

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)				
In re:)		Chapter 11		
)				
FRED’S, INC., <i>et al.</i> , ¹)	Case No. 19-	_____	()	
)				
Debtors.)	Joint Administration Requested			
)				

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION
EMPLOYEE WAGES, BENEFITS, AND OTHER OBLIGATIONS AND
(B) CONTINUE EMPLOYEE PROGRAMS AND SEVERANCE
PROGRAM AND (II) GRANTING RELATED RELIEF**

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

RELIEF REQUESTED²

1. The Debtors submit this Motion pursuant to sections 105(a), 363 and 507(a)(4)-(5) of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the “Bankruptcy Code”), rules 4001(d), 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) requesting entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively): (i) authorizing, but not directing, the Debtors, in a reasonable exercise of their business judgment, to

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Fred’s, Inc. (4010); Fred’s Stores of Tennessee, Inc. (9888); National Equipment Management and Leasing, Inc. (4296); National Pharmaceutical Network, Inc. (9687); Reeves-Sain Drug Store, Inc. (4510); Summit Properties-Jacksboro, LLC (9161); Summit Properties-Bridgeport, LLC (2200); and 505 N. Main Opp, LLC (5850). The Debtors’ address is 2001 Bryan Street, Suite 1550, Dallas, Texas 75201.

² Capitalized terms not otherwise defined in this Section shall have the meanings ascribed to such terms below.

(a) honor and pay prepetition Workforce Obligations and (b) continue the Employee Programs and the Severance Program as such were in effect as of the Petition Date and as such may be modified, amended, or supplemented from time to time in the ordinary course of business, and honor and pay any ongoing amounts due thereunder; (ii) authorizing all banks and other financial institutions (the “Financial Institutions”) to honor the Debtors’ checks and/or other electronic funds transfer requests issued prepetition for payment of any authorized Workforce Obligations; (iii) scheduling a final hearing (the “Final Hearing”) to consider the relief requested herein; and (iv) granting related relief.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C § 157(b)(2). Pursuant to Local Rule 9013-1(f), the Debtors consent 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.

3. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory and legal bases for the relief requested herein are sections 105(a), 363, and 507(a)(4)-(5) of the Bankruptcy Code, Bankruptcy Rules 4001(d), 6003, and 6004, and Local Rule 9013-1(m).

BACKGROUND

A. General Background.

5. On the date hereof (the “Petition Date”) each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors continue

to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases. No committees have been appointed or designated.

6. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors' bankruptcy petitions are set forth in greater detail in the *Declaration of Mark A. Renzi, Chief Restructuring Officer of Fred's, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith. This Motion incorporates by reference the facts set forth in the First Day Declaration as if fully set forth herein. Additional facts specific to this Motion are set forth below.

B. Overview of the Debtors' Workforce.

7. As of the Petition Date, the Debtors employ approximately 1,839 people (collectively, the "Employees") who serve in a number of capacities supporting the Debtors' operations at their corporate office (the "Corporate Employees"), distribution center (the "DC Employees"), or retail stores and pharmacies (the "Retail Employees"). The Employees comprise of approximately 982 full-time employees (the "Full-Time Employees") and 857 part-time employees (the "Part-Time Employees"). All of the Debtors' Part-Time Employees are employed at one of the Debtors' various retail store locations. The Debtors' Full-Time Employees are employed at all levels of the Debtors' business operations.

8. In addition to the Employees, from time to time, the Debtors also retain specialized individuals as independent contractors (the "Independent Contractors") to complete discrete projects and temporary workers (the "Temporary Workers") from approximately 5 different staffing agencies (collectively, the "Staffing Agencies") and collectively with the

Independent Contractors and the Temporary Workers, the “Supplemental Workforce”). Currently, the Debtors employ approximately 10 Independent Contractors, though this number fluctuates based on the Debtors’ specific needs at any given time. The Independent Contractors provide IT services or are former employees of the Debtors who have been contracted back to provide similar services as they provided during their tenures. Presently, approximately 10 Temporary Workers provide services to the Debtors with respect to taxes, payroll, finance, accounts payable, and pharmacy operations. The Supplemental Workforce is a critical supplement to the efforts of the Debtors’ Employees.

C. Overview of the Employee Programs, Severance Program, and Related Workforce Obligations.

9. In the ordinary course of business, the Debtors maintain a variety of business practices, programs, and policies for their workforce (collectively, as may be modified, amended, or supplemented from time to time in the ordinary course of business, the “Employee Programs”). The following table contains descriptions of the significant Employee Programs and the Debtors’ estimates of the fees, costs, and expenses, including amounts owed to third-party administrators,³ incident to the Employee Programs (collectively, the “Employee Obligations”) that have accrued but remain unpaid as of the Petition Date and, of the unpaid Employee Obligations, the amounts due in the ordinary course of business within 21 days of the Petition Date.

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
Employee Compensation	Employee compensation consists of amounts owed to the Employees pursuant to their	\$1,006,062.34	\$1,006,062.34

³ Pursuant to a master consulting agreement, Aon South, Inc. and the Aon plc network of subsidiaries and correspondents (collectively, “Aon”) are the exclusive brokers/agents of record for most of the Employee Programs and certain of the Debtors’ insurance policies.

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	<p>individual terms of employment and under applicable law (as more fully described herein, the “<u>Employee Compensation</u>”).</p> <p>Employee Compensation includes, as applicable, wages and salaries earned in the ordinary course of business, but does not include Severance, Reimbursable Expenses, Bonuses, accrued and unused PTO (each as defined below), or the value of the non-cash benefits described herein.</p> <p>The Debtors have both salaried and hourly Employees. Part-Time Employees who do not work in the Debtors’ pharmacies are regularly scheduled to work less than 30 hours per week. Part-Time Employees who work in the Debtors’ pharmacies are regularly scheduled to work less than 26 hours per week.</p> <p>All of the Part-Time Employees, except 1, are hourly employees. Of the Debtors’ Full-Time Employees, 380 are salaried employees and 602 are hourly employees.</p> <p>The Corporate Employees and the DC Employees are paid every week. The Retail Employees are paid every two weeks. The Debtors estimate that the average aggregate amount of Employee Compensation is \$7,150,000.00 per month. The most recent full payroll occurred on September 3, 2019, representing payment for services performed from August 16, 2019 through August 29, 2019 for bi-weekly payroll and August 25, 2019 through August 31, 2019 for weekly payroll. As a result, 5 days of prepetition Employee Compensation – approximately \$1,006,062.34 – have accrued but remain unpaid as of the Petition Date.</p>		
Payroll Costs	The majority of the Debtors’ payroll obligations are satisfied by direct deposit through the electronic transfer of funds from Automatic Data Processing (“ <u>ADP</u> ”) directly to each Employee’s bank account, with the remainder of Employees receiving physical	\$24,167.00	\$24,167.00

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	<p>checks or prepaid pay cards. Each new Employee receives his or her first paycheck through a prepaid pay card and may choose to continue receiving his or her compensation through that method.</p> <p>The Debtors handle payroll management internally and outsource the payroll processing operation and the calculation of payroll taxes to ADP. ADP invoices the Debtors for its services – approximately \$72,500 – on a monthly basis. As of the Petition Date, the Debtors estimate that approximately \$12,050 is due to ADP for payroll services that have accrued but remain unpaid.</p>		
Supplemental Workforce Compensation	<p>To supplement their workforce, the Debtors utilize approximately 10 Independent Contractors, although the number of Independent Contractors fluctuates based on current needs. The Independent Contractors provide the Debtors with invoices, which the Debtors pay through their accounts payable bank account. On average, the Debtors pay approximately \$210,000 per month in compensation to the Independent Contractors.</p> <p>The Debtors also utilize the services of approximately 5 Staffing Agencies from time to time to hire the Temporary Workers. The Debtors pay Temporary Workers' wages to the applicable Staffing Agencies, and the Staffing Agencies distribute the wages to the Temporary Workers. On average, the Debtors pay approximately \$95,000 per month in wages to the Temporary Workers and to the Staffing Agencies.</p>	\$171,667.00	\$171,667.00
Bonus Programs	<p>Prior to the Petition Date, the Debtors identified and agreed to provide 10 key but non-insider Employees with retention bonuses (the "<u>Retention Bonuses</u>")⁴ whose continued</p>	\$449,250.00	\$0

⁴ The Employees who are eligible to earn Retention Bonuses work in the Debtors' corporate offices, IT department, and pharmacies. While certain of these Employees have titles such as vice president, senior vice president, or director, each of these Employees reports to a more senior-level employee and none of these Employees has the decision-making authority to dictate the Debtors' corporate policy or the disposition of corporate assets.

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	<p>employment is crucial to the Debtors' ability to continue normal operations during the period of uncertainty associated with the Debtors' prepetition and postpetition restructuring efforts. Each of these Employees has important experience with, and institutional knowledge of, the Debtors' operations that cannot be easily or resourcefully replaced. In order to encourage these Employees to continue their employment with the Debtors, the Debtors agreed to provide the Retention Bonuses. Each of the Retention Bonuses has a retention period of (i) 12 months, (ii) 24 months, or (iii) an indefinite date that ends with the elimination of his or her position. As of Petition Date, the Debtors estimate that approximately \$0 in Retention Bonuses will be earned and payable during the first 21 days of their Chapter 11 Cases and approximately \$449,250 in Retention Bonuses will be earned and payable in the ordinary course, as they come due with future pharmacy closings, which will be after the Petition Date.</p>		
<p>Deductions, Withholdings and Payroll Taxes</p>	<p>During each pay period, the Debtors routinely deduct certain amounts from the gross pay of Employees, including Employee contributions to retirement savings plans, health benefits plans, life insurance, disability insurance, certain child care expenses, garnishments, child support, personal insurance premiums, union dues, and similar deductions (collectively, the "<u>Deductions</u>"), which either the Debtors or a third-party service provider then forwards to the appropriate recipients.</p> <p>The Debtors are required by law to withhold amounts from the gross pay of Employees that are related to federal, state, and city income taxes, including social security and Medicare taxes, and unemployment insurance for remittance to the appropriate taxing and other</p>	<p>\$392,364.31</p>	<p>\$392,364.31</p>

Accordingly, none of these Employees are "insiders" under Bankruptcy Code Section 101(31). *See, e.g., In re Borders Grp., Inc.*, 453 B.R. 459, 469-70 (Bankr. S.D.N.Y. 2011) (noting that "[c]ompanies often give employees the title 'director' or 'director-level' but do not give them decision-making authority akin to an executive").

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	<p>governmental authorities (collectively, the “<u>Withholdings</u>”). To the extent that any Deductions or Withholdings have been collected and not yet remitted, the Debtors seek authority to remit those amounts.</p> <p>In addition, the Debtors are required by law to pay social security and Medicare taxes and, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance (the “<u>Employer Payroll Taxes</u>”). The Debtors estimate that, as of the Petition Date, approximately \$176,000 in Employer Payroll Taxes have accrued but remain unpaid.</p>		
Reimbursable Expenses	<p>The Debtors routinely reimburse Employees for certain expenses incurred while traveling on authorized company business (the “<u>Reimbursable Expenses</u>”).</p> <p>There is a gap period between the time expenses are incurred and the time an expense is processed and reimbursed, and therefore it is difficult for the Debtors to determine the precise amount of incurred, but not reported, reimbursable expenses at any particular time. Based on the Debtors’ historical average monthly spend over the past 12 months, the Debtors estimate that, as of the Petition Date, approximately \$325,000 in Reimbursable Expenses have accrued but remain unpaid.</p> <p>Previously the Debtors offered corporate credits cards to certain employees, which were paid directly by the Debtors. Although this program was discontinued as of August 23, 2019, some employees still hold corporate cards and will have expenses that have been accrued, but not paid as of the petition date. To the extent there are still employees using active credit cards for reimbursable expenses, the Debtors request the ability to pay these amounts in the normal course.</p>	\$108,333.00	\$108,333.00
PTO - Sick and Vacation Time	The Debtors provide eligible Employees with various leaves of absence (paid and unpaid), including, but not limited to, paid time off	\$1,428,512.00	\$34,436.00

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	<p>(“PTO” and together with Employee Compensation and Bonuses, the “<u>Compensation Obligations</u>”) for vacation, illness, holidays, personal time, jury duty, bereavement, and family leave.</p> <p>Eligible hourly Full-Time Employees can begin using sick days after completing one year of work. Sick days are provided on an annual basis starting January 1 as follows: (i) 2 days after 1 year of service, (ii) 3 days after 2 years of service, (iii) 4 days after 3 years of service, (iv) 5 days after 4 years of service, and (v) 6 days after 5 years of service. Sick time does not carry over year-to-year and is not paid out upon an hourly Employee’s termination.</p> <p>Eligible salaried Employees can begin using sick days after completing 90 days of work. After 90 days, eligible salaried Employees may use up to 6 sick days per year. Sick time does not carry over year-to-year and is not paid out upon a salaried Employee’s termination.</p> <p>All Full-Time Employees are eligible for vacation. Vacation is earned during a 10-month calendar – from January to October – to be used in a given calendar year. Vacation is earned and accrued on the first day of the month from January to October. The number of days earned on the first day of the month varies based on each Employee’s length of employment and whether the Employee is an hourly or salaried Employee – ranging from 0.5 days to 1.5 days. Subject to limited, case-by-case exceptions, all vacation earned but not used is reduced to 0 after December 31 of each year.</p> <p>Pursuant to the Debtors’ written vacation policy, the Debtors have paid out any remaining vacation upon termination of employment, unless such termination is with cause or occurs with less than 2 weeks’ notice. The Debtors estimate that, as of the Petition</p>		

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	<p>Date, the aggregate amount of accrued but unused vacation is approximately \$1,428,511.22. A majority, if not all, of such amount is not a current cash pay obligation, as Employees are only paid out for accrued but unused vacation upon termination as a result of a layoff or without cause and following proper notice.</p> <p>By this Motion, the Debtors are requesting authority, but not direction, to continue honoring their PTO obligations and to honor, in the ordinary course of business, all unused vacation that accrued prior to the Petition Date but not to make cash payments except upon termination of employment as a result of a layoff or without cause and following proper notice; <i>provided</i> that no Employee will receive cash payments of more than \$13,650 in the aggregate on account of prepetition Compensation Obligations, unless required by applicable law, subject to entry of the Final Order, or as otherwise described herein.</p>		
<p>Health Benefits Plans</p>	<p>The Debtors offer eligible Employees a number of benefits programs, including, among other programs, self-funded medical, dental, and prescription drug coverage and a vision plan administered by Vision Service Provider (collectively, the “<u>Health Benefits Plans</u>”). The Debtors offer 3 medical plans, 2 of which are high-deductible medical plans. The Debtors estimate that the monthly cost of the Health Benefits Plans, including administrative fees, Stop Loss Insurance,⁵ and the premium for the vision plan, is approximately \$1,486,295.</p> <p>The Debtors also provide eligible Employees with access to a flexible spending account</p>	<p>\$1,486,295</p>	<p>\$1,026,154.36</p>

⁵ Although many of the Medical Benefit Plans are self-funded by the Debtors, the Debtors maintain stop-loss insurance to protect against catastrophic or unpredictable losses (the “Stop Loss Insurance”). Blue Cross Blue Shield provides the Stop Loss Insurance at a cost of \$22.85 per month for single coverage and \$67.08 per employee per month for family coverage. The premium for a given month is generally received and paid during that month. As of the Petition Date, payment of Stop Loss Insurance is up to date.

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	<p>(“FSA”) administered by WageWorks, which can be used to cover incidental medical costs and dependent childcare. The Debtors do not make contributions to the FSAs and do not incur any administrative fees to WageWorks on account of the FSAs.</p> <p>In addition to the foregoing, the Debtors have in place miscellaneous practices, programs, and policies that provide medical and welfare benefits to eligible Employees, including COBRA (collectively, the “<u>Other Welfare Programs</u>”). The Debtors believe that the Other Welfare Programs are important to maintaining Employee morale and assisting in the retention of the Debtors’ workforce. The monthly cost of such programs for the Debtors is negligible in the context of the Debtors’ aggregate compensation and benefit obligations. The Debtors believe that failing to honor expected benefits under such Other Welfare Programs would have an adverse effect on the Employees.</p>		
Workers’ Compensation	<p>The Debtors provide workers’ compensation insurance for Employees at the statutorily required level for each applicable state. Additionally, in accordance with state law, the Debtors provide workers’ compensation coverage to the Employees under state-administered workers’ compensation programs. The Debtors are insured through Safety National Casualty Corp. The Debtors are seeking authority to pay amounts owed on account of workers’ compensation premiums by separate motion filed on the Petition Date.</p>	N/A	N/A
Life, Disability, and Accident Insurance	<p>The Debtors provide eligible Employees with basic life and long-term disability insurance coverage through MetLife (the “<u>Basic Insurance</u>”). The Debtors pay approximately \$21,365 on account of premiums for the Basic Insurance. As of the Petition Date, the Debtors have not yet made their August payment.</p> <p>The Debtors also provide eligible Employees with the opportunity to purchase additional</p>	\$21,365	\$21,365

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	insurance coverage through MetLife (the “ <u>Supplemental Insurance</u> ”), including various optional supplemental life, whole life, accidental death and dismemberment, and short-term disability, and short-term buy-up coverage. The premiums for the Supplemental Insurance are paid entirely by the electing Employee.		
401(k) Plan	The Debtors offer eligible Employees the opportunity to participate in a 401(k) plan (the “ <u>401(k) Plan</u> ”) administered by Fidelity. Employees who participate in the 401(k) Plan can make pre-tax payroll contributions to their 401(k) accounts up to the maximum amount permitted by the Internal Revenue Service. Each Employee’s 401(k) contributions are deducted automatically from their paychecks. The Debtors have suspended matching of any Employee’s 401(k) contributions.	\$0.00	\$0.00
Employee Discounts⁶	The Debtors provide the Employees with a discount of 10 percent on most goods purchased by the Employees at the Debtors’ stores.	N/A	N/A
Miscellaneous Benefit Programs	In addition to the benefit plans described above, the Debtors are currently aware of, and may discover other, <i>de minimis</i> prepetition obligations owed with respect to their Employees, including a cell phone data payment plan for eligible Employees (collectively, the “ <u>Miscellaneous Benefit Programs</u> ”). The Debtors estimate that, as of the Petition Date, approximately \$6,250 is accrued but unpaid with respect to the Miscellaneous Benefit Programs, and the Debtors’ historical average monthly spend over the past 12 months is approximately \$6,250 with respect to the Miscellaneous Benefit Programs.	\$2,417.00	\$2,417.00

⁶ Certain government-regulated and other products are not eligible for the employee discount.

10. In addition to the Employee Programs described above, the Debtors have historically offered a severance program to Employees (the “Severance Program,” and the obligations thereunder, the “Severance Obligations”), as described below. The Employee Obligations and the Severance Obligations are referred to collectively herein as the “Workforce Obligations.”

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
<p>Severance Program</p>	<p>Except as set forth explicitly in a written employment contract between an Employee and the Debtors, the Debtors provide eligible full-time salaried Employees who incur an involuntary termination of employment by reason of a reduction in force or elimination of the Employee’s position with severance (“<u>Severance</u>”) in the ordinary course of business. Severance is calculated based on the Employee’s years of service, weekly salary rate, and employment classification on the termination date. The amount of an Employee’s Severance ranges from (a) 4 weeks of base pay plus 1 week of base pay for each year of service, with a 2 week minimum, up to a combined maximum of 30 weeks to (b) 1 week of base pay for each year of service, with a 1-week minimum and a maximum of 4 weeks. Payments are made in installments according to the Debtors’ regular payroll schedule.</p> <p>There are approximately 598 individuals⁷ that were terminated prior to the Petition Date and are entitled to receive payments under the Severance Program (the “<u>Prepetition Severed Employees</u>”). The remaining payments under the Severance Program to the Prepetition Severed Employees total approximately \$1,545,121.88 in the aggregate. Approximately \$297,122.42 of those payments will come due on the Debtors’ next regularly scheduled payroll date of September 12, 2019, with no individual Prepetition Severed Employee receiving in excess of \$3,568.77. There are approximately 5 Prepetition Severed Employees whose remaining</p>	\$1,545,121.88	\$297,122.42

⁷ All of these individuals are non-executive employees. The Debtors are not continuing any severance payments to any executives.

Category	Description	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days of Petition Date
	Severance payments as of the Petition Date are in excess of \$13,650 in the aggregate. The Debtors request authority, but not direction, to: (i) make the next regularly scheduled payment under the Severance Program to the Prepetition Severed Employees due to the <i>de minimis</i> nature of such payments and the extreme hardship that would result to the Prepetition Severed Employees if these amounts were not paid and (ii) continue making payments under the Severance Program to the Prepetition Severed Employees in the ordinary course of business. Additionally, in the ordinary course of business, the Debtors may incur Severance Obligations after the Petition Date. Subject to entry of the Final Order, the Debtors request authorization, but not direction, to continue the Severance Program in the ordinary course of business with respect to Employees that may be terminated after the Petition Date and to pay any Severance Obligations owing thereunder.		

BASIS FOR RELIEF REQUESTED

A. The Court Should Authorize the Debtors To Honor the Workforce Obligations.

11. The Debtors seek the authority, but not the direction, in the reasonable exercise of their business judgment, to honor, pay, satisfy, or remit certain prepetition Workforce Obligations subject to relief requested herein during the first 21 days of these Chapter 11 Cases. The Debtors represent that they will not pay any amounts over a total aggregate amount of \$3,084,088.43 on account of prepetition Workforce Obligations on an interim basis.

12. To maintain their operations and preserve the value of their estates, it is essential that the Debtors continue to operate, to the extent possible, in the ordinary course of their business. To achieve that result, the Debtors must retain the uninterrupted service and loyalty of their Employees, Independent Contractors, and Temporary Workers. The maintenance and

continuation of the Employee Programs, as well as the payment of amounts owing in respect thereof, is essential to this goal. In addition, if Severance Obligations under the Severance Program are not honored, then current Employees could become concerned about the Debtors' employment practices and may seek out new employment immediately to the detriment of the Debtors' business and estates. Accordingly, the Debtors submit that the relief requested herein is critical to their ability to operate effectively and to preserve the value of their estates throughout these Chapter 11 Cases and, therefore, is in the best interests of the Debtors, their estates, and their creditors.

B. Certain of the Workforce Obligations Are Entitled to Priority Treatment.

13. A majority of the prepetition Workforce Obligations are entitled to priority treatment under the Bankruptcy Code. To the extent that such claims are afforded priority status, the Debtors must pay these claims in full prior to payment of general unsecured creditors under a plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan); 11 U.S.C. § 507(a)(4) (providing that allowed unsecured claims for “(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor” up to \$13,650 per individual are entitled to a fourth priority ahead of general unsecured claims); 11 U.S.C. § 507(a)(5) (providing that “allowed unsecured claims for contributions to an employee benefit plan . . .,” with offsets for payments made under Section 507(a)(4), are entitled to a fifth priority). Accordingly, granting the relief sought with respect to such obligations will affect only the timing of the payments and will not have any material negative impact on recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of those

obligations will enhance value for the benefit of all stakeholders because it will help ensure that the Employees, Independent Contractors, and Temporary Employees – the lifeblood of the Debtors’ business operations – will continue to provide vital services to the Debtors at this critical juncture. In addition, to the extent that the Debtors are authorized, in a reasonable exercise of their business judgment, to pay prepetition Workforce Obligations on a postpetition basis in the ordinary course of business, such payments will enhance the value of the Debtors’ estates for all stakeholders.

C. Payment of Certain of the Workforce Obligations Is Required by Law.

14. The Debtors seek authority to remit and pay Deductions, Withholdings, and Employer Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that Employees, governments, and judicial authorities have designated for withholding from Employees’ paychecks and, therefore, are not property of the Debtors’ estates. *See* 11 U.S.C. §§ 541(b)(1), (d); *see also* *Beiger v. I.R.S.*, 496 U.S. 53, 59 (1990) (“Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not ‘property of the estate.’”); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-96 (3d Cir. 1994) (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); *Ducharmes & Co. v. Michigan (In re DuCharmes & Co.)*, 852 F.2d 194, 195-96 (6th Cir. 1988) (per curiam) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). The Debtors request that the Court authorize the Debtors to remit the Deductions, Withholdings, and Employer Payroll Taxes to the proper parties in the ordinary course of business.

**D. Payment of the Workforce Obligations Is Appropriate
Under Bankruptcy Code Section 363.**

15. Bankruptcy Code section 363 empowers the Court to authorize a Chapter 11 debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. 11 U.S.C. § 363. Section 363(b) provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). To obtain approval for the use of estate assets outside the ordinary course of business, a debtor must articulate a valid business justification for the requested use. *See In re Filene's Basement, LLC*, No. 11-13511, 2014 WL 1713416, *12 (Bankr. D. Del. Apr. 29, 2014) (noting that under Bankruptcy Code Section 363(b), "[w]here the debtor articulates a reasonable basis for its business decisions . . . courts will generally not entertain objections to the debtor's conduct") (quoting *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986)); *In re Landsource Cmtys. Dev. LLC*, No. 108BK11111, 2009 WL 4874670, ¶ 15 (Bankr. D. Del. Nov. 25, 2009) ("Where valid business justifications exist, a presumption exists 'that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'") (quoting *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1990)); *see also In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (requiring that debtor show a "sound business purpose" to justify its actions under Section 363 of Bankruptcy Code); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). Moreover, if "the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that

“[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

16. Payment of the Workforce Obligations, as set forth herein, serves the sound business purpose of permitting the Debtors to minimize disruption in their operations as they move forward with maximizing their assets. Non-payment of the Workforce Obligations would jeopardize the Debtors’ Chapter 11 Cases, as any sale or liquidation of assets depends on the continued efforts and dedication of the Debtors’ Employees and other compensated individuals and entities. Accordingly, the Court should grant the requested relief under Bankruptcy Code section 363.

E. Payment of the Workforce Obligations Is Warranted Under the Doctrine of Necessity.

17. The proposed payment of the Workforce Obligations should also be authorized under Bankruptcy Code section 105, which empowers this 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). The “doctrine of necessity” functions in a Chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein.

18. The United States Court of Appeals for the Third Circuit has recognized the applicability of the doctrine of necessity with respect to the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *In re Lehigh & N. E. R. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating a court may authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits

“immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid.”); *see also In re Motor Coach Indus. Int’l, Inc.*, No. 08-12136, 2009 WL 330993, at *3 (D. Del. Feb. 10, 2009) (denying stay of appeal on grounds that “the viability of the ‘doctrine of necessity’ has not been brought into serious question by courts in the Third Circuit”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-26 (D. Del. 1999) (noting that the Third Circuit permits debtors to pay prepetition claims that are essential to the continued operation of business).

19. The relief requested herein will benefit the Debtors’ estates and creditors by allowing the Debtors’ business operations to continue without interruption while the Debtors seek to restructure their business. Any delay in paying or otherwise honoring the Workforce Obligations could severely disrupt the Debtors’ relationship with, and irreparably impair the morale of, the Employees at a time when the Employees’ continued dedication, confidence, and cooperation are most critical to the Debtors and the success of these Chapter 11 Cases. The Debtors face the risk that the success of these cases and their ability to effectively operate their business may be severely jeopardized if the Debtors are not immediately granted authority to pay the Workforce Obligations.

20. At this critical stage, the Debtors simply cannot risk the substantial disruption of their business and affairs that would, in all likelihood, accompany any decline in workforce morale attributable to the Debtors’ failure to pay the Workforce Obligations in the ordinary course of business. Absent the relief requested herein, the Employees would suffer great hardship and, in many instances, financial difficulties, because these monies are needed to enable them to meet their personal obligations. Additionally, without the requested relief, the Debtors’ stability would be undermined by the potential threat that otherwise loyal Employees at all levels

would seek other employment immediately. Such a development would deplete the Debtors' workforce, hinder the Debtors' ability to meet their customer obligations, and diminish customer confidence in the Debtors. Moreover, the loss of valuable individuals and the recruiting efforts that would be required to replace them would be a massive and costly distraction at a time when the Debtors should be focusing on the Chapter 11 Cases. Similarly, the individuals and entities comprising the Supplemental Workforce may choose to end their relationships with the Debtors, resulting in disruptions to the Debtors' business at this crucial time. Granting the relief requested in this Motion will allow the Debtors to continue to operate with minimal disruption and enable them to maximize the value of the estates for the benefit of all stakeholders.

21. The importance of a debtor's employees to its operations has been recognized by courts in this district in granting relief similar to the relief requested herein. Indeed, courts in this jurisdiction have approved relief similar to the relief requested in this Motion.

F. The Court Should Authorize Banks and Other Financial Institutions to Honor Checks and Electronic Funds Transfers.

22. To facilitate the implementation of the requested relief, the Debtors further request that the Court authorize all banks to receive, process, honor, and pay any and all checks drawn or electronic fund transfers from the Debtors' accounts whether such checks or transfer requests were presented before or after the Petition Date, to the extent that such checks or electronic fund transfers are expressly identified by the Debtors as relating directly to the authorized payments under this Motion. The Debtors also seek authority to issue new postpetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the entry of an order for relief.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

23. For a debtor to obtain relief to make payments within 21 days of the Petition Date, it must establish that making such payments satisfies the requirements mandated by Bankruptcy Rule 6003 – namely, the relief requested is necessary to avoid “immediate and irreparable harm.”

24. As described above, immediate and irreparable harm would result if the relief requested herein is not granted. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

WAIVER OF NOTICE REQUIREMENTS

25. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (a) the notice requirements under Bankruptcy Rule 6004(a) and (b) the 14-day stay under Bankruptcy Rule 6004(h), to the extent that either rule is applicable.

DEBTORS’ RESERVATION OF RIGHTS

26. 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. 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

27. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the District of Delaware, (b) the Debtors’ thirty largest unsecured creditors on a consolidated basis, (c) counsel to the DIP Agent, (d) Aon, (e) the United States Attorney for the District of Delaware, (f) the Internal Revenue Service, (g) the Securities and Exchange Commission, (h) each of the Debtors’ financial banking institutions, (i) any party that has requested notice

pursuant to Bankruptcy Rule 2002 as of the time of service, (j) and any other party required to be provided notice under Local Rule 9013-1(m). Due to the nature of the relief requested herein, the Debtors submit that no other or further notice need be provided.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court: (i) enter the Interim Order substantially in the form attached hereto as **Exhibit A** granting the relief requested in this Motion on an interim basis; (ii) schedule the Final Hearing on the Motion within 30 days of the Petition Date or as soon as otherwise practicable thereafter to consider entry of the Final Order substantially in the form attached hereto as **Exhibit B** and enter the Final Order; and (iii) grant such other and further relief as may be just and proper.

Dated: September 9, 2019
Wilmington, Delaware

/s/ Derek C. Abbott

Derek C. Abbott (No. 3376)
Andrew R. Remming (No. 5120)
Matthew B. Harvey (No. 5186)
Joseph C. Barsalona II (No. 6102)
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- and -

Adam L. Shiff (*pro hac vice* motion pending)
Robert M. Novick (*pro hac vice* motion pending)
Matthew B. Stein (*pro hac vice* motion pending)
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**PROPOSED COUNSEL FOR DEBTORS AND
DEBTORS IN POSSESSION**

EXHIBIT A

Proposed Interim Order

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

In re:)	
)	Chapter 11
FRED’S, INC., <i>et al.</i> , ¹)	Case No. 19-_____ ()
Debtors.)	Joint Administration Requested
)	

**INTERIM ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION EMPLOYEE WAGES,
BENEFITS, AND OTHER OBLIGATIONS AND (B) CONTINUE EMPLOYEE
PROGRAMS AND SEVERANCE PROGRAM AND (II) GRANTING RELATED RELIEF**

Upon the Motion² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of this Interim Order pursuant to Bankruptcy Code sections 105(a), 363 and 507(a)(4)-(5), Bankruptcy Rules 4001(d), 6003, and 6004, and Local Rules 9013-1(m) (i) authorizing, but not directing, the Debtors, in a reasonable exercise of their business judgment, to (a) honor and pay prepetition Workforce Obligations and (b) continue the Employee Programs and the Severance Program as such were in effect as of the Petition Date and as such may be modified, amended, or supplemented from time to time in the ordinary course of business, and honor and pay any ongoing amounts due thereunder; (ii) authorizing all Financial Institutions to honor the Debtors’ checks and/or other electronic funds transfer requests issued prepetition for payment of any authorized Workforce Obligations; (iii) scheduling a Final Hearing to consider entry of the Final Order to the extent that a hearing is necessary, and (iv) granting related relief, all as further described in the Motion; and this Court having

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Fred’s, Inc. (4010); Fred’s Stores of Tennessee, Inc. (9888); National Equipment Management and Leasing, Inc. (4296); National Pharmaceutical Network, Inc. (9687); Reeves-Sain Drug Store, Inc. (4510); Summit Properties-Jacksboro, LLC (9161); Summit Properties-Bridgeport, LLC (2200); and 505 N. Main Opp, LLC (5850). The Debtors’ address is 2001 Bryan Street, Suite 1550, Dallas, Texas 75201.

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

jurisdiction to consider the Motion and the relief requested therein in accordance with 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; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and upon the record of any hearing being held to consider the relief requested in the Motion; and upon the First Day Declaration and all proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted on an interim basis to the extent provided herein.
2. Subject to the terms and conditions of the DIP Financing Documents, the Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay, remit, or otherwise honor the prepetition Employee Obligations; *provided, however*, that, absent further order of this Court, the aggregate cash payments on account of prepetition Compensation Obligations shall not exceed \$13,650 (a) per individual Employee, unless amounts above \$13,650 are on account of unpaid PTO that is required to be paid under applicable law, and (b) per individual Independent Contractor or Temporary Worker; *provided further* that, absent further order of this Court, the aggregate payments on account of Employee Obligations (excluding Employee claims under the Health Benefits Plans) will not exceed \$2,124,018.00

pursuant to this Interim Order. For the avoidance of doubt, this authority is inclusive of any prepetition Employee Obligations to third-party service providers that administer, insure, or otherwise facilitate the Employee Programs, which amounts shall not count towards the \$13,650 cap per Employee.

3. Subject to the terms and conditions of the DIP Financing Documents, the Debtors are authorized, but not directed, to continue the Employee Programs and pay all postpetition Employee Obligations that may arise thereunder in the ordinary course of business.

4. To the extent the Debtors make any payments on account of prepetition claims under a self-insured Health Benefits Plan, such payments shall be made without regard to the current employment status of the Employee, provided that such Employee (or dependent) was eligible for coverage on the date such claim was incurred.

5. Notwithstanding anything to the contrary contained herein, with respect to the Severance Program, which may be modified, amended, or supplemented from time to time in the ordinary course of business, and subject to the terms and conditions of the DIP Financing Documents, the Debtors are authorized, but not directed, to: (i) make the next regularly scheduled payment under the Severance Program to the Prepetition Severed Employees; and (ii) continue making payments under the Severance Program to the Prepetition Severed Employees in the ordinary course of business, in each case; *provided, however*, that absent further order of this Court, the aggregate payments on account of the Severance Obligations to Prepetition Severed Employees will not exceed \$297,123.00 pursuant to this Interim Order. Subject to entry of the Final Order, the Debtors are authorized, but not directed, to continue the Severance Program in the ordinary course of business with respect to Employees that may be terminated after the Petition Date and to pay any Severance Obligations owing thereunder, subject in all

respects to the cap set forth in Bankruptcy Code section 503(c)(2), as applicable. Nothing in this Interim Order shall be deemed to violate or permit a violation of Bankruptcy Code section 503(c).

6. The Debtors are authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to prepetition amounts authorized to be paid herein.

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

8. Subject to the Cash Management Order, the banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized, but not directed, to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such Financial Institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Interim Order.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Interim Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, the creation of an administrative priority claim on account of the prepetition obligations sought to be paid, or the assumption or adoption of any contract or agreement under Bankruptcy Code section 365.

10. The requirements set forth in Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

11. The deadline by which objections to the Motion and the Final Order must be filed is _____, 2019 at 4:00 p.m. (ET). Objections must be served on: (a) proposed counsel to the Debtors, (i) Kasowitz Benson Torres LLP, 1633 Broadway, New York, New York 10019, Attn: Adam L. Shiff, Esq. (AShiff@kasowitz.com), Robert M. Novick (RNovick@kasowitz.com), and Matthew B. Stein (MStein@kasowitz.com) and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., 16th Floor, Wilmington, Delaware 19899, Attn: Derek C. Abbott (DAbbot@mnat.com), and Andrew R. Remming (ARemming@mnat.com); (b) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street Suite 2207 Lockbox 35, Wilmington, Delaware 19801; (c) counsel to the DIP Agent, (i) Parker, Hudson, Rainer & Dobbs LLP, 303 Peachtree Street N.E., Suite 3600, Atlanta, Georgia 30308, Attn: C. Edward Dobbs, Esq. (edobbs@phrd.com) and Eric W. Anderson, Esq. (eanderson@phrd.com) and (ii) Richards Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: John H. Knight, Esq. (knight@rlf.com); and (d) counsel to any statutory committee appointed in these Chapter 11 Cases. A final hearing, if required, on the Motion will be held on _____, 2019 at ___ (ET). If no objections are filed to the Motion, this Court may enter the Final Order without further notice or hearing.

12. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, this Interim Order shall be immediately effective and enforceable upon its entry.

13. To the extent that the Motion is inconsistent with this Interim Order, the terms of this Interim Order shall govern.

14. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Interim Order.

Dated: _____, 2019
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

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

In re:)	
)	Chapter 11
FRED’S, INC., <i>et al.</i> , ¹)	Case No. 19-_____ ()
Debtors.)	Joint Administration Requested
)	

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION EMPLOYEE WAGES,
BENEFITS, AND OTHER OBLIGATIONS AND (B) CONTINUE EMPLOYEE
PROGRAMS AND SEVERANCE PROGRAM AND (II) GRANTING RELATED RELIEF**

Upon the Motion² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of this Final Order pursuant to Bankruptcy Code sections 105(a), 363 and 507(a)(4)-(5), Bankruptcy Rules 4001(d) and 6004, and Local Rules 9013-1(m): (i) authorizing, but not directing, the Debtors, in a reasonable exercise of their business judgment, to (a) honor and pay prepetition Workforce Obligations and (b) continue the Employee Programs and the Severance Program as such were in effect as of the Petition Date and as such may be modified, amended, or supplemented from time to time in the ordinary course of business, and honor and pay any ongoing amounts due thereunder; (ii) authorizing all Financial Institutions to honor the Debtors’ checks and/or other electronic funds transfer requests issued prepetition for payment of any authorized Workforce Obligations; and (iii) granting related relief, all as further described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended*

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: Fred’s, Inc. (4010); Fred’s Stores of Tennessee, Inc. (9888); National Equipment Management and Leasing, Inc. (4296); National Pharmaceutical Network, Inc. (9687); Reeves-Sain Drug Store, Inc. (4510); Summit Properties-Jacksboro, LLC (9161); Summit Properties-Bridgeport, LLC (2200); and 505 N. Main Opp, LLC (5850). The Debtors’ address is 2001 Bryan Street, Suite 1550, Dallas, Texas 75201.

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

Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and upon the record of any hearing being held to consider the relief requested in the Motion; and upon the First Day Declaration and all proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted on a final basis to the extent provided herein.
2. Subject to the terms and conditions of the DIP Financing Documents, the Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay, remit, or otherwise honor the prepetition Employee Obligations; *provided, however*, that absent further order of this Court, the aggregate cash payments on account of prepetition Compensation Obligations shall not exceed \$13,650 (a) per individual Employee, unless amounts above \$13,650 are on account of unpaid PTO that is required to be paid under applicable law or pursuant to the Debtors' ordinary course of business following termination of an Employee, and (b) per individual Independent Contractor. This authority is inclusive of any prepetition amounts that may become payable to third-party service providers that administer, insure, or otherwise

facilitate the Employee Obligations, which amounts shall not count towards the \$13,650 cap per Employee.

3. Subject to the terms and conditions of the DIP Financing Documents, the Debtors are authorized, but not directed, to continue the Employee Programs and pay all postpetition Employee Obligations that may arise thereunder in the ordinary course of business.

4. To the extent the Debtors make any payments on account of prepetition claims under a self-insured Health Benefits Plan, such payments shall be made without regard to the current employment status of the Employee, provided that such Employee (or dependent) was eligible for coverage on the date such claim was incurred.

5. Notwithstanding anything to the contrary contained herein, with respect to the Severance Program, which may be modified, amended, or supplemented from time to time in the ordinary course of business, and subject to the terms and conditions of the DIP Financing Documents, the Debtors are authorized, but not directed, to: (i) continue making payments under the Severance Program to the Prepetition Severed Employees in the ordinary course of business, subject in all respects to the cap set forth in Bankruptcy Code section 503(c)(2), as applicable; and (ii) to continue the Severance Program in the ordinary course of business with respect to Employees that may be terminated after the Petition Date and to pay any Severance Obligations owing thereunder, subject in all respects to the cap set forth in Bankruptcy Code section 503(c)(2), as applicable. Nothing in this Final Order shall be deemed to violate or permit a violation of Bankruptcy Code section 503(c).

6. The Debtors are authorized, but not directed, to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks or fund transfer requests

that are dishonored as a consequence of the Chapter 11 Cases with respect to prepetition amounts authorized to be paid herein.

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

8. Subject to the Cash Management Order, the banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized, but not directed, to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such Financial Institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as being approved by this Final Order.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Final Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, the creation of an administrative priority claim on account of the prepetition obligations sought to be paid, or the assumption or adoption of any contract or agreement under Bankruptcy Code section 365.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, this Final Order shall be immediately effective and enforceable upon its entry.

11. To the extent that the Motion is inconsistent with this Final Order, the terms of this Final Order shall govern.

12. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Final Order.

Dated: _____, 2019
Wilmington, Delaware

United States Bankruptcy Judge