IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
WELLPATH HOLDINGS, INC., *et al.*,[1]	Case No. 24-90533 (ARP)
Debtors.	(Joint Administration Requested)

DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES, (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS, (II) AUTHORIZING CURRENT AND FORMER EMPLOYEES TO PROCEED WITH OUTSTANDING WORKERS' COMPENSATION CLAIMS, AND (III) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 5:00 p.m. (prevailing Central Time) on November 12, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on November 12, 2024, at 5:00 p.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002.

Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Perez's conference room number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Perez's homepage. The meeting code is "JudgePerez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Perez's homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.

[1] A complete list of the Debtors (as defined below) in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://dm.epiq11.com/Wellpath. The Debtors' service address for these chapter 11 cases is 3340 Perimeter Hill Drive, Nashville, Tennessee 37211.

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

Relief Requested

1. By this Motion, and pursuant to sections 105(a), 362(d), 363(b), 507(a)(4), 507(a)(5), and 541 of title 11 of the United States Code (the "Bankruptcy Code") and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek entry of an order, substantially in the form annexed hereto (the "Order"), (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Compensation and Benefits (each as defined herein), and (ii) continue the Compensation and Benefits programs plans, practices, procedures, and policies for their current and former Employees (as defined below), including payment of certain related prepetition obligations in the ordinary course, as may be modified, terminated, amended, or supplemented from time to time by the Debtors, (b) permitting current and former Employees holding claims under the Workers' Compensation Program (as defined below) to proceed with such claims in the appropriate judicial or administrative forum, (c) authorizing the applicable banks and financial institutions to receive, process, honor, and pay all checks or wire transfers used by the Debtors to pay or satisfy the foregoing, and (d) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the

[2] The facts and circumstances supporting this Motion are set forth in the *Declaration of Timothy J. Dragelin as Chief Restructuring Officer and Chief Financial Officer of Wellpath Holdings, Inc. and Certain of its Affiliates and Subsidiaries in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration") filed contemporaneously herewith 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.

Order of Reference to Bankruptcy Judges, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.).

3. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent 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 a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

4. Venue of these chapter 11 cases and related proceedings is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. Wellpath is the premier provider of localized, high quality, compassionate care to vulnerable patients in challenging clinical environments. Wellpath is the leading medical and mental health services provider in correctional facilities, inpatient and residential treatment facilities, forensic treatment facilities, and civil commitment centers. Headquartered in Nashville, Tennessee with operations in approximately 420 facilities across 39 states, Wellpath provides outsourced solutions to the correctional healthcare and behavioral healthcare industries. Wellpath offers an array of healthcare services to its federal, state, and local government partners, including on-site medical services, telehealth, and mental health programs, and pharmacy management. Wellpath employs more than 13,000 people and serves nearly 200,000 patients daily. [3]

6. On November 11, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

[3] Additional information about the Debtors' businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the First Day Declaration.

7. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and rule 1015-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Local Rules"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no statutory committee has been appointed or designated.

The Debtors' Workforce

8. As of the Petition Date, the Debtors employ approximately 13,700 Employees (collectively, with current members of the Debtors' boards of directors[4] (or similar governing bodies), the "Employees"), including approximately 9,200 full-time Employees (the "Full Time Employees"), and approximately 4,500 part-time Employees (the "Part Time Employees"). Of the Debtors' Employees, approximately 2,200 are salaried Employees and approximately 11,500 Employees are paid hourly.

9. While the majority of the Debtors' Employees are not represented by a labor union, the Debtors are party to eleven collective bargaining agreements (the "CBAs") with respect to nearly 1,300 union Employees (collectively, the "Union Employees"). The Debtors seek authority, but not direction to continue to provide compensation and benefits to their Union Employees in accordance with the CBAs to which they are party.[5]

[4] The Debtors pay Employee Wages (as defined below) to members of its boards of directors in the form of cash. The Debtors estimate that, as of the Petition Date, the Debtors do not owe any amounts on account of accrued and outstanding director fees.

[5] By requesting authorization to honor obligations relating to any CBA in this Motion, the Debtors are not assuming or affirming any contracts, agreements, programs, or applicability of any law related to the CBAs, and the Debtors reserve all of their rights with respect thereto.

10. In the ordinary course, the Debtors contract with and provide various management and administrative services to 18 professional entities (collectively, the "Professional Corporations") that are owned exclusively by licensed physicians affiliated with the Debtors. To facilitate the relationship between the Debtors and the Professional Corporations, the Debtors have entered into management services agreements with the Professional Corporations (the "PC Management Services Agreements"). The PC Management Services Agreements typically require the Debtors to process wages, payroll, and various other benefits of the individuals employed by the Professional Corporation (the "PC Employees").[6] Although the PC Employees are not Employees of the Debtors, the Debtors seek authority, but not direction, to (a) pay and honor any prepetition claims and obligations owed to the PC Employees for compensation and benefits satisfied in the ordinary course by the Debtors in accordance with the PC Management Services Agreements and (b) continue paying and honoring such obligations in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

11. Additionally, the Debtors engage approximately 110 independent contractors (collectively, the "Independent Contractors") across the United States for a variety of functions. The Debtors also utilize approximately 600 contract workers via approximately 40 Employment Agencies (as defined below) to support various IT, human resources, finance and accounting, office administration, and healthcare services (collectively, the "Temporary Contractors" and,

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[6] As more fully described in the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Honor and Incur Obligations to Professional Corporations and (B) Obtain New Professional Corporation Contracts, (II) Extending Statutory Protections to Professional Corporations, and (III) Granting Related Relief* (the "Professional Corporation Motion") filed contemporaneously herewith, the Debtors are seeking authority, but not direction, to pay and honor any prepetition claims and obligation owed under the PC Management Services Agreements (as defined in the Professional Corporation Motion) and to continue paying and honoring such obligations in the ordinary course of business on a post-petition basis and consistent with past practices during the administration of these chapter 11 cases.

together with the Employees, PC Employees, and Independent Contractors, the "Debtors' Workforce").

12. The Debtors' Workforce performs a wide variety of functions crucial to the Debtors' operations, including operating the Debtors' facilities, providing medical and mental health services, and recruiting and training physicians, nurses, psychiatrists, dentists, and other medical and mental health professionals. The Debtors' Workforce also engages in various functions to manage and support the operations of the Debtors' medical and mental health services, including various administrative, marketing, legal, accounting, finance, and management-related tasks. A majority of the Debtors' Workforce consists of highly skilled physicians, nurses, psychiatrists, dentists, and other clinical staff. The skills and experience of the Debtors' Workforce is essential to the Debtors' ongoing operations. In many instances, the Debtors' Workforce is distinctly familiar with the Debtors' services, clinical practices, processes, and systems and possess specialized knowledge, skills, or experience that cannot be easily replaced. Finally, many of the Debtors' medical and mental health professionals are in short supply. Due to the high demand for professionals with these skill sets, if such a professional were to leave, it would be extremely difficult to replace them with someone with similar expertise.

13. The vast majority of the Debtors' Workforce relies exclusively on their compensation and benefits to pay their daily living expenses and to support their families. Thus, the Debtors' Workforce will be exposed to significant financial constraints if the Debtors are not permitted to continue paying wages and salaries, providing employee benefits, and maintaining certain programs benefiting the Debtors' Workforce in the ordinary course of business. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Compensation and Benefits

14. To minimize the personal hardship that the Debtors' Workforce will suffer if their prepetition obligations are not paid or remitted when due or as expected, the Debtors seek authority to pay and honor certain prepetition claims and continue to honor obligations on a post-petition basis, as applicable, relating to (a) Compensation and Withholding Obligations, (b) Employee Health and Welfare Benefits, and (c) Supplemental Employee Benefits (each as defined below and, collectively, the "Compensation and Benefits"), as summarized in the following chart:

Relief Sought	Amount
Compensation and Withholding Obligations	
Employee Wages	$16,100,000
PC Employee Wages	$5,200,000
Payroll Costs	$1,300,000
Employee Management Service Costs	1,800,000
Independent Contractors	$400,000
Employment Agencies	$7,000,000
Non-Insider Bonus Program	$300,000
Commission Program	$10,000
Non-Insider Severance Program	$0
Time-Off Benefits	$0
Withholding Obligations	$14,300,000
Reimbursable Obligations	$737,000
Employee Health and Welfare Benefits	
Health Benefits	$10,095,000
Health Savings Account	$3,000
Flexible Spending Accounts	$4,000
Life and AD&D Insurance	$90,000
Disability Benefits	$140,000
Worker's Compensation Program	$7,200,000
401(k) Plan	$70,000
Supplemental Employee Benefits	
Supplemental Employee Benefits	$12,000
TOTAL	$64,761,000

15. In addition, out of an abundance of caution, the Debtors seek authority to continue to honor the Compensation and Benefits provided to the Debtors' Workforce on a post-petition

basis in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases and pay all necessary costs related thereto.

I. Compensation and Withholding Obligations.

16. In the ordinary course of business, the Debtors incur obligations for Employee Wages, PC Employee Wages, Payroll Costs, Employee Management Service Costs, Independent Contractors, Employment Agencies, the Non-Insider Bonus Programs, the Non-Insider Severance Program, Time-Off Benefits, Withholding Obligations, and Reimbursable Expenses (each as defined below and, collectively, the "Compensation and Withholding Obligations"). The Debtors estimate that, as of the Petition Date, they owe approximately $47,147,000 in the aggregate on account of accrued but unpaid prepetition Compensation and Withholding Obligations. Accordingly, the Debtors request authority to, in their sole discretion, continue to honor the Compensation and Withholding Obligations and to pay any related prepetition claims in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

A. Employee Wages.

17. In the ordinary course of business, the Debtors incur payroll obligations for base wages owed to Employees (the "Employee Wages"). The Employees are paid on a biweekly basis. Failure to pay Employee Wages may lead to widespread departures at all levels of the Debtors' corporate structure. On average, the Debtors pay approximately $52,400,000 per month in the aggregate on account of the Employee Wages.[7]

[7] Many of the Debtors' Employees are hourly Employees with variable hours each week. As a result, the amount of gross monthly payroll is subject to fluctuation.

18. The Debtors estimate that, as of the Petition Date, they owe approximately $16,100,000 on account of accrued but unpaid Employee Wages. As described above, the loss of Employee Wages could cause the Employees to experience substantial financial hardship. In light of the substantial benefit that the Employees provide to the Debtors and their estates, the Debtors want to avoid imposing such hardship.

19. Accordingly, the Debtors seek authority to, in their sole discretion, pay their Employees any outstanding prepetition Employee Wages in the ordinary course of business and to continue honoring Employee Wages obligations in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

B. PC Employee Wages.

20. In the ordinary course of business, the Debtors incur payroll obligations for wages owed to PC Employees (the "PC Employee Wages"). The PC Employees are paid on a bi-weekly basis. Failure to pay PC Employee Wages may lead to widespread departures at the Debtors' Professional Corporations, which constitutes a material source of the Debtors' operating revenue. On average, the Debtors pay approximately $16,700,000 per month in the aggregate on account of the PC Employee Wages.[8]

21. The Debtors estimate that, as of the Petition Date, they owe approximately $5,200,000 on account of accrued but unpaid PC Employee Wages. As described above, the loss of PC Employee Wages could cause the PC Employees to experience substantial financial hardship. In light of the substantial benefit that the Professional Corporations and the PC

[8] Many of the Debtors' PC Employees are hourly PC Employees with variable hours each week. As a result, the amount of gross monthly payroll is subject to fluctuation.

Employees provide to the Debtors and their estates, the Debtors want to avoid imposing such hardship and preserve their relationship with the Professional Corporations.

22. Accordingly, the Debtors seek authority to, in their sole discretion, pay the PC Employees any outstanding prepetition PC Employee Wages in the ordinary course of business and to continue honoring PC Employee Wages obligations in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

B. Payroll Costs.

23. The Debtors use Ultimate Kronos Group (the "Payroll Processor") as their third-party payroll processor to support payroll processing, payroll tax calculations and filings, and other payroll-related services (collectively, the "Payroll Costs"). The Payroll Processor calculates the Debtors' payroll, benefits, and tax obligations for each Employee, and the Debtors then transfer funds sufficient to satisfy such obligations to the Payroll Processor for disbursement. The Debtors pay bi-weekly fees to the Payroll Processor for the payroll-related services that it provides to the Debtors and related administrative costs (the "Payroll Processor Fees"). On average, the Debtors pay approximately $150,000 per month on account of the Payroll Processor Fees.

24. The Debtors estimate that, as of the Petition Date, they owe approximately $1,300,000 on account of accrued but unpaid Payroll Processor Fees. By this Motion, the Debtors seek authority to, in their sole discretion, pay any unpaid prepetition Payroll Processor Fees in the ordinary course of business and to continue paying the Payroll Processor Fees in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

C. Employee Management Service Costs.

25. The Debtors also utilize various employee management service vendors (the "Employee Management Service Costs") to provide services relating to employee

recruitment, onboarding, and human resources management. On average, the Debtors pay approximately $900,000 per month on account of the Employee Management Service Costs. The Debtors estimate that, as of the Petition Date, they owe approximately $1,800,000 on account of accrued but unpaid Employee Management Service Costs. By this Motion, the Debtors seek authority to, in their sole discretion, pay any unpaid prepetition Employee Management Service Costs in the ordinary course of business and to continue paying the Payroll Processor Fees in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

D. Independent Contractors.

26. In addition to the Employees, the Debtors also use Independent Contractors to further supplement the Debtors' workforce. The Independent Contractors include nurses, physicians, dentists, psychiatrists, pharmacists, other mental health and healthcare professionals, and various essential workers that serve the Debtors' facilities. In many cases, given the rural nature of some of the Debtors' facilities, the Independent Contractors are the only option available to the Debtors for the services provided. On average, the Debtors pay approximately $1,100,000 per month for the services of Independent Contractors. The Debtors estimate that, as of the Petition Date, they owe approximately $400,000 on account of accrued, but unpaid, amounts to Independent Contractors. The Debtors request authority to, in their sole discretion, pay accrued but unpaid prepetition obligations owed to Independent Contractors utilized by the Debtors and to continue honoring such obligations in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

E. Employment Agencies.

27. To further supplement the staffing of their facilities and provide various information technology, human resources, finance and accounting, and office administration for

the Debtors' businesses, the Debtors obtain services of various skilled Temporary Contractors, which include nurses, laboratory technicians, clinical staff, human resources support, accounting personnel, information technology data managers, and other supplemental and temporary employees through a variety of staffing agencies (collectively, the "Employment Agencies"). The Temporary Contractors are critical to the Debtors businesses. The Employment Agencies invoice the Debtors based on the number of hours worked by the Temporary Contractors and, in turn, the Employment Agencies pay the Temporary Contractors their wages. On average, the Debtors incur approximately $3,000,000 in obligations each month to the active Employment Agencies (the "Employment Agency Obligations"). The Debtors estimate that, as of the Petition Date, they owe approximately $7,000,000 on account of Employment Agency Obligations to Employment Agencies that the Debtors continue to rely on. If the Debtors fail to pay these amounts, the Employment Agencies may refuse to continue providing Temporary Contractors, which could be detrimental to preserving the Debtors' going concern value during these chapter 11 cases.

28. The Debtors request authority to, in their sole discretion, pay accrued but unpaid prepetition Employment Agency Obligations to those Employment Agencies providing Temporary Contractors to the Debtors and to continue honoring the Employment Agency Obligations in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

F. Non-Insider Bonus Program.

29. The Debtors maintain a number of incentive programs for non-insider Employees (collectively, the "Non-Insider Bonus Programs"), including Sign-on Bonuses and incentive bonuses under the Bonus Incentive Plan. Sign-on bonuses are provided to certain newly hired Employees in connection with the commencement of their employment with the Debtors and

typically average $3,000 and are paid 90 to 120 days following an Employee's start date (the "Sign-on Bonuses"). The Debtors pay approximately $25,000 per month for Sign-On Bonuses.

30. Further, as part of the Non-Insider Bonus Programs, the Debtors offer an annual incentive program based on the Debtors' fiscal year, which provides eligible non-insider Employees with the opportunity to earn incentive bonuses on an annual basis based on the achievement by Wellpath of EBITDA, revenue, and cash flow performance targets, as well as individual Employee performance (the "Bonus Incentive Plan").[9] The Bonus Incentive Plan provides for target bonuses starting at 10% going up to 55% of annual base salary and payment is subject to the applicable participant's continued employment through the date of payment. Eligible Employees typically receive their bonuses under the Bonus Incentive Plan in June and November. Presently, approximately 500 non-insider Employees are eligible to participate in the Bonus Incentive Plan. The average bonus amount in 2023 for the Bonus Incentive Plan was approximately $20,000 per Employee, and the Debtors paid out approximately $9,500,000 on account of the Bonus Incentive Plan with respect to the 2023 plan year.

31. The Non-Insider Bonus Programs drive Employee performance, align Employees' interests with those of the Debtors generally, prevent attrition, and promote the overall efficiency and safety of the Debtors' operations. On average, in the 12 months prior to the Petition Date, the Employees earned in the aggregate approximately $850,000 per month on account of the Non-Insider Bonus Programs. The Debtors believe that, as of the Petition Date, they owe approximately $300,000 on account of accrued, but unpaid obligations under the Non-Insider Bonus Programs.

[9] Certain of the Debtors' insiders are also entitled to the Bonus Incentive Plan. The Debtors are not seeking authority to pay these bonuses or other bonuses, incentives, or non-wage payments pursuant to this Motion. To the extent the Debtors propose to make these bonus payments the Debtors will seek separate approval from the Court.

The Debtors request authority to, in their sole discretion, pay all prepetition amounts owed on account of the Non-Insider Bonus Programs and continue honoring the Non-Insider Bonus Programs in the ordinary course of business and consistent with the Non-Insider Bonus Programs for 2024 and past practices during the administration of these chapter 11 cases.

G. Commission Program.

32. In the ordinary course of business, the Debtors offer eligible Employees sales-based commissions in order to drive Employee performance and incentivize Employees to sign new customer contracts (the "Commission Program"). The Commission Program generally includes performance-based targets directly related to customer retention. On average, the Debtors pay approximately $20,000 per month in the aggregate on account of the Commission Program.

33. The Debtors estimate that, as of the Petition Date, they owe approximately $10,000 to non-insider Employees on account of the Commission Program. The Debtors seek authority to, in their sole discretion, pay any prepetition unpaid amounts on account of the Commission Program and to continue honoring the Commission Program in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

H. Non-Insider Severance Program.

34. In the ordinary course of business and consistent with past practices, and at times as required by certain employment agreements, the Debtors provide certain non-insider Employees or former Employees arrangements whereby the Debtors are pay one or a combination of severance, COBRA (as defined below), or bonuses to certain Employees terminated under defined circumstances (the "Non-Insider Severance Program"). The Debtors request authorization to continue honoring the Non-Insider Severance Programs on a post-petition basis in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases, with the consent of the Required Backstop Parties, which shall not be unreasonably

withheld. The Debtors believe that, as of the Petition Date, they do not owe any amounts on account of the Non-Insider Severance Programs. However, out of an abundance of caution, the Debtors seek authority to pay, in their sole discretion, any prepetition amounts owed on account of the Non-Insider Severance Programs and to continue honoring the Non-Insider Severance Programs in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

35. Importantly, by this Motion, the Debtors do not request authorization to make any bonus or severance payments to any "insider" as the term is defined in section 101(31) of the Bankruptcy Code. Consequently, the Debtors submit that section 503(c) of the Bankruptcy Code does not apply to the relief requested herein.

I. Time-Off Benefits.

36. The Debtors offer several paid and unpaid time-off benefits for eligible Employees, including Holiday Time, PTO, Bereavement Leave, Other Paid Leave, and Parental Leave (each as defined below and, collectively, the "Time-Off Benefits"). As described below, the Debtors pay Employees for the cash amount of some of their accrued but unused Time-Off Benefits upon termination of their employment.

1. Holiday Time.

37. The Debtors provide paid time off for the following national holidays to eligible Employees: New Year's Day; Martin Luther King, Jr. Day; President's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; day after Thanksgiving Day; and Christmas Day (the "Holiday Time"). Employees are not paid for Holiday Time upon termination of their employment and, therefore, the Debtors do not make any cash payments on account of the Holiday Time policy.

2. PTO.

38. In the ordinary course of business, the Debtors provide certain Employees with paid time off ("PTO"). The Debtors' PTO policy permits Employees to carry over between 0 and 240 accrued PTO hours into the next calendar year depending on the Employee's tenure, with the Debtors. The Debtors also pay Employees for accrued, unused PTO upon termination when required by applicable state law. The Debtors estimate that, as of the Petition Date, Employees have accrued approximately $15,500,000 on account of PTO. However, the Debtors believe that there are no current cash obligations relating to PTO (*i.e.* amounts owed on account of Employees who have sought to cash out their accrued PTO).

3. Bereavement Leave.

39. Certain Full Time Employees are eligible to receive up to three days with pay to handle family affairs in the event of the death of an immediate family member ("Bereavement Leave"). Employees are not paid for unused Bereavement Leave upon termination of employment, and the Debtors therefore do not make any cash payments on account of the Bereavement Leave policy. Certain Part Time Employees are eligible for paid time off for Bereavement Leave at the Employee's regular rate of pay and prorated based upon the Employee's regular work schedule.

4. Other Paid Leave and Parental Leave.

40. The Debtors also maintain policies for requests by Employees for time off work, whether paid or unpaid, as the result of, among other things, jury duty, parental leave, sick leave, voting, and personal leave (the "Other Paid Leave"). In addition, the Debtors authorize leaves of absence in compliance with applicable federal and state laws. Employees are not entitled to any separate cash payments in addition to their normal compensation for the Other Paid Leave. Additionally, the Debtors provide eligible Employees with up to 12 weeks of unpaid parental leave

following the birth or adoption of a child (the "Parental Leave") in accordance with the Family and Medical Leave Act.

41. The Debtors believe that, as of the Petition Date, there are no amounts outstanding on account of the Time-Off Benefits. However, out of an abundance of caution, the Debtors request authorization to pay, in their discretion, any outstanding prepetition amounts incurred on account of the Time-Off Benefits and to continue honoring the Time-Off Benefits in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

J. Withholding Obligations.

1. Payroll Taxes.

42. The Debtors are required by federal and state laws to withhold from Employees' and PC Employees' Wages amounts related to federal, state, and local income taxes, Medicare taxes, Social Security, and state-issued employment insurance (collectively, the "Employee Payroll Taxes") for remittance to the appropriate federal, state, or local taxing authority. Moreover, the Debtors are required by applicable statutory authority to match from their own funds Social Security, Medicare taxes, and certain additional amounts for federal and state unemployment insurance and short-term disability insurance (collectively, the "Employer Payroll Taxes" and, together with the Employee Payroll Taxes, the "Payroll Taxes"). The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, and local taxing authorities at the same time the Employees' payroll payments are disbursed. On average, the Debtors remit approximately $23,400,000 per month on account of the Payroll Taxes.

43. The Debtors estimate that, as of the Petition Date, they will owe approximately $12,000,000 in the aggregate on account of the Payroll Taxes. The Debtors seek authority to remit unpaid prepetition Payroll Taxes and to continue deducting and remitting the Payroll Taxes in the

ordinary course of business on a post-petition basis and consistent with past practices during the administration of these chapter 11 cases.

2. Deductions.

44. The Debtors also routinely deduct certain amounts from Employees' and PC Employees' Wages, including (a) garnishments, child support and service charges, and other similar deductions and (b) other pre- and post-tax deductions payable pursuant to certain of the Employee Health and Welfare Benefits, including health insurance premiums and 401(k) plan contributions (collectively, the "Deductions" and, together with the Payroll Taxes, the "Withholding Obligations"). On average, the Debtors withhold and remit approximately $4,600,000 per month on account of all Deductions. The Debtors estimate that, as of the Petition Date, they will owe approximately $2,300,000 on account of the Deductions.

45. The Debtors estimate that, as of the Petition Date, they owe approximately $14,300,000 in the aggregate on account of the Withholding Obligations. The Debtors believe that any amounts held by the Debtors on account of the Withholding Obligations generally are held in trust by the Debtors and are not property of their estates. The Debtors request authorization to remit all outstanding prepetition amounts incurred on account of the Withholding Obligation, and to continue deducting and remitting the Withholding Obligations in the ordinary course of business on a post-petition basis and consistent with past practices during the administration of these chapter 11 cases.

K. Reimbursable Obligations.

46. In the ordinary course of business, the Debtors reimburse their Employees for reasonable business expenses incurred on behalf of the Debtors within the scope of their employment ("Reimbursable Expenses") incurred by the Employees. These reimbursements are made on account of Out-of-Pocket Expenses, the Relocation Program, the Cell Phone Allowance

Program, and the Vehicle Allowance Program (each as defined below and, collectively, the "Reimbursable Obligations").

1. Out-of-Pocket Expenses.

47. The Debtors have expense reimbursement policies for certain travel, lodging, ground transportation, meals, and reasonable business expenses (collectively, the "Out-of-Pocket Expenses").[10] At times, Employees submit reimbursement requests via an expense reimbursement platform provided by SAP Concur and the Debtors issue payments to Employees via direct deposit. Although the Debtors' policy requires that Employees promptly submit reimbursement requests, submission delays occur from time to time. In 2024, the Debtors have incurred on average approximately $490,000 per month on account of Out-of-Pocket Expenses. The Debtors estimate that, as of the Petition Date, they owe approximately $710,000 on account of accrued but unpaid Out-of-Pocket Expenses.

2. Relocation Program.

48. The Debtors offer to pay for certain expenses to relocate or provide temporary housing allowances for Employees who transferred locations in connection with their job (the "Relocation Program"). In 2024, the Debtors have incurred on average approximately $13,000 per month on account of the Relocation Program. The Debtors estimate that, as of the Petition Date, they owe approximately $16,000 on account of accrued but unpaid amounts relating to the Relocation Program.

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[10] As more fully described in the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System and Maintain Existing Bank Accounts, and (B) Maintain Existing Forms and Books and Records, (II) Waiving Deposits and Investment Requirements, (III) Allowing Intercompany Transactions and Affording Administrative Expense Priority to Post-petition Intercompany Claims, and (IV) Granting Related Relief* (the "Cash Management Motion") filed contemporaneously herewith, the Debtors also maintain corporate credit cards used by certain Employees for certain expenses. For the avoidance of doubt, the Debtors will separately seek continuation of the corporate credit cards through the Cash Management Motion.

3. Cell Phone Allowance Program.

49. The Debtors reimburse cell phone expenses for approximately 120 Employees by providing a cell phone allowance of $40 to $80 per month (the "Cell Phone Allowance Program"). In 2024, the Debtors have incurred on average approximately $6,000 per month on account of the Cell Phone Allowance Program. The Debtors estimate that, as of the Petition Date, they owe approximately $7,000 on account of accrued but unpaid amounts relating to the Cell Phone Allowance Program.

4. Vehicle Allowance Program.

50. The Debtors reimburse five Employees for expenses related to the use of personal vehicles in the course of their work through a vehicle allowance disbursed with regular payroll that is subject to applicable taxes (the "Vehicle Allowance Program"). In 2024, the Debtors have incurred on average approximately $3,000 per month on account of the Vehicle Allowance Program. The Debtors estimate that, as of the Petition Date, they owe approximately $4,000 on account of accrued but unpaid amounts relating to the Vehicle Allowance Program.

51. The Debtors estimate that, as of the Petition Date, they owe approximately $737,000 in the aggregate on account of accrued but unpaid Reimbursable Obligations. The Debtors' inability to reimburse Employees on account of the Reimbursable Obligations could impose hardship on those Employees who otherwise incurred obligations in conjunction with their employment with the Debtors. Accordingly, the Debtors request authorization to pay, in their discretion, any outstanding prepetition amounts incurred on account of the Reimbursable Obligations, and to continue paying the Reimbursable Obligations in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

II. Employee Health and Welfare Benefits.

52. In the ordinary course of business, the Debtors offer eligible Employees health and welfare benefits, including Health Benefits, Health Savings Accounts, Flexible Spending Accounts, Life Insurance Plans, Disability Benefits, Workers' Compensation Program, 401(k) Plan, and the Supplemental Medical Programs (each as defined below and, collectively, the "Employee Health and Welfare Benefits"). The Debtors estimate that, as of the Petition Date, they owe approximately $17,602,000 in the aggregate on account of accrued but unpaid Employee Health and Welfare Benefits. Accordingly, the Debtors request authorization to pay, in their discretion, any prepetition amounts owed on account of the Employee Health and Welfare Benefits and to continue honoring Employee Health and Welfare Benefits in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

53. Further, Corporate Synergies Group Inc. ("CSG") administers the Employee Health and Welfare Benefits on behalf of the Debtors. Payments to CSG are included in payments on account of the Health Benefits (as defined below). The Debtors believe that, as of the Petition Date, they do not owe any amounts to CSG. However, out of an abundance of caution, the Debtors request authorization to pay, in their discretion, any outstanding prepetition amounts owed to CSG and to continue paying CSG in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

A. Health Benefits.

54. The Debtors offer Employees and PC Employees the opportunity to participate in a variety of health benefit plans, including, health, vision, and dental plans (collectively, the "Health Benefits"). Specifically, the Debtors provide the following:

- Medical Plans: The Debtors offer several medical plans (the "Medical Plans"), in which approximately 6,000 Employees and PC Employees participate, through Blue Cross Blue Shield of Tennessee ("BCBS"), The Health Plan, Kaiser Permanente

("Kaiser"), and Aetna Inc. ("Aetna"). Through BCBS, the Debtors offer several exclusive provider organization plans (the "BCBS Plans"). The Debtors also offer a health maintenance organization plan to certain Employees located in California administered by Kaiser (the "Kaiser Plans"). The Debtors also offer a referenced-based pricing plan through The Health Plan that is designed to reduce costs through competitive pricing and increase access to facilities. The Debtors also offer a separate Medical Plan to PC Employees through Aetna. In accordance with the Medical Plans, the Debtors make monthly premium payments to BCBS, Kaiser, and The Health Plan. On average, the Debtors pay monthly premiums and claim amounts of approximately $3,200,000 to BCBS, approximately $620,000 to Kaiser, and approximately $1,340,000 to The Health Plan, and approximately $250,000 to Aetna. The Debtors estimate that, as of the Petition Date, they owe approximately $8,950,000 in the aggregate on account of accrued and unpaid relating to the Medical Plans.

- Vison and Dental Plans: The Debtors provide optional, employee and employer funded vision and dental plans (the "Vision and Dental Plans") to both Employees and PC Employees through Aetna. The Vision and Dental Plans are available to certain Employees regardless of whether the Employee or PC Employee participates in the Medical Plans, and approximately 6,000 Employees and PC Employees participate in the Vision and Dental Plans. The Vision and Dental Plans are funded by the Employees and PC Employees, but the Debtors pay for incurred but not reported claims on account of the dental plan on a weekly basis. On average, the Debtors pay a monthly premium of approximately $380,000 on account of the Vision and Dental Plans. The Debtors estimate that, as of the Petition Date, they owe approximately $550,000 in the aggregate on account of accrued and unpaid amounts relating to the Vision and Dental Plans.

- COBRA: In the ordinary course of business, the Debtors also subsidize or continue to provide Health Benefits to certain former Employees and PC Employees after their termination, retirement, or disability leave under the Consolidated Budget Reconciliation Act of 1985 ("COBRA").

- Supplemental Medical Programs: The Debtors maintain certain supplemental medical programs (the "Supplemental Medical Programs"). Specifically, the Debtors provide the following Supplemental Medical Programs:

    - Stop Loss Policy: The Debtors maintain a stop loss policy issued by Berkshire Hathaway, Inc. ("Berkshire Hathaway") to cover all amounts in excess of $600,000 per year for individual Employee claims under the Medical Plans (the "Stop Loss Policy"). Berkshire Hathaway also acts as a third-party administrator under the Stop Loss Policy. On average, the Debtors pay approximately $130,000 per month on account of the Stop Loss Program, which includes costs for administering reimbursements thereunder. The Debtors estimate that, as of the Petition Date, approximately $50,000 has accrued and remains outstanding on account of the Stop Loss Policy.

- Prescription Drug Program: The Debtors provide Employees enrolled in the Medical Plans with prescription drug coverage (the "Prescription Drug Program") administered by Kaiser or Maxor National Pharmacy Services, LLC ("MaxorPlus"). On average, the Debtors pay approximately $1,410,000 per month on account of the Prescription Drug Program. The Debtors estimate that, as of the Petition Date, approximately $520,000 has accrued and remains outstanding on account of the Prescription Drug Program.

- Care Management Program: The Debtors provide Employees enrolled in the Medical Plans with access to a range of services to support their physical and mental wellbeing, including virtual 24/7 care for non-emergency conditions and access to free self-guided programs and coaching (the "Care Management Program"). The Care Management Program is administered by Teladoc Health, Inc. On average, the Debtors pay approximately $40,000 per month on account of the Care Management Program. The Debtors estimate that, as of the Petition Date, approximately $20,000 has accrued and remains outstanding on account of the Care Management Program.

- Cancer Treatment Support Program: The Debtors provide certain Employees with personalized, expert guidance from leading oncologists administered by Cancer Expert Now (the "Cancer Treatment Support Program"). On average, the Debtors pay approximately $5,000 per month on account of the Cancer Treatment Support Program. The Debtors estimate that, as of the Petition Date, approximately $2,000 has accrued and remains outstanding on account of the Cancer Treatment Support Program.

- Flexible Benefit Program: Under certain CBAs, the Debtors provide eligible Union Employees the option to participate in eligible "cafeteria plans" under section 125 of the Internal Revenue Code (the "Flexible Benefit Program"). As of the Petition Date, 13 Union Employees participate in the Flexible Benefit Program. The Flexible Benefit Program provides eligible Union Employees with the option to deduct certain qualified medical expenses, such as health insurance premiums, dental insurance premiums, vision insurance premiums, and other qualified expenses permitted under the Flexible Benefit Program, on a pre-tax basis. Importantly, the Flexible Benefit Program does not provide insurance to eligible Union Employees; instead, it allows the eligible Union Employees to use pre-tax money to choose and pay for the benefits they find valuable. On average, the Debtors remit approximately $6,000 per month on account of the Flexible Benefit Program. The Debtors estimate that, as of the Petition Date, approximately $3,000 is accrued and outstanding on account of the Flexible Benefit Program.

55. The Health Benefits are customary for similarly-sized companies, and the Employees and their dependents have come to rely on the Health Benefit Plans. Without the Health Benefits, the Employees would be forced to either forego health benefit coverage

completely or obtain potentially expensive out-of-pocket insurance coverage, which would likely cause financial hardship for the Employees and adversely affect Employee morale. The Debtors request authorization to, in their discretion, pay or remit any outstanding prepetition amounts incurred on account of the Health Benefits and to continue paying the Health Benefits in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

56. The Debtors estimate that, as of the Petition Date, they owe approximately $10,095,000 on account of the Health Benefits. The Debtors request authorization to, in their discretion, pay any outstanding prepetition amounts incurred on account of the Health Benefits, and to continue paying the Health Benefits in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

B. Health Savings Accounts.

57. Employees and PC Employees who participate in certain BCBS Plans may also contribute to a health savings account (the "Health Savings Account") administered by Bank of America ("BofA") in conjunction with the Debtors' related Medical Plan. Employees enrolled in the Health Savings Plan make pre-tax contributions to their Health Savings Account through payroll deductions to cover reimbursements of amounts paid for qualified medical expenses under the Medical Plans and Vision and Dental Plans. As of the Petition Date, approximately 450 Employees maintain Health Savings Accounts.

58. In September 2024, BofA's fees to administer the Health Savings Accounts totaled approximately $6,000. Aside from the administration fees paid to BofA, the Health Savings Accounts are fully funded by the Employees and the Debtors do not separately make payments on behalf of the Health Savings Accounts. The average monthly amount that the Debtors pass through from Employees' contributions to the Health Savings Accounts total approximately $135,000.

59. The Debtors believe that, as of the Petition Date, they owe approximately $3,000 on account of the Health Savings Accounts. The Debtors request authorization to remit, in their discretion, any outstanding prepetition amounts held on account of the Health Savings Accounts and to continue remitting funds to the Health Savings Accounts in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

C. Flexible Spending Accounts.

60. The Debtors also provide Employees and PC Employees with access to three types of flexible spending accounts: (a) healthcare flexible spending account; (b) limited purpose flexible spending account; and (c) dependent care flexible spending account (each, a "Flexible Spending Account"), each of which is administered by BofA. Employees and PC Employees can contribute a minimum of $50 to a maximum of $5,000 annually depending on the Employee's plan enrollment and coverage. The Debtors are current on withholdings on the Employees' behalf for the Flexible Spending Accounts. In September 2024, BofA's fees to administer the Flexible Spending Accounts totaled approximately $9,000. Aside from the administration fees paid to BofA, the Flexible Spending Accounts are fully funded by the Employees and the Debtors do not separately make payments on behalf of the Flexible Spending Accounts. The average monthly amount that the Debtors pass through from Employees' contributions to the Flexible Spending Accounts total approximately $230,000. The Debtors believe that, as of the Petition Date, they owe approximately $4,000 on account of the Flexible Spending Accounts. The Debtors request authorization to remit, in their discretion, any outstanding prepetition amounts held on account of the Flexible Spending Accounts and to continue remitting funds to the Flexible Spending Accounts in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

D. Life and AD&D Insurance.

61. The Debtors offer certain Employees and PC Employees basic employee life insurance coverage and basic accidental death and dismemberment insurance at the Debtors' cost. Approximately 12,500 Employees and PC Employees receive basic term life, disability, and personal accident insurance (the "Life Insurance Plans") through New York Life. The Debtors contribute on average approximately $230,000 per monthly on account of the Life Insurance Plans and the eligible Employees and PC Employees contribute on average approximately $260,000 per month.

62. Employees and PC Employees may also elect to purchase, at their own cost, additional voluntary life insurance, spouse and dependent life insurance, accidental injury insurance, critical illness insurance, and hospital care insurance, which is fully funded by the participating Employees and PC Employees via pre-tax deductions and the Debtors do not make separate payments on behalf of this optional insurance. The Debtors believe that, as of the Petition Date, they owe approximately $90,000 on account of the Life Insurance Plans. However, out of an abundance of caution, the Debtors request authorization to pay, in their discretion, any outstanding prepetition amounts incurred on account of the Life Insurance Plans and to continue remitting amounts incurred on account of the Life Insurance Plans in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

E. Disability Benefits.

63. The Debtors provide approximately 5,000 Employees and PC Employees with Short- and Long-Term disability benefits through New York Life (the "Disability Benefits"). Under the short-term disability benefits program, eligible Employees and PC Employees are entitled to a portion of their weekly income, up to a weekly limit of $2,500, and ends at recovery

or at 26 weeks (whichever comes first) in the event of a disabling accident or sickness (the "Short-Term Disability Benefits").

64. Under the long-term disability benefits program, eligible Employees and PC Employees are entitled to 60% of their monthly salary, up to a monthly limit of $20,000, in the event of a disabling accident or sickness (the "Long-Term Disability Benefits"). An eligible Employee or PC Employee qualifies for Long-Term Disability Benefits only after Short-Term Disability Benefits have been exhausted.

65. The Debtors estimate that, as of the Petition Date, approximately $140,000 in accrued prepetition amounts remain outstanding on account of the Disability Benefits. The Debtors request authorization to, in their discretion, pay any outstanding prepetition amounts incurred on account of the Disability Benefits and to continue paying the Disability Benefits in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

F. Workers' Compensation Program.

66. The Debtors provide workers' compensation benefits (the "Workers' Compensation Program") to the Employees. In particular, under the laws of the various jurisdictions in which they operate, the Debtors are required to maintain policies and programs to provide Employees with workers' compensation benefits. In accordance with these obligations, the Debtors maintain workers' compensation insurance policies in all jurisdictions where they operate. The Workers' Compensation Program is administered by Zurich American Insurance Company. In 2023, the Debtors paid approximately $2,500,000 in premiums for the Workers' Compensation Program and employers' liability coverage, including taxes and administrative fees.

The Debtors estimate that, as of the Petition Date, they owe approximately $7,200,000 on account of the Workers' Compensation Program.

67. Failure to maintain the Workers' Compensation Program could result in administrative or legal proceedings against the Debtors and their officers and directors and could cause employee departures, which would disrupt the business. Accordingly, the Debtors respectfully request authority to (a) lift the automatic stay to permit Employees to proceed with their workers' compensation claims in the appropriate judicial or administrative forum and (b) pay, in their discretion, all workers' compensation obligations, including any outstanding insurance premiums and any other amounts related to prepetition workers' compensation claims, as they become due in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

G. 401(k) Plan.

68. The Debtors sponsor a 401(k) retirement savings plan (the "401(k) Plan"), which is a defined contribution plan that meets the requirements of section 401(k) of the Internal Revenue Code and is available to eligible Employees and PC Employees. Fidelity Investments ("Fidelity") administers the 401(k) Plan on behalf of the Debtors.

69. The Debtors may provide annual discretionary contributions between up to 50% of the first 6% of salary contributed by the Employee or PC Employee. The Debtors are required to make matching contributions to approximately 40 Union Employee participants pursuant to the terms of their applicable CBAs. There are approximately 13,000 current and former Employees with current account balances in the 401(k) Plan. The Debtors withhold approximately $3,360,000 each month from active 401(k) Plan participants' paychecks on account of contributions to the 401(k) Plan and remit approximately $140,000 each month on account of the 401(k) Plan matching obligations.

70. As plan sponsor of the 401(k) Plan, the Debtors have a fiduciary duty arising under Title IV of the Employee Retirement Income Security Act of 1974, as amended, to administer the 401(k) Plan in accordance with its terms. Moreover, the failure of the plan sponsor to administer the 401(k) Plan in accordance with its terms would be a violation of the qualification standards of section 401(a) of the Internal Revenue Code. Disqualification of the 401(k) Plan would generally cause the trust under the 401(k) Plan to lose its tax-exempt status under section 501(a) of the Internal Revenue Code causing participants to be currently taxed on their balances under the 401(k) Plan and would adversely affect the Debtors' ability to take a current tax deduction under section 404(a)(5) of the Internal Revenue Code.

71. The Debtors estimate that, as of the Petition Date, they owe approximately $70,000 on account of the 401(k) Plan. The Debtors request authorization to process any Employee contributions to the 401(k) Plan or remit any administrative fees related to the 401(k) Plan that become due in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

H. Deferred Compensation Plan.

72. The Debtors offer Employees the right to participate in a non-qualified deferred compensation plan (the "Deferred Compensation Plan"), under which certain Employees have elected to defer certain eligible earned compensation, thereby deferring the associated income tax obligations to a later date. The amount that the Debtors pay out under the Deferred Compensation Plan each year, to participants in pay status, varies and is dependent upon, among other things, the employment status of the participants and the elections made by the participants as to the timing of payments.

73. There are approximately 135 participants in the Deferred Compensation Plan. The Debtors estimate that, as of the Petition Date, they owe participants approximately $14,500,000 in

the aggregate under the Deferred Compensation Plan, and funds intended to satisfy such Deferred Compensation Plan obligations are currently held in a "rabbi trust," pursuant to a certain Amended and Restated Rabbi Trust Agreement (the "Trust Agreement").

74. The Deferred Compensation Plan constitutes an unsecured obligation of the Debtors, and any payments made pursuant to the Deferred Compensation Plan must be made using assets also made available to the Debtors' general creditors. Since the Debtors' obligations under the Deferred Compensation Plan are unsecured, the participants may not receive all or any portion of their respective account balances, whether such amounts relate to pre- or post-petition wages, absent a further order from the Court. As a result, any additional deferrals of income made under the Deferred Compensation Plan will inequitably lower the participants' earned compensation instead of providing the intended income enhancing tax benefit.

75. Under the express terms of the Deferred Compensation Plan, the Debtors may terminate the Deferred Compensation Plan at any time, as determined in their sole discretion, subject to compliance with Section 409A of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder (with the statute and regulations, collectively, "Section 409A"); in the absence of such a Section 409A-compliant termination, the Debtors may not suspend participants' existing deferral elections for calendar year 2024 without subjecting such participants to adverse tax consequences under Section 409A. However, Section 409A does permit a compliant termination and liquidation of a nonqualified deferred compensation plan, and cessation of existing deferrals and payment of deferred amounts thereunder, without adverse tax consequences, with the approval of a bankruptcy court, and to the extent such distributions are made in accordance with Treas. Reg. § 1.409A-3(j)(4)(ix).

76. Under the Trust Agreement, as a default matter, the "rabbi trust" shall not terminate, and assets held therein (collectively, the "Trust Assets") shall not be returned to the Debtors or diverted to any others, until the participants and their beneficiaries are no longer entitled to payments of benefits pursuant to the terms of the Deferred Compensation Plan; however, upon termination, all of the remaining Trust Assets shall be returned to the Debtors. *See* Trust Agreement §§ 4 and 12(b).

77. Notwithstanding the general obligation of the trustee to makes payments of benefits to participants while amounts are due to them under the terms of the Deferred Compensation Plan, the Trust Agreement does require that payments of benefits cease if the Debtors are Insolvent (as defined therein), and, in such case, the Trust Assets must be held for the benefit of the Debtors' general creditors. *See* Trust Agreement § 3. As such, no payments of benefits can be made to the participants in the Deferred Compensation Plan at this time.

78. While participants are still entitled to seek payments of benefits pursuant to the terms of the Deferred Compensation Plan, the trustee cannot make any distributions out of the Trust Assets due to the Debtors being Insolvent, and as such, retention of the Trust Assets in the "rabbi trust" does not make sense as a practical matter given the Debtors' Insolvent status. Accordingly, termination of the "rabbi trust" and the Trust Agreement, with the Trust Assets being returned to the Debtors, is appropriate.

79. Accordingly, to avoid any prejudice to the participants in the Deferred Compensation Plan, the Debtors seek (a) authorization, but not direction, to allow the Debtors to terminate the Deferred Compensation Plan retroactive to the Petition Date, (b) a determination that any portion of a participant's regular income paid post-petition that has been deferred or contributed to the Deferred Compensation Plan, or that has been elected for contribution to the

Deferred Compensation Plan going forward, will be afforded administrative priority treatment under section 503(b) of the Bankruptcy Code, (c) authorization and instruction to the trustee under the Trust Agreement to, upon direction from the Debtors, liquidate (assuming termination of the Deferred Compensation Plan) the Trust Assets and deliver the resulting proceeds to the Debtors (or as otherwise directed by the Debtors), and (d) authorization, but not direction, to allow the Debtors to pay, if so determined in their discretion, to participants any and all amounts deferred or contributed prepetition to the Deferred Compensation Plan, subject to the statutory cap set forth in section 507(a)(4) of the Bankruptcy Code and in a manner compliant with Section 409A.

III. Supplemental Benefits Programs.

80. In the ordinary course of business, the Debtors offer the following additional employee benefits and programs (collectively, the "Supplemental Benefits Programs"):

- Identity Theft Protection: The Debtors provide eligible Employees and PC Employees the option to access services that protect and secure enrolled Employee's personal information and data.

- Legal Service Plans: The Debtors provide eligible Employees and PC Employees access to prepaid legal coverage that provides access to a network of affordable attorneys for legal guidance on various matters.

- Commuter Benefits: The Debtors facilitate a pre-tax account for Employees and PC Employees to utilize to pay for public transportation and qualified parking expenses.

- Wellness Program: The Debtors provide eligible Employees and PC Employees with access to a range of comprehensive wellness programs and discounts.

- Care Resources: The Debtors provide eligible Employees and PC Employees with access to leading caregiver search site for child/elder care, pet care, and housekeeping services.

- Tuition Reimbursement: The Debtors provide eligible Employees financial assistance for approved educational courses and other expenses up to $2,000 every 12 months.

- Travel Benefits: The Debtors provide eligible Employees and PC Employees with assistance on domestic and international travel, which includes pre-trip planning services, assistance while traveling if there is an unexpected event, and transportation related to medical emergencies while traveling.

- Referral Awards: The Debtors also provide cash awards historically in the amount of $1,500 to eligible Employees and PC Employees who refer candidates to the Debtors that are ultimately hired to fill certain roles.

- Recognition Program: The Debtors developed a program that recognizes and rewards Employees that consistently model the Debtor's mantra, "Always Do the Right Thing!"

- Dare to Care Program: The Debtors administer an Employee funded program that provides financial assistance to Employees that may have been affected by natural disaster, life-threatening illness or injury, or other extreme circumstances.

- DailyPay Program: The Debtors offer their Employees and PC Employees an option to access their earned wages ahead of the normal scheduled payday through DailyPay, Inc.

81. The Debtors utilize certain vendors to secure, administer, and manage certain Supplemental Benefits Programs offered to Employees (collectively, the "Benefit Plan Administrators").[11] Historically, the Debtors have paid approximately $110,000 in the aggregate per month on account of the Supplemental Benefits Programs and the Benefit Plan Administrators. The Debtors believe that, as of the Petition Date, they owe approximately $12,000 on account of the Supplemental Benefits Programs and the Benefit Plan Administrators. The Debtors seek authority to pay, in their discretion, any prepetition amounts due on account of the Supplemental Benefits Programs and to continue paying amounts on account of the Supplemental Benefits Programs in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases.

[11] The Benefit Plan Administrators include, but are not limited to, Allstate, New York Life, MetLife, BofA, BCBS, and Bright Horizons Family Solutions, Inc.

Basis for Relief

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

A. Certain Compensation and Benefits are Entitled to Priority Treatment.

82. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Compensation and Benefits owed to the Employees to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. 11 U.S.C. § 1129(a)(9)(b). Granting the relief sought herein should only affect the timing of certain payments to the Employees and should not negatively affect recoveries for general unsecured creditors. Payment of the Compensation and Benefits at this time enhances value for the benefit of all interested parties. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) ("The need to pay [employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.").

B. Payment of Certain Compensation and Benefits is Required by Law.

83. The Debtors seek authority to pay the applicable 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. Certain of the Withholding Obligations are property of the Employees, governmental authorities, or other parties and required to be turned over under applicable law; as such, these amounts are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g., Begier v. I.R.S.*, 496 U.S. 53, 67 (1990) (stating that withheld taxes are property held by debtor in F for another and, as such, are not property of debtor's estate); *I.R.S. v.*

Prescription Home Health Care, Inc. (In re Prescription Home Health Care, Inc.), 316 F.3d 542, 544 (5th Cir. 2002) ("withheld [income and payroll] taxes must be remitted to the IRS on a quarterly basis[,] and, while in the possession of the employer, they are considered a 'special fund in trust for the United States'") (internal citations omitted); *I.R.S. v. Kaplan (In re Kaplan)*, 104 F.3d 589, 591 n.1 (3d Cir. 1997) (classifying certain withheld employment taxes as "trust fund" taxes); *Official Comm. of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1059–60 (3d Cir. 1993) (indicating that even if a statute does not establish an express trust, a constructive trust may be found). Because certain of the Withholding Obligations are the property of the relevant Employees, governmental authorities, or other parties and are not property of the Debtors' estates, such funds are not available for the satisfaction of creditors' claims and, as such, the Court should authorize the Debtors to remit payment of these Withholding Obligations to the relevant Employees, governmental authorities, or other parties.

84. State laws also 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' ongoing chapter 11 process.

II. Payment of the Compensation and Benefits is Proper Pursuant to Section 363(b) of the Bankruptcy Code.

85. The Debtors believe that the payment of the Compensation and Benefits would be in the ordinary course of their businesses because (a) the Compensation and Benefits are commonplace and routine in the Debtors' industry and (b) the Debtors consistently and regularly fulfill such obligations. As a result, the Debtors believe that payment of the Compensation and

Benefits is warranted under section 363(c) of the Bankruptcy Code, which authorizes a debtor to "enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing." 11 U.S.C. § 363(c)(1). Nevertheless, out of an abundance of caution, the Debtors seek entry of an order authorizing the Debtors to pay the Compensation and Benefits to the extent that such authorization is required under section 363(b) of the Bankruptcy Code.

86. Section 363(b)(1) of the Bankruptcy Code empowers a court to allow a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor's decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business"). Courts emphasize that the business judgment standard is not an onerous standard; rather it "is flexible and encourages discretion." *In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011); *In re Perez*, 339 B.R. 385, 399 n. 14 (Bankr. S.D. Tex. 2006), *aff'd sub nom. Perez v. Peake*, 373 B.R. 468 (S.D. Tex. 2007) ("Section 363(b) should be interpreted liberally to provide a bankruptcy judge with substantial freedom to tailor his orders to meet differing circumstances and to avoid shackling the judge with unnecessary rigid rules." (cleaned up)). As such, courts exhibit "[g]reat judicial deference . . . to [a debtor's] exercise of business judgment." *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (N.D. Tex. 2005). Indeed, as long as a transaction "appears to enhance a debtor's estate, court approval of a debtor-in-possession's decision to [enter into the transaction] should only be withheld if the debtor's judgment is clearly erroneous, too

speculative, or contrary to the Bankruptcy Code." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (cleaned up).

87. The Debtors submit that, to the extent that the use of property of the estate is implicated here, the relief requested in this Motion represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm, and is justified under section 363 of the Bankruptcy Code. Any delay in paying and maintaining the Compensation and Benefits will adversely impact the Debtors' relationships with their Employees and could irreparably impair Employees' morale, dedication, confidence, and cooperation. The Employees' support for the Debtors' restructuring efforts in these chapter 11 cases is critical to the success of those efforts. At this stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably attend any decline in their Employees' morale attributable to the Debtors' failure to pay the Compensation and Benefits.

88. Finally, the Debtors submit that payment of the Compensation and Benefits is necessary and appropriate and, therefore, may be authorized by this Court under section 105(a) of the Bankruptcy Code, pursuant to what is referred to interchangeably as the "doctrine of necessity" or "necessity of payment rule." The doctrine of necessity functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable powers to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (applying the rule where the "Debtors' businesses [would be] seriously damaged by the delay required to satisfy the court that a particular creditor should be paid its prepetition claim outside of a confirmed plan"); *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that a court may authorize payment of prepetition claims when payment is essential to continued operation of the debtor, such as where

there is a "possibility that the creditor will employ an immediate economic sanction, failing such payment"); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for the payment of pre-petition claims" under the doctrine of necessity).

89. The United States Supreme Court first articulated the doctrine of necessity 140 years ago, in *Miltenberger v. Logansport Ry. Co.*, in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286, 311–12 (1882); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989). This doctrine has become an accepted component of modern bankruptcy jurisprudence, and courts' application of it largely adheres to the Supreme Court's reasoning in *Miltenberger*. *See Ionosphere Clubs.*, 98 B.R. at 175–76; *In re Equalnet Commun. Corp.*, 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000) (noting that "courts in this district" have applied this doctrine "primarily out of common sense and the presence of a legal or factual inevitability of payment"); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (recognizing the "doctrine of necessity").

90. The Court's power to utilize the "doctrine of necessity" in these chapter 11 cases derives from the Court's inherent equity powers and its statutory authority 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); *see also U.S. v. Energy Res. Co.*, 495 U.S. 545, 549 (1990) (section 105(a) of the Bankruptcy Code is "consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships"). "The debtor-in-possession's role as the equivalent of a trustee under § 1107(a) and its duty to protect the going-

concern value of an operating business in a Chapter 11 provides the bridge that makes application to the Doctrine of Necessity necessary or appropriate to carry out the provisions of the Bankruptcy Code." *In re CEI Roofing, Inc.*, 315 B.R. 50, 56 (Bankr. N.D. Tex. 2004) (cleaned up).

91. The doctrine of necessity is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. For instance, courts have acknowledged "the principle that a bankruptcy court may exercise its equity powers under § 105(a) to authorize payment of prepetition claims where such payment is necessary to 'permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.'" *In re StructureLite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (citations omitted). In some situations, a "per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." *Id.* at 932. Accordingly, pursuant to section 105(a) of the Bankruptcy Code, the Court is empowered to grant the relief requested herein.

92. Here, payment of the Compensation and Benefits is warranted under this authority and the facts of these chapter 11 cases. The majority of the Employees exclusively rely on the Compensation and Benefits to satisfy their daily living expenses. Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Compensation and Benefits. Continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' ongoing business operations.

93. Employees are critical to the ordinary course operations of the Debtors. The Debtors believe that absent the payment of the Compensation and Benefits owed to the Employees the Debtors may experience workforce turnover and instability at this critical time

in these chapter 11 cases. Without these payments, the Debtors' Workforce may become demoralized and unproductive because of the potential significant financial strain and other hardships these Employees may face. Such individuals may then elect to seek alternative employment opportunities. A significant portion of the value of the Debtors' businesses is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors, therefore, believe that payment of the prepetition obligations with respect to the Compensation and Benefits (a) is a necessary and critical element of the Debtors' efforts to preserve value, (b) will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their businesses in these chapter 11 cases, (c) falls within the sound business judgment of the Debtors, and (d) would benefit, rather than prejudice, the Debtors' creditors by preserving the property of the Debtors' estates.

94. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors' estates and stakeholders under the doctrine of necessity and section 105(a) of the Bankruptcy Code. Absent this relief, the value of the Debtors' estates would suffer, possibly precipitously. Consequently, the Debtors' stakeholders would benefit if the requested relief is granted.

III. Cause Exists to Authorize the Debtors to Continue to Pay and/or Honor the Workers' Compensation Program and to Authorize Current and Former Employees to Proceed with Outstanding Workers' Compensation Claim.

95. It is imperative that the Debtors be permitted (but not, for the avoidance of doubt, directed), to continue to pay and/or honor the Workers' Compensation Program, including all prepetition premiums, claims (including claim settlements), losses, and expenses in connection with the Workers' Compensation Program, and to pay all costs and expenses associated with the

Workers' Compensation Program, including such costs and expenses related to administration, servicing, processing, adjusting, paying, and settling claims and losses under these programs.

96. It is crucial for Employee morale and for the Debtors' operations that the Debtors be able to continue to (a) pay workers' compensation benefits and (b) honor their obligations under the Workers' Compensation Program described herein.

97. Section 362(a)(1) of the Bankruptcy Code operates to stay:

> [T]he 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). 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." 11 U.S.C. § 362(d)(1).

98. To the extent that any current or former Employees hold claims pursuant to the Workers' Compensation Program, the Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with their claims against the Workers' Compensation Program in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the Employees' workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors' business to the detriment of all stakeholders. In addition, if the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. To this end, the Debtors seek an order granting (a) relief from the automatic stay as it relates to current and former Employee

claims under the Workers' Compensation Program and (b) a waiver of the corresponding notice requirements under Bankruptcy Rule 4001(d).[12]

IV. The Court Should (A) Authorize the Debtors to Terminate the Deferred Compensation Plan Pursuant to Section 363(b) of the Bankruptcy Code, (B) Grant Participants Administrative Expense Priority for all Post-petition Deferrals and Contributions, and (C) Authorize and Instruct the Trustee to Liquidate the Truste Assets and to Deliver the Proceeds therefrom to the Debtors.

99. Terminating the Deferred Compensation Plan is a sound exercise of the Debtors' business judgment and may be in the best interests of the Debtors' estates and stakeholders, particularly the Employees. Specifically, any portion of a participant's compensation deferred pursuant to the Deferred Compensation Plan will only be recoverable by such participant as a general unsecured claim against the Debtors' estates. *See, e.g., In re Silicon Graphics, Inc.*, 363 B.R. 690, 700 (Bankr. S.D.N.Y. 2007); *In re The Colonial Banc Group, Inc.*, 436 B.R. 695, 712 (Bankr. M.D. Ala. 2010). As a result, any additional deferrals of income made under the Deferred Compensation Plan will inequitably lower the participants' earned compensation instead of providing them with the intended income enhancing tax benefit. Putting participants' compensation further at risk would negatively impact the morale of key members of the Debtors' Workforce and have a negative effect on the administration of the Debtors' chapter 11 cases, to the detriment of all stakeholders, such that termination of the Deferred Compensational Plan in order to cease such additional deferrals of income is the best course of action. Moreover, the express terms of the Deferred Compensation Plan permit the Debtors to terminate the Deferred Compensation Plan with the approval of the bankruptcy court, which termination would be compliant with Section 409A and therefore not adverse to the participants. Finally, while the Trust

[12] Pursuant to this Motion, the Debtors do not seek a waiver, termination, or modification of the automatic stay with respect to any other claims.

Assets generally would not be returned to the Debtors until the Debtors' obligations under the Deferred Compensation Plan are satisfied, the Debtors' Insolvent status makes an earlier termination of the Trust Agreement appropriate, since the trustee cannot make any distributions of the Trust Assets, and therefore, the Trust Assets would be "frozen." As the Trust Agreement explicitly provides that, upon termination of the Trust Agreement, all of the remaining Trust Assets shall be returned to the Debtors and, therefore, be available to the estate, including for purposes of settling general creditor claims, termination of the Trust Agreement would be appropriate under the circumstances, so as to release the Trust Assets.

100. Accordingly, the Debtors submit that the relief requested with respect to terminating the Deferred Compensation Plan is a valid exercise of the Debtors' business judgment, and that terminating the Deferred Compensation Plan may be in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases. In light of the foregoing termination of the Deferred Compensation Plan and the inability of the trustee to make any payments of benefits while the Debtors are Insolvent, the trustee under the Trust Agreement should, upon direction from the Debtors, liquidate the Trust Assets and deliver the proceeds therefrom to the Debtors (or as otherwise directed by the Debtors).

101. As discussed above, if the Debtors do not terminate the Deferred Compensation Plan in the near-term, or seek other relief with respect to the Deferred Compensation Plan, a portion of certain participants' post-petition salaries will continue to be contributed to the Deferred Compensation Plan (as suspending an existing deferral election for the current calendar year is generally impermissible under Section 409A), thereby inequitably reducing such participants' post-petition base compensation. Accordingly, the Court should authorize termination of the Deferred Compensation Plan.

102. Further, out of an abundance of caution and to ensure compliance with Section 409A, the Debtors also request authority to treat as an administrative expense, under section 503(b)(1)(A) of the Bankruptcy Code, any post-petition deferrals or contributions of the participants' salaries, including any amounts that have been elected for deferral for calendar year 2024 (through elections that cannot be changed or suspended for the balance of calendar year 2024 in a manner in compliance with Section 409A), but were not yet contributed under the Deferred Compensation Plan; *provided* that any such administrative expense status claim shall be junior and subordinate to the carve out and approved superpriority administrative expense claims provided for in any order, including a Financing Order (as defined in the Order).

103. Section 503(b)(1)(A) of the Bankruptcy Code expressly provides that "the actual, necessary costs and expenses of preserving the estate" include "wages, salaries, or commissions for services rendered after the commencement of the case . . . " 11 U.S.C. § 503(b)(1)(A); *see also In re Continental Airlines, Inc*., 148 B.R. 207, 212 (D. Del. 1992) (wage claims which are paid to induce employees to continue to work for an employer who has filed a petition for Chapter 11 are necessary). The Debtors believe that granting participants administrative expense priority on account of post-petition deferrals or contributions of the participants' salaries falls squarely within the purview of section 503(b)(1)(A) of the Bankruptcy Code.

V. The Court Should Authorize Applicable Banks and Financial Institutions to Honor and Process Related Checks and Transfers.

104. The Debtors also request that the Court authorize all applicable banks and financial institutions to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before, on, or after the Petition Date (provided that funds are available in

the Debtors' accounts to cover the checks and fund transfers), and (b) rely on the Debtors' designation of any particular check as approved by the Order.

105. The Debtors believe that they have sufficient liquidity to pay the amounts set forth in this Motion in the ordinary course of business and have implemented controls to ensure that prepetition claims will not be paid out except as authorized by the Court. The Debtors, therefore, submit that the payment-processing procedures described in this Motion are appropriate.

Emergency Consideration

106. Pursuant to Bankruptcy Local Rule 9013-1(i), the Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003. Bankruptcy Rule 6003 provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . . ." Fed. R. Bankr. P. 6003. As set forth in this Motion and the First Day Declaration, the Debtors believe that an orderly transition into chapter 11 is critical to the viability of the Debtors' businesses, operations, and estates and that any delay in granting the relief requested herein could cause immediate and irreparable harm. The Debtors also believe that they may need to make upcoming payments related to the relief requested herein during the first 21 days of these chapter 11 cases. Failure to receive the requested relief during the first 21 days of these chapter 11 cases could imperil the Debtors' restructuring and cause immediate and irreparable harm. Accordingly, the Debtors submit that the relief requested herein satisfies the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

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

107. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates and economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Reservation of Rights

108. Nothing contained herein or any actions taken pursuant to the relief requested in this Motion is intended or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law, (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds, (c) a promise or requirement to pay any claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim, (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 rights under the Bankruptcy Code or any other applicable law, or (h) 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. The Debtors also expressly reserve their rights to contest any claims related to Compensation and Benefits under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment or transfer made pursuant to the Court's order is not intended, and should not be construed as, an admission as to the amount, priority, character, or validity of any claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

Notice

109. Notice of this Motion will be provided to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the DIP Lenders; (d) counsel to the Ad Hoc Group; (e) counsel to the Prepetition First Lien Administrative Agent; (f) counsel to the Prepetition Second Lien Administrative Agent; (g) the Office of the United States Attorney for the Southern District of Texas; (h) the state attorneys general for states in which the Debtors conduct business; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; and (k) any party identified in section E of the Procedures for Complex Cases in the Southern District of Texas (collectively, the "Notice Parties"). A copy of this Motion and the Order approving it will also be made available on the Debtors' case

information website located at https://dm.epiq11.com/Wellpath. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested, the Debtors respectfully submit that no other or further notice is required.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as the Court deems appropriate under the circumstances.

Dated: November 12, 2024
Dallas, Texas

/s/ Marcus A. Helt

Marcus A. Helt (Texas Bar #24052187)
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Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Accuracy

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and accurate to the best of my knowledge, information, and belief. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Marcus A. Helt
Marcus A. Helt

Certificate of Service

I certify that, on November 12, 2024, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Marcus A. Helt
Marcus A. Helt

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
WELLPATH HOLDINGS, INC., *et al.*,[1]	Case No. 24-90533 (ARP)
	(Joint Administration Requested)
Debtors.	**Re: Docket No.**

ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES, AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS, (II) AUTHORIZING CURRENT AND FORMER EMPLOYEES TO PROCEED WITH OUTSTANDING WORKERS' COMPENSATION CLAIMS, AND (III) GRANTING RELATED RELIEF

Upon the emergency motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Compensation and Benefits, and (ii) continue the Compensation and Benefits programs plans, practices, procedures, and policies for their current and former Employees, including payment of certain related prepetition obligations related thereto in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases, as may be modified, terminated, amended, or supplemented from time to time by the Debtors, (b) permitting current and former Employees holding claims under the Workers' Compensation Program to proceed with such claims in the appropriate judicial or administrative forum, and (c) authorizing the applicable banks and financial institutions to receive, process, honor, and pay all

[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://dm.epiq11.com/Wellpath. The Debtors' service address for these chapter 11 cases is 3340 Perimeter Hill Drive, Nashville, Tennessee 37211.

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

checks or wire transfers used by the Debtors to pay or satisfy the foregoing, and (d) granting related relief, as more fully described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges,* General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.); and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of these chapter 11 cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed and considered the Motion and the First Day Declaration; and this Court having held a hearing to consider the relief requested in the Motion on a final basis (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Debtors are authorized, but not directed, to continue the Compensation and Benefits, in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases, to pay and honor prepetition amounts related thereto and other obligations incurred in providing the Compensation and Benefits in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases and in accordance with the terms of this Order.

2. Subject to paragraph 5 hereof, the Debtors are authorized, but not directed, to continue the Non-Insider Severance Program described in the Motion in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases, with the consent of the Required Backstop Parties, which shall not be unreasonably withheld, including making any payments or satisfying any obligations to non-insiders with respect to the prepetition period.

3. 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 to pay, in their discretion, any prepetition amounts relating thereto in the ordinary course of business and consistent with past practices during the administration of these chapter 11 cases, 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.

4. The Debtors shall not honor any prepetition claims or obligations on account of Compensation and Benefits to any individual that exceeds the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. If unpaid prepetition claims or obligations to any Employee exceed the $15,150 priority wages cap imposed by section 507(a)(4) of the Bankruptcy Code, the Debtors shall seek such relief under a separate motion.

5. The Debtors shall maintain a matrix/schedule of amounts that are over $25,000 paid to a single individual related to prepetition amounts paid on account of the Non-Insider Bonus Program, made pursuant to this Order, including the following information: (a) the title of the payee; (b) the date and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; and (d) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, counsel to the DIP Lenders and Ad Hoc Group, and counsel to any statutory committee appointed in these chapter 11 cases each month concurrently with the date that they file their monthly operating reports.

6. The Debtors shall not make any prepetition or post-petition bonus, incentive, retention, severance payments, or any payments that would violate or implicate section 503(c) of the Bankruptcy Code to any Insiders (as such term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.

7. The Debtors are authorized, but not directed, to take any action necessary and appropriate to (a) terminate the Deferred Compensation Plan retroactive to the Petition Date, (b) deem as an administrative claim under section 503(b) of the Bankruptcy Code any portion of a participant's regular income paid post-petition that has been deferred or contributed to the

Deferred Compensation Plans or that has been elected for contribution to the Deferred Compensation Plan going forward, and (c) pay to participants any amounts deferred or contributed prepetition to the Deferred Compensation Plans, subject to the cap set forth in section 507(a)(4) of the Bankruptcy Code. In addition, in accordance with applicable non-bankruptcy law and the Trust Agreement, the trustee under the Trust Agreement is authorized and instructed to, upon direction from the Debtors, liquidate the Trust Assets and deliver the resulting proceeds to the Debtors (or as otherwise directed by the Debtors).

8. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law, (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds, (c) a promise or requirement to pay any claim, (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim, (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 rights under the Bankruptcy Code or any other applicable law, or (h) 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.

9. All applicable banks and financial institutions are hereby authorized to receive, process, honor, and pay all such checks, drafts, wire transfers, and other forms of payment evidencing amounts paid by the Debtors under this Order, regardless of whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks and fund transfers are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

10. The Debtors are authorized, but not required, to issue, in their sole discretion, new post-petition checks, or to effect post-petition fund transfers, for the Compensation and Benefits to replace any checks, drafts, wire transfers, and other forms of payment that have been dishonored or rejected.

11. Notwithstanding anything to the contrary in this Order, in the event of any conflict or inconsistency between the terms of this Order and the terms of any order of this Court approving the post-petition secured debtor-in-possession financing facility and the use of cash collateral (any such order, a "Financing Order"), including any documentation with respect to such financing and any budget or cash flow forecasts in connection therewith, the terms of the applicable Financing Order (including any documentation with respect to such financing and any budget or cash flow forecasts in connection therewith) shall govern. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of any Financing Order.

12. Any Bankruptcy Rule or Bankruptcy Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

13. The Debtors are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of this Court.

14. This Court retains exclusive jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: ___________, 2024
Houston, Texas

____
UNITED STATES BANKRUPTCY JUDGE