

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

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In re:	:	Chapter 11
	:	
THE COLLECTED GROUP, LLC, <i>et al.</i> , ¹	:	Case No. 21-10663 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	-X	

**DEBTORS’ APPLICATION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
RETENTION AND EMPLOYMENT OF MILLER BUCKFIRE AS FINANCIAL
ADVISOR AND INVESTMENT BANKER, EFFECTIVE AS OF THE PETITION DATE,
(II) WAIVING CERTAIN INFORMATIONAL REQUIREMENTS, AND
(III) GRANTING RELATED RELIEF**

The Collected Group, LLC and its affiliated debtors and debtors in possession (each a “Debtor” and collectively, the “Debtors”) in the above-captioned chapter 11 cases (these “Chapter 11 Cases”) respectfully submit this Application (this “Application”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2014-1 and 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) (i) authorizing them to retain and employ Miller Buckfire & Co., LLC (“MB&Co.”) and its affiliate Stifel, Nicolaus & Co., Inc. (“SN&Co.” and together with MB&Co., “Miller Buckfire”) as their financial advisor and investment banker in accordance with the terms and conditions set

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: The Collected Group, LLC (5234); The Collected Group Company, LLC (2188); The Collected Group Exports, Inc. (3426); The Collected Group Retail, LLC (2878); and RBR, LLC (9479). The Debtor’s headquarters are located at 4775 Eucalyptus Avenue, Chino, California 91710.

forth in that certain engagement letter dated as of February 10, 2021, the “Engagement Letter”),² a copy of which is attached to the Proposed Order as **Exhibit 1**, effective as of the Petition Date (as defined below); (ii) approving the terms of Miller Buckfire’s employment and retention, including the fee and expense structure and the indemnification, contribution, reimbursement and related provisions set forth in the Engagement Letter; (iii) waiving certain informational requirements and (iv) granting such other and further relief as is just and proper. In support of this Application, the Debtors submit the declaration of James Doak, a Managing Director of Miller Buckfire (the “Doak Declaration”), which is attached hereto as **Exhibit B** and incorporated herein by reference. In further support of this Application, the Debtors respectfully state as follows:

BACKGROUND

1. On April 5, 2021 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. The factual background regarding the Debtors, including their business operations and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the *Declaration of Evan Hengel in Support of Chapter 11 Petitions and Requests for First Day Relief* [Docket No. 4] (the “First Day Declaration”), which was filed with the Court on the Petition Date and is fully incorporated herein by reference.

² Any references to, or summaries of, the Engagement Letter in this Application are qualified by the express terms of the Engagement Letter, which shall govern if there is any conflict between the Engagement Letter and such summaries or references herein. Such summaries are provided for convenience only. Additionally, any capitalized terms used in this Application not otherwise defined herein shall have the meanings ascribed to them in the Engagement Letter or the First Day Declaration (as defined below), as applicable.

3. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

4. On April 6, 2021, the Court entered an order authorizing the joint administration of these Chapter 11 Cases [Docket No. 43].

JURISDICTION AND VENUE

5. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.). The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

6. By this Application, the Debtors request entry of the Proposed Order, authorizing the Debtors to retain and employ Miller Buckfire as their investment banker effective as of the Petition Date for the purpose of providing necessary investment banking and financial advisory services in connection with these Chapter 11 Cases and in accordance with the terms of the Engagement Letter.

MILLER BUCKFIRE'S QUALIFICATIONS

7. The Debtors seek to retain Miller Buckfire as their financial advisor and investment banker because, among other things, Miller Buckfire's professionals have extensive experience in providing financial advisory and investment banking services to financially

distressed companies and to creditors, equity holders and other constituencies in reorganization proceedings and complex financial restructurings, both in- and out-of-court.

8. MB&Co. is an investment bank that provides strategic and financial advisory services in large-scale corporate restructuring transactions. MB&Co. is an indirect, wholly-owned subsidiary of Stifel Financial Corp. (“Stifel Financial” and together with its approximately 100 subsidiaries, the “Stifel Group”) and has no subsidiaries or other controlled affiliates. SN&Co. is a direct, wholly-owned subsidiary of Stifel Financial whose subsidiaries and controlled affiliates have no operations or employees beyond insurance and holding licenses related to the executive tax advice business at SN&Co. The only common parent of MB&Co. and SN&Co. is Stifel Financial. Stifel Financial is a publicly-traded financial holding company listed on the New York Stock Exchange (ticker symbol: SF), headquartered in St. Louis, Missouri.

9. Stifel Financial completed its acquisition of MB&Co. in 2012 to add restructuring expertise to SN&Co.’s investment banking branch. Among other reasons, MB&Co. remains a separate subsidiary to help preserve the value of MB&Co.’s restructuring reputation in the market.

10. MB&Co. and SN&Co. are affiliated broker-dealers. Generally, MB&Co. bankers are restructuring specialists and SN&Co. bankers are industry-specific and other specialists. In this case, the SN&Co. professionals involved have significant apparel and retail expertise. These professionals are continuing to work together with the MB&Co. professionals as a coordinated team for the Debtors, providing both restructuring and apparel and retail experience under a single fee structure.

11. The Debtors have been advised that MB&Co., SN&Co. or both have been retained to provide investment banking and other services in connection with the restructuring of

the following companies, among others, in jurisdictions around the country: Acis Capital Management, L.P.; Acterna Corporation; ADPT DFW Holdings LLC (Adeptus); Aéropostale, Inc.; Aerovías Nacionales de Colombia S.A.; Agera Energy LLC; Allied Holdings, Inc.; Amtrol Inc.; Anchor Danly Company; Applied Extrusion Technologies, Inc.; AT&T Latin America; Aurora Foods Inc.; Autocam Corporation; Avado Brands, Inc.; Birch Telecom, Inc.; Black Diamond Mining Company, LLC; Bruno's Inc.; Burlington Industries; Calpine Corporation; Cambridge Industries; Carmike Cinemas; Celotex Corporation; Centerpoint Energy; Citation Corporation; CMS Energy Corporation; Criimi Mae, Inc.; CTC Communications; Dana Corporation; Delta Air Lines, Inc.; Dow Corning Corporation; Drypers, Inc.; Dura Automotive Systems, Inc.; EaglePicher Holdings Inc.; Emerge Energy Services LP; Exide Technologies; Eurotunnel Group; Favorite Brands International Inc.; FLYi, Inc.; Foamex International; Focal Communications Corporation; FPA Medical Management; Furniture Brands International, Inc.; Gate Gourmet; General Growth Properties, Inc.; GNC Holdings, Inc.; Grand Union Co.; Greatwide Logistics; Grupo TMM; Gymboree Group, Inc.; hhgregg, Inc.; Hines Horticulture, Inc.; Horizon Natural Resources Company; Huntsman Corporation; ICG Communications; ICO Global Communication, Ltd.; IMPATH Inc.; Innkeepers USA Trust; Interstate Bakeries Corporation; J.L. French Automotive Castings; Kmart Corporation; Level (3) Communications; Laidlaw, Inc.; Legacy Reserves, Inc.; Lenox Group, Inc.; Lodgenet, Inc.; Loewen Group; Magna Entertainment Corp.; MagnaChip Semiconductor LLC; McLeodUSA; Meridian Technologies Inc.; Mervyn's Inc.; Micro Warehouse; Mirant Corp.; Molycorp, Inc.; Montgomery Ward & Co.; National Airlines; Oakwood Homes; Neff Corp.; Optima Specialty Steel, Inc.; Pacific Crossing Limited; Pathmark Stores, Inc.; Pegasus Satellite Communications; PennCorp Financial Group, Inc.; Pioneer Companies; PSINet; Polaroid Corporation; Polymer Group, Inc.; Progressive Molded

Products Inc.; Questex Media Group, Inc.; Rand Logistics, Inc.; The Reader's Digest Association, Inc.; Real Industry, Inc.; Sable Permian Resources LLC; SI Corporation; Simmons Bedding Company; Southern Foods Group, LLC (Dean Foods Company); The Spiegel Group; Stallion Oilfield Services Ltd.; SquareTwo Financial Services Corporation; Standard Pacific Corp.; Stolt-Nielsen S.A.; Stolt-Offshore S.A.; Sunbeam Corporation; Sundance Energy, Inc.; Taylor-Wharton International LLC; Techniplas, LLC; TECO Energy; Things Remembered, Inc.; Tidewater Inc.; TNT Crane & Rigging, Inc.; Trans World Airlines; Tuesday Morning Corporation; Ultrapetrol (Bahamas) Limited; Unitek Global Services, Inc.; U.S. Office Products; Vonage Corporation; and Women First Healthcare, Inc. MB&Co.'s professionals are also providing or have provided mergers and acquisitions advisory services in connection with whole or partial company sale transactions involving companies across a wide range of industries, including Archimica, Inc.; Atwood Mobile Products (Dura Corporation); Aurora Foods; Burlington Industries; Calpine Corporation; Cambridge Industries; Career Blazers; Castle Brands Inc.; Conversent Communications; Country Road Communications; Dana Corporation; ED Management Corporation; Focal Communications; Global Valley Networks; IMPATH; LodgeNet, Inc.; Magna Entertainment Corp.; Newmark & Company Real Estate, Inc.; Pegasus Broadcast Corporation; Pegasus Communications; Pendum, Inc.; Penn National Gaming, Inc.; PSINet; Polaroid Corporation; and The Reader's Digest Association, Inc.

12. The resources, capabilities and experience of Miller Buckfire in advising the Debtors are crucial to the Debtors' chapter 11 strategy. An experienced financial advisor and investment banker, such as Miller Buckfire, fulfills a critical need that complements the services offered by the Debtors' other restructuring professionals. The Debtors require the services of a capable and experienced financial advisor and investment banker such as Miller Buckfire.

MILLER BUCKFIRE'S RETENTION

13. Since its initial retention in May 2019, and during the weeks and months leading up to the Petition Date, Miller Buckfire provided investment banking services across an array of potential paths forward for the debtors.³ As a result, Miller Buckfire has acquired significant knowledge of the Debtors and their businesses and is intimately familiar with the Debtors' financial affairs, debt structure, business operations, capital structure, key stakeholders, financing documents and other related material information. In providing prepetition services to the Debtors, Miller Buckfire has worked closely with the Debtors' senior management and their other advisors and has familiarity with the other major stakeholders that will be involved in these Chapter 11 Cases. Accordingly, Miller Buckfire has developed relevant experience and expertise regarding the Debtors that (i) makes Miller Buckfire a natural selection as the Debtors' financial advisor and investment banker and (ii) will assist Miller Buckfire in providing effective and efficient services in these Chapter 11 Cases.

SERVICES TO BE PROVIDED BY MILLER BUCKFIRE

14. The parties have entered into the Engagement Letter, which governs the relationship between the Debtors and Miller Buckfire. The terms and conditions of the Engagement Letter were negotiated at arm's length between the Debtors and Miller Buckfire and reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement. Under the Engagement Letter, in consideration for the compensation contemplated thereby, Miller Buckfire has provided and has agreed to provide the following services:

- a. Familiarize itself with the business, operations, properties, financial condition and prospects of the Debtors and advise and assist the Debtors in

³ Miller Buckfire was originally engaged pursuant to an engagement letter dated May 30, 2019 (the "Prior Agreement"). The Prior Agreement was superseded and replaced by the Engagement Letter.

structuring and effecting the financial aspects of the transactions defined in the Engagement Letter;

- b. Assist in developing and seeking approval of the Debtors' Restructuring plan (a "Plan");
- c. Assist in structuring any new securities to be issued under the Plan;
- d. Participate or otherwise assist in negotiations with entities or groups affected by the Plan;
- e. Assist in structuring and effecting any Financing;
- f. Identify and contact potential Investors;
- g. Participate or otherwise assist in negotiations with Investors;
- h. Assist with any Sale, whether under section 363 of the Bankruptcy Code or otherwise (including any out-of-court Sale);
- i. Identify and contact potential acquirers;
- j. Participate or otherwise assist in negotiations with acquirers;
- k. Prepare and develop a Debtor sale memorandum for use in soliciting potential acquirers; and
- l. Participate in hearings before the court in which the Bankruptcy Case is commenced in connection with Miller Buckfire's other services, including related testimony, in coordination with the Debtors' counsel.

NO DUPLICATION OF SERVICES

15. The services that Miller Buckfire will provide to the Debtors are necessary to enable the Debtors to maximize the value of their estates. The Debtors believe that the services will not duplicate the services that other professionals will be providing to the Debtors in these Chapter 11 Cases. Specifically, Miller Buckfire will carry out unique functions and will use reasonable efforts to coordinate with the Debtors' other retained professionals to avoid the unnecessary duplication of services.

PROFESSIONAL COMPENSATION AND FEE APPLICATIONS

16. In consideration of the services to be provided by Miller Buckfire, and as more fully described in the Engagement Letter, subject to the Court's approval, the Debtors have agreed to pay Miller Buckfire the proposed compensation set forth in the Engagement Letter (the "Fee and Expense Structure"), which may be summarized as follows:

- a. Monthly Fee. \$100,000.
- b. Transaction Fee. \$1,300,000, due upon the earlier of a Restructuring and a Sale.
- c. Financing Fee. \$100,000, due upon the first funding of each Financing.
- d. Treatment of Multiple Fees.
 - (1) Half of any Monthly Fees actually paid will be credited against any Transaction Fee.
 - (2) Any Financing Fee actually paid will be credited in full against any Transaction Fee.
 - (3) The maximum aggregate Financing Fees and Transaction Fees is limited to \$1,300,000.
- e. Expenses. The Debtors will promptly reimburse Miller Buckfire's reasonable documented, out-of-pocket expenses incurred in connection with the Engagement Letter, including Miller Buckfire's performance under the Engagement Letter and any costs of enforcement. These expenses include the reasonable, documented fees and out-of-pocket expenses of Miller Buckfire's counsel, including in connection with defending retention and fee applications (without the requirement that such counsel be approved by the Bankruptcy Court), its consultants and other advisors, and also include reasonable, documented out-of-pocket travel and lodging expenses, data processing and communication charges, research and courier services. The Debtors shall also reimburse Miller Buckfire for any documented sales, use or similar taxes (including additions thereto) incurred by Miller Buckfire in connection with the Engagement Letter.

THE FEE AND EXPENSE STRUCTURE IS APPROPRIATE AND REASONABLE AND SHOULD BE APPROVED UNDER SECTION 328(A) OF THE BANKRUPTCY CODE

17. The Debtors believe that the Fee and Expense Structure is comparable to those generally charged by financial advisors and investment bankers of similar stature to Miller

Buckfire for comparable engagements, both in and out of bankruptcy proceedings, and reflects a balance between a fixed, monthly fee and a contingency amount, which are tied to the consummation and closing of the transactions and services contemplated by the Debtors and Miller Buckfire in the Engagement Letter.

18. The Fee and Expense Structure summarized above and described fully in the Engagement Letter is consistent with Miller Buckfire's normal and customary billing practices for comparably sized and complex cases and transactions, both in- and out-of-court, involving the services to be provided in connection with these Chapter 11 Cases. Moreover, the Fee and Expense Structure is consistent with and typical of arrangements entered into by Miller Buckfire and other financial advisors and investment banks in connection with the rendering of comparable services to clients such as the Debtors. Miller Buckfire and the Debtors believe that the Fee and Expense Structure is both reasonable and market-based.

19. To induce Miller Buckfire to represent the Debtors, the Fee and Expense Structure was established to reflect the difficulty of the extensive assignments Miller Buckfire has undertaken and expects to undertake and to account for the potential for an unfavorable outcome resulting from factors outside of Miller Buckfire's control.

20. The Debtors and Miller Buckfire negotiated the Fee and Expense Structure to function as an interrelated, integrated unit, in correspondence with Miller Buckfire's services, which Miller Buckfire renders not in parts, but as a whole. It would be contrary to the intention of Miller Buckfire and the Debtors for any isolated component of the Fee and Expense Structure to be treated as sufficient consideration for any isolated portion of Miller Buckfire's services. Instead, the Debtors and Miller Buckfire intend that Miller Buckfire's services be considered as a whole that is to be compensated by the Fee and Expense Structure in its entirety.

21. Miller Buckfire's restructuring expertise, as well as its capital markets knowledge, financing skills, and mergers and acquisitions expertise, some or all of which may be required by the Debtors during the term of Miller Buckfire's engagement, under the Engagement Letter, were important factors in determining the Fee and Expense Structure. The ultimate benefit to the Debtors derived from the services provided by Miller Buckfire under the Engagement Letter cannot be measured by a reference to the number of hours expended by Miller Buckfire's professionals.

22. The Fee and Expense Structure was agreed to in anticipation that a substantial commitment of professional time and effort will be required of Miller Buckfire and its professionals and in light of the fact that (i) such commitment may foreclose other opportunities for Miller Buckfire and (ii) the actual time and commitment required of Miller Buckfire and its professionals to perform its services may vary substantially from week to week and month to month, creating "peak load" issues for Miller Buckfire.

23. In light of the foregoing and given the numerous issues that Miller Buckfire may be required to address in the performance of its services under the Engagement Letter, Miller Buckfire's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for Miller Buckfire's services for engagements of this nature in both the in-court and out-of-court contexts, the Debtors believe that the Fee and Expense Structure is fair and reasonable and market-based under the standards set forth in section 328(a) of the Bankruptcy Code.

24. In the event that, during the pendency of these chapter 11 cases, Miller Buckfire requests reimbursement for attorneys' fees or expenses, the invoices and supporting time records from such attorneys will be included in Miller Buckfire's fee applications and such

invoices and time records shall be in compliance with the Local Rules and approval of the Court under the standards of Bankruptcy Code sections 330 and 331.

25. Miller Buckfire has not shared or agreed to share any of its compensation from the Debtors with any other person, other than as permitted by section 504 of the Bankruptcy Code. No promises have been received by Miller Buckfire as to compensation in connection with these Chapter 11 Cases, other than as set forth in the Engagement Letter.

RECORD KEEPING AND APPLICATIONS FOR COMPENSATION

26. It is not the general practice of financial advisory and investment banking firms, including Miller Buckfire, to keep detailed time records similar to those customarily kept by attorneys and required by Local Rule 2016-2(d). Because Miller Buckfire does not ordinarily maintain contemporaneous time records in tenth-hour (0.1) increments or provide or conform to a schedule of hourly rates for its professionals, pursuant to Local Rule 2016-2(h), Miller Buckfire should be excused from compliance with such information requirements set forth in Local Rule 2016-2(d) with respect to Miller Buckfire's professional fees only. Miller Buckfire should be required to maintain time records in half-hour (0.5) increments setting forth, in a summary format, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtors.

27. Miller Buckfire will also maintain detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services. Miller Buckfire's applications for compensation and expense reimbursement will be paid by the Debtors pursuant to the terms of the Engagement Letter, in accordance with Local Rule 2016-2(e) and any procedures established by the Court.

INDEMNIFICATION PROVISIONS

28. Pursuant to the indemnification provisions of the Engagement Letter, the Debtors have agreed, among other things, to indemnify and hold harmless Miller Buckfire and its affiliates, their respective directors, officers, members, managers, agents, employees and controlling persons, and each of their respective successors and assigns to the full extent lawful, from and against all losses, claims damages, liabilities, and expenses incurred by Miller Buckfire that are related to or arise out of actions or alleged actions taken or omitted to be taken by the Debtors or an indemnified person with the Debtors' consent or in conformity with the Debtors' actions or omissions or Miller Buckfire's activities under Miller Buckfire's engagement, subject to customary limitations.

29. The Debtors and Miller Buckfire believe that the indemnification provisions contained in the Engagement Letter are customary and reasonable for financial advisory and investment banking engagements, both in- and out-of-court, and, as modified by the Proposed Order, reflect the qualifications and limitations on indemnification provisions that are customary in this district and other jurisdictions. *See, e.g., In re Real Industry, Inc.*, Case No. 17-12464 (KJC) (Bankr. D. Del. Jan. 17, 2018); *In re Tidewater Inc.*, Case No. 17-11132 (BLS) (Bankr. D. Del. July 26, 2017); *In re Westmoreland Coal Co.*, Case No. 18-35672 (DRJ), Dkt. No. 622 (Bankr. S.D. Tex. Nov. 28, 2018); *In re iHeartMedia, Inc.*, Case No. 18- 31274 (MI), Dkt. No. 864 (Bankr. S.D. Tex. May 30, 2018); *In re Ultra Petrol Corp.*, Case No. 16-32202, Dkt. No. 420 (MI) (Bankr. S.D. Tex. July 20, 2016); *In re Warren Res., Inc.*, Case No. 16-32760, Dkt. No. 175 (Bankr. S.D. Tex. July 13, 2016); *In re Aéropostale, Inc.*, Case No. 16-11725 (SHL) (Bankr. S.D.N.Y. June 3, 2016).⁴

⁴ Because of the voluminous nature of the orders cited in this Application, they are not attached to the Application. Copies of these orders are available upon request to the Debtors' proposed counsel.

30. The terms and conditions of the Engagement Letter were negotiated by the Debtors and Miller Buckfire at arm's length and in good faith. The Debtors respectfully submit that the indemnification, contribution, exculpation, reimbursement and other provisions contained in the Engagement Letter, viewed in conjunction with the other terms of Miller Buckfire's proposed retention, are reasonable and in the best interests of the Debtors, their estates and creditors in light of the fact that the Debtors require Miller Buckfire's services to successfully reorganize. Accordingly, as part of this Application, the Debtors request that the Court approve the Engagement Letter.

BASIS FOR RELIEF REQUESTED

31. The Debtors seek authority to retain and employ Miller Buckfire as their financial advisor and investment banker under section 327 of the Bankruptcy Code, which provides that a debtor is authorized to employ professional persons "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [Debtors] in carrying out [their] duties under this title." 11 U.S.C. § 327(a). Section 1107(b) of the Bankruptcy Code elaborates upon sections 101(14) and 327(a) of the Bankruptcy Code in cases under chapter 11 of the Bankruptcy Code and provides that "a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b).

32. In addition, the Debtors seek approval of the Engagement Letter (including, without limitation, the Fee and Expense Structure and the indemnification provisions), pursuant to section 328(a) of the Bankruptcy Code which provides, in relevant part, that the Debtors "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer,

on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. . . .” 11 U.S.C. § 328(a). Section 328 of the Bankruptcy Code permits the compensation of professionals, including financial advisors and investment bankers, on more flexible terms that reflect the nature of their services and market conditions. As the United States Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat’l Gypsum Co. (In re Nat’l Gypsum Co.)*, 123 F.3d 861 (5th Cir. 1997):

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants “reasonable compensation” based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

Id. at 862 (citations omitted), *cited in Riker, Danzig, Scherer, Hyland & Perretti LLP v Official Comm. of Unsecured Creditors (In re Smart World Techs. LLC)*, 383 B.R. 869, 874 (S.D.N.Y. 2008). Owing to this inherent uncertainty, courts have approved similar arrangements that contain reasonable terms and conditions under section 328 of the Bankruptcy Code. *See, e.g., In re Chaparral Energy, Inc.*, Case No. 16-11144 (LSS) (Bankr. D. Del. June 10, 2016); *In re Energy & Exp. Partners, Inc.*, Case No. 15-44931 (RFN) (Bankr. N.D. Tex. Feb. 8, 2016).

33. Furthermore, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 amended section 328(a) of the Bankruptcy Code, which now provides as follows:

The trustee, or a committee appointed under section 1102 of this title, with the court’s approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, *on a fixed or percentage fee basis*, or on a contingent fee basis.

11 U.S.C. § 328(a) (amendment emphasized). This change makes clear that the Debtors are able to retain a professional on a fixed or percentage fee basis, such as the Fee and Expense Structure, with bankruptcy court approval.

34. The Engagement Letter appropriately reflects (i) the nature and scope of services to be provided by Miller Buckfire, (ii) Miller Buckfire's substantial experience with respect to financial advisory and investment banking services and (iii) the fee structures typically utilized by Miller Buckfire and other leading financial advisors and investment bankers that do not bill their clients on an hourly basis.

35. Similar fixed and contingency fee arrangements have been approved and implemented by courts in other large chapter 11 cases. *See, e.g., In re Real Industry, Inc.*, Case No. 17-12464 (KJC) (Bankr. D. Del. Jan. 17, 2018); *In re Tidewater Inc.*, Case No. 17-11132 (BLS) (Bankr. D. Del. July 26, 2017); *In re Westmoreland Coal Co.*, Case No. 18-35672 (DRJ), Dkt. No. 622 (Bankr. S.D. Tex. Nov. 28, 2018); *In re iHeartMedia, Inc.*, Case No. 18-31274 (MI), Dkt. No. 864 (Bankr. S.D. Tex. May 30, 2018); *In re CHC Group LTD.*, Case No. 16-31854 (BJH), Dkt. No. 576 (Bankr. N.D. Tex. Aug. 8, 2016). Accordingly, the Debtors believe that Miller Buckfire's retention on the terms and conditions proposed herein is appropriate.

MILLER BUCKFIRE'S DISINTERESTEDNESS AND PAYMENTS TO MILLER BUCKFIRE PRIOR TO THE PETITION DATE

36. During the 90-day period prior to the commencement of these Chapter 11 Cases, Miller Buckfire was paid in the ordinary course certain fees and expense reimbursements totaling \$200,095.43. Specifically, the Debtors paid Miller Buckfire: (i) \$100,000 on March 5, 2021 on account of the February 2021 Monthly Fee; and (ii) \$100,095.43 on March 22, 2021 on account of the March 2021 Monthly Fee and certain prepetition expenses. Miller Buckfire did not

receive any other payments from the Debtors during the 90 days immediately preceding the Petition Date.

37. To the best of the Debtors' knowledge and except to the extent disclosed herein and in the Doak Declaration: (i) Miller Buckfire is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code and does not hold or represent an interest materially adverse to the Debtors' estates; and (ii) Miller Buckfire has no connection to the Debtors, their creditors or other parties in interest in these Chapter 11 Cases.

38. As set forth in further detail in the Doak Declaration, Miller Buckfire has certain connections with creditors, equity security holders and other parties in interest in these Chapter 11 Cases. All of these matters, however, are unrelated to these Chapter 11 Cases. The Debtors and Miller Buckfire do not believe that any of these matters represent an interest materially adverse to the Debtors' estates or otherwise create a conflict of interest regarding the Debtors or these Chapter 11 Cases.

39. To the extent that any new relevant facts or relationships bearing on the matters described herein during the period of Miller Buckfire's retention are discovered or arise, Miller Buckfire will use reasonable efforts to file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

NOTICE

40. Notice of this Application will be given to: (i) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), (ii) counsel to the DIP Agent and Prepetition Agent; (iii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; and (iv) any party that has requested notice pursuant to

Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as **Exhibit A**: (i) granting the relief sought herein; and (ii) granting to the Debtors such other and further relief as the Court may deem proper.

Dated: April 12, 2021

Respectfully submitted,

The Collected Group, LLC, *et al.*
Debtors and Debtors in Possession

/s/ Alan Leavitt

Alan Leavitt
General Counsel
The Collected Group, LLC