetition Utility Services. Due to the timing of the Petition Date in relationship to the Utility Companies’ billing cycles, certain Utility Services have been invoiced but not yet paid and other Utility Services have been provided but not yet invoiced.

94. The Debtors seek, through the Utilities Motion, to respect the protections conferred upon Utility Companies by the Bankruptcy Code while affording the Debtors an opportunity to provide and negotiate adequate assurance with the Utility Companies. The Debtors seek to deposit \$800,000, which is over 50% of the Debtors’ estimated monthly cost of their Utility Services, into a separate, segregated, interest-bearing account, that will be established and funded within twenty (20) business days after the Petition Date (the “Utility Deposit Account”).

95. Additionally, and set forth in more detail below, the Debtors plan to conduct store closing sales for certain retail locations, which are expected to begin on June 1, 2020. After the stores are closed and utility accounts associated therewith are settled, the Debtors will reduce the amount of the Utility Deposit Account to reflect Utility Services that are no longer provided. The applicable Utility Companies will be required to return deposits within a reasonable amount of time of receiving notice from the Debtors that the respective Utility Service is no longer in use.

96. Uninterrupted Utility Services are essential to the continued operations of the Debtors’ business. If the Utility Companies refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted. If such disruption occurred, the

impact on the Debtors' business and revenue would be extremely harmful and would jeopardize the Debtors' efforts to reorganize. It is critical that Utility Services continue uninterrupted and that the relief in this Motion be granted.

97. I believe that the cash flow from the Debtors' ongoing business operations, together with funding from the DIP Lenders, will be sufficient to allow the Debtors to satisfy all administrative expenses relating to Utility Services. Further, the Debtors intend to pay all postpetition obligations owed to the Utility Companies in a timely manner. Nevertheless, to provide additional adequate assurance of payment for future Utility Services, the Debtors will deposit the above-mentioned \$800,000 (over 50% of the Debtors' estimated monthly cost of its Utility Services) into the Utility Deposit Account, subject to the terms and conditions of the DIP Financing agreement and applicable orders authorizing the Debtors to enter into the same. I believe that the foregoing deposits, along with the Debtors' access to the DIP Financing, provides the Utility Companies with adequate assurance of payment.

98. In the event that a Utility Company believes that the aforementioned deposits do not provide sufficient adequate protection, the Debtors are proposing the procedures more fully described in the Utilities Motion (the "Procedures") for the Utility Company to make additional requests for adequate assurance.

99. I believe that the Procedures provide a fair, reasonable, and orderly mechanism for the Utility Companies to seek additional adequate assurance, while temporarily maintaining the status quo for the benefit of all stakeholders.

100. Separate negotiations with each of the Utility Companies would be time-consuming and unnecessarily divert the Debtors' personnel from other critical tasks related to the operation of their business and the restructuring. This is especially true given the fact that the Debtors

operate locations in multiple states across the county, many of which have separate utility arrangements. During the first days of these Chapter 11 Cases it would be incredibly difficult, costly, and would divert the Debtors' limited personnel resources to engage in separate negotiations with each potential Utility Company. Further, if individual negotiations were required and the Debtors were to fail to reach early agreement with each Utility Company, it would likely have to file further motions seeking expedited determinations as to adequate assurance or risk service termination. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Utilities Motion.

G. Motion to Extend Deadline to File Schedules and SOFA

101. The Debtors also filed their *Motion for Extension of Time to File Schedules of Assets and Liabilities, Schedule of Executory Contracts, and Statement of Financial Affairs* (the "Schedules Motion"). Through the Schedules Motion the Debtors are seeking an extension of the period in which to complete and file their (1) schedules of assets and liabilities, (2) schedule of executory contracts, and (3) statement of financial affairs (collectively, the "Schedules and Statements") as required by Bankruptcy Code § 521 and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). Bankruptcy Rule 1007(c) provides for the extension, for cause, of the time for the filing of the Schedules and Statements. FED. R. BANKR. P. 1007(c).

102. Because the Debtors made the decision to commence this case shortly before filing their petitions and did not have significant time to work on the Schedules and Statements prior to the Petition Date, I believe that the Debtors and their professionals will be unable to complete their Schedules and Statements in the 14 days provided under Bankruptcy Rule 1007(c). In my experience, obtaining all necessary information to properly complete the Statements and Schedules

will require the Debtors and their professionals to expend a substantial amount of time and effort and may require the cooperation of certain third parties.

103. While the Debtors are mobilizing to work diligently and expeditiously to prepare the Schedules and Statements, the Debtors' resources are limited. In view of the amount of work entailed in completing the Schedules and Statements and the competing demands upon the Debtors' resources to assist in efforts to stabilize business operations during the initial postpetition period, I do not believe that the Debtors will be able to properly and accurately complete the Schedules and Statements within the required 14-day time period.

104. I believe that focusing the attention of key personnel on critical operational and Chapter 11 compliance issues during the early days of this case will help the Debtors make a smooth transition into Chapter 11 and, therefore, ultimately will help maximize the value of the Debtors' estates to the benefit of creditors and parties in interest. Nevertheless, recognizing the importance of the Schedules and Statements in these Chapter 11 Cases, the Debtors intend to complete the Schedules and Statements as quickly as possible under the circumstances.

105. I anticipate that the Debtors will be able to file the Schedules and Statements, all in the appropriate formats prescribed by the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules of this Court, by July 10, 2020, which is 44 days after the original deadline as governed by Bankruptcy Rule 1007(c).

106. In view of the amount of information that must be assembled and compiled, and the limited time available to do so, I believe that ample cause exists for the requested extension. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Schedules Motion.

H. Claims Agent Application

107. In the *Debtors' Emergency Application for Authorization to Retain and Employ Epiq Corporate Restructuring, LLC as Claims, Noticing, and Solicitation Agent* (the "Claims Agent Application"), the Debtors seek entry of an order appointing Epiq Corporate Restructuring, LLC ("Epiq") as the Claims and Noticing Agent for the Debtors in the Chapter 11 Cases, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors' Chapter 11 Cases.

108. It is my understanding that Epiq has substantial experience in matters of this size and complexity and has acted as the official claims and noticing agent in many large bankruptcy cases. I believe that Epiq is fully equipped to manage claims issues and provide notice to creditors and other interested parties in the Chapter 11 Cases. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Claims Agent Application.

I. Customer Programs Motion

109. In addition, the Debtors have filed the *Debtors' Emergency Motion for Entry of an Order Authorizing the Debtors to Honor Certain Prepetition Obligations to Customers and to Otherwise Continue Customer Programs in the Ordinary Course of Business* (the "Customer Programs Motion"). Through the Customer Motion, and pursuant to Bankruptcy Code §§ 105(a), 363, 507(a)(7), 1107 and 1108, the Debtors request authority in their business judgment to (a) continue, maintain, and/or terminate any Customer Programs, in its discretion, in the ordinary course of business, (b) pay, honor and otherwise satisfy, at the Debtors' discretion, its prepetition obligations thereunder in a manner consistent with past practice, and (c) pay, honor or otherwise satisfy prepetition processing costs and fees associated with the Customer Programs (collectively, the "Customer Obligations"). The Debtors also request the Court to authorize and direct the

Debtors' banks to receive, process, honor and pay all checks, credit card, and electronic payment request relating to the foregoing.

110. Prior to the commencement of these Chapter 11 Cases, in the ordinary course of business, the Debtors instituted and engaged in certain activities to develop and sustain a positive reputation and relationship with its customers. To that end, the Debtors implemented various customer programs and policies (collectively, the "Customer Programs") designed to ensure customer satisfaction, develop and sustain customer relationships and loyalty, improve profitability, and generate goodwill for the Debtors and their business. As of the Petition Date, the Customer Programs include the Gift Card Program, the Tuesday Morning Perks Program, Sales Promotions, and Refunds (each as defined below).

111. In the ordinary course of business, the Debtors maintain a gift card program (the "Gift Card Program") wherein they distribute Gift Cards for use in all locations. The Debtors maintain transaction data regarding the sale of its Gift Cards. However, the Debtors do not track and have no information about the identity of the holders of the Gift Cards. I have been informed that as of the Petition Date, the total liability for all outstanding Gift Cards is approximately \$1.9 million.

112. I believe that continuing to honor the Gift Card Program is essential for maintaining customer goodwill and continuing the Debtors' business. I believe that the negative impact of refusing to honor the Gift Card Program would severely jeopardize the Debtors' relationships with their customers and the Debtors' ability to reorganize successfully. I believe that the failure to honor the Gift Card Program could result in current customers choosing to patronize our competitors. I also believe that the negative publicity could jeopardize the Debtors' ability to attract new customers.

113. In the ordinary course of business, the Debtors operate the Tuesday Morning Perks Program, which is a value-added program that provides rewards to incentive customers to purchase additional merchandise from the Debtors (the “Perks Program”). Under the Perks Program, members receive a one-time, ten-dollar (\$10) discount off a fifty-dollar (\$50) purchase. To preserve the goodwill of its customer base, the Debtors seek authorization to honor the Perks Program rewards and discounts.

114. From time to time, the Debtors also conduct sales promotions at selected stores (the “Sales Promotions”). The Sales Promotions include, among other things, coupons and discounts on purchases. To preserve the goodwill of their customer base, the Debtors seek authorization to honor the Sales Promotions.

115. The Debtors have traditionally maintained flexible return, refund, and exchange policies. Under the Debtors’ traditional return policy, customers may return all purchases to the Debtors’ store locations within 30 days of the original purchase date and within 60 days if the customer is a Perks Program member. Due to the COVID-19 pandemic, the Debtors have further modified their Refunds policy. Once a state or local restriction is lifted and a store location reopens, the Debtors allow customer Refunds up to 45 days from the date of the reopening. If the customer has a receipt along with a valid ID, the customer is entitled to a full refund. The Debtors seek authority to maintain the Refunds policy.

116. It is critical that the Debtors maintain their customer base. I believe that if the Debtors do not honor their Customer Programs, they will face negative publicity and substantial ill-will from their customer base. I believe that current customers are also more likely to be lost to the Debtors competitors, and new customers may be frightened off. The continuing support of the Debtors’ customers is imperative to their ongoing operations and the viability of their business

enterprise. The uninterrupted continuance of the Customer Programs is critical to maintaining and preserving such support. Accordingly, on behalf of the Debtors, I respectfully submit that the Court should approve the Customer Programs Motion.

J. Trade Claimant Motion

117. The Debtors also filed the *Debtors' Emergency Motion for Entry of (I) Authorizing the Debtors to Pay or Honor Prepetition Obligations to Certain Claimants and (II) Granting Related Relief* (the "Claims Motion"). Pursuant to the Lien Claimants Motion the Debtors seek authority, but not direction, under Bankruptcy Code §§ 105 and 363 to pay or honor prepetition obligations owed to certain Shippers, Warehousemen, and Miscellaneous Lien Claimants (collectively, and as described herein, the "Obligations") and to authorize and direct financial institutions to receive, process, honor, and pay checks presented for payment and credit and electronic payment requests related to such prepetition Obligations.

118. In addition, the Debtors request that any Claimant that accepts payment pursuant to this Motion and Order be obligated to continue providing services to the Debtors postpetition according to the existing agreements and the ordinary and customary course of dealing between the parties (the "Customary Trade Terms"). To the extent any Claimant refuses to provide services after accepting a payment made pursuant to this Motion, the Debtors reserve the right to seek the return of such payment. More specifically, the Debtors desire to condition the payments of the Obligations upon such Claimant's agreement to continue supplying goods or services on Customary Trade Terms for the duration of these Chapter 11 Cases by executing an Agreement substantially in the form attached to the Claimant Motion as Exhibit D (each, an "Agreement"). Each Agreement, once agreed to and accepted by a Claimant, shall be a legally binding contractual arrangement between the parties governing the commercial trade relationship as provided therein.

119. To successfully operate its business, the Debtors must ensure their retail stores (the “Stores”) are continuously replenished with stock for sale to its customers (the “Inventory”). Inventory planning begins approximately six (6) months in advance of the applicable season; however, as an off-price format business, the Debtors are opportunity buyers and acquire Inventory throughout the season. All Inventory is purchased from domestic and foreign vendors (the “Vendors”) that manufacture Inventory both domestically and internationally. The Debtors’ supply chain and order fulfillment depends on the services provided by, among others, third-party shippers, haulers, common or contract carriers, customs brokers, freight forwarders, third-party logistics system providers, transporters, and warehousemen (collectively, the “Shippers and Warehousemen”).

120. Additionally, the Debtors contract with numerous third parties (the “Miscellaneous Lien Claimants” and, together with the Shippers and Warehousemen, the “Claimants”). Collectively, the Debtors estimate that approximately \$3.3 million is due and owing to the Claimants as of the Petition Date.

121. Under certain nonbankruptcy laws, the Claimants may be able to assert liens on the goods in their possession to secure payment of charges or expenses incurred in connection with the prepetition Obligations. For example, a Miscellaneous Lien Claimant may refuse to release Inventory to the Debtors’ Distribution Centers if they are not paid current. Moreover, if the Debtors are unable to pay the Shipper and Warehousemen, the Debtors risk losing business partners and service providers who are critical to the continued operation of the Stores. An imposition of a Miscellaneous Lien Claim in one of the Debtors’ Stores would also likely violate the provisions of many of the Debtors’ leases and related agreements with business partners.

122. Through the Claimants Motion, the Debtors seek authority, but not direction, to pay and discharge, on a case-by-case basis and pursuant to the Agreement attached to the Claimants Motion as Exhibit D, the Obligations owed to the Claimants, regardless of whether such Claimants have perfected interests. Without the Debtors' supply chain properly functioning, the Debtors' successful reorganization possibilities are slim. If the Debtors lack confidence in timely delivery of Inventory to the Stores, it would be detrimental to the value of their estates and greatly hinder their ability to compete with other retail companies.

123. Accordingly, on behalf of the Debtors, I respectfully submit that this Court should approve the Trade Claimants Motion.

K. Store Closing Sales Motion

124. The Debtors also filed *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement; (II) Approving Procedures for Store Closing Sales; (III) Approving the Sale of Store Closure Assets Free and Clear of All Liens, Claims and Encumbrances; (IV) Waiving Compliance with Applicable State Laws and Approving Dispute Resolution Procedures; (V) Approving Procedures to Conduct Sales in Additional Closing Stores; and (VI) Granting Related Relief* (the "Store Closing Sales Motion"). Pursuant to the Store Closing Sales Motion, the Debtors seeks entry of interim and final orders: (i) authorizing the Debtors to assume the consulting agreement dated as of May 6, 2020 (as amended, revised, or supplemented from time to time, the "Consulting Agreement") by and among Tuesday Morning Corporation (the "Merchant") and Great American Group, LLC (the "Consultant") (a copy of which is annexed as Schedule 1 to the proposed Interim Order); (ii) approving the procedures for conducting store closing or similarly themed sales, starting on June 1, 2020 in accordance with the terms of the sale guidelines (the "Sale Guidelines") annexed as Schedule 2 to the proposed Interim Order; (iii) approving the sale of Store Closure Assets

(defined below) free and clear of all liens, claims, and encumbrances (the “Sales”); (iv) waiving compliance with Applicable State Laws (defined below) and approving Dispute Resolution Procedures (defined below); (v) approving procedures to conduct the Sales at any Additional Closing Stores (defined below); and (vi) granting related relief.

i. Store Closings

125. The Debtors have faced a challenging business environment brought on by COVID-19 and declining sales at their retail locations. These circumstances have left the Debtors with a significant number of stores operating at sub-optimal performance levels. Recognizing the need to right-size their store footprint to align with industry conditions, prior to the Petition Date, the Debtors’ management team in the exercise of their sound business judgment and in consultation with their advisors ultimately determined that it is appropriate to close and wind down (the “Store Closings”) underperforming store locations (the “Closing Stores”). There Store Closing sales are expected to begin on June 1, 2020 (the “Wave 1 Closing Stores”). The list of Wave 1 Closing Stores is attached to the Consulting Agreement as Exhibit A. Further, the Debtors’ management team and advisors continue to evaluate whether certain of the Closing Stores should instead remain open and whether additional stores beyond the Closing Stores should be closed. Specifically, the determination of the final number of stores to close will depend on, among other considerations, whether the Debtors are able to negotiate more favorable lease terms and rent reductions for certain stores with their landlords (the “Lease Negotiations”). The Debtors have retained A&G Realty Partners, LLC (“A&G”) to assist with the ongoing Lease Negotiations. The Debtors reserve the right to add or remove stores from that list in the exercise of their reasonable business judgment and depending on the outcome of the Lease Negotiations, subject to entry of the Interim Order or the Final Order, as applicable.

126. In formulating the list of Closing Stores, the Debtors considered, among other factors, historical store profitability, recent sales trends, the geographic market in which the store is located, the potential to realize negotiated rent reductions with applicable landlords, and specific circumstances related to a store's performance. The Closing Stores are either unprofitable, are significantly underperforming compared to the Debtors' remaining portfolio, or may not be a strategic fit with the Debtors' business going forward. Many of the Closing Stores are located in geographic markets that have experienced poor or negative sales trends and may no longer fit within the Debtors' business plan. In order to maximize the value of their estates, the Debtors may need to close additional stores during the Chapter 11 Cases not identified in the Consulting Agreement (such stores, the "Additional Closing Stores," and together with the Closing Stores, the "Stores").

127. In conjunction with their analysis of store performance, the Debtors also conducted a review and analysis of their inventory levels at the Closing Stores. Such inventory will be included in and sold as part of the Sales (collectively, the "Inventory"). The Debtors expect that the bulk of the Sales and Store Closings will take approximately 10 weeks to complete.

128. After determining that the Consultant was well qualified and negotiating the terms of the agreement at arms' length with the assistance of their advisors, the Debtors selected and engaged the Consultant to manage the Store Closings as well as to sell their furniture, fixtures, and equipment (the "FF&E" and, together with the Merchandise, the "Store Closure Assets") located in the Closing Stores and otherwise prepare those stores for turnover to the applicable landlords on the terms set forth in the Consulting Agreement.

129. The Debtors seek to assume the Consulting Agreement so that the Consultant may continue its preparation for the Store Closings on a postpetition basis without interruption. The

Debtors have determined, in an exercise of their business judgment, that (a) the services of the Consultant are necessary for a seamless and efficient large-scale execution of the Store Closings and Sales, as is contemplated by this Motion, and to maximize the value of the assets being sold, and (b) the Consultant is capable of performing the required tasks on favorable financial terms, as determined by the evaluation process.

130. Further, the Store Closings are a critical component of the Debtors' go-forward business plan, and assumption of the Consulting Agreement will allow the Debtors to conduct the Store Closings in an efficient, controlled manner that will maximize value for the Debtors' estate. The relief requested in this Motion is integral to maximizing the value of the Debtors' estate. Entry of an Order authorizing the Store Closing Sales will permit the Debtors to commence the Store Closings in a timely manner as contemplated in the Motion and will establish fair and uniform sale guidelines to assist the Debtors and their creditors through the Debtors' transition to a smaller, more profitable enterprise.

ii. Consultant Agreement

131. I believe that assumption of the Consulting Agreement will allow the Debtors to utilize the logistical capabilities, experience, and resources of the Consultant in performing large-scale liquidations in a format that allows the Debtors to retain control over the sale process. The consulting agreement was negotiated in good faith and at arms' length. As such, I believe the Consulting Agreement contains the most favorable terms available under the circumstances. I believe the Consulting Agreement is in the best interest of the Debtors and their estates.

132. The Consultant has extensive expertise in conducting liquidation sales and is well positioned to oversee and assist in the management and implementation of the Store Closings in an efficient and cost-effective manner. Assumption of the Consulting Agreement will enable the Debtors to utilize the skills and resources of the Consultant to effectively and efficiently conduct

the Store Closings and Sales for the benefit of all stakeholders. If the Consulting Agreement is not assumed on an interim basis, there could be substantial harm to all stakeholders. For example, the estate would lose the benefit of the momentum and preparation that has already been started by the Consultant regarding the Store Closings prepetition. Finally, given the number of Closing Stores and the particular issues in administering the Store Closings, it is not certain the Debtors could retain a liquidator able to conduct the process as efficiently and effectively as the Consultant, without added delay or cost.

iii. Sale Guidelines

133. The Debtors seek approval of streamlined procedures (*i.e.*, the Sale Guidelines) to sell the Store Closure Assets, in each case free and clear of liens, claims and encumbrances. The Debtors also seek approval of the Sale Guidelines to provide advertising media in which the Sales may be advertised with comfort that the Debtors are conducting the Sales in compliance with applicable law and with the Bankruptcy Court's approval. The Debtors seeks interim approval of the Sale Guidelines in light of the need to start the sales on June 1, 2020, so that the Debtors can complete the Sales prior to the Debtors' emergence from chapter 11.

134. I believe that ample business justification exists to conduct the Store Closings. Prior to the Petition Date, the Debtors, with the assistance of its advisors, engaged in an extensive review of each of their stores to: (a) identify underperforming stores; (b) consider whether the store's performance can be improved by various initiatives, including through the negotiation of lease concessions with landlords; and (c) determine what stores should be closed promptly to eliminate their ongoing negative impact on the Debtors' financial performance and to improve the Debtors' liquidity. This process has resulted in the Debtors' identification of the Closing Stores.

135. Further, delay in consummating the Store Closings would diminish the recovery tied to monetization of the Store Closure Assets for a number of reasons, chief among them that

the Closing Stores fail to currently generate positive cash flow and therefore are a drain on liquidity. Thus, the Debtors will realize an immediate benefit in terms of financial liquidity upon the sale of the Store Closure Assets and the termination of operations at the Closing Stores. Further, the swift and orderly commencement of the Store Closings will allow the Debtors to timely reject the applicable Store leases, and therefore avoid the accrual of unnecessary administrative expenses for rent payment.

136. The Debtors have determined, in the exercise of business judgment and in consultation with advisors, that the Sale Guidelines will provide the best and most efficient means of selling the Store Closure Assets in order to maximize their value to the estate. The Debtors estimates that consummation of the majority of the Sales and Store Closings will take approximately 10 weeks to complete.

iv. Liquidation Sale Laws and Dispute Resolution Procedures

137. It is my understanding that certain states in which the Debtors operate stores have or may have licensing or other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including, without limitation, state, provincial, and local laws, statutes, rules, regulations, and ordinances (the “Liquidation Sale Laws”).

138. Liquidation Sale Laws may establish licensing, permitting or bonding requirements, waiting periods, time limits, and bulk sale restrictions and augmentation limitations that would otherwise apply to the Store Closings. Such requirements hamper the Debtors’ ability to maximize value in selling its inventory.

139. I believe that authorizing the Sales without the delays and burdens associated with obtaining various state and local licenses, observing state and local waiting periods or time limits, and/or satisfying any additional requirements with respect to advertising and similar items is necessary and appropriate. The Debtors do not seek a general waiver of all state and local law

requirements, but only those that apply specifically to retail liquidation sales. Indeed, the requested waiver is narrowly tailored to facilitate the successful consummation of the Sales. Moreover, the Debtors will comply with applicable state and local public health and safety laws, and applicable tax, labor, employment, environmental, and consumer protection laws, including consumer laws regulating deceptive practices and false advertising. Finally, the Dispute Resolution Procedures provide an ordered means for resolving any disputes arising between the Debtors and any Governmental Units with respect to the applicability of any Liquidation Sale Laws and should therefore be approved.

v. Fast Pay Laws

140. It is my understanding that many states in which the Debtors operate have laws and regulations that require the Debtors to pay an employee substantially contemporaneously with his or her termination (the “Fast Pay Laws” and together with the Liquidation Sale Laws, the “Applicable State Laws”).

141. The nature of the Store Closings contemplated by the Store Closing Sales Motion will result in a substantial number of employees being terminated during the Store Closings. To be clear, the Debtors intend to pay terminated employees as expeditiously as possible and under normal payment procedures. However, the Debtors’ payroll system will simply be unable to process the payroll information associated with these terminations in a manner that will be compliant with the Fast Pay Laws. Under ordinary circumstances, the Debtors’ payroll department is able to coordinate delivery of final checks to coincide with an employee’s final day of work where required by state law. This process requires the Debtors’ payroll department to calculate individual termination payments, prepare each termination payment check, obtain authorization for each such check and then prepare each such check for mailing. Given the number of employees

who will likely be terminated during the Store Closings, this process could easily take several days, making compliance with the Fast Pay Laws burdensome to the Debtors' estates, if not impossible.

142. To eliminate the time, delay, and expense associated with the administrative procedures necessary to comply with the Applicable State Laws, the Debtors propose the Sale Guidelines as a way to streamline the administrative burdens on its estate while still adequately protecting the broad and varied interests of both landlords and applicable governmental agencies charged with enforcing any Liquidation Sale Laws that may apply to the Store Closings. As such, the Debtors believe the Sale Guidelines mitigate any concerns that its landlords or governmental agencies may raise with respect to the Store Closings, and therefore, the below requested relief is in compliance with any applicable Liquidation Sale Laws.

vi. Lease Restrictions

143. The Debtors also respectfully request a waiver of any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Store Closings and Sales. In certain cases, the contemplated Store Closings and Sales may be inconsistent with certain provisions of leases, subleases, or other documents with respect to the premises in which the Debtors operate, including (without limitation) reciprocal easement agreements, agreements containing covenants, conditions, and restrictions (including, without limitation, "go dark" provisions and landlord recapture rights), or other similar documents or provisions. Such restrictions would also hamper the Debtors' ability to maximize value in selling its inventory.

144. The Debtors also requests that no entity, including, without limitation, utilities, landlords, shopping center managers and personnel, creditors, and all persons acting for or on their behalf shall interfere with or otherwise impede the conduct of the Store Closings, the Sales or institute any action against the Debtors in any court (other than in the Bankruptcy Court) or

before any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Store Closings, the Sales or the advertising and promotion (including through the posting of signs) of the Sales.

vii. Abandonment of Certain Property

145. The Debtors seek sell FF&E remaining in the Closing Stores; however, the Debtors may determine that the costs associated with holding or selling certain property or FF&E exceeds the proceeds that will be realized upon its sale, or that such property is not sellable at all. In such event, the property is of inconsequential value and benefit to the estates and/or may be burdensome to retain.

viii. Consumer Privacy

146. The Debtors will utilize all commercially reasonable efforts to remove or cause to be removed any confidential or personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including, but not limited to, an individual's name, social security number, date of birth, government-issued identification number, account number and credit or debit card number) in any of the Debtors' hardware, software, computers or cash registers or similar equipment that are to be sold or abandoned. The Debtors will not be selling or releasing personally identifiable information in the course of the Sales. Therefore, appointment of a consumer privacy ombudsman is unnecessary.

147. I believe that the relief requested in the Store Closing Sales Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest, and will enable the Debtors to continue to operate their business in Chapter 11 without disruption. Accordingly, on behalf of the Debtors, I respectfully submit that the Store Closing Sales Motion should be approved.

L. NOL Motion

148. The Debtors have filed this *Debtors' Emergency Motion for Entry of Interim and Final Orders (A) Establishing Notification and Hearing Procedures for Certain Transfers of, and Claims of Worthlessness with Respect to, Equity Securities and (B) for Related Relief* (the “NOL Motion”). Pursuant to the NOL Motion, the Debtors seek entry of interim and final orders (a) establishing notification and hearing procedures related to certain transfers of, or declarations of worthlessness with respect to, equity securities in the Debtors or any beneficial interest therein (the common stock of Debtors and any beneficial interest therein, including Options (as defined in Paragraph 12(e) of the Securities Trading Motion) to acquire such stock, the “Common Stock” or the “Equity Securities”) that must be complied with before trades or transfers of such securities or declarations of worthlessness become effective, (b) ordering that any purchase, sale, or other transfer of, or declaration of worthlessness with respect to, Equity Securities in violation of the procedures set forth below shall be void *ab initio*, and (c) scheduling a final hearing.

149. The Debtors have incurred, and may continue to incur, significant net operating losses (“NOLs”), translating to potentially material tax savings. The Debtors’ NOLs consist of losses generated in any given or prior tax year and can be “carried forward” indefinitely to offset the Debtors’ future taxable income, thereby reducing future aggregate tax obligations. *See* 26 U.S.C. § 172. NOLs also may be utilized to offset taxable income generated by transactions completed during the Chapter 11 Cases.

150. The Debtors have limited the relief requested in the NOL Motion to the extent necessary to preserve estate value. Specifically, the proposed Interim and Final Orders will affect only holders of the equivalent of more than approximately 2,160,474 shares of Common Stock

(*i.e.*, 4.5% or more of outstanding Common Stock)¹⁵ and parties who are interested in purchasing sufficient Equity Securities to result in such party's becoming a holder of the equivalent of at least approximately 2,160,474 shares of Common Stock. The Debtors also requested this Court enter interim and final orders establishing procedures with respect to certain transfers of Equity Securities as outlined in Exhibit A of the NOL Motion and the annexes related thereto.

151. The relief sought in the NOL Motion will protect and preserve the Debtors' valuable tax attributes, including the NOLs, as well as approximately \$3.2 million in general business credits (collectively, the "Tax Attributes") ultimately benefitting all stakeholders. Therefore, I believe that the relief requested in the NOL Motion is in the best interest of the Debtors' estates, their creditors, and all other parties in interest. Accordingly, on behalf of the Debtors, I respectfully submit that the NOL Motion should be approved.

¹⁵ This number is based on the 48,010,534 shares of Common Stock outstanding as of the Petition Date.

Exhibit B

Summary of the Debtors' Operations

Tuesday Morning Corporation (TM Corp.)

Tuesday Morning Corporation (“TM Corp.”) is the parent corporation of TMI Holdings. All other Tuesday Morning legal entities operate below TMI Holdings. TM Corp. is otherwise inactive in all taxing jurisdictions.

TMI Holdings, Inc. (TMI Holdings)

TMI Holdings, Inc. (“TMI Holdings”) is the parent corporation of TMI. TMI Holdings is otherwise inactive in all taxing jurisdictions.

Tuesday Morning, Inc. (TMI)

Tuesday Morning, Inc. (“TMI”) is a wholly-owned subsidiary of TMI Holdings. TMI indirectly owns a combined 100 percent interest in TMP through its subsidiaries DOTW and NOTW. TMI functions as an operator of the Tuesday Morning stores and also performs certain strategic functions such as site selection, lease management, advertising, and senior management guidance.

Days of the Week, Inc. (DOTW)

Days of the Week, Inc. (“DOTW”) is a wholly owned subsidiary of TMI and is the general partner of TMP.

Nights of the Week, Inc. (NOTW)

Nights of the Week, Inc. (“NOTW”) is a wholly owned subsidiary of TMI and is the limited partner of TMP.

Tuesday Morning Partners, Ltd. (TMP)

Tuesday Morning Partners, Ltd. (“TMP”) is a limited partnership. TMP is 1-percent owned by DOTW (its general partner) and 99-percent owned by NOTW (its limited partner). TMP provides operational and strategic services to TMI, including merchandising, store design and lay-out, sales planning and allocation, warehousing, and logistics.

Friday Morning, LLC. f/k/a Friday Morning, Inc. (FM LLC)

Friday Morning, LLC (“FM LLC”) owns the real property associated with the Dallas Distribution Center and the Tuesday Morning corporate offices. Additionally, FM LLC (i) issues and sells prepaid and stored value cards and similar items (in paper, plastic, electronic or other format) that can be redeemed by owners of such cards for the purchase of merchandise and/or services at Tuesday Morning stores and (ii) provides services related to the management and operation of prepaid and stored value card programs, including card processing, manufacturing and regulatory compliance services.