

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov**

IN RE:

Chapter 11 Cases

RED LOBSTER MANAGEMENT LLC, ¹	Case No. 6:24-bk-_____
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-_____
RLSV, INC.,	Case No. 6:24-bk-_____
RED LOBSTER CANADA, INC.	Case No. 6:24-bk-_____
RED LOBSTER HOSPITALITY LLC	Case No. 6:24-bk-_____
RL KANSAS LLC	Case No. 6:24-bk-_____
RED LOBSTER SOURCING LLC	Case No. 6:24-bk-_____
RED LOBSTER SUPPLY LLC	Case No. 6:24-bk-_____
RL COLUMBIA LLC	Case No. 6:24-bk-_____
RL OF FREDERICK, INC.	Case No. 6:24-bk-_____
RED LOBSTER OF TEXAS, INC.	Case No. 6:24-bk-_____
RL MARYLAND, INC.	Case No. 6:24-bk-_____
RED LOBSTER OF BEL AIR, INC.	Case No. 6:24-bk-_____
RL SALISBURY, LLC,	Case No. 6:24-bk-_____
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-_____

Debtors.

(Joint Administration Pending)

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF
AN ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF LIEN CLAIMANTS IN THE ORDINARY
COURSE OF BUSINESS, AND (II) GRANTING RELATED RELIEF**

(Emergency Hearing Requested)

Basis for Requested Emergency Relief

The Debtors respectfully request that the Court conduct an emergency hearing on this Motion. It is essential that the Debtors continue to receive uninterrupted access to goods and services from vendors which are essential to the Debtors' continued operations of their retail restaurant business. Through this Motion, the Debtors

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices are located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

seek authority to pay Lien Claimants (defined below) the pre-Petition Date debt owed to them in order to avoid material disruption to the Debtors' business. The Debtors reasonably believe that a hearing to consider the relief requested herein must be held on an emergency basis as soon as the Court's calendar will permit in order to avoid direct, immediate, and substantial harm to the Debtors' bankruptcy estates.

The above-captioned debtors and debtors-in-possession (each, a "Debtor", and collectively, the "Debtors"), by and through their undersigned attorneys, hereby file this motion (the "Motion"), seeking the entry of order, in the form attached as **Exhibit A** (the "Proposed Order"), authorizing the Debtors to pay prepetition claims of vendors that have the ability to assert common law, statutory, or contractual liens over inventory, equipment, or other goods that are vital to the Debtors' postpetition operations. In support of this Motion, the Debtors rely upon the *Declaration of Jonathan Tibus in Support of Debtors' Chapter 11 Petitions and First Day Relief* (the "First Day Declaration"), which was filed on May 19, 2024 (the "Petition Date"), and respectfully represent the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105 and 363 of chapter 11 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 Rule 9013-1(d) of the Local Rules of the United States Bankruptcy Court for the Middle District of Florida.

Procedural Background

4. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors are operating their businesses and managing their affairs as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

6. For a detailed description of the Debtors and their operations, the Debtors respectfully refer the Court and parties in interest to the First Day Declaration.

Relief Requested

7. By this Motion, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, the Debtors request authority, but not direction, to (i) pay in the ordinary course of business, in their sole discretion and based on their sound business judgment, prepetition amounts owed to Lien Claimants; and (ii) obtain related relief. The Debtors request, pursuant to the Motion, authority, but not direction, to pay upon entry of the Proposed Order, the Lien Claims (defined below) in an amount not to exceed \$93,000 as they become due in the ordinary course of business and only on such terms and conditions as are appropriate, in the Debtors' business judgment, to minimize any disruptions to the Debtors' businesses.

8. The Debtors further request that the Court (a) authorize all applicable financial institutions (collectively, the "Banks") to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing to the extent directed by the Debtors in accordance with the Motion and to the extent the Debtors have sufficient funds on deposit in their accounts with such Banks, whether such checks were presented or electronic requests were submitted before, on, or after the Petition Date and (b) authorize all Banks to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to the Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

The Lien Claimants

9. The Debtors are a leading seafood restaurant unit operator in the United States and

one of the largest sustainable seafood purchasers worldwide. As of the Petition Date, the Debtors owned and operated approximately 551 restaurants across the United States and approximately 27 restaurants in Canada. To operate these restaurants, the Debtors routinely engage a number of third parties, including equipment manufacturers, contractors, repair technicians, and other service providers that may be able to assert and perfect liens, including warehouse liens, carrier liens, bailee's liens, mechanic's liens, artisan's liens, construction liens, and other statutory, common law, or contractual lien rights,² against the Debtors' property if the Debtors fail to pay for the goods or services rendered (such vendors, suppliers, distributors, and service providers, each a "Lien Claimant") and collectively, the "Lien Claimants" and, their prepetition claims, each a "Lien Claim" and collectively, the "Lien Claims"). The Debtors believe there are ten Lien Claimants holding Lien Claims of approximately \$93,000.

10. The Lien Claimants perform a number of services for the Debtors, including construction, installation, maintenance, servicing, delivery and/or storage of equipment, facilities, supplies, and products that are essential to the Debtors' restaurant enterprise, including the warehousing of a subset of the Debtors' inventory. In accordance with their applicable real property leases, the Debtors are responsible for covering the costs of improvements and repairs to their properties. The also rely upon vendors and repairment to service certain of their equipment used in the operation of their businesses. Such equipment includes refrigeration and electrical systems, plumbing, and various types of food service equipment, all of which are integral components of the Debtors' ongoing businesses. As such, the Debtors request the services and

² Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, might be excluded from the automatic stay. Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A).

labor of the Lien Claimants, including certain subcontractors, to make regular improvements and repairs. With the Debtors' required ongoing service, repair, and maintenance obligations of their store locations and equipment, the Debtors depend on continuing business relationships with, and services provided by, the Lien Claimants.

11. If the Debtors are unable to timely pay the Lien Claims, they risk being unable to fully operate their businesses, which could prevent them from maximizing recoveries for all stakeholders in these chapter 11 cases. Moreover, various state laws would permit such claimants to assert statutory liens against the Debtors' equipment and/or merchandise (or underlying property) (collectively, the "Merchandise") in their possession and the subject of any delinquent charges, which would secure such charges but also potentially block the Debtors' access to such Merchandise. Similarly, the Debtors pay certain vendors to store frozen inventory in warehouses. Failure to pay those vendors could result in the vendor asserting warehouse liens over the inventory, which would interrupt distribution to the Debtors' stores, which would negatively impact the Debtors' restaurant business.

12. Separately, most or all of the Debtors' real property leases require the Debtors to satisfy any liens that arise out of the Debtors' operation of the premises. To the extent a Lien Claimant successfully perfects a lien against real property subject to one of these leases, such lien may cause the Debtors to risk defaulting under such lease if the lien is not timely satisfied. This risk is heightened where a lien may attach to a property that is the subject of a master lease agreement in which several of the Debtors' properties are governed, and therefore impacted, by the default provisions of one lease agreement.

13. The Debtors, in consultation with their professional advisors, engaged in a comprehensive process to (a) identify those vendors, suppliers, and service providers with asserted

or potential lien rights that are also essential to the Debtors' businesses and (b) quantify the relief necessary to avoid immediate and irreparable harm to the Debtors at the outset of these chapter 11 cases.

14. Importantly, pursuant to their proposed debtor-in-possession financing, the Debtors will have sufficient funds to satisfy these Lien Claims in the ordinary course, and the proposed DIP lenders affirmatively support the payments on account of Lien Claims.

Relief Requested Should Be Granted

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

15. The Court may grant the relief requested herein pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Under section 105(a), a court can permit the pre-plan payment of a prepetition obligation when it is essential to the continued operation of the debtor. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) ("[t]o invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is 'critical to the debtor's reorganization.'") (internal quotation omitted); *see also, e.g., In re Cargo Transp. Svcs., Inc.*, No. 8:11-bk-00432-MGW (Bankr. M.D. Fla. Jan. 20, 2011) (court enters interim order granting motion to pay prepetition claims under authority of sections 105 and 363 of the Bankruptcy Code); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 17 (Bankr. M.D. Fla. 2005) (noting that "[b]ankruptcy courts recognize that section 363 is a source for authority to make vendor payments, and section 105 is used to fill in the

blanks”); *In re UAL Corp., et al.*, No. 02-B-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (authorizing the debtors to pay pre-petition trade claims of essential trade creditors pursuant to sections 363 and 364 of the Bankruptcy Code)); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397–98 (S.D.N.Y. 1983) (reasoning that payment to prepetition vendors was a reasonable response to business exigencies). The group of potential Lien Claimants is limited to only those vendors which, if left unpaid, could cause material disruption in the operation of the Debtors’ business.

16. Moreover, the Debtors have a compelling business purpose for paying the Lien Claimants. Absent payment of the Lien Claimants, such Lien Claimants could be unwilling to release the Merchandise in their possession on which they may assert liens, as releasing such goods could result in the conversion of their claims against the Debtors from secured to unsecured status. Absent authorization to satisfy outstanding Lien Claims, the Debtors could be denied access to Merchandise that is essential to their business operations. If the Lien Claimants possess lien rights with respect to Merchandise in their possession and/or have the ability to exercise “self-help” remedies to secure payment of Lien Claims, failure to satisfy such claims could have a materially adverse effect on the Debtors’ businesses, which would be to the detriment of the Debtors’ estates and their stakeholders.

17. Reflecting the recognition that the payment of prepetition claims of certain suppliers and vendors can be necessary to a debtor’s ability to preserve going-concern value, courts routinely authorize chapter 11 debtors to pay prepetition claims to Lien Claimants where the payments are essential to preserve the debtors’ continued operations. *In re BL Restaurants Holding, LLC*, No. 20-10156 (MWF) (Bankr. D. Del. Feb. 26, 2020) (authorizing payment of certain prepetition claims); *In re RUI Holding Corp.*, No. 19-11509 (JTD) (Bankr. D. Del. Aug. 7,

2019) (authorizing payment of certain prepetition claimants); *In re Am. Apparel, LLC*, No. 16-12551 (BLS) (Bankr. D. Del. Nov. 15, 2016) (same); *In re Sports Authority Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. Mar. 29, 2016) (same).

18. Furthermore, it is well established that a bankruptcy court has the equitable power to authorize the payment of prepetition claims where such payments are necessary to preserve the going-concern value of a debtor's business. *See, e.g., Miltenberger v. Logansport, Crawfordsville and Southwestern Ry. Co.*, 106 U.S. 286, 311 (1882) (“[m]any circumstances may exist which may make it necessary and indispensable to the business of the road and the preservation of the property, for the receiver to pay pre-existing debts of certain classes out of the earnings of the receivership....”); *Just For Feet, Inc.*, 242 B.R. at 825 (“[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of prepetition claims when such payment is necessary for the survival during Chapter 11.”);³ *In re Jeans.com, Inc.*, 502 B.R. 250, 253-54, 257-59 (Bankr. D. P.R. 2013) (granting motion authorizing payment of budgeted pre-petition amounts applying three-part standard enunciated in *Tropical Sportwear*, and discussing related necessity of payment doctrine); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payments of prepetition claims where “the payment is necessary to avert a serious threat to the Chapter 11 process.”).

19. Under the “necessity of payment” doctrine articulated in the above cases, the selective payment of the Lien Claims manifestly warranted. The seamless transition into chapter 11 is essential to the continued operations of the Debtors’ business. It is vitally important to the Debtors’ efforts to operate inside a chapter 11 proceeding that the Debtors pay the Lien Claims.

³ The “doctrine of necessity” is sometimes referred to as the “necessity of payment” doctrine or “necessity of payment” rule and falls within a bankruptcy court’s equitable powers under Section 105(a) of the Bankruptcy Code. *See id.* at 824 (“Certain prepetition claims by employees and trade creditors . . . may need to be paid to facilitate a successful reorganization.”) (citing 11 U.S.C. § 105(a)).

20. The standard applied in the Middle District of Florida for a determination as to whether an entity should be eligible for payment of prepetition indebtedness as a result of its importance to the continued unimpaired operations, like the Lien Claimants subject of this Motion, is set forth in *Tropical Sportswear*: “(i) the payments are necessary to the reorganization process; (ii) a sound business justification exists in that the [Lien Claimant(s)] refuse to continue to do business with the debtor absent being afforded [Lien Claimant] status; and (iii) the disfavored creditors are at least as well off as they would have been had the [Lien Claimant] order not been entered.” *Tropical Sportswear*, 320 B.R. at 17. This standard is met for each of the Lien Claims.

21. Bankruptcy courts in the Middle District of Florida and others within the Eleventh Circuit have approved payment of prepetition claims held by vendors where the payment was essential to the debtor’s continued postpetition business operations. *In re Alrod Logistics, Inc.*, No. 3:23-bk-01820-BAJ (Bankr. M.D. Fla. Mar. 19, 2024); *In re International Granite & Stone, LLC*, No. 8:24-bk-00706-RCT (Bankr. M.D. Fla. Mar. 18, 2024); *In re Starboard Group of Space Coast, LLC, et al.*, No. 6:23-bk-04797 (Bankr. M.D. Fla. Nov. 27, 2023); *In re Post Oak TX, LLC*, No. 21-18563-EPK (Bankr. S.D. Fla. Sept. 17, 2021); *In re TooJay’s Management LLC, et al.*, No. 20-14792-EPK (Bankr. S.D. Fla. June 29, 2020); *Cargo Transp. Svcs., Inc.*, No. 8:11-bk-00432-MGW (Bankr. M.D. Fla. Jan. 20, 2011); *Tropical Sportswear Int’l Corp.*, No. 8:04-bk-24134-MGW (Bankr. M.D. Fla. 2005); *In re HearUSA, Inc.*, No. 11-23341-BKC-EPK (Bankr. S.D. Fla. May 20, 2011); *In re Gulfstream Intern. Group, Inc., et al.*, No. 10-44131-BKC-JKO (Bankr. S.D. Fla. Nov. 8, 2010 and Dec. 16, 2010); *In re HNI Holdco, Inc. (F/K/A Medical Staffing Network Holdings, Inc., et al.*, No. 9:10-bk-29101-BKC- EPK (Bankr. S.D. Fla. July 2, 2010).

Applicable Financial Institutions Should be Authorized to Receive, Process, Honor and Pay Checks Issued and Transfers Requested to Pay the Vendor Claims

22. The Debtors anticipate having sufficient funds to pay the amounts described herein in the ordinary course of business using expected cash flows from ongoing business operations, cash collateral, and funds from DIP financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify whether checks or wire transfer requests are payments authorized by the relief requested in the Motion. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. As such, the Court should authorize the Banks to receive, process, honor and pay any and all checks or wire transfer requests as directed by the Debtors in respect of the relief requested herein, to the extent the Debtors have sufficient funds on deposit in their accounts with such Banks, whether such checks or wire transfer requests were submitted before, on or after the Petition Date, and such Banks may rely on the representations of the Debtors without any duty of further inquiry and without liability for following the Debtors' instructions.

Bankruptcy Rule 6003(b) Has Been Satisfied

23. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" prior to twenty-one (21) days after the Petition Date. Fed. R. Bankr. P. 6003(b). As explained above and in the First Day Declaration, the Debtors would suffer immediate and irreparable harm if the relief sought herein is not promptly granted. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

Expedited Consideration and Waiver of any Applicable Stay

24. The Debtors respectfully request expedited consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” Here, the Debtors believe an orderly transition into chapter 11 is essential to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this essential juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an expedited basis.

25. To implement the foregoing successfully, 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

26. Nothing contained herein is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors or any liens satisfied pursuant to the Motion; (ii) an agreement or obligation to pay any claims; (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (iv) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute any claim; or (v) an approval, assumption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the

Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Conclusion

27. If the requested relief is not granted, the Debtors' business operations may be materially impaired. In this precarious environment, it is especially important to maintain a "business as usual" atmosphere to ensure smooth and uninterrupted business operations. It is the Debtors' business judgment, therefore, that authority to pay immediately the Lien Claimant Claims described in the Motion is absolutely essential to the success of these chapter 11 cases. Accordingly, for all of the reasons set forth herein, the relief requested in the Motion should be granted.

WHEREFORE, the Debtors respectfully request that the Court enter an order in the form attached hereto as **Exhibit A** (i) granting the relief requested in this Motion; (ii) authorizing, but not directing the Debtors to pay, in the ordinary course of business, the Lien Claims; (iii) authorizing and directing the Debtors' Banks to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing; and (iv) granting such other relief as the Court deems just and proper.

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Dated: May 19, 2024

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Filer's Attestation: Pursuant to Local Rule 1001-2(g)(3) regarding signatures, Paul Steven Singerman attests that concurrence in the filing of this paper has been obtained.

Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

(Proposed Order)

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**
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IN RE:

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Debtors.

(Joint Administration Pending)

**ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN
ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION CLAIMS
OF LIEN CLAIMANTS IN THE ORDINARY COURSE OF BUSINESS,
AND (II) GRANTING RELATED RELIEF**

THIS CASE came before the Court on [●], 2024, at [●] a.m./p.m., in Orlando, Florida for a hearing (the "Hearing") upon the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to Pay Certain Prepetition Claims of Lien Claimants in the Ordinary Course of Business, and (II) Granting Related Relief* [ECF No. [●]] (the "Motion"), seeking the entry of an order authorizing, but not directing, the Debtors² to pay certain prepetition claims of Lien Claimants. The Court, having considered the Motion, finds that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (c) this matter is core pursuant to 28 U.S.C. § 157(b)(2); (d) the Court may enter a final order consistent with Article III of the United States Constitution; (e) notice of the Motion and the Hearing thereon was sufficient under the circumstances and no other or further notice need be provided; (f) the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and (g) upon a review of the record before the Court, including the legal and factual bases set forth in the Motion and the First Day Declaration and the statements made by counsel at the Hearing, and being otherwise fully advised in the premises, does for the reasons stated on the record of the Hearing, all of which are incorporated herein; and after due deliberation and sufficient cause appearing therefor, has determined that good and sufficient cause exists to grant the relief requested. Accordingly, it is

ORDERED as follows:

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

1. The Motion is **GRANTED**.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to pay, or cause to be paid, the Lien Claims, in an aggregate amount not to exceed \$93,000 upon such terms and in the manner provided in this order (the "Order") and the Motion.
3. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion and in consultation with the DIP Lenders (as defined in the First Day Declaration), the extent, perfection, priority, validity, or amounts of any claims or liens held by any Lien Claimant and the Debtors' rights to contest the extent, validity, or perfection or seek the avoidance of all such liens or the priority of such claims are fully preserved.
4. All Banks are (i) authorized and directed to receive, process, honor and pay all checks presented for payment and electronic payment requests as directed by the Debtors on account of the Lien Claims, to the extent the Debtors have sufficient funds on deposit in their accounts with such Banks, whether such checks were presented or electronic requests were submitted before, on or after the Petition Date; (ii) authorized to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to the Motion without any duty of further inquiry and without liability for following the Debtors' instructions; and (iii) prohibited from placing any hold on, or attempting to reverse, any automatic transfer on account of the Lien Claims.
5. 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 their chapter 11 cases with respect to prepetition amounts owed in connection with any Lien Claims referenced herein.

6. Nothing in the Motion or this Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due.

7. Nothing contained in the Motion or this Order nor any payment made pursuant to the authority granted by this Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors or any lien satisfied pursuant to the Motion, (ii) an agreement or obligation to pay any claims, (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (iv) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim, or (v) an approval, assumption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

8. Except as otherwise set forth herein, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

9. Notwithstanding anything to the contrary contained herein, (i) any payment made or to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved postpetition financing facility or any order regarding the use of cash collateral approved by the Court in these chapter 11 cases, including, without limitation, the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing*, *(II) Authorizing the Debtors to Use Cash Collateral on a Limited Basis*, *(III) Granting Liens and Providing Superpriority Administrative Expense Status*, *(IV) Granting Adequate Protection*, *(V) Modifying The Automatic Stay*, *(VI) Scheduling A Final Hearing*, and *(VII) Granting Related Relief* (the "DIP Order"), and (ii) 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 DIP Order and the Approved DIP Budget (as defined in the DIP Order) shall control. For the avoidance of doubt, the Debtors are not

authorized to make payments pursuant to this Order except as permitted by the Approved DIP Budget (as defined in the DIP Order).

10. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

11. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all reasonable actions necessary or appropriate to effectuate the relief granted in this Order.

13. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

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(Attorney Paul Steven Singerman is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of the order.)