

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

In re:)	
)	Chapter 11
)	
SUNPOWER CORPORATION, <i>et al.</i> , ¹)	Case No. 24-[●] (●)
)	
Debtors.)	(Joint Administration Requested)
)	

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

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”), (a) authorizing, but not directing, the Debtors to (i) pay all prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits Programs (as defined below) and (ii) continue to administer the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: SunPower Corporation (8969); SunPower Corporation, Systems (8962); SunPower Capital, LLC (8450); SunPower Capital Services, LLC (9910); SunPower HoldCo, LLC (0454); SunPower North America, LLC (0194); Blue Raven Solar, LLC (3692); Blue Raven Solar Holdings, LLC (4577); BRS Field Ops, LLC (2370); and Falcon Acquisition HoldCo, Inc. (3335). The location of the Debtors' service address for purposes of these chapter 11 cases is: 880 Harbour Way South, Suite 600, Richmond, CA 94804.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Matthew Henry, Chief Transformation Officer of SunPower Corporation, in Support of the Chapter 11 Filing and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith on August 5, 2024 (the "Petition Date") and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Employee Compensation and Benefits Programs in the ordinary course, including payment of prepetition obligations related thereto, and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing approximately twenty-one days from the Petition Date.

Jurisdiction and Venue

2. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the “Court”) under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court 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.

4. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 9013-1.

Background

5. SunPower Corporation, together with its Debtor and non-Debtor affiliates (collectively, the “Company”), is a leading provider of solar technology and energy products offering all-in-one residential solar and energy storage solutions to customers located primarily in

the United States and Canada. Headquartered in Richmond, California, the Company's mission since its inception has been to reduce greenhouse gas emissions by making home solar energy more accessible for historically underserved communities.

6. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property 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' Workforce

I. The Debtors' Prepetition Workforce.

7. Prior to the Petition Date, the Company employed approximately 4,700 total workers. The Debtors also periodically engaged specialized workers to complete discrete projects or fulfill certain duties on a short-term or extended basis, including independent contractors and temporary workers. Prior to the Petition Date, the Debtors' temporary workforce totaled approximately 1,900 workers between SunPower and Blue Raven.

8. The Debtors have been grappling with various macroeconomic headwinds, as well as certain Company-specific challenges. In response, after exhausting all available options, in careful consultation with their advisors, the Company made the difficult decision to terminate the employment of approximately 15% of its workforce prior to the filings of these chapter 11 cases. On July 26, 2024, the Debtors' management team and advisors commenced layoffs of certain segments of their workforce and issued notices pursuant to the federal Worker Adjustment and Retraining Notification Act, and various state law equivalents, to the approximately 650

employees, notifying such employees that they had been permanently laid off and consequently terminated (all employees terminated before the Petition Date, collectively, the “Former Employees”).

II. The Debtor’s Postpetition Workforce.

9. As of the Petition Date, the Debtors’ workforce comprises approximately 4,000 employees (the “Employees”)³ whose skills and knowledge are essential to the Debtors’ assets, operations, and ability to complete a value maximizing sale. Of these, approximately 2,800 are U.S. Employees, and approximately 1,200 are Filipino Employees. The Employees are compensated on a salaried or hourly basis.

10. The Debtors historically sourced, and will continue to source, critical labor support from various agencies and periodically retain specialized individuals as independent contractors or temporary workers (the “Temporary Staff”) to complete discrete projects on an as-needed basis. The Temporary Staff were, and will continue to be, an important supplement to the efforts of the Debtors’ Employees.

11. Together, the Employees and Temporary Staff perform a variety of critical functions including accounting, administration, finance, human resources, management, security, and other tasks that are essential to the Debtors’ remaining operations and ability to pursue a value-maximizing sale and continue as a going concern.

Employee Compensation and Benefits Programs

12. The Debtors seek authority, but not direction, to (a) pay and honor certain prepetition claims and (b) continue to honor obligations on a postpetition basis, as applicable,

³ The Debtors also employ three Employees in Canada, and the relief sought herein includes such Employees’ Employee Compensation and Benefits Programs.

relating to, among other things, wages, salaries, commissions, contractor fees, severance, withholding taxes, other amounts withheld (including garnishments, Employees' share of insurance premiums, taxes, and 401(k) contributions and other retirement savings contributions), certain non-insider incentive plans, payroll processing, reimbursable expenses, health insurance benefits, medical savings accounts, life and AD&D insurance, short and long-term disability benefits, the workers' compensation program, business travel insurance, retirement savings plans, benefit administration services, time-off benefits (including vacation time, unpaid vacation time, excused work days, holidays, and parental leave), COBRA benefits, and other benefits that the Debtors have provided to Employees and/or Temporary Staff historically (collectively, the "Employee Compensation and Benefits Programs"), in each case, on a case-by-case basis and in the Debtors' discretion, on an interim and a final basis, as detailed herein, and summarized in the chart below. In addition, the Debtors also seek to pay all costs incidental to the Employee Compensation and Benefits Programs.

13. Subject to the Court's approval of the relief requested in this motion, the Debtors intend to continue their prepetition Employee Compensation and Benefits Programs in the ordinary course, including paying prepetition amounts. The Debtors would retain the right to modify, change, and discontinue any of their Employee Compensation and Benefits Programs and to implement new programs, policies, and benefits, in the ordinary course during these chapter 11 cases and without the need for further Court approval, subject to applicable law.

14. As set forth below, by this motion, the Debtors seek authority, but not direction, to pay, remit, or reimburse, as applicable, the following aggregate prepetition amounts on account of the Employee Compensation and Benefits Programs set forth in the table below:

Employee Compensation and Benefits Programs	Approximate Interim Amount	Approximate Final Amount
Compensation and Withholding Obligations		
Unpaid Wages	\$4,800,000	\$4,800,000
Unpaid Temporary Staff Obligations	\$2,500,000	\$2,500,000
Withholdings Obligations	\$1,725,000	\$1,725,000
Accrued PTO	\$965,000	\$965,000
Unpaid Commissions	\$1,470,000	\$1,470,000
Severance Obligations	\$3,716,000	\$3,716,000
Non-Insider Incentive Plans	\$0	\$1,505,000
Benefits and Entitlements		
Health and Welfare Programs	\$838,000	\$838,000
Other		
Miscellaneous Benefits	\$30,000	\$30,000
Payroll Fees	\$23,000	\$23,000
Reimbursable Expenses	\$40,000	\$40,000
Total	\$16,107,000	\$17,612,000

I. Compensation and Withholding Obligations.

A. Wages.

15. The Debtors pay wages, salaries, and other compensation (collectively, excluding reimbursable expenses, commissions, and paid leave, the “Wages”) to their Employees on a semi-monthly basis. Employees are generally paid in arrears every two weeks, or semi-monthly, with a small number of hourly Employees being paid weekly. Because

Employees are generally paid in arrears, certain Employees and Former Employees will be owed accrued but unpaid Wages as of the Petition Date. Wages may also be due and owing as of the Petition Date due to, among other things, pay discrepancies that, upon resolution, may reveal that additional amounts are owed to certain Employees and Former Employees.

16. On average, the Debtors paid approximately \$15,550,000 per month on account of Wages for the three months immediately preceding the Petition Date. Additionally, certain Blue Raven and U.S. based SunPower Employees are entitled to receive commissions based on the Employee's respective sales (the "Commissions"). As of the Petition Date, the Debtors estimate that they owe approximately \$4,800,000 in accrued and unpaid Wages (the "Unpaid Wages"). Further, the Debtors owe approximately \$1,470,000 in accrued and unpaid commissions (the "Unpaid Commissions"). The Debtors seek authority to pay any Unpaid Wages and Unpaid Commissions, including amounts that may have accrued or been incurred prior to the Petition Date, and continue to pay the Wages and Commissions on a postpetition basis in the ordinary course and consistent with prepetition practice. For the avoidance of doubt, to the extent the Debtors seek to pay outstanding prepetition amounts on account of Accrued PTO, Unpaid Temporary Staff Obligations, Unpaid Commissions, and Non-Insider Incentive Plans (each, as defined herein), in excess of the priority amount of \$15,150 imposed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the "Priority Cap"), the Debtors request such relief solely pursuant to the Final Order, *provided, however*, the Debtors seek authority to pay outstanding prepetition amounts to PTO Eligible Employees (as defined herein) on account of Accrued PTO (as defined herein), as required by applicable state law, in excess of the Priority Cap, pursuant to the Interim Order.

B. Temporary Staff Compensation.

17. The Debtors make payments directly to their Temporary Staff (the "Temporary Staff Compensation") for the performance of certain services critical to the Debtors' operations,

including, among other things, sales and marketing services. The Employees rely on the Temporary Staff to complete discrete projects in furtherance of the Debtors' business and to provide critical support to the Debtors' operations on a short-term basis where it is not economically feasible to employ personnel on a full- or part-time basis. The Debtors believe the authority to continue paying the Temporary Staff Compensation is critical to maintain existing operations and pursue a value-maximizing sale.

18. The Debtors paid approximately \$3.5 million per month, between SunPower and Blue Raven, on account of the Temporary Staff Compensation for the three months immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they owe approximately \$2.5 million in accrued and unpaid Temporary Staff Compensation (the "Unpaid Temporary Staff Obligations"), all of which will become due and owing within the first twenty-one days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any accrued but Unpaid Temporary Staff Obligations, including amounts that may have accrued or been incurred prior to the Petition Date, and continue to pay the members of the Temporary Staff on a postpetition basis in the ordinary course of business and consistent with prepetition practices.

C. Non-Insider Incentive Plans.

19. The Debtors historically maintained certain incentive programs to recruit and retain high level Employees through sign-on and retention bonus programs (the "Sign-on Bonus Program" and the "Employee Retention Bonus Program", respectively, and together the "Non-Insider Incentive Plans") for certain Employees who do not constitute "Insiders" (as defined in section 101(31) of the Bankruptcy Code, "Insiders"). As of the Petition Date, the Debtors estimate that they will owe approximately \$1,505,000 on account of the Non-Insider Incentive Plans. The Debtors seek authority to pay the amounts related to the Non-Insider Incentive Plans, including amounts that may have accrued or been incurred prior to the Petition Date, and continue to pay the

amounts related to the Non-Insider Incentive Plans on a postpetition basis in the ordinary course and consistent with prepetition practices. For the avoidance of doubt, the Debtors seek authority to pay the amounts related to the Non-Insider Incentive Plans pursuant to the Final Order only and do not propose to make any payment on account of the Non-Insider Incentive Plans to Insiders.

1. Sign-on Bonuses.

20. The Debtors historically maintained the Sign-on Bonus Program for certain Employees. Eligible Employees were historically granted sign-on bonuses based on their qualifications, role, and market conditions (the “Sign-on Bonuses”). As of the Petition Date, the Debtors estimate that they will owe approximately \$1,200,000 on account of the Sign-on Bonus Program (the “Sign-on Bonus Obligations”). Accordingly, the Debtors seek authority continue to honor and process the Sign-on Bonus Obligations on a postpetition basis in the ordinary course and consistent with prepetition practice. For the avoidance of doubt, the Debtors do not intend to offer Sign-on Bonuses on a postpetition basis.

2. Employee Retention Bonuses.

21. The Debtors historically offered retention bonuses for certain high-level Employees as part of the Employee Retention Bonus Program. As of the Petition Date, the Debtors estimate that they will owe approximately \$305,000 on account of the Employee Retention Bonus Program. Going forward, the Debtors believe that retaining the legacy Employee Retention Bonus Program, and paying related amounts, is crucial to avoiding the disruption that would result if certain key Employees left their positions during a potential sale(s). Accordingly, the Debtors seek authority to continue to honor and process payment of such amounts on a postpetition basis in the ordinary course and consistent with prepetition practice.

3. The Prepetition Non-Insider Retention Bonuses.

22. In addition to the Employee Retention Bonus Program, prior to commencing these chapter 11 cases, the Debtors paid retention bonuses to certain non-Insider Employees, subject to claw back under certain circumstances (the “Prepetition Non-Insider Retention Bonuses”). The Prepetition Non-Insider Retention Bonuses were offered as an incentive to keep eighty-five critical non-Insider Employees on the job while the Debtors undertake an expeditious sale process to maximize estate value. For the avoidance of doubt, no amounts remain outstanding on account of the Prepetition Non-Insider Retention Bonuses, and the Debtors do not seek authority to pay or continue any of the Prepetition Non-Insider Retention Bonuses, but make this disclosure for transparency.

D. Severance.

23. The Debtors maintain a severance policy under which certain Employees (the “Severance Eligible Employees”) are entitled to receive benefits (the “Severance Program”). Under the Severance Program, Severance Eligible Employees receive severance benefits (the “Severance Obligations”), the amount of which depends on their position and years of completed service with the Debtors. As of the Petition Date, the Debtors estimate they owe \$3,716,000 on account of the Severance Program. By this motion, the Debtors seek authority to honor and process the Severance Obligations on a postpetition basis in the ordinary course and consistent with prepetition practice. For the avoidance of doubt, the Debtors are not seeking authority to make any severance payments to any Insiders of the Debtors.

E. Payroll Processing.

24. In the ordinary course, the Company utilizes payroll software provided by several vendors, including Automatic Data Processing, Inc. and UKG Inc. (collectively, the “Payroll Providers”), which supports payroll processing, payroll tax calculations and filings, and other

payroll-related services. The Debtors pay the Payroll Providers certain software, payroll-related, and other administrative fees to the Payroll Providers (the “Payroll Fees”) on a monthly basis. Failure to satisfy the Payroll Fees in the future could lead to a delay in payroll processing and delayed disbursement of payroll taxes to the appropriate third parties to the detriment of the Employees and the Debtors’ operations. The Debtors believe the authority to continue paying the Payroll Providers the Payroll Fees in order to maintain their use of the Payroll Software and to continue administering payroll, each in the ordinary course and consistent with prepetition practice, is critical to the Debtors’ continued operations while in chapter 11.

25. On average, the Debtors paid approximately \$129,000 on account of the Payroll Fees for the three months immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they owe approximately \$23,000 in accrued and unpaid Payroll Fees. Accordingly, the Debtors seek authority to remit the Payroll Fees to the Payroll Providers, including amounts that may have accrued or been incurred prior to the Petition Date, and to continue administering payroll in the ordinary course, and consistent with prepetition practice.

F. Withholding Obligations.

26. During each applicable pay period, the Debtors routinely deduct certain amounts from Employees’ paychecks, including, without limitation, garnishments, levies, child support and related fees, and pre-tax deductions payable in accordance with certain Employee Compensation and Benefit Programs, including payments pursuant to any supplemental Employee-elected, voluntary insurance programs provided by Prudential Financial, Inc. (“Prudential”) and Cigna Financial (“Cigna Financial”) (collectively, the “Deductions”). On average, the Debtors deducted approximately \$4,500,000 per month from Employees’ paychecks for the three months immediately preceding the Petition Date.

27. The Debtors also are required by law to withhold from the Employees' Wages amounts related to, among other things, federal, state and local income taxes, and Social Security and Medicare taxes (collectively, the "Employee Withholding Taxes") for remittance to the appropriate federal, state, and local taxing authorities. The Debtors must then match the Employee Withholding Taxes from their own funds and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the "Employer Payroll Taxes") and, together with the Employee Withholding Taxes, the "Payroll Taxes").⁴ The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, or local taxing authority within a few days of when Employees' payroll checks are disbursed.

28. On average, the Debtors paid approximately \$294,000 per month on account of the monthly Payroll Taxes for the three months immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that approximately \$1,725,000 of accrued but unpaid Deductions and Payroll Taxes (together, the "Withholding Obligations") have been deducted but not remitted to the appropriate third-party payees. The Debtors believe that the Withholding Obligations are not property of their estates. However, out of an abundance of caution, the Debtors seek authority to remit the Withholding Obligations to the respective third-party payees and to continue to honor and process the Withholding Obligations on a postpetition basis in the ordinary course and consistent with prepetition practice.

G. Reimbursable Expenses.

29. The Debtors reimburse Employees or pay credit card invoices on their behalf for approved expenses incurred on behalf of the Debtors in the ordinary course. The Debtors expect

⁴ For the avoidance of doubt, the Debtors seek authority to pay Payroll Taxes solely in this motion and not in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Prepetition and Postpetition Taxes and Fees and (II) Granting Related Relief* filed contemporaneously herewith.

that the Employees will continue to incur necessary reimbursable expenses (the “Reimbursable Expenses”) in connection with the Debtors’ limited business operations. Reimbursable Expenses typically include out-of-pocket expenses associated with transportation, lodging, and meals incurred in connection with business travel and certain other work-related expenses, such as business mobile phones, and general office expenses. Generally, if a Corporate Credit Card (as defined below) is not used, Reimbursable Expenses are incurred directly by the Employees with personal funds. Accordingly, without reimbursement, Employees may be held personally liable for any unpaid obligations. The Debtors’ inability to reimburse such expenses would impose hardship on such individuals where the obligations were incurred for the Debtors’ benefit.

30. The Debtors also provide certain Employees with corporate credit cards through Fifth Third Bank (the “Corporate Credit Cards”). The Corporate Credit Cards are primarily utilized to pay for certain work-related expenses, such as work-related travel expenses, including meals, accommodations, ground transportation, and all other business-related expenses incurred while traveling, as well as office supplies, vendor payments, and small, non-recurring purchases made on behalf of the Debtors. Given the importance of Employees’ ability to use the Corporate Credit Cards for payment of these work-related expenses, the Debtors request authority to continue utilizing and making payments on account of the Corporate Credit Cards in the ordinary course and consistent with prepetition practice.

31. The Debtors utilize Oracle Fusion, a program provided by Oracle Corporation (“Oracle”) to manage a suite of programs, and other administrative tasks, including employee reimbursements. The Debtors pay a monthly fee of approximately \$216,000 to Oracle for administering Oracle Fusion and estimate that, as of the Petition Date, they owe approximately

\$812,000 to Oracle.⁵ In addition to payments made to Oracle, on average, the Debtors reimbursed approximately \$96,000 per month to Employees on account of the Reimbursable Expenses for the three months immediately preceding the Petition Date. As of the Petition Date, the Debtors estimate that they will owe approximately \$40,000 in the aggregate amount of accrued but unpaid Reimbursable Expenses, all of which will become due and owing within the first twenty-one days of these chapter 11 cases. Accordingly, the Debtors seek authority to satisfy any accrued but unpaid prepetition Reimbursable Expenses and continue to pay the Reimbursable Expenses, on a postpetition basis in the ordinary course and consistent with prepetition practice.

II. Employee Benefits Programs.

A. Health and Welfare Programs.

32. The Debtors offer certain health and welfare benefits programs to eligible Employees and Former Employees, including the Health Insurance Programs, the Medical Savings Accounts, the Life and AD&D Insurance Plans, the Disability Benefits, and the Employee Assistance Programs, and pay certain administrative fees to third-party providers associated with such programs (each as defined herein and, collectively, the “Health and Welfare Programs”).

1. Health Insurance Programs.

33. Employees are offered the opportunity to participate in or are otherwise provided a number of health benefit plans, including the Medical Plans, the Vision Plans, and the Dental Plans (each as defined herein, and collectively, the “Health Insurance Programs”). The Debtors also subsidize or continue to provide certain benefits to certain Former Employees after their

⁵ Relief to compensate Oracle is requested separately in the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors To Pay Prepetition Claims Of Certain Critical Vendors, 503(b)(9) Claimants, And Lien Claimants, (II) Confirming Administrative Expense Priority Of Outstanding Orders, and (III) Granting Related Relief*, filed contemporaneously herewith.

termination, retirement, or disability leave, including (without limitation) benefits provided under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”).

34. ***SunPower Medical Insurance Programs.*** SunPower offers medical and prescription drug benefit programs (the “SunPower Medical Plans”) to its Employees, which are administered by Cigna Healthcare (“Cigna”), Kaiser Permanente, Hawaii Medical Service Association, and The Canada Life Assurance Company (together, the “SunPower Health Insurance Providers”). The coverage in the SunPower Medical Plans differs depending on the level of coverage Employees elect to receive. Monthly health care premiums differ depending on the SunPower Medical Plan in which the Employee is enrolled and whether the SunPower Employee has dependents covered by the applicable plan. The Debtors subsidize the premiums due on account of each Employee’s coverage under the SunPower Medical Plans.

35. The Debtors also provide SunPower Employees who participate in certain medical plans with access to a flexible spending account (“FSA”) and a Dependent Care Flexible Spending Account (“DC FSA”) administered by HealthEquity, Inc. (“HealthEquity”) or a health savings account (“HSA,” together with FSA and DC FSA, the “Medical Savings Accounts”), administered by HSA Bank (“HSA Bank”) that can be used to cover incidental medical costs and dependent childcare. The HSA fees paid to HSA Bank are part of the Cigna Premium Replacements that are calculated to include both claims and expenses. On average, the Debtors paid approximately \$960 per month to HealthEquity for the administration of the FSA and DC FSA and \$1,996 per month to HSA Bank for the administration of the HSA for the three months immediately preceding the Petition Date. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued but unpaid amounts payable to HealthEquity is approximately \$3,700 and the aggregate amount of accrued but unpaid amounts payable to HSA Bank is approximately \$4,000.

36. The Debtors also provide SunPower Employees vision insurance through VSP Vision Care (the “SunPower Vision Plan”) and dental insurance through Delta Dental Plans Association (the “SunPower Dental Plan,” together with the SunPower Vision Plan and the SunPower Medical Plans, the “SunPower Health Insurance Programs”). The Debtors subsidize the premiums on account of each SunPower Employee’s coverage under both the SunPower Vision Plan and the SunPower Dental Plan.

37. On average, the Debtors paid approximately \$1,854,000 per month on account of the SunPower Health Insurance Programs for three months immediately preceding the Petition Date. Of this amount, certain vendors under the SunPower Health Insurance Programs are paid at the beginning of the month in advance, while others are paid at various times throughout the month in advance. As of the Petition Date, the Debtors estimate that they owe approximately \$753,000 on account of the SunPower Health Insurance Programs, all of which will become due and owing within the first twenty-one days of these chapter 11 cases.

38. ***Blue Raven Medical Insurance Programs.*** Blue Raven offers medical and prescription drug benefit programs (the “Blue Raven Medical Plans,” together with the SunPower Medical Plans, the “Medical Plans”) to Blue Raven Employees, which are administered by Select Health (the “Blue Raven Health Insurance Provider”). The Debtors also provide Blue Raven Employees who participate in certain medical plans with access to an HSA. The coverage in the Blue Raven Medical Plans differs depending on the level of coverage Employees elect to receive. Monthly health care premiums differ depending on the Blue Raven Medical Plan in which the Blue Raven Employee is enrolled and whether the Blue Raven Employee has dependents covered by the applicable plan. The Debtors subsidize the premiums due on account of each Employee’s coverage under the Blue Raven Medical Plans.

39. Blue Raven also provides dental and vision insurance through Cigna (respectively, the “Blue Raven Dental Plan” and the “Blue Raven Vision Plan” together respectively with the SunPower Dental Plan and SunPower Vision Plan, the “Dental Plans” and the “Vision Plans,” and together respectively with Blue Raven Medical Plans the “Blue Raven Health Insurance Programs”). Blue Raven subsidizes the premiums on account of coverage for Employees in positions of manager and above under the Blue Raven Dental Plan. Blue Raven does not subsidize premiums under the Blue Raven Vision Plan.

40. On average, the Debtors paid approximately \$114,000 per month on account of the Blue Raven Health Insurance Programs for three months immediately preceding the Petition Date. Of this amount, certain vendors under the Blue Raven Health Insurance Programs are paid at the beginning of the month in advance, while others are paid at various times throughout the month in advance. As of the Petition Date, the Debtors estimate that they owe approximately \$85,000 on account of the Blue Raven Health Insurance Programs, all of which will become due and owing within the first twenty-one days of these chapter 11 cases.

41. Accordingly, the Debtors seek authority to pay any prepetition amounts owed on account of the Health and Welfare Programs and to continue the Health and Welfare Programs on a postpetition basis in the ordinary course and consistent with prepetition practice.

2. Insurance, Disability, and Workers’ Compensation Programs.

a. Life and AD&D Insurance Programs.

42. *SunPower Life and AD&D Insurance Programs.* SunPower provides life insurance coverage (the “Basic SunPower Life Insurance”) and accidental death and dismemberment insurance coverage (the “Basic SunPower AD&D Insurance”) to SunPower Employees through Prudential, each of which provide maximum coverage of \$1,200,000 to a SunPower Employee in the event of an Employee’s death or dismemberment. SunPower

Philippines Employees may also purchase life and AD&D insurance through CoCoLife Insurance (the “SunPower Philippines Life and AD&D Insurance”) that covers twenty-four times the Employee’s monthly basic salary and up to thirty-six times their monthly basic salary depending on the Employee’s status and grade. The policy also covers up to thirty-six times the Employee’s monthly basic salary for accidental death and dismemberment or total permanent disability.

43. SunPower Employees can also purchase supplemental life insurance (the “SunPower Supplemental Life Insurance,” and together with the Basic SunPower Life Insurance, the Basic SunPower AD&D Insurance, and the SunPower Supplemental Life Insurance, and SunPower Philippines Life and AD&D Insurance, the “SunPower Life and AD&D Insurance”) covering themselves and their spouses and children, through Prudential. Active SunPower Employees working at least twenty hours per week are eligible for SunPower Life and AD&D Insurance starting on the date of hire.

44. ***Blue Raven Life and AD&D Insurance Programs.*** Blue Raven provides life insurance coverage (the “Basic Blue Raven Life Insurance”) and accidental death and dismemberment insurance coverage (the “Basic Blue Raven AD&D Insurance”) to Blue Raven Employees through Cigna Financial, each of which provide complimentary coverage of \$10,000 to each Blue Raven Employee in the event of death or dismemberment. Blue Raven Employees may also purchase supplemental life insurance (the “Blue Raven Supplemental Life Insurance,” and together with the Basic Blue Raven Life Insurance, the Basic Blue Raven AD&D Insurance, and the Blue Raven Supplemental Life Insurance, the “Blue Raven Life and AD&D Insurance,” together with the SunPower Life and AD&D Insurance, the “Life and AD&D Insurance Plans”) up to an additional maximum benefit of the lesser amount of five times the Employee’s salary or \$500,000. All full-time Blue Raven Employees are provided Blue Raven Life and AD&D

Insurance. The Debtors estimate that they currently owe approximately \$13,550 on account of the Life and AD&D Insurance Plans and the Debtors will owe approximately \$13,550 in the aggregate within the first twenty-one days of these chapter 11 cases.

b. Disability Benefits.

45. The Debtors provide SunPower Employees with Short and Long-Term Disability Benefits (defined herein). All such Employees are eligible for Disability Benefits (defined herein). Disability Benefits are administered by Tristar Insurance Group (“Tristar”). Under the short-term Disability Benefits program, Employees are entitled to, among other things, continuation of sixty percent of their base wages, up to a weekly limit of \$2,307 with a seven-day waiting period (unless otherwise mandated by state law) in the event of a short-term medical disability due to an illness, injury, or pregnancy related condition (the “Short-Term Disability Benefits”). Under the basic long-term disability benefits program, Employees are entitled to, among other things, continuation of sixty percent of their wages, up to a monthly limit of \$10,000, with an additional sixty-seven percent of annual salary, up to a monthly maximum benefit of \$15,000 for Employees enrolled in Optional Long-Term Disability Insurance, until the earlier of (a) the date the Employee’s disability ends or (b) the date the Employee reaches Social Security retirement age, in the event of a long-term medical disability due to illness or injury or longer if the Employee is disabled after age sixty (the “Long-Term Disability Benefits,” and, together with the Short-Term Disability Benefits, the “Disability Benefits”).

46. SunPower Employees’ Short-Term Disability Benefits begin after an Employee is unable to work due to illness or injury for seven consecutive days and continues up to one year. The Long-Term Disability Benefits begin after an Employee has been unable to work due to illness or injury for one year and continues until the earlier of (a) the date the Employee’s disability ends

or (b) the date the Employee meets the normal retirement age as defined by the Social Security Administration. The Disability Benefits are fully insured and administered through Tristar.

47. As of the Petition Date, the Debtors estimate that they owe approximately \$16,000 to Tristar on account of administrative fees which will become due and owing within the first twenty-one days of these chapter 11 cases. The Debtors estimate that they currently owe approximately \$10,400 on account of the Disability Benefits. Accordingly, the Debtors seek authority to pay any prepetition amounts owed on account of the Life and AD&D Insurance Plans and Disability Benefits and continue the Life and AD&D Insurance Plans and the Disability Benefits on a postpetition basis in the ordinary course and consistent with prepetition practice.

c. Workers' Compensation Program.

48. The Debtors maintain workers' compensation insurance for their Employees at the levels required by laws in the jurisdictions where the Debtors operate (collectively, the "Workers' Compensation Program"). For U.S. based Employees, the Debtors maintain Workers' Compensation Program coverage through Berkshire Hathaway Inc. and The Hartford Financial Group Services, Inc. as carriers (the "Workers' Compensation Vendors"), which make payments on compensable claims in accordance with the applicable insurance policy. The Company's Workers' Compensation Program for Philippines-based Employees is self-funded, and payments are funded directly by the Debtors. The Debtors pay approximately \$2,200,000 annually to the Workers' Compensation Vendors to maintain the Workers' Compensation Program, making a deposit at the beginning of the policy and ten monthly installments, thereafter, and pay approximately \$180,000 on average per month, which is paid to eligible Employees every other week. The Debtors believe that there are no accrued and unpaid payments owed to the Workers' Compensation Vendors and claimants as of the Petition Date but seek authority to pay any amounts that may have actually accrued out of the abundance of caution.

49. The Debtors must continue the claim assessment, determination, adjudication, and payment processing pursuant to the Workers' Compensation Program, without regard to whether such liabilities are outstanding before the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements.⁶ As of the Petition Date, there are seventy open claims under the Workers' Compensation Program, with a total estimated loss liability of \$2.4 million that insurers may pay out on these claims.

50. For the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with their contractual and legal obligations, the Debtors must continue to assess, determine, and adjudicate claims brought under the Workers' Compensation Program during these chapter 11 cases. In addition, to the extent any Employees assert claims under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the Workers' Compensation Program. This requested modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

51. Because the Debtors may be statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that would disrupt the chapter 11 process. Accordingly, the Debtors seek authority to continue the Workers' Compensation Program in the ordinary course on a postpetition basis, including by modifying the automatic stay solely to allow affected Employees to assert claims under the Workers' Compensation Program.

⁶ The Debtors' Workers' Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. The Debtors request authority to continue making all payments related to Workers' Compensation Program postpetition, including making any changes to current policy and practices that become necessary.

3. The Assistance Program.

52. ***Employee Assistance Programs.*** The Debtors provide the Employees and their immediate family members with free, confidential, and voluntary counseling and referral services (the “Employee Assistance Programs”). The Employee Assistance Programs pair Employees and/or their family members with professional counselors who may also provide referrals and follow-up for individuals, couples, families, and groups regarding personal or work-related issues such as stress, marital, family, and relationship problems, anger management, substance abuse, work performance issues, emotional difficulties, or other related concerns that become a problem in an Employee’s (or their immediate family member’s) life.

53. The Employee Assistance Programs are administered by Healthjoy, LLC and Cigna. On average, the Debtors pay approximately \$2,800 on a monthly basis on account of the Employee Assistance Programs. As of the Petition Date, the Debtors estimate that they owe approximately \$7,200, on account of the Employee Assistance Programs, all of which will become due and owing within the first twenty-one days of these chapter 11 cases.

4. Paid and Unpaid Leave.

54. The Debtors provide paid leave in the form of PTO (as defined below) and certain other statutory paid leave (together, the “Paid Leave”); the Debtors also provide Unpaid Leave (as defined below) in certain situations. In the ordinary course, the Debtors provide paid time off (“PTO”) to the Employees as a Paid Leave benefit that may be used for vacations, parent/teacher conferences, or other personal business.

55. Salaried or otherwise exempt Employees do not accrue PTO or have an allotted number of PTO days. Instead, salaried Employees are encouraged to take time off as needed under the Debtors’ discretionary paid time off policy (the “Discretionary PTO Policy”). Under the Discretionary PTO Policy, a salaried or exempt Employee can take time off as needed so long as

the Employee coordinates with their manager to schedule time off in advance. Accordingly, there is generally no “accrued” PTO and both exempt and salaried Employees are not paid any amount of sick time or PTO upon termination of employment. However, Employees paid on an hourly basis, including, but not limited to, licensed tradespeople and administrative professionals (the “PTO Eligible Employees”), accrue PTO based on hours and tenure. Upon termination, unless state and local employment laws mandate otherwise, PTO Eligible Employees are paid their accrued, unused PTO (“Accrued PTO”). The Debtors estimate that, as of the Petition Date, the aggregate amount of Accrued PTO is approximately \$965,000, all of which will become due and owing within the first twenty-one days of these chapter 11 cases. This amount, however, is not a current cash payment obligation.

56. In addition, the Debtors provide certain other forms of Paid Leave and Unpaid Leave, including:

- paid holidays throughout the year, during which Employees are not required to work and are paid their base rate of pay;
- leave under the Family and Medical Leave Act for: (a) birth, adoption, or foster care; (b) family care; (c) medical emergencies; (d) military exigencies; and (e) military caregiving needs;
- parental leave for birthing and non-birthing parents for Employees employed for at least twelve months; and
- other paid and unpaid leaves of absence for personal reasons, many of which are required by law, including statutory sick leave, emergency closings, missed work time in the ordinary course for bereavement leave, jury or court attendance, or time spent voting and unpaid leaves of absence for family medical leaves and military leaves (the “Unpaid Leave”).

These other forms of Paid Leave and Unpaid Leave do not involve incremental cash outlays beyond standard payroll obligations.

57. The Debtors believe that the continuation of the Paid Leave and Unpaid Leave policies, in accordance with prior practice, is essential to minimizing the adverse effects of these

chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend. The Debtors anticipate that their Employees will utilize any accrued Paid Leave in the ordinary course, which will not create any material cash flow requirements beyond the Debtors' normal payroll obligations.

B. Miscellaneous Benefits.

58. In addition to the above-mentioned benefits programs, the Debtors historically maintain the following benefits programs (the "Miscellaneous Benefits"):

- SunPower historically offered various health and wellness programs including membership and discounts on physical and mental health services, such as Gympass.
- SunPower historically offered certain educational programs for eligible Employees, which included tuition reimbursement, reimbursement for eligible educational expenses, and enrollment in educational courses and programs, such as LinkedIn Learning.
- SunPower historically offered charitable monetary gift matching to approved charities up to \$1,500 per Employee and up to \$125,000 company-wide per year.
- SunPower historically offered adoption assistance up to \$4,000 per adoption.
- SunPower historically offered legal assistance programs for Employees through MetLaw Legal Services for a fee that is deducted from the Employee's paycheck per pay period.
- SunPower historically offered Pet Insurance for Employees.
- SunPower historically offered commuter benefits.
- SunPower historically offered Business Travel Accident Insurance.
- Blue Raven historically offered identify theft protection benefits.
- Blue Raven historically offered, to Employees who submit a request, an "Anniversary Experience and Health Bonus" of up to \$1,000 pre-tax as a reimbursement to eligible Employees for qualifying expenses, like vacation/travel, unique or fun experiences, health-related events, and volunteer/services.

- The Debtors historically offered Accidental Hospital Indemnity Benefits.

59. On average, the Debtors paid approximately \$70,000 per month on account of the Miscellaneous Benefits for the three months immediately preceding the Petition Date. Additionally, the Debtors estimate that they currently owe approximately \$30,000 on account of the Miscellaneous Benefits. The Miscellaneous Benefits are an important part of the total benefits package offered by the Debtors to their Employees. The Debtors therefore seek authority to pay unpaid prepetition amounts owed on account of the Miscellaneous Benefits and to continue paying amounts that come due on a postpetition basis in the ordinary course, and consistent with past practice.

Basis for Relief

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

A. Certain Employee Compensation and Benefits Programs Are Entitled to Priority Treatment.

60. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the Employee Compensation and Benefits Programs to priority treatment, to the extent such payments do not exceed \$15,150 for each individual as provided for under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, the Debtors are required to pay these 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 given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code for (a) wages, salaries or commissions, including vacation, severance, and 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 \$15,150 on account of claims entitled to priority, 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. Here, the Debtors also

seek to pay amounts in excess of the \$15,150 cap to a limited number of non-Insider Employees on account of the Unpaid Temporary Staff Obligations, Unpaid Commissions, Non-Insider Incentive Plans, and Accrued PTO, solely pursuant to the Final Order, *except that* the Debtors seek authority to pay Accrued PTO to PTO Eligible Employees, pursuant to the Interim Order, to the extent required by applicable state law. Given the importance of these Employees to the Debtors' restructuring efforts, however, such payment is warranted under section 363(b)(1) of the Bankruptcy Code and the doctrine of necessity, as explained further below.

B. Payment of Certain Employee Compensation and Benefits Programs Is Required by Law.

61. As discussed above, the Debtors seek authority to pay the Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Furthermore, federal and state laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 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 the Withholding Obligations may not be property of the Debtors' estates, the Debtors should be authorized to transmit the Withholding Obligations on account of the Employees to the proper parties in the ordinary course, and

consistent with prepetition practice. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998). The Debtors therefore request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course, and consistent with prepetition practice.

62. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers' Compensation Program amounts is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring. The Debtors therefore request that the Court authorize the Debtors to maintain the Workers' Compensation Program.

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

63. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course, property of the estate." 11 U.S.C. § 363(b)(1). "In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions." *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987)

(requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

64. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code, which codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See Just for Feet*, 242 B.R. 821, 824–26 (D. Del. 1999). Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). 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.” *See Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

65. Payment of amounts owed on account of the Employee Compensation and Benefits Programs is warranted under this authority and the facts of these chapter 11 cases. The Employees are essential to the success of these chapter 11 cases. As the Debtors undertake a value-maximizing sale(s), it is imperative that the Debtors' workforce remains fully engaged, motivated, and productive. Absent timely payment of Employee Compensation and Benefits Programs to Employees, however, the Debtors risk workforce attrition and resulting business disruption, which stands to materially impair estate value. Accordingly, the relief requested herein is a necessary and critical element of the Debtors' efforts to preserve estate value and pursue a value-maximizing sale.

66. Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Employee Compensation and Benefits Programs. Additionally, continuing ordinary course benefits will help minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' ongoing business operations.

67. Courts in this district have granted similar relief to that requested in this motion in previous chapter 11 cases. *See, e.g., In re Vyair Med., Inc.*, No. 24-11217 (BLS) (Bankr. D. Del. July 9, 2024) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re Appgate, Inc.*, No. 24-10956 (CTG) (Bankr. D. Del. May 28, 2024) (same); *In re Express Inc.*, No. 24-10831 (KBO) (Bankr. D. Del. May 16, 2024) (same); *In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) (same); *In re MVK Farmco LLC*, No. 23-11721 (LSS) (Bankr. D. Del. Nov. 13, 2023).⁷ Accordingly, the Debtors respectfully request that the Court authorize the

⁷ 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.

Debtors to pay and continue the Employee Compensation and Benefits Programs in the ordinary course and consistent with prepetition practice.

III. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate Here.

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

69. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with workers’ compensation claims in the appropriate judicial or administrative forum. Staying the workers’ compensation claims could frustrate Employees’ reasonable expectations and lead to the departure of Employees who are important to the Debtors’ restructuring efforts. Such departures could cause a severe disruption in the Debtors’ business, which would be to the detriment of all parties in interest.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

70. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course by virtue of access to cash on hand and anticipated access to cash collateral. 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 do not believe that checks or wire transfer requests, other than those relating to authorized payments, will be inadvertently honored. Therefore, the

Debtors request authority, but not direction, to 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(b) Are Satisfied

71. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first twenty-one 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, and the failure to receive the requested relief during the first twenty-one days of these chapter 11 cases could impact the Debtors’ operations at this important juncture. The requested relief is necessary for the Debtors to operate their business in the ordinary course, preserve the ongoing value of their operations, and maximize value of their estates for the benefit of all stakeholders. As set forth herein, 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.

Reservation of Rights

72. Notwithstanding anything to the contrary herein, nothing contained in this motion or any actions taken pursuant to any order granting the relief requested by this motion (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s rights to dispute any particular 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; (g) a waiver or limitation of the Debtors' or any other party in interest's claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. 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, priority, or amount of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

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

73. 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.

Notice

74. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the

states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the United States Department of Justice; (h) the First Lien Agent and counsel thereto; (i) the Second Lien Agent and counsel thereto; (j) the L/C Secured Party; and (k) any party that is entitled to notice pursuant to Local Rule 9013-1(m) (collectively, the "Notice Parties"). As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: August 5, 2024
Wilmington, Delaware

/s/ Jason M. Madron

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*Proposed Co-Counsel to the Debtors and Debtors
in Possession*

*Proposed Co-Counsel to the Debtors and Debtors in
Possession*

Exhibit A

Proposed Interim Order

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

In re:

SUNPOWER CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-[●] (●)

(Joint Administration Requested)

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

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an interim order (this “Interim Order”), (a) authorizing the Debtors, on a case-by-case basis (i) to pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits Programs and (ii) to continue Employee Compensation and Benefits Programs in the ordinary course, and consistent with prepetition practice, including payment of certain undisputed prepetition obligations related thereto; (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 the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: SunPower Corporation (8969); SunPower Corporation, Systems (8962); SunPower Capital, LLC (8450); SunPower Capital Services, LLC (9910); SunPower HoldCo, LLC (0454); SunPower North America, LLC (0194); Blue Raven Solar, LLC (3692); Blue Raven Solar Holdings, LLC (4577); BRS Field Ops, LLC (2370); and Falcon Acquisition HoldCo, Inc. (3335). The location of the Debtors' service address for purposes of these chapter 11 cases is: 880 Harbour Way South, Suite 600, Richmond, CA 94804.

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

referred to the Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); 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 relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; 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, if any, at a hearing before this Court (the "Hearing"); 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:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2024, at __:__.m. (Eastern Daylight Time). Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m. (Eastern Daylight Time) on _____, 2024 and shall be served on: (a) the Debtors, 880 Harbour Way South, Suite 600, Richmond, CA 94904, Attn.: Chief Legal Officer and Chief Transformation Officer; (b) proposed counsel to the Debtors (i) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com) and Zachary R. Manning (zach.manning@kirkland.com), (ii) Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois, 60654, Attn.: Chad J. Husnick, P.C. (chad.husnick@kirkland.com), Jeffrey Michalik

(jeff.michalik@kirkland.com), and Robert Jacobson (rob.jacobson@kirkland.com); (iii) Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, Delaware 19801, Attn.: Mark D. Collins (collins@rlf.com) and Jason M. Madron (madron@rlf.com); (c) co-counsel to the First Lien Agent, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn.: Brian M. Resnick, (brian.resnick@davispolk.com), Angela M. Libby (angela.libby@davispolk.com), and Jarret Erickson (jarret.erickson@davispolk.com); (e) co-counsel to the First Lien Agent, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19899, Attn: Robert J. Dehney, Sr. (RDehney@morrisnichols.com), Tamara K. Mann (tmann@morrisnichols.com), and Matthew Talmo (mtalmo@morrisnichols.com); (f) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Richard L. Schepacarter (richard.schepacarter@usdoj.gov); and (g) any statutory committee appointed in these chapter 11 cases.

3. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits Programs and to implement new programs, policies, and benefits, in the ordinary course, and consistent with prepetition practice, during these chapter 11 cases and without the need for further Court approval, subject to applicable law, *provided*, that any material change to the Employee Compensation and Benefits Programs shall be made after consulting with the First Lien Agent. For the avoidance of doubt, except as otherwise expressly set forth herein, nothing in this Interim Order should be construed as authorizing the Debtors to: (i) pay any amounts to Insiders on account of any bonus or incentive programs; or (ii) make any payment on account of the Employee Compensation and Benefits

Programs that are outside the ordinary course, or inconsistent with prepetition practice, without prior Court approval.

4. The Debtors are authorized, but not directed, in their discretion, to pay and honor prepetition amounts related to the Employee Compensation and Benefits Programs (including the Severance Obligations) pursuant to this Interim Order; *provided, however*, that, during the interim period, no Employee or Former Employee may receive payment on account of the Employee Compensation and Benefits Programs of amounts in excess of the limits provided for by sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code pursuant to this Order, *except that* the Debtors are authorized, but not directed, during the Interim Period to honor all Accrued PTO obligations on account of the PTO Eligible Employees solely to the extent applicable state law requires payments upon termination of an employee that, in combination with the other payments authorized by this Interim Order, would exceed the limits of §§ 507(a)(4) and 507(a)(5).

5. Nothing herein shall be deemed to authorize the payment of any prepetition amounts which violates or implicates section 503(c) of the Bankruptcy Code; *provided that* nothing herein shall prejudice the Debtors' ability to seek, after consultation with the First Lien Agent, approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

6. Pursuant to section 362(d) of the Bankruptcy Code: (a) the automatic stay is modified so that Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized, but not directed, to pay all undisputed prepetition amounts relating thereto in the ordinary course and consistent with prepetition practice; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation

Program, and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

7. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief (including any payment made in accordance with this Interim Order), nothing in this Interim Order is intended as or shall be construed or deemed to be: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular 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 Interim Order or the Motion or any order granting the relief requested by the 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; (g) a waiver or limitation of the Debtors' or any other party in interest's claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens;

(j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Interim Order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

8. 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.

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

10. The Debtors are authorized, but not directed, 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.

11. Notwithstanding anything to the contrary herein, any payment made or to be made under this Interim Order shall be in compliance with and subject to the "Approved Budget" as defined in the order of the Court approving the use of cash collateral in these chapter 11 cases.

12. Notwithstanding anything in the Motion or herein to the contrary, at the Final Hearing on the Motion, the Court shall address that portion of the Motion in which the Debtors seek authority to make payment under the Non-Insider Incentive Plans.

13. The Debtors are authorized, but not directed, 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.

14. The Debtors have demonstrated that the requested relief is “necessary to avoid immediate and irreparable harm,” as contemplated by Bankruptcy Rule 6003.

15. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

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

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

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

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

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

Exhibit B

Proposed Final Order

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

In re:)	
)	Chapter 11
SUNPOWER CORPORATION, <i>et al.</i> , ¹)	Case No. 24-[●] (●)
)	
Debtors.)	(Joint Administration Requested)
)	

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

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of a final order (this “Final Order”), (a) authorizing the Debtors, on a case-by-case basis (i) to pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Employee Compensation and Benefits Programs and (ii) to continue Employee Compensation and Benefits Programs in the ordinary course, and consistent with prepetition practice, including payment of certain undisputed prepetition obligations related thereto; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to the Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: SunPower Corporation (8969); SunPower Corporation, Systems (8962); SunPower Capital, LLC (8450); SunPower Capital Services, LLC (9910); SunPower HoldCo, LLC (0454); SunPower North America, LLC (0194); Blue Raven Solar, LLC (3692); Blue Raven Solar Holdings, LLC (4577); BRS Field Ops, LLC (2370); and Falcon Acquisition HoldCo, Inc. (3335). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 880 Harbour Way South, Suite 600, Richmond, CA 94804.

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

States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); 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 relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; 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, if any, at a hearing before this Court (the "Hearing"); 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:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits Programs and to implement new programs, policies, and benefits, in the ordinary course, and consistent with prepetition practice, during these chapter 11 cases and without the need for further Court approval, subject to applicable law *provided, however*, that no current or former Employee may receive payment from the Debtors on account of Prepetition Employee Obligations in an amount greater than \$15,150, (inclusive of any amounts paid to such individual pursuant to the Interim Order) pursuant to this Order, *except that* notwithstanding any of the foregoing or anything else to the contrary in this Order, the Debtors shall be permitted to pay all amounts (without regard to the Priority Cap) including, but not limited

to, such amounts that relate to the Unpaid Commissions, Severance Obligations, Accrued PTO, and Non-Insider Incentive Plans, *provided*, that any material change to the Employee Compensation and Benefits Programs shall be made after consulting with the First Lien Agent. For the avoidance of doubt, except as otherwise expressly set forth herein, nothing in this Final Order should be construed as authorizing the Debtors to: (i) pay any amounts to Insiders on account of any bonus or incentive programs; or (ii) make any payment on account of the Employee Compensation and Benefits Programs that are outside the ordinary course, or inconsistent with prepetition practice, without prior Court approval.

3. Notwithstanding anything to the contrary herein, the Debtors are authorized to pay and honor prepetition amounts related to the Employee Compensation and Benefits Programs pursuant to this Final Order.

4. Nothing herein shall be deemed to authorize the payment of any prepetition amounts which violates or implicates section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors' ability to seek, after consultation with the First Lien Agent, approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

5. Pursuant to section 362(d) of the Bankruptcy Code: (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized, but not directed, to pay all undisputed prepetition amounts relating thereto in the ordinary course and consistent with prepetition practice; and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any

recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

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

7. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief (including any payment made in accordance with this Final Order), nothing in this Final Order is intended as or shall be construed or deemed to be: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular 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 Final Order or the Motion or any order granting the relief requested by the 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; (g) a waiver or limitation of the Debtors' or any other party in interest's claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief

requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

8. 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.

9. The Debtors are authorized, but not directed, 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. Notwithstanding anything to the contrary herein, any payment made or to be made under this Final Order shall be in compliance with and subject to the "Approved Budget" as defined in the order of the Court approving the use of cash collateral in these chapter 11 cases.

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

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

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

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