

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

In re: ) Chapter 11  
 )  
MOUNTAIN SPORTS LLC; *et al.*,<sup>1</sup> ) Case No. 24-11385 (MFW)  
 )  
Debtors. ) Joint Administration Requested

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**DECLARATION OF DAVID BARTON IN SUPPORT OF FIRST-DAY MOTIONS**

I, David Barton, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Executive Officer of Mountain Sports LLC (“*Mountain*”) and the Authorized Representative of Mountain and its debtor-affiliates SDI Gift Card LLC (“*SDI Gift*”); Bob’s Stores USA LLC (“*Bob’s*”); SDI Stores LLC (“*SDI Stores*”); and Mountain Sports USA LLC (“*MSUSA*” and collectively with Mountain, SDI Gift, Bob’s, and SDI Stores, the “*Debtors*”).

2. I am familiar with the Debtors’ day-to-day operations, business affairs, and books and records.

3. On June 18, 2024 (the “*Petition Date*”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the “*Bankruptcy Code*”), in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”), thereby commencing the above-captioned bankruptcy cases (these “*Chapter 11 Cases*”). In order to minimize the adverse effects of these chapter 11 filings, the Debtors are requesting various types of relief in “first day” motions (collectively, the “*First Day Motions*”) that are being filed with the Court.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Mountain Sports LLC (9597); SDI Gift Card LLC (9775); Bob’s Stores USA LLC (6115); SDI Stores LLC (4751); and Mountain Sports USA LLC (4036). The location of the Debtors’ corporate headquarters is 160 Corporate Court, Meriden, CT 06450.

4. I am submitting this declaration (the “*Declaration*”) in support of the Debtors’ chapter 11 petitions and First Day Motions in the above-captioned cases. Except as otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge, my review of public and nonpublic documents, or my opinion, based on my experience and knowledge of the retail sporting goods industry, and the Debtors’ operations and financial condition. If called upon to testify, I could and would testify competently to the statements set forth herein.

5. Part I of this Declaration describes the Debtors’ businesses and the circumstances surrounding the commencement of these Chapter 11 Cases. In Part II of this Declaration, I substantiate the truth and accuracy of the relevant facts set forth in the First Day Motions filed concurrently herewith.

## **I. BACKGROUND**

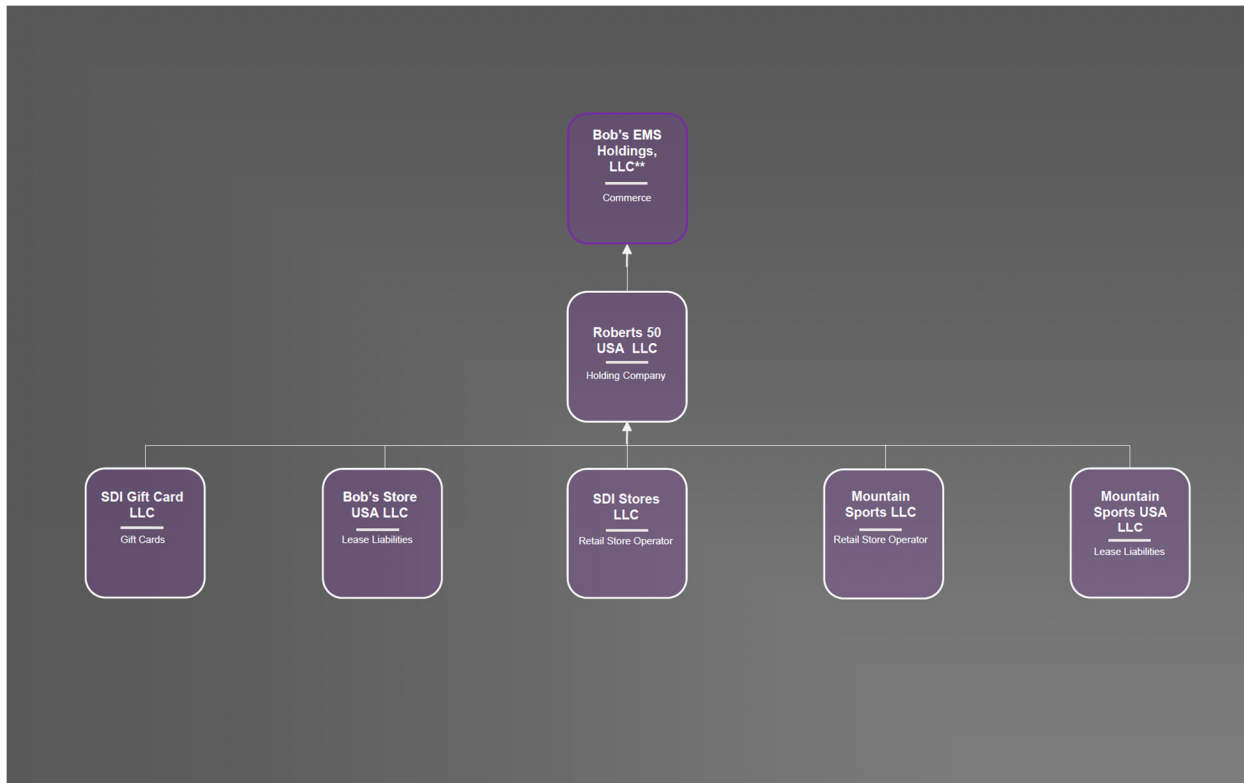
### **A. Debtors’ Businesses**

6. The Debtors operate outdoor clothing, sporting goods, activewear and sports equipment retail locations in the northeastern United States under the brands “Eastern Mountain Sports” (“*EMS*”) and “Bob’s Stores” (“*Bob’s*”). EMS markets to the adventurer looking for reliable and functional outerwear and gear at a value price. Bob’s targets moderate-income customers with a selection of footwear, workwear, teamwear and activewear. Under both brands, the Debtors operate approximately 50 retail outlets and maintain an e-commerce presence.

7. The Debtors’ operations are currently principally conducted from their corporate headquarters and distribution center at 160 Corporate Court, Meriden, Connecticut 06450 (the “*Distribution Center*”). However, as part of the Debtors’ recent restructuring process, they have determined that they can vacate the Distribution Center and operate from their larger stores and remotely. Therefore, the Debtors are in the process of vacating the Distribution Center.

8. As of the Petition Date, the Debtors employed approximately 771 full- and part-time employees. For the calendar year ending December 31, 2023, the Debtors generated \$131,850,000.00 in net revenue.

9. The corporate structure and purpose of each entity is as follows:



**B. The Debtors’ Prepetition Capital Structure**

10. The Debtors’ primary lender and secured creditor is PNC Bank, National Association as lender and agent (“PNC” or the “Bank”) under that certain Revolving Credit and Security Agreement among certain lenders, PNC as agent, each of the Debtors and non-debtor Roberts 50 USA, LLC, as borrower, and non-debtor Bob’s EMS Holdings LLC as guarantor, dated as of April 7, 2023 (the “Loan Agreement”). The loan consists of two tranches: a revolver and a FILO (the “Loans”).

11. PNC alleges it is currently owed approximately \$24.9 million under the revolver, and approximately \$4.5 million under the FILO, for a combined aggregate amount of approximately \$29.4 million owed under the Loans. The Debtors were current on payments on the Loans through the Petition Date.

12. PNC asserts a first-priority security interest in Debtors' inventory, receivables, deposit accounts, and proceeds (collectively, the "*Collateral*"), pursuant to the Loan Agreement. Specifically, the Debtors understand that the Bank asserts an interest in the Debtors' cash (the "*Cash Collateral*").

13. The Debtors also owe an estimated aggregate unsecured debt of approximately \$26,672,693.74 million<sup>2</sup> as of the Petition Date. These obligations are generally owed to landlords for back rent, trade creditors, and outstanding operating debts.

**C. Reasons For Chapter 11 Filings**

14. On March 29, 2024, PNC declared a default under the Loan Agreement. Subsequently, PNC exercised dominion over the Debtors' cash and receivables, and only funded certain expenses as the Debtors tried to work out a reorganization plan with PNC's consent. These discussions did not result in a consensual resolution, and on or about June 12, 2024, PNC stopped funding the Debtors entirely.

15. The Debtors determined, in their business judgment, that Chapter 11 filings were necessary and appropriate, in light of the ensuing liquidity crisis, in order to continue to operate the Debtors' business while attempting to develop a plan of reorganization.

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<sup>2</sup> This amount does not include any secured creditors that may be undersecured and have an unsecured portion to their claim.

16. The Debtors accordingly seek to use these filings to restructure their liabilities and reorganize their businesses in a comprehensive and orderly fashion.

## **II. FIRST DAY MOTIONS**

17. Concurrently with the filing of the Chapter 11 Cases, the Debtors are filing certain motions and proposed orders. The Debtors request that the relief described below be granted, as each request constitutes a critical element in achieving the successful restructuring of the Debtors for the benefit of all parties in interest.

18. I have reviewed and discussed with the Debtors' counsel each of the First Day Motions filed contemporaneously herewith (including the exhibits thereto) and incorporate by reference any factual statements set forth in the First Day Motions. It is my belief that the relief sought in each of the First Day Motions is tailored to meet the goals described above and, ultimately, will be critical to the Debtors' ability to successfully reorganize in these Chapter 11 Cases.

### **A. Debtors' Motion for an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (the "*Joint Administration Motion*").**

19. Given the integrated nature of the Debtors' operations, joint administration of these Chapter 11 Cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders in these Chapter 11 Cases will affect each Debtor entity. The entry of an order directing joint administration of these Chapter 11 Cases will reduce fees and costs by avoiding duplicative filings and objections. Joint administration also will allow the Office of the United States Trustee for the District of Delaware and all parties in interest to monitor these Chapter 11 Cases with greater ease and efficiency.

20. Accordingly, I submit that the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors, and all other parties in interest.

**B. Emergency Motion of Debtors for Entry of Interim and Final Orders *Nunc Pro Tunc* to the Petition Date Authorizing (I) Continued Maintenance of Existing Cash Management System and Bank Accounts; (II) Use of Existing Forms; and (III) Granting Related Relief (the “Cash Management Motion”).**

21. By the Cash Management Motion, the Debtors seek to maintain their cash management system, which consists of several bank accounts currently maintained by each Debtor at PNC (collectively, the “Bank Accounts”). The Debtors' use of their Bank Accounts to collect cash and satisfy its financial obligations comprise their “Cash Management System.”

22. The following is an explanation of the types of Bank Accounts held by the Debtors pursuant to their Cash Management System:

- a. Operating Accounts and Disbursement Accounts: These accounts are used to fund operating expenses (such as vendor payments) which require wire and ACH transfers.
- b. FBO PNC Business Account: These accounts are used to receive credit card payments from the Debtors' stores.
- c. Payroll Account: These accounts are strictly used as payroll disbursement accounts for the Debtors' employees' payroll and for payroll taxes.

23. The Debtors understand that PNC is an authorized depository and approved bank in accordance with section 345 of the Bankruptcy Code.

24. The Debtors' Cash Management System is integral to the operation and administration of their businesses. The Cash Management System allows the Debtors to (i) monitor and control all of their cash receipts and disbursements, (ii) identify the cash requirements of the Debtors, and (iii) forecast the Debtors' cash needs and liquidity. Given the size of the Debtors' Chapter 11 Cases, I believe that requiring the Debtors to close the Bank Accounts and open new ones will materially disrupt the Debtors' operations by: (a) slowing down payments to

crucial vendors as many are paid through electronic fund transfers; (b) requiring the Debtors to redirect all incoming payments, including those from credit card companies and e-commerce sites, to new accounts, which would materially inhibit the Debtors' ability to process and collect customer payments; (c) disrupting and delaying payment for payroll, administrative fees, and related taxes; (d) creating administrative burdens for the Debtors; (e) increasing the work of the Debtors' accounting personnel, who are already dealing with the many complex and varied issues related to the Chapter 11 Cases; and (f) needlessly costing the Debtors time and money. I believe that any changes to the Cash Management System would therefore result in no discernable benefit to the Debtors' bankruptcy estates or their creditors and other parties in interest.

25. Based on the foregoing, I submit that the relief requested by the Cash Management Motion is necessary and appropriate, is in the best interest of the estates and creditors, and should be granted by this Court.

**C. Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service; (II) Deeming Utilities Adequately Assured of Future Performance; (III) Establishing Procedures for Determining Adequate Assurance of Payment; (IV) Authorizing the Payment of Prepetition Administrative Fees Relating to Utility Services; and (V) Granting Related Relief (the "*Utilities Motion*").**

26. In the normal conduct of its business operations, the Debtors receive services from many utility companies and other providers (collectively, the "*Utility Companies*") for the provision of sewer, water, gas, waste, electric, and other similar utility services (collectively, "*Utility Services*"). The Debtors estimate that, in the year prior to the Petition Date, they paid approximately \$205,725 in aggregate monthly payments to the Utility Companies for Utility Services rendered.

27. The Debtors intend to timely pay all post-petition obligations owed to the Utility Companies. The Debtors expect that they will generate cash flow through their continued business

operations that will be more than sufficient to pay all post-petition obligations for Utility Services. Nonetheless, to provide adequate assurance of payment to the Utility Companies, the Debtors propose to deposit cash in an amount equal to the approximate aggregate cost of two (2) weeks of Utility Services, calculated based on the estimated aggregate monthly payment to the Utility Companies for Utility Services, or approximately \$102,863, into a newly created segregated account (the “*Adequate Assurance Deposit*”) within 20 days after the Petition Date. The Adequate Assurance Deposit account will be either interest-bearing or non-interest-bearing at the Debtors’ election.

28. Preserving the Utility Services on an uninterrupted basis is essential to ensure that the Debtors’ stores remain functioning as usual and to preserve the value of the Debtors’ businesses throughout the Chapter 11 Cases. It is imperative that the Utility Companies continue to provide Utility Services in the ordinary course of business. Failure to do so would likely result in immediate and irreparable harm to the Debtors’ operations, customer relationships, revenues, and profits, seriously jeopardizing the Debtors’ reorganization efforts and, ultimately, recoveries to creditors. Indeed, any interruption in the Utility Services, even for a brief period, could seriously jeopardize the Debtors’ reorganization efforts and, ultimately, creditor recoveries.

29. By filing the Utilities Motion, the Debtors seek to avoid such a result by requesting that the Utility Companies be prohibited from altering, refusing, or discontinuing Utilities to the Debtors absent further order of the Court.

30. Based on the foregoing, I submit that the Utilities Motion is in the best interest of the Debtors’ estates, their creditors, and other parties in interest, and should therefore be granted by this Court.



**D. Debtors' Application for an Order, Pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f), and Local Rule 2002-1(f), Appointing Epiq Corporate Restructuring, LLC as Claims and Noticing Agent, *Nunc Pro Tunc* to the Petition Date (the "*Claims Agent Application*").**

31. In the Claims Agent Application, the Debtors request entry of an order appointing Epiq Corporate Restructuring, LLC ("*Epiq*") as the Claims and Noticing Agent for the Debtors in these Chapter 11 Cases. The Debtors have not yet filed their schedules of assets and liabilities; however, the Debtors anticipate that they have more than 200 creditors and parties in interest, many of whom will require notice and are expected to file proofs of claim. Epiq's services will include assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in these Chapter 11 Cases.

32. Epiq has years of experience in noticing and claims processing. Epiq has a proprietary claims management system in which claims are effectively managed for the Office of the Clerk of the Bankruptcy Court (the "*Clerk*"). The Debtors have selected Epiq as the Claims and Noticing Agent because of Epiq's abilities and experience serving in such capacity in chapter 11 cases of this size, as well as the reasonableness of its fees.

33. By appointing Epiq as the Claims and Noticing Agent in these Chapter 11 Cases, the distribution of notices and the processing of claims will be expedited, and the Clerk will be relieved of the administrative burden of processing claims.

34. In view of the number of anticipated claimants and parties requiring notice, and the complexity of the Debtors' businesses, I submit that the appointment of a Claims and Noticing Agent is both necessary and in the best interests of the Debtors' estates, their creditors, and other parties at interest.

**E. Debtors' Emergency Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Pay and Honor Certain Prepetition Wages, Benefits and Other Obligations, (B) Authorizing Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations, and (C) Granting Related Relief (the "*Wages and Benefits Motion*")**

35. As of the Petition Date the Debtors employ approximately 771 employees (collectively, the "*Employees*") – some salaried and some paid hourly –who work on a full-time or part-time basis. Of these employees, approximately 290 are employed on a full-time basis and approximately 481 are employed on a part-time basis.

36. These employees are employed in a variety of roles, including as store sales associates and supervisors, in various management, accounting, and information technology roles, and as guides for outdoor ventures hosted by EMS, among other positions.

37. To ensure that the Debtors can continue to provide the highest levels of service, maintain high Employee morale and low attrition rates, minimize the personal hardship to Employees, and minimize disruption to revenue, the Debtors are seeking authority to continue to pay and honor, in their discretion, their prepetition obligations owing to the Employees.

38. In the ordinary course of business, the Debtors incur and pay obligations (the "*Compensation Obligations*") relating to the Employees' wages, salaries, and incentive-based compensation. The vast majority of the Debtors' Employees rely on their compensation from the Debtors to pay their living expenses. In addition, the Debtors incur a number of other obligations related to the Employees, such as federal and state withholding taxes and other withheld amounts, expense reimbursements, healthcare plans, insurance obligations, and 401k contributions, and other benefits that the Debtors have historically provided in the ordinary course of business. The Debtors' compensation and benefit obligations to the Employees (together with all fees, costs, and expenses incident thereto) are referred to herein as the "*Employee Obligations.*"

39. The Debtors routinely fund the Employee Obligations pursuant to a prepetition engagement (the “*Services Agreement*”) with ADP, a third-party Professional Employer Organization (the “*PEO*”). Pursuant to the Services Agreement, every pay period, the Debtors provide the PEO with sufficient funds to process payroll and provide and administer benefits for all Employees.

40. As of the Petition Date, I believe that certain prepetition amounts owed on account of the Employee Obligations remain outstanding due to, among other things, the timing of the Debtors’ payroll and method of payment for Employees, and the processing of Employee-related payments and expense reimbursements. The outstanding Employee Obligations are as follows:

**(I) Wage Obligations**

41. In the ordinary course of business, the Debtors pay Employee wages and salaries, (collectively, the “*Wage Obligations*”) on a bi-weekly basis. On average, the Debtors’ estimated bi-weekly gross payroll for Employees is approximately \$770,000.

42. As of the Petition Date, I believe that approximately \$935,000 in Wage Obligations have accrued and remain unpaid. I do not believe that the amount of Wage Obligations owed to any single Employee exceeds \$15,150.00, the statutory cap outlined in section 507(a)(4) of the Bankruptcy Code (the “*Statutory Cap*”).

43. On average, the Debtors pay the PEO a service fee of around \$3,500.00 per pay period for payroll-related services (the “*Processor Fees*”) that they provide to the Debtors. I estimate that approximately \$4,500.00 in prepetition Processor Fees were outstanding as of the Petition Date.

44. By the Wages and Benefits Motion, the Debtors are requesting the authority, but not direction, to pay all prepetition Wage Obligations and to pay all outstanding prepetition Processor Fees in the ordinary course of business.

**(II) Payroll Taxes and Other Deductions**

45. The Debtors, via the PEO, 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 (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*"). On average, the Debtors, through the PEO, remit to the Taxing Authorities approximately \$140,000.00 on account of the Payroll Taxes per pay period. As of the Petition Date, I estimate that approximately \$160,000.00 in Payroll Taxes have accrued and remain unpaid on account of Payroll Taxes relating to the prepetition period.

46. In addition, the PEO routinely deducts certain amounts from the Employees' paychecks on account of miscellaneous items, including garnishments, child support and other similar deductions (collectively, the "*Deductions*"). The Debtors consider their outstanding Deductions to be negligible and far below the Statutory Cap of \$15,150.00 per Employee.

47. By the Wages and Benefits Motion, the Debtors are requesting the authority, but not direction, to pay (i) all prepetition Withholding Taxes in the ordinary course of business, and (ii) the Deductions in the ordinary course of business.

**(III) Reimbursements**

48. The Debtors reimburse certain Employees for approved, legitimate expenses incurred in the scope of their employment on behalf of the Debtors. These expenses include miscellaneous business expenses. To the extent these expenses are incurred in furtherance of the Debtors' business, they are reimbursed in full (the "*Expense Reimbursement Obligations*") after submission of appropriate documentation through direct deposit.

49. The Debtors consider their Expense Reimbursements to be negligible (approximately \$10,000 in the aggregate) and far below the Statutory Cap of \$15,150.00 per Employee. To the extent such obligations are outstanding, the Debtors are seeking the authority, but not direction, to pay these Expense Reimbursement Obligations in the ordinary course of business.

**(IV) Healthcare Plans**

50. In the ordinary course of business, the Debtors have established health benefit plans and policies for the Employees and certain of the Employees' dependents and beneficiaries, which include medical insurance (including prescription drugs), dental insurance, and vision insurance (collectively, the "*Healthcare Plans*"). Premiums for the Healthcare Plans are withheld from the Employees' gross pay and included within the Deductions discussed above.

51. The Debtors offer full-time Employees medical plans (the "*Medical Plans*"). Each of the plans offers comprehensive medical and preventative care coverage, but the Employees' premiums, deductibles, co-pays, and out-of-pocket costs vary depending on which plan is selected and whether the Employee has dependents covered by the applicable Medical Plan. Prescription drug coverage is also available under each of the Medical Plans. These Medical Plans also offer Health Savings Account ("*HSA*") and Flexible Spending Account ("*FSA*") options.

52. The Debtors additionally offer full-time Employees dental and vision plans (the “*Dental Plans*” and “*Vision Plans*” respectively). Each of the Dental Plans generally covers preventative dental services and basic and major restorative services, but the Employees’ premiums, deductibles, co-pays, and out-of-pocket costs vary depending on which Dental Plan the Employee selects and whether the Employee has dependents covered by the applicable Dental Plan. Each of the Vision Plans saves the Employees money on eligible eye care expenses, such as periodic eye exams, eyeglasses, contact lenses, and similar expenses, but the Employees’ premiums, deductibles, co-pays, and out-of-pocket costs vary depending on which Vision Plan the Employee selects and whether the Employee has dependents covered by the applicable Vision Plan.

53. In addition to the Healthcare Plans, the Debtors provide qualifying terminated Employees with the opportunity to receive other benefits, such as the ability to continue medical insurance in accordance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“*COBRA*”) and subsidies in connection with the continuation of such benefits (together with Healthcare Plans, the “*Healthcare Obligations*”).

**(V) Employee Insurance Obligations**

54. The Debtors offer Employees additional insurance in connection with their employment (the “*Insurance Obligations*”). Each of these plans include basic life insurance, accidental death and dismemberment insurance, and disability insurance, and the Debtors have paid the costs for this insurance coverage for all employees. In addition, the Debtors’ Employees have had the option to include various supplemental insurance plans as well, including supplemental life insurance, accident insurance, critical illness insurance, identity theft insurance,

pet insurance, and legal insurance, which the Employees have the option of funding through their paychecks.

55. The Debtors pay an aggregate of approximately \$271,000.00 per month on account of the Insurance Obligations and Healthcare Obligations, including funds the Debtors receive from Employee contributions through payroll deductions and later remit, to provide the Insurance Obligations and Healthcare Obligations to eligible Employees.

56. As of the Petition Date, I estimate that approximately \$431,000.00 in the aggregate is due in connection with the Insurance Obligations and Healthcare Obligations.

57. By the Wages and Benefits Motion, the Debtors are seeking authority to continue to fund the Healthcare Obligations and Insurance Obligations to the Employees in the ordinary course of business, continue making contributions to such programs, continue to pay amounts related thereto, including premiums, claim amounts, and administrative costs (including without limitation those of third party administrators), and pay such amounts to the extent they remain unpaid as of the Petition Date. The Debtors also request authority to remit premiums, if any, that may have been withheld from Employees' paychecks but not yet forwarded to the insurance provider and to continue honoring their obligations under the Healthcare Obligations and Insurance Obligations post-petition in the ordinary course of business and consistent with their pre-petition practices.

58. The Debtors depend almost exclusively on the Employees to meet the operational needs of the businesses, largely to serve customers in their retail store operations and associated programs. The Employees likewise depend on the Debtors to continue to fulfill the Employee Obligations.

59. Based on the foregoing, I submit that the Wages and Benefits Motion is appropriate and in the best interests of the Debtors, their estates, creditors, and other parties in interest, and should be granted in the Chapter 11 Cases as requested therein.

**F. Emergency Motion Pursuant to Sections 361 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001 for Interim and Final Orders: (1) Authorizing Use of Cash Collateral; (2) Scheduling Final Hearing; and (3) For Related Relief (the “Cash Collateral Motion”)**

60. By the Cash Collateral Motion, the Debtors seek approval of interim and final orders: (i) authorizing the Debtors’ use of cash collateral on the terms and conditions in the proposed interim order; (ii) authorizing the proposed adequate protection; (iii) scheduling a final hearing; and (iv) approving the proposed notice thereof.

61. The Debtors’ senior secured Lender is PNC. As of the Petition Date, PNC asserts that it is owed approximately \$24.9 million pursuant to a revolver and \$4.5 million pursuant to a FILO loan. PNC asserts a first-priority security interest in the Collateral, including the Cash Collateral.

62. The Debtors’ estates will suffer immediate and irreparable harm if the Debtors do not obtain immediate access to the Cash Collateral. The Debtors do not have sufficient unencumbered cash and need liquidity to operate their businesses and pay operating expenses critical to the businesses, including utilities, payroll, rents, insurance, and taxes. The Debtors cannot reasonably expect their Employees, vendors and service providers to continue providing services without a source of payment while they reorganize their businesses.

63. Most urgently, the Debtors need to make payroll on June 21, 2024, and need to fund same immediately. Accordingly, the Debtors are seeking to have the Cash Collateral Motion heard on an emergency basis.



64. More broadly, the Debtors have an immediate need to use the Cash Collateral to assure the orderly administration of their Chapter 11 Cases. Without use of the Cash Collateral, the Debtors will not be able to pay their direct operating expenses. Inability to use the Cash Collateral on an interim basis will likely result in cessation of the Debtors' ongoing operations and will cause irreparable harm to the Debtors' estates. Put simply, the Debtors cannot continue operations or their restructuring efforts absent use of the Cash Collateral.

65. Based on the foregoing, I submit that the Cash Collateral Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest, and should be granted in the Chapter 11 Cases as requested therein.

**G. Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Continue to Maintain Their Insurance Policies and Programs, and (B) Honor All Insurance Obligations, and (II) Granting Related Relief (the “*Insurance Motion*”)**

66. In connection with the operation of the Debtors' businesses and the management of their properties, the Debtors maintain various insurance policies and workers' compensation programs (collectively, the “*Insurance Policies and Programs*” and all premiums and other obligations related thereto, including any broker or advisor fees, assessments, or other fees, collectively, the “*Insurance Obligations*”) through several different insurance carriers (the “*Insurers*”) including, but not limited to, those Insurance Policies and Programs and Insurers listed on Exhibit C (the “*Insurance Schedule*”) to the Insurance Motion.

**(I) The Insurance Policies**

67. The Debtors maintain various liability, property and other insurance policies, which provide the Debtors with insurance related to, among other things, general liability, directors & officers, ERISA, business, auto, cargo, workers compensation, commercial property, and excess liability coverage (collectively, the “*Insurance Policies*”). The Debtors maintain the Insurance

Policies to help manage and limit the various risks associated with operating their stores and store programs, which is essential to the preservation of the value of the Debtors' businesses and assets. Some of the Insurance Policies are required by certain regulations, laws, and contracts that govern the Debtors' commercial activities.

68. Pursuant to the Insurance Policies and Programs, the Debtors pay premiums based upon a fixed rate established and billed by each Insurer (collectively, the "*Insurance Premiums*"). The Debtors pay approximately \$1,105,973.00 in Insurance Premiums each year. The Debtors have approximately \$332,650.28 in Insurance Premiums currently due and payable on account of Insurance Policies which extend coverage to the Debtors during the period beginning May 1, 2024 and ending May 1, 2025.

69. By the Insurance Motion, the Debtors are seeking authority to pay their Insurance Premiums, as they come due, in the ordinary course of business, whether arising from the prepetition or postpetition period, throughout these Chapter 11 Cases.

**(II) The Workers' Compensation Programs**

70. The Debtors also maintain workers' compensation insurance (the "*Workers' Compensation Policies*") as required by statute in each of the states in which they operate. The Debtors' Workers' Compensation Policies insure their employees for on-the-job injuries. The Debtors also maintain several excess workers' compensation insurance policies with certain third-party Insurers, which are maintained to cover workers' compensation claims in excess of the amounts covered by the base Workers' Compensation Policies (the "*Excess Policies*" and collectively with the Workers' Compensation Policies, the "*Workers' Compensation Programs*").

71. The Debtors utilize a third-party administrator to investigate, administer and pay claims arising under their Workers' Compensation Programs.

72. On June 18, 2024, the Debtors' workers' compensation insurer sent the Debtors a certified letter indicating that effective August 3, 2024, the Debtors' Workers' Compensation Policies would be canceled for nonpayment of premiums. At the time of this Motion, the Debtors had \$32,968.60 in overdue workers compensation premiums due immediately.<sup>3</sup>

73. By the Insurance Motion, the Debtors are seeking authority to resume paying their workers' compensation premiums to maintain coverage. Specifically, the Debtors seeks authority (i) to pay any obligations arising under or in connection with the Workers' Compensation Programs, including prepetition and past-due premiums and other obligations, (ii) to maintain the Excess Policy with the Excess Insurers, and (iii) to maintain their Workers' Compensation Programs in the ordinary course of business.

### **(III) The Debtors' Insurance Financing Arrangements**

74. Generally, the Debtors' Insurance Policies require annual Insurance Premium payments to be made at the beginning of the applicable policy period. Because it is not always economically advantageous for the Debtors to pay Insurance Premiums on a lump-sum basis, the Debtors finance certain of their Insurance Premiums, pursuant to that certain Premium Finance Agreement – Promissory Note, dated as of May 16, 2024 (the "*Premium Financing Agreement*"), by and between, on the one hand, certain of the Debtors and related entities (the "*Insured Parties*"),<sup>4</sup> and on the other hand, AFCO Credit Corporation (the "*Premium Financier*").

75. Under the Premium Financing Agreement, the Premium Financier agreed to finance applicable Insurance Premiums up to a total amount of approximately \$307,350.00. In

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<sup>3</sup> The policy in question is in the name of Roberts 50 USA LLC, the non-Debtor parent of the Debtors. However, the Workers Compensation Policies cover the Debtors' employees.

<sup>4</sup> These contracting parties include Debtors Mountain Sports USA, LLC and Bob's Stores USA LLC, and non-Debtor Roberts 50 USA, LLC.

exchange therefor, the Insured Parties agreed to pay the Premium Financier a down payment of approximately \$61,870.00 followed by ten (10) monthly installments of approximately \$25,583.46, beginning on June 1, 2024. These monthly installments are due on the first day of each month. The amount financed under the Premium Financing Agreement accrues interest at an annual rate of 9.10%.

76. Pursuant to the Premium Financing Agreement, the Insured Parties granted the Premium Financier a security interest “in any and all unearned or return premium(s) and dividends which may become due under the policy(ies) being purchased.” If the Debtors do not satisfy their obligations under the Premium Financing Agreement, the Premium Financier has the right, subject to the automatic stay, to, among other things, terminate any covered Insurance Policies.

77. By the Insurance Motion, the Debtors request to continue honoring their obligations to the Premium Financier in the ordinary course of business, including authority to pay any amounts that may be due and owing or that come due and owing under the Premium Financing Agreement.

78. Paying the Insurance Obligations are necessary costs of preserving the Debtors’ estates. In addition, the Debtors are contractually and legally obligated to maintain certain types of insurance, and I have been advised that the Debtors must maintain certain of the Insurance Policies and Programs in order to comply with the operating guidelines of the Office of the United States Trustee for Region 3. For example, applicable state law mandates that certain Debtors maintain workers’ compensation coverage for their employees, or the Debtors could be prohibited from operating their stores. The Debtors’ failure to maintain the Workers’ Compensation Programs could jeopardize their coverage and expose the Debtors to fines and other adverse actions by state workers’ compensation boards. In addition, the risk that eligible workers’ compensation claimants would not receive timely payments for prepetition employment-related injuries could negatively

impact the financial well-being and morale of not just those claimants, but also the Debtors' active employees. In addition, the Insurance Programs are essential to the Debtors' operations, as the Debtors would be exposed to significant liability if the Insurance Programs were allowed to lapse or terminate. Such exposure could have a materially adverse impact on the Debtors' chapter 11 strategy and their ability to maximize value for their stakeholders.

79. Based on the foregoing, I submit that the Insurance Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest, and should be granted in the Chapter 11 Cases as requested therein.

**H. Motion for Order Authorizing Payment of Prepetition Sales and Use Taxes (the “*Tax Motion*”)**

80. The Debtors incur and collect from customers state and local sales taxes (the “*Sales Taxes*”) in connection with the sale of products. Sales Taxes are charged at the point of purchase and set by the applicable Taxing Authority as a percentage of the total purchase price.

81. In addition to Sales Taxes, the Debtors are also responsible for remitting use taxes (the “*Use Taxes*,” and together with the Sales Taxes, the “*Sales and Use Taxes*”) any time they purchase tangible personal property from vendors who are not located in the state to which the property is to be delivered, or on account of certain goods and services. Use Taxes arise if a supplier does not have business operations in the state in which it is supplying goods and therefore does not charge state taxes. In such instances, applicable law generally requires the Debtors to self-assess and pay Use Taxes to the applicable Taxing Authorities.

82. As of the Petition Date, I believe the Debtors owe payment of Sales and Use Taxes for the month of May 2024, which total approximately \$274,725.67. In addition, the Debtors estimate that roughly \$165,000.00 in Sales and Use Taxes have accrued in the month of June 2024 as of the filing of the Petitions. The Debtors seek authority to pay their outstanding Sales and Use

Taxes due as of the Petition Date, and to continue to pay Sales and Use Taxes on a post-petition basis in the ordinary course of business.

83. The Debtors use a third-party tax compliance company, Avalara, Inc. (“Avalara”), to manage their payment of these Sales and Use Taxes. The Debtors’ ordinary course of business involves disbursing the amounts owed for Sales and Use Taxes to Avalara, who then disburses the funds to the relevant state Taxing Authorities. The Debtors seek to continue this prepetition arrangement in the ordinary course of business.

84. Based on the foregoing, I submit that the Tax Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest, and should be granted in the Chapter 11 Cases as requested therein.

85. I look forward to working with all parties to achieving a successful reorganization and maximizing the value of the Debtors’ estates for the benefit of all parties in interest.

Date: June 20, 2024

By: /s/ David Barton  
David Barton  
Authorized Representative of the Debtors