

**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)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING MAINTENANCE, ADMINISTRATION,
AND CONTINUATION OF CERTAIN CUSTOMER PROGRAMS**

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 an order, substantially in the form attached hereto as Exhibit A (the “Proposed 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”), (i) authorizing the Debtors to maintain and administer certain of their customer-related programs as described in the Motion (collectively, the “Customer Programs”), and honor prepetition obligations to customers related thereto in the ordinary course of business to the extent requested herein, (ii) authorizing the Debtors to continue, replace, implement, modify and/or suspend one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further application to the Court, (iii) authorizing banks and other financial institutions (the “Banks”) to honor and process check and electronic transfer requests related to the foregoing, and (iv) granting related relief. In support of the Motion, the

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); SP Images, Inc. (7773); and Hastings Internet, Inc. (0809). The Debtors’ executive headquarters are located at 3601 Plains Boulevard, Amarillo, TX 79102.

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 as of 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 (the "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. Gift Cards

13. Prior to the Petition Date, the Debtors sold gift cards (collectively, the “Gift Cards”), in the ordinary course of business, to Hastings and MovieStop customers, in

various denominations up to \$9,999.99.³ Customers could purchase Gift Cards in Hastings and MovieStop retail stores and/or through their respective online stores. In addition, both retailers issued Gift Cards on account of store credit for returned merchandise. Gift Cards can be used only for in-store purchases or online purchases and only with the respective retailer from which the Gift Cards were purchased.⁴ Gift card programs of this nature are commonplace and popular in the retail industry, and the Debtors' competitors offer similar programs to their customers.

14. The Debtors' books and records reflect an aggregate net liability in respect of Gift Cards and store credit on account of as of the Petition Date of approximately \$25,000,000 in the aggregate, of which approximately \$23,500,000 is at Hastings, and approximately \$1,500,000 is at MovieStop. In the Debtors' experience, Gift Cards that have aged for over two years are unlikely to be redeemed. The Debtors estimate that the Gift Card obligations that are likely to be redeemed amount to a liability of approximately \$3,400,000 for Hastings, and \$1,400,000 for MovieStop. Those sums represent the obligation on Gift Cards that are less than two years old.

15. The Debtors request authority, in their sole discretion, (i) to honor all Gift Cards purchased prior to the Petition Date, for a period of thirty (30) days after the Petition Date, and (ii) to pay any prepetition processing fees or allow Gift Card vendors to set off commissions in the ordinary course of business.

³ MovieStop stopped issuing Gift Cards on or about May 12, 2016, in conjunction with the MovieStop Store Closing Sales. Hastings stopped issuing Gift Cards on June 10, 2016.

⁴ Shortly before the Petition Date, in conjunction with the MovieStop Store Closing Sales and in order to ease the burdens imposed on customers and encourage use of the Hastings on-line offerings, the Debtors expanded the permitted use of MovieStop Gift Cards. Specifically, for a thirty (30) day period after the Petition Date, MovieStop Gift Card holders are permitted to use MovieStop Gift Cards on the Hastings e-commerce website (in addition to being able to use them for MovieStop retail purchases).

II. Refund and Exchange Program

16. Prior to the Petition Date and subject to certain exceptions, Hastings and MovieStop generally allowed their customers to return or exchange merchandise that is in saleable condition (collectively, the “Refund and Exchange Program”). Hastings and MovieStop accepted returns of merchandise that was unopen, accompanied by a receipt and presented within thirty (30) days of original purchase for cash or store credit; merchandise presented without a receipt but within thirty (30) days of original purchase could only be exchanged for store credit. Video game systems could be exchanged for the same hardware unit if presented within fourteen (14) days of original purchase and accompanied by a receipt and original packaging. Hastings and MovieStop also exchanged opened merchandise for the same title if accompanied by a receipt and presented within thirty (30) days of original purchase.

17. In conjunction with the ongoing Store Closing Sales and the orderly liquidation of MovieStop, the Debtors terminated the MovieStop Refund and Exchange Program prior to the Petition Date.

18. Programs similar to the Refund and Exchange Program are common in the retail industry, and similar programs are used by the Debtors’ competitors. Accordingly, the Debtors request authority, in their sole discretion, to honor all prepetition obligations associated with the Refund and Exchange Program at Hastings, but only for a period of thirty (30) days after the Petition Date.

19. The Debtors are unable to estimate the value of their prepetition obligations with respect to the Hastings Refund and Exchange Program with precise accuracy due to the fact that returns and exchanges can be made for an extended period in the future following the original sale. The Debtors, however, do not expect the commencement of these

Cases to result in a significant deviation in the volume of returns and exchanges from that which they experienced prepetition, which average approximately \$664,600 per month for Hastings.

III. Military Discount Program

20. Prior to the Petition Date, MovieStop offered a 10% discount to members of the armed forces when they display their military ID (the "Military Discount Program"). The Debtors request authority, in their sole discretion, to continue the Military Discount Program, for a period of thirty (30) days after the Petition Date.

IV. Store Credits

21. Prior to the Petition Date, in the ordinary course of business, the Debtors offered several promotions by which customers could purchase or earn store credits for free or reduced price movie or game rentals or other products (collectively, the "Store Credits"). Store Credits include the following programs:

- a. Hastings and MovieStop offered their customers the opportunity to reserve new releases in advance of the release date (the "Pre-Order Program"). Under the Pre-Order Program, a customer could make a five-dollar deposit toward the purchase (not rental) of a game or movie that has not yet been released to ensure that, upon release, the item will be available for immediate purchase. Under the Pre-Order Program, when the item arrives and the customer purchases the item, the five-dollar deposit can be deducted from the purchase price or rolled over as a deposit towards another future purchase.
- b. Hastings provided customers with an early return credit toward a future rental (the "Early Return Credit Program") for videos that are returned on the day following their rental. The Early Return Credit Program encouraged customers to return their videos early, which contributes to higher inventory levels. Customers may not redeem early return credits for cash.
- c. Hastings and MovieStop ran membership programs known as the Used Product Account Programs. Used Product

Account Programs members could sell back used products for store credit.

22. The Debtors terminated the ability to obtain additional MovieStop Store Credits prior to the Petition Date, and suspended the ability to obtain additional Hastings Store Credits as of June 10, 2016. To foster goodwill with customers, the Debtors request authority, in their sole discretion, to honor prepetition Store Credits, but only to be used towards the purchase of new merchandise (the “Redemption Allowance”), for a period of thirty (30) days after the Petition Date

23. The Debtors estimate that their total obligations as of the Petition Date for the Store Credits are approximately \$905,000, of which approximately \$383,500 is at Hastings, and approximately \$522,200 is at MovieStop.

V. Credit Card and Other Payment Processors

24. In addition to cash, the Debtors accept several other methods of payment from customers at their point of sale, including (i) credit cards, (ii) gift cards, (iii) certificates, and (iv) checks. The Debtors also accept PayPal payments on their websites. For all methods of payment (other than a cash transaction), the Debtors receive the net customer sales less any chargebacks, returns and processing fees charged. The processing fees charged by each company vary, but are generally in the range of 1% to 4%. The fees that are owing to these companies are set off from the funds that are remitted to the Debtors on a weekly basis.

25. Maintaining use of the credit cards and other payment mechanisms is essential to the continuing operation of the Debtors’ business because a significant amount of the Debtors’ sales are made using non-cash payment methods. By this Motion, the Debtors request authority, in their sole discretion, to allow the credit card companies, PayPal, and any third-party

administrators to continue to process the customer payments, including deducting chargebacks, returns, and processing fees in the ordinary course of business.

RELIEF REQUESTED

26. By this Motion, the Debtors request that the Court enter an order, pursuant to sections 105 and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtors to maintain and administer certain of their Customer Programs and honor prepetition obligations to customers related thereto in their discretion in the ordinary course of business to the extent requested herein; (ii) authorizing the Debtors to continue, replace, implement, modify and/or suspend one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further application to the Court; (iii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and (iv) granting related relief.

27. Maintaining the loyalty, support, and goodwill of their customers is critical to the Debtors' reorganization efforts. In short, the Debtors must maintain positive customer relationships and a reputation for reliability to ensure that their customers continue to purchase the Debtors' products. Achieving these goals is particularly important while operating in chapter 11. In the ordinary course of business, the Debtors provide customers with certain Customer Programs that engender goodwill, maintain loyalty, increase the Debtors' sales opportunities, and allow the Debtors a comparative advantage over their competition. Specifically, the Customer Programs relate to the Debtors' programs by which they offer gift cards, refunds and exchanges, and promotional offers to their customers, as well as processing customer purchases through the use of credit cards. The Debtors believe that their ability to continue certain of the Customer Programs and to honor their obligations thereunder in the

ordinary course of business is necessary to (i) retain their reputation for reliability, (ii) meet competitive market pressures, (iii) maintain positive customer relationships, and (iv) ensure customer satisfaction, thereby retaining current customers, attracting new ones, and, ultimately, enhancing revenue and profitability for the benefit of all the Debtors' stakeholders.

BASIS FOR RELIEF

I. Honoring Customer Program Commitments is Warranted under Sections 105(a) and 363(b) of the Bankruptcy Code.

28. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], 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). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (discussing prior order authorizing payment of prepetition wage claims pursuant to section 363(b) of the Bankruptcy Code). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” *Id.*

29. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the equitable powers of the bankruptcy court, 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). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *Ionosphere Clubs*, 98 B.R. at 175–76. Specifically, the Court may use its power under

section 105(a) to authorize payment of prepetition obligations pursuant to the “doctrine of necessity.” *See id.*

30. The United States Court of Appeals for the Third Circuit recognized the doctrine of necessity in *In re Lehigh & New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (recognizing necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

31. The rationale for the doctrine of necessity—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *see also Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such

payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process.”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation . . .” is appropriate); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.”); COLLIER ON BANKRUPTCY ¶105.02[4][a] (Alan N. Resnick & Henry J. Sommer Eds., 16th ed. 2016) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

32. Accordingly, the Court has authority to authorize the Debtors to continue the Customer Programs, to the extent requested herein, and to pay prepetition claims arising thereunder, pursuant to sections 363(b) and 105(a) of the Bankruptcy Code.

33. The Customer Programs are standard in the retail industry. If the Debtors are unable to honor their Customer Programs as provided herein or continue them at their non-liquidating stores, their ability to conduct business and generate sales will be severely hampered. On the other hand, continuing to administer certain of the Customer Programs without interruption during the pendency of these Cases will help preserve the Debtors’ valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors’ stakeholders. Moreover, in the event the Debtors determine, in the exercise of their business

judgment, to suspend one or more Customer Programs, the Debtors will provide reasonable notice of any such termination to customers in stores and on the Debtors' websites.

34. Courts in this district have granted relief similar to that requested here. *See, e.g., In re Phoenix Brands, LLC*, Case No. 16-11242 (BLS) (Bankr. D. Del. May 24, 2016) [Docket No. 64]; *In re Vestis Retail Grp., LLC*, Case No. 16-10971 (LSS) (Bankr. D. Del. Apr. 19, 2016) [Docket No. 53]; *In re Sports Auth. Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. Mar. 3, 2016) [Docket No. 134]; *In re City Sports, Inc.*, Case No. 15-12054 (KG) (Bankr. D. Del. Oct. 28, 2015) [Docket No. 190]; *In re The Wet Seal, Inc.*, No. 15-10081 (CSS) (Bankr. D. Del. Jan. 20, 2015) [Docket No. 95].⁵

35. The Debtors submit that the substantial benefit conferred on the Debtors' estates by the Customer Programs substantially outweighs the costs associated with the Customer Programs. Accordingly, the Debtors respectfully request the authority to continue their Customer Programs and honor prepetition commitments related thereto to the extent requested herein, all in the Debtors' sole discretion. In addition, the Debtors respectfully request authority to continue, replace, implement, modify and/or suspend one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further application to the Court.

II. Processing of Checks and Electronic Fund Transfers Should be Authorized.

36. The Debtors also request that the Court authorize all applicable Banks to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Customer Programs, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on

⁵ 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.

the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.⁶

IMMEDIATE RELIEF IS NECESSARY

37. 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. There is no question that the Debtors' failure to honor their Customer Programs as provided herein would likely result in immediate and irreparable harm to the Debtors' customer relations. Thus, if the relief requested herein is not granted, the Debtors' failure to honor and support the Customer Programs, as provided herein, and satisfy the obligations related thereto would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts.

38. 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

39. 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

⁶ 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 Suspending the Requirements of 11 U.S.C. § 345(B) on an Interim Basis* filed contemporaneously with this Motion, and the First Day Declaration.

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

40. Nothing in the Proposed Order 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, or (iii) shall be construed as a promise to pay a claim.

NOTICE

41. 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

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

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CONCLUSION

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that this Court enter an order, substantially in the form 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

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EXHIBIT A

Proposed 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. _____

**ORDER AUTHORIZING MAINTENANCE, ADMINISTRATION,
AND CONTINUATION OF CERTAIN CUSTOMER PROGRAMS**

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 order (this "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"), (i) authorizing the Debtors to maintain and administer certain of their customer-related programs as described in the Motion (collectively, the "Customer Programs"), and honor prepetition obligations to customers related thereto in the ordinary course of business and as described in the Motion, (ii) authorizing the Debtors to continue, replace, implement, modify and/or suspend one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further application to the Court, (iii) authorizing banks and other financial institutions (the "Banks") to honor and process check and electronic transfer requests related to the foregoing, and (iv)

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

granting related relief; and upon consideration of the First Day Declaration and the record of these Cases; and it appearing that the Court has 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, as set forth herein.
2. The Debtors are authorized, but not directed, to, in their sole discretion: (i) honor all Gift Cards purchased prior to the Petition Date, but only for a period of thirty (30) days after the Petition Date unless otherwise ordered by the Court, and (ii) pay any prepetition processing fees or allow Gift Card vendors to set off commissions in the ordinary course of business.
3. The Debtors are authorized, but not directed, to, in their sole discretion, honor all prepetition obligations associated with the Refund and Exchange Program at Hastings, but only for a period of thirty (30) days after the Petition Date unless otherwise ordered by the Court.

4. The Debtors are authorized, but not directed, to, in their sole discretion, continue the MovieStop Military Discount Program, but only for a period of thirty (30) days after the Petition Date unless otherwise ordered by the Court.

5. The Debtors are authorized, but not directed, to, in their sole discretion, honor all prepetition obligations associated with the Store Credits under the Redemption Allowance, but only for a period of thirty (30) days after the Petition Date unless otherwise ordered by the Court; *provided* that the Redemption Allowance shall not include recovery of Store Credits in the form of cash.

6. Debtors are authorized to continue, replace, implement, modify, and/or suspend one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further application to the Court.

7. In the event the Debtors determine, in the exercise of their business judgment, to suspend one or more Customer Programs, the Debtors shall provide prominent notice of any such suspension to customers in stores and on the Debtors' websites.

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 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 Order.

9. Nothing in this Order, nor as a result of any payment made pursuant to this 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 be construed as a promise to pay a claim.

10. The credit card companies, internet vendors, and check processors used by the Debtors are authorized to offset chargebacks, returns, and fees on account of customer purchases in the ordinary course of business that may have arisen before the Petition Date up to the aggregate amount set forth in the Motion.

11. The Debtors are authorized to issue postpetition checks, or to affect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Cases with respect to prepetition amounts owed in connection with the Customer Programs.

12. Nothing contained in the Motion or this Order is intended or should be construed to create an administrative priority claim on account of any Customer Programs.

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

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

15. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this 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 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 Order.

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

Dated: _____, 2016
Wilmington, Delaware

United States Bankruptcy Judge