

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

In re:

AeroCision Parent, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11032 (___)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF
CRITICAL VENDORS, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for entry of interim and final orders, substantially in the forms 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), 503(b)(9), 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”): (a) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, certain prepetition claims of critical vendors and service providers, subject to the conditions described herein, including certain prepetition claims of 503(b)(9) claimants and lien claimants (collectively, the “**Critical Vendors**”), (b) authorizing financial institutions to honor and process related checks and transfers,

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective federal tax identification numbers, are: AeroCision Parent, LLC (8828); AeroCision, LLC (0509); and Numet Machining Techniques, LLC (3162). The Debtors’ service address is 12-A Inspiration Lane, Chester, CT 06412.

and (c) granting certain related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of David Nolletti in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”).²

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 28 U.S.C. §§ 1408 and 1409. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is later determined that the Court lacks Article III jurisdiction to enter such final judgment or order absent consent of the parties.

2. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

BACKGROUND

I. General

3. On the date hereof (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)

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

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.

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

II. Overview of the Critical Vendors, Critical Vendor Payments, and Trade Agreements

5. As described more fully in the First Day Declaration, the Debtors are leading suppliers of complex engine components and assemblies to the global aerospace industry. In the ordinary course of business, the Debtors engage various goods and service providers that, among other things, (i) supply raw materials, engineered materials, and parts to be integrated into the Debtors' products, including, without limitation, bar stock, sheet metal, cast and wrought superalloys, machined parts, forged rings and other forged metal products, investment castings, bearings, fasteners and other engineered products, and other component parts; and (ii) provide the Debtors with critical services, such as welding, painting, coating, heat treatment, anodizing, deburring, carburizing, balancing, brazing, shot peen, stress relief, and other material processing services, as well as specialized testing, maintenance, calibration, quality assurance, packaging, information technology services, and other services. Certain Critical Vendors provide essential shipping and transportation services for the Debtors, and other Critical Vendors delivered goods which were received by the Debtors within the twenty (20) days preceding the Petition Date or provide services critical to the ongoing success of the Debtors' business (collectively, the "**Goods and Services**").

6. After careful analysis, the Debtors and their advisors have determined that the inability to pay the Critical Vendor Claims (defined below) on the terms proposed will cause

material disruptions in the Debtors' operations and could cause irreparable harm to their business, goodwill, and customer base, and may hinder the Debtors' ability to maximize value for all stakeholders through these proceedings.

7. As further described in the First Day Declaration, absent the ability to pay claims held by Critical Vendors ("**Critical Vendor Claims**"),³ the Debtors will suffer immediate and irreparable harm to both their customer and vendor bases. Further, the Debtors submit that replacing the Critical Vendors at the outset of these chapter 11 cases would be difficult and, with respect to certain sole suppliers, impossible. Due to the customized nature of the components of the Debtors' products, the Debtors believe it could take three to four months to replace some Critical Vendors. Even assuming that the Debtors could replace the Critical Vendors, for the reasons outlined in the First Day Declaration, the time and expense required to do so would have a detrimental impact on the Debtors' business, thereby adversely impacting the Debtors' ability to maximize value

8. As of the Petition Date, approximately \$7.5 million is owed on account of Critical Vendor Claims. As described more fully below, of the \$7.5 million, approximately \$500,000 is owed on account of certain Critical Vendors' 503(b)(9) Claims (defined below) and approximately \$100,000 is owed on account of certain Critical Vendors' Lien Claims (defined below).

9. In large part, the Debtors contemplate funding payment of the Critical Vendor Claims through cash received through operations and advances made under proposed debtor-in-possession financing. The Debtors and their advisors have carefully compiled a list of potential Critical Vendors, after which the Debtors' management team, together with the Debtors'

³ Critical Vendor Claims are inclusive of 503(b)(9) Claims and Lien Claims (defined below),

advisors, determined the appropriate number of Critical Vendors, the scope of the Critical Vendor payments, and the timing needs related thereto. The Debtors are focused on ensuring a seamless operational transition into chapter 11. Absent the relief sought herein, the Debtors believe that they would incur significant business disruption and attendant costs in securing alternative suppliers, even assuming that they could identify and implement such alternatives within the compressed timeframes necessary to ensure uninterrupted supply to the Debtors' customers.

10. In this context, the Debtors believe, for the reasons set forth herein and in the First Day Declaration, that the ability to pay the Critical Vendors, certain of which have 503(b)(9) Claims and Lien Claims (as defined below), is necessary to sustain the Debtors' operations, and not having the ability to pay the Critical Vendor Claims, on the terms set forth in the Proposed Orders attached hereto, would result in immediate and irreparable harm to the Debtors, their business, and the estates. The Debtors believe that the Critical Vendors would immediately stop existing shipments and services, refuse to provide future shipments and services, and/or would immediately tighten credit terms if the Debtors do not have authority to satisfy the Critical Vendors Claims in the manner proposed.

11. To identify the Critical Vendors, the Debtors reviewed their accounts payable and prepetition vendor lists to identify those vendors and suppliers most essential to the Debtors' operations pursuant to the following criteria: (a) which vendors provide unique Goods and Services, without whom the Debtors could not continue operations without disruption; (b) the Debtors' ability to find timely alternative platforms, service providers, or vendors, and the potential disruption while sourcing replacements; (c) which service providers or vendors would be prohibitively expensive to replace; (d) whether a service provider or vendor meeting the foregoing criteria is able or likely to refuse to continue to do business with the Debtors postpetition if its

prepetition balances are not paid; (e) whether the specific vendor is subject to an existing executory contract requiring ongoing provision of Goods and Services despite the Debtors' chapter 11 filing, and the ability for the Debtors to compel performance; (f) the loss of revenue if a Critical Vendor refuses to continue to provide Goods and Services; (g) whether the vendor holds a valid claim under section 503(b)(9) of the Bankruptcy Code.

12. Regardless of which of the foregoing (or other) categories a particular Critical Vendor falls into, the Debtors believe that each designated Critical Vendor satisfies the stringent criteria described above and there is a high likelihood that such vendors will refuse to continue to do business with the Debtors if the Debtors do not have authority to satisfy the Critical Vendor Claims. Certain Goods and Services provided by the Critical Vendors are described below.

A. Material Suppliers

13. The Debtors engage with certain outside vendors that supply raw materials, engineered materials and parts to be integrated into the Debtors' products, including, without limitation, bar stock, sheet metal, cast and wrought superalloys, machined parts, forged rings and other forged metal products, investment castings, bearings, fasteners and other engineered products, and other component parts and supplies. These materials are directly or indirectly needed in the manufacturing process and the Debtors believe that a disturbance in the supply chain for these and other materials could prevent them from meeting their contractual obligations and financial targets.

B. Service Providers

14. Each Debtor's major operations rely on outside vendors for material processing services such as welding, painting, coating, heat treatment, anodizing, deburring, carburizing, balancing, brazing, shot peen, stress relief, and other material processing services.

Many of these processes are required by the Debtors' contracts with their customers and the Debtors outsource these processes to outside vendors primarily because they lack the capability (expertise or equipment) or capacity to perform these processes themselves. In addition to material processing services, the Debtors also outsource other services to certain vendors, including, without limitation, calibration and maintenance of their machines, quality assurance, packaging, and information technology services.

15. In addition to the foregoing, the Debtors believe that they owe certain Critical Vendors approximately \$500,000 on account of goods received by the Debtors within the 20 days immediately preceding the Petition Date (claims related to such goods, the "**503(b)(9) Claims**"). After closely analyzing the scope of potential 503(b)(9) Claims, the Debtors expect that all of the 503(b)(9) Claims will come due within the first thirty (30) days of the chapter 11 cases. The Debtors seek to have applicable Critical Vendors apply any postpetition payments received first against such Critical Vendors' 503(b)(9) Claim(s), in whole or in part. As discussed more fully below, the Debtors believe that payment of 503(b)(9) Claims at this time does not prejudice the estates, as it merely affects the timing of payment, whereas non-payment of the 503(b)(9) Claims at this time would have a prejudicial impact on the estates and the Debtors' ability to prosecute these cases.

16. Certain of the Critical Vendors also provide shipping and transportation services and, under applicable non-bankruptcy law, may have the ability to assert liens against certain of the Debtors' assets ("**Lien Claims**") if the Debtors fail to pay for services rendered prior to the Petition Date. These Critical Vendors provide essential logistical support for the Debtors' operations and facilitate the distribution of the Debtors' inventory.

17. As of the Petition Date, Critical Vendors with the potential to assert Lien Claims may not have been paid in full for certain prepetition services, which may result in such parties asserting, and perfecting, possessory liens against the Debtors' goods or equipment, notwithstanding the automatic stay under section 362 of the Bankruptcy Code, as discussed below. The Debtors believe that they owe certain Critical Vendors approximately \$100,000 on account of Lien Claims, the majority of which will come due in the first thirty (30) days of the chapter 11 cases. If the Debtors are unable to pay the Lien Claims, the Debtors risk losing access to critical property, which could immediately and irreparably harm the Debtors to the detriment of all stakeholders. Accordingly, the Debtors seek authority, in their discretion, to pay the Lien Claims on a case-by-case basis, where the Debtors determine, in their reasonable business judgment, that such payment is in the best interests of the Debtors' estates.

18. Finally, the Debtors carefully analyzed the list of Critical Vendors and the proposed Critical Vendors Payments to determine which payments they had to make under the interim cap captured in the Proposed Interim Order (the "**Interim Cap**"), and which payments could await entry of the Proposed Final Order.

19. To ensure that each Critical Vendor continues providing supplies or services on Customary Trade Terms (as defined in the Proposed Interim Order or Proposed Final Order, as applicable) for the duration of these chapter 11 cases, the Debtors seek authority, but not direction, to execute binding trade agreements (the "**Trade Agreements**"). The Trade Agreements may include, without limitation, the following terms:

- a. The amount of the Critical Vendor's estimated prepetition claim, (after accounting for any setoffs, other credits, and discounts thereto), which shall be mutually determined in good faith by the Critical Vendor and the Debtors. Such amount shall be used only for purposes of the Proposed Orders and shall not be deemed a claim allowed by the Court. Further, the rights of all parties in interest to

object to a claim of a Critical Vendor shall be fully preserved until further order of the Court;

- b. The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis within six (6) months of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;
- c. The Critical Vendor's agreement to provide the Goods and Services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;
- d. The Critical Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates, or any of their respective assets or property (real or personal) any lien (each, a "**Lien**") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors arising from the Goods and Services provided to the Debtors prior to the Petition Date. To the extent the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- e. The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Proposed Interim Order or, if entered, the Proposed Final Order, and consents to be bound thereby;
- f. The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims;
- g. The Critical Vendor's agreement that nothing in the Trade Agreement grants an allowed claim with respect to any unpaid amounts, and that the Critical Vendor retains responsibility to file a timely proof of claim with respect to any amounts that are alleged to remain unpaid;
- h. The Critical Vendor's agreement to apply any payments received, in the first instance, against any claims such Critical Vendor holds arising under section 503(b)(9) of the Bankruptcy Code, as applicable; and

- i. The Critical Vendor's acknowledgement that, if it subsequently refuses to provide the Goods and Services to the Debtors on Customary Trade Terms, the Debtors reserve all rights to recover sums paid in excess of postpetition obligations in the event a Trade Agreement is terminated

20. To the extent that a Critical Vendor refuses to execute a Trade Agreement, the Debtors also seek authority to pay Critical Vendor Claims without execution of a Trade Agreement if the Debtors determine, in their business judgment, that it is in the best interest of the Debtors' estates. Irrespective of whether a Critical Vendor executes a Trade Agreement, the Debtors reserve the right to seek repayment of Critical Vendor payments, in whole or in part, if any Critical Vendor refuses to provide Goods or Services on Customary Trade Terms or refuses to waive or release claims, liens, and other rights and remedies in connection with claims satisfied by the Critical Vendor payments.

RELIEF REQUESTED

21. By this Motion, the Debtors request that the Court enter the Proposed Orders, authorizing, but not directing, the Debtors to pay, in their discretion, the Critical Vendor Claims in an aggregate amount up to \$7.5 million (the "**Final Cap**"). Specifically, the Debtors seek authority to pay, in their discretion, up to \$5 million under the Proposed Interim Order and, upon entry of the Proposed Final Order, up to \$7.5 million, inclusive of the amounts authorized under the Proposed Interim Order. The Debtors seek authority to apply any payment, in the first instance, against Critical Vendor Claims arising under section 503(b)(9) of the Bankruptcy Code.

22. The Debtors also seek relief authorizing banks and other financial institutions (collectively, the "**Banks**") to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with any relief granted in connection with this Motion.

BASIS FOR RELIEF REQUESTED

I. Ample Authority Exists to Authorize Payment to the Critical Vendors.

A. Payment of the Critical Vendor Claims is Appropriate Under Sections 363(b) and 105(a) of the Bankruptcy Code and the Doctrine of Necessity.

23. Under section 363(b) of the Bankruptcy Code, a bankruptcy court may authorize a chapter 11 debtor to use property of the estate other than in the ordinary course of business where the debtor has articulated a valid business justification for the requested use of estate assets. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.”); *In re Filene’s Basement, LLC*, No. 11-13511, 2014 WL 1713416, *12 (Bankr. D. Del. Apr. 29, 2014) (“Where 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 Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) gives the court “broad flexibility” for the debtor to pay prepetition wages as long as the debtor articulates a business justification).

24. Once a debtor articulates such a valid business justification, a presumption exists in favor of the debtor’s business decisions. *See In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumption of the business judgment rule on the merits is a near-Herculean task.”); *see also Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (describing the business judgment rule as “a presumption 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 taken was in the best interests of the company”).

25. Moreover, section 105(a) of the Bankruptcy Code empowers the 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). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175; *see also Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts are authorized to approve orders allowing payment of prepetition claims that are necessary for the debtors to have a successful reorganization); *In re Just For Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor’s business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same). “Under 11 U.S.C. § 105 the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing the doctrine of necessity and authorizing the debtor to pay prepetition claims if such payment was essential to the continued operation of the debtor).

26. With these statutory underpinnings, 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. *See Lehigh*, 657 F.2d at 581 (holding that court may authorize payment of prepetition claims if such payment was essential to continued operation of debtor); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing existence of judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors’ continued operation).

This doctrine frequently is invoked early in a chapter 11 case, particularly in connection with the payment of prepetition claims. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11: “facilitating the continued operation and rehabilitation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Friedman’s Inc.*, No. 09-10161 CSS, 2011 WL 5975283, at *3 (Bankr. D. Del. Nov. 30, 2011) (“[N]ormally, a debtor only pays prepetition, unsecured claims through a confirmed plan of reorganization . . . most courts will allow such payments under the ‘doctrine of necessity,’ if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor’s business.”). Accordingly, pursuant to section 105(a) of the Bankruptcy Code, the Court is empowered to grant the relief requested in this Motion.

27. The Debtors submit that the relief requested herein is an appropriate exercise of the Debtors’ business judgment under sections 363(b) and 105(a) of the Bankruptcy Code. As demonstrated by the First Day Declaration, the proposed Critical Vendor payments are necessary to ensure continued operation of the Debtors’ business and, in turn, preserve and enhance the value of the Debtors’ estates. The Debtors have carefully reviewed their accounts payable and undertaken a lengthy and thoughtful process to identify vendors, suppliers, and service providers essential to ongoing operations. Without the Critical Vendors’ Goods and Services, the Debtors may be forced to halt most, if not all, ongoing business immediately while they search for substitute vendors, to the extent any even exist, and the Debtors could be forced to forgo existing favorable trade terms. In this context, the DIP Lenders have agreed to fund the Critical Vendor Payments. Finally, the Debtors have developed procedures that will ensure Critical Vendors receiving payments will continue to provide Goods and Services based on value-maximizing Customary Trade Terms.

28. Given the nature of the Goods and Services provided by the Critical Vendors, the consequences should the Critical Vendors cease to provide these Goods and Services, and the related potential loss of value to the Debtors' estates, the Debtors submit that the Court should authorize the Critical Vendor Payments under sections 363(b) and 105(a) of the Bankruptcy Code and the doctrine of necessity on the terms set forth in the proposed orders attached hereto.

B. The Debtors Should be Authorized to Pay Critical Vendor Claims Under Sections 1107(a) and 1108 of the Bankruptcy Code.

29. Payment of the Critical Vendor Claims is also authorized under sections 1107 and 1108 of the Bankruptcy Code. The Debtors, operating their business as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries for their estates. *See In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 474 (3d Cir. 1998) (citation omitted); *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *CoServ*, 273 B.R. at 497.

30. The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate" *Id.* There, the court provided a three-pronged test to determine whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty, stating:

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

Id. at 498.

31. The Debtors submit that payment of the Critical Vendor Claims meets each of the *CoServ* factors. First, it is critical that the Debtors deal with the Critical Vendors because the Critical Vendors provide Goods and Services that are necessary to the Debtors' ongoing operations. Second, the Debtors believe that the Critical Vendors would otherwise be unwilling or unable to provide Goods and Services to the Debtors on a postpetition basis if their prepetition balances are not paid. Accordingly, not paying Critical Vendor Claims would harm the Debtors financially because losing access postpetition to the necessary Goods and Services provided by the Critical Vendors could force the Debtors to halt ongoing business and potentially forgo existing favorable trade terms. Third, the Debtors and their advisors have examined other options short of paying Critical Vendor Claims and have determined that, to avoid any unexpected or inopportune interruptions to their business operations, there is no practical alternative to paying the Critical Vendor Claims consistent with the Interim Cap and the Final Cap. Therefore, the Debtors submit that payment of the Critical Vendor Claims are a sound exercise of their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

C. The Relief Requested is Supported by Section 503(b)(9) of the Bankruptcy Code.

32. As noted above, a portion of the contemplated Critical Vendor payments are on account of 503(b)(9) Claims related to inventory and other goods received by the Debtors in the ordinary course of the Debtors' business during the 20 days before the Petition Date. Therefore, the Debtors believe that certain claims which would be satisfied by Critical Vendor payments are likely entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code.

33. Section 503(b)(9) of the Bankruptcy Code provides that, "[a]fter notice and a hearing, there shall be allowed administrative expenses . . . including . . . the value of any goods

received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). The Debtors will have to pay in full all claims entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code to confirm any chapter 11 plan filed in these cases. *See* 11 U.S.C. § 1129(a)(9)(A) (requiring payment in full of claims entitled to priority).

34. Although section 503(b)(9) of the Bankruptcy Code does not specify a time for payment of these expenses, bankruptcy courts have the discretion to allow for distributions to administrative claimants prior to confirmation if the debtor has the ability to pay and there is a need to do so. *See Matter of Cont'l Airlines, Inc.*, 146 B.R. 520, 531 (Bankr. D. Del. 1992) ("The timing of payment of an administrative claim is at the sound discretion of the court.").

35. Therefore, the Debtors have concluded that the authority to pay many of the Critical Vendor Claims, as requested in this Motion, affects the timing, but not the ultimate amount, of such payment for many Critical Vendors. As noted above, the Debtors seek Court authority to condition payment of the Critical Vendor Claims on application against claims arising under section 503(b)(9) of the Bankruptcy Code, in the first instance. For these and other reasons, the Debtors respectfully submit that it is appropriate to pay the Critical Vendor Claims during the pendency of the Chapter 11 Cases.

D. Payment of the Critical Vendors' Lien Claims is Justified Under Sections 362(b)(3) and 546(b) of the Bankruptcy Code.

36. As discussed herein, the Debtors believe that certain Critical Vendor payments are on account of Lien Claims held by Critical Vendors that provide the shipping and transportation services for the Debtors.

37. Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting possessory liens against the Debtors' goods or equipment, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against any entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A). Furthermore, certain Lien Claimants may refuse to perform ongoing shipping services unless the Lien Claims are paid in full.

38. If the Debtors are unable to pay the Lien Claims, the Debtors risk losing access to critical property, which could immediately and irreparably harm the Debtors to the detriment of all stakeholders. Accordingly, the Debtors seek authority, in their discretion, to pay potential Lien Claims held by certain Critical Vendors on a case-by-case basis, where the Debtors determine, in their reasonable business judgment, that such payment is in the best interests of the Debtors' estates.

E. The Court Should Authorize Banks to Honor and Pay Checks Issued and Electronic Funds Transferred to Pay the Critical Vendor Payments.

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

replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Banks

THE REQUIREMENTS OF BANKRUPTCY RULE 6003(b) ARE SATISFIED

40. 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. For the reasons discussed above and in the First Day Declaration, authorizing the Debtors to pay the Critical Vendor Claims, subject to the caps described herein, and granting the other relief requested herein is critical to the Debtors’ ability to continue operating with the least amount of disruption as possible following the Petition Date. Failure to receive such authorization and other relief during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture and imperil the Debtors’ chapter 11 efforts. The relief requested is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of the Debtors’ operations, and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(h)

41. 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).

42. 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

43. 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. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Proposed Orders is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequent dispute such claim.

NOTICE

44. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the DIP Lenders and the First Lien Lenders; (d) counsel to the Second Lien Lenders; (e) counsel to Liberty Hall Capital Partners Fund I, L.P.; (f) the Internal Revenue Service; (g) the Office of the United States Attorney for the District of Delaware; (h) the Banks; and (i) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order

entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

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 31, 2023
Wilmington, Delaware

**YOUNG CONAWAY STARGATT
& TAYLOR, LLP**

/s/ Shella Borovinskaya

Michael R. Nestor (No. 3526)
Andrew L. Magaziner (No. 5426)
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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

AeroCision Parent, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11032 (___)

(Jointly Administered)

Ref. Docket No. ___

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF CRITICAL VENDORS, AND
(II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an interim order (this “**Interim Order**”) under sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004 (i) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, certain prepetition claims of the Critical Vendors, subject to the conditions described herein, (ii) authorizing the Banks to honor and process related checks and transfers, and (iii) granting certain related relief; and upon consideration of the First Day Declaration; and a hearing having been held to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the record of the Hearing; 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

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective federal tax identification numbers, are: AeroCision Parent, LLC (8828); AeroCision, LLC (0509); and Numet Machining Techniques, LLC (3162). The Debtors’ service address is 12-A Inspiration Lane, Chester, CT 06412.

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

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 is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003(b); 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.
2. Objections to entry of an order granting the Motion on a final basis must be filed by _____, 2023 at 4:00 p.m. (ET) and served on: (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), Andrew L. Magaziner (amagaziner@ycst.com), Elizabeth S. Justison (ejustison@ycst.com), and Shella Borovinskaya (sborovinskaya@ycst.com); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Jane M. Leamy (jane.m.leafy@usdoj.gov); (iii) counsel to the DIP Lenders, (a) Choate, Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Douglas R. Gooding, P.C. (dgooding@choate.com) and Jonathan D. Marshall (jmarshall@choate.com)), and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19801 (Attn: Derek C. Abbott (dabbott@morrisonichols.com)); (iv) counsel to the Prepetition Second Lien Lenders, (a) Moore & Van Allen, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202 (Attn: Zachary H. Smith (zacharysmith@mvalaw.com) and Kimberly Easter Zirkle (kimberlyzirkle@mvalaw.com)) and (b) Richards Layton & Finger, P.A., One Rodney Square,

920 North King Street, Wilmington, Delaware 19801 (Attn: Jason M. Madron (madron@rlf.com)) (v) counsel to Liberty Hall Capital Partners Fund I, L.P., (a) Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071 (Attn: Robert Klyman (rklyman@gibsondunn.com), Jeffrey C. Krause (jkrause@gibsondunn.com)), and Natalie L. Soloperto (nsoloperto@gibsondunn.com), and (b) Cole Schotz P.C., 500 Delaware Ave., Suite 1410, Wilmington, DE 19801 (Attn: Norman L. Pernick (npernick@coleschotz.com)); and (vi) counsel to any statutory committee appointed in these chapter 11 cases. A final hearing, if required, on the Motion will be held on _____, 2023 at _____ .m. (ET). If no objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

3. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to pay the Critical Vendor Claims; *provided*, that payments on account of Critical Vendor Claims shall not exceed \$5 million in the aggregate during the interim period from the date of the entry of this Interim Order until the date that a final order is entered on this matter, unless otherwise ordered by this Court.

4. The Debtors are authorized, but not directed, to pay the Critical Vendor Claims in the ordinary course of business when due, not on an accelerated basis; *provided, however*, that any Critical Vendor that accepts payment pursuant to the authority granted in this Interim Order must agree to supply the Goods and Services to the Debtors postpetition on Customary Trade Terms (as defined below) or on such other favorable terms as are acceptable to the Debtors.

5. Any payments with respect to prepetition claims hereunder shall first be used to satisfy any allowed claim of the applicable Critical Vendor that is entitled to priority under

section 503(b)(9) of the Bankruptcy Code, in whole or in part, and thereafter to satisfy the applicable Critical Vendor's general unsecured claims(s).

6. Any Critical Vendor that accepts payment pursuant to the authority granted in this Interim Order shall be deemed to agree to the terms and provisions of this Interim Order. The Debtors shall provide a copy of this Interim Order to any Critical Vendor to whom a payment is made pursuant to this Interim Order.

7. Neither the Debtors nor any other party in interest concedes that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim Order are valid, and the Debtors expressly reserve the right to contest the extent, validity, or perfection or seek the avoidance of all such liens.

8. The Debtors shall condition the payment of Critical Vendor Claims on the agreement of a Critical Vendor to continue supplying the Goods and Services to the Debtors on terms that are as or more favorable to the Debtors as the most favorable trade terms, practices, and programs in effect between the Critical Vendor and the Debtors in the six (6) months period preceding the Petition Date (the "**Customary Trade Terms**"), or such other trade terms as are agreed to by the Debtors and the Critical Vendor.

9. The Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor terminated, together with the other benefits to the Critical Vendor as contained in this Interim Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor (a) has not complied with the terms and provisions of the Trade Agreement or (b) has failed to continue to provide Customary Trade Terms to the Debtors.

10. If a Trade Agreement is terminated as set forth above or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply the Goods and

Services to the Debtors on Customary Trade Terms during the pendency of these chapter 11 cases, the Debtors may declare (a) that the payment of such Critical Vendor Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover in cash from such Critical Vendor (including by setoff against postpetition obligations), or (b) that the Critical Vendor shall immediately return the payment of its Critical Vendor Claim without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets or any type whatsoever, it being the explicit intention of this Court to return the parties to their position immediately prior to entry of this Order with respect to all prepetition claims.

11. The execution of a Trade Agreement by the Debtors shall not constitute a waiver of any other cause of action, including any avoidance action that may be held by the Debtors.

12. Nothing in the Motion or this Interim Order shall prejudice the Debtors' rights to request further authority from this Court, after notice and an opportunity for a hearing, to pay any Critical Vendor payments in excess of the cap described herein.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Critical Vendor Claims that are dishonored or rejected.

14. Nothing in this Interim 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.

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

16. The requirements of Bankruptcy Rule 6003(b) are satisfied because the relief granted by this Interim Order is necessary to avoid immediate and irreparable harm to the estates.

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

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

EXHIBIT B

Proposed Final Order

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

In re:

AeroCision Parent, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-11032 (___)

(Jointly Administered)

Ref. Docket Nos. ___ & ___

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF CRITICAL VENDORS, AND
(II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors for entry of a final order (this “**Final Order**”) under sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 (i) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, certain prepetition claims of the Critical Vendors, subject to the conditions described herein, (ii) authorizing the Banks to honor and process related checks and transfers, and (iii) granting certain related relief; and upon consideration of the First Day Declaration; and upon the record of the hearing held to consider the relief requested in the Motion on a final basis (the “**Hearing**”), as applicable; 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

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective federal tax identification numbers, are: AeroCision Parent, LLC (8828); AeroCision, LLC (0509); and Numet Machining Techniques, LLC (3162). The Debtors’ service address is 12-A Inspiration Lane, Chester, CT 06412.

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

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 this Court having entered that certain *Interim Order (A) Authorizing the Debtors to Pay Certain Prepetition Claims of Critical Vendors, and (II) Granting Related Relief* [Docket No. ____] (the “**Interim Order**”); 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, but not directed, in the exercise of their reasonable business judgment, to pay the Critical Vendor Claims; *provided*, that payments on account of Critical Vendor Claims shall not exceed \$7,500,000 in the aggregate (inclusive of the amount of Critical Vendor Claims paid pursuant to the Interim Order) pursuant to this Final Order unless otherwise ordered by this Court.
3. The Debtors are authorized, but not directed, to pay the Critical Vendor Claims in the ordinary course of business when due, not on an accelerated basis; *provided, however*, that any Critical Vendor that accepts payment pursuant to the authority granted in this Order must agree to supply the Goods and Services to the Debtors postpetition on Customary Trade Terms (as defined below) or on such other favorable terms as are acceptable to the Debtors.
4. Any payments with respect to prepetition claims hereunder shall first be used to satisfy any allowed claim of the applicable Critical Vendor that is entitled to priority under section 503(b)(9) of the Bankruptcy Code, and thereafter to satisfy the applicable Critical Vendor’s general unsecured claims(s).

5. Any Critical Vendor that accepts payment pursuant to the authority granted in this Final Order shall be deemed to agree to the terms and provisions of this Order. The Debtors shall provide a copy of this Final Order to any Critical Vendor to whom a payment is made pursuant to this Order.

6. Neither the Debtors nor any other party in interest concedes that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order are valid, and the Debtors expressly reserve the right to contest the extent, validity, or perfection or seek the avoidance of all such liens.

7. The Debtors shall condition the payment of Critical Vendor Claims on the agreement of a Critical Vendor to continue supplying the Goods and Services to the Debtors on terms that are as or more favorable to the Debtors as the most favorable trade terms, practices, and programs in effect between the Critical Vendor and the Debtors in the six (6) months period preceding the Petition Date (the “**Customary Trade Terms**”), or such other trade terms as are agreed to by the Debtors and the Critical Vendor.

8. The Debtors may, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor terminated, together with the other benefits to the Critical Vendor as contained in this Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor (a) has not complied with the terms and provisions of the Trade Agreement or (b) has failed to continue to provide Customary Trade Terms to the Debtors.

9. If a Trade Agreement is terminated as set forth above or a Critical Vendor who has received payment of a prepetition claim later refuses to continue to supply the Goods and Services to the Debtors on Customary Trade Terms during the pendency of these chapter 11 cases, the Debtors may declare (a) that the payment of such Critical Vendor Claim is a voidable

postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover in cash from such Critical Vendor (including by setoff against postpetition obligations), or (b) that the Critical Vendor shall immediately return the payment of its Critical Vendor Claim without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets or any type whatsoever, it being the explicit intention of this Court to return the parties to their position immediately prior to entry of this Final Order with respect to all prepetition claims.

10. The execution of a Trade Agreement by the Debtors shall not constitute a waiver of any other cause of action, including any avoidance action that may be held by the Debtors.

11. Nothing herein shall prejudice the Debtors' rights to request additional authority to pay Critical Vendor Claims.

12. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Critical Vendor Claims that are dishonored or rejected.

13. Nothing in this Final 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.

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

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

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