COLE SCHOTZ P.C.
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602-0800
(201) 489-3000
(201) 489-1536 Facsimile
Michael D. Sirota, Esq.
msirota@coleschotz.com
Ryan T. Jareck, Esq.
rjareck@coleschotz.com
Matteo Percontino, Esq.
mpercontino@coleschotz.com
Proposed Counsel to Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
SAM ASH MUSIC CORPORATION, *et al.*	Case No. 24-14727 (SLM)
Debtors.[1]	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION EMPLOYEE WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EMPLOYEE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). The location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

The above-captioned debtors and debtors in possession (collectively, the "Debtors")[2] respectfully state as follows in support of this motion (this "Motion"):

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the "Interim Order" and "Final Order", respectively): (i) authorizing the Debtors to (a) pay prepetition employee wages, salaries, other compensation, and reimbursable employee expenses, and (b) continue employee benefits programs; and (ii) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately 21 days after the commencement of these chapter 11 cases to consider entry of the Final Order.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of New Jersey (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference of the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

[2] A detailed description of the Debtors, their business, and the facts and circumstances supporting these chapter 11 cases is set forth in the *Declaration of Jordan Meyers, Chief Restructuring Officer of the Debtors, in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

4. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of the Bankruptcy Code, rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the "Local Rules").

Background

5. As set forth in the First Day Declaration, the Debtors are "The World's Favorite Music Store®" having served thousands of musicians since 1924 as a family-owned manufacturer and specialty retailer of musical instruments and related equipment. As of the date hereof, the Debtors operate 42 stores and 4 distribution centers throughout the United States. The Debtors also operate an ecommerce business that primarily conducts sales domestically. Further, the Debtors operate a wholesale business, Samson, which designs, markets, distributes, and sells products to musical instrument and consumer electronic retailers, distributors, and sound contractors both domestically and internationally. The Debtors are headquartered in Hicksville, New York and currently employ approximately 830 employees.

6. On the date hereof (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing 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 filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

The Debtors' Work Force

7. As of the Petition Date, the Debtors employ a total of approximately 830 employees (collectively, the "Employees"), consisting of full-time, part-time, and intermittent Employees

whose hours vary on a seasonal or project-by-project basis. Specifically, the Debtors employ approximately 671 full-time and 159 part-time Employees.

8. None of the Employees are party to a collective bargaining agreement or similar labor agreement. The Debtors also benefit from temporary workers and personnel sourced from third-party staffing companies (the "Staffing Companies"). At any given time, the Staffing Companies provide five (5) or less personnel who perform necessary office support services for the Debtors.

9. As more fully discussed below, to ensure that the Debtors can continue to provide their customers with the highest levels of service, maintain high Employee morale and low attrition rates, and minimize the personal hardship to Employees, the Debtors seek authority to continue to pay and honor prepetition obligations owing to the Employees during the pendency of these chapter 11 cases. In addition, to ensure the Debtors can continue to provide the highest level of service to their customers during these chapter 11 cases, the Debtors seek authority to continue to pay and honor prepetition obligations owing to the Staffing Companies. These obligations include: (a) Employee Wage Obligations; (b) Staffing Company Obligations; (c) Employee Incentive Programs; (d) Payroll Taxes and Deductions; (e) Expense Reimbursement Obligations; (f) Health and Welfare Plans; (g) PTO Plans; and (h) the 401(k) Plan (as defined herein and collectively, the "Employee Wages and Benefits Programs") as they were in effect as of the Petition Date and as such may be modified, amended, or supplemented from time to time in the ordinary course of business.

Employee Compensation and Benefits

I. Employee Wages and Benefits Programs.

10. In the ordinary course of business, the Debtors incur and pay obligations relating to the Employees' wages, salaries, and incentive-based compensation, as described in greater detail

below. In addition, the Debtors incur a number of obligations related to the Employees, such as federal and state withholding taxes and other withheld amounts, health benefits, paid time off, life and accidental death and dismemberment insurance, short- and long-term disability coverage, 401(k) contributions, expense reimbursements, and other benefits that the Debtors have historically provided in the ordinary course of business. The Debtors' compensation and benefit obligations to the Employees and Staffing Companies (together with all fees, costs, and expenses incident thereto, including amounts owed to third-party administrators) are referred to herein as the "Employee Obligations" and are more fully described below.[3]

A. Wage Obligations.

11. In the ordinary course of business, the Debtors pay Employee wages and salaries (collectively, the "Employee Wage Obligations") on a weekly basis, one week in arrears. In addition, to the extent employees earn commissions, with limited exceptions, such commissions are paid weekly. The Debtors pay the Employees through direct deposit or checks. Employees working in the direct sale of merchandise may be entitled to commission on these sales. These commissions are calculated at point of sale by the Debtors' computer system and vary by an individual item's cost and sale price and by its associated commission rate. A typical commission rate is between 8% and 18%. Commissions are only earned if an eligible Employee's commissions exceed such Employee's hourly base pay. With limited exceptions, the commission paid is the

[3] The summary of the Employee Obligations provided herein is qualified entirely by the Debtors' official policies or other practices, programs or agreements, whether written or unwritten, evidencing an arrangement among the Debtors and the Employees (each, an "Official Policy"). In the event of any inconsistency or ambiguity between this summary and an Official Policy, the terms of such Official Policy shall govern but, for the avoidance of doubt, in no event shall the Debtors make any payments or honor any prepetition obligations other than what is authorized by the Court after consideration of this Motion.

difference between the hourly base pay and the commissions earned weekly.[4] Approximately 488 employees are entitled to potential commission-based earnings. The Debtors believe, based on their historical payment obligations, approximately $900,000.00 in Employee Wage Obligations have accrued and remain unpaid as of the Petition Date.

12. To facilitate payment of the Employee Wage Obligations, the Debtors calculate payroll and other obligations for the Employees with the help of Paypro Corporation (the "Payroll Processor"). Among other things, the Payroll Processor calculates gross-to-net wages and tax obligations and also provides payroll tax filing and human capital management services for the Debtors. The Debtors do not believe any amounts were due to the Payroll Processor as of the Petition Date.

13. The Debtors also have obligations with respect to the Staffing Companies (the "Staffing Company Obligations"). The Staffing Company Obligations are paid through the Debtors' accounts payable system following submission of a documented and supported invoice. The Debtors estimate that approximately $3,000.00 in prepetition Staffing Company Obligations remain outstanding as of the Petition Date.

B. Employee Incentive Programs.

14. In order to offer appropriate incentives to motivate Employees and thereby maximize the value of their business, the Debtors offer certain eligible Employees a number of incentive programs described below (collectively, the "Employee Incentive Programs").[5]

[4] Certain employees who conduct repairs are entitled to hourly base pay plus all commissions and teachers are paid the greater of their hourly base pay or commission.

[5] During the post-petition period, the Debtors intend to honor only those Employee Incentive Programs as are necessary, in the Debtors' business judgment, to administer the Debtors' chapter 11 estates and maximize value for all parties in interest. Notwithstanding the foregoing, in light of the Debtors' dual-track process, the Debtors reserve the right to honor all the Employee Incentive Programs, pursuant to their business judgment.

15. As discussed in the First Day Declaration, the Debtors are conducting a dual sale process, which includes a marketing of their businesses as a going concern while at the same time conducting store closing sales at certain of their retail locations. Beginning in March 2024, the Debtors instituted a store employee incentive program whereby eligible Employees may earn an additional 2% sales commission on a weekly basis and may earn an additional $50 per week payable upon termination for continuing to work at stores conducting store closing sales (the "Store Employee Incentive Bonus"). The Debtors estimate that approximately $120,000.00 remains owed to eligible Employees on account of Store Employee Incentive Bonuses as of the Petition Date.

16. Also beginning in March 2024, the Debtors offered a retention incentive bonus to certain of their managers overseeing the store closing sales (the "Manager Incentive Program"). The Manager Incentive Program provides that if the eligible Employees remain with the Debtors through the conclusion of the store closing process, such eligible Employees will receive a bonus of up to eight (8) weeks' pay paid at the conclusion of the store closing sales over an eight (8) week period. Additionally, if an Employee eligible under the Manager Incentive Program also elects to receive COBRA (defined below) coverage at the conclusion of such Employee's employment, the Debtors will fund the difference between the Employee's current cost for such benefits and the costs of the COBRA coverage for a period equal to the number of weeks of the retention period, up to eight (8) weeks. Approximately one hundred and three (103) employees were offered to participate in the Manager Incentive Program and the Debtors estimate that up to $360,000.00 may come due during the course of these chapter 11 cases.

17. In addition, certain eligible sales Employees may also earn vendor incentives for the sale of merchandise. In all instances, these benefits are paid by the applicable vendor either directly or indirectly, through the Debtors.

18. The Employee Incentive Programs are a critical component of the Employee compensation structure and are designed to encourage Employees to achieve performance goals and maintain the Debtors' status as an industry leader in its field. The Debtors estimate that approximately $215,000.00 is due and outstanding on account of the Employee Incentive Programs as of the Petition Date.

C. Payroll Taxes and Other Deductions.

19. The Debtors are required by law to withhold from the Employees' paychecks amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes and federal taxes (collectively, the "Withholding Taxes") and to remit the same to the appropriate taxing authorities (collectively, the "Taxing Authorities"). In addition, the Debtors are required to make matching 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 (together with the Withholding Taxes, the "Payroll Taxes"). The Debtors estimate, based on their historical payment obligations, that approximately $70,000.00 in Payroll Taxes have accrued and remain unpaid on account of Payroll Taxes as of the Petition Date.

20. In addition to deductions relating to the Debtors' health and welfare plans, the Debtors routinely deduct certain amounts from the Employees' paychecks on account of miscellaneous items, including, but not limited to, garnishments, child support, and other similar deductions (collectively, the "Deductions"). The Debtors estimate, based on their historical payment obligations, they have collected (or will collect) approximately $27,000.00 in Deductions

from Employees' paychecks that have not yet been transferred to the appropriate third parties as of the Petition Date.

D. Expense Reimbursements and Other Allowances.

21. The Debtors reimburse certain Employees or pay credit card invoices on behalf of certain Employees for approved, legitimate expenses incurred in the scope of their employment on behalf of the Debtors (the "Expense Reimbursement Obligations"). The Debtors reimburse Employees for such expenses by issuing checks. In the direct-reimbursement context, Employees are personally liable to their banks for such costs, or front an outlay of cash, in the first instance. The Debtors estimate that approximately $1,000.00 of Expense Reimbursement Obligations, which are paid in the ordinary course, were outstanding as of the Petition Date.[6]

22. The Debtors also maintain vehicle, vehicle insurance, and cell phone allowances for certain Employees (the "Other Allowances") which are either paid directly by the Debtors or reimbursed to such Employees. The Debtors estimate that approximately $12,000.00 was outstanding under the Other Allowances as of the Petition Date.

E. Employee Benefit Plans.

23. In the ordinary course of business, the Debtors have established various benefit plans and policies for the Employees and certain of the Employees' dependents and beneficiaries, which can be divided into the following categories: (a) medical insurance (including prescription drugs), dental insurance, vision care, hospital care, life insurance, basic accidental death and

[6] Simultaneously with the filing of this Motion, the Debtors filed the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Bank Accounts, and (D) Continue to Perform Intercompany Transactions, (II) Granting Administrative Expense Status to Postpetition Intercompany Claims, and (III) Granting Related Relief,* which seeks authority for among other things, to pay any prepetition amounts owed and to continue in the ordinary course postpetition, the use of corporate credit cards to fund certain approved and legitimate business expenses.

dismemberment insurance, long-term and short-term disability insurance, and additional miscellaneous programs (collectively, the "Health and Welfare Plans"); (b) paid time off plans, including, but not limited to, holidays, vacation, and sick days (collectively, the "PTO Plans"); and (c) a 401(k) plan for Employees (the "401(k) Plan" and collectively, the "Employee Benefit Plans").

1. Health and Welfare Plans.

24. The Debtors sponsor several Health and Welfare Plans to provide benefits to full-time Employees, including medical, dental, vision, life, and long- and short-term disability insurance. A schedule identifying the Health and Welfare Plans and the Miscellaneous Health and Welfare Plans (defined below) is annexed hereto as **Exhibit C**. Payroll deductions in connection with the Health and Welfare Plans are administered by a third-party processor, Strategic Benefits Administrator (the "Benefits Processor"). Although the Debtors' Health and Welfare Plans are administered by third-party providers, the Debtors self-insure for medical, dental and vision insurance up to $200,000.00, after which a stop-loss insurance policy with provided by Symetra Life Insurance Company becomes responsible for filed claims. The Debtors do not believe any prepetition fees were outstanding to the Benefits Processor as of the Petition Date. As of the Petition Date, $21,000 in known unpaid claims on account of the Health and Welfare Plans are outstanding. In addition, the Company records a reserve for claims incurred but not received in the amount of approximately $500,000.

25. The Debtors also offer various miscellaneous health and welfare programs to both full- and part-time employees, including, but not limited to commuter benefits, virtual healthcare, legal services, identity theft and pet insurance (the "Miscellaneous Health and Welfare Plans"). The Debtors believe that they owe $300.00 in relation to the Miscellaneous Health and Welfare Plans as of the Petition Date.

26. In addition, qualifying terminated Employees have the opportunity to continue to receive certain benefits, such as the ability to continue medical insurance in accordance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

2. PTO Plans.

27. Under the PTO Plans, the Debtors provide paid vacation time to eligible Employees or as otherwise required by law. Length of employment generally determines the amount of vacation time available to each eligible Employee and the rate at which such vacation time accrues. Eligible Employees may carry forward unused vacation to the next calendar year. Any vacation time carried forward expires after nine (9) months unless otherwise required by local law. Earned and unused vacation time, if any, is generally paid out at termination to eligible Employees. The Debtors estimate that eligible Employees have accrued and outstanding paid vacation time with a value of approximately $1.5 million as of the Petition Date.

28. Under the PTO Plans, all eligible Employees, accrue one hour of sick leave for every thirty (30) hours worked, unless otherwise required by law. Employees may carryover up to forty-eight (48) hours of sick time and may not use more than forty (40) hours of sick time in any year, unless otherwise allowed by law.[7] The Debtors estimate that eligible Employees have accrued and outstanding sick time with a value of approximately $500,000.00 as of the Petition Date. While the Debtors do accrue for the amounts set forth in this paragraph they do not pay these amounts upon termination.

29. The Debtors' Employees are also eligible for certain paid holidays and other paid time off. These days are not a form of accrued leave and, in general, are not paid upon termination

[7] In some instances, the policy differs by location. For example, in New York Employees may carryover up to fifty-six (56) hours of sick time and may not use more than fifty-six (56) hours of sick time in any year, and in California Employees may carryover up to eighty (80) hours of sick time and may not use more than forty-eight (48) hours of sick time in any year.

of employment unless required under local law. The Debtors also provide for paid and unpaid leaves of absence, including unpaid personal leave, bereavement, jury duty, family and medical leave, and military leave. The Debtors do not accrue for the amounts set forth in this paragraph and do not pay these amounts out upon termination.

30. The Debtors estimate that they have a total of approximately \$2 million of accrued obligations under the PTO Plans of which, \$1.5 million is generally payable on termination (the "PTO Obligations") as of the Petition Date, the majority of which are not current cash-pay obligations, as only a small number of Employees are eligible to be paid for accrued and unused vacation time, and, even then, only in the event they are terminated.

3. The 401(k) Plan.

31. The Debtors maintain a retirement savings plan for the benefit of their eligible Employees that satisfies the requirements of section 401(k) of the Internal Revenue Code (the "401(k) Plan"). The 401(k)Plan is administered by John Hancock (the "401(k) Plan Administrator") with Mercer as the investment advisor (the "401(k) Plan Advisor"). The 401(k) Plan allows for automatic pre-tax salary deductions of eligible employee compensation up to the limits set forth by the Internal Revenue Code. The Debtors do not believe any amounts are outstanding and owed to the 401(k) Plan Administrator or the 401(k) Plan Advisor as of the Petition Date.

32. The Debtors also have a discretionary matching program under the 401(k) Plan (the "Employer 401(k) Contributions"). The Debtors have not participated in the discretionary matching in the 2024 calendar year and do not believe any amounts are outstanding in Employer 401(k) Contributions as of the Petition Date.

Basis for Relief

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee Obligations.

A. Certain Employee Obligations Are Entitled to Priority Treatment.

33. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle priority treatment to certain of the Employee Obligations owed to the Employees in an aggregate amount up to \$15,150 for each individual the ("Statutory Cap"). The Debtors are required to pay such priority claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries, or commissions, including sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than the Statutory Cap, the relief sought with respect to compensation only affects the timing of payments to Employees and does not have any material negative impact on recoveries for general unsecured creditors. As of the Petition Date, the Debtors do not believe any of their Employees are entitled to more than the Statutory Cap on account of Employee Wage Obligations and the Store Employee Incentive Bonus. The Debtors believe that certain Employees may exceed the Statutory Cap on account of other types of compensation, including, vacation earned by such Employees which may be paid at termination. To the extent an Employee is owed more that the Statutory Cap on account of certain Compensation and Benefits, the Debtors submit that the full payment of such obligations in the ordinary course is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity. However, to be clear, the Debtors only seek authority to pay amounts in excess of the Statutory Cap pursuant to the Final Order.

34. The Debtors submit that payment of the Employee Obligations, including Employee Compensation and Benefit Programs, at this time enhances value for the benefit of all interested parties because it will help ensure that the Employees, who are central to the Debtors'

business operations, continue to provide vital services to the Debtors at this critical time. The Debtors firmly believe that maintaining the Employee Obligations is critical to maintaining positive Employee morale and loyalty during these chapter 11 cases. Indeed, the Debtors' failure to honor the Employee Obligations would cause severe personal hardship to the Employees and likely would result in attrition at a time when the Debtors need the Employees to perform at peak efficiency.

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

35. The Debtors seek authority to pay applicable unremitted Payroll Taxes, Deductions or other Employee contributions to the Health and Welfare Plans or the 401(k) Plan to the appropriate third-party entities when such obligations are owed. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction withholding from Employees' wages. Indeed, certain of the Deductions, including contributions to the Health and Welfare Plans, the 401(k) Plan, and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' wages on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d).

36. Further, federal, state, and foreign laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because these amounts may not be property of the Debtors' estates, the Debtors request that the Court authorize them to transmit these Employee Obligations on account of the Employees to the

proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998).

37. The Debtors therefore request that the Court recognize that these amounts are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize, but not direct, the Debtors to transmit such monies to the proper parties in the ordinary course of business.

II. Payment of the Employee Obligations Is Proper Pursuant to Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

38. Section 363(c)(1) of the Bankruptcy Code expressly grants the Debtors the authority to "enter into transactions . . . in the ordinary course of business" and "use the property of the estate in the ordinary course of business without notice or a hearing." Therefore, the Debtors believe they are permitted to pay all postpetition amounts due pursuant to the Employee Obligations as such actions are in the ordinary course of the Debtors' business. Out of an abundance of caution, however, the Debtors seek entry of an order granting the relief requested herein to avoid any disruptions to their business operations.

39. The relief requested herein may be granted by the Court pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. 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). Under section 363(b), courts require only that the debtor "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted) (requiring that the debtor show a "sound business purpose" to justify its actions under section 363 of the Bankruptcy Code); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, "[w]here the debtor articulates a reasonable basis for its business

decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task"). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code.

40. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of a bankruptcy court, empowers bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the title." 11 U.S.C. § 105(a). The Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of the Employee Obligations under the "necessity of payment" rule (also referred to as the "doctrine of necessity"). The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code, and supports the relief requested herein. *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to debtor's continued operation); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of [prepetition] claims" under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan).

41. The doctrine of necessity is designed to foster a debtor's rehabilitation, which courts have recognized is "the paramount policy and goal of Chapter 11." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also Just for Feet*, 242 B.R. at 824-26 (finding that payment of prepetition claims to certain trade vendors was "essential to the survival of the debtor during the chapter 11 reorganization" and that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of [prepetition] claims" under the doctrine of necessity); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("[P]ayment by a debtor-in-possession of [prepetition] claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code," but "[a] general practice has developed . . . where bankruptcy courts permit the payment of certain [prepetition] claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment."); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as "necessary to avert a serious threat to the [c]hapter 11 process"); *In re Chateaugay Corp*., 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (affirming lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

42. Payment of the Employee Obligations is warranted under this authority and the facts of these chapter 11 cases. The majority of the Employees rely exclusively on payment of the Employee Obligations to satisfy their daily living expenses. Consequently, Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor unpaid Employee Obligations. Additionally, continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' business operations.

43. Moreover, Employees provide the Debtors with services necessary to conduct the Debtors' business, and the Debtors believe that, absent the Debtors timely honoring the Employee Obligations, the Debtors may experience turnover and instability at this critical time in these chapter 11 cases. The Debtors believe that without timely honoring the Employee Obligations, the Employees may become demoralized and unproductive because of the potential significant financial strain and other hardships these Employees face. Such Employees may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' business is tied to their workforce, which cannot be replaced without significant efforts—efforts that might not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe honoring the prepetition obligations with respect to the Employee Obligations, including making timely payments as applicable on account thereof, is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their business in these chapter 11 cases.

44. Indeed, courts in this district have repeatedly recognized the importance of satisfying employee obligations in cases requesting relief similar to that requested here. *See, e.g.*, *In re Thrasio Holdings, Inc.,* No. 24-11840 (CMG) (Bankr. D.N.J. Apr. 4, 2024) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto); *In re Invitae Corporation,* No. 24-11362 (MBK) (Bankr. D.N.J. Mar. 18, 2024) (same); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Feb. 29, 2024) (same); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Jan. 30, 2024) (same); *In re WeWork Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (same); *In re DirectBuy*

Home Improvement, Inc., No. 23-19159 (SLM) (Bankr. D.N.J. Nov. 9, 2023) (same); *In re Cyxtera Tech., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. June 29, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 18, 2023) (same); *In re Block Fi, Inc.,* No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 17, 2023) (same).[8] Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay and continue the Employee Obligations in the ordinary course of business and consistent with past practice.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

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

The Requirements of Bankruptcy Rule 6003 Are Satisfied

46. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first 21 days after the petition date only "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations, and the failure to receive

[8] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders. The Debtors submit that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003 and request that the Court grant the requested relief.

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

47. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h) for the reasons set forth herein.

Reservation of Rights

48. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action, or other rights of the Debtors or any other

party in interest against any person or entity under the Bankruptcy Code or any other applicable law. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

49. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the Office of the U.S. Trustee for the District of New Jersey, Attn: Fran B. Steele, Esq. (Fran.B.Steele@usdoj.gov) and Peter J. D'Auria, Esq. (Peter.J.D'Auria@usdoj.gov); (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel for Tiger Finance LLC, Riemer & Braunstein LLP, Anthony B. Stumbo, Esq. and Steven E. Fox, Esq.; (d) the United States Attorney's Office for the District of New Jersey; (e) the Internal Revenue Service; (f) the offices of the attorneys general for the states in which the Debtors operate; (g) the National Association of Attorneys General; (h) Staffing Companies; (i) Taxing Authorities; (j) the Payroll Processor; (k) the Benefits Processor; (l) the 401(k) Plan Administrator; (m) the 401(k) Plan Advisor; (n) the Health and Welfare Plan providers listed on Exhibit C; and (o) any party that is entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

Waiver of Memorandum of Law

50. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

No Prior Request

51. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** respectively, (a) granting the relief requested herein and (b) granting such other relief as is just and proper.

DATED: May 8, 2024

Respectfully submitted,

COLE SCHOTZ P.C.

By: *\/s/ Michael D. Sirota*

Michael D. Sirota, Esq.
Ryan T. Jareck, Esq.
Matteo Percontino, Esq.
Court Plaza North
25 Main Street
Hackensack, NJ 07601
(201) 489-3000
(201) 489-1536 Facsimile
Email: msirota@coleschotz.com
wusatine@coleschotz.com
rjareck@coleschotz.com
mpercontino@coleschotz.com

Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT A

Proposed Interim Order

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1(b) **COLE SCHOTZ P.C.** Court Plaza North 25 Main Street P.O. Box 800 Hackensack, New Jersey 07602-0800 (201) 489-3000 (201) 489-1536 Facsimile Michael D. Sirota, Esq. msirota@coleschotz.com Ryan T. Jareck, Esq. rjareck@coleschotz.com Matteo Percontino, Esq. mpercontino@coleschotz.com *Proposed Counsel to Debtors and Debtors in Possession*	
In re: SAM ASH MUSIC CORPORATION, *et al.* Debtors.[1]	Chapter 11 Case No. 24-14727 (SLM) Judge: (Joint Administration Requested)

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION EMPLOYEE WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EMPLOYEE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through seven (7), is hereby **ORDERED**.

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). The location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"): (a) authorizing the Debtors to (i) pay prepetition employee wages, salaries, other compensation, and reimbursable employee expenses and (ii) continue employee benefits programs; (b) scheduling a final hearing to consider approval of the Motion on a final basis; and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other 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 this Court having determined that the legal and factual bases set forth in the Motion and at the hearing thereon establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

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

1. The Motion is **GRANTED** on an interim basis as set forth in this Interim Order.

2. The final hearing (the "Final Hearing") on the Motion shall be held on **_________, 2024, at__:__ _.m., prevailing Eastern Time**. Objections or responses to entry of a final order on the Motion shall be filed **on or before 4:00 p.m., prevailing Eastern Time, on _________, 2024**. If no objections are filed to the Motion, this Court may enter an order approving the relief requested in the Motion on a final basis without further notice or hearing.

3. The Debtors are hereby authorized, but not directed, to: (a) continue, modify, change, and/or discontinue the Employee Wages and Benefits Programs in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices without the need for further Court approval, subject to applicable law and the terms of this Interim Order; (b) honor and pay any prepetition amounts outstanding under or related to the Employee Wages and Benefits Programs as and when such obligations are due, in their business judgment during these chapter 11 cases and without the need for further Court approval, subject to applicable law and the terms of this Interim Order; *provided* that pending entry of the Final Order, the Debtors shall not make any payment to, or on account of, any individual with respect to any prepetition claim in excess of $15,150 as set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; *provided further* that the Debtors will not pay any outstanding prepetition or postpetition claims with respect to the Expense Reimbursement Obligations in advance of the date they come due; and (c) pay in the ordinary course of business any costs and expenses incidental to payment of the Employee Wages and Benefits Programs obligations, including amounts owed to third-party administrators.

4. Debtors are authorized to forward any unpaid amounts on account of Payroll Taxes and Deductions to the appropriate third-party recipients or taxing authorities in the ordinary course of business.

5. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Wages and Benefits Programs.

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

7. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability,

or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action, or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

8. Notwithstanding anything to the contrary in the Motion or this Interim Order, any payment made by the Debtors pursuant to the authority granted in this Interim Order must be in compliance with and any authorization of the Debtors contained herein is subject to: (a) any interim or final orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and/or authorizing the use of cash collateral; (b) the documentation in respect of any such debtor-in-possession financing or use of cash collateral; and (c) any budget or cash flow forecasts in connection therewith (in each case, the "DIP Order").

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

10. Nothing in the Motion or this Interim Order shall be construed as impairing the Debtors' right to contest the validity or amount of any Employee Obligations, including any Payroll Taxes that may be due to any Taxing Authority.

11. Nothing in the Motion or this Interim Order shall be deemed to (i) authorize the payment of any amounts that are subject to section 503(c) of the Bankruptcy Code, including, for the avoidance of doubt, payment of any bonus, incentive, or severance obligations to or on behalf

of any "insider" (as defined by section 101(31) of the Bankruptcy Code) or (ii) violate or permit a violation of section 503(c) of the Bankruptcy Code. A separate motion will be filed for any requests that are governed by section 503(c) of the Bankruptcy Code.

12. To the extent the Debtors make any payments on account of prepetition claims incurred under any self-insured Health and Welfare Plans, such payments shall be made without regard to the current employment status of the Employee (or dependent), provided that such Employee (or dependent) was eligible for coverage on the date such claim was incurred.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

14. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due.

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

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

17. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

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

19. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after entry of this Order.

20. Any party may move for modification of this Order in accordance with Local Rule 9013-5(e).

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

<u>EXHIBIT B</u>

Proposed Final Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

COLE SCHOTZ P.C.
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602-0800
(201) 489-3000
(201) 489-1536 Facsimile
Michael D. Sirota, Esq.
msirota@coleschotz.com
Ryan T. Jareck, Esq.
rjareck@coleschotz.com
Matteo Percontino, Esq.
mpercontino@coleschotz.com
Proposed Counsel to Debtors and Debtors in Possession

In re:

SAM ASH MUSIC CORPORATION, *et al.*

Debtors.[1]

Chapter 11

Case No. 24-14727 (SLM)

Judge:

(Joint Administration Requested)

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION EMPLOYEE WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EMPLOYEE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through six (6), is hereby **ORDERED**.

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). The location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"): (a) authorizing the Debtors to (i) pay prepetition employee wages, salaries, other compensation, and reimbursable employee expenses and (ii) continue employee benefits programs; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other 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 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 upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

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

1. The Motion is **GRANTED** on a final basis as set forth in this Final Order.

2. The Debtors are hereby authorized, but not directed, to: (a) continue, modify, change, and/or discontinue the Employee Wages and Benefit Programs in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices without the need for further Court approval, subject to applicable nonbankruptcy law and the terms of this Final Order; (b) honor and pay any prepetition and postpetition amounts outstanding under or related to the Employee Wages and Benefit Programs as and when such amounts are due, in their business judgment during these chapter 11 cases and without the need for further Court approval, subject to applicable law and the terms of this Final Order; and (c) pay in the ordinary course of business any costs and expenses incidental to payment of the Employee Wages and Benefit Programs obligations, including amounts owed to third-party administrators.

3. Debtors are authorized to forward any unpaid amounts on account of Payroll Taxes and Deductions to the appropriate third-party recipients or taxing authorities in the ordinary course of business.

4. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Wages and Benefits Programs.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented

for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

6. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim, or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action, or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

7. Notwithstanding anything to the contrary in the Motion or this Final Order, any payment made by the Debtors pursuant to the authority granted in this Final Order must be in compliance with and any authorization of the Debtors contained herein is subject to: (a) any interim or final orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-

possession financing facility and/or authorizing the use of cash collateral; (b) the documentation in respect of any such debtor-in-possession financing or use of cash collateral; and (c) any budget or cash flow forecasts in connection therewith (in each case, the "DIP Order").

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

9. Nothing in the Motion or this Final Order shall be construed as impairing the Debtors' right to contest the validity or amount of any Employee Obligations, including any Payroll Taxes that may be due to any Taxing Authority.

10. Nothing in the Motion or this Final Order shall be deemed to (i) authorize the payment of any amounts that are subject to section 503(c) of the Bankruptcy Code, including, for the avoidance of doubt, payment of any bonus, incentive, or severance obligations to or on behalf of any "insider" (as defined by section 101(31) of the Bankruptcy Code) or (ii) violate or permit a violation of section 503(c) of the Bankruptcy Code. A separate motion will be filed for any requests that are governed by section 503(c) of the Bankruptcy Code.

11. To the extent the Debtors make any payments on account of prepetition claims incurred under any self-insured Health and Welfare Plans, such payments shall be made without regard to the current employment status of the Employee (or dependent), provided that such Employee (or dependent) was eligible for coverage on the date such claim was incurred.

12. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

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

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

15. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

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

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

EXHIBIT C

Health and Welfare Plans

Type of Coverage	Insurer
Medical Plans	Self-Insured with the assistance of third-party administrator Anthem HealthChoice Assurance, Inc./Anthem Blue Cross
Prescription	Anthem HealthChoice Assurance, Inc./Anthem Blue Cross
Dental Plan	Anthem HealthChoice Assurance, Inc./Anthem Blue Cross
Vision Plan	Anthem HealthChoice Assurance, Inc./Anthem Blue Cross
Basic Employee Life Insurance	Anthem Life & Disability Insurance Company
Short-Term Disability	Anthem Life & Disability Insurance Company
Long-Term Disability	Anthem Life & Disability Insurance Company
Basic and Supplemental AD&D Insurance	Anthem Life & Disability Insurance Company
Transit Spending Account	OCA Benefit Services, LLC
Virtual Healthcare	Anthem HealthChoice Assurance, Inc./Anthem Blue Cross
Legal Services	LegalShield
Identity Theft Protection	IDShield
Pet Insurance	Spot Pet Insurance