**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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|---|---|---|
| In re: | § | Chapter 11 |
| AUDACY, INC., *et al.*, | § | Case No. 24-90004 (CML) |
| | § | (Joint Administration Requested) |
| Debtors.[1] | § | (Emergency Hearing Requested) |

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I)(A) AUTHORIZING PAYMENT OF CERTAIN PREPETITION WORKFORCE OBLIGATIONS, INCLUDING COMPENSATION, EXPENSE REIMBURSEMENTS, BENEFITS, AND RELATED OBLIGATIONS, (B) CONFIRMING RIGHT TO CONTINUE WORKFORCE PROGRAMS ON POSTPETITION BASIS, (C) AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLL-RELATED TAXES, (D) CONFIRMING THE DEBTORS' AUTHORITY TO TRANSMIT PAYROLL DEDUCTIONS, (E) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OWING TO ADMINISTRATORS OF WORKFORCE PROGRAMS, AND (II) GRANTING RELATED RELIEF**

**Emergency relief has been requested. Relief is requested not later than 2:00 p.m. (prevailing Central Time) on January 8, 2024.**

**If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

**A hearing will be conducted on this matter on January 8, 2024 at 2:00 p.m. (prevailing Central Time) in Courtroom 401, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.**

**Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Lopez's conference room number is**

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://dm.epiq11.com/Audacy (the "**Case Website**"). The location of the Debtors' corporate headquarters and service address for purposes of these chapter 11 cases is: 2400 Market Street, 4th Fl, Philadelphia, PA 19103.

**590153. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Lopez's home page. The meeting code is "JudgeLopez". Click the settings icon in the upper right corner and enter your name under the personal information setting.**

**Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Lopez's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.**

The above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") respectfully state the following in support of this emergency motion (the "**Motion**"):

## RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order (the "**Order**"), substantially in the form attached hereto:

(i) authorizing the Debtors to pay certain prepetition amounts owing to or for the benefit of the Debtors' employees (the "**Employees**"), independent contractors (the "**Independent Contractors**") and temporary workers (the "**Temporary Workers**" and, together with the Employees and Independent Contractors, the "**Workforce**") for compensation, reimbursable expenses, and benefits (collectively, the "**Prepetition Workforce Obligations**");

(ii) confirming the Debtors' right to continue postpetition, in the ordinary course of business, the workforce-related plans, programs, and policies in effect immediately prior to the filing of these cases (collectively, the "**Workforce Programs**");

(iii) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes relating to prepetition periods;

(iv) confirming the Debtors' right to continue to deduct and to transmit deductions from payroll checks as authorized by employees, as required under any workforce-related plan, program, or policy, or as required by law;

(v) authorizing the Debtors to pay any prepetition claims owing to the administrators of, or third party providers under, their workforce-related plans, programs, and policies as necessary to ensure the delivery of compensation, benefits, and expense reimbursements to their employees; and

(vi) granting related relief.

2. The Debtors estimate that the aggregate amount of Prepetition Workforce Obligations owed as of the Petition Date is approximately $54,313,000:

| **Relief Sought** | **Estimated Prepetition Amounts** |
|---|---|
| Prepetition Workforce Compensation [Section I] | $32,330,000 |
| Workforce Reimbursement Obligations [Section II] | $1,560,000 |
| Employee Benefits Obligations [Section III] | $20,193,000 |
| Payments to Administrators [Section VI] | $230,000 |
| Payments to Employee Benefits Consultants [Section VII] | $0 |

## JURISDICTION AND VENUE

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and this Court may enter a final order consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. § 1408.

5. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 363(c), 364, 507(a), 541, 1107(a) and 1108 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended and modified, the "**Bankruptcy Code**"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Bankruptcy Local Rules**"), and the Procedures for Complex Cases in the Southern District of Texas (the "**Complex Case Procedures**").

## BACKGROUND

6. On the date hereof (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and commenced these chapter 11 cases (the "**Chapter 11 Cases**"). The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or an examiner has been made in the Chapter 11 Cases, and no official statutory committees have been appointed or designated by the Office of the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**").

7. The facts and circumstances supporting this Motion are set forth in the *Declaration of Heath C. Gray in Support of the Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**"),[2] filed concurrently herewith.[3]

8. These Chapter 11 Cases are "prepackaged" cases commenced for the purpose of implementing an agreed restructuring of the Debtors' first lien senior secured loan debt and the Debtors' second lien secured note debt. Prior to the Petition Date, the Debtors entered into the Restructuring Support Agreement, dated as of January 4, 2024 (as may be amended, modified, or supplemented, the "**Restructuring Support Agreement**") with beneficial holders of (a) approximately 82.2% of the Debtors' first lien senior secured loans and (b) approximately 73.6% of the Debtors' second lien secured notes.

9. A plan of reorganization reflecting the terms of the Restructuring Support Agreement (as may be amended, modified, or supplemented, the "**Plan**") was filed on the Petition Date, along with a disclosure statement with respect to the Plan (as may be amended, modified, or

[2] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

[3] The First Day Declaration and other relevant case information is available on the Case Website.

supplemented, the "**Disclosure Statement**"). The Plan contemplates that all Allowed General Unsecured Claims (as defined in the Plan) will be paid in full or will otherwise be unimpaired.

10. Prior to the Petition Date, votes on the Plan were solicited from eligible holders of Class 4 First Lien Claims and Class 5 Second Lien Notes Claims (each as defined in the Plan), the only classes entitled to vote under the Plan. On the Petition Date, the Debtors filed a motion seeking, among other things, (a) conditional approval of the Disclosure Statement and authority to solicit votes on the Plan from the remaining holders of Class 4 First Lien Claims and Class 5 Second Lien Notes Claims, and (b) to schedule a combined hearing to consider approval of the Disclosure Statement on a final basis and confirmation of the Plan. The Debtors seek to obtain confirmation of the Plan as quickly as the Court's schedule and requisite notice periods will permit.

## THE DEBTORS' WORKFORCE

11. In connection with the Debtors' operations, the Debtors currently employ 4,887 Employees, including approximately 50 Temporary Workers, and approximately 411 Independent Contractors. The Debtors employ 2,661 Employees paid a fixed salary ("**Salaried Employees**") and 2,226 Employees paid on an hourly basis (the "**Hourly Employees**"). Included in the Employee headcount are 3,534 full time Employees (the "**Full Time Employees**")[4] and 1,353 part time Employees (the "**Part Time Employees**"). The Employees are employed by Audacy Services, LLC and the Independent Contractors are retained by various entities among the Debtors. The Debtors' Employees are primarily located at the Debtors' offices in: Atlanta, GA; Austin, TX; Baltimore, MD; Boston, MA; Buffalo, NY; Chattanooga, TN; Chicago, IL; Cleveland, OH; Dallas, TX; Denver, CO; Detroit, MI; Gainesville, FL; Greensboro, NC; Greenville, SC; Hartford, CT;

[4] For purposes of this Motion, Employees who work 30 or more hours per week are considered Full Time Employees and, as such, are eligible to receive Employee Benefits (as defined below).

Houston, TX; Kansas City, KS; Las Vegas, NV; Los Angeles, CA; Madison, WI; Memphis, TN; Miami, FL; Milwaukee, WI; Minneapolis, MN; New Orleans, LA; New York, NY; Norfolk, VA; Orlando, FL; Philadelphia, PA; Phoenix, AZ; Pittsburgh, PA; Portland, OR; Providence, RI; Richmond, VA; Riverside, CA; Rochester, NY; Sacramento, CA; San Diego, CA; San Francisco, CA; Seattle, WA; Springfield, MA; St Louis, MO; Washington, DC; Wichita, KS; and Wilkes-Barre, PA. Approximately 810 Employees (collectively, the "**Represented Employees**") are members of various labor unions (collectively, the "**Unions**") and are covered by approximately 45 collective bargaining agreements (the "**CBAs**") (including their sub-parts for disparate geographic units within them and two units that are in the process of negotiating their initial collective bargaining agreements) between the Debtors and the Unions. Represented Employees are typically the Debtors' on-air and commercial-production talent, off-air newsroom and podcast production staff, engineers, and some other off-air positions. The Debtors request authority to continue to honor all obligations to Represented Employees under the terms of the existing CBAs to which the Debtors are party.

12. The Debtors supplement their workforce from time to time by relying on the Temporary Workers to complete discrete projects and fulfill certain duties on a short and long-term basis. The Temporary Workers are a critical and cost-effective supplement to the efforts of the Debtors' permanent Employees. Generally, the Debtors make payments to staffing agencies who then pay the Temporary Workers directly. The staffing agencies' ability to pay the Temporary Workers hinges upon timely receipt from the Debtors of the compensation for Temporary Workers.

13. In the ordinary course of business, the Debtors incur payroll and various other obligations and provide other benefits to their Workforce. Maintaining the Debtors' Workforce

with minimal interruption is critical to maintaining the Debtors' business and operations and to their ability to maximize value through a restructuring. If the Debtors cannot assure their Workforce that they will promptly pay the Prepetition Workforce Obligations to the extent allowed under the Bankruptcy Code and continue to honor, as applicable, the Workforce Programs,[5] certain members of the Workforce will likely seek employment elsewhere. The loss of the Workforce at this critical juncture would have a material adverse impact on the Debtors' businesses and the Debtors' ability to maximize value through the Chapter 11 Cases.

## I. Prepetition Workforce Compensation

### A. Payroll Related Obligations

14. The Debtors pay both Salaried Employees and Hourly Employees on a bi-weekly basis on every other Friday (or, if such Friday is a holiday, then on the immediately preceding business day). In the ordinary course of business, the Debtors' Full Time Employees are paid current (i.e., not in arrears), and each pay period ends on the Friday occurring on the applicable pay date. In the ordinary course of business, the Debtors' Part Time Employees are paid one week in arrears, and each pay period ends on the Friday prior to the applicable pay date. The Debtors' average payroll per month is approximately $33,510,000. The last date all Employees were compensated prior to the Petition Date was January 5, 2024, which included all Salaried Employee wages earned through January 5, 2024 and all Hourly Employee wages earned through December 29, 2023.

[5] By this Motion, the Debtors do not seek to assume or reject any Workforce Program to the extent that such Workforce Program is deemed to be an executory contract within the meaning of section 365 of the Bankruptcy Code. Moreover, the Debtors do not waive their right to modify or terminate any Workforce Program to the extent that such right exists under the terms of the Workforce Program or as may be authorized by applicable law.

15. In the ordinary course of business, the Debtors pay the Independent Contractors when their invoices are due. The Debtors' average payroll for Independent Contractors each month is approximately $2,700,000.

16. The Debtors generally hire Temporary Workers through staffing agencies (the "**Staffing Agencies**") and pay for services provided by the Temporary Workers through the Staffing Agencies based upon periodic invoices submitted to the Debtors. On average, the Debtors pay approximately $260,000 on account of Temporary Workers per month. The Temporary Workers and Independent Contractors are not eligible to receive the Employee Benefits (as defined herein) or any other benefits provided by the Debtors and further described in this Motion.

17. The Debtors estimate that, as of the Petition Date, accrued but unpaid wages owed to the Employees total approximately $1,460,000. As of the Petition Date, the Debtors estimate that they owe approximately $80,000 in accrued and unpaid compensation for Temporary Workers and approximately $100,000 in accrued and unpaid compensation for Independent Contractors. By this Motion, the Debtors seek authority to pay such accrued and unpaid compensation and to continue to compensate the Workforce on a postpetition basis in the ordinary course of business and consistent with past practices.

**B. Deductions**

18. In the ordinary course of their businesses, the Debtors make deductions from Employees' paychecks for payments to third parties on behalf of Employees (collectively, the "**Deductions**"). Deductions are made for amounts related to local, state, and federal income taxes, Social Security and Medicare taxes, child support and other court-ordered garnishments, as well as for savings programs, insurance premiums and other similar amounts related to benefit programs. The Deductions made by the Debtors per month average approximately $3,100,000.

19. Employees are owed certain prepetition amounts on account of regular compensation earned through the Petition Date. Accordingly, the applicable Deductions have not yet been taken. Additionally, even where Deductions have been withheld from the applicable Employee's paycheck, the Debtors may not yet have forwarded the Deductions to the various third parties to which the Deductions are required to be distributed. The Debtors estimate that, as of the Petition Date, accrued Deductions total approximately $140,000. By this Motion, the Debtors seek authority to remit such Deductions to the applicable third parties.

**C. Paid Time Off; Leave**

20. As part of their overall compensation, Full Time Employees (and certain limited categories of Part Time Employees) are eligible, in certain circumstances, to receive paid time off ("**PTO**") for, among other things, vacation, personal days, and holidays. The Debtors' PTO programs are typical and customary, and continuing to offer them is necessary for the Debtors to retain Employees during the Chapter 11 Cases. The specifics of the Debtors' PTO policies vary based upon union status and exempt status. Full Time Employees, generally, who are exempt are eligible for Flexible Time Away ("**FTA**"). Under FTA, there is no specified limit of days off per year, subject to approval of the Employees' supervisors. For Full Time Employees who are non-exempt and not covered by a CBA or a personal services agreement that provides for a different PTO schedule, vacation hours awards are accrued each pay period at a rate of 15 days per year, increasing to 20 days per year after five years of service. Full Time Employees' unused vacation balances do not carry over into the following year or get paid out, unless required under state law. Full Time Employees who are non-exempt receive two paid personal days each year. Additionally, Full Time Employees generally accrue 10 sick days per year at 3.08 hours per pay period which rollover each year until the Employee has accrued a total of 60 days. Full Time Employees also receive a half-day off per quarter for volunteer time and up to 6 weeks of paid parental leave after

one year of employment. The Debtors' Full Time Employees are also entitled to bereavement leave, jury/witness duty, military leave, parental leave, and in some circumstances leaves of absence may be taken with the Debtors' approval or in accordance with applicable laws such as the Family and Medical Leave Act. Some Represented Employees under certain CBAs receive PTO under the terms of the specific CBA they are covered by instead of the Debtors' standard PTO programs.

21. Because PTO is accrued and used by Full Time Employees on a continuous basis, it is difficult to quantify precisely the cost of accrued PTO as of the Petition Date. However, the Debtors estimate that as of the Petition Date the value of accrued and unused or unpaid PTO is approximately $15,930,000. This amount is generally not a current cash pay obligation because Employees are typically only entitled to be paid for accrued and unused vacation time, personal days and holidays in the event they resign or are terminated, if at all.[6] However, in connection with the Debtors' transition to the FTA policy in 2022, certain exempt Employees have accrued, unused PTO that is scheduled to be paid in January 2024, which the Debtors estimate is approximately $870,000 in the aggregate. Because PTO is an essential feature of the employment package provided to the Debtors' Full Time Employees, and failure to provide this benefit would harm Employee morale and encourage the premature departure of valuable Employees, the Debtors request authority to honor all of their PTO obligations as and when they come due in the ordinary course of business.

[6] Under the laws of certain states in which the Debtors' Employees are located, the Debtors may be required to pay accrued and unused PTO upon termination.

**D. Commission Obligations**

22. Approximately 540 of the Debtors' Employees sell advertising spots to buyers or otherwise are eligible to receive commissions (such Employees are collectively referred to herein as the "**Sales Representatives**"). The Debtors pay the Sales Representatives commissions for meeting the monthly goal of net revenue sales (the "**Commissions**"). A Sales Representative's Commissions goals are based on such Sales Representative's prior year's earnings, book of business, and other individual factors. The size of a Commission is based on the Sales Representative's location and whether the sales were self-generated new business, among other factors. The criteria and conditions used by the Debtors to determine Commissions are periodically set and communicated by the Debtors to the Sales Representatives. Commissions are calculated and paid to Sales Representatives on a monthly basis. The Sales Representatives comprise a substantial portion of the Debtors' Workforce, and Commissions comprise a significant portion of the total compensation received by the Sales Representatives. If the Debtors do not pay the prepetition Commissions to the Sales Representatives, it is likely that the Debtors would lose the Sales Representatives' valuable services. As of the Petition Date, the Debtors estimate that approximately $6,800,000 is outstanding on account of Commissions based on historical payments of Commissions.

**E. Employee Incentive Programs**

23. In the ordinary course of business, to encourage and reward outstanding performance, the Debtors offer eligible Employees and other members of the Workforce the opportunity to earn bonuses under various bonus and incentive programs (collectively, the "**Employee Incentive Programs**"), under which the Employees are eligible to earn awards based on individual and business targets. By this Motion, the Debtors do not seek authority to pay any amounts to insiders under the Employee Incentive Programs, but the Debtors reserve the right to

seek such authority during these Chapter 11 Cases by separate motion. The following Employee Incentive Programs are applicable to Employees of the Debtors:

a. *2022 Equity Compensation Plan*. On May 10, 2022, the Debtors adopted the 2022 Equity Compensation Plan (the "**ECP**"), pursuant to which the Debtors may grant cash, equity, and equity-based incentive awards to certain eligible Employees, including both insiders and non-insiders. The ECP provides for the grant of incentive stock options, nonstatutory stock options, stock appreciation rights, restricted stock, restricted stock units and dividend equivalents. Directors of Debtor Audacy, Inc., as well as Employees and certain third parties are eligible to receive awards under the ECP. As of the Petition Date, the Debtors have granted a total of approximately 266,125 Restricted Stock Unit awards ("**RSUs**") covering shares of common stock. Each RSU represents a contractual right to receive one share of the Debtors' common stock upon becoming fully vested and payable, subject to the terms and conditions of the respective award agreement. Prior to the Petition Date, the Debtors ceased granting new awards under the ECP. By this Motion, the Debtors seek authority to continue the ECP in the ordinary course of business for non-insider Employees.

b. *Performance-Based Bonuses*. The Debtors offer bonuses to non-insider Employees, generally with the title of Manager or above based on quarterly and annual performance goals (the "**Performance-Based Bonuses**"). The goals are based on revenue, ratings, and broadcast cash flow. The bonuses based on quarterly goals are paid out quarterly while the bonuses based on annual goals are paid out annually. As of the Petition Date, the Debtors estimate that approximately $2,760,000 is accrued but not yet payable on account of Performance-Based Bonuses based on historical payments of Performance-Based Bonuses.[7] By this Motion, the Debtors seek authority to pay amounts accrued but unpaid on account of the Performance-Based Bonuses to non-insiders as they become due in the ordinary course.

c. *Programming Bonuses*. The Debtors offer programming bonuses payable to certain on-air Employees and other programming and digital managers for achieving certain ratings and sales metrics (the "**Programming Bonuses**"). Certain of the Debtors' on-air talent and programming and digital managers are eligible to receive Programming Bonuses for achieving certain revenue and ratings metrics, including, but not limited to, penetration and growth in a particular market or region, and overall listenership within certain key demographic audiences within a particular demographic area. Each eligible member of the Workforce may earn Programming Bonuses on a sliding scale based on market or region-specific metrics

[7] Due to the quarter and year ending shortly prior to the Petition Date, the Debtors have not as of the Petition Date determined the amounts of various quarterly and annual bonuses earned during 2023, including the Performance-Based Bonuses as well the Programming Bonuses, the Corporate Bonuses, and the Digital Bonuses (each as defined below). Upon a determination of the amounts earned on account of such Employee Incentive Programs, the Debtors will provide notice to the U.S. Trustee and any official committee.

for, among other things, revenue and audience share. Eligible members of the Workforce may earn a payout for achieving quarterly goals. They also earn a payout for achieving certain market, region, or area targets. Programming Bonuses are paid on a quarterly and annual basis depending on the goals. As of the Petition Date, the Debtors estimate that approximately $2,570,000 is accrued but not yet payable on account of Programming Bonuses based on historical payments of the Programming Bonuses. By this Motion, the Debtors seek authority to pay amounts accrued but unpaid on account of the Programming Bonuses to non-insiders as they become due in the ordinary course.

d. *Corporate Bonuses*. The Debtors offer annual corporate bonuses to certain Employees at the executive and senior management level for achieving certain performance goals based on EBITDA and qualitative factors (the "**Corporate Bonuses**"). The bonuses are paid out annually. As of the Petition Date, the Debtors estimate that there are no outstanding amounts owed on account of Corporate Bonuses.

e. *Digital Bonuses*. The Debtors offer semi-annual bonuses to Digital Specialists and Digital Engineering & Product Employees based on EBITDA and qualitative factors (the "**Digital Bonuses**"). The bonuses are paid out semi-annually, in August and February for the respective previous six month periods, if the Employee is employed at the time of payment. As of the Petition Date, the Debtors estimate that approximately $450,000 is accrued but not yet payable on account of Digital Bonuses based on historical payments of the Digital Bonuses. By this Motion, the Debtors seek authority to pay amounts accrued but unpaid on account of the Digital Bonuses to non-insiders as they become due in the ordinary course.

f. *Sales Contest Bonuses*. The Debtors routinely put on quarterly sales contests where the top-selling members of the Workforce earn bonuses (the "**Sales Contest Bonuses**"). Sales Contest Bonuses are paid out on a quarterly basis and the Debtors estimate that approximately $100,000 is accrued but not yet payable on account of Sales Contest Bonuses based on historical payments of the Sales Contest Bonuses. By this Motion, the Debtors seek authority to pay amounts accrued but unpaid on account of the Sales Contest Bonuses to non-insiders as they become due in the ordinary course.

g. *Referral Bonus Plan*. The Debtors maintain a referral bonus policy under which certain of the Debtors' Employees are eligible for a referral bonus when referring a new Employee (the "**Referral Bonuses**"). Referral Bonuses are paid out a few months after the referred Employee starts work. As of the Petition Date, the Debtors estimate that there approximately $20,000 is accrued but not yet payable on account of Referral Bonuses. By this Motion, the Debtors seek authority to pay amounts accrued but unpaid on account of the Referral Bonuses to non-insiders as they become due in the ordinary course.

h. *Sign-on Bonuses*. The Debtors routinely offer cash sign-on bonuses (the "**Sign-On Bonuses**") to certain newly hired Employees. As of the Petition Date, the Debtors

estimate that there are no outstanding amounts owed on account of Sign-on Bonuses. Out of an abundance of caution, the Debtors seek authority to pay Sign-on Bonuses to non-insiders as they become due in the ordinary course.

24. The Debtors paid approximately $29,300,000 on account of the Employee Incentive Programs during the twelve-month period prior to the Petition Date. As of the Petition Date, the Debtors estimate that there is approximately $5,900,000 outstanding in connection with the Employee Incentive Programs.

25. Given the large percentage of the Employees covered by the Employee Incentive Programs and how much of these Employees' total compensation is comprised of payments under the Employee Incentive Programs, any interruption in payments pursuant to the Employee Incentive Programs could upset Employee morale or cause attrition, which could lead to severe disruptions to the Debtors' operations. By this Motion, the Debtors seek authority to pay accrued and unpaid amounts owed to non-insiders under the Employee Incentive Programs, and to continue the Employee Incentive Programs for non-insider Employees on a postpetition basis in the ordinary course of business. The Debtors seek authority to pay the full amount of accrued and unpaid amounts owed to non-insider Employees under the Employee Incentive Programs as they come due, without limitation by any estimates provided herein. By this Motion, the Debtors do not seek authority to pay any amounts to insiders under the Employee Incentive Programs, but the Debtors reserve the right to seek such authority during these Chapter 11 Cases by separate motion.

**F. Non-Insider Retention Program**

26. In June 2023, the Debtors entered into certain retention agreements (the "**Non-Insider Retention Program**") with 67 non-insider Employees pursuant to which the Debtors made certain payments to such Employees on or about June 23, 2023 and on or about December 22, 2023, with the second of such retention payments to be fully earned should such Employees remain employed by the Debtors as of June 16, 2024. As contemplated by the Restructuring

Support Agreement, prior to the Petition Date, the Debtors extended the Non-Insider Retention Program to provide for additional payments to the applicable Employees on July 1, 2024 (subject to court approval, and if such approval is not obtained then on the later of July 1, 2024 and the effective date of the Plan). Subject to certain conditions, the payments under the Non-Insider Retention Program are earned if employment of an applicable Employee is terminated without cause prior to approximately six months following the applicable payment date. There will be approximately $2,060,000 in the aggregate due in future payments under the Non-Insider Retention Program, the allocation of which is yet to be determined by the Debtors.[8] By this Motion, the Debtors seek to continue the Non-Insider Retention Program in the ordinary course of business. For the avoidance of doubt, the Debtors do not seek by this Motion the authority to make any retention payments to insiders, but the Debtors reserve the right to seek such authority during these Chapter 11 Cases by separate motion.[9]

27. As of the Petition Date, the total prepetition obligations owed in respect of Workforce compensation described in this Section I that the Debtors seek authority to pay by this Motion is approximately $32,330,000.

## II. Employee Reimbursement Obligations

28. The Debtors customarily reimburse their Workforce for a variety of ordinary, necessary, and reasonable business-related expenses incurred as part of their official duties and in

[8] Upon a determination of the allocations of the future payments under the Non-Insider Retention Program, the Debtors will provide notice to the U.S. Trustee, counsel to the First Lien Ad Hoc Group, counsel to the Second Lien Ad Hoc Group, and any statutory committee.

[9] In the interest of full disclosure, the Debtors paid retention bonuses, which must be repaid if the recipient does not continue working for the Debtors for the specified retention period, to certain insiders on or about June 23, 2023. 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 Petition Date. In addition, as contemplated by the Restructuring Support Agreement, the Debtors may seek authority by separate motion or through confirmation of the Plan, to pay retention bonuses to certain insiders on July 1, 2024 (subject to court approval, and if such approval is not obtained then on the later of July 1, 2024 and the effective date of the Plan).

furtherance of the Debtors' business. These include expenses for business travel (including airfare, lodging, taxi costs, automobile rentals, meals, and internet charges) and other general business-related expenses. Members of the Workforce are expected to use sound judgment and good business sense when incurring the expenses, and in order to be reimbursed, a member of the Workforce must submit his or her receipts through the Debtors' expense reporting software program and such expenses must be approved by the worker's supervisor or manager. The Workforce is generally reimbursed for approved out of pocket business-related expenses through the normal payroll process.

29. The Debtors require members of the Workforce to submit all business expenses, receipts, and approvals through SAP Concur ("**Concur**"). On average, the Debtors pay approximately $1,300,000 per month on account of the Workforce's business expenses submitted through Concur.

30. The Debtors, through KeyBank National Association ("**KeyBank**"), provide approximately 700 Full Time Employees who frequently incur business-related expenses with corporate credit cards (the "**KeyBank Cards**") to be used solely in connection with expenses incurred within the scope of their employment by the Debtors. The Debtors remit payment for these business-related expenses directly to KeyBank for submitted and approved expenses. In connection with the KeyBank Cards, KeyBank requires the Debtors to maintain collateral in a deposit account at KeyBank in an amount of approximately $3,300,000 to secure the Debtors' obligations with respect to the KeyBank Cards. In addition, through American Express ("**AmEx**" and together with KeyBank, the "**Credit Card Banks**") the Debtors provide approximately three Full Time Employees who frequently incur business-related expenses with corporate credit cards (the "**AmEx Cards**" and together with the KeyBank Cards, the "**Corporate Credit Cards**") to be

used solely in connection with expenses incurred within the scope of their employment by the Debtors. The Debtors remit payment for these business-related expenses directly to AmEx for submitted and approved expenses.

31. The Debtors' reimbursement obligations on account of business-related expenses include, but are not limited to reimbursements relating to the following:

- *Travel and Expense Policy*. The Debtors' travel and expense policy is designed to provide Employees with a clear and consistent understanding of policies and procedures for reimbursement of travel, lodging, entertainment, and other expenses incurred while conducting business activities on behalf of the Debtors. The program maximizes the Debtors' ability to negotiate discounted rates with preferred vendors and to better manage travel expenses and provide Employees traveling for business with a competitive level of service and comfort at the lowest possible cost.

- *Transportation Expenses.* In the ordinary course of business, the Debtors directly cover the travel-related expenses incurred by the Debtors' Employees. The Employees submit their expenses through Concur using a mileage calculator tool. As noted above, these Employees live and work in various states and have job responsibilities that require the business use of vehicles. Accordingly, payment of these travel-related costs is essential for the Employees to be able to continue to perform their duties. As of the Petition Date, the Debtors estimate that approximately $500,000 is outstanding with respect to the Employees' travel-related expenses.

32. All prepetition business-related expenses were incurred by the Workforce within the scope of their employment by the Debtors with the understanding that they would be reimbursed for such business-related expenses. To avoid harming the members of the Workforce who incurred expenses on behalf of the Debtors, the Debtors request the authority to reimburse the Workforce for business-related expenses that may have been incurred prepetition including, as applicable, payments to the Credit Card Banks (on account of the Corporate Credit Cards) and the reimbursement of the Workforce for all unpaid business-related expenses that were incurred prepetition or relate to the prepetition period. The Debtors also seek the authority to continue the

use of the Corporate Credit Cards in the ordinary course of business, and to reimburse the Workforce for any business-related expenses incurred in the ordinary course of business.

33. During the twelve months prior to the Petition Date, the monthly amount of business-related expenses incurred by the Workforce, either through the use of the Corporate Credit Cards, the Debtors' prior corporate credit card program,[10] or through the use of personal funds or personal credit cards, was, on average, approximately $1,300,000.

34. As of the Petition Date, the Debtors' total prepetition obligations owed in respect of reimbursement of business-related expenses described in this Section II, owed to the Credit Card Banks, or directly to the Workforce,[11] is approximately $1,560,000.

## III. Employee Benefits Obligations

35. Prior to the Petition Date, the Debtors offered eligible Employees[12] and their eligible spouses and dependents various standard employee benefits, including, without limitation, (a) medical insurance, (b) dental insurance, (c) vision insurance, (d) basic term life and accidental death and dismemberment insurance, (e) long-term and short-term disability insurance, (f) savings and related types of benefits, (g) workers' compensation, (h) severance benefits, and (i) miscellaneous other benefits provided to the Employees in the ordinary course of business (collectively, the "**Employee Benefits**"). As of the Petition Date, the Debtors were obligated to pay certain contributions to or provide benefits under such plans, programs, and policies.

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[10] Prior to September 2023, the Debtors provided certain Employees with corporate credit cards issued by Bank of America. The Debtors have since replaced those corporate credit cards with the KeyBank Cards.

[11] While the Debtors can provide an estimate of the prepetition reimbursement obligations, it is difficult for the Debtors to determine the precise amount outstanding as of the Petition Date because Employees may have expenses that have yet to be submitted to the Debtors for reimbursement.

[12] All Full Time Employees and Part Time Employees who meet certain hours requirements are eligible for Employee Benefits. New hires are eligible to receive Employee Benefits starting on the first day of the month following 30 days of employment with the Debtors.

### A. Health Care Benefits Plans

36. The Debtors offer several health and welfare programs to qualifying Employees and their eligible dependents, including medical, prescription drug, dental and vision care coverage, (the "**Health Care Benefits Plans**"). Health Care Benefits Plans are provided to eligible Employees through programs administered by UMR or its affiliates ("**UMR**") and Kaiser Permanente ("**Kaiser**"), which administer the medical and one of the prescription drug plans; OptumRX ("**OptumRX**") which administers one of the prescription drug plans; EyeMed Vision Care, LLC ("**EyeMed**"), which administers the vision plan; and Delta Dental ("**Delta**"), which administers the dental plan.[13]

37. *Medical and Prescription Drug Plans*. The Debtors' eligible Employees have the opportunity to choose from among four medical plans administered by UMR, which are similar in the types of services they cover but vary in terms of costs. Eligible Employees that reside in California can choose from the four UMR plans or three HMO plans administered by Kaiser. Under all four UMR plans, many preventive care services are covered at 100% with no calendar year deductible. Two of the UMR medical plans and one of the Kaiser plans are High Deductible Health plans (the "**HDH Plans**") under which the Debtors deposit money into a Health Savings Account (the "**HSA**"), which can be used to pay for eligible medical expenses, including the applicable deductible. The HDH Plans do not pay benefits until the applicable deductible is satisfied (except for in-network preventive care, which is covered at 100%). The amount deposited into an Employee's HSA account varies based on the number of dependents covered. The non-HDH plans offered by the Debtors include standard plans and enhanced plans. The enhanced plans

[13] The Debtors also provide two Employees, both of whom are insiders, with a separate medical plan, a top hat plan (the "**IBX Plan**"), administered through Independence Blue Cross ("**IBX**"). The IBX Plan is fully insured, and the Debtors pay approximately $11,000 per month to IBX on account of these Employees. As of the Petition Date, the Debtors estimate that there are no outstanding amounts owed on account of these two insider Employees.

provide higher coverage than the standard plans, but at greater costs. The Debtors are fully insured with respect to the Kaiser medical plans. The Debtors are self-insured[14] with respect to the UMR medical plans, and the Debtors pay monthly stop-loss premiums totaling approximately $60,000 per month to Sun Life and Health Insurance Company ("**Sun Life**"). The Debtors pay approximately $2,120,000 per month to UMR and Kaiser directly, with respect to Employees' medical and prescription drug coverage, and participating Employees pay premiums to the Debtors through payroll deductions totaling approximately $574,000 per month.

38. *Dental Plans*. The Debtors' eligible Employees have the opportunity to choose from two dental plans administered by Delta. The Debtors' dental plans are self-insured. Both plans let participating Employees use in-network or out-of-network dentists, with in-network dentists potentially providing cost savings as participating Employees who use a dentist who is not in the PPO network are responsible for any charges over the plans' approved benefit amount. The enhanced plan covers basic services at a higher percentage after deductible than the basic plan. The Debtors pay monthly dental insurance claims totaling approximately $88,000 per month, and participating Employees pay premiums through payroll deductions totaling approximately $70,000 per month.

39. *Vision Plan*. The Debtors' eligible Employees have the opportunity to participate in a vision coverage plan administered by EyeMed. The Debtors' vision plan is fully insured. Participating Employees may visit a doctor within the EyeMed network and take advantage of

[14] A self-insured group health plan (also called a self-funded plan) is one in which the employer assumes the financial risk for providing health care benefits to its employees by generally paying claims out-of-pocket rather than paying a fixed premium to an insurance carrier. As is common in these types of arrangements, the Debtors have purchased stop-loss coverage to limit their exposure under their self-insured medical plans. An employer often contracts with a third party administrator to administer self-insured group health plans, as has been done for the Debtors' medical plans by contracting with UMR. By contracting with a third party administrator such as UMR, the Debtors are able to provide their employees with access to a low-cost network of healthcare providers and get the benefit of the discounted provider rates negotiated by UMR for healthcare services provided to covered employees.

higher benefits coverage or visit an out-of-network provider for a reduced benefit. Participating Employees pay vision insurance premiums through payroll deductions totaling approximately $17,000 per month.

40. The Debtors estimate that as of the Petition Date, they owe approximately $130,000 on account of the Health Care Benefits Plans. By this Motion, the Debtors seek authority, but not direction, to continue to pay all prepetition amounts relating to the Health Care Benefits Plans as and when they come due and to continue to honor their obligations thereunder in the ordinary course during the administration of the Chapter 11 Cases.

**B. Flexible Spending Accounts**

41. The Debtors additionally offer their Full Time Employees the opportunity to contribute, through pre-tax compensation deductions, to flexible spending accounts ("**FSAs**") to be used for healthcare related expenses, commuter benefits, and dependent care expenses, subject to limits imposed by federal law. FSA deductions are made from Employees' paychecks. Wex Inc. ("**Wex**"), which administers the claims under the FSAs, provides participating Employees a debit card that may be used to pay for eligible expenses directly. In order to be reimbursed for eligible expenses not paid for with the debit card, Employees must submit eligible claims to Wex, which remits reimbursements to the Employees. Employees cannot participate in the traditional Healthcare FSA if they elect to enroll in the HDH Plan and contribute to the HSA. Employees contributing to an HSA may participate in a Combination Healthcare FSA, which covers dental and vision expenses only until the participant reaches the Internal Revenue Service statutory deductible, after which the account can be used towards eligible medical expenses. As of the Petition Date, the Debtors estimate that they are holding FSA deductions to be remitted to Wex of approximately $20,000.

### C. Life and Accidental Death and Dismemberment Insurance, Short-Term and Long-Term Disability Insurance, Supplemental Insurance

42. Full Time Employees receive, at the Debtors' cost, one times their covered earnings up to a maximum of $200,000 in basic life insurance ("**Basic Life**"), and a matching basic accidental death and dismemberment ("**Basic AD&D**") benefit, each through New York Life Insurance Company ("**New York Life**"). Full Time Employees also have the opportunity to purchase, for themselves and in some circumstances their dependents, voluntary life insurance ("**Voluntary Life**") and voluntary AD&D coverage ("**Voluntary AD&D**"), each through New York Life, up to maximum coverage of six times a participating Employee's salary up to a maximum of $1,000,000, for each of Voluntary Life and Voluntary AD&D coverage.

43. Full Time Employees receive, at the Debtors' cost, long-term disability ("**LTD**") insurance, through New York Life. It provides benefits of 50% of monthly earnings up to $6,000 per month beginning with the ninety-first day after an approved claim and continuing until retirement age.

44. Full Time Employees have the option to purchase short-term disability ("**STD**") insurance, through New York Life, which provides benefits in the event an Employee becomes disabled from a non-work-related injury or sickness. Full Time Employees also have the option to purchase voluntary long-term disability ("**VLTD**") insurance, through New York Life, providing 60% of monthly earnings up to $12,000 per month.

45. On average, the Debtors pay approximately $80,000 per month on account of Basic Life, Basic AD&D, and LTD, and participating Employees pay monthly premiums through payroll deductions totaling approximately $140,000 per month on account of Voluntary Life, Voluntary AD&D, STD, and VLTD insurance premiums. As of the Petition Date, the Debtors estimate that they owe approximately $20,000 to New York Life on account of Basic Life, Basic AD&D, and

LTD, and will owe approximately five days' worth of deductions from Hourly Employees' paychecks not yet transferred to New York Life on account of Voluntary Life, Voluntary AD&D, STD, and VLTD insurance premiums.

**D. Retirement Savings Plans**

46. Prior to the Petition Date, and in the ordinary course of business, the Debtors maintained a 401(k) retirement savings plan (the "**Retirement Savings Plan**"), which is administered by The Vanguard Group ("**Vanguard**"). The Retirement Savings Plan generally allows Employees to contribute pre-tax earnings or post-tax earnings to 401(k) retirement accounts, subject to limits imposed by federal law. Amounts contributed to 401(k) accounts by Employees are generally deducted automatically from each participating Employee's paycheck.

47. Approximately 4,000 Employees currently participate in the Retirement Savings Plan, and they contribute approximately $2,860,000 of their own funds per month. The Debtors also make "matching" contributions with respect to the Retirement Savings Plans equal to 50% of the first 5% of eligible compensation, then subject to a vesting schedule based on the participating Employee's date of hire. The Debtors make matching contributions with respect to the Retirement Savings Plan of approximately $770,000 per month. Employees participating in the Retirement Savings Plan have the option to borrow money from their 401(k) accounts during their employment, and the Debtors then facilitate repayment of such loans by deducting repayment amounts from applicable Employees' paychecks. Approximately $180,000 is deducted from Employees' paychecks per month on account of loan repayments under the Retirement Savings Plan. Deductions with respect to Employee contributions to the Retirement Savings Plan, as well as with respect to repayment of loans under the Retirement Savings Plan, are remitted by the Debtors to Vanguard by Tuesday of each payroll week.

48. The Debtors' matching 401(k) contributions are a critical component of the Employees' compensation. Failure to make such payments would negatively impact morale and place undue hardship on Employees that could result in losses of Employees during the Chapter 11 Cases. Accordingly, by this Motion, the Debtors seek authority to pay all amounts owed under the Retirement Savings Plan and to continue to perform their obligations under the Retirement Savings Plan postpetition in the ordinary course of business. As of the Petition Date, the Debtors estimate that they owe approximately $30,000 on account of matching contributions or on account of the Retirement Savings Plan.

**E. Deferred Compensation Program**

49. The Debtors also sponsor two deferred compensation plans for certain Employees, the Entercom Key Employee Deferred Compensation Plan (the "**Entercom Plan**") and the CBS Radio Excess 401(k) Plan (the "**CBS Plan**," and collectively, the "**Deferred Compensation Plans**"). Employees participating in the Deferred Compensation Plans include management or highly compensated Employees. Prior to the Petition Date, the Deferred Compensation Plans were frozen to new contributions. Under each of the Deferred Compensation Plans the Debtors made certain elective matching contributions, all of which had vested prior to the Petition Date. There are 70 current Employees and 19 former Employees who have deferred compensation pursuant to the Deferred Compensation Plans. As of the Petition Date, there are approximately $19,920,000 in total deferred compensation obligations under the Deferred Compensation Plans. However, not all of this amount is a current cash payment obligation as a participating Employee is only entitled to cash payment distributions in the event such Employee leaves the Debtors' employment or otherwise has a pre-elected scheduled distribution.

50. The Debtors use Vanguard and Newport Group Inc. ("**Newport**") to administer the Deferred Compensation Plans. As of the Petition Date, the Debtors estimate that they owe

approximately $3,000 to Vanguard and Newport on account of administrative fees in connection with the administration of the Deferred Compensation Plans. By this Motion, the Debtors request the authority to maintain the Deferred Compensation Plans. The Debtors do not seek authority to make distributions under the Deferred Compensation Plans pursuant to this Motion.

**F. Severance Programs**

51. Prior to the Petition Date and in the ordinary course of business, the Debtors maintain a severance policy (the "**Severance Policy**"), which provides certain severance benefits for the Debtors' Employees in the event of termination without cause due to position elimination, role modification where the incumbent is no longer qualified, and company restructuring, among other reasons. All regular Full Time Employees, except for Represented Employees (unless their respective CBA incorporates the Severance Policy), are covered under the Severance Policy, including both insiders[15] and non-insiders of the Debtors. Benefits under the Severance Policy vary based on compensation, length of employment with the Debtors, and other factors the Debtors may consider at their discretion. Generally, unless otherwise indicated in a written agreement that specifically provides for other severance benefits, regular, full time, non-unionized Employees are eligible for one week of severance for each year of completed service, up to a maximum of 15 total weeks of severance, payable in regular payroll installments, provided all other provisions of the Company's severance pay plan are met. Severance payments are reduced by any compensation

[15] Certain Employees who are covered by the Severance Policy constitute "insiders" of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code. The Debtors seek authority to continue the Severance Policy in the ordinary course of business postpetition with respect to both "insider" Employees and non-insider Employees subject to section 503(c) of the Bankruptcy Code. For the avoidance of doubt, however, the Debtors do not by this Motion seek authority to pay any amounts with respect to the Severance Policy to "insider" Employees, and the Debtors will file a subsequent motion seeking approval from this Court prior to making any payments to insiders under the Severance Policy.

earned by Employees from radio broadcasters or businesses operating an advertising supported media during the severance payment period.

52. In addition, prior to the Petition Date and in the ordinary course of business, the Debtors provided specific severance benefits to certain Employees through separate severance agreements or employment agreements (collectively, the "**Severance Packages**" and together with the Severance Policy, the "**Severance Programs**"). For instance, the Debtors entered into employment agreements with certain market managers pursuant to which such market managers are eligible to receive, subject to certain terms and conditions, a Severance Package in an amount individually negotiated between the Employee and the respective Debtor for which it performs services.

53. As of the Petition Date, the Debtors estimate that they owe approximately $50,000 to former non-insider Employees on account of the Severance Programs.[16]

54. By this Motion, the Debtors request authority, in their sole discretion, to continue the Severance Programs in the ordinary course of business, to provide any eligible non-insider Employee with severance benefits in the event such Employee is terminated postpetition, and to pay any outstanding prepetition amounts in connection with the Severance Programs (all of which are owed to non-insiders). However, for the avoidance of doubt, the Debtors do not seek by this Motion the authority to make any payments to insiders under the Severance Programs, and the Debtors will file a subsequent motion seeking approval from this Court prior to making any payments to insiders under the Severance Programs, if necessary.

[16] Separate and apart from the Severance Packages, certain "insiders" of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code may have employment contracts providing for severance. By this Motion, the Debtors do not seek relief with respect to such severance during the Chapter 11 Cases. The Debtors reserve the right to seek authority to pay such severance in the future pursuant to notice and hearing with this Court, if needed.

55. Continuing the Severance Programs is necessary to preserve the goodwill and morale of current Employees. The Debtors' current employees rely on the expectation that the Severance Programs will provide them with income protection in the event they are terminated without cause, and, as such, the Severance Programs represents a key component of the Debtors' retention effort that is critical to maintaining staffing essential to the ongoing operation of the Debtors' business. The Debtors' business relies heavily on the Employees, and a failure to continue the Severance Programs would inevitably result in decreased Employee morale and confidence, consequences that could thwart the Debtors' efforts to maximize value during the Chapter 11 Cases.

**G. Workers' Compensation**

56. Under the laws of the various states in which they operate, the Debtors are required to maintain workers' compensation policies and programs or participate in workers' compensation programs administered by state governments, to provide their Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors (the "**Workers' Compensation Programs**"). The Debtors' Employees are covered under a policy through CNA Financial Corporation or an affiliate ("**CNA**") under which Debtor Audacy, Inc. is the insured party. The Debtors paid an annual, up-front premium of $272,000 under the current policy, which runs from November 17, 2023 through November 16, 2024.[17] The Debtors' workers' compensation policy provides for coverage limits of $1,000,000 per Employee for each accident or disease.

[17] As described in the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay Their Prepetition Insurance Program Obligations, (B) Maintain Their Postpetition Insurance Coverage Program, and (C) Maintain Postpetition Financing of Insurance Premiums, and (II) Granting Related Relief* (the "**Insurance Motion**"), Simkiss & Block ("**Simkiss**") acts as a broker for the Debtors with respect to their insurance policies, including the Debtors' workers' compensation policy. Simkiss does not charge the Debtors a broker's fee attributable to the workers' compensation policy.

57. As of the Petition Date, there were approximately 21 open workers' compensation claims (the "**Workers' Compensation Claims**") against the Debtors arising out of alleged injuries incurred by Employees during the course of their employment with the Debtors, which the Debtors expect to continue to resolve in the ordinary course of business. There are deductibles under the Debtors' workers' compensation policy, and thus CNA pays amounts owed on account of any Workers' Compensation Claim filed by an Employee of the Debtors, up to the applicable coverage limits after the deductible has been satisfied. The Debtors expect to continue to resolve any Workers' Compensation Claims in the ordinary course of business in accordance with applicable state law.

58. Because the Workers' Compensation Programs are required for the continued operation of the Debtors' business under the laws of the various states in which they operate, the Debtors request authority to pay any and all prepetition amounts due or that may become due with respect to the Workers' Compensation Programs. The Debtors further seek authority to maintain and continue their prepetition practices with respect to the Workers' Compensation Programs, including, among other things, renewing their workers' compensation policy and allowing claimants, to the extent they hold valid Workers' Compensation Claims, to proceed with their claims in the ordinary course of business in accordance with applicable state law.

**H. Miscellaneous Benefit Plans**

59. The Debtors provide eligible Employees with the opportunity to participate in a number of miscellaneous benefit programs (the "**Miscellaneous Benefits Programs**"). The Miscellaneous Benefits Programs currently include, but are not limited to, the following:

i. Employee Assistance Program. Through New York Life Group Benefit Solutions, the Debtors provide, at no cost to eligible Employees, a free Employee Assistance Program, which offers confidential telephonic counseling services around the clock, as well as up to three face-to-face sessions with a counselor, to help Employees balance the demands of work, life, and personal needs.

ii. Emotional Support Program. The Debtors provide Employees and eligible dependents with mental health support at no cost through Headspace Care (formerly known as Ginger).

iii. Medical Expert Opinions. The Debtors provide membership to 2nd.MD, which offers virtual second medical opinions, to Employees enrolled in a UMR medical plan.

iv. Care Coordination. Employees enrolled in a UMR medical plan have access at no additional cost to Included Heath which provides support to Employees with navigating medical care and billing.

v. Employee Stock Purchase Program. The Debtors have offered eligible Employees the opportunity to purchase Audacy common stock at a 15% discount from the market price, the cost of which is deducted from the paychecks of participating Employees. This program was frozen prior to the Petition Date.

vi. Student Loan Repayment Assistance Program. Eligible Employees may receive up to $1,000 per year from the Debtors to reduce their student loan debt.

vii. Commuter Benefits. Eligible Employees can contribute part of their wages pre-tax towards transit and parking expenses through Wex Inc.

viii. Tobacco Cessation Reimbursement Program. The Debtors provide reimbursement to eligible Employees for the cost of a smoking cessation method up to two attempts per year.

ix. Auto and Home Insurance. The Debtors provide Employees with the option to purchase Auto and Home Insurance through Farmers Insurance Group.

x. Pet Insurance. The Debtors provide Employees with the option to purchase Pet Insurance through Nationwide Mutual Insurance Company.

xi. Legal Insurance. Through MetLife Services and Solutions, LLC, the Debtors provide Employees the opportunity to purchase legal insurance.

xii. Automobile Allowance Program. The Debtors pay certain Employees, typically executives and market managers, up to $1,400 per month for an automobile stipend.

xiii. Cell Phone Program. The Debtors pay for or provide an allowance to cover the cell phone costs of eligible Employees.

xiv. Identity Theft Protection. Through InfoArmor, Inc., the Debtors provide Employees with the opportunity to purchase identity theft protection services.

xv. Employee Coaching. Through Bravely, Inc., Employees receive professional coaching and workplace guidance at no cost.

60. As of the Petition Date, the Debtors do not believe that any accrued and unpaid amounts are outstanding with respect to the Miscellaneous Benefits Programs. In an abundance of caution, by this Motion, the Debtors seek authority, but not direction, to pay any outstanding prepetition obligations under the Miscellaneous Benefits Programs.

**I. Union Benefits**

61. The Debtors employ approximately 810 Represented Employees who are party to approximately 45 CBAs (including their sub-parts for disparate geographic units within them and two units that are in the process of negotiating their initial collective bargaining agreements) with the various Unions. Under the CBAs, the Debtors are required to withhold via payroll deduction union member dues and typically remit such dues on a monthly basis to the Unions (collectively, the "**Union Dues**"). On average, the Debtors remit approximately $40,000 each month on account of Union Dues. The Debtors seek authority to continue to remit the Union Dues to the Unions and honor and process the Union Dues on a postpetition basis in the ordinary course of business and consistent with past practices.

62. Under the CBAs, certain Represented Employees receive benefits through their respective Unions that can differ from the benefits the Debtors provide to non-represented Employees, and the Debtors make payments to certain Unions on account of such benefits. Most Represented Employees, subject to eligibility based on the Employee's title, receive paid vacation time, short term disability insurance, vision insurance, dental insurance, and a pension component. On average, the Debtors remit approximately $550,000 each month to the applicable Unions and/or their associated multi-employer funds that provide health and retirement benefits on account of benefits for Represented Employees. Under certain CBAs that do not provide the full spectrum of benefits, the applicable Represented Employees can also receive the standard Employee Benefits that the Company provides to non-represented Employees.

63. In addition, pursuant to certain CBAs, the Debtors are contractually obligated to provide certain severance obligations to the applicable Represented Employees (the "**Union Severance**"). The Employees eligible for Union Severance do not include any insiders of the Debtors. As of the Petition Date, the Debtors believe that approximately $20,000 is outstanding on account of Union Severance. Out of an abundance of caution, however, the Debtors seek authority to continue Union Severance in the ordinary course of business on a postpetition basis and consistent with past practices, and to pay any amounts that may come due during the pendency of the Chapter 11 Cases, including any prepetition amounts related thereto.

64. As of the Petition Date, the Debtors' total prepetition obligations owed in respect of the Employee Benefits described in this Section III is approximately $20,193,000.

## IV. Continuation of Workforce Programs Postpetition

65. The Debtors also request confirmation of their right to continue to perform their obligations with respect to all Workforce Programs, except as otherwise indicated herein. The Workforce Programs are essential to the Debtors' efforts to maintain Workforce morale and minimize attrition. The expenses associated with the Workforce Programs are reasonable and cost-efficient in light of the potential attrition, loss of morale, and loss of productivity that would occur if the Workforce Programs were discontinued.

66. Notwithstanding the foregoing, the Debtors reserve the right to evaluate all Workforce Programs and to make such modifications, including terminating any particular plan, program, or policy, as may be necessary or appropriate during the pendency of these cases.

## V. Payments to Independent Directors

67. The Board of Directors of Debtor Audacy, Inc. includes seven non-Employee independent directors: David Berkman, Joel Hollander, Mark LaNeve, Sean Creamer, Susan Neely, Louise Kramer, and Roger Meltzer (the "**Independent Directors**"). The Independent

Directors each receive compensation of $20,000 earned on a quarterly basis, and certain Independent Directors receive additional compensation ranging between $2,500 and $85,000 on a quarterly basis for serving on various committees of the Board of Directors (collectively, the "**Independent Director Compensation**"). In addition, the Debtors reimburse certain expenses incurred by the Independent Directors in the course of their official duties. The Independent Director Compensation is typically paid in advance on a quarterly basis.[18] As of the Petition Date, there is no accrued but unpaid Independent Director Compensation owed to the Independent Directors.[19] The Independent Directors' service is necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors be authorized to pay any prepetition amounts accrued as of the Petition Date to the Independent Directors. By this Motion, the Debtors seek the authority to reimburse any unpaid expenses incurred by the Independent Directors prior to the Petition Date not to exceed $5,000 without further order of the Court. In addition, out of an abundance of caution, the Debtors request authority to continue to pay the Independent Director Compensation and reimburse expenses to the Independent Directors on a postpetition basis in the ordinary course of business.

## VI. Payments to Administrators

68. With respect to the Workforce compensation and Workforce Programs described above, the Debtors contract with several vendors to administer and deliver payments or other benefits to their Employees (the "**Administrators**"). For example, as is customary in the case of most large companies, Ultimate Software Group, Inc. ("**UKG**") maintains or provides record keeping and other administrative services with respect to the Debtors' payroll and various

[18] Prior to January 2024, the Independent Director Compensation was paid on a quarterly basis at the end of the applicable quarter.

[19] The Independent Directors were paid their Independent Director Compensation for the quarter ending November 30, 2023, on November 20, 2023.

Employee Benefit programs. The Debtors pay UKG approximately $71,000 per month for its services. Mosaic Consulting Group ("**Mosaic**") provides UKG support and related customized technical consulting services. Boomi, LP ("**Boomi**") provides UKG customized integration support. The Debtors pay Mosaic and Boomi approximately $62,000 per month for their services. The ongoing services of UKG, Mosaic, and Boomi are imperative to the smooth functioning of the Debtors' operations and payroll system. Further, the Debtors contract with Benefit Technology Resources, LLC ("**PlanSource**") to provide the Debtors with an internet-based benefits and enrollment services platform. The current services of PlanSource are critical to the successful administration of benefits to Employees. The Debtors pay additional administrative fees to: UMR, in connection with the administration of the medical plans; Kaiser, in connection with the administration of the medical and prescription drug plans; Delta Dental, in connection with the administration of the dental plans; New York Life, in connection with the administration of the life, accidental death and dismemberment, and disability plans; OptumRX, in connection with the administration of the prescription drug plans; EyeMed, in connection with the administration of the vision plan; Wex, in connection with the administration of the FSAs and HSAs; CNA, in connection with the administration of the Workers' Compensation Programs; Concur, in connection with the administration of business expense reimbursement; Newport, in connection with the administration of the Deferred Compensation Plans; Vanguard, in connection with the administration of the Retirement Savings Plans and Deferred Compensation Plans; Automatic Data Processing, Inc ("**ADP**"), in connection with tax filings; and various other third parties, in connection with the administration of miscellaneous benefits. As of the Petition Date, the Debtors estimate that they owe approximately $230,000 to Administrators on account of administrative fees.

69. In conjunction with the Debtors' payment of Prepetition Workforce Obligations and continued performance under the Workforce Programs, the Debtors need to obtain specific authorization to pay any claims of the Administrators on a postpetition basis, including prepetition claims to the extent necessary, to ensure uninterrupted delivery of certain benefits to the Workforce. The Administrators may fail to adequately and timely perform or may terminate their services to the Debtors unless the Debtors pay the Administrators' prepetition claims for administrative services rendered and expenses incurred. If the Debtors were required to replace the Administrators postpetition, it would cause significant disruption to the payment of benefits and other obligations to the Workforce. Accordingly, the Debtors submit that the payment of claims owed to the Administrators is in the best interest of the Debtors' estates.

## VII. Payments to Employee Benefits Consultants

70. With respect to the Employee Benefits described above, the Debtors contract with Alera Group, Inc. ("**Alera**") and CAPTRUST Financial Advisors, LLC ("**CAPTRUST**," and together with Alera, the "**Employee Benefits Consultants**") in connection with their provision of Employee Benefits and the Retirement Savings Plan to the Employees. Specifically, the Debtors contract with the Employee Benefits Consultants to provide, among other services, strategic advice and to act as liaison and administrative agent between the Debtors and the third party insurers, administrators and providers in connection with Employee Benefits and the Retirement Savings Plan. The Debtors pay quarterly fees, as applicable, to CAPTRUST out of the existing assets under the Retirement Savings Plan. The Debtors paid approximately $25,000 per quarter in fees to CAPTRUST during the twelve-month period prior to the Petition Date. The Debtors pay Alera a monthly retainer of $35,000 per month which is offset by commissions on insurance policies and products purchased on behalf of the Debtors. As of the Petition Date, Alera holds a retainer of approximately $50,000. As of the Petition Date, the Debtors estimate that there are no outstanding

amounts owed to the Employee Benefits Consultants on account of the consulting services that they provide to the Debtors. Out of an abundance of caution, however, the Debtors seek authority, but not direction, to pay any prepetition amounts owed to Employee Benefits Consultants on a postpetition basis as such amounts become due and payable in the ordinary course.

71. In conjunction with the Debtors' payment of Prepetition Workforce Obligations and continued performance under the Workforce Programs, the Debtors need to obtain specific authorization to pay any claims of the Employee Benefits Consultants on a postpetition basis, including prepetition claims to the extent necessary, to ensure uninterrupted delivery of certain benefits to the Workforce. Unless the prepetition claims owed to the Employee Benefits Consultants are paid, the Employee Benefits Consultants may fail to perform adequately and timely or may terminate its services to the Debtors, which would cause significant disruption to the provision of benefits to or for the benefit of the Workforce. Accordingly, paying claims owed to the Employee Benefits Consultants is in the best interest of the Debtors' estates.

## APPLICABLE AUTHORITY

72. The relief requested in this Motion is necessary for the Debtors' business to continue to operate in the ordinary course of business to maximize value for all stakeholders. The Workforce is vital to the success of the Chapter 11 Cases. Any delay or failure to pay wages, salaries, benefits, and other similar items would irreparably impair the Workforce's morale, dedication, confidence, and cooperation, and would adversely impact the Debtors' relationship with its Workforce at a time when the Workforce's support is critical to the Chapter 11 Cases and to the Debtors' restructuring efforts. At this early stage, the Debtors simply cannot risk the substantial damage to their business that would inevitably result from a rapid decline in the Workforce's morale.

73. Absent the relief requested herein, the Workforce will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable the Workforce to meet its own personal financial obligations. Likewise, any interruption to the Employee Benefits provided by the Debtors could have a material, negative effect on the well-being and morale of the Debtors' employees and their families. Without the requested relief, the stability of the Debtors' business will be undermined, perhaps irreparably, by the distinct possibility that otherwise loyal and valuable members of the Workforce will seek other employment alternatives. In addition, to the extent the Debtors owe the Workforce for business expenses incurred prepetition, it would be inequitable to require the Debtors' Workforce to bear personally the cost of any business expenses they incurred prepetition, for the benefit of the Debtors, with the understanding that they would be reimbursed. Further, the Workforce could become concerned about personal liability for business charges, which could distract them from devoting attention to the Debtors' business.

## I. Payment of the Priority Portion of Prepetition Workforce Obligations Should be Authorized under Section 507(a) of the Bankruptcy Code

74. Most, if not all, of the Prepetition Workforce Obligations constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, Workforce claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of $15,150 per member of the Workforce. Similarly, section 507(a)(5) of the Bankruptcy Code provides that the Workforce's claims for contributions to certain employee benefit plans also are afforded priority unsecured status to the extent of $15,150 per member of the Workforce covered by such plan, less any amount paid pursuant to section 507(a)(4). As priority claims, the Prepetition Workforce Obligations must be paid in full before

any general unsecured obligations of the Debtors may be satisfied. Accordingly, the relief requested herein may affect only the timing of the payment of these priority obligations and should not prejudice the rights of general unsecured creditors or other parties in interest. As of the Petition Date, numerous members of the Workforce are owed in excess of $15,150 on account of prepetition compensation.[20]

## II. Payment of Certain of the Prepetition Workforce Obligations is Appropriate under Section 541 of the Bankruptcy Code

75. The payment of the Employee contribution component of the Retirement Savings Plans or payment of other Deductions will not prejudice the Debtors' estates because such withholdings are derived from Employee funds and held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors' estates under section 541 of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 58-59 (1990); *see also In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1059 (3d Cir. 1993) (concluding that property that debtor holds in trust – either express or constructive – for another does not become property of the estate when the debtor files for bankruptcy, and stating that "Congress clearly intended the exclusion by section 541(d) to include not only funds held in express trust, but also funds held in constructive trust."); *EBS Pension L.L.C. v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231 (Bankr. D. Del. 2000) (same).

76. With respect to payroll-related taxes in particular, the payment of such taxes will not prejudice other creditors of the Debtors' estates, as the relevant taxing authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code in respect of such

[20] These Employees, none of whom are insiders, are owed in excess of $15,150 primarily on account of earned but not yet determined amounts owed in connection with Commissions or the Employee Incentive Programs, and in some cases on account of PTO that is scheduled to be paid in January 2024 in connection with the Debtors' transition to the FTA policy.

obligations. Moreover, the portion of the payroll-related taxes withheld from a member of the Workforce's wages on behalf of an applicable taxing authority is held in trust by ADP.

## III. Payment of the Prepetition Workforce Obligations is Authorized under Sections 1107(a) and 1108 of the Bankruptcy Code

77. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

78. According to the *CoServ* court, there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *See Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

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

*Id.* at 498.

79. Payment of the Prepetition Workforce Obligations meets each element of the *CoServ* court's standard. First, any failure by the Debtors to pay the Prepetition Workforce Obligations would have a severe negative impact on the morale of the Debtors' Workforce at a

critical time for the Debtors and their businesses. Second, the potential harm and economic disadvantage that would stem from the failure to pay the Prepetition Workforce Obligations is grossly disproportionate to the amount of any prepetition claim that may be paid. Absent payment of the Prepetition Workforce Obligations, Workforce morale would decrease dramatically, likely leading to the loss of key personnel and other severe business disruptions costing far in excess of the amount of such obligations. Third, the Debtors have examined other options short of payment of the Prepetition Workforce Obligations and have determined that to avoid significant disruption of the Debtors' business operations there exists no practical or legal alternative to payment of such obligations. Moreover, as described above in Section I, the members of the Workforce likely maintain priority claims against the Debtors for all, or the vast majority of, the Prepetition Workforce Obligations.

80. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Prepetition Workforce Obligations.

## IV. Payment of the Prepetition Workforce Obligations Is Warranted under Sections 363(b) and 364 of the Bankruptcy Code

81. To the extent that payment of any of the Prepetition Workforce Obligations sought to be paid under this Motion would be deemed to constitute a use of property outside the ordinary course of business, a basis for authorizing payment of the amounts associated with such obligations is found under section 363(b) of the Bankruptcy Code. Section 363(b)(1) authorizes courts, after notice and a hearing, to permit a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances."). Courts in the Fifth Circuit have

granted a debtor's request to use property of the estate outside of the ordinary course of business upon a finding that such use is supported by sound business reasons. *See, e.g.*, *In re BNP Petrol. Corp.*, 642 F. App'x 429, 434-35 (5th Cir. 2016) (*citing In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986)) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business"); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593 (5th Cir. 2011) ("Section 363 of the Bankruptcy Code addresses the debtor's use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.").

82. The relief requested herein is necessary to the Debtors' successful reorganization because it enables the Debtors to focus on consummating the Plan for the benefit of the Debtors, their estates, and their creditors. The paramount goal of parties in interest is to protect the value of the Debtors' business during the pendency of the Chapter 11 Cases by preventing operational disruptions. It is the Debtors' business judgment that their ability to maintain their Workforce in the ordinary course of the Debtors' business is essential to minimize disruption to the Debtors' operations and preserve the overall value of their business.

83. Continuation of the Corporate Credit Cards and payment of any prepetition amounts related thereto is also warranted under sections 363(b) and 364 of the Bankruptcy Code. The Corporate Credit Cards allow Employees to make necessary business-related purchases and provide the Debtors with a streamlined system for processing such expenses. If the Corporate Credit Cards were discontinued, the Debtors would no longer be able to fund purchases directly, and Employees would be burdened with carrying the costs. Therefore, the Debtors request

authority to maintain the Corporate Credit Cards in the ordinary course of business, subject to the terms and conditions thereof.

84. The Debtors do not seek to alter their compensation, vacation, or other benefit policies at this time. This Motion is intended only to permit the Debtors, in their reasonable discretion, to make payments consistent with the Debtors' existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and to permit the Debtors, in their reasonable discretion, to continue to honor their practices, programs, and policies with respect to their Workforce, as such practices, programs, and policies were in effect as of the Petition Date. Consistent with prepetition practice, however, the Debtors request authority to offer reasonable, ordinary course, cost of living wage increases to their Employees.

85. Payment of all Prepetition Workforce Obligations in accordance with the Debtors' prepetition business practices is in the best interests of the Debtors' estates, their creditors, and all parties in interest and will enable the Debtors to continue to operate their business in an economic and efficient manner, without disruption. The Debtors' Workforce is central to their operations and are vital to the Chapter 11 Cases.

86. It is necessary to continue payment of administrative fees to the Administrators that administer the Debtors' Workforce Obligations and related Workforce Programs and payment of fees to the Employee Benefits Consultants that advise the Debtors with respect to the Employee Benefits. Without the continued services of the Administrators and the Employee Benefits Consultants, the Debtors will be unable to continue to honor their Workforce Obligations and related Employee Benefits in an efficient and cost-effective manner.

87. Accordingly, the Debtors submit that they have satisfied the standard applied to requests under sections 363(b) and 364 of the Bankruptcy Code, and this Court should authorize the payment of the Prepetition Workforce Obligations on such basis.

## V. Section 363(c) of the Bankruptcy Code Supports the Debtors' Request to Maintain Workforce Programs

88. With respect to the aspects of the Motion that seek authorization to satisfy all of the Debtors' postpetition commitments with respect to the Workforce Programs, section 363(c) of the Bankruptcy Code authorizes such actions. In pertinent part, section 363(c)(1) of the Bankruptcy Code provides that "unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The maintenance of the Workforce Programs and honoring postpetition obligations arising thereunder, including undertaking renewals of Workforce Programs as they expire, or entering into new arrangements, fits squarely within the foregoing provision. To the extent, however, that this Court finds that any such actions are not properly characterized as transactions in the ordinary course of the Debtors' business, the Debtors respectfully request that this Court authorize the Debtors to take such actions pursuant to section 363(b) of the Bankruptcy Code as a reasonable exercise of their business judgment.

## VI. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims is Appropriate

89. Section 362(a) of the Bankruptcy Code operates to stay "the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . ." 11 U.S.C. § 362(a)(1).

90. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with Workers' Compensation Claims in the appropriate judicial or administrative forum. Staying the Workers' Compensation Claims could have a detrimental effect on the financial well-being and morale of the Workforce.

91. Similarly, state law requires the Debtors to maintain the Workers' Compensation Programs. If the Debtors fail to maintain the Workers' Compensation Programs, state law may prohibit the Debtors from continuing operations in certain states. Payment of all amounts relating to the Workers' Compensation Programs is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring.

## VII. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

92. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, cash on hand, and postpetition financing for which the Debtors seek approval contemporaneously herewith. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Prepetition Workforce Obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

## EMERGENCY CONSIDERATION

93. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Local Rule 9013-1(i), the Complex Case Procedures, and Bankruptcy Rule 6003, which authorizes a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtors believe that an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the success of the Chapter 11 Cases. As discussed above and in the First Day Declaration, any delay in granting the relief requested could negatively impact the Debtors' Workforce at this critical juncture. As such, the Debtors believe that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003, and the Debtors believe that emergency consideration is necessary and respectfully request that this Motion be heard on an emergency basis.

## WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)

94. To implement the foregoing immediately, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

## RESERVATION OF RIGHTS

95. Nothing contained herein is intended or shall be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against any of the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of any Debtor's or any

other party in interest's rights to dispute any claim on any grounds; (c) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion, or any order granting the relief requested by the Motion; (e) an admission as to the validity, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of any Debtor's estate; (f) a waiver of any Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (g) a waiver of any claims or causes of action which may exist against any entity.

**NOTICE**

96. The Debtors have provided or will provide notice of this Motion to: (a) the U.S. Trustee; (b) the holders of the 30 largest unsecured claims against the Debtors; (c) the agent and counsel for the agent for the First Lien Credit Facility; (d) the trustee and counsel for the trustee for the Second Lien Secured Notes; (e) the agent and counsel for the agent for the Postpetition Securitization Program; (f) counsel for the First Lien Ad Hoc Group; (g) counsel for the Second Lien Ad Hoc Group; (h) the agent and counsel for the agent for the DIP Facility; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the state attorneys general for states in which the Debtors conduct business; (m) the Administrators; (n) the Employee Benefits Consultants; (o) the Federal Communications Commission; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors believe that no other or further notice is required or needed under the circumstances.

[*The remainder of this page is intentionally left blank.*]

WHEREFORE, the Debtors respectfully request that the Court enter the proposed Order, substantially in the form attached hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: January 7, 2024

Respectfully submitted,
*/s/John F. Higgins*
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*Proposed Counsel to the Debtors and Debtors in Possession*

[21] Not admitted to practice in Illinois. Admitted to practice in New York.

## CERTIFICATE OF ACCURACY

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief. This statement is made pursuant to Bankruptcy Local Rule 9013-1(i).

*/s/Heath C. Gray*
Heath C. Gray

## CERTIFICATE OF SERVICE

I certify that on January 7, 2024, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

*/s/John F. Higgins*
John F. Higgins

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| In re: | § | Chapter 11 |
| AUDACY, INC., *et al.*, | § | Case No. 24-90004 (CML) |
| | § | (Jointly Administered) |
| Debtors.[1] | § | |

**ORDER (I)(A) AUTHORIZING PAYMENT OF CERTAIN PREPETITION WORKFORCE OBLIGATIONS, INCLUDING COMPENSATION, EXPENSE REIMBURSEMENTS, BENEFITS, AND RELATED OBLIGATIONS, (B) CONFIRMING RIGHT TO CONTINUE WORKFORCE PROGRAMS ON POSTPETITION BASIS, (C) AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLL-RELATED TAXES, (D) CONFIRMING THE DEBTORS' AUTHORITY TO TRANSMIT PAYROLL DEDUCTIONS, (E) AUTHORIZING PAYMENT OF PREPETITION CLAIMS OWING TO ADMINISTRATORS OF WORKFORCE PROGRAMS, AND (II) GRANTING RELATED RELIEF**

**[Relates to the Motion at Docket No.____]**

Upon the emergency motion (the "**Motion**")[2] of the Debtors for an order (i) authorizing the Debtors to pay certain prepetition amounts owing to or for the benefit of employees for compensation, reimbursable expenses, and benefits; (ii) confirming the Debtors' right to continue postpetition, in the ordinary course of business, the workforce-related plans, programs, and policies in effect immediately prior to the filing of the Chapter 11 Cases; (iii) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes relating to prepetition periods; (iv) confirming the Debtors' right to continue to deduct and to

[1] A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://dm.epiq11.com/Audacy. The location of the Debtors' corporate headquarters and service address for purposes of these chapter 11 cases is: 2400 Market Street, 4th Fl, Philadelphia, PA 19103.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

transmit deductions from payroll checks as authorized by employees, as required under any workforce-related plan, program, or policy, or as required by law; (v) authorizing the Debtors to pay any prepetition claims owing to the administrators of, or third party providers under, their workforce-related plans, programs, and policies as necessary to ensure the delivery of compensation, benefits, and expense reimbursements to their employees; and (vi) granting related relief, all as more fully set forth in the Motion; and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no other or further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Motion and the hearing with respect to the Motion establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are authorized to pay or otherwise honor the Prepetition Workforce Obligations described in the Motion, to, or for the benefit of, the Workforce in the ordinary course of business.

2. Unless otherwise provided in the Motion or this Order, the Debtors are authorized to (a) continue each of the Workforce Programs, including but not limited to maintaining the

Employee Benefits described in the Motion, and (b) continue to fund and to make payments in connection with the costs of and the expenses incurred in connection with any Workforce Program, in each case, in the ordinary course of business.

3. The Debtors are authorized, in their reasonable discretion, to transmit any Deductions previously withheld or deducted from the Workforce payroll to the appropriate third party recipient.

4. The Debtors are authorized to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to the Prepetition Workforce Obligations including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes, whether withheld from the Workforce's wages or paid directly by the Debtors to governmental entities and whether such taxes relate to the period before or after the Petition Date.

5. Subject to the following provision, the Debtors are authorized to continue the Employee Incentive Programs, the Non-Insider Retention Program, and the Severance Programs on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder as they become due; *provided that* nothing in this Order shall be deemed to authorize the payment of any amounts to "insiders" of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code under the Employee Incentive Programs, any retention program, or the Severance Programs during the Chapter 11 Cases. To the extent the Debtors seek to pay insiders under the Employee Incentive Programs, any retention program, or the Severance Programs during the Chapter 11 Cases, the Debtors shall file a separate motion to seek Court approval to pay any amounts to insiders.

6. Nothing herein shall be deemed to authorize the Debtors to make any payment that violates section 503(c) of the Bankruptcy Code during the Chapter 11 Cases; *provided that* the

Debtors are authorized to seek approval of any payments to insiders under the Employee Incentive Programs, any retention program, and the Severance Programs by separate motion.

7. The Debtors are authorized to maintain the Deferred Compensation Plans during the pendency of these Chapter 11 Cases; *provided that* the Debtors are not authorized to make any distributions under the Deferred Compensation Plans absent further order of this Court.

8. The Debtors shall not, within fourteen days of entry of this Order, honor any Prepetition Workforce Obligations to any individual that exceed the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, and any party in interest may object within fourteen days of entry of this Order to the payment of any such Prepetition Workforce Obligations and any such objection shall be subject to mutual resolution of the objecting party and the Debtors, or, if no such mutual resolution can be reached, resolution by the Court; *provided* that, notwithstanding the foregoing, (i) the Debtors are authorized to make payments exceeding such priority amounts on account of PTO obligations, and (ii) the Debtors are authorized to make payments exceeding such priority amounts on January 17, 2024 with respect to Commissions earned prior to the Petition Date unless a party in interest objects to such payments prior to January 17, 2024.

9. The Debtors shall not, within twenty-one days of entry of this Order, make any payments pursuant to the Non-Insider Retention Program, and any party in interest may object within twenty-one days of entry of this Order to any such payments, and any such objection shall be subject to mutual resolution of the objecting party and the Debtors, or, if no such mutual resolution can be reached, resolution by the Court.

10. Before making any payments pursuant to the Employee Incentive Programs in excess of (y) $1,000,000 in the aggregate in any calendar month or (z) $50,000 to any individual,

the Debtors shall provide five (5) days' advance notice to the U.S. Trustee, counsel to the First Lien Ad Hoc Group, counsel to the Second Lien Ad Hoc Group, and any statutory committee of (a) the title of the Employee, (b) the amount of the payment to such Employee, and (c) the proposed payment date. The Debtors shall maintain a matrix/schedule of payments made under Employee Incentive Programs pursuant to this Order prior to confirmation of a plan of reorganization, including the following information: (a) the names of the payee; (b) the nature, date and amount of the payment; (c) the category or type of payment as characterized in the motion; and (d) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, counsel to the First Lien Ad Hoc Group, counsel to the Second Lien Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases on the last day of each month for the prior month's payments.

11. Before making any payments pursuant to the Non-Insider Retention Program, the Debtors shall provide twenty-one (21) days' advance notice to the U.S. Trustee, counsel to the First Lien Ad Hoc Group, counsel to the Second Lien Ad Hoc Group, and any statutory committee of (a) the title of the Employee, (b) the amount of the payment to such Employee, and (c) the proposed payment date.

12. The Debtors are authorized to reimburse the Workforce for all Employee Reimbursement Obligations incurred prior to the Petition Date. In addition, the Debtors are authorized to make direct payments to third parties on account of amounts owed in connection with the Employee Reimbursement Obligations.

13. The Debtors are authorized to maintain the Corporate Credit Cards subject to the terms and conditions thereof, including the payment of any service fees incurred in connection therewith, and to pay any prepetition amounts related thereto.

14. The Debtors are authorized to continue their Workers' Compensation Programs and to pay any outstanding prepetition claims, taxes, charges, assessments, premiums, and third party administrator fees arising under the workers' compensation policies and or programs in which they participate. In addition, the automatic stay under section 362 of the Bankruptcy Code is hereby modified solely to the extent necessary to allow the Workers' Compensation Claims to proceed under the applicable workers' compensation policy and to allow the Debtors' insurance providers and/or third party administrators to negotiate, settle, and/or litigate the Workers' Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

15. The Debtors are authorized to continue to pay the Independent Directors' quarterly fees and expense reimbursements on a postpetition basis in the ordinary course of business and to reimburse up to $5,000 of expenses relating to the prepetition period.

16. The Debtors are authorized to pay prepetition amounts owing to the Administrators and the Employee Benefits Consultants. The Debtors are authorized to continue to pay the Administrators and Employee Benefits Consultants on a postpetition basis in the ordinary course of business.

17. The Debtors are authorized, but not directed, to continue and/or modify, change, or discontinue the Workforce Programs and to implement new programs, policies, and benefits, in the ordinary course of business during the Chapter 11 Cases and without the need for further Court approval, subject to applicable law. The Debtors will provide notice to the U.S. Trustee, counsel to the First Lien Ad Hoc Group, counsel to the Second Lien Ad Hoc Group, and any statutory committee of any material changes to their Workforce Programs or of any material new programs, policies, and benefits.

18. Neither this Order, nor any payments made by the Debtors pursuant to the Motion or this Order, shall be deemed to change the classification of any claim or to in any way change the rights or create new rights of any Employee or other person, including without limitation, the creation of any right to payment entitled to administrative expense priority pursuant to sections 503 and 507 of the Bankruptcy Code.

19. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in the Motion or this Order shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any claim against any of the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of any Debtor's or any other party in interest's rights to dispute any claim on any grounds; (c) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion, this Order or any order granting the relief requested by the Motion; (e) an admission as to the validity, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of any Debtor's estate; (f) a waiver of any Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (g) a waiver of any claims or causes of action which may exist against any entity.

20. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order, and

the Debtors are authorized to replace any prepetition checks or electronic transfers relating to the prepetition obligations approved herein that may be dishonored or rejected.

21. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made and any relief or authorization granted hereunder shall be subject to the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors to obtain postpetition financing and/or use cash collateral (any such order, a "**DIP Order**"), including, for the avoidance of doubt, the debtor-in-possession financing budget. To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Order and the terms of any DIP Order, the terms of the DIP Order will govern.

22. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein. The Debtors retain the business judgment to make or not make such payments. All payments are subject to the condition that funds are available to effect any payment and in no event shall any person (Debtor, officer, director or otherwise) be personally liable for any amounts authorized for payment herein but not paid.

23. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

24. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

25. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall take effect immediately upon its entry.

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

27. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: _____, 2024
Houston, Texas

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE