

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

In re:

SALT LIFE BEVERAGE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case 24-11468 (LSS)

(Jointly Administered)

Objection Deadline: October 7, 2024 at 4PM (ET)

Hearing Date: October 23, 2024 at 10AM (ET)

**MOTION OF DEBTORS FOR ENTRY OF AN
ORDER AUTHORIZING THE DEBTORS TO IMPLEMENT KEY
EMPLOYEE RETENTION PLAN AND GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move (the “**Motion**”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), pursuant to sections 105(a), 363(b) and (c), and 503(c) of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) (i) authorizing the Debtors to implement a key employee retention plan (the “**KERP**”) for sixty (60) employees (the “**Participants**”); (ii) granting administrative expense priority status to all payments to be made by the Debtors pursuant to the KERP; and (iii) granting such other relief as the Court deems proper and just. In support of the Motion, the Debtors rely upon the *Declaration of Michael Grau in Support of Motion of Debtors for Entry of An Order Authorizing the Debtors to Implement Key Employee Retention Plan and Granting Related Relief* (the “**Grau Declaration**”) attached hereto as **Exhibit B**, and the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Salt Life Beverage, LLC, a Delaware limited liability company (8436), Delta Apparel, Inc., a Georgia corporation (8794), Salt Life, LLC, a Georgia limited liability company (6136), M. J. Soffe, LLC, a North Carolina limited liability company (2056), Culver City Clothing Company, a Georgia corporation (4619), DTG2Go, LLC, a Georgia limited liability company (6498), and Salt Life Beverage Management, LLC, a Delaware limited liability company (7886). The location of the Debtors’ headquarters and mailing address is 2750 Premiere Parkway, Suite 100, Duluth, Georgia 30097.

Declaration of J. Tim Pruban, Chief Restructuring Officer of Delta Apparel, Inc. and its Affiliates, in Support of Chapter 11 Petitions and First Day Motions [Docket No. 11] (the “**First Day Declaration**”). In further support of this Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Under Local Rule 9013-1(f), the Debtors consent to entry of a final order under Article III of the United States Constitution. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 363, and 503 and Bankruptcy Rule 6004.

BACKGROUND

3. On June 30, 2024 (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The Debtors are authorized to continue operating their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On July 2, 2024, the Court entered an order authorizing the joint administration of the Chapter 11 Cases for procedural purposes pursuant to Bankruptcy Rule 1015(b). *See* Docket No. 39.

5. On July 11, 2024, the United States Trustee (the “**U.S. Trustee**”) appointed the official committee of unsecured creditors in these Chapter 11 Cases (the “**Committee**”). *See*

Docket No. 72. As of the date hereof, no trustee or examiner has been appointed in these Chapter 11 Cases.

6. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

THE KERP

A. The Sale and Liquidation Process

7. The Debtors determined that expeditious sales of all or substantially all of their assets to potential buyers as detailed in the *Amended Motion of Debtors for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Potential Sale of the Debtors' Assets, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Authorizing the Debtors to Enter Into One or More Stalking Horse Agreements, (E) Approving Bid Protections, (F) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (G) Granting Related Relief; and (II) an Order (A) Approving the Sale of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (B) Authorizing the Assumption and Assignment of Contracts and Leases, and (C) Granting Related Relief* [Docket No. 67] (the “**Bid Procedures Motion**”) filed by the Debtors on July 10, 2024, will maximize value to the Debtors' estates. The order approving the Bid Procedures Motion (the “**Bid Procedures Order**”) was entered on July 26, 2024. *See* Docket No. 145.

8. In accordance with the Bid Procedures Order, the Debtors designated FCM Saltwater Holdings, Inc. (“**FCM**”) as the Stalking Horse Purchaser for the Debtors' assets related to the *Salt Life*® brand (the “**Salt Life Assets**”). No Stalking Horse Purchaser was designated for the assets unrelated to the *Salt Life*® brand (the “**Non-SL Assets**”). The Debtors also received a joint qualified bid for the Salt Life Assets from Iconix International, Inc. and Hilco Merchant

Resources, LLC (“**Iconix/Hilco**”) and qualified bids for: (a) certain of the Non-SL Assets related to the Soffe brand (the “**Soffe Assets**”) from Renfro, LLC (“**Renfro**”) and NG Labs, Inc. (“**NG Labs**”); (b) 1,289,168 units of “Fanatics neck pre-labeled blanks” in the inventory of Debtor DTG2Go, LLC (the “**DTG2Go Assets**”) from Fanatics, LLC (“**Fanatics**”); and (c) the leases for two Salt Life retail locations: (a) 207 Main St., Huntington Beach, CA 92648; and (b) 157 Avenida Del Mar, San Clemente, CA 92672 that were not included in any other qualified bid (the “**SL California Leases**”) from L&L Wings, Inc. (“**L&L**”). No qualified bids were received for the remaining assets (the “**Remaining Delta Assets**”). In accordance with the Bid Procedures Order, the Debtors conducted a virtual auction (the “**Auction**”) on August 27, 2024.

9. Following the Auction, and as reflected in the *Notice of Successful Bidders and Backup Bidders* Debtors filed on August 28, 2024: (a) Iconix/Hilco was designated the Successful Bidder and FCM was designated the Backup Bidder for the Salt Life Assets, (b) Renfro was designated the Successful Bidder and NG Labs was designated the Backup Bidder for the Soffe Assets, (c) Fanatics was designated the Successful Bidder for the DTG2Go Assets, and (d) L&L was designated the Successful Bidder for the SL California Leases. *See* Docket No. 258.

10. Debtors have made significant progress towards obtaining approval of each of the sale transactions (collectively, the “**Sales**”) described above and closing the same. Specifically, the Court approved the sale of the Soffe Assets at the September 5, 2024 hearing and the sale of the Salt Life Assets and DTG2Go Assets was approved at the September 13, 2024 hearing.² The hearing on approval of the sale of the SL California Leases has been adjourned to October 23, 2024. *See* Docket No. 331. Unlike the going concern sale contemplated in the Stalking Horse

² The *Order (I) Approving The Sale Of The Debtors’ DTG2GO Assets Free And Clear Of All Liens, Claims, Encumbrances, And Interests, And (II) Granting Related Relief* was entered on September 13, 2024. *See* Docket No. 341. The Debtors are finalizing the sale orders and related asset purchase agreements for the Salt Life Assets and Soffe Assets and will submit those orders under certificate of counsel once finalized.

agreement with FCM, the sale transaction with Iconix/Hilco (the “**Salt Life Sale**”) contemplates the liquidation of the inventory component of the Salt Life Assets through a series of going out of business sales (the “**GOB Sales**”) in each of the retail locations. Additionally, both the Salt Life Sale and the sale transaction with Renfro (the “**Soffe Sale**”) contemplate the Debtors’ provision of transition services (the “**Transition Services**”) to each of the respective buyers. Last, the Debtors obtained final approval of their engagement of SB360 Capital Partners, LLC to liquidate the Remaining Delta Assets on September 13, 2024. *See* Docket No. 340.

11. The Debtors recognize that certain key employees are needed to assist with, among other things, the: (a) consummation the Sales, (b) execution of the GOB Sales, (c) provision of Transition Services as contemplated in the Soffee and Salt Life Sales, (d) liquidation of the Remaining Delta Assets, and (e) effectuation of an orderly wind down of the estates (collectively, the “**Sale and Liquidation Process**”). It is anticipated that the Sale and Liquidation Process will take at least four months. The Participants will be critical to these tasks, in addition to performing their day-to-day activities. Additionally, the Participants work in robust geographic economies where individuals seeking employment can easily find alternate opportunities.

12. The list of Participants was developed by the Debtors’ advisors and management team. The terms of the KERP were carefully formulated in good faith and reviewed and compared to similar programs in other chapter 11 cases to determine that the KERP are fair, reasonable, and within statutory and market standards. Due to the evolving nature of the case, the Debtors have been unable to finalize the terms of the KERP and the list of necessary Participants until recently, after the conclusion of the Auction and designation of the Successful Bidders. With the path forward now clear, the Debtors have been able to finalize the KERP and list of Participants necessary to the effectuation of the Sale and Liquidation Process.

13. The Participants are all critical, have assumed, and will continue to assume greater responsibilities in the Chapter 11 Cases, including, importantly, in connection with the Sale and Liquidation Process. The Participants have been willing to accept these responsibilities in reliance that they will be rewarded for their efforts in the Chapter 11 Cases. Additionally, the Debtors have advised the Participants both before and during the Chapter 11 Cases that Debtors plan to seek approval of the KERP and a line item for the same was in the initial DIP Budget filed as an exhibit to *Debtors' Motion for Interim and Final Orders Under Bankruptcy Code Sections 105, 361, 362, 363, and 364, Bankruptcy Rules 2002 and 4001, and Local Bankruptcy Rule 4001-2, (I) Authorizing the Debtors to (A) Obtain Postpetition Financing on a Secured, Superpriority Basis and (B) Use Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* and has remained a line item in the revised DIP Budgets filed on August 21, 2024 and September 4, 2024. *See* Docket No. 15, Exhibit B; Docket No. 240, Exhibit B; and Docket No. 286, Exhibit 1.

14. Prior to the filing of this Motion, the Debtors have consulted with Wells Fargo Bank, National Association, as postpetition agent (the “**DIP Agent**”) for itself and the other postpetition lenders (collectively, the “**DIP Lenders**”), and the Committee regarding the KERP. To that end, the payments to be made under the KERP are included in the budget (the “**Budget**”) attached to the *Final Order (A) Authorizing Debtors to Obtain Interim Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105, 364(c) and 364(d); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; and (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* entered by the Court on September 13, 2024. *See* Docket No. 340.

15. Accordingly, the Debtors believe that implementation of the KERP is a sound exercise of their business judgment and request that the Court approve the same.

B. The Terms of the KERP

16. The Participants consist of sixty (60) individuals who serve a variety of corporate and operational functions. A schedule of the Participants is attached to hereto as Schedule 1. The Participants serve in a variety of key roles, both supervisory and non-supervisory, but none of the Participants are insiders or executives. Many of the Participants have worked for the Debtors for years, and their institutional knowledge is critical to achieving the Debtors' goals in these Chapter 11 Cases. The loss of the Participants would cause significant disruption to the Debtors' operations and sales.

17. The KERP was designed to provide non-executive, non-insider key employees with a retention bonus to encourage the Participants to remain with the Debtors through the Sale and Liquidation Process. Given the evolving nature of the Sale transactions, the list of Participants has been reduced from eighty-six (86) at a cost of \$1.16 million contemplated in the initial DIP Budget to a total of sixty (60) Participants at a cost of \$832,566.00, including the employer portion of payroll taxes.

18. A summary of the KERP terms are as follows:

- a. *Participants.* The Debtors have limited the Participants to sixty (60) individuals critical to the Debtors' day-to-day operations and Liquidation Process.
- b. *Payments.* Participants will receive retention payments (the "**KERP Payments**") as set forth on Schedule 1. KERP Payments will range between \$4,397.00 and \$32,400.00, inclusive of payroll taxes, and the total aggregate of KERP Payments will be \$832,566.00 (the "**KERP Pool**").
- c. *Timing.* Participants will receive KERP Payments upon the completion of the Sale and Liquidation Process ("**Sale Completion**") or, in the event that the any individual Participant's required contribution to the Sale Completion process is deemed to be fulfilled prior to Sale Completion, at

the time of the Participant's termination. Upon voluntary termination or termination for cause prior to the receipt of any earned KERP Payment, a Participant's KERP Payment, if any, will be forfeited. Such forfeited KERP Payments will not be made available to other employees.

19. The Debtors submit that the KERP is reasonable when compared to similar key employee retention plans in similar cases. Although the KERP Payments are retention payments, the timing of the KERP Payments is tied to the Sale Completion. The KERP is limited in terms of the number of participants and the aggregate amount to be paid. The total cost of the KERP is \$832,566.00, with the average cost per Participant approximately \$13,876.00, inclusive of payroll taxes. As a percentage of base salary, the KERP Payments range from 5% to 15% excluding payroll taxes, with an average of 14.3%.

20. The Debtors' management team and advisors identified individuals critical to the Sale and Liquidation Process. Because of the industry in which the Debtors operate, Participants are necessary to the Debtors' efforts in these Chapter 11 Cases as they have unique or significant knowledge of the apparel industry, including the Debtors' customers. The Participants also have unique and significant knowledge of the information technology and financial reporting systems required to effectuate the Sale Completion and administer the Chapter 11 Cases. Further, the Sale and Liquidation Process contemplates the liquidation of the Remaining Delta Assets, GOB Sales, and Transition Services. In addition to the cost and difficulty of finding adequate replacements, the loss of Participants would hinder such efforts and slow down the Sale and Liquidation Process.

21. The Debtors have determined that there would be a disproportionate and negative impact on the Debtors' estates if any of the Participants left the Debtors' employ. On average, the Participants have many years' experience with the Debtors and cannot be readily or easily replaced. Thus, the loss of Participants would substantially impair the Debtors' efforts in the

Chapter 11 Cases. Accordingly, the Debtors have determined that a non-insider retention plan is crucial here.

RELIEF REQUESTED

22. By this Motion, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A** (i) authorizing the Debtors to implement the KERP, (ii) authorizing the Debtors to make payments under the KERP to Participants, (iii) granting administrative expense priority to all payments to be made by the Debtors thereunder, and (iv) granting related relief.

BASIS FOR RELIEF

23. Approval of key employee retention plans in large cases in this District has been approved. *See, e.g., In re Amyris, Inc.*, Case No. 23-11131 (TMH) [Docket No. 286] (Bankr. D. Del. Sept. 14, 2023) (approving KEIP and KERP); *In re Proterra Inc.*; *In re L.K. Bennett U.S.A., Inc.*, Case No. 19-10760 (KG) [Docket No. 131] (Bankr. D. Del. May 7, 2019) (same); *In re Charlotte Russe Holding, Inc.*, Case No. 19-10210 (LSS) [Docket No. 313] (Bankr. D. Del. Mar. 6, 2019) (same); *In re American Apparel, LLC*, Case No. 16-12551 (BLS) [Docket No. 422] (Bankr. D. Del. Jan. 4, 2017) (same). *See also In re Sears Holdings Corp.*, Case No. 18-23538 (RDD) [Docket No. 1437] (Bankr. S.D.N.Y. Dec. 28, 2018) (same).

I. The KERP is Not Governed by Bankruptcy Code Sections 503(c)(1) and (c)(2)

24. Bankruptcy Code sections 503(c)(1) and (c)(2) govern retention and severance payments to insiders. The definition of “insider” under the Bankruptcy Code includes directors, officers, and persons in control of the debtor. 11 U.S.C. § 101(31)(B). A person holding an officer’s title is presumptively an “officer” and an insider, but that presumption may be rebutted with “evidence sufficient to establish that the person holds the title of an officer in name only and, in fact, does not meet the substantive definition of the same, i.e., he or she is not taking part in the

management of the debtor.” *In re Foothills Texas, Inc.*, 408 B.R. 573, 574-75 (Bankr. D. Del. 2009). *See also In re F-Squared Inv. Mgt., LLC*, 600 B.R. 294, 311 (Bankr. D. Del. 2019) (noting that a person holding the title of Senior Vice President may not be an officer depending on his responsibilities). For example, this presumption may be rebutted when an individual is not a member of the board, does not report to the board or participate in corporate governance, and reports to officers. *In re Global Aviation Holdings, Inc.*, 478 B.R. 142, 148 (Bankr. E.D.N.Y. 2012).

25. Here, no Participant is an insider. Instead, each Participant reports directly or indirectly to an officer appointed by the Debtors’ Board of Directors, with input in the Debtors’ financial decisions. As set forth in the Grau Declaration, while certain individuals may have “manager,” “vice president,” “officer,” or the like in their title, none were appointed to their position by the Debtors’ Board, have any significant role in the management of the Debtors, or have any input into the Debtors’ financial decisions. *See, e.g., In re NMI Sys., Inc.*, 179 B.R. 357, 370 (Bankr. D.D.C. 1995) (finding that an individual was not an insider when he was not “in the inner circle of making the company’s critical financial decisions.”); *In re Three A’s Holdings LLC*, Case No. 06-10886 (BLS) (Bankr. D. Del. 2006), Transcript of Nov. 16, 2006, Hearing, pp. 81-82 (employees with title of “vice president” were not “officers” because they were not appointed to those positions by the board under the company’s bylaws); *In re CEP Holdings LLC, et al.*, 2006 WL 3422665, *1 (Bankr. N.D. Ohio Nov. 28, 2006) (titles listed in a plan’s schedules were not determinative of whether an employee was an “officer” when there was nothing in the company’s books and records electing the employee to officer status).

26. Thus, while the KERP Payments are retention payments, Bankruptcy Code sections 503(c)(1) and (2) are not applicable. *See, e.g., In re Borders Grp., Inc.*, 453 B.R. 459, 468-69

(Bankr. S.D.N.Y. 2011). Additionally, the KERP does not contemplate severance payments, so Bankruptcy Code section 503(c)(2) does not apply.

II. The KERP Satisfies Bankruptcy Code Section 503(c)(3)

27. Bankruptcy Code section 503(c)(3) provides that “there shall be neither allowed, nor paid . . . other transfers or obligations that are outside the ordinary course of business and not justified the facts and circumstances of the case.” 11 U.S.C. § 503(c)(3). This language closely mirrors the language of Bankruptcy Code section 363(b) and (c), which permits a debtor to “use property of the estate in the ordinary course of business,” and, with court approval, to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(c), (b)(1). As such, bankruptcy courts will often apply the business judgment standard of Bankruptcy Code section 363(b) when evaluating a KEIP under Bankruptcy Code section 503(c)(3). *See, e.g., In re Global Home Prods., LLC*, 369 B.R. at 778, 783 (Bankr. D. Del. 2007) (“If [the proposed plans are] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.”); *In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) (“Courts have held that the ‘facts and circumstances’ language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b).”). *See also In re Alpha Natural Resources, Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) (collecting cases). Thus, the analysis of the appropriateness of the KERP turns upon whether the Debtors exercised their business judgment under Bankruptcy Code sections 363(b) and 503(c)(3). *In re Global Home Products*, 369 B.R. at 786.

28. The use of estate property outside the ordinary course of business is left to the sound judgment of the debtor under Bankruptcy Code section 363(b)(1). *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (“[U]nder normal circumstances the [bankruptcy] court would defer to the trustee’s [or debtor-in-possession’s] judgment so long as there is a

legitimate business justification.”) (citation omitted). Under Bankruptcy Code section 363(b), courts require only that a debtor “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) (citations omitted). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted).

29. Although “[c]ompensation issues are normally governed by business judgment standards, i.e., proof that there is a broad business purpose for an action,” with respect to incentive or retention plans, courts consider a number of non-exhaustive factors:

- Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e., will the key employee stay for as long as it takes for the debtor to market its assets, or, in the case of a performance incentive, is the plan calculated to achieve the desired performance?
- Is the cost of the plan reasonable in the context of the debtor’s assets, liabilities, and earning potential?
- Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- Is the plan or proposal consistent with industry standards?
- What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?
- Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

In re Global Home Products, 369 B.R. at 786 (citing *In re Dana Corp.*, 358 B.R. 567, 576-77 (Bankr. S.D.N.Y. 2006)). The Debtors submit that the implementation of the KERP is a sound exercise of the Debtors' business judgment.

30. First, there is a reasonable relationship between the KERP and the desired results. The KERP ensures that key employees will remain employed by the Debtors during the Sale and Liquidation Process. The Debtors have determined that this course of action is the best course to maximize the value of the Assets for the benefit of all stakeholders. Second, the cost of the KERP is reasonable in the context of the Debtors' assets, liabilities, and earning potential, and are consistent with industry standards. The Debtors arrived at this conclusion after performing substantial due diligence in investigating the need for a KERP, analyzing which key employees needed to be retained, and determining what is generally applicable in their particular industry. Third, the scope of the KERP is fair and reasonable and does not discriminate unfairly. As discussed above, Participants were carefully selected and if the KERP Payments are not paid in full, there is a risk that the employees will be demoralized, which could diminish the value of the Debtors' estates. Accordingly, the implementation of the KERP was the result of the Debtors' sound business judgment and the KERP is justified by the facts and circumstances of these Chapter 11 Cases.

CONSENT TO JURISDICTION

31. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

NOTICE

32. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the DIP Agent; (c) counsel to the Committee; and (d) any party that

has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

33. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as the Court deems appropriate.

Dated: September 15, 2024
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Christopher A. Ward

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Counsel to the Debtors and Debtors in Possession

SCHEDULE 1

[REDACTED]³

³ Schedule 1 has been redacted from the Motion. Contemporaneously herewith, the Debtors have filed schedule 1 under seal and a *Motion for Entry of an Order Authorizing the Debtors to File Under Seal Certain Information Related to Debtors' Motion to Approve Key Employee Retention Plan Under Seal* with the Court.

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

In re:

SALT LIFE BEVERAGE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11468 (LSS)

(Jointly Administered)

Objection Deadline: October 7, 2024 at 4PM (ET)

Hearing Date: October 23, 2024 at 10AM (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (the “**Debtors**”) have filed the *Motion of Debtors for Entry of an Order Authorizing the Debtors to Implement Key Employee Retention Plan and Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to entry of an order approving the Motion must be filed on or before **October 7, 2024 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801 and served, so actually received by the Objection Deadline, upon the undersigned proposed counsel for the Debtors.

PLEASE TAKE FURTHER NOTICE that a hearing to consider approval of the Motion will be held on **October 23, 2024 at 10:00 a.m. (ET)** before the Honorable Laurie Selber Silverstein, at the Bankruptcy Court, 824 N. Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801. Only those objections made in writing and timely filed and served in accordance with the above procedures will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Salt Life Beverage, LLC, a Delaware limited liability company (8436), Delta Apparel, Inc., a Georgia corporation (8794), Salt Life, LLC, a Georgia limited liability company (6136), M. J. Soffe, LLC, a North Carolina limited liability company (2056), Culver City Clothing Company, a Georgia corporation (4619), DTG2Go, LLC, a Georgia limited liability company (6498), and Salt Life Beverage Management, LLC, a Delaware limited liability company (7886). The location of the Debtors’ headquarters and mailing address is 2750 Premiere Parkway, Suite 100, Duluth, Georgia 30097.

Dated: September 15, 2024
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Christopher A. Ward

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Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

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

In re:

SALT LIFE BEVERAGE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case 24-11468 (LSS)

(Jointly Administered)

Re: Docket No. ____

**ORDER AUTHORIZING THE DEBTORS TO IMPLEMENT KEY
EMPLOYEE RETENTION PLAN AND GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the Debtors, for entry of an order, pursuant to Bankruptcy Code sections 363(b), 503(b), and 506(c), authorizing the Debtors to implement a key employee retention plan (the “**KERP**”); the Court having reviewed the Grau Declaration and the First Day Declaration; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and this Court having found that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having determined that the legal and factual bases set forth in the Motion, the Grau Declaration, and the First Day Declaration establish just cause for the relief granted herein; and any objections to the relief requested in the Motion having been withdrawn or

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Salt Life Beverage, LLC, a Delaware limited liability company (8436), Delta Apparel, Inc., a Georgia corporation (8794), Salt Life, LLC, a Georgia limited liability company (6136), M. J. Soffe, LLC, a North Carolina limited liability company (2056), Culver City Clothing Company, a Georgia corporation (4619), DTG2Go, LLC, a Georgia limited liability company (6498), and Salt Life Beverage Management, LLC, a Delaware limited liability company (7886). The location of the Debtors’ headquarters and mailing address is 2750 Premiere Parkway, Suite 100, Duluth, Georgia 30097.

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

overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, as set forth herein.
2. The KERP is approved in all respects.
3. Any payments earned by the Participants under the KERP shall be entitled to administrative expense priority pursuant to Bankruptcy Code sections 503(b)(1) and 503(c)(3).
4. To the extent any Participant is entitled to an allowed administrative expense claim for severance, any KERP Payment made to such Participant shall automatically offset and reduce on a dollar-for-dollar basis any such administrative severance claim.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry, notwithstanding any provision in the Bankruptcy Rules or the Local Rules to the contrary, and the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.
6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit B

Grau Declaration

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

In re:

SALT LIFE BEVERAGE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case 24-11468 (LSS)

(Jointly Administered)

**DECLARATION OF MICHAEL GRAU IN SUPPORT
OF MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING
THE DEBTORS TO IMPLEMENT KEY EMPLOYEE INCENTIVE PLAN AND
KEY EMPLOYEE RETENTION PLAN AND GRANTING RELATED RELIEF**

I, Michael Grau, hereby declare under penalty of perjury and to the best of my knowledge, information and belief:

1. I am a Senior Managing Director with Focus Management Group (“**Focus**”), which is the financial advisor to the Debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”). I have been heavily involved in the day-to-day operations of Delta Apparel, Inc. and its subsidiaries (collectively, the “**Debtors**” or the “**Company**”) as well as the development of the key employee retention plan (the “**KERP**”).

2. I have personal knowledge of, and am familiar with, the business affairs, day-to-day operations, books and records, and financial condition of the Debtors. I am authorized to make this declaration (this “**Declaration**”) on behalf of the Debtors. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from

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the Debtors' employees, agents, attorneys, and advisors, the accuracy and completeness of which information I relied upon to provide this Declaration. References to the Bankruptcy Code (as hereafter defined), the chapter 11 process, and related legal matters are based on my understanding of such matters in reliance on the explanation provided by, and the advice of, counsel. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

3. I submit this Declaration on behalf of the Debtors in support of the *Motion of Debtors for Entry of An Order Authorizing the Debtors to Implement Key Employee Retention Plan and (II) Granting Related Relief* (the "**Motion**") filed contemporaneously herewith.²

BACKGROUND

4. The Debtors recognize that certain key employees are needed to, among other things, assist with: (a) the consummation of: (i) the sale transaction (the "**Salt Life Sale**") with Iconix International, Inc. and Hilco Merchant Resources, LLC; (ii) the sale transaction (the "**Soffe Sale**") with Renfro, LLC; (iii) the sale transaction (the "**DTG2Go Sale**") with Fanatics, LLC; and (iv) the sale transaction (the "**Lease Sale**") with L&L Wings, Inc.; (b) the execution of the going out of business sales as contemplated in the Salt Life Sale, (c) the provision of Transition Services as contemplated in the Sale Life Sale and Soffe Sale, (d) the liquidation of the Debtors' remaining assets, and (e) effectuating an orderly wind down of the estates (collectively referred to as the "**Sale and Liquidation Process**"). The Participants will be critical to these tasks, in addition to performing their day-to-day activities. Additionally, the Participants work in robust geographic economies where individuals seeking employment can easily find alternate opportunities.

5. The list of Participants was developed by the Debtors' advisors and management team. The terms of the KERP were carefully formulated in good faith and reviewed and compared

² Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion.

to similar programs in other chapter 11 cases to determine that the KERP is fair, reasonable, and within statutory and market standards. Due to the evolving nature of the case, the Debtors have been unable to finalize the terms of the KERP and the list of necessary Participants until recently, after the conclusion of the Auction and designation of the Successful Bidders.

6. Payment of the Board-approved amounts under the KERP will be critical to maximizing proceeds in the Chapter 11 Cases. The Participants are all critical, have assumed and will continue to assume greater responsibilities in the Chapter 11 Cases, including, importantly, the Sale and Liquidation Process. Additionally, the Debtors have advised the Participants both before and during the Chapter 11 Cases that the Debtors plan to seek approval of the KERP and a line item for the same was in the initial DIP Budget filed as an exhibit to the DIP Motion filed on July 1, 2024, and has remained a line item in the revised DIP Budgets filed on August 21, 2024 and September 4, 2024. I understand and believe that the Participants have relied on these representations by the Debtors and based their decision to remain employed with the Debtors throughout Sale and Liquidation Process.

7. Prior to the filing of this Motion, the Debtors have consulted with Wells Fargo Bank, National Association, as postpetition agent (the “**DIP Agent**”) for itself and the other postpetition lenders (collectively, the “**DIP Lenders**”), and the Committee regarding the KERP. To that end, the payments to be made under the KERP are included in the budget (the “**Budget**”) attached to the *Final Order (A) Authorizing Debtors to Obtain Interim Post-Petition Financing and Grant Security Interests and Superpriority Administrative Expense Status Pursuant to 11 U.S.C. §§ 105, 364(c) and 364(d); (B) Modifying the Automatic Stay Pursuant to 11 U.S.C. § 362; and (C) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* entered by the Court on September 13, 2024. *See* Docket No. 340.

8. Accordingly, the Debtors believe that implementation of the KERP is a sound exercise of their business judgment and request that the Court approve such programs.

THE KERP

9. The Participants consist of sixty (60) individuals who serve a variety of corporate and operational functions. A schedule of the Participants is attached to the Motion as Schedule 1. The Participants serve in a variety of key roles, both supervisory and non-supervisory. Many of the Participants have worked for the Debtors for years, and their institutional knowledge is critical to achieving the Debtors' goals in these Chapter 11 Cases. The loss of Participants would cause significant disruption to the Debtors' operations and sales.

10. The KERP was designed to provide non-executive, non-insider key employees with a retention bonus to encourage the Participants to remain with the Debtors through the Sale and Liquidation Process. Given the evolving nature of the Sale transactions, the list of Participants has been reduced from eighty-six (86) Participants at a cost of \$1.16 million contemplated in the initial DIP Budget to a total of sixty (60) Participants at a total cost of \$832,566.00, including the employer portion of payroll taxes.

11. A summary of the KERP terms are as follows:

Participants. The Debtors have limited the Participants to sixty (60) individuals critical to the Debtors' day-to-day operations and Liquidation Process.

Payments. Participants will receive retention payments (the "**KERP Payments**") as set forth on Schedule 1. KERP Payments will range between \$4,397.00 and \$32,400.00, inclusive of payroll taxes, and the total aggregate of KERP Payments will be \$832,566.00 (the "**KERP Pool**").

Timing. Participants will receive KERP Payments upon the completion of the Sale and Liquidation Process ("**Sale Completion**") or, in the event that the any individual Participant's required contribution to the Sale Completion process is deemed to be fulfilled prior to Sale Completion, at the time of the Participant's termination. Upon voluntary termination or termination for cause prior to the receipt of any earned KERP Payment, a

Participant's KERP Payment, if any, will be forfeited. Such forfeited KERP Payments will not be made available to other employees.

12. The Debtors submit that the KERP is reasonable when compared to similar key employee retention plans in similar cases. While the KERP Payments are retention payments, the timing of the KERP Payments is tied to the Sale Completion. The KERP is limited in terms of the number of participants and the aggregate amount to be paid. The total cost of the KERP is \$832,566.00 and the average cost per Participant is approximately \$13,876.00, inclusive of payroll taxes. As a percentage of base salary, the KERP Payments range from 5% to 15% excluding payroll taxes, with an average of 14.3%.

13. The Debtors' management team and advisors identified individuals critical to the Sale and Liquidation Process. Because of the industry in which the Debtors operate, Participants are necessary to the Debtors' efforts in these Chapter 11 Cases as they have unique or significant knowledge of the apparel industry, including the Debtors' customers. The Participants also have unique and significant knowledge of the information technology and financial reporting systems required to effectuate the Sale Completion and administer the Chapter 11 Cases. Further, the Sale and Liquidation Process contemplates the liquidation of the Remaining Delta Assets, GOB Sales, and Transition Services. In addition to the cost and difficulty of finding adequate replacements, the loss of Participants would hinder such efforts and slow down the Sale and Liquidation Process.

14. The Debtors have determined that there would be a disproportionate and negative impact on the Debtors' estates if any of the Participants left the Debtors' employ. On average, the Participants have many years' experience with the Debtors and cannot be readily or easily replaced. Thus, the loss of Participants would substantially impair the Debtors' efforts in the Chapter 11 Cases. Accordingly, the Debtors have determined that a non-insider retention plan is crucial here.

I. No Participant is an Insider

15. No Participant is an insider. Instead, each Participant reports directly or indirectly to an officer appointed by the Debtors' Board of Directors, with input in the Debtors' financial decisions. While certain individuals may have "manager," "vice president," "officer," or the like in their title, none were appointed to their position by the Debtors' Board, have any significant role in the management of the Debtors, or have any input into the Debtors' financial decisions.

II. The KERP is a Reasonable Exercise of the Debtors' Business Judgment

16. The implementation of the KERP represents the sound business judgment of the Debtors. For the reasons stated above, the Participants are necessary to maximize the value of the Debtors' estates for the benefit of stakeholders. The KERP ensures that key employees will remain employed by the Debtors during the Sales process. Because the Sale and Liquidation Process is occurring simultaneously, the premature loss of any of Participants would harm the Debtors' efforts in the Chapter 11 Cases. The KERP aligns the interests of the Debtors and certain non-insider employees.

17. Accordingly, the Debtors submit that the KERP is justified by the facts and circumstances of the Chapter 11 Cases and the Debtors respectfully request that the Court authorize and approve the KERP.

Executed this 15th day of September 2024.

/s/ Michael Grau

Michael Grau,
Managing Director, Focus Management Group