

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

In re:	)	
	)	Chapter 11
	)	
CONVERGEONE HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 24-90194 (CML)
	)	
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION  
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER  
COMPENSATION, AND (B) CONTINUE EMPLOYEE BENEFITS AND INCENTIVE  
PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 2:30 p.m. (prevailing Central Time) on April 4, 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 April 4, 2024 at 2:30 p.m. (prevailing Central Time) in Courtroom 401, 4th Floor, 515 Rusk, 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 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.

<sup>1</sup> The Debtors in these Chapter 11 Cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: AAA Network Solutions, Inc. (7602); ConvergeOne Dedicated Services, LLC (3323); ConvergeOne Government Solutions, LLC (7538); ConvergeOne Holdings, Inc. (9427); ConvergeOne Managed Services, LLC (6277); ConvergeOne Systems Integration, Inc. (9098); ConvergeOne Technology Utilities, Inc. (6466); ConvergeOne Texas, LLC (5063); ConvergeOne Unified Technology Solutions, Inc. (2412); ConvergeOne, Inc. (3228); Integration Partners Corporation (7289); NetSource Communications Inc. (6228); NuAge Experts LLC (8150); Providea Conferencing, LLC (7448); PVKG Intermediate Holdings Inc. (4875); Silent IT, LLC (7730); and WrightCore, Inc. (3654). The Debtors' mailing address is 10900 Nesbitt Avenue South, Bloomington, Minnesota 55437.

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

**Relief Requested**

1. The Debtors request entry of an order, substantially in the form attached hereto (the “**Proposed Order**”), (i) authorizing the Debtors to (a) pay prepetition wages, salaries, compensation, reimbursable expenses, incentives, and certain severance obligations to Employees and Contractors (each as defined below) (collectively, the “**Compensation**”) as well as remit amounts withheld from the Compensation to applicable taxing authorities and pay third-party Administrator Fees (as defined below), (b) pay prepetition amounts on account of and continue providing Employees with benefits (the “**Benefits**”), including the Employee Health and Welfare Benefits and Other Employee Benefits (each as defined below), and pay certain prepetition obligations related thereto, including Administrator Fees, and (ii) granting certain related relief.

2. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Salvatore Lombardi in Support of the Debtors’ Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”),<sup>2</sup> filed contemporaneously herewith.

**Jurisdiction, Venue, and Predicates for Relief**

3. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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

5. The predicates for the relief requested herein are sections 105(a), 363(b), 503(c)(1), and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 1075-1 9013-1(a) of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”).

### **Background**

#### **I. Overview of Chapter 11 Cases**

6. On April 4, 2024 (the “**Petition Date**”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court (the “**Chapter 11 Cases**”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have requested joint administration and procedural consolidation of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases, and no official committees have been appointed or designated.

7. The Debtors, together with their non-Debtor affiliates (collectively, “**C1**”), are a leading global provider of information technology services to private and public sector customers, including many of the companies listed on the Fortune 100. C1 was founded in 1993 and has a global workforce of more than 3,000 individuals in 49 states and 15 countries, with main domestic hubs in Minnesota, New Jersey, Texas, and California. Through a series of acquisitions and growth, today C1 serves more than 6,000 customers worldwide. C1 partners with more than 140 global industry partners to design, implement, and support thousands of IT solutions across its core technology markets: pure and hybrid cloud solutions, business applications, customer experiences,

contact center design and enablement, modern workplace infrastructure, cyber security, and enterprise networking.

8. These Chapter 11 Cases are prepackaged cases commenced for the purpose of implementing a comprehensive deleveraging of the Debtors' capital structure in accordance with the terms of a Restructuring Support Agreement (the "**RSA**") with the beneficial holders of (a) approximately 81% of the Debtors' first lien debt and (b) approximately 81% of the Debtors' second lien term loans. On the Petition Date, the Debtors are filing a plan of reorganization reflecting the terms of the RSA (the "**Plan**"), along with a disclosure statement with respect to the Plan (the "**Disclosure Statement**"). The Plan contemplates that all general unsecured claims will be paid in full in cash or otherwise be unimpaired. The Debtors are also filing a motion seeking, among other things, (a) conditional approval of the Disclosure Statement and (b) a combined hearing to consider approval of the Disclosure Statement on a final basis and confirmation of the Plan.

9. Additional factual background and information regarding the Debtors, including their business operations, corporate and capital structure, their restructuring activities, the RSA, and the events leading to the commencement of these Chapter 11 Cases, is set forth in the First Day Declaration.

## **II. The Debtors' Workforce**

### **A. Employees and Contractors**

10. As of the Petition Date, C1 and its Debtor and non-Debtor affiliates maintain a workforce of approximately 2,500 employees and 530 independent contractors in fifteen countries.

#### **1. Employees**

11. C1 currently employs approximately 2,240 individuals in the United States as direct employees (the "**U.S. Employees**"), approximately 230 employees in India (the "**India**

**Employees**”), and approximately 30 employees in Canada (the “**Canada Employees**” and, together with U.S. Employees and India Employees, the “**Employees**”). The U.S. Employees work across 49 states, with main domestic hubs in Minnesota, New Jersey, Texas, and California. The majority of the Debtors’ workforce works remotely. Additionally, most of the Debtors’ U.S. and Canada-based workforce is employed by or contracts with Debtor ConvergeOne, Inc. (“**C1 Inc.**”) as the main operating entity of C1.<sup>3</sup> The India Employees are employed directly by non-Debtor affiliate ConvergeOne India Private Limited (“**C1 India**”), which is based out of Hyderabad, India.

12. While the majority of the Debtors’ Employees are not represented by a labor union (such non-represented Employees, collectively, the “**Non-Union Employees**”), the Debtors are party to two collective bargaining agreements (the “**CBAs**”) with respect to approximately 85 union Employees (collectively, the “**Represented Employees**”). Of the Debtors’ Represented Employees, approximately 20 are employed under a CBA with the Communication Workers of America (the “**CWA**”), and 65 are covered by a CBA with various bargaining units of the International Brotherhood of Electrical Workers (the “**IBEW**”).<sup>4</sup> As discussed in greater detail below, by this Motion the Debtors are requesting authority to continue to provide compensation and benefits to their Represented Employees in compliance with the CBAs to which they are party.<sup>5</sup>

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<sup>3</sup> As is described in more detail in the First Day Declaration, Debtor C1 Government Solutions, LLC (“**C1GS**”) is a wholly-owned subsidiary of C1 Inc. that operates largely independently of C1 Inc. and the other Debtor entities. C1GS provides technology services to the federal government. C1 Inc. provides certain shared services to C1GS pursuant to an affiliated operations plan, which authorizes C1 Inc. to provide, among other things, human resources services to C1GS, including payroll and benefits administration.

<sup>4</sup> The Debtors also sign project-specific subscription agreements with other certain local units of the IBEW to comply with certain terms of the respective CBA for a project to the extent required by the customer agreement.

<sup>5</sup> By requesting authorization to honor obligations relating to any CBA in this Motion, the Debtors are not assuming or affirming any contracts, agreements, programs, or applicability of any law related to the CBAs, and the Debtors reserve all of their rights thereto.

## 2. Contractors

13. The Debtors also supplement their workforce by retaining, from time to time, individuals with specialized expertise on a temporary or project basis as independent contractors (the “**Contractors**”), each of whom is necessary for the ongoing operation of the Debtors’ business. The Debtors presently retain approximately 530 Contractors, who are primarily based in the United States and India, with a small portion located in various global locations. The Contractors perform various administrative, sales, technical, and research and development support roles. All of the Contractors play a critical role in the Debtors’ day-to-day operations, helping to preserve the value of the Debtors’ estates.

14. **U.S. Contractors.** There are approximately 250 Contractors in the United States retained by the Debtors (the “**U.S. Contractors**”), who are mainly contracted by the Debtors through third-party staffing agency Randstad USA (“**Randstad**”).<sup>6</sup> A small portion of the U.S. Contractors in sales-related positions contract directly with the Debtors.

15. **C1 India.** C1 India is an integral part of the Debtors’ delivery of IT support and technology services and solutions to its customers across domains such as customer experience, cybersecurity, enterprise networking, and unified communications. C1 India provides these services under the terms of a master services agreement between C1 India and C1 Inc.<sup>7</sup> C1 India currently utilizes the services of approximately 280 Contractors (the “**India Contractors**”) in the delivery of shared services to C1.

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<sup>6</sup> The Debtors also utilize various other third-party staffing agencies for a small portion of the Contractors (collectively, with Randstad, the “**U.S. Third Party Vendors**”).

<sup>7</sup> The relationship between C1 Inc. and C1 India is discussed in greater detail in the Shared Services Motion, which is filed concurrently herewith.

16. C1 India retains the India Contractors through agreements between C1 Inc. and certain third-party managed service providers. Approximately 240 of the India Contractors are provided by Seismic LLC (together with its affiliate, Inspiredge IT Solutions Provider Limited, “**Seismic**”). The approximately 40 remaining India Contractors that provide services to C1 India are engaged by C1 Inc. through other third-party vendors, including Cognativ, Inc., Rattle Tech LLC, and Talodyn Networks Private Limited, among others (collectively, and together with the U.S. Third Party Vendors and Seismic, the “**Third Party Vendors**”).

17. The Employees’ and Contractors’ skills, knowledge, and understanding of the Debtors’ infrastructure and operations are essential to the continued operation and viability of the Debtors’ business and to preserve operational stability and efficiency. Many of the Employees and Contractors are highly trained personnel who are not easily replaced. Without their continued, uninterrupted services, the Debtors would not be able to maintain their operations during these Chapter 11 Cases.

18. The Debtors believe that most of the Employees and Contractors rely exclusively or primarily on the compensation and benefits they receive from the Debtors to pay their daily living expenses. Thus, in addition to the damage that would be sustained by the Debtors’ business operations if they were unable to pay their Employees and Contractors in a timely fashion, the Employees and Contractors themselves would be exposed to significant financial hardship if the Debtors are not permitted to continue paying wages and salaries, providing employee benefits, and maintaining certain programs benefiting Employees and Contractors in the ordinary course of business. The Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these Chapter 11 Cases.

## B. Subcontractors

19. The Debtors retain approximately 120 subcontractors (the “**Subcontractors**”) in connection with their ongoing business operations, utilizing the services of over 100 third-party vendors (the “**Subcontractor Vendors**”). The Debtors utilize the services of the Subcontractors to service and fulfill customer contracts on a recurring basis. The Debtors contract with the Subcontractor Vendors, which in turn, contract with the Subcontractors.

## III. Compensation and Benefits

20. To preserve their operations during these Chapter 11 Cases and minimize the personal hardship that Employees and Contractors would suffer if prepetition Employee- or Contractor-related obligations were not paid or remitted when due or as expected, the Debtors seek authority to pay and honor certain prepetition claims and, out of an abundance of caution, continue to honor obligations on a postpetition basis, as applicable, relating to the Compensation and Benefits, including: (a) Compensation and Withholding Obligations; (b) Employee Health and Welfare Benefits; (c) Other Employee Benefits; and (d) Administrator Fees (each as defined below), as summarized in the following chart:

Relief Sought	Prepetition Amount
<i>Compensation and Withholding Obligations</i>	\$18,788,000
Employee Wages	\$9,000,000
Third Party Vendor Fees and Contractor Fees	\$3,200,000
Subcontractor Vendor Fees	\$500,000
Sales Compensation	\$1,120,000
Time Off Benefits	\$400,000
Reimbursable Expenses	\$144,000
Company Vehicles	\$40,000
Incentive Programs	\$144,000
Non-Insider Retention Awards	\$0
Severance Obligations	\$290,000
Withholding Obligations	\$3,950,000
<i>Employee Health and Welfare Benefits</i>	\$3,605,000
Health Plans	\$1,980,000
Insurance and Welfare Programs	\$345,000



401(k) Savings Plans	\$1,280,000
Workers' Compensation Program	\$0
<i>Other Employee Benefits</i>	\$104,000
Optional Employee Benefits	\$104,000
Wellness Programs	\$0
Airvet Program	\$0
<i>Administrator Fees</i>	\$597,000
Payroll Fees	\$108,000
Benefits Administrator Fees	\$484,000
Other Administrator Fees	\$5,000
<b>Total Prepetition Amount</b>	<b>\$23,094,000</b>

#### **A. Compensation and Withholding Obligations**

21. In the ordinary course of business, the Debtors incur obligations to the Employees for Employee Wages, Third Party Vendor Fees and Contractor Fees, Subcontractor Vendor Fees, Sales Compensation, Time Off Benefits, Reimbursable Expenses, Company Vehicles, Additional Incentive Programs, Non-Insider Retention Awards, Severance Obligations, and Withholding Obligations (each as defined below and collectively, the “**Compensation and Withholding Obligations**”). As of the Petition Date, the Debtors owe approximately \$18,788,000 in the aggregate on account of accrued but unpaid Compensation and Withholding Obligations. The Debtors request authorization to continue to honor the Compensation and Withholding Obligations and to pay any related prepetition claims in the ordinary course of business up to the priority amounts set forth in sections 507(a)(4) and (a)(5) of the Bankruptcy Code. As of the Petition Date, the Debtors are aware of obligations to two former non-insider Employees with respect to prepetition terminations and one Employee with respect to a New Hire Award (as defined below) that exceed the priority amount under the Bankruptcy Code. With respect to these and any other Compensation and Withholding Obligations (if any) of which the Debtors become aware that exceed the priority amount under the Bankruptcy Code, the Debtors will provide twenty-one (21) days’ advance notice to the Office of the United States Trustee for the Southern District of Texas

(the “**U.S. Trustee**”), the First Lien Ad Hoc Group, and any statutory committee through a summary report that identifies information about the proposed payment(s). Upon expiration of the notice period, the Debtors will proceed with paying such obligations in the ordinary course unless any party has objected to such payment in writing to the Debtors (email being sufficient). To the extent that the parties are unable to resolve any such objection within five (5) business days of receipt, the applicable notice party shall file a written objection with the Court.

### 1. Employee Wages

22. In the ordinary course of business, the Debtors incur payroll obligations for base wages owed to their Employees (the “**Employee Wages**”). The timing of the payments is reflected in the chart below. C1 Inc. processes payroll for the Debtors listed in the chart below, utilizing Automatic Data Processing, Inc. (“**ADP**”) for U.S. Employees and PEO Canada Ltd. (“**PEO Canada**”) for Canada Employees. Debtor C1 Inc. also funds the payroll accounts for each of these Debtors except for C1GS, which funds its payroll account through its operations.<sup>8</sup> The Debtors pay approximately \$21.1 million per month in the aggregate on account of Employee Wages.

Debtor Entity	Union/ Non-Union	Frequency	Payroll Processing Day	Pay Date
ConvergeOne, Inc.	Non-Union	Biweekly	Every Other Tuesday	Every other Friday
ConvergeOne, Inc. – Non-Union	Non-Union	Weekly	Every Tuesday	Friday
AAA Network Solutions – Union (Local 11)	Union	Weekly	Every Wednesday	Thursday
ConvergeOne Government Solutions, LLC	Non-Union	Biweekly	Every Other Tuesday	Every other Friday
ConvergeOne Dedicated Services, LLC (Local 1109) CWA – Union	Union	Biweekly	Every Other Tuesday	Every other Friday
ConvergeOne Dedicated Services, LLC (Local 164) IBEW – Union	Union	Weekly	Every Monday	Thursday

<sup>8</sup> Nonetheless, C1 Inc. and C1GS are party to a funding agreement authorizing C1GS to submit written borrowing requests to C1 Inc. for liquidity as necessary to fund C1GS’s operations on a quarterly basis.

23. As of the Petition Date, the Debtors owe approximately \$9,000,000 on account of accrued but unpaid Employee Wages. The Debtors request authorization to pay all outstanding prepetition amounts on account of the Employee Wages, and to continue paying the Employee Wages on a postpetition basis in the ordinary course of business consistent with prepetition practices.

## **2. Third Party Vendor Fees and Contractor Fees**

24. As noted above, most of the Contractors are contracted through Third Party Vendors. On average, the Debtors pay the Third Party Vendors approximately \$1,410,000 per month in the aggregate. As of the Petition Date, the Debtors estimate that approximately \$1,500,000 remains due and owing to the Third Party Vendors. The Debtors are seeking authority to pay any prepetition amounts due and owing Third Party Vendors (the “**Third Party Vendor Fees**”) and to continue their services postpetition in the ordinary course.

25. Additionally, the Debtors contract directly with a small portion of Independent Contractors, including those that are based in locations other than the United States and India. On average, the Debtors pay approximately \$1,570,000 per month directly to Independent Contractors, which includes amounts due on account of the Independent Contractors’ rates charged in the ordinary course of business and sales commissions owed to certain Independent Contractors (the “**Contractor Fees**”). As of the Petition Date, the Debtors owe approximately \$1,700,000 on account of accrued but unpaid Contractor Fees. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Contractor Fees, and to continue paying the Contractor Fees on a postpetition basis in the ordinary course of business consistent with prepetition practices.

### 3. Subcontractor Vendor Fees.

26. As of the Petition Date, the Debtors estimate that approximately \$500,000 is due and owing to the Subcontractor Vendors (the “**Subcontractor Vendor Fees**”). The Debtors are seeking authority to pay these prepetition amounts and to continue these services postpetition in the ordinary course.

### 4. Sales Compensation

27. In addition to those Employees receiving Employee Wages, certain non-insider Employees, in addition to certain Contractors, are eligible to receive sales-based compensation pursuant to the Debtors’ Master Commission Plan, including, among other things, commissions for sales or renewals of products and services purchased by customers (the “**C1 Sales Compensation**”).<sup>9</sup> Employees and Contractors that have achieved certain targets set forth in the Master Commission Plan receive their sales-related payment on ordinary payroll days after such payments are determined, calculated, and approved for payment. Approximately 630 Employees and three Contractors are eligible to receive C1 Sales Compensation. On average, the Debtors pay approximately \$3,530,000 per month in C1 Sales Compensation to Employees, and approximately \$17,000 to Contractors.

28. Additionally, Debtor C1GS also provides sales-based compensation to certain Employees pursuant to the C1GS Master Commission Plan (the “**C1GS Sales Compensation**” and together with C1 Sales Compensation, the “**Sales Compensation**”).<sup>10</sup> Payments made on account of the C1GS Sales Compensation are made monthly after such payments are determined, calculated, and approved for payment. Approximately ten Employees are eligible to receive C1GS

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<sup>9</sup> The Master Commission Plan outlines the relevant policies and goals that must be met for various positions within the Debtors’ workforce to receive the C1 Employee Sales Compensation.

<sup>10</sup> The C1GS Master Commission Plan outlines the relevant policies and goals that must be met for various positions within the Debtors’ workforce to receive the C1GS Employee Sales Compensation.

Employee Sales Compensation. On average, the Debtors pay approximately \$71,000 per month in CIGS Employee Sales Compensation.

29. As of the Petition Date, the Debtors owe approximately \$1,120,000 on account of accrued but unpaid Sales Compensation. The Debtors are requesting authorization to pay any outstanding prepetition amounts incurred on account of the Sales Compensation, and to continue paying the Sales Compensation on a postpetition basis in the ordinary course of business consistent with prepetition practices.

### 5. Time Off Benefits

30. The Debtors provide eligible Employees with paid and unpaid time off benefits that include PTO, Vacation Time, Other Paid Leave, Parental Leave (each as defined below, and collectively, the “**Time Off Benefits**”). Details regarding the specific categories of Time Off Benefits that the Employees are entitled to is set forth below.

31. In the ordinary course of business, the Debtors provide paid time off (“**PTO**”) to certain Represented Employees, which is a combination of vacation days (“**Vacation Time**”), sick days, and float days.<sup>11</sup> PTO is granted upon the date of hire at ten (10) days per calendar year. PTO must be used annually by November 30 or it is paid out to the Represented Employees prior to December 21. Represented Employees accrue between two and four weeks of Vacation Time per year depending on their length of service with the Debtors. Represented Employees may carry over up to 80 hours of accrued and unused Vacation Time every other year with manager approval. Any carryover Vacation Time is forfeited if unused by June of the following calendar year. Represented Employees who are terminated or resign are entitled to a cash payment in lieu of their accrued but unused Vacation Time. Any amounts due on account of accrued but unused Vacation

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<sup>11</sup> Certain Represented Employees receive 3 float days per calendar year.

Time are paid to a Represented Employee in one lump sum, in addition to any unpaid Employee Wages, on the first pay period following the Represented Employee's termination or resignation.

32. Non-Union Employees and hourly employees ("**Hourly Employees**") also receive PTO, which is made up of sick days and vacation days. PTO hours begin accruing on an individual's hire date and are accrued weekly. Generally, a Non-Union Employee's and Hourly Employee's annual PTO days range from 17 to 29 days, depending on years of service with the Debtors.

33. As of the Petition Date, the Debtors accrued approximately \$7,670,000 in PTO to approximately 2,155 Non-Union Employees and Hourly Employees (the "**Non-Union and Hourly Employee Accrued PTO**") and approximately \$300,000 in PTO to approximately 85 Represented Employees (the "**Represented Employee Accrued PTO**"). Non-Union and Hourly Employee Accrued PTO and Represented Employee Accrued PTO is typically not monetized until an Employee's termination, and the Debtors do not have any outstanding prepetition amounts owed on account of the Non-Union and Hourly Employee Accrued PTO and Represented Employee Accrued PTO.

34. Certain commission-based Employees as well as Director-level and above positions follow a discretionary time-off model, and therefore the Debtors do not presently have any accrued PTO obligations to such Employees.

35. The Debtors also permit Employees to take certain paid leaves of absence for personal reasons, many of which are required by law. The Debtors pay Employees for certain missed work time in the ordinary course of business, including for leave for bereavement, military duty, jury duty, or court attendance (the "**Other Paid Leave**"). Employees are not entitled to any separate cash payments in addition to their normal compensation for the Other Paid Leave.

Additionally, the Debtors provide eligible Employees with up to four weeks of paid parental leave and eight weeks of unpaid parental leave following the birth or adoption of a child (“**Parental Leave**”) in accordance with the Family and Medical Leave Act (the “**FMLA**”).

36. On average, the Debtors pay approximately \$661,000 per month on account of Time Off Benefits. As of the Petition Date, the Debtors owe approximately \$400,000 on account of accrued and owing Time Off Benefits. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Time Off Benefits, and to continue paying the Time-Off Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

## 6. Reimbursable Expenses

37. The Debtors reimburse Employees for business expenses and other qualifying expenses incurred in carrying out their employment responsibilities, including, but not limited to, expenses for meals, hotels, flights, car rentals, parking, fuel costs, and other qualifying expenses (collectively, the “**Reimbursable Expenses**”). Except for those Employees who are issued a corporate card for work-related expenses, Employees pay for Reimbursable Expenses by using either a personal credit card or cash.<sup>12</sup> Employees then submit electronic receipts to request reimbursement, and if approved in accordance with internal policies and procedures, the Reimbursable Expenses are processed through the Debtors’ accounts payable system. Without continued reimbursement of the Reimbursable Expenses, Employees would be saddled with additional personal costs, causing potential financial hardship. On average, the Debtors pay approximately \$72,000 per month in Reimbursable Expenses.

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<sup>12</sup> The Debtors issue American Express corporate credit cards to certain Employees for ordinary course work-related expenses. These corporate cards are further described and relief is requested to continue the use of this program in the Cash Management Motion, filed contemporaneously herewith.

38. As of the Petition Date, the Debtors owe approximately \$144,000 on account of accrued but unpaid Reimbursable Expenses. Although the Debtors ask that reimbursement requests be submitted promptly, submission delays occur from time to time. Employees may therefore submit reimbursement requests for prepetition expenses after the Petition Date. The Debtors are requesting authorization to pay all outstanding prepetition amounts incurred on account of the Reimbursable Expenses, and to continue paying the Reimbursable Expenses on a postpetition basis in the ordinary course of business consistent with prepetition practices.

#### **7. Company Vehicles**

39. As of the Petition Date, the Debtors provide approximately 70 Employees with leased company vehicles (each, a **“Company Vehicle”**). The Company Vehicles are leased through fleet management programs with Enterprise Holdings, Inc. (**“Enterprise”**) and Donlen Corp. (**“Donlen”**). The Debtors pay approximately \$20,000 per month in the aggregate to Enterprise and Donlen on account of the Company Vehicles. The Debtors also pay for the service and maintenance of the Company Vehicles, which includes normal maintenance, tire and break service, and fuel costs, and amounts to approximately \$2,000 per month. In certain instances, Employees may be reimbursed for costs incurred related to the Company Vehicles. As of the Petition Date, the Debtors owe approximately \$40,000 on account of the Company Vehicles. The Debtors are requesting authorization to pay all outstanding prepetition amounts incurred on account of the Company Vehicles, and to continue paying for the Company Vehicles on a postpetition basis in the ordinary course of business consistent with prepetition practices.

#### **8. Incentive Programs**

40. In addition to regular Employee Wages, the Debtors provide certain Employees with additional compensation if certain eligibility criteria are met. More specifically, the Debtors



offer New Hire Awards, Referral Bonuses, the Elevate Program, and Project Bonuses (each as defined below and collectively, the “**Incentive Programs**”) to certain of their Employees.

41. By this Motion, the Debtors are not seeking to make any payments to any “insider” (as the term is defined in section 101(31) of the Bankruptcy Code) under any of the Additional Incentive Programs. Should the Debtors in the future seek authority to make any such payments to insiders, the Debtors will do so by separate motion filed with the Court.

42. **New Hire Awards.** From time to time, the Debtors may offer certain Employee-candidates a sign-on cash payment in addition to their base salary (the “**New Hire Awards**”). New Hire Awards are offered to incentivize candidates who the Debtors believe will bring additional value to their workforce and/or have unique experience and knowledge with respect to the Debtors’ industry to leave their current places of employment to work for the Debtors. New Hire Awards are granted on a case-by-case basis and may include claw-back provisions requiring the Employee-candidate to remain employed with the Debtors for six months to one year. On average, New Hire Awards range from approximately \$5,000 to \$50,000 per Employee-candidate. New Hire Awards allow the Debtors to provide competitive compensation packages to Employee-candidates and play an important role in the Debtors’ recruiting efforts, and thus, their operations. As of the Petition Date, the Debtors owe \$25,000 to one Employee on account of a New Hire Award effectuated prior to the Petition Date.

43. **Referral Bonus.** Additionally, Employees may be rewarded for participating in the recruiting process by receiving a bonus in connection with referring prospective candidates that to C1 who subsequently become Employees (each, a “**Referral Bonus**”). On average, the Debtors pay approximately \$6,000 per month for referral bonuses. As of the Petition Date, the Debtors estimate that they owe \$19,000 in the aggregate on account of Referral Bonuses.

44. **Elevate Program.**<sup>13</sup> Further, the Debtors offer a bonus program to Employees called Elevate, which emphasizes the Debtors' culture of enhancing the human experience (the "**Elevate Program**"). Employees can send e-cards to each other in recognition of great work and appreciation and high-achieving Employees can receive monetary awards. Through the Elevate Program, Employees can receive points and redeem them with various retailers. The Debtors pay approximately \$34,000 per month on account of the Elevate program. As of the Petition Date, the Debtors owe approximately \$100,000 on account of the Elevate Program.

45. **Project Bonuses.** Additionally, the Debtors have project-specific bonuses that are contingent on the successful implementation of such projects ("**Project Bonuses**"). Once a project is successfully launched and implemented, Employees may receive a bonus in an amount dependent on the Employee's contribution to the project. The Debtors do not owe any prepetition amounts on account of the Project Bonuses.

46. As of the Petition Date, the Debtors owe approximately \$144,000 on account of the Incentive Programs. By this Motion, the Debtors are requesting authority to pay all outstanding prepetition amounts incurred on account of the Additional Incentive Programs, and to continue paying amounts for these programs on a postpetition basis in the ordinary course of business consistent with prepetition practices.

## 9. **Non-Insider Retention Awards.**<sup>14</sup>

47. In the ordinary course of their business operations, the Debtors provide payments to certain non-insider Employees who possess certain skills or knowledge to incentivize them to

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<sup>13</sup> While the Debtors may provide an annual bonus to certain Employees who are not commission-eligible if the Debtors' annual EBITDA goals are met (the "**Annual Bonus Program**"), the Debtors do not owe any prepetition or postpetition amounts on account of the Annual Bonus Program.

<sup>14</sup> The Debtors recently implemented a prepetition key employee retention program (the "**KERP**") for certain Employees, which was approved by the Debtors' board of directors, to ensure minimal disruptions to the Debtors' operations while in chapter 11. The Debtors will request any relief with respect to the KERP by separate motion.

remain in the employ of the Debtors for a set time period pursuant to their employment agreements (the “**Non-Insider Retention Awards**”). Certain non-insider Employees are eligible for Non-Insider Retention Awards pursuant to a standard retention agreement with the Debtors, each of which contains a promise of future payment if the Employee remains with the Debtors through a predetermined date, subject to the applicable Employee’s continued employment through the date of payment and satisfaction of minimum performance standards.

48. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of the Non-Insider Retention Awards. The Debtors request authorization to continue paying the Non-Insider Retention Awards on a postpetition basis in the ordinary course of business consistent with prepetition practices.

49. For the avoidance of doubt, the Debtors do not request authorization to make any retention payments to any “insider” as the term is defined in section 101(31) of the Bankruptcy Code. As such, the Debtors submit that section 503(c) of the Bankruptcy Code, applicable to bonus or severance payments to insiders, does not apply to the relief requested herein.

## **10. Severance Obligations**

50. In the ordinary course of business, the Debtors historically have offered severance upon an Employee’s termination (the “**Non-Insider Severance Program**,” and the obligations thereunder the “**Severance Obligations**”). Payments under the Non-Insider Severance Program are based on the terminated Employee’s salary and job level, and for those employees below the vice president level, their time of service with the Debtors prior to termination. In accordance with the Non-Insider Severance Program, former employees also commonly execute severance agreements with the Debtors setting forth the Severance Obligations owed to them and which frequently include restrictive covenants, including non-compete, non-solicitation, and confidentiality covenants.

51. As of the Petition Date, two (2) former non-insider Employees are owed Severance Obligations on account of terminations effectuated prior to the Petition Date. As of the Petition Date, the Debtors owe approximately \$290,000 in the aggregate on account of the Severance Obligations. Continuing to pay the Severance Obligations in the ordinary course to these former Employees is essential to preserving their non-compete, non-solicitation, and confidentiality obligations to the Debtors under their severance agreements.

52. As mentioned above, Debtors do not request authorization to make any bonus or severance payments to any “insider” as the term is defined in section 101(31) of the Bankruptcy Code. As such, the Debtors submit that section 503(c) of the Bankruptcy Code, applicable to bonus or severance payments to insiders, does not apply to the relief requested herein.

#### **11. Withholding Obligations**

53. The Debtors are required by law to withhold from Employees’ salaries, wages, and other compensation amounts related to federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the “**Withholding Taxes**”) and remit them to the appropriate taxing authorities (collectively, the “**Taxing Authorities**”). The Debtors are also required to make payments from their own funds on account of Social Security and Medicare taxes and to pay, based on a percentage of gross payroll (and subject to state-imposed limits), additional amounts to the Taxing Authorities for, among other things, state and federal unemployment insurance (collectively, the “**Employer Payroll Taxes**” and, together with the Withholding Taxes and the Deferred Payroll Taxes (as defined below), the “**Payroll Tax Obligations**”). The Debtors’ average weekly liabilities for Withholding Taxes and Employer Payroll Taxes total approximately \$1,168,000 and \$393,000, respectively. The Debtors estimate that they will be required to withhold approximately \$3,800,000 on account of prepetition Payroll Tax Obligations as of the Petition Date.

54. In the ordinary course of processing payroll for Employees, the Debtors may also be required by law to withhold from certain Employee's wages amounts for various garnishments, such as tax levies, child support or other court-ordered garnishments (collectively, the "**Garnishments**," and together with the Payroll Tax Obligations, the "**Withholding Obligations**"). Each pay cycle, the Debtors withhold such amounts from the applicable Employees' paychecks and remit them to the appropriate governmental authorities or entities. In the most recent pay period, the Debtors withheld and subsequently remitted approximately \$133,000 on account of Garnishments. The Debtors estimate that they are withholding approximately \$150,000 on account of prepetition Garnishments as of the Petition Date.

55. As of the Petition Date, the Debtors owe approximately \$3,950,000 on account of prepetition Withholding Obligations. The Debtors seek authority to continue collecting and remitting the Withholding Obligations incurred in the ordinary course of business and to remit any prepetition amounts withheld, or otherwise required to be paid, if any.

## **B. Employee Health and Welfare Benefits**

56. In the ordinary course of business, the Debtors offer to eligible Employees Health Plans, Insurance and Welfare Programs, a 401(k) Savings Plan, and a Workers' Compensation Program (each as defined below and collectively, the "**Health and Welfare Benefits**"). As of the Petition Date, the Debtors owe certain Employees approximately \$3,605,000 in the aggregate on account of accrued but unpaid Employee Health and Welfare Benefits. Accordingly, the Debtors are requesting authorization to pay these prepetition amounts and to continue to honor the Employee Health and Welfare Benefits in the ordinary course of business.

### **1. Health Plans**

57. The Debtors offer their U.S. Employees, Represented Employees, and their dependents the opportunity to participate in a number of health benefits plans, including the

Medical Plans, Prescription Drug Plan, Dental Plan, Vision Plan, HSA, FSA, and COBRA (each as defined herein, and collectively, the “**Health Plans**”).

58. **Medical Plans.** Under the Non-Union Employee Medical Plans (as defined below), which are self-funded by the Debtors, participants have four medical benefit options: (a) a traditional PPO plan (the “**Non-Union Employee PPO Plan**”), (b) a consumer-directed health plan with a corresponding savings account (the “**CDHP/HSA Plan 1**”), (c) a consumer-directed health plan with a corresponding savings account (the “**CDHP/HSA Plan 2**”), and (d) a California health maintenance organization plan for Non-Union Employees residing in California (the “**California HMO Plan**”, and, together with the Non-Union Employee PPO Plan, CDHP/HSA Plan 1, and CDHP/HSA Plan 2 the “**Non-Union Employee Medical Plans**”). The Non-Union Employee Medical Plans provides coverage for, among other medical costs, outpatient and inpatient services, and preventative care. Participants pay monthly premiums between \$104 and \$818 depending on the level of coverage selected under their chosen plan. The Debtors pay approximately \$280 per month per eligible Non-Union Employee, including Employee contributions, to provide the medical benefits under the Non-Union Employee Medical Plans.

59. The Debtors have contracted with ClaimDOC, LLC (“**ClaimDOC**”) and HealthSCOPE Benefits Inc. (“**HealthSCOPE**”) and to administer the coverage under the Non-Union Employee PPO Plan, CDHP/HSA Plan 1, and CDHP/HAS Plan 2. With respect to the California HMO Plan, the Debtors have contracted with Kaiser Permanente (“**Kaiser**”).

60. With respect to their Represented Employees, pursuant to the terms of their CBAs, the Debtors contribute to an employee benefit plan under Section 302 of the Taft-Harley Act and the Employee Retirement Income Security Act (the “**Welfare Fund**”). The Debtors pay \$11.00 multiplied by forty hours per week for all Represented Employees. The Debtors also offer

Represented Employees the ability to contribute to a flexible spending account (each, an “**FSA**”), which allows Represented Employees to pay their dependent care and medical expenses on a pre-tax basis (the “**Represented Employee FSA**,” and together with the Welfare Fund, the “**Represented Employee Medical Plan**”). The Debtors pay approximately \$240 per month per eligible Represented Employee, including Represented Employee contributions, to provide the medical benefits under the Represented Employee Medical Plan.

61. As of the Petition Date, the Debtors estimate that their total accrued but unpaid obligations under the Non-Union Employee Medical Plans and the Represented Employee Medical Plan (the “**Medical Plans**”) are approximately \$350,000.

62. **Prescription Drug Plan.** The Debtors also offer prescription drug coverage (“**Prescription Drug Plan**”) through Optum Rx (“**Optum Rx**”) to Non-Union Employees. The Debtors pay approximately \$630,000 per month to OptumRx on account of the Prescription Drug Plan. As of the Petition Date, the Debtors owe approximately \$1,260,000 to Optum Rx on account of Prescription Drug Plan. By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts, if any, incurred on account of the Prescription Drug Plan, and to continue paying the Prescription Drug Plan on a postpetition basis in the ordinary course of business consistent with prepetition practice.

63. **Dental Plan.** The Debtors also offer dental benefits to Employees under their respective health plans. Under the Non-Union Employee Medical Plan, Non-Union Employees have the option to participate in a dental preferred provider option with Delta Dental of Minnesota through a PPO or premier network (the “**Dental Plan**”). Participants pay monthly premiums between \$22 and \$88 depending on the level of their chosen coverage. The Debtors pay, on average, \$50 per month per eligible employee, including Employee contributions, to provide the

dental benefits under the Dental Plan. As of the Petition Date, the Debtors estimate that their total accrued but unpaid obligations under the Dental Plan are approximately \$138,000.

64. **Vision Plan**. The Debtors offer all Employees the option to participate in a vision plan (the “**Vision Plan**”) administered by EyeMed Vision Care, LLC (“**EyeMed**”). Approximately 1,400 Employees are enrolled in the Vision Plan. Non-Union Employees pay monthly premiums of up to \$24 depending on the level of coverage selected under the Vision Plan. The Debtors pay approximately \$24,000 per month, including Employee contributions, to offer the benefits provided under the Vision Plan. As of the Petition Date, the Debtors estimate that their total accrued but unpaid obligations under the Vision Plan are approximately \$48,000.

65. **HSA**. Non-Union Employees who participate in the CDHP/HSA Plan 1 and CDHP/HSA Plan 2 may contribute a portion of their Wages into a health savings account (each, an “**HSA**”), administered by Further, by HealthEquity, Inc. (“**HealthEquity**”) in conjunction with the Debtors’ agreements with ClaimDOC and HealthSCOPE related to the Medical Plans. The Debtors contribute between \$250 and \$1,000 annually to participants’ HSAs depending on plan enrollment and timing (the “**HSA Contributions**”). Employees may make pre-tax contributions (collectively, the “**HSA Deductions**”) to their HSA through payroll deductions to cover reimbursements of amounts paid for qualified medical expenses under the Health Plans and the Vision Plan up to the maximum amount permitted by the Internal Revenue Service. As of the Petition Date, approximately 1,070 Employees contribute to a Debtor-sponsored HSA.

66. As of the Petition Date, the Debtors owe approximately \$180,000 on account of the HSA Contributions. The Debtors do not believe they owe any amounts on account of HSA Deductions made by Employees. The Debtors are requesting authority to pay all prepetition HSA Contributions, to remit any prepetition HSA Deductions, if any, and to continue honoring their



obligations related to the HSA on a postpetition basis in the ordinary course of business consistent with prepetition practices.

67. **FSA.** The Debtors offer eligible Non-Union Employees the ability to contribute a portion of their pretax compensation to flexible spending accounts (“**FSA**”) administered by HealthEquity to pay for certain out-of-pocket health care and dependent care expenses (the “**FSA Program**”), which include the following: (i) a flexible spending account for health care (“**Health Care FSA**”) for participants in the Non-Union Employee PPO Plan to pay qualified health care expenses, (ii) a limited flexible spending account for health care (the “**Limited Health Care FSA**”) for participants in the CDHP/HSA Plans to pay for qualified dental and vision expenses, (iii) a flexible spending account to pay for qualified expenses related to care for dependents while Employees or their spouses/partners work or attend school (the “**Dependent Care FSA**”), and (iv) a flexible spending account for certain transportation expenses (collectively, the “**Commuter Accounts**”).

68. Approximately 300 U.S. Employees participate in the FSA Program. Because the Debtors remit all deductions under the FSA Program to HealthEquity on the same day they are deducted from each Employee’s Wages, the Debtors do not believe they are presently holding any amounts as of the Petition Date that have not yet been remitted on account of any Employee FSA Deductions. By this Motion, the Debtors are requesting authorization to remit all outstanding prepetition amounts owed on account of the FSA programs, and to continue paying for the FSAs on a postpetition basis in the ordinary course of business consistent with prepetition practices.

69. **COBRA.** Under the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”), Employees and their families who are terminated have the right to continue their health benefits (the “**COBRA Benefits**”) from their employer for a limited period of time and

under certain circumstances (the “**COBRA Participants**”). To assist in the administration of the COBRA Benefits, the Debtors utilize the services of Wex Inc. The cost of COBRA is borne by the exiting Employees, except for an administration charge of approximately \$2,000 per month. As of the Petition Date, the Debtors estimate that their total accrued but unpaid obligations to Wex Inc. are approximately \$4,000. The Debtors are seeking authority to (a) to pay any prepetition amounts outstanding on account of the COBRA Benefits, (b) continue to offer the COBRA benefits, including to those Employees who may be terminated after the Petition Date, (c) honor all postpetition obligations related thereto in the ordinary course of business and consistent with past practices, and (d) continue to pay fees related to the COBRA Benefits postpetition in the ordinary course of business and consistent with past practices.

## 2. Insurance and Welfare Programs

70. The Debtors offer their Employees and their dependents the opportunity to participate in a number of insurance programs, including the Life and AD&D Insurance Benefits, Business Travel Accident Insurance, International Medical Insurance, and Disability Benefits (each as defined herein, and collectively, the “**Insurance and Welfare Programs**”).

71. **Life and AD&D Insurance Benefits.** The Debtors offer to U.S. Employees several life and accidental death and dismemberment insurance policies, as explained further below (collectively, the “**Life and AD&D Insurance Benefits**”), which are administered by Standard Insurance Company (“**Standard**”).<sup>15</sup>

72. More specifically, the Debtors provide all Non-Union Employees with basic term life and accidental death and dismemberment insurance (the “**Basic Life and AD&D Insurance**”). The Basic Life and AD&D Insurance is fully funded by the Debtors and provides a maximum

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<sup>15</sup> Coverage is portable, such that retired Employees (“**Retirees**”) can elect to continue the policy once retired.

benefit amount of up to \$50,000. The Debtors pay approximately \$6,000 per month to Standard on account of premiums with respect to the Basic Life and AD&D Insurance. Non-Union Employees can also elect to purchase additional voluntary life and accidental death and dismemberment insurance in increments of \$10,000 with maximum guaranteed coverage of \$500,000 (the “**Voluntary Life and AD&D Insurance**”).

73. Represented Employees receive life insurance at an amount equal to the Represented Employee’s annual base salary, with a maximum of \$200,000 (the “**Represented Employee Basic Life Insurance**”). Represented Employees can also elect to purchase additional voluntary life and accidental death and dismemberment insurance in increments of \$10,000 with maximum guaranteed coverage of \$500,000.

74. As of the Petition Date, the Debtors owe approximately \$12,000 on account of premiums for the Life and AD&D Insurance Benefits. The Debtors are requesting authorization to pay all outstanding prepetition amounts owed on account of the Life and AD&D Insurance Benefits, and to continue honoring their obligations under the Life and AD&D Insurance Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

75. **Business Travel Accident Insurance.** The Debtors provide various benefits to Employees who are injured or experience a medical emergency while traveling on a company-paid and approved business or relocation trip. Specifically, the Debtors contract with Starr Indemnity & Liability Company (“**Starr**”) to provide all Employees with business travel accident insurance (the “**Business Travel Accident Insurance**”), which is provided by the Debtors to their

Employees at no cost and provides coverage of up to a maximum amount of \$2,500,000 per accident.<sup>16</sup>

76. The Debtors pay approximately \$2,000 per year to Starr for expenses related to the Business Travel Accident Insurance. As of the Petition Date, the Debtors owe approximately \$1,000 to Starr on account of premiums under the Business Travel Accident Insurance. By this Motion, the Debtors are requesting authorization to pay all outstanding amounts owed on account of the Business Travel Accident Insurance, and to continue paying the Business Travel Accident Insurance on a postpetition basis in the ordinary course of business consistent with prepetition practices.

77. **International Medical Insurance.** The Debtors contract with Worldwide Insurance Services, LLC (“**Worldwide Insurance**”) to provide all Non-Union Employees, along with India Employees and Canada Employees, with Blue Cross Blue Shield Global Travelers Insurance (the “**International Medical Insurance**”). This provides participating Employees and their certain dependents with supplemental medical and emergency coverage when traveling outside the Employee’s home country for up to 180 consecutive days. The Debtors pay approximately \$19,000 annually to cover all eligible employees. As of the Petition Date, the Debtors owe approximately \$4,000 on account of the International Medical Insurance. The Debtors are requesting authorization to pay all outstanding prepetition amounts incurred on account of the International Medical Insurance, and to continue honoring their obligations on account of the International Medical Insurance on a postpetition basis in the ordinary course of business consistent with prepetition practices.

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<sup>16</sup> The Business Travel Accident Insurance also provides coverage for a spouse and/or child traveling with the Employee on an approved business trip.

78. **Disability Benefits.** The Debtors fund and provide Employees with both short-term disability benefits (the “**Short-Term Disability Benefits**”) and long-term disability benefits, also administered by Standard (the “**Long-Term Disability Benefits**” and, together with the Short-Term Disability Benefits, collectively, the “**Disability Benefits**”). In the event of a short-term disability due to an illness, injury, pregnancy-related condition, or mental disorder, eligible Non-Union Employees may receive between 60% and 100% of their weekly pay depending on their job title. Eligible Employees may continue to receive Short-Term Disability Benefits up to a maximum of ninety (90) days. Eligible Represented Employees may receive 100% of their pay for the first thirty (30) calendar days, and then 75% of pay for up to 180 days in total.

79. Following the period of the Short-Term Disability Benefits, Non-Union Employees are eligible to receive Long-Term Disability Benefits. With respect to the Long-Term Disability Benefits, eligible Non-Union Employees are entitled to receive 60% of their monthly pay, up to a maximum of \$15,000 per month. The Long-Term Disability Benefits begin after an Employee is absent from work for ninety (90) consecutive days following a covered disability and continue until either the Employee is able to return to work or the Employee reaches the established Social Security retirement age. Eligible Represented Employees are entitled to receive up to 60% of eligible pay or the monthly plan maximum, whichever is less.

80. Currently, approximately 700 Employees are receiving Short-Term Disability Benefits through Standard, and 2,125 Employees are receiving Long-Term Disability Benefits through Standard. As of the Petition Date, the Debtors owe approximately \$14,000 on account of the Short-Term Disability Benefits and approximately \$314,000 on account of the Long-Term Disability Benefits. The Debtors are requesting authorization to pay all outstanding prepetition amounts incurred on account of the Disability Benefits, and to continue honoring their obligations

on account of the Disability Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

**C. 401(k) Savings Plans**

81. The Debtors provide all U.S. Employees and certain Represented Employees with the ability to participate in one of two 401(k) plans (together, the “**401(k) Plans**”). The investment advisor for both plans is SageView Advisory Group, LLC (“**SageView Advisory**”). The two 401(k) Plans include: (1) a 401(k) Plan for Non-Union Employees (the “**Non-Union Employee 401(k) Plan**”), and (2) a 401(k) Plan for Represented Employees (the “**Represented Employee 401(k) Plan**”). Empower Retirement, LLC (“**Empower Brokerage**”) serves as the 401(k) Plans record-keeper. Approximately \$1,692,000 per month in the aggregate is deducted from Employees’ pay on account of the Employees’ contributions to the 401(k) Plans (the “**401(k) Deductions**”).

82. The Debtors also provide certain matching contributions for the 401(k) Plans. Specifically, for the Non-Union Employee 401(k) Plan, Debtor C1 Inc. matches \$0.35 per \$1 of the first 10% contributed by an Employee (the “**401(k) Non-Union Matching Contributions**”). The 401(k) Non-Union Matching Contributions fully vest upon five years of service with C1.<sup>17</sup>

83. Similarly, the Debtors also provide matching contributions for the Represented Employee 401(k) Plan (the “**401(k) Represented Matching Contributions**” and, together with the 401(k) Non-Union Matching Contributions, the “**401(k) Matching Contributions**”). The Debtors contribute \$0.75 for every \$1 contributed by a Represented Employee up to 6% of such Represented Employee’s gross annual earnings.

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<sup>17</sup> The 401(k) Non-Union Matching Contributions vest at 20% after one year of service, 40% after two years of service, 60% after three years of service, 80% after four years of service; and 100% upon five years of service.

84. As of the Petition Date, the Debtors owe approximately \$1,280,000 on account of the 401(k) Matching Contributions. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the 401(k) Plan, including 401(k) Matching Contributions, to remit any unpaid prepetition 401(k) Deductions, and to continue honoring their obligations on account of the 401(k) Plan and 401(k) Matching Contributions on a postpetition basis in the ordinary course of business consistent with prepetition practices.

**D. Workers' Compensation Program**

85. The Debtors maintain workers' compensation insurance at the level required by statute for each state in which the Debtors conduct business (the "**Workers' Compensation Program**") to satisfy any claims made by an Employee for workers' compensation in accordance with applicable state law requirements (each, a "**Workers' Compensation Claim**"). The Debtors maintain a workers' compensation insurance policy (the "**Workers' Compensation Policy**") administered by Chubb Indemnity Insurance Company ("**Chubb Insurance**"), for which Lockton Companies LLC ("**Lockton**") serves as broker.<sup>18</sup> The Workers' Compensation Policy provides up to \$1.0 million in coverage per incident for each Workers' Compensation Claim. When a claim is made against the Workers' Compensation Policy, Chubb Insurance administers the claim and makes any payments in connection therewith. Chubb Insurance conducts a "true-up" at the end of every year and refunds any prepayment overage or bills the Debtors for any shortage.

86. For the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with their contractual obligations and applicable law, the Debtors

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<sup>18</sup> Further information regarding the Debtors' insurance providers, brokers, and policies is set forth in *the Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Maintain Insurance Coverage and Surety Bonds and Pay Related Prepetition Obligations, (B) Renew, Supplement, Modify, or Purchase Insurance Coverage and Surety Bonds, and (II) Granting Related Relief* (the "**Insurance Motion**"), filed concurrently herewith.

must continue to assess, determine, and adjudicate claims brought under the Workers' Compensation Program during these Chapter 11 Cases. In addition, to the extent any Employees assert claims under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the Workers' Compensation Program. This required modification of the automatic stay pertains solely to claims under the Workers' Compensation Program. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that disrupt the reorganization process.

87. As of the Petition Date, there are approximately three pending Workers' Compensation Claims under the Workers' Compensation Program, with related total future reserves of approximately \$11,000. The Debtors do not owe any prepetition amounts account of Workers' Compensation Claims under the Workers' Compensation Program. In addition, the Debtors must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers' Compensation Program without regard to whether such liabilities were outstanding before the Petition Date to ensure that the Debtors comply with applicable workers' compensation laws and requirements.<sup>19</sup> In order to continue the Workers' Compensation Program in the ordinary course, the Debtors are requesting authority to pay any outstanding prepetition amounts related thereto, including any true-ups owed, and to continue to honor their obligations under the Workers' Compensation Program as they come due on a postpetition basis consistent with past practice.

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<sup>19</sup> The Debtors' Workers' Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. The Debtors request authority to continue the Workers' Compensation Program postpetition in the ordinary course, including making any changes to current policy and practices that become necessary under applicable law.



#### IV. Other Employee Benefits

88. In the ordinary course of business, the Debtors offer various other employee benefits and programs to certain of their Employees, including Optional Employee-Paid Benefits, Wellness Programs, and the Airvet Program (each as defined below and collectively, the “**Other Employee Benefits**”). As of the Petition Date, the Debtors owe approximately \$104,000 in the aggregate on account of accrued but unpaid Other Employee Benefits. The Debtors request authorization to pay all outstanding prepetition amounts owed on account of the Other Employee Benefits and to continue to honor the Other Employee Benefits postpetition in the ordinary course of business.

##### A. Optional Employee Benefits

89. The Debtors provide certain of their Employees with access to supplemental Employee-paid benefits (collectively, the “**Optional Employee Benefits**”), described in detail below.

90. **Supplemental Insurance Plans.** The Debtors provide their Employees with supplemental life, supplemental accidental death and dismemberment, critical illness, accident, and hospital indemnity insurance through Standard (collectively, the “**Supplemental Insurance Plans**”).<sup>20</sup> The Debtors deduct and remit approximately \$38,000 per month from participating Employees’ Compensation on account of the Supplemental Insurance Plans. As of the Petition Date, the Debtors owe approximately \$75,000 on account of the Supplemental Insurance Plans, which amounts will be deducted from participating Employee’s pay.

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<sup>20</sup> The Debtors also offer Employees the opportunity to purchase life and accidental death and dismemberment insurance for their spouse/partner and qualifying dependent children in varying amounts that are also fully funded by the Employees.

91. **Legal Services Plan.** The Debtors also provide their Employees with a legal services plan to assist Employees with procuring affordable legal advice involving a variety of matters, including family matters, estate planning, credit protection, tax matters, real estate, and driving matters, which is administered by Pre-Paid Legal Services, Inc. d/b/a LegalShield (the “**Legal Services Plan**”). The Debtors deduct and remit approximately \$15,000 per month from participating Employees’ Compensation on account of the Legal Services Plan. As of the Petition Date, the Debtors owe approximately \$29,000 on account of the Legal Services Plan, which amounts will be deducted from participating Employee’s pay.

92. The Debtors believe that the Optional Employee-Paid Benefits generally are held in trust by the Debtors and are not property of their estates. As such, the Debtors do not believe they need authority to remit such payments to the appropriate third parties. However, out of an abundance of caution, the Debtors request authorization to remit all outstanding prepetition amounts incurred on account of the Optional Employee-Paid Benefits, and to continue paying the Optional Employee-Paid Benefits on a postpetition basis in the ordinary course of business consistent with prepetition practices.

## **B. Wellness Programs**

93. The Debtors contract with Omada Health Inc. (“**Omada Health**”) and Teladoc Health, Inc. (“**Teladoc**”) to provide Employees with lifestyle change programs as well as cost-efficient ways to seek medical care (the “**Wellness Programs**”). The Wellness Programs are partially funded by the Employees themselves, depending on the services chosen by the Employees. As described in more detail below, payments on account of these programs are bundled with the Medical Plans.

94. **Employee Assistance Program.** The Debtors also offer certain Employees the services of Health Advocate, which provides support for Employees’ wellbeing, including mental,

emotional and physical needs at no cost to the employee (the “**Employee Assistance Program**”). The Employee Assistance Program also includes six assessment and counseling sessions. The fees for the services of Health Advocate are bundled with payments the Debtors make to Standard, which is discussed further below.

### C. **Airvet Program**

95. The Debtors contract with Airvet, Inc. to provide Employees free access to veterinary services for family pets (the “**Airvet Program**”). The Debtors pay approximately \$30,000 annually for the Airvet Program. The Debtors do not believe they owe any prepetition amounts on account of the Airvet Program. The Debtors request authorization to pay all outstanding payments owed in connection with Airvet Program, and to continue honoring their obligations to Airvet Program on a postpetition basis in the ordinary course of business consistent with prepetition practices.

## V. **Administrator Fees**

96. As part of the effective and efficient administration of the Compensation and Benefits, the Debtors use certain third-party administrators to administer the various programs under Compensation and Benefits (collectively, the “**Administrators**”), as set forth in detail below. As of the Petition Date, the Debtors owe the Administrators approximately \$597,000 in the aggregate in unpaid fees (the “**Administrator Fees**”). By this Motion, the Debtors are requesting authority to pay all prepetition amounts related to the Administrator Fees and to continue to pay the Administrator Fees postpetition in the ordinary course of business.

### A. **Payroll Fees**

97. **Payroll Service Fees.** The Debtors utilize the services of ADP and PEO Canada to provide payroll processing services, payroll tax calculations and filings, 401(k) contribution and matching calculations, garnishment support and filings, check preparation, report writing support,

and 1095-C form processing, as necessary (collectively, the “**Payroll Services**”). Additionally, PEO Canada pays out all premiums and associated costs for Benefits specifically for Canada Employees, which the Debtors fund. ADP and PEO Canada calculate the amounts owed for certain Withholding Obligations for each applicable payroll period. Prior to each respective payday, the Debtors transfer to ADP and PEO Canada the amounts necessary to satisfy the Employee Wages, Payroll Taxes, and garnishment obligations. ADP and PEO Canada then process and transfer the Employee Wages to each Employee by direct deposit into the Employees’ bank account or by issuing checks for Employees who have not elected direct deposit.<sup>21</sup> ADP and PEO Canada also remit the Payroll Taxes and garnishments to the applicable taxing authorities and third-party payees, respectively. The Debtors calculate and remit amounts owed on account of certain Employee Health and Welfare Benefits directly to the applicable third-party payees.

98. The Debtors pay ADP approximately \$48,000 in Administrator Fees per month in the aggregate. The Debtors pay PEO Canada approximately \$6,000 in Administrator Fees per month in the aggregate. The Debtors also pay PEO Canada \$315,000 for its payment of the premiums and associated costs with Benefits for Canada Employees. The Debtors owe approximately \$108,000 to ADP and PEO Canada on account of the Payroll Services as of the Petition Date. The Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Payroll Services, and to continue to pay the Payroll Services on a postpetition basis in the ordinary course of business consistent with prepetition practices.

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<sup>21</sup> ADP will also process payments and issue Paychecks: (a) to newly hired Employees who have opted for direct deposit but whose accounts have not yet been verified through a pre-note transaction; (b) when state law requires the Debtors to pay outstanding owed amounts, including the Employee’s wages or salary, immediately upon termination; and (c) if there was an error calculating or entering the Employee’s time and the Employee cannot wait for that error to be remedied during the next pay cycle. Accordingly, the Debtors seek authority to continue to issue Paychecks, as necessary, on a postpetition basis in the ordinary course of business and consistent with past practices.

**B. Benefits Administrator Fees**

99. **Standard Administrator Fees.** The Debtors utilize Standard to administer claims for Life and AD&D Insurance Benefits, FMLA claims, and the Employee Assistance Program. The Debtors pay Standard certain Administrator Fees in the amount of approximately \$179,000 per month (the “**Standard Administrator Fees**”). As of the Petition Date, the Debtors owe Standard approximately \$370,000 on account of the Standard Administrator Fees. By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts, if any, incurred on account of the Standard Administrator Fees, and to continue paying the Standard Administrator Fees on a postpetition basis in the ordinary course of business consistent with prepetition practice.

100. **Medical Plan Fees.** In addition, the Debtors have contracted with HealthSCOPE, ClaimDOC, and Kaiser to administer coverage under the Debtors’ Health Plan. The payments to ClaimDOC and HealthSCOPE are bundled with the payments made under the Health Plans, while Kaiser’s fees are bundled with the monthly premiums the Debtors pay (collectively, the “**Medical Plan Fees**”). The fees are not invoiced separately to the Debtors

101. **Vision Plan Fees.** The Debtors also contract with EyeMed to administer coverage under the Vision Plan. The Debtors pay a monthly fee to EyeMed to administer the Vision Plan (the “**Vision Plan Fees**”). As of the Petition Date, the Debtors owe approximately \$52,000 in Vision Plan Fees. By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts, if any, incurred on account of the Vision Plan Fees, and to continue paying the Vision Plan Fees on a postpetition basis in the ordinary course of business consistent with prepetition practice.

102. **Prescription Drug Plan Fees.** The Debtors contract with OptumRx to administer the Prescription Drug Plan. The fees owed to OptumRx to administer the Prescription Drug Plan

are bundled with the payments made under the Prescription Drug Plan and are not invoiced separately to the Debtors.

103. **Dental Plan Fees.** The Debtors contract with Delta Dental of Minnesota to administer coverage under the Dental Plan (the “**Dental Plan Fees**”). As of the Petition Date the Debtors owe approximately \$16,000 to Delta Dental of Minnesota on account of the Dental Plan Fees. By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts, if any, incurred on account of the Dental Plan Fees, and to continue paying the Dental Plan Fees on a postpetition basis in the ordinary course of business consistent with prepetition practice.

104. **HSA and FSA Administrator Fees.** The Debtors contract with HealthEquity to administer the HSA and FSA programs for Employees. The Debtors pay a monthly fee per participant. With respect to the HSA program, the Debtors pay \$1 per month per participant. With respect to the FSA program, the Debtors pay \$4.50 per month per participant. As of the Petition Date, the Debtors owe approximately \$3,000 to HealthEquity on account of the HSA and FSA programs (the “**HSA and FSA Administrator Fees**”). By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts, if any, incurred on account of the HSA and FSA Administrator Fees, and to continue paying the HSA and FSA Administrator Fees on a postpetition basis in the ordinary course of business consistent with prepetition practice.

105. **401(k) Plans Fees.** The Debtors contract with SageView to act as the investment advisor for the 401(k) Plans. In exchange for these services, the Debtors pay approximately \$13,000 annually to SageView Advisory Investment. As of the Petition Date, the Debtors owe approximately \$3,000 to SageView Advisory Investment on account of the 401(k) Plans. While the Debtors also utilize the services of Empower Brokerage, all fees are paid by the Employees participating in the respective 401(k) Plans on a quarterly basis.

106. **Wex Fees.** The Debtors also contract with Wex, Inc. to administer COBRA payments for the Debtors under the Health Plans. Wex, Inc. provides the Debtors with individualized employee benefit administration, as well as eligibility verification and related administrative services. In exchange for these services, the Debtors pay approximately \$4,500 monthly through an automated clearing house (ACH) transfer (the “**Wex Fees**”). As of the Petition Date, the Debtors owe approximately \$35,000 on account of the Wex Fees. By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Wex Fees, and to continue paying the Wex Fees on a postpetition basis in the ordinary course of business consistent with prepetition practice.

107. **Workers’ Compensation Program Fees.** The Debtors contract with Chubb Insurance to provide coverage under the Workers’ Compensation Program, for which Lockton Co. (“**Lockton**”) serves as the broker. The Debtors’ payments to Lockton for administering the Workers’ Compensation Program are explained in detail in the Insurance Motion and relief to pay Lockton’s fees is sought under the Insurance Motion, filed contemporaneously herewith.

108. Pursuant to state law, the Debtors are required to maintain separate coverage in North Dakota, Ohio, Washington, and Wyoming for the Workers’ Compensation Program. The Debtors pay, in the aggregate, an average monthly fee of approximately \$5,000 on account of the State Specific Programs (the “**Workers’ Compensation Program Fees**”). By this Motion, the Debtors request authorization to pay all outstanding prepetition amounts, if any, incurred on account of the Workers’ Compensation Program Fees, and to continue paying the Workers’ Compensation Program Fees on a postpetition basis in the ordinary course of business consistent with prepetition practice.

109. **International Medical Insurance Fees.** The Debtors contract with Worldwide Insurance as the administrator of the International Medical Insurance program. The fees owed to Worldwide Insurance to administer the International Medical Insurance are bundled with the payments made under the International Medical Insurance program and are not invoiced separately to the Debtors.

110. **Wellness Program Fees.** The Debtors contract with Omada Health and Teladoc to provide services to Employees under the Wellness Program. With respect to Omada Health, the Debtors are billed per participant as a claim under the Health Plans and are not invoiced separately. The fees owed to Teladoc are bundled into payments made under the Medical Plans and are not invoiced separately to the Debtors.

**C. Other Administrator Fees<sup>22</sup>**

111. The Debtors also use the services of Lockton Co. as a broker in administering various programs under the Health Plans, the Insurance and Welfare Programs, and the Other Employee Benefits (the “**Other Administrator Fees**”). On average, the Debtors pay approximately \$2,500 per month on account of the Other Administrator Fees. As of the Petition Date, the Debtors owe approximately \$5,000 on account of the Other Administrator Fees.

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<sup>22</sup> To the extent the Debtors have inadvertently omitted any other similar postretirement employee benefits payable to Retirees that may be deemed to constitute an “employee benefit” for purposes of ERISA, the Debtors request authority to pay any prepetition amounts related thereto and to continue to honor their obligations under any such program in the ordinary course of business as if set forth fully herein.



**Basis for Relief**

**I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits.**

**A. Certain Compensation and Benefits Are Entitled to Priority Treatment.**

112. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Compensation and Benefits owed to the Employees to priority treatment. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code designates wages, salaries, commissions, vacation, severance, sick leave, and contributions to employee benefits plans as administrative priority claims up to a limit of \$15,150 per individual. Because such claims are administrative priority claims, the Debtors are required to pay them in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment in full of certain allowed unsecured claims for (a) wages, salaries, or commissions, including severance, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). Thus, granting the relief requested herein with respect to payment of certain amounts up to the priority cap will likely only affect the timing of such payments, and should not negatively affect recoveries for general unsecured creditors. Payment of the Compensation and Benefits at this time enhances value for the benefit of all interested parties as the continued operation of the Debtors' business relies on the employees, without whom the Debtors would have to shut down operations and the enterprise value of their business would greatly decline. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) ("The need to pay [employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.").

**B. Payment of Certain Prepetition Employee Obligations Is Required by Law.**

113. The Debtors are also requesting authority to remit Withholdings to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' compensation. Indeed, certain Withholdings are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' compensation on another party's behalf. *See* 11 U.S.C. § 541(b)(7) (providing that amounts withheld by employer from wages of employees for payment as contributions to certain employee benefit or health insurance plans are not property of the estate); 11 U.S.C. § 541(d) (providing that property in which debtor holds only legal title and not equitable interest does not become property of the debtor's estate to the extent of any equitable interest not held by the debtor). Further, certain federal and state laws require the Debtors to withhold certain tax payments from Employees' compensation and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also Begier v. I.R.S.*, 496 U.S. 53, 59 (1990) (holding that "[b]ecause the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate'") (citation omitted); *see also In re Chabrand*, 301 B.R. 468, 475–81 (Bankr. S.D. Tex. 2003) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Withholdings may not be property of the Debtors' estates, the Debtors request authorization to remit, or cause to be remitted, the Withholdings to the proper parties in the ordinary course of business.

114. Courts in this district have routinely approved requests for authorization to remit Withholdings to the proper parties in the ordinary course of business. *See In re Robertshaw US Holding Corp.*, Case No. 24-90052 (CML) (Bankr. S.D. Tex. Feb. 15, 2024) [Docket No. 104]; *see also In re Hornblower Holdings LLC*, Case No. 24-90061 (Bankr. S.D. Tex. Feb. 23, 2024)

[Docket No. 109]; *see also In re WESCO Aircraft Holdings, Inc.*, Case No. 23-90611 (Bankr. S.D. Tex. Jun. 01, 2023) [Docket No. 117]; *see also In re Party City Holdco Inc.*, Case No. 23-90005 (Bankr. S.D. Tex. Jan. 18, 2023) [Docket No. 106].

## **II. Payment of the Employee Compensation and Benefits Is Warranted Under Sections 105(a), 363(b), and 1107 of the Bankruptcy Code.**

115. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g., Inst’l Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or a 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 In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale.”); *In re Terrace Gardens Park P’ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989).

116. Further, section 105(a) of the Bankruptcy Code provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code, pursuant to the “doctrine of necessity.” 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical claims not explicitly authorized by the

Bankruptcy Code and further supports the relief requested herein. *See In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (recognizing the “doctrine of necessity”).

117. Additionally, section 1107 of the Bankruptcy Code provides that a debtor in possession has, among other things, an “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *CoServ*, 273 B.R. at 497) (holding that sections 105 and 1107 of the Bankruptcy Code provide authority for a debtor-in-possession to pay prepetition claims); *see also In re Tusa-Expo Holdings, Inc.*, Case No. 08-45057-DML-11, 2008 WL 4857954, at \*1 (Bankr. N.D. Tex. Nov. 7, 2008); *CEI Roofing*, 315 B.R. at 56; *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003).

118. Payment of the Compensation and Benefits is warranted under this authority and the facts of these Chapter 11 Cases. The Debtors believe that the vast majority of the Employees and Contractors rely exclusively on their compensation and benefits to pay their daily living expenses and support their families. Thus, the Employees and Contractors will be exposed to significant financial difficulties if the Debtors are not permitted to honor such obligations. This relief is necessary and appropriate under the circumstances, and the estates would likely suffer irreparable harm if the Employees and Contractors do not receive their Compensation and Benefits in a timely fashion.

119. Moreover, the Employees and Contractors provide the Debtors with services necessary to conduct the Debtors’ business, and the Debtors believe that, absent the payment of the Compensation and Benefits owed to the Employees, the Debtors may experience turnover and instability at this critical time. The Debtors believe that without these payments, the Employees and Contractors may become demoralized and unproductive because of the potential significant

financial strain and other hardships they may face, causing them to elect to seek alternative employment opportunities. Additionally, the value of the Debtors' business is tied to their Employees and Contractors, whom cannot be replaced without significant efforts—effort that may not be successful given the potential overhang and stigma associated with being a debtor in possession. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. Payment of the Compensation and Benefits obligations is thus a necessary and critical element of the Debtors' efforts to preserve value and will provide the Debtors the greatest likelihood of retention of their employees as the Debtors seek to operate their businesses in these Chapter 11 Cases.

120. Accordingly, the Debtors request that the Court authorize the Debtors to pay the prepetition and postpetition obligations specified herein and to continue the Compensation and Benefits in the ordinary course of business, consistent with past practice.

121. Courts in this district and others have frequently approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those described herein as a routine matter in similar cases. *See, e.g., In re Talen Energy Supply, LLC*, Case No. 22-90054 (MI) (Bankr. S.D. Tex. May 10, 2022) [Docket No. 118]; *In re Basic Energy Services, Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Aug. 17, 2021) [Docket No. 44]; *In re CBL & Associates Properties, Inc., et al.*, Case No. 20-35226 (DRJ) (Bankr. S.D. Tex. Nov. 2, 2020) [Docket No. 69]; *In re Fieldwood Energy LLC*, Case No. 20-33948 (MI) (Bankr.S.D. Tex. Aug. 4, 2020) [Docket No. 51].

### **III. A Limited Waiver of the Automatic Stay for the Debtors' Workers' Compensation Program Is Appropriate in this Case.**

122. Section 362(a)(1) of the Bankruptcy Code operates to stay:

[T]he 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 . . .

Section 362(d) 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.” 11 U.S.C. § 362(d)(1).

123. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with their Workers’ Compensation Claims in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the Workers’ Compensation Claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees who are critical to maintain the value of the Debtors’ estates. Such departures could cause a severe disruption in the Debtors’ business to the detriment of all stakeholders. In addition, if the Debtors fail to maintain the Workers’ Compensation Program, state laws may prohibit the Debtors from operating in those states. The Debtors request a limited waiver of the automatic stay for purposes of allowing the Debtors’ Workers’ Compensation Program to proceed.

124. Courts in this district and others have frequently approved a limited waiver of the automatic stay for purposes of allowing the Debtors’ Workers’ Compensation Program to proceed. *See In re Gulfport Energy Corp.*, Case No. 20-35562 (Bankr. S.D. Tex. Nov. 16, 2020) [Docket No. 119]; *see also In re Hornblower Holdings LLC*, Case No. 24-90061 (Bankr. S.D. Tex. Feb. 23, 2024) [Docket No. 109]; *see also In re Party City Holdco Inc.*, Case No. 23-90005 (Bankr. S.D. Tex. Jan. 18, 2023) [Docket No. 106]; *see also In re Orbital Infrastructure Group, Inc.*, Case No. 23-90763 (Bankr. S.D. Tex. Aug. 25, 2023) [Docket No. 45].

**Emergency Consideration**

125. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors’ operations. Failure to receive the requested relief during the first twenty-one days of these Chapter 11 Cases would severely disrupt the Debtors’ and jeopardize these cases.

126. Further, as set forth in the Motion, absent expedited relief, the Debtors may lose key employees and customers that are essential to their business and to a successful restructuring. For these reasons, the Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

**Processing of Check and Electronic Funds Transfers Should Be Authorized**

127. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected access to cash collateral and debtor in possession financing. 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 relief requested herein. There is minimal risk that checks or wire transfer requests that the Court has not authorized will be honored inadvertently. The Debtors request that the Court authorize and direct 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.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

128. To implement the foregoing successfully, and given the nature of the relief requested herein, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

129. Nothing contained in this Motion nor any actions taken pursuant to the relief requested 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 a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) an impairment or waiver of the Debtors' or any other party in interest's rights to dispute the amount of, basis for, or validity of any claim against, or interest in, any Debtor, its property, or its estate on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a waiver of any claim or cause of action that may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; (h) an implication or admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance of property of the Debtors' estates; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to this Motion are valid and the rights of all parties in



interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) an impairment or waiver of any claims or causes of action that may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute the extent, perfection, priority, validity, or amount of such claim.

### **Notice**

130. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition ABL Agent; (d) counsel to the Prepetition First Lien Term Loan Agent; (e) counsel to the Prepetition KL Notes Agent; (f) counsel to the Prepetition PVKG Notes Agent; (g) counsel to the Prepetition Second Lien Agent; (h) counsel to the First Lien Ad Hoc Group; (i) counsel to the Second Lien Ad Hoc Group; (j) the United States Attorney's Office for the Southern District of Texas; (k) the state attorneys general for states in which the Debtors conduct business; (l) the Internal Revenue Service; (m) the United States Securities and Exchange Commission; (n) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (o) other governmental agencies having a regulatory or statutory interest in these cases; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Local Rule 9013-1(d). In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

*[Remainder of Page Intentionally Left Blank]*

The Debtors respectfully request that the Court enter the Proposed Order granting the relief requested in this Motion and such other and further relief as the Court deems appropriate under the circumstances.

Dated: April 4, 2024  
Houston, Texas

**WHITE & CASE LLP**

/s/ Charles R. Koster

Charles R. Koster (Texas Bar No. 24128278)

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Certificate of Accuracy**

I certify that the foregoing statements are true and accurate to the best of my knowledge.  
This statement is being made pursuant to Local Rule 9013-1(i).

/s/ Charles R. Koster  
Charles R. Koster

**Certificate of Service**

I certify that on April 4, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster  
Charles R. Koster

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

In re:  CONVERGEONE HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>  Debtors.	) ) ) ) ) ) )	Chapter 11  Case No. 24-90194 (CML)  (Jointly Administered) <b>Re: Docket No. ____</b>
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**ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) PAY PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS,  
AND OTHER COMPENSATION, AND (B) CONTINUE EMPLOYEE BENEFITS  
AND INCENTIVE PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), pursuant to sections 105(a), 363(b), 503(c)(1), and 507 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(a), (i) authorizing the Debtors to pay the Compensation and Benefits, including (a) paying prepetition wages, salaries, compensation, reimbursable expenses, incentives, and certain severance obligations as well as remitting amounts withheld from the Compensation to applicable taxing authorities and applicable third party benefits administrators, and (b) authorizing the Debtors to continue Employee Health and Welfare Benefits and Other

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<sup>1</sup> The Debtors in these Chapter 11 Cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: AAA Network Solutions, Inc. (7602); ConvergeOne Dedicated Services, LLC (3323); ConvergeOne Government Solutions, LLC (7538); ConvergeOne Holdings, Inc. (9427); ConvergeOne Managed Services, LLC (6277); ConvergeOne Systems Integration, Inc. (9098); ConvergeOne Technology Utilities, Inc. (6466); ConvergeOne Texas, LLC (5063); ConvergeOne Unified Technology Solutions, Inc. (2412); ConvergeOne, Inc. (3228); Integration Partners Corporation (7289); NetSource Communications Inc. (6228); NuAge Experts LLC (8150); Providea Conferencing, LLC (7448); PVKG Intermediate Holdings Inc. (4875); Silent IT, LLC (7730); and WrightCore, Inc. (3654). The Debtors’ mailing address is 10900 Nesbitt Avenue South, Bloomington, Minnesota 55437.

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

Employee Benefits in the ordinary course of business, including payment of certain prepetition obligations related thereto, and (ii) granting related relief, in each case as more fully set forth in the Motion, and subject to the terms of this Order; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors, in consultation with the First Lien Ad Hoc Group, are authorized to continue and/or modify their Compensation and Benefits programs on a postpetition basis in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors' discretion, to pay and honor all prepetition and postpetition amounts related thereto (either directly or to third parties for payment or remittance, as applicable).

2. The Debtors, in consultation with the First Lien Ad Hoc Group, are authorized to continue, administer, modify, change, and/or discontinue the Compensation and Benefits programs

and to implement new programs, policies, and benefits, in the ordinary course of business during these Chapter 11 Cases and without need for further Court approval, subject to applicable law.

3. The Debtors are authorized, in their sole discretion, to transmit any deductions previously withheld or deducted from the Employee payroll on account of the Benefits to the appropriate third-party recipient, in each case in the ordinary course of business.

4. The Debtors are authorized to pay any and all Compensation and Withholding Obligations, including, but not limited to, all local, state, and federal withholding and payroll-related taxes, social security taxes, Medicare taxes, or similar taxes related to the Benefits Program, whether withheld from Employees' 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. The Debtors are authorized to continue to pay Severance Obligations on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder, as they become due and pay amounts owed as of the Petition Date to non-insider Employees; *provided* that nothing in this Order shall be deemed to authorize the payment of any amounts to insiders under the Severance Obligations. To the extent the Debtors seek to pay any amounts to insiders under the Severance Obligations, the Debtors, in consultation with the First Lien Ad Hoc Group, shall file a separate motion seeking Court approval to do so.

6. The Debtors are authorized to continue to pay the Non-Insider Retention Awards on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder, as they become due and pay amounts owed as of the Petition Date to non-insider Employees; *provided* that nothing in this Order shall be deemed to authorize the payment of any amounts to insiders under the Non-Insider Retention Awards. To the extent the Debtors, in consultation with the First Lien Ad Hoc Group, seek to pay any amounts to insiders under the Non-

Insider Retention Awards, the Debtors shall file a separate motion seeking Court approval to do so.

7. The Debtors are authorized to continue the Employee Health and Welfare Benefits 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 and pay amounts owed as of the Petition Date.

8. The Debtors are authorized to continue Other Employee Benefits on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder as they become due and pay amounts owed as of the Petition Date.

9. The Debtors are authorized to continue to pay Administrator Fees on a postpetition basis in the ordinary course of business, and in each case to pay any accrued amounts thereunder as they become due and pay amounts owed as of the Petition Date.

10. The Debtors shall maintain a matrix/schedule of any amounts paid related to the Compensation and Benefits, made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; (c) the category or type of payment, as further described and classified 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, the First Lien Ad Hoc Group, and any statutory committee appointed in these Chapter 11 Cases every 30 days beginning upon entry of this Order.

11. Before honoring any prepetition Compensation and Benefits, including without limitation Severance Obligations, that exceed the priority amounts set forth in sections 507(a)(4) and (a)(5) of the Bankruptcy Code for any Employees and Contractors, the Debtors shall provide twenty-one (21) days advance notice to the U.S. Trustee, the First Lien Ad Hoc Group, the Second Lien Ad Hoc Group, and any statutory committee appointed in these Chapter 11 Cases through a

summary report that identifies (a) the title of the claimant, (b) the amount and category of the payment to such claimant, and (c) the proposed payment date. Upon expiration of the notice period, the Debtors shall be authorized to pay the prepetition Compensation and Benefits set forth in the notice unless any notice party has objected to such payment in writing to the Debtors (email being sufficient). To the extent that the parties are unable to resolve any such objection within five (5) business days of receipt, the applicable notice party shall file a written objection with the Court.

12. Pursuant to section 362(d) of the Bankruptcy Code: (a) Employees are authorized to proceed with their Workers' Compensation Claims in the appropriate judicial or administrative forum under the Workers' Compensation Programs, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to Workers' Compensation Claims and any such claims must be pursued in accordance with the Workers' Compensation Claims. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the Workers' Compensation Program, including with regard to any policy limits or caps.

13. Nothing in this Order authorizes any payment subject to section 503(c) of the Bankruptcy Code, and nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

14. Notwithstanding anything to the contrary contained in the Motion or in this Order, the Debtors shall provide reasonable advance notice to the First Lien Ad Hoc Group and the Second Lien Ad Hoc Group of any material changes or modifications to (i) the Compensation and



Benefits programs and policies as such were in effect as of the Petition Date and (ii) the Debtors' historical policies and practices with respect to any action taken or proposed to be taken hereunder, and the Debtors, in consultation with the First Lien Ad hoc Group, shall seek Court approval, on notice, of any such material changes or modifications to the extent required under the Bankruptcy Code.

15. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of cash collateral and/or any postpetition debtor-in-possession financing (such orders, collectively, the "**DIP Order**"), and any budgets in connection therewith governing any such use of cash collateral and/or postpetition debtor-in-possession financing. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

16. Nothing in the Motion or this Order waives or modifies the requirements of the RSA, including, without limitation, the consent and consultation rights contained therein.

17. The Debtors are authorized to execute and deliver such documents and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

18. 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 and directed 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.

19. The Debtors are authorized to issue postpetition checks or effect postpetition fund transfer requests in replacement of any checks or fund transfer requests that are inadvertently dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

20. Nothing contained in the Motion or this Order nor any actions taken pursuant to the relief granted 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 a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) an impairment or waiver of the Debtors' or any other party in interest's rights to dispute the amount of, basis for, or validity of any claim against, or interest in, any Debtor, its property, or its estate on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any claim is of a type specified or defined in the Motion or this Order granting the relief requested by the Motion, or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a waiver of any claim or cause of action that may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease; (g) a waiver or limitation of the Debtors,' or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; (h) an implication or admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance of property of the Debtors' estates; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to this Order are valid and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all

such liens; or (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) an impairment or waiver of any claims or causes of action that may exist against any entity under the Bankruptcy Code or any other applicable law. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute the extent, perfection, priority, validity, or amount of such claim.

21. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

22. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Houston, Texas  
Dated: \_\_\_\_\_, 2024

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UNITED STATES BANKRUPTCY JUDGE