

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

DRAW ANOTHER CIRCLE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 16- (_____)

(Joint Administration Requested)

**MOTION FOR INTERIM AND FINAL ORDERS
AUTHORIZING (I) PAYMENT OF WAGES, COMPENSATION AND
EMPLOYEE BENEFITS AND (II) FINANCIAL INSTITUTIONS TO HONOR
AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Draw Another Circle, LLC (“DAC”) and its chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”), hereby move the Court (the “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B (the “Proposed Interim Order” and the “Proposed Final Order,” respectively, and together, the “Proposed Orders”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing, but not requiring, the Debtors to (i) pay, in their sole discretion, Wage Obligations, Expense Reimbursements, and Payroll Taxes (each as defined below, and collectively, the “Employee Obligations”), as well as costs incident to the foregoing, (ii) maintain and continue to honor their employee practices, programs, and policies (the “Employee Benefits”), (iii) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing; and (iv)

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Draw Another Circle, LLC (2102); Hastings Entertainment, Inc. (6375); MovieStop, LLC (9645); and SPI Images, Inc. (7773). The Debtors’ executive headquarters are located at 3601 Plains Boulevard, Amarillo, TX 79102.

granting related relief. In support of the Motion, the Debtors rely on the *Declaration of Duane A. Huesers in Support of Debtors' First Day Pleadings* (the "First Day Declaration")² concurrently filed herewith. In further support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over these Cases and the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("Local Rules"), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory and legal predicates for the relief requested herein are sections 105 and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

BACKGROUND

4. On the date hereof (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code.

5. The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in these Cases by the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”).

6. Founded in 1968, Hastings Entertainment, Inc. (“Hastings”), a Texas corporation, is a leading multimedia entertainment and lifestyle retailer. Hastings operates entertainment superstores that buy, sell, trade and rent various home entertainment products, including books, music, software, periodicals, movies on DVD and Blu-ray, video games, video game consoles, hobby, sports and recreation, lifestyle and consumer electronics. Hastings also offers consumables and trends products such as apparel, t-shirts, action figures, posters, greeting cards and seasonal merchandise. With the assistance of over 3,500 employees, Hastings operates 123 superstores, averaging approximately 24,000 square feet, principally in medium-sized markets located in 19 states, primarily in the Northwestern, Midwestern, and Southeastern United States.

7. Hastings also operates a multimedia entertainment e-commerce web site, goHastings.com, which offers a broad selection of books, software, video games, movies on DVD and Blu-ray, music, trends, comics, sports, recreation, and electronics. Hastings fills orders for new and used products placed at the website and also through Amazon and eBay Marketplaces using its proprietary goShip program, which allows Hastings to ship directly from its stores or distribution center. Hastings has one wholly-owned subsidiary, Hastings Internet, Inc. In 2015, Hastings generated revenue totaling approximately \$401.1 million.

8. MovieStop, LLC (“MovieStop”), a Delaware limited liability company, is a value retailer of new and used movies based in Atlanta, Georgia. MovieStop currently operates 39 destination locations in 10 states, primarily along the Eastern United States Coast. MovieStop

is conducting store closing sales at all of its locations, and anticipates completion of all store closings by the end of July.

9. SP Images, Inc. (“SPI”), a Massachusetts corporation, is a full-service licensed distributor of sports and entertainment products and apparel headquartered in Franklin, Massachusetts. SPI specializes in providing retail partners with an unmatched assortment of licensed merchandise that allows them to maximize turns, sales and gross margins. SPI stocks over 20,000 individual items licensed by Major League Baseball, the National Football League, the National Hockey League, the National Basketball Association, Marvel Comics, DC Comics and many more.

10. Hastings, MovieStop and SPI are each wholly-owned subsidiaries of DAC.

11. As is further discussed in the First Day Declaration filed contemporaneously herewith, the Debtors commenced these chapter 11 cases to (i) effectuate the sale of Hastings pursuant to a Court-approved bidding and auction process; (ii) complete the liquidation of the MovieStop business for the benefit of creditors; (iii) preserve SPI’s business through a going concern sale process; and (iv) liquidate all of the Debtors’ remaining assets and discontinue all business lines that cannot be sold for value.

12. More detailed factual background regarding the Debtors and the commencement of these Cases is set forth in the First Day Declaration.

I. The Debtors’ Employee Obligations

13. In the ordinary course of business, the Debtors incur payroll and employee benefits obligations to their employees for the performance of services. As of the Petition Date,

the Debtors employ approximately 4,200 individuals (the “Employees”),³ approximately 1,450 of which are full-time and none of whom are members of a union.

14. The Debtors incurred outstanding Employee Obligations and Employee Benefits relating to the period prior to the Petition Date. Certain of these costs and obligations are outstanding, due and payable now, while others will become due and payable in the ordinary course of the Debtors’ business after the Petition Date, most of which will become due and owing before final relief can be granted. There are currently only three Employees for whom the Debtors incurred outstanding Employee Obligations and Employee Benefits during the period prior to the Petition Date that exceed the \$12,850 cap set forth pursuant to sections 507(a)(4) and (5) of the Bankruptcy Code.

A. Wages and Salaries

15. Prior to the Petition Date and in the ordinary course of business, the Debtors typically paid obligations relating to wages, commissions, and salaries for its Employees on a weekly or bi-weekly basis (the “Wage Obligations”).⁴ Specifically, Hastings and MovieStop pay Employees on a bi-weekly basis with pay periods ending on alternating weeks. SPI pays its employees, including all commissions, on a weekly basis. The Debtors’ currently estimated payroll during the combined pay-period⁵ including estimated employer payroll tax obligations is approximately \$2.5 million.

16. All Wage Obligations accrued before the Petition Date compensate Employees for work already performed. As a result, accrued outstanding Wage Obligations for

³ Employees also include certain independent contractors entitled to compensation and expense reimbursement from the Debtors. Accrued obligations to such contractors as of the Petition Date are approximately \$2,600.

⁴ Wage Obligations also included bonuses paid to certain eligible Employees on a quarterly basis. Bonuses were last paid in May 2016. Bonuses have since been discontinued, and there are no outstanding bonuses currently included in Wage Obligations.

⁵ Although staggered, the “combined pay-period” refers to the aggregate Wage Obligations for Hastings, MovieStop, and SPI for each individual Debtor’s pay period.

the prepetition period for the respective Debtors are as follows: (i) Hastings from June 5, 2016; (ii) MovieStop from May 29, 2015; and (iii) SPI from June 6, 2016, aggregating approximately \$2.0 million, which is inclusive of estimated employer payroll tax obligations.

B. Payroll Taxes

17. The Debtors are required by law to withhold from the Employees' wage amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes (collectively, the "Withholding Taxes") and to remit the same to the appropriate taxing authorities (collectively, the "Taxing Authorities"). In addition, the Debtors are required to make matching payments from their own funds on account of social security and Medicare taxes, and to pay, based on a percentage of gross payroll (and subject to state-imposed limits), additional amounts to the Taxing Authorities for, among other things, state and federal unemployment insurance (collectively, the "Employer Payroll Taxes" and, together with the Withholding Taxes, the "Payroll Taxes").

C. Expense Reimbursements

18. The Debtors' Employees incur various expenses in the discharge of their ordinary duties, such as travel and meal expenses. Because these expenses are incurred as part of their official duties and in furtherance of the Debtors' businesses, the Employees are reimbursed in full (the "Expense Reimbursements") after submission of appropriate expense reimbursement reports to the Employee's manager and the accounting department. Expense reports must be submitted by the Employee according to the expense report schedule, and must include, *inter alia*: (i) the amount of the expense; (ii) the time and place of travel; (iii) the business purpose for the expense; and (iv) the identity and business relationship of others who participated in the event. In addition, the Debtors issued company credit cards that Employees can use to pay for business related expenses. While these credit cards are paid directly by the Debtors,

Employee-cardholders may be held personally liable for unpaid credit card balances. The Debtors believe it necessary to allow payment of unpaid credit card expenses incurred during the period prior to the Petition Date as part of the Expense Reimbursements to limit any potential liability Employee-cardholders may have.

19. In the six-month period prior to the Petition Date, Expense Reimbursements averaged approximately \$40,000 per month, though Expense Reimbursements are expected to be substantially reduced going forward due to the Debtors' proposed sale. The Debtors estimate that there are Expense Reimbursements currently outstanding in the approximate amount of \$250,000, but Employees, however, may have incurred expenses before the Petition Date that have not yet submitted requests for reimbursement that may increase this amount.

II. The Debtors' Employee Benefits

20. In the ordinary course of business, the Debtors established various Employee Benefits for its eligible Employees that can be divided into the following categories: (i) paid time-off plans, including vacation days and sick days (the "PTO Plans"); (ii) insurance, including medical, vision, dental, life, and short-term and long-term disability insurance (collectively, the "Health and Welfare Plans"); (iii) Health Savings Accounts; (iv) 401(k) Plans (as defined herein); and (v) an assistance program in connection with Employee well-being (the "Assistance Program"). The Debtors directly deduct specified amounts from Employees' wages in connection with certain of the Employee Benefits.

A. Paid Time-Off Benefits

21. Under the PTO Plans, eligible Employees may receive their full wages for, among other things, vacation and sick days. At Hastings, for example, all salaried and full-time waged employees are eligible to accrue up to four weeks of vacation time a year depending on

the Employee's length of employment. Additionally, full-time Hastings Employees may accrue up to one week of paid sick time. Similar programs are available at MovieStop and SPI though maximum accrued time available to Employees may differ from Hastings.

22. In addition to Employees using vacation and sick time in the ordinary course of business, eligible Employees may convert up to one-week's unused and accrued vacation time (the "Vacation Conversion") to an immediate cash payout due to financial hardship.⁶ Moreover, Employees may receive an immediate cash payout of up to two-weeks' accrued and unused vacation time upon voluntary resignation of an Employee after proper notice is given or upon termination of an Employee without cause (the "Termination Payout").

23. The Debtors' current, eligible Employees have accrued approximately \$2.25 million in unused time in connection with the PTO Plans as of the Petition Date.

B. Health and Welfare Plans

24. The Debtors sponsor several Health and Welfare Plans to provide benefits to eligible Employees, including, without limitation, (i) medical, dental, or other health-related plans; (ii) life insurance; (iii) short-term and long-term disability insurance; and (iv) workers' compensation insurance.

i. Medical Insurance

25. The Debtors offer eligible, full-time Employees and their families medical insurance coverage. Hastings and SPI self-insure their medical insurance coverage (the "Self-Insured Medical Insurance"), which is administered by Blue Cross Blue Shield of Texas ("Blue

⁶ A determination as to whether a financial hardship warrants Vacation Conversion is left to the discretion of Debtors' management.

Cross”).⁷ Premiums for the Self-Insured Medical Insurance are partially covered by Hastings and SPI with the remainder paid for by each covered Employee as a deduction in the covered Employees’ wages. Hastings and SPI then pay administrative fees of approximately \$34,000 to Blue Cross on a monthly basis to administer the covered Employees’ Self-Insured Medical Insurance plans. Payments are made in arrears. There is approximately \$14,000 accrued by Blue Cross as of the Petition Date in connection with the Self-Insured Medical Insurance all of which will become due and owing during the interim period.

26. Because Hastings and SPI self-insure the Self-Insured Medical Insurance, Hastings and SPI assume the direct risk for payment of any claims for benefits under the Self-Insured Medical Insurance plans. To mitigate the financial risk, Hastings and SPI maintain stop loss insurance (“Stop-Loss Insurance”) provided by Optum, Inc. (“Optum”). Under the Stop-Loss Insurance, Hastings and SPI are responsible for all claims exceeding the Employee’s deductible under the Self-Insured Medical Insurance plans. The Stop-Loss Insurance reimburses Hastings and SPI for claims and expenses above \$175,000 for each covered Employee. Hastings and SPI pay approximately \$33,000 to Optum on a monthly basis in connection with the Stop-Loss Insurance. Payments are made in advance. There is currently \$0 accrued, unpaid, and owing to Optum as of the Petition Date in connection with the Stop-Loss Insurance.

27. Medical claims asserted under the Self-Insured Medical Insurance (the “Medical Claims”)⁸ are filed against Blue Cross who, in turn, seeks reimbursement from Hastings and SPI. The Medical Claims are reconciled by Hastings and SPI on a weekly basis.

⁷ Blue Cross also administers continuing medical benefits to former Hastings and SPI Employees and their families under the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”). Former Employees cover all administrative expenses associated with COBRA Benefits and pay these expenses directly to Blue Cross. Blue Cross then remits such payments, withholding the administrative fee, to Hastings and SPI. There is currently \$0 accrued, unpaid, and owing to Blue Cross as of the Petition Date in connection with COBRA Benefits.

⁸ Medical Claims include claims filed by former Hastings and SPI Employees receiving COBRA benefits.

Due to the lag time involved in medical billing, the Medical Claims paid in each weekly period arose approximately two months before the payments are made.

28. Reconciliation of the Medical Claims to allow reimbursement to Blue Cross is necessary to ensure there is no disruption in services for Employees under their Self-Insured Medical Insurance plans. For the past six months, weekly payments Self-Insured Medical Claims have averaged approximately \$90,000. There is approximately \$810,000 in Medical Claims accrued by Blue Cross as of the Petition Date all of which may become due and owing during the interim period.

29. MovieStop provides fully funded medical insurance (the “Funded Medical Insurance”) to eligible, full-time Employees and their families, which is administered by United Healthcare Services, Inc. (“United Healthcare”).⁹ Premiums for the Funded Medical Insurance are partially covered by MovieStop with the remainder paid for by covered Employees as a deduction in the Employee’s wages. MovieStop then pays United Healthcare approximately \$26,000 on a monthly basis. Payments are made in arrears. There is approximately \$10,000 accrued by United Healthcare as of the Petition Date in connection with respect to the Funded Medical Insurance all of which will become due and owing during the interim period.

ii. Dental Insurance

30. The Debtors also offer Employees and their families dental insurance coverage. The Debtors self-insure their dental insurance (the “Self-Insured Dental Insurance”), which is administered by Guardian Dental Insurance (“Guardian”), for eligible, full-time

⁹ Although United Healthcare acts as the ultimate insurer for former MovieStop Employees receiving COBRA benefits, the benefits are administered by Conexis. MovieStop pays an administrative fee of approximately \$100 to Conexis on a monthly basis in connection to the administration of former MovieStop Employee COBRA benefits. Payments are made in arrears. There is approximately \$35 accrued by Conexis as of the Petition Date in connection with the administration of former MovieStop Employee COBRA benefits all of which will become due and owing during the interim period.

Employees. Premiums for the Self-Insured Dental Insurance are partially covered by the Debtors with the remainder paid for by each covered Employee as a deduction in the covered Employees' wages. The Debtors then pay administrative fees of approximately \$2,700 to Guardian on a monthly basis to administer the covered Employees' Self-Insured Dental Insurance plans. Payments are made in arrears. There is currently \$1,100 accrued by Guardian as of the Petition Date in connection with the Self-Insured Dental Insurance all of which will become due and owing during the interim period.

31. Dental claims asserted under the Self-Insured Dental Insurance (the "Dental Claims") are filed against Guardian who, in turn, seeks reimbursement from the Debtors. The Dental Claims are reconciled by the Debtors on a monthly basis. Reconciliation and reimbursement to Guardian is necessary to ensure there is no disruption in services for Employees under their Self-Insured Dental Insurance plans. Like with Medical Claims, there is an approximate two month lag time before Dental Claims are filed and the Debtors receive them for reconciliation. For the past six months, total weekly Self-Insured Dental Claims have averaged \$7,300. There is approximately \$59,000 in Dental Claims accrued by Guardian as of the Petition Date all of which may become due and owing during the interim period.

iii. Vision Insurance

32. The Debtors also offer Employees and their families vision insurance coverage. The vision insurance (the "Vision Insurance") is fully funded and administered by Vision Service Plan ("VSP"), for eligible, full-time Employees. Premiums for the Vision Insurance are fully paid for by each covered Employee as a deduction in the covered Employees' wages. The Debtors then pay approximately \$8,000 to Guardian on a monthly basis to administer the covered Employees' Vision Insurance plans. Payments are made in arrears. There

is currently \$3,500 accrued by VSP as of the Petition Date in connection with the Vision Insurance all of which will become due and owing during the interim period.

iv. Life and AD&D Insurance

33. The Debtors purchase life and accident death and dismemberment (“AD&D”) insurance (the “Company-Provided Life Insurance”) from Mutual of Omaha for each of their eligible, full-time Employees. Employees may also purchase from Mutual of Omaha optional life insurance for themselves or their dependents (the “Optional Life Insurance”) in addition to the Company-Provided Life Insurance, which is deducted from the covered Employee’s wages. The Debtors then pay approximately \$5,500 to Mutual of Omaha for the Company-Provided Life Insurance and Optional Life Insurance on a monthly basis. Payments are made in arrears. There is approximately \$2,000 accrued by Mutual of Omaha as of the Petition Date in connection with the company-Provided Life Insurance and Optional Life Insurance all of which will become due and owing during the interim period.

34. The Debtors also purchase executive life insurance (the “Executive Life Insurance”) for the Debtors’ senior managers and executives from Genworth Financial, Inc. (“Genworth”). The Debtors pay \$5,500 to Genworth for the Executive Life Insurance on a semi-annual basis. Payments are made in advance. There is currently \$0 accrued, unpaid, and owing to Genworth as of the Petition Date in connection with the Executive Life Insurance.

v. Long-Term and Short-Term Disability Insurance

35. The Debtors purchase basic, long-term disability insurance (the “Basic Long-Term Disability Insurance”) from Mutual of Omaha for each of its eligible, full-time Employees. Employees may also purchase from Mutual of Omaha additional, buy-up long-term disability coverage (the “Buy-Up Long-Term Disability Insurance”) through deductions from each covered Employee’s wages. The Debtors then pay \$5,200 to Mutual of Omaha for the

Basic Long-Term Disability Insurance and the Buy-Up Long-Term Disability Insurance on a monthly basis. Payments are made in arrears. There is approximately \$2,400 accrued by Mutual of Omaha as of the Petition Date in connection with the Basic Long-Term Disability Insurance and the Buy-Up Long-Term Disability Insurance all of which will become due and owing during the interim period.

36. Eligible Employees may also purchase a short-term disability insurance plan (“Short-Term Disability Insurance”) from Dearborn National through deductions from each of the covered Employee’s wages. The Debtors then pay approximately \$400 to Dearborn National for the Short-Term Disability Insurance on a monthly basis. Payments are made in arrears. There is approximately \$150 accrued by Dearborn National in connection with the Short-Term Disability Insurance all of which will become due and owing during the interim period.

vi. Workers’ Compensation Insurance

37. The Debtors provide workers’ compensation insurance for their Employees at the level required by statute for each state in which the Debtors have Employees, administered by numerous insurers (the “Workers’ Compensations Insurers”). Annual claims under the Debtors’ worker compensation insurance policies (the “Workers’ Compensation Insurance Policies”) over the past five years have averaged \$260,000. Average monthly costs for the Debtors’ workers’ compensation insurance, including deductibles, are approximately \$25,000. There is approximately \$100,000 accrued by Workers’ Compensation Insurers in connection with the Workers’ Compensation Insurance Policies approximately \$22,000 of which will become due and owing during the interim period.

38. Certain benefits under the Workers’ Compensation Insurance Policies may have been incurred prepetition but have yet to be fully paid, and certain other claims may have

been filed prepetition but have yet to be resolved or not yet filed (collectively, the “Unpaid Workers’ Compensation Claims”). For the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with their contractual obligations, the Debtors must continue to assess, determine, and adjudicate Unpaid Workers’ Compensation Claims during these Cases. In addition, to the extent any of the Employees assert claims under the Workers’ Compensation Insurance Policies, the Debtors request that this Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the Workers’ Compensation Insurance Policies. This required modification of the automatic stay pertains solely to Unpaid Workers’ Compensation Claims.

C. Health Savings Accounts

39. The Debtors offer their Employees the option to contribute a portion of their pre-tax wages to a health savings account (“HSAs”) for use on certain out-of-pocket medical expenses. Each Employee must determine at the beginning of each enrollment period the amount to put toward the HSA. For those Employees that contribute to an HSA, the Debtors match the Employees’ contributions up to \$300 for individual Employee HSAs and up to \$600 to Employee plus dependent(s) HSAs on an annual basis. The Debtors’ contributions to the Employee’s HSAs were made in equal installments during each pay period. As of the Petition Date, the Debtors no longer make contributions to the Employees’ HSAs.

40. The HSAs are administered by HSA Bank. There is currently \$0 accrued, unpaid, and owing to HSA Bank as of the Petition Date. There is, however, approximately \$2,300 owed in matching contributions to the Employees’ HSAs that accrued as of the Petition Date.

D. 401(k) Plans

41. The Debtors offer voluntary retirement plans in which eligible Employees may elect to participate (the “401(k) Plans”). Eligible Employees can defer up to 3% of pre-tax compensation into retirement account and adjust the amount of their contribution at any time. The Debtors provided an employer match on a quarterly basis that varied depending on the Debtor. As of the Petition Date, the Debtors no longer provide quarterly matches on the 401(k) Plans.

42. The 401(k) Plans are administered by Wells Fargo. Any administrative costs associated with the 401(k) Plans are covered through the Employees’ accounts. There is currently \$0 accrued, unpaid, and owing to Wells Fargo as of the Petition Date in connection with the 401(k) Plans.

E. Assistance Program

43. The Debtors provide to Employees and their families assistance and support on a comprehensive range of issues, including: emotional well-being, family and caregiving, health and wellness, daily living, financial, and legal (the “Assistance Program”). The Assistance Program is intended to provide Employees short-term counseling, with no out of pocket costs and no use of insurance.

44. The Assistance Program is administered by ComPsych–GuidanceResources (“ComPsych”). The Debtors pay ComPsych approximately \$1,500 monthly to administer the Employee Assistance Program. Payments are made in advance. There is currently \$0 accrued, unpaid, and owing to ComPsych as of the Petition Date in connection with the Assistance Program.

RELIEF REQUESTED

45. By this Motion, the Debtors request, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, entry of the Interim Order and Final Order authorizing, but not requiring, the Debtors to (i) pay to the Debtors' employees, up to \$4.5 million, which is comprised of (a) Wage Obligations in the amount of approximately \$2.0 million, (b) Expense Reimbursements in the amount of \$250,000, and (c) up to \$2.25 million on account of the Debtors' PTO Plans, of which \$800,000 is sought on an interim basis with the remainder authorized to be paid out on a final basis; and (ii) pay to third party vendors/administrators in connection with the Employee Benefits in the amount of approximately \$1,200,000.

46. Additionally, the Debtors request the Court authorize all applicable banks and financial institutions (the "Banks") to receive, process, honor, and pay all prepetition and postpetition checks issued or to be issued, and electronic fund transfers requested or to be requested, by the Debtors in connection with the Employee Obligations and Employee Benefits.

BASIS FOR RELIEF

I. Cause Exists to Authorize Payment to the Debtors' Employees.

A. The Debtors' Employee Obligations And Employee Benefits Constitute Priority Claims Under The Bankruptcy Code.

47. The Debtors' Employee Obligations and Employee Benefits relating to the period before the Petition Date constitute priority claims under the Bankruptcy Code. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims against the Debtors for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of \$12,850 per individual. 11 U.S.C. § 507(a)(4)(A). Similarly, section 507(a)(5) of the Bankruptcy Code provides that Employees' claims for contributions to certain employee benefit plans are also

afforded priority unsecured status to the extent of \$12,850 per Employee covered by such plan, less any amount paid pursuant to section 507(a)(4) of the Bankruptcy Code. *See* 11 U.S.C. § 507(a)(5).

48. The Debtors' Employee Obligations and Employee Benefits described above clearly constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Accordingly, the relief requested may affect only the timing of the payment of these priority obligations, and will not prejudice the rights of general unsecured creditors.

B. Satisfaction Of The Debtors' Prepetition Employee Obligations And Employee Benefits Are Appropriate Under The Necessity Of Payment Doctrine.

49. Notwithstanding the foregoing, the Debtors submit that satisfaction and payment of the Employee Obligations and Employee Benefits is necessary and appropriate and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code pursuant to the "necessity of payment" doctrine.¹⁰ The Debtors, however, do not seek authority to pay any such amount in excess of the statutory cap on an interim basis.

50. The "necessity of payment" doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (authorizing the payment of prepetition employee wages and benefits); *see also Mich. Bureau of Workers' Disability Compensation v. Chateaugay*

¹⁰ The Debtors believe that a total of approximately \$35,000 is owed in Employee Obligations and Employee Benefits to three Employees that exceed the \$12,850 statutory priority cap provided by section 507(a)(4) and (5) of the Bankruptcy Code. The Debtors will not seek interim relief to allow payment of Employee Obligations and Employee Benefits that exceeds the statutory cap and reserve such relief until after notice and an opportunity to be heard at a final hearing.

Corp. (In re Chateaugay Corp.), 80 B.R. 279, 285-86 (S.D.N.Y. 1987), *appeal dismissed* 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits). This doctrine is consistent with the paramount goal of chapter 11 of “facilitating the continued operation and rehabilitation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176

51. Section 105(a) of the Bankruptcy Code empowers the Court 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). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175. “Under Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177).

52. Furthermore, section 363(b)(1) of the Bankruptcy Code provides, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1).

53. Any delay or failure to pay wages, salaries, benefits, and other similar items would irreparably impair the Employees’ morale, dedication, confidence, and cooperation, and would adversely impact the Debtors’ relationship with its Employees at a time when the Employees’ support is critical to the success of the Cases. At this early stage, the Debtors simply cannot risk the substantial damage to its business that would inevitably attend any decline in their Employees’ morale.

54. Absent an order granting the relief requested herein, the Employees will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain of the Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors will be undermined, perhaps irreparably, by the distinct possibility that otherwise loyal Employees will seek other employment alternatives. In addition, it would be inequitable to require the Debtors' Employees to bear personally the cost of any business expenses they incurred prepetition for the benefit of the Debtors, with the understanding that they would be reimbursed.

55. With respect to Payroll Taxes in particular, the payment of such taxes will not prejudice other creditors of the Debtors' estate, as the relevant Taxing Authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code with respect to such obligations. Moreover, the portion of the Payroll Taxes withheld from an Employee's wages on behalf of the applicable Taxing Authority is held in trust by the Debtors. As such, these Payroll Taxes are not property of the Debtors' estate under section 541 of the Bankruptcy Code. *See, e.g., Begier v. IRS*, 496 U.S. 53 (1990) (withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor's estate).

56. In addition, the Debtors believe it is necessary to continue payment of administrative fees to the administrators of the Debtors' Employee Obligations and Employee Benefits. Without the continued services of these administrators, the Debtors would be unable to continue to honor their Wage Obligations and Employee Benefits obligations in an efficient and cost-effective manner.

57. The Debtors do not seek to alter any of their Employee Benefits at this time. This Motion is intended only to permit the Debtors, in their discretion, to make payments

consistent with the Debtors' existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and to permit the Debtors, in their discretion, to continue to honor their practices, programs, and policies with respect to its Employees, as such practices, programs, and policies were in effect as of the Petition Date. Payment of all Employee Obligations in accordance with the Debtors' prepetition business practices is in the best interests of the Debtors' estates, their creditors, and all parties in interest, and will enable the Debtors to continue to operate their businesses in an economic and efficient manner without disruption. As explained more fully above, the Debtors' Employees are central to its operations and are vital to these Cases. A significant deterioration in employee morale at this critical time would have a devastating impact on the Debtors, their clients and vendors, the value of the Debtors' assets and businesses, and the Debtors' ability to continue operations. Moreover, the total amount sought to be paid herein is relatively modest compared with the size of the Debtors' overall business and the importance of the Employees to the Cases.

58. In other chapter 11 cases, courts in this District have approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those described herein. *See, e.g., In re Phoenix Brands LLC*, Case No. 16-11242 (BLS) (Bankr. D. Del. May 23, 2016) [Docket No. 50]; *In re Sports Auth. Holdings, Inc.*, Case No. 16-10527 (MFW) (Bankr. D. Del. Mar. 31, 2016) [Docket No. 919]; *In re City Sports, Inc.*, Case No. 15-12054 (KG) (Bankr. D. Del. Oct. 28, 2015) [Docket No. 186]; *In re Seal 123, Inc.*, Case No. 15-

10881 (CSS) (Bankr. D. Del. Sept. 20, 2015) [Docket No. 96]; *In re Deb Stores Holdings, LLC*, Case No. 14-12676 (MFW) (Bankr. D. Del. Dec. 5, 2014) [Docket No. 50].¹¹

59. Accordingly, by this Motion, the Debtors seek authority pursuant to sections 105(a) and 363(b) of the Bankruptcy Code to pay Employee Obligations as they become due and owing during the pendency of these chapter 11 cases and to continue, uninterrupted, its practices, programs, policies, and payments with respect to its Employee Benefits, as such practices, programs, and policies were in effect as of the Petition Date.

II. Applicable Banks Should Be Authorized to Honor and Pay Checks Issued and Make Other Transfers to Pay Employee Obligations.

60. Under the Debtors' existing cash management system,¹² the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Employee Obligations and Employee Benefits. The Debtors, therefore, further request that this Court authorize applicable Banks to receive, process, honor, and pay all prepetition and postpetition checks issued or to be issued, and electronic fund transfers requested or to be requested, by the Debtors in connection with the Employee Obligations and Employee Benefits. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of the Employee Obligations and Employee Benefits to replace any prepetition checks or electronic fund transfer requests that may have already been dishonored or rejected.

¹¹ Because of the voluminous nature of the unreported orders cited herein, they are not annexed to this Motion. Copies of these orders are available upon email request of Debtors' counsel by contacting Max Schlan, Esq. at mschlan@cooley.com.

¹² For further information regarding the Debtors' cash management system, see the *Debtors' Motion for entry of Order (I) Authorizing Continued Use of Cash Management System, (II) Authorizing Continued Use of Existing Business Forms (III) Authorizing the Continuation of Intercompany Transactions, (IV) Granting Administrative Priority Status to Postpetition Intercompany Transactions, (V) Authorizing Use of Prepetition Bank Accounts, Account Control Agreements, and Certain Payment Methods, and (VI) Temporarily Waiving the Requirements of 11 U.S.C. §345(B) on an Interim Basis* filed contemporaneously with this Motion, and the First Day Declaration.

61. Authorization to pay all amounts on account of Employee Obligations and Employee Benefits shall not be deemed to constitute postpetition assumption or adoption of any contract, program, or policy pursuant to section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserves all of its rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts on account of Employee Obligations and Employee Benefits shall not affect the Debtors' right to contest the amount or validity of any such claims, including without limitation, the Payroll Taxes that may be due to any Taxing Authority.

III. Cause Exists To Waive The Automatic Stay With Respect To The Workers' Compensation Insurance Policies.

62. Section 362(a) of the Bankruptcy Code operates as a stay with respect to "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced" before the Petition Date. 11 U.S.C. § 362(a)(1).

63. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with their Workers' Compensation Insurance Policies in the appropriate judicial or administrative forum or to allow Unpaid Workers' Compensation Claims to be filed that may have arisen in the prepetition period. Under various state laws, the Debtors must maintain their Workers' Compensation Insurance Policies to ensure prompt and efficient payment of applicable claims. If the Debtors fail to maintain their Workers' Compensation Insurance Policies, they may be prohibited by state law from operating in those states without making significant adjustments. Payment of all amounts due under the Workers' Compensation Insurance Policies, therefore, is crucial to the continued operation of the Debtors' business.

IMMEDIATE RELIEF IS NECESSARY

64. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As set forth throughout this Motion, any disruption of the Employee Obligations, would substantially diminish or impair the Debtors’ efforts in their Cases to preserve and maximize the value of their estates.

65. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF ANY APPLICABLE STAY

66. The Debtors also request that 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 business without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

67. Nothing in the Proposed Orders or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with

respect to the validity, priority, or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against an Insurance Carrier; or (iv) shall be construed as a promise to pay a claim.

NOTICE

68. The Debtors will provide notice of this Motion to: (i) the U.S. Trustee; (ii) holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors; (iii) Bank of America, N.A.; (iv) Pathlight Capital LLC; (v) the Banks; and (vi) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. As this Motion is seeking “first day” relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

69. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

[remainder of page intentionally left blank]

CONCLUSION

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that this Court enter interim and final orders, substantially in the forms attached hereto, granting the relief requested in the Motion and such other and further relief as is just and proper.

Dated: June 13, 2016
Wilmington, Delaware

Respectfully submitted,

/s/ Christopher M. Samis

Christopher M. Samis (No. 4909)
L. Katherine Good (No. 5101)
Chantelle D. McClamb (No. 5978)
WHITEFORD, TAYLOR & PRESTON LLC
The Renaissance Centre, Suite 500
405 North King Street
Wilmington, Delaware 19801
Telephone: (302) 353-4144
Email: csamis@wtplaw.com
kgood@wtplaw.com
cmclamb@wtplaw.com

- and -

Cathy Hershcopf, Esq.
Michael Klein, Esq.
Robert Winning, Esq.
COOLEY LLP
1114 Avenue of the Americas
New York, New York 01136
Telephone: (212) 479-6000
Email: chershcopf@cooley.com
mklein@cooley.com
rwinning@cooley.com

*Proposed Counsel for the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

DRAW ANOTHER CIRCLE, LLC, *et al.*,¹
Debtors.

Chapter 11

Case No.: 16- (_____)

(Joint Administration Requested)

Re: Docket No. _____

**INTERIM ORDER AUTHORIZING (I) PAYMENT
OF WAGES, COMPENSATION AND EMPLOYEE
BENEFITS AND (II) FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion (the “Motion”)² of Draw Another Circle, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”) in the above-captioned jointly administered chapter 11 cases (the “Cases”), for entry of an interim order (this “Interim Order”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing, but not requiring, the Debtors to (i) pay, in their sole discretion, the Employee Obligations, (ii) maintain and continue to honor their Employee Benefits as they were in effect on the Petition Date, and as such may be modified, amended, or supplemented from time to time in the ordinary course, (iii) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing, and (iv) granting related relief; and upon consideration of the First Day Declaration and the entire record of these Cases; and it appearing that the Court has

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Draw Another Circle, LLC (2102); Hastings Entertainment, Inc. (6375); MovieStop, LLC (9645); and SPI Images, Inc. (7773). The Debtors’ executive headquarters are located at 3601 Plains Boulevard, Amarillo, TX 79102.

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

jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby **ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not required, to satisfy and honor, without further order of the Court, and in accordance with the Debtors' stated policies and procedures, all obligations with respect to the Employee Obligations and Employee Benefits.
3. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2016, at __:__ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2016, and shall be served on: (i) the Debtors, 3601 Plains Boulevard, Amarillo, Texas 79102 (Attn: Duane A. Huesers); (ii) proposed counsel for the Debtors, (x) Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036 (Attn: Cathy Hershcopf, Esq. and Michael A. Klein, Esq.) Email: chershcopf@cooley.com and mklein@cooley.com and (y) Whiteford, Taylor & Preston LLC, The Renaissance Centre, 405

North King Street, Suite 500, Wilmington, Delaware 19801 (Attn: Christopher M. Samis, Esq. and L. Katherine Good, Esq.) Email: csamis@wtplaw.com and kgood@wtplaw.com; (iii) counsel to Bank of America, N.A., (x) Riemer & Braunstein, LLP, Times Square Tower, Suite 2506, Seven Times Square, New York, New York 10036 (Attn: Donald E. Rothman, Esq. and Steven E. Fox, Esq.) Email: drothman@riemerlaw.com and sfox@riemerlaw.com and (y) Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150, Wilmington, Delaware 19801 (Attn: Gregory Taylor, Esq.) Email: gtaylor@ashby-geddes.com; (iv) counsel to Pathlight Capital LLC, (x) Choate, Hall & Stewart LLP, Two International Place, Boston, Massachusetts 02110 (Attn: Kevin J. Simard, Esq.) Email: ksimard@choate.com and (y) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and John H. Knight, Esq.) Email: collins@rlf.com and knight@rlf.com; (v) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Hannah Mufson McCollum, Esq.) Email: hannah.mccollum@usdoj.gov; and (vi) counsel to any statutory committee appointed in these Cases. If no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without further notice or hearing.

4. Notwithstanding anything in this Interim Order to the contrary, the Debtors are authorized, but not required, on an interim basis, to pay amounts owed prior to the Petition Date to the Debtors' Employees on account of Employee Obligations and Employee Benefits in accordance with the Debtors' stated policies and procedures as set forth in the Motion in an amount not to exceed \$4.5 million; *provided* that the satisfaction of the Employee Obligations and Employee Benefits for any individual Employee shall not exceed \$12,850

during the interim period; *provided further* that payment under the PTO Plans may not exceed \$800,000 in the aggregate during the interim period.

5. The Debtors are authorized, but not required, to continue to honor their practices, programs, and policies with respect to their Employees as such practices, programs, and policies were in effect as of the Petition Date.

6. The Debtors are authorized, but not required, to pay costs and expenses incidental to the payment of the Employee Obligations and Employee Benefits, including all administration and processing costs and payments to outside professionals, independent contractors, or third-party vendors, in the ordinary course of business, in order to facilitate the administration and maintenance of the Debtors' programs and policies related to the Employee Obligations and Employee Benefits.

7. The automatic stay is modified, pursuant to section 362(d) of the Bankruptcy Code, solely to the extent necessary to permit Employees to proceed with their claims under the Debtors' Workers' Compensation Insurance Policies in the appropriate judicial or administrative forum.

8. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order,

and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Interim Order.

9. Notwithstanding anything in this Interim Order to the contrary, any payment made or to be made under this Order, any authorization contained in this Interim Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders approved by this Court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

10. Nothing in this Interim Order, nor as a result of any payment made pursuant to this Interim Order, (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against an Insurance Carrier; or (d) shall be construed as a promise to pay a claim.

11. Nothing in the Motion or this Interim Order shall be deemed to authorize the payment of any amounts in satisfaction of bonus or severance obligations, or which are subject to section 503(c) of the Bankruptcy Code.

12. Bankruptcy Rule 6003(b) has been satisfied.

13. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Interim Order shall be effective immediately and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted

in this Interim Order; and (c) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Interim Order.

14. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Interim Order.

Dated: _____, 2016
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

DRAW ANOTHER CIRCLE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No.: 16- (_____)

(Joint Administration Requested)

Re: Docket No. _____

**FINAL ORDER AUTHORIZING (I) PAYMENT
OF WAGES, COMPENSATION AND EMPLOYEE
BENEFITS AND (II) FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion (the "Motion")² of Draw Another Circle, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the "Debtors") in the above-captioned jointly administered chapter 11 cases (the "Cases"), for entry of a final order (this "Final Order"), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtors to (i) pay, in their sole discretion, the Employee Obligations, (ii) maintain and continue to honor their Employee Benefits as they were in effect on the Petition Date, and as such may be modified, amended, or supplemented from time to time in the ordinary course, (iii) authorizing banks and other financial institutions (collectively, the "Banks") to honor and process check and electronic transfer requests related to the foregoing, and (iii) granting related relief; and upon consideration of the First Day Declaration and the entire record of these Cases; and it appearing that the Court has jurisdiction

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Draw Another Circle, LLC (2102); Hastings Entertainment, Inc. (6375); MovieStop, LLC (9645); and SPI Images, Inc. (7773). The Debtors' executive headquarters are located at 3601 Plains Boulevard, Amarillo, TX 79102.

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

to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby **ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not required, to satisfy and honor all Employee Obligations and Employee Benefits that arose prior to the Petition Date in accordance with the Debtors' stated policies and procedures as set forth in the Motion, including those Employee Obligations and Employee Benefits that exceed \$12,850 for any individual Employee.
3. The Debtors are authorized, but not required, to continue to honor their practices, programs, and policies with respect to their Employees as such practices, programs, and policies were in effect as of the Petition Date.
4. The Debtors are authorized, but not required, to pay costs and expenses incidental to the payment of the Employee Obligations and Employee Benefits, including all administration and processing costs and payments to outside professionals, independent contractors, or third-party vendors, in the ordinary course of business, in order to facilitate the

administration and maintenance of the Debtors' programs and policies related to the Employee Obligations and Employee Benefits.

5. The automatic stay is modified, pursuant to section 362(d) of the Bankruptcy Code, solely to the extent necessary to permit Employees to proceed with their claims under the Debtors' Workers' Compensation Insurance Policies in the appropriate judicial or administrative forum.

6. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Final Order.

7. Notwithstanding anything in this Final Order to the contrary, any payment made or to be made under this Order, any authorization contained in this Final Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders approved by this Court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.

8. Nothing in this Final Order, nor as a result of any payment made pursuant to this Final Order, (a) is intended or shall be deemed to constitute an assumption of any

agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates; (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against an Insurance Carrier; or (d) shall be construed as a promise to pay a claim.

9. Nothing in the Motion or this Final Order shall be deemed to authorize the payment of any amounts in satisfaction of bonus or severance obligations, or which are subject to section 503(c) of the Bankruptcy Code.

10. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Final Order shall be effective immediately and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Final Order; and (c) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Final Order.

11. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Final Order.

Dated: _____, 2016
Wilmington, Delaware

United States Bankruptcy Judge