

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

In re:

BROADVISION, INC.,¹

Debtor.

Chapter 11

Case No. 20-____ (____)

**DECLARATION OF PEHONG CHEN IN SUPPORT OF
CHAPTER 11 PETITION AND FIRST DAY MOTIONS**

I, Pehong Chen, hereby declare under penalty of perjury:

1. I am the President, Chief Executive Officer, Interim Chief Financial Officer, Chairman of the Board, and founder of BroadVision, Inc. (the “Debtor” or the “Company”, as applicable), a corporation organized under the laws of the State of Delaware and the debtor and debtor in possession in the above-captioned chapter 11 case (the “Chapter 11 Case”). In these capacities, I am familiar with the Debtor’s day-to-day operations, business, financial affairs, and books and records, and I am authorized to make this Declaration on behalf of the Debtor.

2. Prior to founding the Company, I held the position of Vice President of multimedia technology at Sybase, where I was responsible for the company’s interactive initiatives. Additionally, I founded and was President of Gain Technology, which was acquired in 1992 by Sybase (a division of SAP AG since 2011).

3. In addition to serving on the Company’s Board, I have also served on the boards of Yonyou (SSE: 600588), China’s largest enterprise software provider, Pactera (Nasdaq: PACT), China’s leading software out-sourcing firm, and Fortinet (Nasdaq: FTNT), the world’s leading supplier of network threat management solutions.

¹ The last four digits of the Debtor’s federal tax identification number are 4303. The Debtor’s address is 460 Seaport Ct., Suite 102, Redwood City, California 94063.

4. I received a Doctor of Philosophy (PhD) from the University of California, Berkeley, a Master of Science (MS) from Indiana University, and a Bachelor of Science (BD) from National Taiwan University, all in computer science. I am also a graduate of Stanford University's executive program in business and management. I was an advisor to the College of Engineering at the University of California, Berkeley for ten (10) years and I am a member and the former Vice Chairman of the Committee of 100, a non-profit organization dedicated to improving mutual understanding between United States and China through dialogue and cooperation.

5. I submit this Declaration to assist the Court and parties in interest in understanding the circumstances that led to the commencement of this Chapter 11 Case and in support of: (a) the Debtor's petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") filed on March 30, 2020 (the "Petition Date"); and (b) the relief that the Debtor has requested from the Court pursuant to the motions and applications described herein (collectively, the "First Day Motions").

6. To familiarize the Court with the Debtor, the purpose of initiating this Chapter 11 Case, and the relief that the Debtor will seek in connection with this Chapter 11 Case, this Declaration is organized in five parts. Part I provides an introduction to the Debtor and information on the Debtor's business operations. Part II provides an overview of the Debtor's organizational structure and capital structure. Part III describes the circumstances leading to the commencement of this Chapter 11 Case. Part IV describes the Debtor's chapter 11 goals. Part V sets forth additional relevant facts in support of each of the First Day Motions filed in connection with this Chapter 11 Case.

I.

THE DEBTOR'S BUSINESS

7. I founded the Company on May 13, 1993, to be a driver of innovative solutions to deliver business value in areas such as one-to-one personalization, knowledge management, e-commerce, e-banking, enterprise social networking, unified communication and collaboration, among other areas, for many years. In 1996, the Company underwent an initial public offering and began trading on The Nasdaq Capital Market under the symbol BVSN.

8. The Company pioneered web-based e-commerce and was among the first to offer pre-integrated, packaged self-service web applications for process, commerce, portal and content management. The Company develops, markets, and supports enterprise portal applications that enable companies to unify their e-business infrastructure and conduct both interactions and transactions with employees, partners, and customers through a personalized self-service model that increases revenues, reduces costs, and improves productivity.

9. The Company's array of current applications can best be understood when divided into the following product offerings: Business Agility Suite, Commerce Agility Suite and Quicksilver. Each is described, in turn, below:

- a. The Business Agility Suite is a portal that provides personalized views of information and processes from diverse internal, external, and legacy sources. It supports collaboration both inside and outside the enterprise, and manages web content throughout its lifecycle: creation, review, approval, version control, deployment, distribution, and audit trail.
- b. The Commerce Agility Suite is the Company's e-commerce system for transacting business on the web, from lead generation, navigation, category management, incentive, shopping cart, order execution, to customer care. It supports both business-to-business and business-to-consumer commerce. Additionally, it has the full capabilities of the Company's Business Agility Suite.
- c. QuickSilver is a high-end publishing system for large and complex documents. Quicksilver is commonly used for publishing projects such as

aircraft manuals, weapon system manuals, and massive customizable insurance policies. Quicksilver supports multiple output formats, such as HTML, PDF, and Postscript. It also includes a complete XML authoring environment.

10. The Company's product offerings have the following characteristics and advantages:

- a. *Track Record*—Experience from over 1,000 implementations over 20 years.
- b. *Agility, Extensibility, and Configurability*—Integrated tools for rapidly creating e-business applications with modular out-of-the-box capabilities and custom development.
- c. *Scalability*—Advanced load balancing and multi-layered caching for high concurrent users and transactions.
- d. *Personalization*—Session and event-based observations for dynamic and targeted navigation.
- e. *Secure Transaction Processing*—A wide range of commercial functions including order processing, discount, incentive, tax computation, shipping and handling charges, payment processing, and order tracking.
- f. *Multi-Platform Support*—Support for major operating systems (Linux, Solaris, Windows, HP-UX, and AIX), application servers (WebLogic, WebSphere and JBoss) and databases (Oracle, Sybase, IBM, MySQL and SQL Server).
- g. *Low Total Cost of Ownership*—Support for open source platforms in addition to commercial platforms.
- h. *Cloud*—Hosted SaaS (Software-as-a-Service), allowing customers to access enterprise-quality software without traditional IT overhead.
- i. *Mobile*—Native mode application support for Apple iOS and Android as well as support for leading browsers, which extends access to cloud applications and services to most connected devices.

11. The Company, along with its non-Debtor subsidiaries, currently operates in three primary geographical territories: North and South America (Americas); Europe, Middle East and Africa (Europe); and Asia, Pacific and Japan (Asia/Pacific).

12. The Company currently has five full-time employees and one part-time employee, all based in the U.S. As of September 30, 2019, the most recently reported period,² the Company's financial statements reflected assets with a book value totalling approximately \$5.6 million and liabilities totalling approximately \$2.9 million.

II.

THE DEBTOR'S ORGANIZATIONAL AND CAPITAL STRUCTURE

A. The Debtor's Prepetition Organizational Structure

13. The Company has a number of non-Debtor affiliates, including Vmoso, Inc. ("VMOSO"),³ in which I own a controlling interest of 80.1%. The Company and VMOSO are parties to a Services and Facilities Agreement (as amended, the "SFA"), dated as of January 1, 2019, the terms of which provide for the payment of certain fees to the Company by VMOSO in exchange for the contribution of the Company's expertise, administrative and financial services, and certain resources in VMOSO's business and operations. The SFA has an initial period of one year and is renewable upon the written consent of the parties thereto.

14. Additional non-Debtor affiliates include BroadVision (Delaware) LLC, a Delaware limited liability company ("BVD"), which the Company has a controlling voting interest in. BVD is the sole owner of BroadVision (Barbados) Limited ("BVB"), which is, in turn, the sole owner of BroadVision On Demand, a Chinese entity ("BVOD"). The Company invested approximately \$9.0 million in BVOD (directly and through BVD and BVB) from 2007

² The Company notes that the next reporting period shall be March 30, 2020. However, as the Plan contemplates the cancellation of all Equity Interests and delisting all of the Debtor's Common Stock immediately following the Effective Date of the Plan, the Company has decided to forgo filing this periodic report, in an effort to conserve valuable resources.

³ In response to the COVID-19 outbreak, on March 25, 2020, the Company announced the immediate availability of its Telework Jumpstart Program (the "TJP"). Under the TJP, the Company offers unlimited free use for 12 months of the VMOSO enterprise digital hub platform.

through 2016. In 2014, the Company began making payments directly to BVOD for certain labor outsourcing services and expect to continue to pay BVOD for such services at the rate of approximately \$550,000 per quarter for the foreseeable future. The Company made aggregate payments to BVOD of \$1.8 million and \$2.3 million (based on the RMB to USD exchange rates on the applicable dates of payment) for such services in the years ended December 31, 2018 and 2017, respectively. These payments covered, in part, services rendered outside of the applicable twelve-month periods. In April 2019, BVOD was liquidated as a result of cost cutting measures, including a reduction of workforce.

15. The Debtor has numerous other non-Debtor international affiliates, including: BroadVision Deutschland GmbH, BroadVision France S.A., BroadVision Italia Srl, BroadVision Japan K.K., BroadVision Spain, BroadVision Systems India Pvt Ltd., BroadVision Systems India Pvt Ltd., BroadVision Taiwan, BroadVision UK Ltd., Interleaf German GmbH, and Interleaf UK Ltd. BroadVision Italia Srl, which maintains an office in Rome, Italy, and BroadVision UK Ltd., each currently have two employees—with one employee in finance and the other in sales. BroadVision Spain currently has two employees in engineering. Interleaf German GmbH and Interleaf UK Ltd. each currently have one employee working in sales. BroadVision Taiwan is branch of the Debtor and currently has two employees, one working in sales and the General Manager of Global Operations. BroadVision Japan K.K. utilizes independent contractors to generate sales and maintains no office space.⁴

16. None of the Company's subsidiaries or affiliates have filed or intend to file for chapter 11 in conjunction with this Chapter 11 Case.

⁴ Any entities without a physical office have virtual offices.

B. The Debtor's Prepetition Capital Structure

17. The Company has no outstanding secured or unsecured debt facilities, and no creditor or other party holds a security interest in any of the Company's cash or cash-generating assets. As such, no such party holds an interest in any cash collateral.

18. The Company is currently authorized to issue two classes of capital stock, designated as common stock and convertible preferred stock. As of February 29, 2020, there were 5,142,333 shares of common stock outstanding and no shares of convertible preferred stock are issued or outstanding.⁵ The three largest holders of the Company's common stock are myself / Honu Holdings, LLC⁶ (31.9%), ESW Capital, LLC ("ESW") (23.65%), and Marlin Capital Investments (6.85%).

III.

EVENTS LEADING TO CHAPTER 11 FILING

19. Over the last decade, the Company's cash position has decreased from approximately \$45 million as of December 31, 2011 down to approximately \$400,000 as of the Petition Date, and the Company has not generated positive net income since 2009. The Company and its consolidated subsidiaries generated net losses of approximately \$9.9 million for the fiscal year ended December 31, 2017 (as reported on Form 10-K), and approximately \$7.0 million for the fiscal year ended December 31, 2018 (as reported on Form 10-K). Further, the Company generated net losses of approximately \$1.5 million for the fiscal year ended December 31, 2019 (draft, unaudited).

20. From 2001 to date, the Company's annual revenue has declined, and as of December 31, 2019, the Debtor had an accumulated deficit of approximately \$1,269 million.

⁵ As set forth in the Plan (defined below), the 5,142,333 shares includes "all Outstanding Shares, Restricted Stock Awards, Restricted Stock Units, and Permitted Stock Options, whether or not vested."

⁶ Honu Holdings, LLC, is a company I own and control.

The majority of this accumulated deficit to date has resulted from non-cash charges associated with the acquisition of Interleaf, Inc. in 2000, and restructuring charges related to long-term real estate lease obligations.

21. In 2016, to preserve the going-concern value of its business and to enable the Debtor to execute a go-forward business plan, I made a capital contribution to the Company of \$16 million. Additionally, the Company started implementing cost reduction measures in 2017, which were designed to reduce cash needs. These measures reduced the Company's operational costs by approximately \$5 million in 2018 and \$4 million in 2019 but were insufficient to guide the Company to profitability. The Company believed any further cost reductions could result in voluntary departures of the Company's highly skilled technical and managerial personnel, which would have a material adverse effect on the Company's business, internal controls, financial condition, and revenues.

22. The Company's operations face two key challenges: (a) the maturity of its major revenue-generating legacy products, and (b) competing in a crowded ESN solution space. The Company has invested heavily in cloud-based, mobile, messaging, and collaboration technologies, while continuing to support its legacy product base. Unfortunately, as a result of its ongoing losses and required cost-cutting, the Company became hampered in its ability to execute on its business plan. Total revenues of approximately \$1.588 million in the first half of 2019 declined from total revenues of \$2.8 million for the first half of 2018, with the decrease mainly in legacy revenue. Total revenues of approximately \$1.383 million for the first half of 2020 declined from total revenues of \$1.588 million for the first half of 2019. The Company expects that the decline in legacy revenue, which is the majority of the Debtor's revenue mix,

will continue to dominate overall financial performance until a significant installed base of new product revenues is established.

23. As discussed above, as of the Petition Date, the Company has approximately \$400,000 in remaining cash. While these funds are believed to be sufficient to permit the Company to fund its chapter 11 plan without the need for debtor-in-possession financing, it is clear that absent a restructuring, the Company's already tenuous cash position will continue to worsen, and recoveries to the Company's creditors and shareholders will be at significant risk.

24. The current economic shutdown has exacerbated the Company's liquidity issues and need for relief, as the Company anticipates that customers may cancel or delay payment. Moreover, the Company does not believe it has the ability to raise cash or debt in the current unique capital market climate.

25. In light of the Company's deteriorating liquidity and its inability to generate positive net income, it became clear that a proactive chapter 11 bankruptcy filing represented the best alternative available to maximize recoveries for the Debtor's creditors and shareholders. Accordingly, the Debtor engaged with ESW and the Shareholders and hired restructuring advisors to assist in the development and refinement of a viable path forward. Ultimately, vigorous arm's-length negotiations with ESW resulted in the entry into the Restructuring Support Agreement (the "RSA"). The RSA allows the Debtor's restructuring to be implemented efficiently through the proposed pre-packaged plan of reorganization (as described in section IV below, the "Plan"), thereby minimizing administrative costs and protecting the Debtor's estate for the benefit of its stakeholders.

26. After considering the limited likelihood of success of any other alternatives as of the date hereof, as well as the proposed 100% distributions on account of allowed claims and

significant recoveries well in excess of share trading prices (even prior to the recent market correction) to shareholders contemplated by the Plan, the Debtor determined, acting through a special committee, and based on its fiduciary responsibility and advice of its legal advisors, that the restructuring contemplated by the RSA is in the best interests of the Debtor and its stakeholders.

IV.

CHAPTER 11 GOALS

27. As noted above, ESW owns a significant portion of the Company's common stock.⁷ As a legacy minority shareholder, ESW has been keenly aware of the Company's struggles, including its liquidity constraints. After several back and forth discussions between the Company and ESW that commenced in June 2019, on February 4, 2020, ESW issued a non-binding indication of interest (the "IOI"), which set forth the material terms of ESW's proposed acquisition of 100% of the equity interests in the reorganized Company through the Plan. The salient terms of the IOI, which were eventually memorialized in the RSA, are as follows:⁸

- a. ESW will sponsor and fund the Plan, which will provide for the full payment of all allowed administrative, legal costs, and secured (if any) and unsecured liabilities (including those of employees and vendors).
- b. Holders of the Company's common stock (other than ESW) will receive \$4.375 per common share (assuming 5,142,333 shares are outstanding), *plus* each of their pro rata share of the Debtor's cash on hand as of the effective date of the Plan (including proceeds from the sale of a block of IP addressed owned by the Debtor).
- c. In exchange for funding the cash payments necessary under the Plan and in lieu the cash payment described immediately above, ESW will

⁷ ESW is an investment group specifically focused on purchasing, strengthening, and then growing software companies. ESW has been investing in enterprise software companies since 1988 and has made over 80 portfolio acquisitions in this space, including software brands such as Aurea, Ignite Technologies, Trilogy, and Versant.

⁸ This summary is qualified in its entirety by the terms of the RSA and the Plan, as applicable.

acquire 100% of the equity interests of the reorganized Company, free and clear of any options, liens, or other claims.

28. The Debtor intends to implement the above terms through the Plan. The Debtor believes that entering into these contemplated transactions will best position the Company for future success. By partnering with ESW, a specialist in operating enterprise software companies, with a proven track record of taking struggling software companies to the next level, the Company will continue existing operations and have the financial support to continue advancing its product offerings under ESW's leadership.

29. Further, the proposed transaction, which provides for payment in full of all of the Company's trade and other debt obligations, and which provides existing shareholders with a substantial premium on the value of their shares in the Company (whereas, if the Company were forced into a liquidating chapter 11 or chapter 7, such shareholders would receive no return on their investment), is in the best interests of the Debtor, its creditors, shareholders, and other stakeholders.

30. As set forth in the RSA,⁹ the Debtor is bound by the following milestones:

- The Debtor shall file its chapter 11 petition in the United States Bankruptcy Court for the District of Delaware no later than March 31, 2020;
- The Debtor shall file a motion seeking approval and assumption of the RSA with the Court no later than the Petition Date;
- The Court shall enter an order approving the RSA and the Debtor's assumption of same no later than three (3) days after the Petition Date;
- The Court shall enter an order, acceptable in form and substance to ESW (in its reasonable discretion), approving the disclosure statement and confirming the Plan no later than May 22, 2020; and
- The effective date of the Plan shall have occurred no later than May 29, 2020.

⁹ Contemporaneously herewith, the Debtor is filing a motion to approve the RSA.

31. The assumption of the RSA will secure the foundation for the Debtor's consensual restructuring, ensure that such restructuring is valid and enforceable against all signatories to the RSA, and provide the Debtor with the benefits it bargained for in the weeks and months prior to and following the Petition Date, including the ability to maximize recoveries to the Debtor's creditors and equity holders through an efficient chapter 11 process.

V.

SUMMARY OF RELIEF SOUGHT THROUGH FIRST DAY MOTIONS¹⁰

32. Contemporaneously herewith, the Company filed a number of First Day Motions seeking relief that the Company believes is critical and necessary for it to operate with minimal disruption and to preserve the value of its assets and business during the Chapter 11 Case. I have reviewed each of the First Day Motions referenced below. The facts stated in each are true and correct to the best of my knowledge and belief, with appropriate reliance on the Company's employees and advisors. The following is a summary of the relief requested in each First Day Motion and the reasons for such requests. The facts set forth in the First Day Motions are incorporated herein in their entirety.

I. Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Epiq Corporate Restructuring, LLC as Claims and Noticing Agent Pursuant to 28 U.S.C. § 156(c) ("Section 156(c) Application").

33. Through the Section 156(c) Application, the Debtor seeks the appointment of Epiq Corporate Restructuring, LLC ("Epiq") as claims and noticing agent for this Chapter 11 Case. The Debtor selected Epiq after soliciting and reviewing proposed engagement terms from three (3) other parties that have been approved by this Court to serve as claims and noticing agents. As the claims and noticing agent, Epiq would assume full responsibility for the

¹⁰ Capitalized terms in this Part V that are used but not defined in this Declaration have the meaning set forth in the applicable First Day Motion, and each such pleading is incorporated into this Declaration by reference.

distribution of statutory notices to creditors and other parties in interest and the maintenance, processing, and docketing of proofs of claim filed in this Chapter 11 Case. Given the complexity of this Chapter 11 Case and the number of creditors and other parties in interest involved, I believe that the appointment of Epiq will maximize the value of the Debtor's estate for all of their stakeholders and will help to facilitate the efficient administration of this Chapter 11 Case while alleviating these burdens for the Clerk of the Court. Accordingly, I respectfully submit that the Section 156(c) Application should be approved.

II. Motion of the Debtor for Entry of an Order (I) Scheduling a Combined Hearing on (A) Adequacy of Disclosure Statement, (B) Confirmation of Plan, and (C) the Assumption of Executory Contracts and Cure Amounts; (II) Approving Form and Manner of Notice of (A) Combined Hearing, (B) Commencement of Chapter 11 Case, And (C) Assumption of Executory Contracts and Cure Amounts Related Thereto, and Objection Deadlines; (III) Establishing Procedures for Objecting to (A) Disclosure Statement, (B) Plan, and (C) Proposed Assumption or Rejection of Executory Contracts and Cure Amounts; (IV) Conditionally (A) Directing the United States Trustee Not to Convene a Section 341 Meeting of Creditors, and (B) Waiving Requirement of Filing Statements of Financial Affairs and Schedules of Assets and Liabilities; and (V) Granting Related Relief ("Confirmation Procedures Motion").

34. Through the Confirmation Procedures Motion, the Debtor seeks entry of an order, among other things,

- scheduling a combined hearing (the "Combined Hearing") for the Court to consider (i) approving the adequacy of the *Disclosure Statement for Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for BroadVision, Inc.* (as may be amended, modified or supplemented from time to time the "Disclosure Statement"), (ii) confirmation of the *Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for BroadVision, Inc.* (as may be amended, modified, or supplemented from time to time, the "Plan"),¹¹ and (iii) the proposed assumption or rejection of executory contracts, unexpired leases and any related cure costs in connection therewith (the "Cure Amounts");
- establishing an objection deadline to object to the adequacy of the Disclosure Statement or confirmation of the Plan;

¹¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Plan.

- establishing the deadline to object to the proposed assumption or rejection of executory contracts and unexpired leases and any related Cure Amounts;
- approving the form and manner of notice of the Combined Hearing, the objection deadlines, notice of commencement, and the assumption of executory contracts and unexpired leases, Cure Amounts;
- modifying the requirement that the Debtor file both statements of financial affairs and complete schedules of assets and liabilities, but instead, authorize the Debtor to only file its schedules of assets and liabilities, in order to confirm its general unsecured claims, which will be paid in full in cash under the Plan; and
- conditionally directing the Office of the United States Trustee for the District of Delaware for Region 3 not to convene the initial meeting of creditors under section 341(a) of the Bankruptcy Code.

35. The relief requested in the Confirmation Procedures Motion is the typical relief requested in connection with the prosecution of a prepackaged chapter 11 plan of reorganization. These procedures will help streamline the chapter 11 process and ensure that all creditors with allowed claims are paid in full under the Plan. The procedures also reduce the administrative burden of the Court and the Office of the United States Trustee. Accordingly, I respectfully submit, on behalf of the Debtor, that the relief requested in the Confirmation Procedures Motion should be granted.

III. Debtor’s Motion for an Order Authorizing the Debtor to (i) Pay Certain Prepetition Wages and Compensation and Maintain and Continue Employee Benefit Programs and (ii) Authorize and Direct Banks to Honor and Process Checks and Transfers Related to Such Employee Obligations (“Employee Wage Motion”).

36. The Debtor seeks to eliminate any personal hardship to its employees as a result of the filing of this Chapter 11 Case and to minimize the disruption to the Debtor’s efforts to reorganize its operations, consistent with the Plan. As of the Petition Date, certain of the Debtor’s prepetition obligations to its Employees or other third parties (collectively, the “Prepetition Workforce Obligations”), remain unpaid or not yet provided because, among other

things: (a) the Debtor commenced this Chapter 11 Case in the beginning of a payroll period and payroll is paid in arrears, (b) checks previously issued on account of employee and independent contractor obligations may not have been presented for payment or may not have cleared the banking system, (c) amounts related to prepetition services, while accrued in whole or in part, had not yet become due and payable by the Debtor, and (d) amounts deducted from Employee pay checks were not then due to be paid over to the intended recipient or account, including (i) deductions taken from Employees' pay checks to make payments on behalf of the Employees for or with respect to the Debtor's Employee Benefit Programs or amounts due to third parties in connection therewith, and (ii) withholdings from Employees' pay checks on account of various federal, state or local income, state disability, unemployment and other taxes for remittance to the appropriate federal, state or local taxing authority.

37. By the Employee Wage Motion, the Debtor seeks authority to pay or provide as they become due all Prepetition Workforce Obligations and the related administrative fees that have already accrued. The Debtor is also seeking authority to honor and continue benefit programs for their Employees. In light of the importance of the Employees to the Debtor's business, I respectfully submit, on behalf of the Debtor, that the relief requested in the Employee Wage Motion is essential and should be granted.

IV. Debtor's Motion for (i) Approval of Continued Use of Cash Management System; (ii) Authorizing the Debtor to Open and Close Bank Accounts; (iii) Authorizing Banks to Honor Certain Transfers; (iv) Suspending the Requirements of 11 U.S.C. § 345(b); and (v) Granting Related Relief ("Cash Management Motion").

38. The Debtor needs to maintain its current bank accounts with Citibank and its securities account with Morgan Stanley to continue to make ordinary course disbursements, including payment of payroll obligations, to collect customer receipts, corporate credit card, and other obligations.

39. More specifically, in the Cash Management Motion, the Debtor seeks authorization (1) to maintain its existing bank accounts and to pay any prepetition banking fees imposed by the financial institution where the Debtor's bank account is maintained, if any, (2) to continue to use its existing business forms and checks, (3) to continue to use its existing cash management system, and (4) to waive, on an interim basis, the deposit and investment guidelines imposed under section 345(b) of the Bankruptcy Code.

40. The relief requested in the Cash Management Motion is essential to facilitate the orderly operation of the Debtor's business and reorganization process. Accordingly, I respectfully submit that the Cash Management Motion should be approved.

V. Debtor's Motion for Interim and Final Orders (i) Approving the Debtor's Proposed Form of Adequate Assurance of Payment, (ii) Establishing Procedures for Resolving Objections by Utility Companies, and (iii) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service ("Utilities Motion").

41. Pursuant to the Utilities Motion, the Debtor's seek entry of interim and final orders (a) approving the Debtor's proposed form of adequate assurance of postpetition payment to the Utility Companies of a two-week deposit for each Utilities Company, (b) establishing procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance, and (c) prohibiting the Utility Companies from altering, refusing, or discontinuing service to, or discriminating against, the Debtor solely on the basis of the commencement of this Chapter 11 Case, a debt that is owed by the Debtor for services rendered prior to the Petition Date, or on account of any perceived inadequacy of the Debtor's Proposed Adequate Assurance.

42. In the ordinary course of the operation of their business, the Debtor uses various utility services, including electricity, natural gas, water, municipal steam heating, sewer, trash collection, internet access, telecommunication and other services. On average, prior to the

Petition Date, the Debtor spent approximately \$8,975.00 each month on account of Utility Services.

43. Preserving Utility Services on an uninterrupted basis is essential to the Debtor's ongoing operations and, therefore, to the success of this Chapter 11 Case. Any interruption in Utility Services, even for a brief period of time, would disrupt the Debtor's ability to continue operations. I believe this disruption would adversely impact the Debtor's ability to operate their business in the ordinary course and could jeopardize the sale of substantially all of their assets. It is critical, therefore, that Utility Services continue uninterrupted during this Chapter 11 Case. Accordingly, on behalf of the Debtor, I respectfully submit that the relief requested in the Utilities Motion should be granted.

VI. Debtor's Motion for Interim and Final Orders Authorizing the Debtor to Pay Certain Prepetition Taxes ("Tax Motion").

44. Through the Taxes Motion, the Debtor is seeking authority to pay certain prepetition taxes and related obligations. In the ordinary course of business, the Debtor is subject to various taxes, regulatory fees and assessments, and related obligations (collectively, the "Taxes") that are payable directly to numerous Taxing Authorities.

45. The Debtor seeks the relief requested in this Motion in the event and to the extent that: (a) the various Taxes and related obligations that accrued or were assessed prior to the Petition Date: (i) were not paid prepetition; (ii) were not processed prepetition; or (iii) were paid in an amount that was less than is actually owed, including amounts subsequently determined upon any audit or otherwise to be due and owing for periods prior to the Petition Date; (b) any payments made prepetition were rejected, lost, not collected, or otherwise not received in full by any Taxing Authority; or (c) any Taxes and related obligations that accrued or were assessed

prepetition, or will accrue or be assessed postpetition with respect to any prepetition period, will become due during the pendency of this Chapter 11 Case in the ordinary course of business.

46. The Debtor's failure to pay the Taxes could result in unnecessary penalties and fees, as well as potential personal liability to the Debtor's directors and officers. In light of the foregoing, I respectfully submit that the relief requested in the Taxes Motion should be granted.

VII. Debtor's Motion for Entry of an Order Authorizing the Debtor to (i) Continue Its Insurance Program, and (ii) Pay All Prepetition and Postpetition Obligations With Respect Thereto ("Insurance Motion").

47. Through the Insurance Motion, the Debtor is seeking authority to continue its existing Insurance Program and honor its related prepetition obligations, as well as to renew, supplement, modify, extend, terminate, or purchase new insurance coverage in the ordinary course of business.

48. The Debtor's Insurance Program is comprised of Commercial Insurance Policies that are administered through various Insurers, and which provide coverage for, among other things, commercial liability (property and general liability), automobile liability, employers' liability, errors and omissions liability, directors' and officers' liability, and fiduciary and crime liability. Maintenance of insurance coverage under the Insurance Program is essential to the continued operation of the Debtor's business and is required under the U.S. Trustee's Operating Guidelines, the laws of the various states in which the Debtor operates, applicable federal law, and certain of the Debtor's customer contracts and real estate leases. Accordingly, I respectfully submit that the Insurance Motion should be approved.

VIII. Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105, 362, and 541, and Bankruptcy Rule 3001, Establishing Notification and Hearing Procedures for Trading in Equity Securities ("Trading Procedures Motion").

49. Through the Trading Procedures Motion, the Debtor seeks orders (i) approving certain notification and hearing procedures regarding the purchase, sale or transfer of equity

securities in the Debtor, (b) directing that any purchase, sale, or other transfer of the equity securities in violation of such procedures is null and void *ab initio*, and (c) granting related relief.

50. Generally, a company generates net operating losses if it has incurred more expenses than it has earned revenues in a tax year. Subject to certain conditions, as discussed below, a company may apply, or “carry forward” net operating losses to reduce future tax payments in a tax year or years. 26 U.S.C. §§ 39, 172. For net operating losses generated in tax years beginning before January 1, 2018, such “carry forward” may only reduce future tax payments up to twenty (20) years after the tax year in which the net operating losses were generated.

51. Utilization of the net operating losses in future tax years may generate substantial cash savings from reduced taxes for a post-emergence company. The net operating losses are of significant value to the Debtor and its estate because the Debtor can carry forward the net operating losses to offset future taxable income, thereby reducing future aggregate tax obligations. As of the Petition Date, the Debtor had net operating losses of approximately \$592 million.

52. I understand that an ownership change may negatively impact utilization of the net operating losses. Therefore, to maximize the use of the net operating losses and enhance recoveries for the Debtor’s stakeholders, the Debtor seeks limited relief that will enable it to closely monitor transfers of the equity securities so as to be in a position to act expeditiously to prevent such transfers, if necessary, with the purpose of preserving the net operating losses. I believe that the relief requested in the Trading Procedures Motion is in the best interests of the Debtor’s estate, its creditors, and all other parties in interest, and will enable the Debtor

maximize creditor recoveries. Accordingly, I respectfully submit that the Trading Procedures Motion should be approved.

IX. Motion of the Debtor for Entry of an Order (i) Establishing Deadlines for Filing Proofs of Claim, Including Section 503(b)(9) Claims, (ii) Approving the Form and Manner of Notice Thereof, and (iii) Granting Related Relief (“Bar Date Motion”) and the Debtor’s Motion for Order Shortening Notice of the Bar Date Motion (“Motion to Shorten”).

53. Through the Bar Date Motion, the Debtor requests that the Court set the following bar dates:

- May 8, 2020 at 4:00 p.m. (ET) as the “General Bar Date” and deadline for all persons or entities, other than Governmental Units (as defined in section 101(27) of the Bankruptcy Code), to file proofs of claim (each, a “Proof of Claim”) based on claims against the Debtor that arose prior to the Petition Date, including claims for the value of goods sold to the Debtor in the ordinary course of business and received by the Debtor within twenty (20) days before the Petition Date that remain unpaid; and
- September 28, 2020 at 4:00 p.m. (ET) as the “Governmental Bar Date” and deadline for all Governmental Units to file Proofs of Claim against the Debtor based on claims against the Debtor that arose prior to the Petition Date that remain unpaid.

54. The Plan contemplates full payment in Cash on the Effective Date of all Allowed Claims. Establishing the proposed bar dates will enable the Debtor to receive, process, and analyze creditor claims in a timely and efficient manner and will help expedite the administration of its Chapter 11 Case.

55. The relief requested through the Bar Date Motion is a corollary to the relief the Debtor requests, through the Confirmation Procedures Motion, that the Court authorize the Debtor to file only its schedules of assets and liabilities, and not its statement of financial affairs, if the Plan is confirmed at the Combined Hearing. Based on the timeframes contemplated by the parties for implementation of the Plan, the Debtor believes that it would be beneficial to its estate to obtain Court approval of the Bar Date Motion and the Motion to Shorten as soon as possible.

For all of the foregoing reasons, I respectfully request that the Court grant the relief requested in each of the First Day Motions filed concurrently herewith.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: March 30, 2020

/s/ Pehong Chen
Dr. Pehong Chen