

**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 INTERIM AND
FINAL ORDERS AUTHORIZING PAYMENT OF CERTAIN
PREPETITION SHIPPING, DELIVERY, AND WAREHOUSEMEN CHARGES**

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”), (i) authorizing, but not directing, the Debtors to pay certain prepetition claims for shipping, freight forwarding, consolidating, and warehousemen, (ii) authorizing banks and financial institutions (the “Banks”) to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (iii) granting related relief. In support of the Motion, the Debtors rely on the *Declaration of Duane A. Huesers in Support of Debtors' First*

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.

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(a) 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 Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in these

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

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.

RELIEF REQUESTED

13. By this Motion, the Debtors request that the Court enter an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing, but not directing, the Debtors to pay certain prepetition claims for shipping, freight

forwarding, consolidating, and warehousemen (collectively, the “Transporter Claims”), (ii) authorizing the Banks to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (iii) granting related relief.

14. The Debtors’ business depends on the daily process of importing and shipping their products to stock the Debtors’ stores. In order to ensure the steady movement of products, the Debtors rely on a network of shippers, freight forwarders, and consolidators (the “Shippers”) who process and ship the Debtors’ merchandise (the “Merchandise”) to and from the Debtors’ distribution centers and stores. If the Debtors fail to pay any of the foregoing entities for charges incurred in connection with the transportation of the Merchandise, various statutes, tariffs, and agreements may permit the Shippers to assert possessory liens against any Merchandise in their possession.

15. In addition, some of the Debtors’ Merchandise is delivered by the Shippers to warehouses operated by third-parties (the “Warehousemen”) who receive and store the Merchandise in their warehouses prior to ultimate delivery to the stores. In the event that the Debtors fail to reimburse the Warehousemen for charges incurred in connection with the storage of the Merchandise, various state laws permit the Warehousemen to assert a statutory lien against the Merchandise in their possession that is the subject of any delinquent charges, securing such charges and potentially blocking the Debtors’ access to the stored Merchandise.

16. As of the Petition Date, the Debtors estimate that approximately \$1,100,000 is owed in the aggregate on account of prepetition Transporter Claims. These amounts are in respect of Shippers, and Warehousemen, and include both invoices that the Debtors have received, as well as amounts that the Debtors have not yet received, but are believed to have been incurred as of the Petition Date based on historical practice. Payment of

the foregoing Transporter Claims will avoid disruption in the Debtors' business, prevent the possibility of possessory liens being asserted against the Merchandise, and enable the Debtors to realize the value of the Merchandise and continue their operations uninterrupted.

17. Moreover, although the Debtors believe that the above aggregate amount of unpaid prepetition Transporter Claims is accurate, to the extent that additional amounts are found to be outstanding (most likely due to delayed invoicing or the timing of certain shipments), the Debtors must be able to pay such amounts in order to gain access to the Merchandise, as any disruption in the Debtors' movement of Merchandise could result in significant adverse consequences to the Debtors' business.

18. As such, the Debtors request authority, but not direction, to pay prepetition Transporter Claims as and when the Debtors determine that payment is necessary or appropriate in an amount not to exceed \$900,000 on an interim basis and \$1,200,000 on a final basis. Subject to the terms set forth in this paragraph, the Debtors propose to condition the payment of prepetition Transporter Claims on the agreement of individual Shippers and Warehousemen to continue to provide services to the Debtors during the pendency of these Cases on the most favorable terms that existed prior to the Petition Date (the "Historical Trade Terms"), unless this requirement is waived by the Debtors. If any party accepts payment from the Debtors on account of its Transporter Claim and thereafter does not continue to provide services to the Debtors on the Historical Trade Terms, then the Debtors hereby seek authority, in their discretion and without further order of the Court, to take any and all appropriate steps to cause such party to repay payments made to it on account of its Transporter Claim to the extent that such payments exceed the post-petition amounts then owing to such party.

19. The Debtors also request that the Banks be authorized to receive, process, honor, and pay all checks presented for payment and to honor all electronic payment requests made by the Debtors related to the prepetition obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors further request that all Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

BASIS FOR RELIEF

I. The Court May Rely on Section 363(b) of the Bankruptcy Code.

20. The Court may authorize the Debtors to pay shipping and related charges under section 363(b) of the Bankruptcy Code. That section provides that “[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). 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) (authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); *In re UAL Corp.*, Case No. 02-48191, 2002 WL 34344254, at *1 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out-of-ordinary-course transaction). In order to do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. As discussed more fully herein, the Debtors' request to pay the Transporter Claims meets this standard because, given the nature of the Debtors' industry, the failure to satisfy the shipping and related charges could have a material adverse effect on the day-to-day operations of the Debtors' business.

II. The Relief Requested Herein is Warranted Under the Doctrine of Necessity.

21. The Court may authorize payment of prepetition claims under section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the equitable powers of the bankruptcy court, empowers courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of the debtor’s business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “doctrine of necessity” (also referred to as the “necessity of payment” rule). *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175-76.

22. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh and 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 there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment.” *Id.*; accord *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (collecting cases holding that the 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”); *see also Official Comm. of Unsecured Creditors of Motor Coach Indus. Int’l, Inc. v. Motor Coach Indus. Int’l, Inc. (In re Motor Coach Indus. Int’l, Inc.)*, No. 08-12136 BLS, 2009 WL 330993, at *3 (D. Del. Feb. 10, 2009) (denying a stay pending appeal on the grounds that there is not a serious basis to challenge the doctrine of necessity in the Third Circuit); *Just for*

Feet, Inc., 242 B.R. at 824-26 (noting that the Third Circuit permits debtors to pay prepetition claims that are essential to continued operation of business).

23. Application of the doctrine of necessity is justified when necessary to preserve the value of the estate for all stakeholders. *See 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 prepetition 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 tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *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 . . . payment of creditors in full or at least proportionately”); COLLIER ON BANKRUPTCY ¶ 105.04[5][a] (Alan N. Resnick & Henry J. Sommer Eds., 16th ed. rev. 2016) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

24. Courts in this District often authorize payments to prepetition creditors, and, in particular, shippers and other transport-related claimants under similar circumstances. *See, e.g., In re Vestis Retail Grp., LLC*, Case No. 16-10971 (LSS) (Bankr. D. Del. Apr. 19, 2016)

[Docket No. 52]; *In re Sports Auth. Holdings, Inc.*, No. 16-10527 (MFW) (Bankr. D. Del. Mar. 3, 2016) [Docket No. 156]; *In re City Sports, Inc.*, Case No. 15-12054 (KG) (Bankr. D. Del. Oct. 28, 2015) [Docket No. 189]; *In re Am. Apparel, Inc.*, Case No. 15-12055 (BLS) (Bankr. D. Del. Oct. 6, 2015) [Docket No. 75]; *In re The Wet Seal, Inc.*, No. 15-10081 (CSS) (Bankr. D. Del. Jan. 20, 2015) [Docket No. 102].³

25. The Debtors submit that paying the prepetition Transporter Claims, not to exceed \$1,200,000 in the aggregate, is critical to their efforts to maximize the value of their estates for the benefit of their creditors. Absent such payment, Merchandise with a retail value far in excess of the accrued prepetition Transporter Claims might not be released by the parties holding the Transporter Claims. If the Debtors' business operations are to continue, and the Debtors are to efficiently administer their estates, the Debtors must be able to maintain their Merchandise-transport network, and the prompt payment of creditors holding Transporter Claims comprises a vital link in that network.

26. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted.

III. Payment of Transporter Claims is Necessary in Light of Potential Liens.

27. Under the laws of most states, a shipper, consolidator, freight forwarder, or warehousemen may have a lien⁴ on the goods in its possession. Such liens secure the charges or

³ 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.

⁴ By this Motion, the Debtors do not concede that any liens (contractual, common law, statutory, or otherwise) described in this Motion are valid, and the Debtors expressly reserve the right to contest the extent, validity, and perfection of all such liens and/or to seek avoidance thereof.

expenses incurred in connection with the transportation of such goods.⁵ Pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code,⁶ is expressly excluded from the stay imposed by section 362(a) of the Bankruptcy Code. In fact, to protect their asserted lien rights, holders of Transporter Claims may refuse to release goods or equipment in their possession unless and until their prepetition claims for services have been satisfied. Therefore, notwithstanding the stay imposed by section 362 of the Bankruptcy Code, holders of Transporter Claims could be entitled to assert and perfect liens against the Debtors' property, which would entitle them to payment ahead of general unsecured creditors in any event and which would provide them with authority to hold the property subject to the asserted liens pending payment, to the direct detriment of the Debtors and their estates.

28. To the extent that the amount of a Transporter Claim is less than the value of any property securing such claim, a shipper, consolidator, freight forwarder, or warehousemen holding lien rights would also arguably be a fully-secured creditor. In general, pursuant to section 506 of the Bankruptcy Code, fully secured creditors are entitled to receive payment in full of (i) their prepetition claims pursuant to any confirmed plan(s) of reorganization and (ii) the postpetition interest accruing on such claims to the extent such claims are oversecured. Consequently, payment of such Transporter Claims will (i) give holders of Transporter Claims subject to possessory liens no more than they would be entitled to under a plan and (ii) save the Debtors the interest costs that otherwise may accrue on the claims during these chapter 11 Cases.

⁵ For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." *See* U.C.C. § 7-307(1).

⁶ Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection . . ." 11 U.S.C. § 546(b)(1)(A).

29. As explained above, the Debtors' business is necessarily dependent upon the timely receipt and delivery of Merchandise. Any disruption in this system would have damaging effects on the Debtors' business. The value of the Debtors' Merchandise in transit, and the potential injury to the Debtors if such Merchandise is not timely released, is likely to substantially exceed the amount of Transporter Claims. Indeed, even if the holders of Transporter Claims did not have valid liens under applicable state law, their possession and retention of the Debtors' Merchandise would severely disrupt the Debtors' relationship with their customers. For these reasons, in order to preserve and enhance the value of the estates, the Debtors respectfully submit that they must be permitted, in their discretion, to make payments on account of Transporter Claims.

IV. Cause Exists to Authorize the Banks to Honor Checks and Electronic Fund Transfers.

30. The Debtors also request that the Court authorize the Banks to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein, 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 the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.⁷

IMMEDIATE RELIEF IS NECESSARY

31. 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.

⁷ 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.

Bankr. P. 6003. The Debtors' failure to receive the Merchandise necessary to operate would have immediate and detrimental consequences to the Debtors' business and would jeopardize the Debtors' efforts to preserve and maximize the value of their estates, to the detriment and prejudice of all of the Debtors' stakeholders. As the Debtors operate in a highly competitive industry, the Debtors cannot afford any material disruptions of their business operations or present anything less than a business as usual appearance to the public. Moreover, it is the Debtors' business judgment that continuation of their positive relationship with the creditors holding Transporter Claims is critical to avoid any unexpected or inopportune interruption to the Debtors' operations and increases the likelihood of successfully prosecuting these Cases. Any failure to grant the relief requested herein would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts.

32. 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

33. 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

34. 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, or (iii) shall be construed as a promise to pay a claim.

NOTICE

35. 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.

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

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

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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 PAYMENT OF CERTAIN
PREPETITION SHIPPING, DELIVERY, AND WAREHOUSEMEN CHARGES**

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”), (i) authorizing, but not directing, the Debtors to pay certain prepetition claims for shipping, freight forwarding, consolidating, and warehousemen (the “Transporter Claims”), (ii) authorizing banks and financial institutions (the “Banks”) to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (iii) granting related relief; 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

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.

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

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 directed, to pay the prepetition Transporter Claims in the ordinary course of the Debtors' business up to an aggregate amount of \$900,000 as the Debtors, in their business judgment, determine is necessary and appropriate.

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. If any party accepts payment from the Debtors on account of its Transporter Claim and thereafter does not continue to provide services to the Debtors on the Historical Trade Terms, then the Debtors may then take any and all appropriate steps to cause such party to repay payments made to it on account of its Transporter Claim to the extent that such payments exceed the post-petition amounts then owing to such party.

5. 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.

6. The Debtors shall be and hereby are authorized to issue in their sole discretion new postpetition checks or effect new postpetition fund transfers to pay the Transporter Claims to replace any prepetition check or fund transfer requests that may be dishonored or rejected.

7. 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 be construed as a promise to pay a claim; or (d) is intended or shall be deemed to provide that any lien (contractual, common law, statutory, or otherwise) securing a claim that is paid pursuant to this Interim Order constitutes a valid enforceable lien, and the Debtors reserve all rights to contest the extent, validity, perfection, or possible avoidance of any such liens, and to recoup for the Debtors' estates any amounts paid on account of the Transporter Claims to the extent the validity or perfection of such liens are later successfully contested or such liens are later avoided.

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

9. 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 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.

10. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Interim 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 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.

11. 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 PAYMENT OF CERTAIN
PREPETITION SHIPPING, DELIVERY, AND WAREHOUSEMEN CHARGES**

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"), (i) authorizing, but not directing, the Debtors to pay certain prepetition claims for shipping, freight forwarding, consolidating, and warehousemen (the "Transporter Claims"), (ii) authorizing banks and financial institutions (the "Banks") to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (iii) granting related relief; 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

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.

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

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 directed, to pay the prepetition Transporter Claims in the ordinary course of the Debtors' business up to an aggregate amount of \$1,200,000 as the Debtors, in their business judgment, determine is necessary and appropriate.
3. If any party accepts payment from the Debtors on account of its Transporter Claim and thereafter does not continue to provide services to the Debtors on the Historical Trade Terms, then the Debtors may then take any and all appropriate steps to cause such party to repay payments made to it on account of its Transporter Claim to the extent that such payments exceed the postpetition amounts then owing to such party.
4. 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.

5. The Debtors shall be and hereby are authorized to issue in their sole discretion new postpetition checks or effect new postpetition fund transfers to pay the Transporter Claims to replace any prepetition check or fund transfer requests that may be dishonored or rejected.

6. 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 be construed as a promise to pay a claim, or (d) is intended or shall be deemed to provide that any lien (contractual, common law, statutory, or otherwise) securing a claim that is paid pursuant to this Final Order constitutes a valid enforceable lien, and the Debtors reserve all rights to contest the extent, validity, perfection, or possible avoidance of any such liens, and to recoup for the Debtors' estates any amounts paid on account of the Transporter Claims to the extent the validity or perfection of such liens are later successfully contested or such liens are later avoided.

7. 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.

8. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Final 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 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.

9. 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