

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

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In re:	:	Chapter 11
	:	
MEDIAMATH HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 23-10882 (LSS)
	:	
Debtors.	:	(Joint Administration Requested)
	:	
	X	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS, PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(4), AND 507(a)(5) OF THE BANKRUPTCY CODE, (A) AUTHORIZING (I) PAYMENT OF ACCRUED PREPETITION EMPLOYEE WAGES, SALARIES, AND OTHER COMPENSATION; (II) PAYMENT OF ACCRUED PREPETITION OBLIGATIONS OWED TO INDEPENDENT CONTRACTORS; (III) PAYMENT OF PREPETITION EMPLOYEE BUSINESS EXPENSES; (IV) CONTRIBUTIONS TO PREPETITION EMPLOYEE BENEFIT PROGRAMS AND CONTINUATION OF SUCH PROGRAMS IN THE ORDINARY COURSE; (V) PAYMENTS FOR WHICH PREPETITION PAYROLL DEDUCTIONS WERE MADE; (VI) PAYMENT OF ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (VII) PAYMENT TO THIRD PARTIES OF ALL AMOUNTS INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (B) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for the entry of interim and final orders, substantially in the form attached hereto as Exhibit A (the “**Proposed Interim Order**”) and Exhibit B (the “**Proposed Final Order**,” and together with the Proposed Interim Order, the “**Proposed Orders**”), pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), (a) authorizing,

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: MediaMath Holdings, Inc. (2425), MediaMath, Inc. (1297), MediaMath Ventures, LLC (4588), Adroit DS, LLC (0700), Searchlight MM Topco, L.P. (9412), Searchlight MM Topco GP, LLC (N/A), and Searchlight MM Holdings, LLC (5372). The Debtors’ address is MediaMath, Inc., c/o Epiq Corporate Restructuring, LLC, P.O. Box 4420, Beaverton, Oregon 97076-4420.

but not directing, the Debtors, in accordance with their stated policies and in their discretion, to (i) pay accrued prepetition Employee (as defined below) wages, salaries, commissions, and other compensation, (ii) pay accrued prepetition obligations owed to Independent Contractors (as defined below), (iii) pay prepetition business expenses incurred by the Employees (as defined below), (iv) make contributions to prepetition benefit programs and continue such programs in the ordinary course of their business, (v) make payments for which prepetition payroll deductions were made, (vi) pay processing costs and administrative expenses relating to the foregoing payments and contributions, and (vii) make payments to third parties incident to the foregoing payments and contributions, and (b) authorizing banks and other financial institutions (collectively, the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Neil Nguyen in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),<sup>2</sup> filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

### **JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (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 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to

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

28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

### **BACKGROUND**

2. On June 30, 2023 (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner.

3. Additional information regarding the Debtors’ business, their capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

### **RELIEF REQUESTED**

4. By this Motion, the Debtors request that the Court enter the Proposed Orders, authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to: (a) pay accrued prepetition Employee wages, salaries, commissions, and other compensation; (b) pay accrued prepetition Independent Contractor obligations; (c) pay prepetition employee business expenses; (d) make contributions to prepetition benefit programs provided to the Employees, the most significant of which are described below, and continue such programs in the ordinary course of business with respect to the Employees; (e) make payments for which prepetition payroll deductions were made; (f) pay processing costs and administrative expenses relating to the foregoing payments and contributions; and (g) make payments to third parties

incident to the foregoing payments and contributions (collectively, and as described in greater detail below, the “**Employee Wages and Benefits**”).

5. The Debtors also request the Court to authorize the Banks to honor and process check and electronic transfer requests related to the Employee Wages and Benefits.

**I. Obligations on Account of Workforce Wages and Other Compensation, Business Expenses, Deductions, and Payroll Taxes**

**A. Unpaid Wages and Other Compensation**

6. Prior to the Petition Date, the Debtors employed 192 total employees. Of these employees, 190 were full-time and salaried, and two employees were hourly. However, shortly before the Petition Date, the Debtors partially ceased operations and significantly reduced their workforce. As of the Petition Date, the Debtors employ eleven (11) full-time employees (the “**Employees**”), each of which is salaried. The Employees work in various states across the United States.

7. In addition, the Debtors supplement their workforce by retaining from time to time individuals and vendors with specialized expertise as independent contractors (the “**Independent Contractors**,” and together with the Employees, the “**Workforce**”). The number of Independent Contractors employed by the Debtors at any given time fluctuates depending on the Debtors’ business needs. However, as of the Petition Date, the Debtors utilize ten (10) Independent Contractors. The Independent Contractors fill immediate business needs of the Debtors and allow the Debtors to have a flexible Workforce to meet their operational needs in a cost-effective manner.

8. The Workforce, as with any business entity, perform a variety of critical functions for the Debtors, and their knowledge, skills, and understanding of the Debtors’ infrastructure, business operations, and customer and vendor relations are essential to, among other

things, the success of these chapter 11 cases. Without the continued service and dedication of the Workforce, it will be difficult, if not impossible, to operate the Debtors' business without an unexpected or inopportune interruption, and to prosecute these chapter 11 cases in a manner that will maximize the value of the Debtors' estates.

9. Historically, the Debtors' gross aggregate payroll liability was approximately \$3,000,000.00 per month. Employees are generally paid wages and salaries on a semi-monthly basis, via direct deposit. Payroll is made on the fifteenth (15<sup>th</sup>) and the last day of each month for the period ending the prior week ("**Payroll**"). The Debtors typically fund Payroll one business day in advance of payment.

10. Independent Contractors, however, are not paid via Payroll. They are paid via direct deposit when their respective projects are completed. As of the Petition Date, the Debtors estimate that no amounts are owed to Independent Contractors.

11. The Debtors' last prepetition Payroll (for the period June 15, 2023, through June 30, 2023) was funded on June 30, 2023, in the amount of approximately \$1,500,000.00. The Debtors' next Payroll (for the period July 1, 2023, through July 15, 2023) will be funded on July 14, 2023, and is expected to be approximately \$115,000. In addition, the Debtors estimate that the Independent Contractors will be paid, on average and in the aggregate, \$140,000 per month post-petition.

12. Based on historical and estimated payroll figures, the Debtors believe that approximately \$3,500 in the aggregate remains outstanding, as of the Petition Date, on account of unpaid accrued wages, salaries, and other compensation due from the Debtors to the Workforce (collectively, the "**Unpaid Wages**").

13. The Debtors' failure to remit full payment of the amount that the Debtors believe remains outstanding, as of the Petition Date, on account of Unpaid Wages would inflict great financial hardship on the Workforce, and would damage morale and impair the Debtors' chapter 11 efforts. The Debtors, therefore, request authority from the Court to satisfy any obligations owed to the Workforce on account of Unpaid Wages.

**B. Employee Commission and Bonus Programs**

14. In the ordinary course, the Debtors maintain several incentive and bonus programs to drive performance and retention among their Employees, including a commission structure embedded in the sales teams' compensation plan (the "**Commission Program**").

15. Employees working on the Debtors' sales teams earn commission based on a roll-up of the Employees' customer account assignments and their achievement to target. For Employees responsible for developing new business relationships with customers, Employees are paid out a percentage of revenue based on their achievement to target. Finally, for those Employees who are responsible for an entire region, the Employees are paid out based on the achievement of the overall region. Trading leads are paid out on their region's achievement and the onboarding team earns commission based on the total achievement percentage of the North America new business team.

16. All commission owed under the Commission Program was accrued prior to the Petition Date, and the Debtors believe they have paid all commissions owed under the Commission Program prior to the Petition Date. By this Motion, the Debtors are not seeking authority to continue the Commission Program in the ordinary course of business.

17. In addition, from time to time, the Debtors maintained an annual bonus program for non-insider Full-Time Employees (the “**Bonus Program**”).<sup>3</sup> The Bonus Program was discretionary, calculated as a percentage of the Employees’ salary, and would depend upon the Debtors’ performance and ultimate revenue for the given year. There are no amounts outstanding under the Bonus Program, and by this Motion, the Debtors are not seeking authority to continue the Bonus Programs in the ordinary course of business.

**C. Employee Expenses**

18. Certain of the Debtors’ Employees initially incur the Employee Expenses using personal credit cards, debit cards, or funds and subsequently seek reimbursement from the Debtors. Additionally, certain Employees incur the Employee Expenses through corporate credit cards issued by American Express (the “**Corporate Cards**”). Although the Debtors ultimately pay the invoice for the Corporate Cards, the cards are held in the names of individual Employees. Therefore, to the extent that the Debtors fail to remit payment for the Corporate Cards for valid and legitimate charges, the Employees may be personally liable for the same. The Debtors have policies whereby the Employees seek reimbursement, or file expense reports for the Debtors’ payment, of the Employee Expenses. These expenses are ordinary course expenses that the Employees incur in performing their job functions, including all of the Employee Expenses incurred on the Corporate Cards. It is essential to the continued operation of the Debtors’ businesses that the Debtors be permitted to continue reimbursing or making direct payments on behalf of Employees for the Employee Expenses.

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<sup>3</sup> In the interest of full disclosure, prior to the commencement of these Chapter 11 Cases, the Debtors paid salary and bonuses to all critical Employees (including some members of management) who remain with the Debtors going forward, which must be repaid if the recipient does not continue working for the Debtors for the specified retention period. By this Motion, the Debtors do not seek approval or authorization from the Court or any other relief with respect to such payments, which were made prior to the bankruptcy filing.

19. In the past, the Debtors have also offered reimbursement to eligible Employees for lifestyle expenses (the “**Lifestyle Expenses**”). The Lifestyle Expenses include (i) a total of \$200 per quarter towards cell phone, internet, and other necessary electronic payments for the performance of job functions, (ii) a one-time work from home stipend for Employees to purchase equipment to effectively work from home, (iii) a total of \$100 per quarter towards fitness and the well-being of Employees, and (iv) \$10,000 in total towards adoption-related services.

20. It is difficult for the Debtors to determine the exact amount of Employee Expenses outstanding as of the Petition Date because, among other things, the Employees may have expenses that they have yet to submit for reimbursement. On average, over the past year, the Debtors have paid approximately \$65,000.00 per month on account of the Employee Expenses. The Debtors estimate that, as of the Petition Date, approximately \$75,000.00 in Employee Expenses remain unpaid, which is primarily attributable to the Corporate Cards.

21. The Employee Expenses were incurred on the Debtors’ behalf and with the understanding that the Employees would be reimbursed for any and all such amounts. Therefore, to avoid harming the Employees who incurred the Employee Expenses, the Debtors seek authorization, but not direction, to continue reimbursing the Employees for the Employee Expenses in the ordinary course of business and in accordance with their prepetition practices and policies.

**D. Wage Deductions and Payroll Taxes**

22. During each applicable pay period, the Debtors routinely deduct certain amounts from the Workforce’s compensation that represent earnings that judicial or government authorities, or the Workforce, have designated for deduction, including, but not limited to: pre-tax and after-tax deductions payable pursuant to certain of the Workforce benefit plans discussed herein, such as self-insured health care benefits, insurance premiums, 401(k)



contributions, legally ordered deductions, and other miscellaneous deductions (collectively, the “**Wage Deductions**”), and forward those amounts to various third-party recipients. On average, the Debtors have historically deducted, in the aggregate, approximately \$475,000.00 semi-monthly in Wage Deductions from the Workforce’s pay. The Debtors believe that, as of the Petition Date, \$15,000 remains outstanding to the various third-party recipients on account of the Wage Deductions.

23. Accordingly, the Debtors seek authority to (i) remit \$15,000 in pre-petition Wage Deductions to the various third-party recipients and (ii) continue to forward Wage Deductions to the applicable third-party recipients on a postpetition basis in the ordinary course of their business, as routinely done prior to the Petition Date.

## **II. Employee Benefits**

24. In the ordinary course of business, the Debtors provide their eligible Employees, directly or indirectly, a number of benefits, including, but not limited to: (a) medical, dental, and vision insurance; (b) paid sick days, vacation days, pregnancy and parental leave, and other paid time off; (c) a 401(k) retirement plan; (d) certain other miscellaneous employee benefits, including, but not limited to, life and accidental death & dismemberment insurance, short-term and long-term disability insurance, and certain benefits to certain former Employees after their termination, retirement, or disability leave, including, but not limited to, benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”); and (e) certain state specific benefits, including voluntary benefits available for opt-in at the discretion of the Employees (the “**Voluntary Benefits**” and together the foregoing, the “**Employee Benefits**”).

25. By this Motion, the Debtors seek authority, but not direction, to: (a) continue to provide the Employee Benefits for their Employees in the ordinary course of business; (b) continue to honor obligations related to the Employee Benefits, including, but not

limited to, any premiums and administrative fees; and (c) pay amounts owed related to the Employee Benefits to the extent that they remain unpaid as of the Petition Date. Certain of the Employee Benefits are discussed below.

**A. Health Benefits**

26. The Debtors sponsor several health and welfare benefit plans, including medical (including employer contributions to participating Employees' health savings accounts), dental, vision, and Flexible Spending Accounts for their Employees (collectively, the "**Health Benefits**"). The Debtors provide their Employees with a medical plan administered by Mercer Health & Benefits Administration LLC ("**Mercer**").<sup>4</sup> In addition, the Debtors offer dental plans, which are administered by Mercer, and vision plans administered by Mercer.

27. In addition to offering the medical benefits described above, the Debtors offer Employees the option to enroll in certain flexible spending accounts, including a healthcare flexible spending account, a dependent care flexible spending account, and a commuter transit flexible spending account (collectively, the "**Flexible Spending Accounts**"). Participating Employees can make pre-tax payroll contributions (the "**Flexible Spending Account Contributions**") to the Flexible Spending Accounts up to the maximum amounts permitted by the Internal Revenue Service. Employees then may use the proceeds of Flexible Spending Accounts to cover the cost of eligible health care expenses incurred by such Employees and/or their dependents, depending on the Flexible Spending Account in which they are enrolled. Employees who participate in the Flexible Spending Accounts may use such proceeds by, among other means, utilizing a designated debit card provided to participating Employees or submitting claims for reimbursement.

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<sup>4</sup> The Debtors' health insurance is self-funded.

28. In addition, the Debtors fund premiums on account of COBRA coverage which is administered through WEX. Although the Debtors significantly reduced their workforce before the Petition Date, they expect to have COBRA payments upcoming for Employees who received COBRA benefits before they were terminated but whose payments will not be due until after the Petition Date.

29. Because the Debtors' health insurance, including COBRA benefits, is self-funded, the Debtors, in consultation with the Prepetition Secured Parties, have agreed to reserve \$350,000.00 to satisfy claims for Health Benefits and COBRA, including any premiums, estimated claims, and administrative costs.

30. By this Motion, the Debtors seek authority to: (a) continue to provide the Health Benefits and COBRA coverage to the Employees in the ordinary course of business; (b) continue making contributions and payments to such benefit programs; (c) continue to pay amounts related thereto, including administrative costs (including, without limitation, those of third party insurance administrators); and (d) pay such amounts to the extent that they remain unpaid on the Petition Date.

**B. Paid Time Off**

31. The Debtors provide, subject to certain company guidelines, unlimited paid time off for, without limitation, sick days, vacation time, holidays, and other miscellaneous reasons, to all qualifying Employees as a paid-time-off benefit ("**Paid Time Off**"). Since it is unlimited, Paid Time Off does not rollover into subsequent years. Paid Time Off is paid at the eligible Employee's base wage, but commissions and other compensation are not included. Upon termination, there is no payout regarding any unused or outstanding Paid Time Off, unless required by applicable local, state, or federal law. As of the Petition Date, the Debtors do not owe any amounts on account of Paid Time Off.

32. Subject to the Court’s approval of the requested relief, the Debtors intend to comply with their policies and applicable local, state, and federal law related to Paid Time Off. Through this Motion, the Debtors request authority, but not direction, from the Court to continue to honor their Paid Time Off policies, to comply with applicable local, state, and federal law in the ordinary course of business, and to honor and pay, in their discretion, prepetition amounts related thereto. The Debtors will not pay prepetition obligations in excess of the section 507(a)(4) cap, unless required by applicable local, state, or federal law.

**C. Additional Employee Benefits**

*i. 401(k) Plan*

33. The Debtors offer a 401(k) plan for the benefit of their eligible Employees (the “**401(k) Plan**”), which is administered through Voya Financial Advisors, Inc. and third-party broker Associated Benefit Consultants, LLC. The 401(k) Plan permits eligible Full-Time Employees to defer a portion of their wages into the 401(k) Plan. Full-Time Employees are eligible to participate in the 401(k) Plan within the first month of employment.

34. Employees enrolled in the 401(k) Plan can contribute up to the maximum amount permitted under federal law. On behalf of Employees enrolled in the 401(k) Plan, subsequent to each pay period, the Debtors remit approximately \$27,750 for contributions to Employees’ 401(k) Plans. Additionally, in its sole discretion, the Company may match up to fifty (50) percent of Employees’ elective deferrals up to six (6) percent of an eligible Employee’s contributions into the 401(k) Plan.

35. As of the Petition Date, the Debtors do not believe that any amounts are currently owed on account of the 401(k) Plan. The Debtors seek authorization, but not direction, to continue to pay in the ordinary course of business amounts associated with the 401(k) Plan,

including prepetition amounts determined to be owed and amounts owed to any 401(k) Plan fiduciaries.

*ii. Life and AD&D Insurance and Disability Benefits*

36. The Debtors offer basic life and accidental death & dismemberment insurance (“**Life and AD&D Insurance**”), as well as short-term and long-term disability insurance (“**Disability Benefits**”), to all eligible Employees through The Hartford. The Life and AD&D Insurance and the Disability Benefits are fully funded by the Company and provided to the Employees at no cost.

37. As of the Petition Date, do not estimate that any amounts of premiums and administrative costs, are currently owed on account of the Life and AD&D Insurance and the Disability Benefits. The Debtors seek authorization, but not direction, to continue to pay in the ordinary course of business amounts associated with the Life and AD&D Insurance and the Disability Benefits, including prepetition amounts determined to be owed.

*iii. Voluntary Benefits*

38. The Debtors offer certain voluntary benefits to eligible Employees, including (i) hospital indemnity insurance, (ii) identity protection insurance, (iii) pet insurance, Teladoc and other online health tools, (iv) travel assist, and (v) certain other miscellaneous benefits.

39. The Voluntary Benefits are available at the election of eligible Employees, and do not require any payments of administrative costs or fees by the Debtors. The Debtors seek authorization, but not direction, to continue to offer the Voluntary Benefits to eligible Employees.

**BASIS FOR RELIEF**

**I. The Court Should Authorize, but Not Direct, the Debtors, in Their Discretion, to Pay or Otherwise Honor the Employee Wages and Benefits**

40. The Debtors seek the relief requested herein because any delay in paying or otherwise honoring the Employee Wages and Benefits could severely disrupt the Debtors' relationship with the Workforce and irreparably impair the Workforce's morale at a time when their 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 operate their business without any unexpected or inopportune interruption may be severely jeopardized if the Debtors are not immediately granted authority to continue the Employee Wages and Benefits.

41. The Workforce is crucial to the operation of a company's business and it is crucial to the success of a chapter 11 case. 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 Employee Wages and Benefits in the ordinary course of business. Absent the requested relief, the Workforce would suffer great hardship and, in many instances, financial difficulties, since 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 the otherwise loyal Workforce at all levels would seek other employment.

42. Pursuant to section 507(a)(4) of the Bankruptcy Code, each Employee may be granted a priority claim for:

allowed unsecured claims, but only to the extent of \$15,150 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, 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 in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

11 U.S.C. § 507(a)(4).

43. Likewise, under section 507(a)(5) of the Bankruptcy Code, the Workforce may ultimately be granted priority claims for:

allowed unsecured claims for contributions to an employee benefit plan—

- (A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only
- (B) for each such plan, to the extent of—
  - (i) the number of employees covered by each such plan multiplied by \$15,150; less
  - (ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

11 U.S.C § 507(a)(5).

44. The Debtors believe that the Unpaid Wages are entitled to priority status under section 507(a)(4) of the Bankruptcy Code. The Debtors would therefore be required to pay these claims in full to confirm any chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries, and commissions, and certain allowed unsecured claims for contributions to an employee benefit plan). Thus, granting the relief

requested herein would only affect the timing, and not the amount, of the payment of such amounts to the extent that they constitute priority claims.

45. Moreover, the vast majority of the Workforce rely exclusively on their full compensation or reimbursement of their wages or expenses to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to pay Unpaid Wages. Additionally, the Debtors believe that if they are unable to honor such obligations, the morale and loyalty of the Workforce will be jeopardized at a time when such support is critical to, among other things, their chapter 11 efforts and their ability to effectively prosecute these chapter 11 cases.

46. Additionally, the Wage Deductions, and Payroll Taxes principally represent portions of the Employees' pay that governments (in the case of the Payroll Taxes), the Employees (in the case of the voluntary Wage Deductions), and certain authorities (in the case of the involuntarily Wage Deductions) have designated for deduction from the Employees' pay. The Debtors' failure to pay these amounts could result in hardship to certain Employees and an administrative burden for the Debtors. Indeed, the Debtors would expect inquiries from garnishors regarding any failure by the Debtors to submit, among other things, child support and alimony payments that are not the Debtors' property but, rather, have been withheld from the Employees' pay on such parties' behalf. Moreover, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors' failure to submit such payments.

47. The Workforce is essential, among other things, to the orderly and successful prosecution of these chapter 11 cases and to avoid any unexpected or inopportune interruption of the Debtors' business operations. They have an intimate knowledge of the Debtors' infrastructure and operations, and any deterioration in the Workforce's morale and welfare at this



critical time undoubtedly would adversely impact the Debtors and the success of these chapter 11 cases.

48. For these reasons, the Debtors submit that the relief requested herein is necessary, prudent, and in the best interests of the Debtors, their estates, and creditors, and should therefore be granted.

**II. The Court Should Authorize the Banks to Honor and Process the Debtors' Payments on Account of the Employee Wages and Benefits**

49. The Debtors also request the Court to authorize the Banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

**SATISFACTION OF BANKRUPTCY RULE 6003(b)**

50. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one (21) days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The Debtors believe that, among other things, the success of their chapter 11 efforts will require the continued focus and dedication of the Workforce, as any deterioration in employee morale or significant loss in workforce will have an adverse impact on the Debtors' ability, among other things, to continue to operate their business without any unexpected or inopportune interruption and to successfully prosecute these chapter 11 cases. Thus, if the relief requested herein is not granted, the failure to

satisfy the Employee Wages and Benefits would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts.

51. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied, and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)**

52. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As provided herein, and to implement the foregoing successfully, the Debtors request that the Proposed Orders include a finding that the Debtors have established cause to exclude such relief from the fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

53. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders.

**RESERVATION OF RIGHTS**

54. Nothing in the Proposed Orders or this Motion: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; or (c) shall be construed as a promise to pay a claim.

**NOTICE**

55. Notice of this Motion will be given to (a) the Office of the United States Trustee for the District of Delaware (Attn: Timothy J. Fox); (b) the United States Attorneys' Office for the District of Delaware; (c) the Internal Revenue Service; (d) the Banks; (e) the creditors listed on the Debtors' consolidated list of thirty (30) creditors holding the largest claims; (f) the Prepetition Secured Parties; and (g) all other parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, under the circumstances, no other or further notice is required.

56. A copy of this Motion is available on (i) the Court's website: [www.deb.uscourts.gov](http://www.deb.uscourts.gov), and (ii) the website maintained by the Debtors' proposed claims and noticing agent, Epiq Corporate Restructuring, LLC, at <https://dm.epiq11.com/MediaMath>.

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**CONCLUSION**

WHEREFORE, the Debtors request entry of the Proposed Orders, granting the relief requested herein and such other and further relief as is just and proper.

Dated: July 3, 2023  
Wilmington, Delaware

Respectfully Submitted,

/s/ Heather P. Smillie

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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
MEDIAMATH HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 23-10882 (LSS)
	)	
Debtors.	)	(Jointly Administered)
	)	Re: Docket No. __

**INTERIM ORDER, PURSUANT TO SECTIONS 105(a), 363(b), 507(a)(4), AND 507(a)(5) OF THE BANKRUPTCY CODE, (A) AUTHORIZING (I) PAYMENT OF PREPETITION EMPLOYEE WAGES, SALARIES, AND OTHER COMPENSATION; (II) PAYMENT OF PREPETITION OBLIGATIONS OWED TO INDEPENDENT CONTRACTORS; (III) PAYMENT OF PREPETITION EMPLOYEE BUSINESS EXPENSES; (IV) CONTRIBUTIONS TO PREPETITION EMPLOYEE BENEFIT PROGRAMS AND CONTINUATION OF SUCH PROGRAMS IN THE ORDINARY COURSE; (V) PAYMENTS FOR WHICH PREPETITION PAYROLL DEDUCTIONS WERE MADE; (VI) PAYMENT OF ALL COSTS AND EXPENSES INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (VII) PAYMENT TO THIRD PARTIES OF ALL AMOUNTS INCIDENT TO THE FOREGOING PAYMENTS AND CONTRIBUTIONS; AND (B) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of interim and final orders, pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor or otherwise satisfy the Employee Wages and Benefits, including amounts and obligations related to the period prior to the Petition Date, and (b) authorizing the Banks to honor

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: MediaMath Holdings, Inc. (2425), MediaMath, Inc. (1297), MediaMath Ventures, LLC (4588), Adroit DS, LLC (0700), Searchlight MM Topco, L.P. (9412), Searchlight MM Topco GP, LLC (N/A), and Searchlight MM Holdings, LLC (5372). The Debtors’ address is MediaMath, Inc., c/o Epiq Corporate Restructuring, LLC, P.O. Box 4420, Beaverton, Oregon 97076-4420.

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

and process check and electronic transfer requests related to the foregoing; and upon consideration of the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein. A final hearing on the relief sought in the Motion shall be conducted on \_\_\_\_\_, 2023 at \_\_\_\_\_ (ET) (the “**Final Hearing**”). Any party objecting to the relief sought at the Final Hearing or the Proposed Final Order shall file and serve a written objection, which objection shall be served upon (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn. Michael R. Nestor (mnestor@ycst.com), Kara Hammond Coyle (kcoyle@ycst.com) and Heather P. Smillie (hsmillie@ycst.com)); (ii) counsel for the Prepetition Secured Parties (a) Goldberg Kohn Ltd. 55 East Monroe, Suite 3300, Chicago, Illinois 60603 (Attn. Randall Klein (Randall.Klein@goldbergkohn.com) and Yasamin N. Kaye (yasamin.kaye@goldbergkohn.com)), and (b) Richards Layton and Finger 920 N King Street, Wilmington, Delaware 19801 (Attn. Paul N. Heath (heath@rlf.com) and John H. Knight (Knight@rlf.com)); (iii) counsel to any statutory committee appointed in these Chapter 11 Cases; and (iv) the Office of the United States Trustee

for the District of Delaware (Attn. Timothy Fox at (Timothy.Fox@usdoj.gov)), in each case so as to be received no later than \_\_\_\_\_, 2023 at 4:00 p.m. (ET). If no objections to the entry of the Proposed Final Order are timely filed, this Court may enter the Proposed Final Order without further notice or a hearing.

2. The Debtors are authorized, in their discretion, to pay, honor, or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; *provided, however*, that: (a) no payment to any Employee or Independent Contractor on account of Unpaid Wages shall exceed, in the aggregate, the \$15,150.00 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code; (b) with respect to the Employee Wages and Benefits set forth in the table immediately below, the Debtors shall not pay any prepetition obligations on account of such Employee Wages and Benefits in excess of the applicable amounts set forth therein, unless required by applicable state law; and (c) the Debtors shall not cash out any prepetition obligations on account of Paid Time Off unless applicable state law requires such cash-out payment.

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages	\$3,500
Employee Expenses	\$75,000
Wage Deductions	\$15,000
Payroll Taxes	\$0
Health Benefits	\$350,000
Paid Time Off	\$0
401(k) Plan	\$0



Life and AD&D Insurance and Disability Benefits	\$0
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3. Subject to Paragraph 3 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (a) continue to pay, honor, or otherwise satisfy Unpaid Wages, Payroll Processor Fees, Employee Expenses, and Paid Time Off, (b) withhold, and remit to the applicable third-parties, Wage Deductions, and Payroll Taxes; and (c) administer the Employee Benefits.

4. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

5. Nothing in this Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; or (c) shall be construed as a promise to pay any claim.

6. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

7. All payments authorized pursuant to this Order may be made to the extent authorized by any order of this Court granting any Debtor the authority to use cash collateral and the Budget referenced therein.

8. The requirements of Bankruptcy Rule 6003(b) are satisfied.

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

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

**EXHIBIT B**

**Proposed Final Order**



to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as otherwise provided herein; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, in their discretion, to pay, honor, or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; *provided, however*, that: (a) no payment to any Employee or Independent Contractor on account of Unpaid Wages shall exceed, in the aggregate, the \$15,150.00 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code; and (b) with respect to the Employee Wages and Benefits set forth in the table immediately below, the Debtors shall not pay any prepetition obligations on account of such Employee Wages and Benefits in excess of the applicable amounts set forth therein, unless required by applicable state law; and (c) the Debtors shall not cash out any prepetition obligations on account of Paid Time Off, unless applicable state law requires such cash-out payment.

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages	\$3,500
Employee Expenses	\$75,000
Wage Deductions	\$15,000
Payroll Taxes	\$0
Health Benefits	\$350,000
Paid Time Off	\$0
401(k) Plan	\$0
Life and AD&D Insurance and Disability Benefits	\$0

3. Subject to Paragraph 2 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (a) continue to pay, honor, or otherwise satisfy Unpaid Wages, Payroll Processor Fees, Employee Expenses, and Paid Time Off; (b) withhold, and remit to the applicable third-parties, Wage Deductions, and Payroll Taxes; and (c) administer the Employee Benefits.

4. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

5. Nothing in this Order: (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; or (c) shall be construed as a promise to pay a claim.

6. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

7. All payments authorized pursuant to this Order may be made to the extent authorized by any order of this Court granting any Debtor the authority to use cash collateral and the Budget referenced therein.

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

9. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.