

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

In re:

American Eagle Delaware Holding Company  
LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-\_\_\_\_ (\_\_\_\_)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION  
EMPLOYEE CLAIMS, INCLUDING WAGES, SALARIES, AND OTHER  
COMPENSATION, (II) CERTAIN EMPLOYEE BENEFITS AND CONFIRMING  
RIGHT TO CONTINUE EMPLOYEE BENEFITS ON POST-PETITION BASIS, (III)  
REIMBURSEMENT TO EMPLOYEES FOR PREPETITION EXPENSES, (IV)  
WITHHOLDING AND PAYROLL-RELATED TAXES, (V) WORKERS'  
COMPENSATION OBLIGATIONS, AND (VI) PREPETITION CLAIMS OWING TO  
ADMINISTRATORS AND THIRD-PARTY PROVIDERS**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move this Court (this “**Motion**”) for entry of an interim order (“**Interim Order**”) and a final order (“**Final Order**”) pursuant to sections 105(a), 363(b), 507, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”); Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: American Eagle Delaware Holding Company LLC (4248), American Eagle Palmer Park LLC (d/b/a Lark Springs) (5908), American Eagle Tuskawilla LLC (d/b/a Palmetto Landing) (9489), American Eagle Leesburg AL LLC (d/b/a Vista Lake) (6258), American Eagle Brandon LLC (d/b/a Aldea Green) (6168), American Eagle Leesburg MC LLC (d/b/a Vista Lake) (7577), American Eagle Venice Island LLC (d/b/a Maris Pointe) (1695), American Eagle Titusville LLC (d/b/a Crescent Wood) (7210), American Eagle Island Lake LLC (d/b/a Cascade Heights) (1975), American Eagle Eau Gallie LLC (d/b/a Greenwood Place) (1483), American Eagle Owatonna AL LLC (d/b/a Timberdale Trace) (0555), American Eagle Hanceville LLC (d/b/a Monarch Place) (8173), American Eagle Ravenna LLC (d/b/a Vista Veranda) (9216), American Eagle Newark LLC (d/b/a Hearth Brook) (7125), American Eagle Kingston LLC (d/b/a Sycamore Springs) (4882), American Eagle Hendersonville LLC (d/b/a Red Cedar Glen) (3669), and American Eagle Pleasant Prairie LLC (d/b/a Robin Way) (9483). The Debtors’ mailing address is American Eagle Delaware Holding Company LLC, c/o American Eagle Lifecare Corporation, 3819 Hawk Crest Rd., Ann Arbor, MI 48103.

Delaware (the “**Local Rules**”), authorizing, but not directing, the Debtors to (i) pay accrued prepetition wages, salaries, and other compensation to their Employees (as defined below); (ii) honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), the Debtors’ paid time off policies and employee benefit plans and programs, as described below; (iii) reimburse Employees (as defined below) for prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of business on a prepetition basis; (iv) pay all related prepetition payroll taxes and other deductions; (v) honor worker’s compensation obligations; and (vi) pay any prepetition claims of administrators and providers in the ordinary course of business to the extent that any of the foregoing programs are administered, insured, or paid through a third-party administrator or provider. In support of the Motion, the Debtors rely upon the *Declaration of Todd Topliff, President of Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”).<sup>2</sup> In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion under 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 as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). In accordance with Local Rule 9013-1(f), the Debtors consent to entry of a final order if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

absent consent of the parties. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), and 507, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1.

## **BACKGROUND**

### **A. General Background**

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

### **B. The Debtors’ Workforce and Related Obligations**

5. In connection with the operation of their business, the Debtors currently employ approximately 598 employees (collectively, the “**Employees**”), of which approximately 472 are full-time employees and 126 are part-time employees. The Employees consist of 62 employees that are paid a fixed salary and 536 employees that are paid on an hourly basis. The Employees are employed at the Debtors’ senior living facilities located in Alabama, Colorado, Florida, Minnesota, Ohio, Tennessee, and Texas (each a “**Facility**,” and collectively, the “**Facilities**”). All Employees

are employed by and paid out of Debtor American Eagle Delaware Holding Company LLC (“**AE Holding**”).

6. The Employees are critical to the Debtors’ business, and their value cannot be overstated, particularly in light of the hardships facing senior living communities during the COVID-19 pandemic. To a significant extent, the long-term prognosis of the Debtors’ business, including ensuring the health and safety of their residents, depends on the Debtors’ ability to attract and retain qualified personnel. There is no question that the Employees will support the Debtors through this restructuring, which will provide much-needed cash to enable the Debtors to make capital improvements, reduce their debt load, and ensure the Debtors are well-positioned for the future.

7. Any interruption in payment of prepetition employee-related obligations, including wages, bonuses, paid time-off, health and other benefits, and reimbursement of business expenses, will impose hardship on the Employees and is certain to jeopardize their continued performance during this critical time. If the Debtors cannot assure their Employees that they will promptly pay prepetition Compensation Obligations (as defined below) to the extent allowed under the Bankruptcy Code, and continue to honor, as applicable, the Employee Benefits Obligations (as defined below), certain Employees will likely seek employment elsewhere. The loss of any Employees at this critical juncture would have a material adverse impact on the Debtors’ business and ability to maximize value through these Chapter 11 Cases as it is well established that the senior care industry is facing its worst job loss among health care providers during the pandemic.<sup>3</sup>

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<sup>3</sup> See, e.g. American Health Care Association, *REPORT: Nursing Homes Down 221,000 Jobs Since Start of Pandemic* (Nov. 10, 2021), <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/REPORT-Nursing-Homes-Down-221,000-Jobs-Since-Start-Of-Pandemic.aspx>; Kimberly Marselas, *Unmanifested inflation: Labor shortages may begin to improve — but at a price* (November 3, 2021), <https://www.mcknights.com/news/unmanifested-inflation-labor-shortages-may-begin-to-improve-but-at-a-price/>.

8. The Debtors also regularly utilize the services of contract workers (“**Contractors**” and, together with the Employees, the “**Workforce**”) to provide a variety of services. The Contractors are either (i) employed directly by, and have contracts directly with, the Debtors (the “**Direct Contractors**”), or (ii) employed by third-party staffing agencies and outsourced to the Debtors (the “**Third Party Contractors**”). There are fifteen (15) Direct Contractors who serve as the executive directors of the Debtors’ Facilities and manage all functional areas of the Facilities and ensure compliance with all current industry standards, regulations, and guidelines. The Debtors spend approximately \$30,000 per week on account of wages and compensation, excluding incentive payments, owed to the Direct Contractors. The Debtors also utilize the services of Third Party Contractors comprising of nurses, nursing assistants, and other temporary employees provided through various staffing agencies<sup>4</sup> which provide critical supplemental staffing for the Facilities. These Third Party Contractors are necessary for the Debtors to provide the high level of care for their residents, and to comply with staff requirements pursuant to federal and state regulations and requirements. Prior to the Petition Date, the staffing agencies invoiced the Debtors based upon the number of hours worked by the Third Party Contractors and, in turn, the staffing agencies pay the Third Party Contractors’ wages and other amounts. As the COVID-19 pandemic continues, the Debtors expect that they may become even more dependent on staffing agencies to both address increased demand for services and to temporarily replace Employees. If the staffing agencies are unable or unwilling to provide the Debtors with the necessary Third Party Contractors, the Debtors will not have sufficient staff to support current resident occupancy levels, which

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<sup>4</sup> The staffing agencies are CoastalCare, Silver Sphere, Right at Home of Longwood, CSI Nurse World Inc., Summit Solutions, Sister 2 Sister Home Care, LLC, AF-102 Amada Senior Care Colorado, Gentle Shepherd Home Care, LLC, Island Medical Staffing, Island Nurse Staffing LLC, Spring Hills Home Care Services of Florida, Concierge Care Staffing LLC, Maxim Healthcare Staffing Services, Inc., RTG Medical, annLeo, Inc., Staff America, Gale Healthcare Solutions-Tampa, LLC, Superior Medical Staffing, OndeCare, American Medical Personnel, All American Healthcare Services, and BrightStar Care of Hudson Solon.

obviously will severely and detrimentally impact the Debtors' business and ordinary operations. During 2021, the Debtors paid the staffing agencies as much as \$40,000 per month in the aggregate across Facilities.

9. The Contractors fill certain critical business needs of the Debtors and allow the Debtors to have a flexible workforce to meet their operational needs in a cost-effective manner. The Contractors are a reliable and cost-efficient component of the Debtors' operations. Thus, as with the Debtors' regular Employees, if the Debtors fail to honor their prepetition compensation obligations to the Contractors, it is highly likely that the Debtors will lose such individuals' valuable services to the detriment of the Debtors' ongoing business operations. And most importantly, there is a real risk to the health and safety of the residents if the Debtors are not able to depend on the Contractors.

10. In the ordinary course of business, the Debtors incur payroll and other compensation obligations for their Employees. The Debtors also provide other benefits to their Employees for the performance of services. These benefits and obligations are described in more detail below.

**i. Workforce Compensation Obligations**

a. Employee Compensation Obligations

11. As detailed herein, in the ordinary course of business, the Debtors incur payroll obligations to their Employees, comprised generally of salaries and wages. Approximately sixty-two (62) Employees are paid a fixed salary and approximately 536 Employees are paid on an hourly basis.

12. The Debtors utilize two payroll cycles, which are designated by Facility. The first payroll cycle consists of all of the Debtors' Employees that are employed at the Lark Springs, Vista Veranda, Sycamore Trace, Vista Lake, Palmetto Landing, Greenwood Place, Crescent Wood, Maris

Pointe, Red Cedar Glen, Monarch Place, Robin Way, and Timberdale Trace Facilities (hereinafter, the “**First Payroll Cycle**”). The second payroll cycle consists of all of the Debtors’ Employees that are employed at the Debtors’ Aldea Green, Hearth Brook, and Cascade Heights Facilities (the “**Second Payroll Cycle**”). All Employees are paid on a bi-weekly basis a week in arrears, regardless of which payroll cycle they belong to; however, because First Payroll Cycle and Second Payroll Cycle are paid in alternating weeks, the Debtors have weekly payroll obligations.

13. The Debtors’ average gross payroll obligation on account of the First Payroll Cycle is approximately \$655,000.00. The Debtors’ average gross payroll obligation on account of the Second Payroll Cycle is approximately \$212,000.00. The last date that the First Payroll Cycle was compensated prior to the Petition Date was January 7, 2022. The last date that the Second Payroll Cycle was compensated prior to the Petition Date was January 14, 2022. The Debtors estimate that as of the Petition Date, approximately \$655,000 has accrued and remains unpaid on account of First Payroll Cycle, and approximately \$106,000 has accrued and remains unpaid on account of Second Payroll Cycle (collectively, the “**Employee Compensation Obligations**”). To the best of the Debtors’ understanding, none of the Employees are owed more than \$13,650 in accrued and unpaid general prepetition wages or salaries.<sup>5</sup>

14. As of the Petition Date, most Employees have elected to have their payroll administered via direct deposit and less than twenty (20) Employees receive physical checks. The Debtors use Oasis, a Paychex Company (“**Oasis**”) to process their payroll and coordinate the payment of Withholding Obligations (as defined below). Oasis plays a crucial role for the Debtors, effectively providing the Debtors with a comprehensive HR back-office system, including the

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<sup>5</sup> To the extent that any Employee is owed more than \$13,650, the Debtors will seek authority to pay such amounts by separate motion pursuant to Bankruptcy Code section 502.

management of all Employee data, payroll processing, wage-related tax filings, and self-service benefits administration.

15. The ongoing services of Oasis are imperative to the smooth functioning of the Debtors' operations and payroll system. Oasis also provides crucial services to the Debtors by administering certain Employee Benefit Plans. The Debtors compensate Oasis through service fees assessed on a per-check basis (e.g., \$20.09 per employee-paid on a bi-weekly schedule), plus additional service fees for other work. The Debtors pay Oasis approximately \$28,000 per month for Oasis' payroll processing services as well as services provided by Oasis for administering certain Employee Benefit Plans (collectively, the "**Administrative Fee Obligations**"). As of the Petition Date, Debtors estimate that no amounts are due and owing to Oasis.

16. The Debtors seek authorization, but not direction, to pay any unpaid Employee Compensation Obligations and, to the extent necessary, any Administrative Fee Obligations that may be due and owing but not yet accounted for in the Debtors' books and records. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of Employee Compensation Obligations to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

b. Contractor Obligations

17. As detailed above, the Debtors utilize the Direct Contractors in the ordinary course of business. The Debtors utilize two payroll cycles to compensate the Direct Contractors. The Debtors spend approximately \$30,000 per week on account of wages and compensation, excluding incentive payments, owed to the Direct Contractors. However, payments to the third-party staffing agencies for the Third Party Contractors vary each month. As of the Petition Date, the Debtors estimate that the aggregate amount owing on account of the Contractors for services performed



prior to the Petition Date is approximately \$50,000 (the “**Contractor Obligations**” and together, with the Employee Compensation Obligations, the “**Compensation Obligations**”). The Debtors would be irreparably harmed without the services of the Contractors because such parties play a critical role in the Debtors’ day-to-day operations, and, as such, the Debtors request authorization, but not direction, to honor and pay any unpaid Contractor Obligations.

c. Withholding Obligations

18. For each applicable pay period, Oasis routinely deducts certain amounts directly from Employees’ paychecks, including, without limitation, pre- and after-tax deductions payable pursuant to certain of the Employees’ benefit plans discussed herein, including an Employee’s share of health care benefits, insurance premiums, 403(b) contributions, legally-ordered deductions, and other miscellaneous deductions (collectively, the “**Deductions**”). Oasis withholds the Deductions from Employees’ wages, which are then remitted to the appropriate third-party recipients and/or retained on account of benefit programs as further described below.

19. In connection with the salaries and wages paid to Employees, the Debtors are required by law to withhold amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes and paid family medical leave taxes from Employees’ wages (collectively, the “**Employee Withholding Taxes**”) and to remit the same to the applicable taxing authorities. In addition, the Debtors are required to make matching payments from their own funds for, among other things, social security, Medicare taxes, and state taxes (the “**Employer Payroll Tax Obligations**,” and together with Employee Withholding Taxes, the “**Payroll Tax Obligations**”). Oasis debits the amounts of the Payroll Tax Obligations in advance of the relevant payroll processing day. Historically, on a monthly basis, the Debtors remit approximately \$210,000 in Payroll Tax Obligations.

20. The Debtors seek authorization, but not direction, to continue to make the Deductions and satisfy the Payroll Tax Obligations and Deductions (collectively, the “**Withholding Obligations**”) and to remit amounts withheld on behalf of third parties postpetition in the ordinary course of business.

**ii. Vacation Time, Holiday Pay, and Sick Leave**

21. The Debtors offer their Employees vacation time, holiday pay, paid sick days, and paid personal days as a paid benefit (collectively, the “**PTO Benefits**”). The Debtors provide their Employees with a range of PTO Benefits related to such Employees’ tenure and status of employment with the Debtors. Employees may carry over certain PTO Benefits to the following year, with some accrued but unused PTO Benefits being forfeited at the end of the calendar year. Employees do not typically receive cash or money in lieu of accrued PTO Benefits at the end of a calendar year. However, in the event Employees voluntarily resign their employment and satisfy resignation procedures, at separation of employment, such Employees are entitled to receive payment for any accrued and unused PTO Benefits. In addition, in the event of an Employee’s termination without cause, or due to death or disability, Employees are entitled to receive payment for any accrued and unused PTO Benefits. The Debtors estimate that, as of the Petition Date, the value of Employees’ accrued PTO Benefits is approximately \$382,000.

22. By this Motion, the Debtors respectfully request authority, but not direction, to continue to honor their Paid Time Off policies in the ordinary course of business, and to pay prepetition amounts related thereto in accordance with their policies and state law.

23. The Debtors request that they be authorized, but not directed, to continue to honor their PTO Benefits policies going forward, including during the administration of these Chapter 11 Cases. The Debtors also request authority to pay any prepetition PTO Benefits in accordance with their policies and state law.

**iii. Reimbursable Expense Obligations**

24. Prior to the Petition Date, in the ordinary course of business, the Debtors reimburse their Workforce for reasonable and legitimate expenses incurred on behalf of the Debtors in the scope of employment (“**Reimbursable Expense Obligations**”). Reimbursable Expense Obligations typically include expenses for, among other things, travel, meals, and certain other business-related expenses. All such expenses are incurred with the applicable individual’s understanding that he or she will be reimbursed by the Debtors in accordance with the Debtors’ reimbursement policy, as described in detail below. In all cases, reimbursement is contingent on the Debtors’ determination that the charges are for legitimate, reimbursable business expenses.

25. The Reimbursable Expense Obligations are ordinary course expenses that the Debtors’ Workforce incur in performing their job functions. It is essential to the continued operation of the Debtors’ business that the Debtors be permitted to continue making direct payments to the Workforce for such expenses.

26. The Workforce incurs the Reimbursable Expense Obligations as business expenses on the Debtors’ behalf and with the understanding that they will be reimbursed. To avoid harming the Workforce who incurred the Reimbursable Expense Obligations, the Debtors request authority, but not direction, to satisfy all prepetition Reimbursable Expense Obligations to the extent the Workforce have paid for such expenses directly from their own fund or are otherwise personally liable for such expense. The Debtors pay approximately \$9,000 in Reimbursable Expense Obligations monthly. The Debtors also seek authority to continue their reimbursement policy in the ordinary course of business during the administration of these Chapter 11 Cases.

**iv. Employee Benefit Programs**

27. In the ordinary course of business, the Debtors implement various benefit plans and policies for their Employees that can be divided into the following categories: (a) medical and

prescription benefits (the “**Medical Plan**”), dental care (the “**Dental Plan**”), and vision care (the “**Vision Plan**,” and collectively, with the Medical Plan and the Dental Plan, the “**Health Plans**”); (b) flexible spending account plan (the “**FSA Plan**”); (c) short-term disability insurance, basic life and accidental death and dismemberment insurance, and group term life and accidental death and dismemberment insurance (collectively, the “**Income Protection Plans**”); (d) a retirement savings 403(b) plan (the “**403(b) Plan**”); (e) an employee assistance program (the “**EAP**”); (f) identity theft protection plans (the “**Identity Theft Protection Plan**”); and (g) the bonus programs (the “**Incentive Programs**”, and collectively, with the Health Plans, the FSA Plan, the Income Protection Plans, the 403(b) Plan, the EAP, and the Identity Theft Protection Plan, the “**Employee Benefits Plans**”). In certain instances, the Debtors deduct specified amounts from the participating Employees’ wages in connection with the Employee Benefits Plans. All obligations with respect to the Employee Benefits Plans are hereinafter referred to as the “**Employee Benefits Obligations.**”

a. Health Plans

28. Employee contributions to the Health Plans have been and are collected through payroll deductions from participating Employees. The Debtors believe that it is necessary and appropriate to continue to honor their obligations to current and former Employees under the Health Plans. The Debtors pay approximately \$135,000 per month for the Health Plans in the aggregate, including premiums, of which approximately \$45,000 per month is reimbursed by Employees through payroll deductions. As of the Petition Date, the Debtors will not owe any Health Plan premium payments as all premiums are paid in advance.

29. The Debtors request authority, but not direction, to pay all prepetition amounts due under the Health Plans. The Debtors also request authority, but not direction, to continue to offer the Health Plans and honor their obligations thereunder in the ordinary course of business during

the administration of these Chapter 11 Cases. Premiums for the Health Plans are collected through paychecks and paid to respective carriers monthly in advance.

1) Medical Plans

30. The Debtors offer Employees and eligible dependents robust medical coverage administered through Aetna. Employees have a few different medical plan options: two open access managed care plan options (“**PPO**”) and two high deductible plans (“**HDH**”) with health savings accounts administered by Oasis.

31. The PPO plans are deductible health plans that offer copays for medical visits and prescription services. These plans also have a coinsurance for services that a copay does not apply. The coinsurance applies after the deductible has been met. The only exception is preventive care. Those are immediately covered at 100% with no cost to the Employees when in-network services are used. There are approximately 90 Employees enrolled in PPO plans.

32. The HDH plans pay a portion, known as coinsurance, of eligible medical costs after the Employee’s deductible has been met. There are copays for certain medical or prescription services. The Employee must first pay the deductible before the plan pays between 80%-90% of costs. The only exception is preventive care. Those are immediately covered at 100% with no cost to the Employee. There are approximately 80 Employees enrolled in HDH plans, with approximately 35 utilizing health savings accounts.

33. The estimated monthly payment by the Debtors on account of the Medical Plan is approximately \$86,000. As of the Petition Date, no Medical Plan payments are outstanding.

2) COBRA

34. As required by law, the Debtors also offer benefits to former Employees under the Consolidated Omnibus Budget Reconciliation Act of 1986 (“**COBRA**”) through WEX Inc.<sup>6</sup> The Debtors currently have two former employees participating in COBRA benefits.

3) Dental Plan

35. The Debtors also offer their Employees dental insurance administered through Delta Dental. Employees are offered the option of a standard plan or a premium plan. There are approximately 165 Employees enrolled in the Dental Plan. The Debtors do not fund any portion of the Dental Plan. The estimated monthly amount of Employee withholdings that the Debtors pay on account of the Dental Plan is approximately \$7,000. As of the Petition Date, no Dental Plan payments are outstanding.

4) Vision Plan

36. The Debtors offer vision coverage to Employees through Avesis. There are approximately 165 Employees enrolled in the Vision Plan. The Debtors do not fund any portion of the Vision Plan, instead the Debtors withhold the Employees’ portion of the Vision Plan and then use those withholdings to pay premiums on account of the Vision Plan. The estimated monthly amount of Employee withholdings that the Debtors pay on account of the Vision Plan is approximately \$2,000. As of the Petition Date, no Vision Plan payments are outstanding.

b. Income Protection Plans

37. The Debtors maintain certain Income Protection Plans including (a) short-term disability insurance, (b) basic life and accidental death and dismemberment insurance, and (c)

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<sup>6</sup> Failure to comply with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 (as amended, “**COBRA**”) can subject the Debtors to daily monetary penalties per qualified beneficiary, actions by the Department of Labor, and civil lawsuits by former employees to recover their benefits. *See, e.g.*, 29 C.F.R. § 2575.502c-6. Accordingly, the Debtors request authority in this Motion to continue to offer COBRA coverage to eligible former employees during these Chapter 11 Cases.

group term life and accidental death and dismemberment insurance through Unum Group; and accident and critical illness insurance through Allstate.

38. The Income Protection Plans, with the exception of accident and critical illness, cost the Debtors approximately \$5,000 in the aggregate per month for premiums and administrative expenses. Approximately \$4,000 of this cost is offset by Employee paycheck withholdings. As mentioned above, Employees may also elect to purchase accident and critical illness insurance through Allstate. This insurance is paid entirely by the Employees who elect to receive such coverage.

39. As of the Petition Date, the Debtors believe that they are current on amounts owed in connection with the Income Protection Plan. The Debtors seek authority, but not direction, to continue to pay in the ordinary course of business amounts associated with the Income Protection Plans, regardless of when accrued, and to maintain the accident and critical illness plan in the ordinary course of business and to honor obligations thereunder, regardless of when accrued.

c. The 403(b) Plan

40. The Debtors offer eligible Employees an opportunity to participate in a 403(b) plan (the “**403(b) Plan**”), which is administered by Capital Group. The Debtors do not currently match Employee contributions. As of the Petition Date, approximately four (4) Employees participate in the 403(b) Plan. The total amount payable by the Debtors in connection with the 403(b) Plan is approximately \$1,250 per Facility annually. As of the Petition Date, the Debtors estimate that they do not owe anything in connection with the 403(b) Plan, but seek authority, but not direction, to continue with the 403(b) Plan in place prior to the Petition Date in the ordinary course and honor any payments owed by the Debtors to Capital Group with respect to the 403(b) Plan, regardless of when accrued.

d. The FSA Plans

41. The Debtors also offer their Employees the ability to contribute a portion of their pre-tax compensation to flexible spending accounts (the “**FSA**”) to pay for eligible out-of-pocket health care benefits and dependent care premiums and expenses. Employees participating in the FSA Plan designate an amount to be contributed to their FSA Plan per pay period. These amounts are withheld by payroll deductions.

42. The Debtors seek authority, but not direction, to continue to pay all prepetition amounts due under the FSA Plan and when they come due and to continue to honor their obligations thereunder in the ordinary course during the administration of the Chapter 11 Cases.

e. Employee Assistance Program

43. The Debtors offer their Employees an EAP help line administered through Employee & Family Resources. The Debtors seek authority, but not direction, to continue with the EAP in place prior to the Petition Date in the ordinary course.

f. Identity Theft Protection Plan

44. The Debtors also offer their Employees identity theft protection insurance administered through LifeLock. Employees are offered the option of a basic plan or an ultimate plan. The Debtors do not fund any portion of the Identity Theft Protection Plan. As of the Petition Date, the Debtors do not owe anything on account of the Identity Theft Protection Plan. The Debtors seek authority, but not direction, to continue with the Identity Theft Protection Plan in place prior to the Petition Date in the ordinary course and honor any obligations owed by the Debtors with respect to the Identity Theft Protection Plan, regardless of when they arose.

g. Incentive Programs

45. In the ordinary course of business, the Debtors have typically maintained performance-based incentive programs (collectively, the “**Incentive Programs**”). The Incentive



Programs are available to the Direct Contractors and the sales associates. Monthly compensation earned under the Incentive Program for Direct Contractors is determined by the respective Facility's average monthly census. Direct Contractors are also eligible for annual bonuses of up to 40% of base salaries under the Incentive Program based on the prior year's census and net-operating income. Compensation earned under the Incentive Program for sale associates is determined by the number of new monthly resident admissions to the Debtors' Facilities. Approximately fifteen (15) Direct Contractors and sixteen (16) sales associates are eligible to receive compensation under the Incentive Programs. Prior to the Petition Date, on average, Direct Contractors earned in the aggregate approximately \$6,000 per month and sale associates earned in the aggregate approximately \$16,000 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$20,000 on account of the Incentive Programs available.

46. For those who receive it, the compensation earned under the Incentive Programs is a critical aspect of their respective overall compensation. Maintaining historical prepetition practices with regard to the Incentive Programs is essential to ensuring that the Debtors can retain their Workforce and continue to operate their business and maximize value through the duration of these Chapter 11 Cases. As stated above, compensation under the Incentive Program is driven by sales, census, and net-operating income. These metrics are financially critical to the Debtors. Moreover, the Debtors operate in an extremely competitive labor market. Any disruption to the Incentive Program would be devastating to the Debtors' workforce, business, and operations. Therefore, the Debtors seek authority, but not direction, to honor their obligations under the Incentive Programs and to maintain the Incentive Programs in the ordinary course of the Debtors' business.

**v. Workers' Compensation Program**

47. The Debtors maintain workers' compensation insurance for their Workforce at the statutorily required level for each state in which the Debtors operate. The Debtors maintain workers' compensation coverage for claims ("**Workers' Compensation Claims**") through Accident Fund General Insurance Company ("**AF**"). The Debtors pay premiums and fees totaling approximately \$410,000 annually to maintain the workers' compensation insurance through AF. Additionally, in Ohio, the Debtors purchase ongoing workers' compensation coverage through the state fund, as Ohio is a monopolistic state for workers' compensation. The Debtors pay approximately \$20,000 in annual premiums and fees to maintain the workers' compensation coverage in Ohio. The Debtors seek authority, but not direction, to pay any Workers' Compensation Claims in the ordinary course and honor payments owed with respect to the Workers' Compensation Claims regardless of when such obligations arose.

**RELIEF REQUESTED**

48. By this Motion, the Debtors request entry of the Interim Order and the Final Order, substantially in the forms of Exhibit A and Exhibit B, respectively, attached hereto, authorizing, but not directing, the Debtors, to (i) pay prepetition claims and honor obligations incurred or related to the Compensation Obligations, the Withholding Obligations, the Incentive Programs, PTO Benefits, the Reimbursable Expense Obligations, the Employee Benefits Obligations, Workers' Compensation Claims, and all fees and costs incident to the foregoing, including amounts owed to third-party administrators (including the Administrative Fee Obligations) (collectively, the "**Employee Obligations**"); and (ii) maintain, continue, and honor, in the ordinary course of business, the Incentive Programs, PTO Benefits policies, postpetition Reimbursable Expense Obligations, the Employee Benefits Plans, and the Workers' Compensation Claims (collectively, the "**Employee Plans and Programs**").

49. To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize all applicable banks and financial institutions (collectively, the “**Banks**”), and Oasis (collectively, and together with the Banks, the “**Processors**”), to receive, process, honor, and pay all checks presented for payment and all electronic payment requests made by the Debtors relating to the Employee Obligations and the Employee Plans and Programs, whether such checks were presented or electronic-payment requests were submitted prior to or after the Petition Date.<sup>7</sup>

### **BASIS FOR RELIEF**

50. The Debtors’ ability to successfully operate is contingent on a reliable and loyal Workforce. Thus, it is essential to assure the Employees that the Debtors will honor the Employee Obligations and continue and maintain the Employee Plans and Programs in the ordinary course of business throughout these Chapter 11 Cases. A failure to promptly do so will create concern and discontent among the Employees and could lead to resignations or the decision to not complete work for the Debtors or accept future hiring proposals. The loss of even a few key personnel would immediately and irreparably harm the Debtors’ ability to maintain operations to the detriment of all interested parties.

51. Therefore, pursuant to Bankruptcy Code sections 105(a), 363, 507, 1107(a), and 1108, the Debtors seek authority to pay the Employee Obligations and to maintain and continue the Employee Plans and Programs and in the ordinary course of business, in the exercise of their business judgment. This relief is necessary to retain the Employees, the loss of which would disable the Debtors’ business operations.

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<sup>7</sup> Concurrently herewith, the Debtors have filed a motion for authority to, among other things, continue utilizing their cash management system.

**A. A Significant Portion of the Employee Obligations is Entitled to Priority Treatment**

52. Bankruptcy Code section 507(a)(4)(A) grants priority status to up to \$13,650 for employee claims for “wages, salaries, or commission, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date. *See* 11 U.S.C. § 507(a)(4)(A). Similarly, Bankruptcy Code section 507(a)(5) grants priority to contributions to employee benefit plans, up to an aggregate amount of \$13,650 multiplied by the number of employees covered, less any amounts paid to such employees under Bankruptcy Code section 507(a)(4).

53. Indeed, “[w]age priority has been a feature of the bankruptcy law since 1898.” *In re Garden Ridge Corp.*, No. 04-10324 (KJC), 2006 WL 521914, at \*2 (Bankr. D. Del. Mar. 2, 2006) (citing 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 507.05[1] (15th ed. 2005)). Its purpose is to “alleviate hardship on workers . . . who may have no other source of income and “to encourage employees to stand by an employer in financial difficulty.” *Id.* (citing *Collier on Bankruptcy* ¶ 507.05[1]). This priority extends to certain other “benefits that are considered akin to compensation, such as vacation, severance and sick leave pay.” *Id.*

54. The Debtors believe that a substantial portion of the Employee Obligations relating to the period prior to the Petition Date constitute priority claims under Bankruptcy Code sections 507(a)(4) and (5). Amounts that are paid on account of priority claims for the majority of the Employee Obligations would not otherwise be available for distribution to unsecured creditors. Therefore, the Debtors’ unsecured creditors will not be prejudiced by permitting priority obligations to be satisfied in the ordinary course of business during these Chapter 11 Cases rather than at the conclusion of them. Indeed, the Debtors submit that payment of Employee Obligations at this time enhances value for the benefit of the Debtors and all interested parties by retaining the Employees. The Debtors believe that honoring the Employee Obligations is important to sustain morale for the current Employees and ensure their retention.

**B. The Debtors Should be Authorized to Pay the Employee Obligations Under Bankruptcy Code Sections 1107(a) and 1108**

55. The Debtors, operating their businesses as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries “holding the bankruptcy estate and operating the business for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). “Implicit in the duties” of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*; see also *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003); *In re Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004).

56. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497. The *CoServ* court specifically noted that preplan satisfaction of prepetition claims is a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim is a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.* at 498.

57. Payment of the Employee Obligations as set forth herein meets each element of the *CoServ* court’s standard. The Debtors’ operations rely on the skill and expertise of their Employees. The Employees possess unique knowledge regarding specific aspects of the Debtors’ operations,

which would be difficult to replace should such Employees be lost through a failure to pay the Employee Obligations. In addition, any failure by the Debtors to pay the Employee Obligations as set forth herein would negatively impact the morale of the Employees at a critical time for the Debtors and their business when the Employees are most needed. The Employees are also critical to the Debtors' ability to maintain their operations consistent with past practices, which would be impossible without the continued efforts of the Employees. The damage to the value of the Debtors' businesses and, hence, the costs to creditors as a whole, would be immediate and irreparable if the Employee Obligations were not met. In short, the potential harm and economic disadvantage that would stem from the failure to pay the Employee Obligations as set forth herein greatly outweighs the amount of any prepetition claims that the Debtors are seeking authorization to pay.

58. After careful consideration in consultation with their advisors, the Debtors have determined in their business judgment that to avoid significant disruption to their business operations there exists no practical or legal alternative to the payment of the Employee Obligations as set forth herein. Therefore, the Debtors can meet their fiduciary duties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108 only by payment of the Employee Obligations as set forth herein.

**C. Payment of the Employee Obligations is Warranted Pursuant to Bankruptcy Code Section 363**

59. Bankruptcy Code section 363(b)(1) provides that a debtor may “after notice and a hearing, use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.)*, 973 F.2d

141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application); *see also In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under Bankruptcy Code section 363(b). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (accepting a debtor’s argument that payment of employee wage claims was “critical . . . in order to preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale,” and finding that the debtor had “clearly demonstrated sound business reasons to justify such payments”).

60. In addition, the Debtors pay the Employee Obligations in the ordinary course of business, as permitted by Bankruptcy Code section 363(c). However, to the extent the Court finds that approval is necessary, and in an abundance of caution, the Debtors request that the Court grant the relief requested herein and enter an order authorizing them to pay the Employee Obligations, consistent with their compensation and other benefit policies and plans, and to permit, but not require, the Debtors, in their discretion, to maintain and continue the Employee Plans and Programs for their Employees as those practices, programs, policies, and plans were in effect as of

the Petition Date, as such may be modified, terminated, amended, or supplemented from time to time hereafter.

**D. Payment of Certain Withholding Obligations is Appropriate Under Bankruptcy Code Section 541**

61. The Debtors also seek authority to pay the Withholding Obligations to the appropriate entities. These amounts principally represent the Employees' earnings that governments, the Employees, and the judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541; *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95 (3d Cir. 1994) (observing the "well-settled principle that debtors do 'not own an equitable interest in property . . . [they] hold[] in trust for another,' and that therefore funds held in trust are not 'property of the estate'" (quoting *Begier v. IRS*, 496 U.S. 53, 59 (1990))).

62. Further, federal and state laws require the Debtors to withhold certain tax payments from Employees' paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also City of Farrell*, 41 F.3d at 95-97 (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). A failure to pay over these amounts could subject the Debtors and their officers and directors to liability. *See, e.g., John F. Olson, et al., Director & Officer Liability: Indemnification and Insurance* § 3:21 (2003). To avoid the potential of such liability, and because the Withholding Obligations are not property of the Debtors' estates,



the Debtors request that the Court authorize them to remit these amounts to the appropriate parties in the ordinary course of business.

**E. Payment of the Employee Obligations is Warranted Pursuant to Bankruptcy Code Section 105(a) and Under the Doctrine of Necessity**

63. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to Bankruptcy Code section 105(a). Bankruptcy Code section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under Bankruptcy Code section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor’s business reorganization plan. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

64. Numerous courts have used their section 105(a) powers under the “doctrine of necessity” to authorize payment of prepetition obligations where, as here, such payment is an essential element of the preservation of the debtor in possession’s potential for rehabilitation. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because the debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *In re Synteen Techs., Inc.*, No. 00-02203-W, 2000 WL 33709667, at \*2 (Bankr. D.S.C. Apr. 14, 2000) (courts have permission to “allow payment of a prepetition claim when essential to the continued operation of the debtor”) (citation

omitted); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“[C]ourts have used their equitable power under section 105(a) . . . to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105] the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”).

65. The “doctrine of necessity” is frequently invoked early in reorganization cases, during the so-called “breathing spell,” when preservation of the estate is most critical and often extremely difficult. *See* 2 Collier on Bankruptcy ¶ 105.02[4][a] (16th ed.) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately). For example, in *In re Structurlite Plastics Corp.*, the court embraced “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor[.]’” *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (quoting *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987)). The court explained that “a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at

932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

66. Here, many of the Employees rely on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses and maintain their health and well-being. Consequently, these Employees will be exposed to significant financial hardships if the Debtors are not permitted to honor the Employee Obligations. If the Debtors are unable to satisfy such obligations, Employee morale and loyalty will suffer at a time when Employee support is critical. Further, if the Court does not authorize the Debtors to honor their various obligations under the Employee Benefits Plans, the Employees' health coverage could be threatened, potentially burdening individual Employees with the costs of health care. At a minimum, the loss of health care coverage, or uncertainty regarding coverage, would result in considerable anxiety for the Employees at a time when the Debtors need their Employees to perform their jobs at peak efficiency. For all of the foregoing reasons, a sound business purpose exists to pay the Employee Obligations.

67. In the absence of such payments, the Debtors believe that their Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Workforce, hinder the Debtors' ability to service their patients, and likely diminish creditor and counterparty confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a substantial and costly distraction at a time when the Debtors must focus on sustaining their operations. Accordingly, the Debtors must be able to pursue all reasonable measures to retain the Employees by, among other things, continuing to honor wages, benefits, and related obligations,

including those that accrued prior to the Petition Date, consistent with the terms set forth in the Order attached hereto.

68. Taken together, the nature of the Employee Obligations, the substantial harm to the Debtors' business that would be caused if those obligations were not honored, the related potential for loss of value in the Debtors' estates, and the fact that a significant portion of the obligations in question relates to priority wage claims, lead to the conclusion that the Employee Obligations fall well within the scope of obligations whose payments may be authorized pursuant to the doctrine of necessity.

69. Accordingly, for all of the foregoing reasons, the relief requested herein will benefit the Debtors' estates, the communities served by the Debtors, and creditors by allowing the Debtors' business operations to continue without interruption and should therefore be approved.

**F. The Court Should Authorize Applicable Banks and Other Processors to Honor Checks and Electronic Fund Transfers in Accordance with the Motion**

70. In connection with the foregoing, the Debtors respectfully request that the Court (a) authorize all applicable Processors to receive, process, honor, and pay all checks and transfers issued by the Debtors in accordance with this Motion, without regard to whether any checks or transfers were issued before or after the Petition Date; (b) provide that all Processors may rely on the representations of the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion (such Banks and other Processors having no liability to any party for relying on such representations by the Debtors provided for herein); and (c) authorize the Debtors to issue replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Processors.

**G. Immediate Relief is Justified Under Bankruptcy Rule 6003**

71. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within twenty-one (21) days after the filing of the petition regarding a motion to “use, sell, lease, or otherwise incur an obligation regarding property of the estate” only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001).

72. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors’ business and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of “immediate and irreparable harm” generally. *Cf.* Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to “irreparable harm to the estate”). Indeed, the “irreparable harm” standard is analogous to the traditional standards governing the issuance of preliminary injunctions. *See* 9 Collier on Bankruptcy ¶ 4001.07[b][3] (discussing source of “irreparable harm” standard under Rule 4001(c)(2)). Courts will routinely consider third-party interests when granting such relief. *See, e.g., Capital Ventures Int’l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); *see also Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

73. As described herein and in the First Day Declaration, the Debtors will suffer immediate and irreparable harm without Court authorization to pay the Employee Obligations and other related relief requested herein. Accordingly, Bankruptcy Rule 6003 has been satisfied, and the relief requested herein should be granted.

**REQUEST FOR WAIVER OF STAY**

74. To the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h), to the extent applicable. *See* Fed. R. Bankr. P. 6004(a), (h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

75. To effectuate the foregoing immediately, the Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**RESERVATION OF RIGHTS**

76. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under Bankruptcy Code section 365. The Debtors expressly reserve their rights to dispute any claim asserted by an Employee under applicable law and to assume or reject any Employee agreements in accordance with the applicable provisions of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

**NOTICE**

77. Notice of this Motion has been or will be provided to: (a) the United States Trustee for the District of Delaware; (b) the holders of the thirty (30) largest unsecured claims on a

consolidated basis against the Debtors; (c) counsel to the Bond Trustee and Master Trustee; (d) the Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) the Office of the United States Attorney for the District of Delaware; (g) all Processors; (h) all Employee Benefits Plan providers and administrators; (i) the United States Centers for Medicare & Medicaid Services; and (k) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**NO PRIOR REQUEST**

78. No previous request for the relief sought herein has been made to this Court or any other court.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: January 14, 2022  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

/s/ Shanti M. Katona

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*Proposed Counsel to the Debtors and  
Debtors in Possession*



**EXHIBIT A**

Proposed Interim Order

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

In re:

American Eagle Delaware Holding Company  
LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-\_\_\_\_ (\_\_\_\_)

(Jointly Administered)

**Re: Docket No.**

**INTERIM ORDER AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION  
EMPLOYEE CLAIMS, INCLUDING WAGES, SALARIES, AND OTHER  
COMPENSATION, (II) CERTAIN EMPLOYEE BENEFITS AND CONFIRMING  
RIGHT TO CONTINUE EMPLOYEE BENEFITS ON POSTPETITION BASIS,  
(III) REIMBURSEMENT TO EMPLOYEES FOR PREPETITION EXPENSES,  
(IV) WITHHOLDING AND PAYROLL-RELATED TAXES, (V) WORKERS'  
COMPENSATION OBLIGATIONS, AND (VI) PREPETITION CLAIMS OWING TO  
ADMINISTRATORS AND THIRD-PARTY PROVIDERS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an interim order (this “**Interim Order**”) authorizing payment of (i) certain prepetition employee claims, including wages, salaries, and other compensation, (ii) certain employee benefits and confirming right to continue employee benefits on postpetition basis, (iii) reimbursement to employees for prepetition expenses, (iv) withholding and payroll-related taxes, (v) workers’ compensation obligations, and (vi) prepetition claims owing to administrators and third-party providers; the Court having

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: American Eagle Delaware Holding Company LLC (4248), American Eagle Palmer Park LLC (d/b/a Lark Springs) (5908), American Eagle Tuskawilla LLC (d/b/a Palmetto Landing) (9489), American Eagle Leesburg AL LLC (d/b/a Vista Lake) (6258), American Eagle Brandon LLC (d/b/a Aldea Green) (6168), American Eagle Leesburg MC LLC (d/b/a Vista Lake) (7577), American Eagle Venice Island LLC (d/b/a Maris Pointe) (1695), American Eagle Titusville LLC (d/b/a Crescent Wood) (7210), American Eagle Island Lake LLC (d/b/a Cascade Heights) (1975), American Eagle Eau Gallie LLC (d/b/a Greenwood Place) (1483), American Eagle Owatonna AL LLC (d/b/a Timberdale Trace) (0555), American Eagle Hanceville LLC (d/b/a Monarch Place) (8173), American Eagle Ravenna LLC (d/b/a Vista Veranda) (9216), American Eagle Newark LLC (d/b/a Hearth Brook) (7125), American Eagle Kingston LLC (d/b/a Sycamore Springs) (4882), American Eagle Hendersonville LLC (d/b/a Red Cedar Glen) (3669), and American Eagle Pleasant Prairie LLC (d/b/a Robin Way) (9483). The Debtors’ mailing address is American Eagle Delaware Holding Company LLC, c/o American Eagle Lifecare Corporation, 3819 Hawk Crest Rd., Ann Arbor, MI 48103.

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

reviewed the Motion and the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b) and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), that the Debtors consent to entry of a final order under Article III of the United States Constitution, and venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed to: (i) pay prepetition claims and honor obligations incurred or related to the Employee Obligations, in an aggregate amount not to exceed \$840,000; *provided, however*, that payments to or for the benefit of any individual Contractor or Employee on account of prepetition obligations will not exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; *provided further*, that the Debtors' Employees are authorized to use paid time off ("**PTO**") in accordance with the Debtors' policies and practices; *provided further*, that unless applicable state law requires such payment, the Debtors are prohibited from paying PTO upon an Employee's termination; and (ii) maintain, continue, and honor, in the ordinary course of business, the Employee Plans and Programs. The \$840,000 "cap" described above is comprised of the following amounts, each of which limit the amount the Debtors may pay on account of the identified Employee Obligations:

<b>Employee Obligation</b>	<b>Amount</b>
Employee Compensation Obligations	\$761,000
Contractor Obligations	\$50,000
Incentive Programs	\$20,000
Reimbursable Expense Obligations	\$9,000

4. Nothing herein authorizes the payment of bonus or severance obligations that implicate section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief with respect to such obligations at a later time, on notice.

5. The Debtors are authorized to continue the programs and policies described in the Motion on a postpetition basis, except as otherwise set forth herein, and to make non-material alterations, modifications, or to discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court, subject to the limitations contained in this Order.

6. Except as otherwise set forth herein, the Debtors are authorized, pursuant to Bankruptcy Code sections 105(a) and 363(b), in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of Compensation Obligations (inclusive of Withholding Obligations); provided, however, that without prejudice to the Debtors' right to seek additional payments, by way of a separate motion, the Debtors' payments to or for the benefit of any individual Contractor or Employee on account of prepetition obligations will not exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, absent further order of the Court.

7. The Debtors are authorized, but not directed, in their sole discretion, to pay the prepetition claims owed on account of the Third Party Contractors, in an aggregate amount not to exceed \$100,000 on an interim basis.

8. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Withholding Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

9. The Debtors are authorized to continue to honor their Reimbursable Expense Obligations including any prepetition obligations, subject to the cap for such expenses that arose prepetition that is set forth in paragraph 3 above, and to continue in accordance with the Debtors' stated policies and prepetition practices; *provided, however,* that satisfaction of prepetition Reimbursable Expense Obligations shall only be allowed to the extent Employees have paid for such expenses directly from their own funds or are otherwise personally liable for such expenses.

10. Subject to the limitations set forth in this Interim Order, the Debtors are authorized to honor the Employee Benefits Plans in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to make any necessary contributions to such programs and pay any unpaid premium, claim, or amount owed as of the Petition Date with respect thereto.

11. The Debtors are authorized to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Compensation Obligations or the Employee Benefits Obligations, including the Administrative Fee Obligations.

12. Nothing in the Motion or this Interim Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or

lease pursuant to Bankruptcy Code section 365, or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Interim Order.

13. Each of the Processors are authorized to receive, process, honor, and pay all checks and transfers issued or requested by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Interim Order and any other order of this Court.

14. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Employee Obligations that are dishonored or rejected and which are authorized to be paid by this Interim Order.

15. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

16. Notice of the Motion as provided therein satisfies the requirements of the Bankruptcy Rules and the Local Rules.

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

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

19. The final hearing (the “**Final Hearing**”) to consider the entry of a final order granting the relief requested in the Motion shall be held on \_\_\_\_\_, 2022, at \_\_:\_\_.m. Prevailing Eastern Time.

20. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on, no later than seven (7) days prior to the

commencement of the final hearing, (a) the Debtors, c/o American Eagle Delaware Holding Company LLC, 3819 Hawk Crest Rd, Ann Arbor, MI 48103; (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (c) counsel to the Bond Trustee and Master Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 666 3<sup>rd</sup> Avenue, New York, NY 10017, Attn: Nathan F. Coco (nfcoco@mintz.com) and Megan M. Preusker (mpreusker@mintz.com); (d) counsel to the official committee of unsecured creditors, if one is appointed; and (e) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov).

21. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2022  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

Proposed Final Order



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

In re:

American Eagle Delaware Holding Company  
LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-\_\_\_\_ (\_\_\_\_)

(Jointly Administered)

**Re: Docket Nos.**

**FINAL ORDER AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION  
EMPLOYEE CLAIMS, INCLUDING WAGES, SALARIES, AND OTHER  
COMPENSATION, (II) CERTAIN EMPLOYEE BENEFITS AND CONFIRMING  
RIGHT TO CONTINUE EMPLOYEE BENEFITS ON POSTPETITION BASIS,  
(III) REIMBURSEMENT TO EMPLOYEES FOR PREPETITION EXPENSES,  
(IV) WITHHOLDING AND PAYROLL-RELATED TAXES, (V) WORKERS'  
COMPENSATION OBLIGATIONS, AND (VI) PREPETITION CLAIMS OWING TO  
ADMINISTRATORS AND THIRD-PARTY PROVIDERS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of a final order (this “**Final Order**”) authorizing payment of (i) certain prepetition employee claims, including wages, salaries, and other compensation, (ii) certain employee benefits and confirming right to continue employee benefits on postpetition basis, (iii) reimbursement to employees for prepetition expenses, (iv) withholding and payroll-related taxes, (v) workers’ compensation obligations, and (vi) prepetition claims owing to administrators and third-party providers; and the Court having reviewed the

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: American Eagle Delaware Holding Company LLC (4248), American Eagle Palmer Park LLC (d/b/a Lark Springs) (5908), American Eagle Tuskawilla LLC (d/b/a Palmetto Landing) (9489), American Eagle Leesburg AL LLC (d/b/a Vista Lake) (6258), American Eagle Brandon LLC (d/b/a Aldea Green) (6168), American Eagle Leesburg MC LLC (d/b/a Vista Lake) (7577), American Eagle Venice Island LLC (d/b/a Maris Pointe) (1695), American Eagle Titusville LLC (d/b/a Crescent Wood) (7210), American Eagle Island Lake LLC (d/b/a Cascade Heights) (1975), American Eagle Eau Gallie LLC (d/b/a Greenwood Place) (1483), American Eagle Owatonna AL LLC (d/b/a Timberdale Trace) (0555), American Eagle Hanceville LLC (d/b/a Monarch Place) (8173), American Eagle Ravenna LLC (d/b/a Vista Veranda) (9216), American Eagle Newark LLC (d/b/a Hearth Brook) (7125), American Eagle Kingston LLC (d/b/a Sycamore Springs) (4882), American Eagle Hendersonville LLC (d/b/a Red Cedar Glen) (3669), and American Eagle Pleasant Prairie LLC (d/b/a Robin Way) (9483). The Debtors’ mailing address is American Eagle Delaware Holding Company LLC, c/o American Eagle Lifecare Corporation, 3819 Hawk Crest Rd., Ann Arbor, MI 48103.

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

Motion, the First Day Declaration, and the *Interim Order Authorizing Payment of (I) Certain Prepetition Employee Claims, Including Wages, Salaries, and Other Compensation, (II) Employee Benefits and Confirming Right to Continue Employee Benefits on Postpetition Basis, (III) Reimbursement to Employees for Prepetition Expenses, (IV) Withholding and Payroll-Related Taxes, (V) Workers' Compensation Obligations, and (VI) Prepetition Claims Owing to Administrators or Third-Party Providers* [Docket No. \_\_\_\_] (the “**Interim Order**”); and the Court having jurisdiction over this matter under 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; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), that the Debtors consent to entry of a final order under Article III of the United States Constitution, and venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed, to: (i) pay prepetition claims and honor obligations incurred or related to the Employee Obligations, in an aggregate amount not to exceed \$1,222,000; *provided, however*, that payments to or for the benefit of any individual Contractor or Employee on account of prepetition obligations will not exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; and (ii) maintain, continue, and honor,

in the ordinary course of business, the Employee Plans and Programs. The \$1,222,000 “cap” described above is comprised of the following amounts, each of which limit the amount the Debtors may pay on account of the identified prepetition Employee Obligations:

<b>Employee Obligation</b>	<b>Amount</b>
Employee Compensation Obligations	\$761,000
Contractor Obligations	\$50,000
PTO Benefits	\$382,000
Incentive Programs	\$20,000
Expense Reimbursement Obligations	\$9,000

4. Subject to Paragraph 6 below, nothing herein authorizes the payment of bonus or severance obligations, including obligations that implicate section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors’ ability to seek approval of relief with respect to such obligations at a later time, on notice.

5. The Debtors are authorized (i) to continue the PTO Benefits policies in the ordinary course of business, and (ii) to honor all obligations under the PTO Benefits policies, including payout of accrued PTO Benefits, subject to the cap for such expenses that arose prepetition that is set forth in paragraph 3 above, in accordance with the Debtors’ prepetition practice and applicable law.

6. The Debtors are authorized to maintain the Incentive Programs and to honor any obligations, including unpaid prepetition obligations, in the ordinary course of business.

7. The Debtors are authorized to continue the programs and policies described in the Motion on a postpetition basis, except as otherwise set forth herein, and to make non-material

alterations, modifications, or to discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court, subject to the limitations contained in this Final Order.

8. Except as otherwise set forth herein, the Debtors are authorized, pursuant to Bankruptcy Code sections 105(a) and 363(b), in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of Compensation Obligations (inclusive of Withholding Obligations); provided, however, that without prejudice to the Debtors' right to seek additional payments, by way of a separate motion, the Debtors' payments to or for the benefit of any individual Contractor or Employee on account of prepetition obligations will not exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, absent further order of the Court.

9. The Debtors are authorized, but not directed, in their sole discretion, to pay the prepetition claims owed on account of the Third Party Contractors, in an aggregate amount not to exceed \$100,000.

10. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Withholding Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

11. The Debtors are authorized to continue to honor their Reimbursable Expense Obligations including any prepetition obligations, subject to the cap for such expenses that arose prepetition that is set forth in paragraph 3 above, and to continue in accordance with the Debtors' stated policies and prepetition practices; provided, however, that satisfaction of prepetition Reimbursable Expense Obligations shall only be allowed to the extent Employees have paid for such expenses directly from their own funds or are otherwise personally liable for such expenses.

12. Subject to the limitations set forth in this Final Order, the Debtors are authorized to honor the Employee Benefits Plans in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to make any necessary contributions to such programs and pay any unpaid premium, claim, or amount owed as of the Petition Date with respect thereto.

13. The Debtors are authorized to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Compensation Obligations and the Employee Benefits Obligations, including the Administrative Fee Obligations.

14. Nothing in the Motion, the Interim Order, or this Final Order, nor as a result of any payment made pursuant to this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to Bankruptcy Code section 365, or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Final Order.

15. Each of the Processors is authorized to receive, process, honor, and pay all checks and transfers issued or requested by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Final Order and any other order of this Court.

16. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Employee Obligations that are dishonored or rejected and which are authorized to be paid by this Final Order.

17. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

18. Notice of the Motion as provided therein satisfies the requirements of the Bankruptcy Rules and the Local Rules.

19. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

20. The Debtors are authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

21. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2022  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE