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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re: §  
§  
§ Chapter 11  
§  
4 West Holdings, Inc. *et al.*,<sup>1</sup> §  
§ Case No. 18-30777  
§  
Debtors. § (Joint Administration Requested)  
§  
§

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL  
ORDERS AUTHORIZING DEBTORS TO (I) PAY PREPETITION  
WAGES, COMPENSATION, AND EMPLOYEE BENEFITS, (II) CONTINUE  
CERTAIN EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY  
COURSE, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors (collectively the “Debtors”), by and through their proposed counsel, DLA Piper LLP (US), hereby submit this motion (the “Motion”) for entry of an interim order, substantially in the form attached hereto as **Exhibit B** (the “Proposed Interim Order”) and

<sup>1</sup> A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, is attached hereto as Exhibit A.

a final order, substantially in the form attached hereto as **Exhibit C** (the “Proposed Final Order” and, together with the Proposed Interim Order, the “Proposed Orders”), pursuant to sections 105(a), 363(b), 507(a), 541, 1107(a) and 1108 of the title 11 of the United States Code (the “Bankruptcy Code”), and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), authorizing, but not directing, the Debtors to, in accordance with prepetition practices, (i) pay prepetition wages and other compensation, reimbursable employee expenses, taxes and withholdings, (ii) honor and continue certain employee benefit programs in the ordinary course of business in accordance with prepetition practices, and (iii) grant related relief. In support of the Motion, the Debtors rely upon, and incorporate by reference, the *Declaration of Louis E. Robichaux IV in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”),<sup>2</sup> filed with the Court contemporaneously herewith. In further support of the Motion, the Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over these chapter 11 cases (the “Chapter 11 Cases”) and this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).
2. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

3. On the date hereof (the “Petition Date”), each Debtor filed with this Court a voluntary petition for relief under the Bankruptcy Code.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the First Day Declaration.

4. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors' Chapter 11 Cases.

5. Additional information regarding the Debtors and these Chapter 11 Cases, including the Debtors' business operations, capital structure, financial condition, and the reasons for and objectives of these Chapter 11 Cases, is set forth in the First Day Declaration.

### **RELIEF REQUESTED**

6. By this Motion, the Debtors request that the Court enter the Proposed Orders, authorizing, but not directing, the Debtors: (a) to pay and/or perform, as applicable, prepetition obligations to their employees and independent contractors, including accrued prepetition wages, salaries and other cash and non-cash compensation claims, except as otherwise set forth herein (collectively, the "Employee Claims"); (b) to honor and continue in the ordinary course of business until further notice (but not assume under section 365(a) of the Bankruptcy Code), certain of the Debtors' vacation, sick time and holiday time policies, employee benefit plans, programs, policies and procedures (collectively, the "Employee Benefit Obligations"), and to pay all fees and costs in connection therewith, except as otherwise set forth herein; (c) to reimburse Employees (as defined below) for prepetition expenses that Employees incurred on behalf of the Debtors in the ordinary course of business (the "Employee Expense Obligations"); (d) to pay all related prepetition withholdings, and payroll-related taxes associated with the Employee Claims and the Employee Benefit Obligations (the "Employee Taxes"); and (e) to pay all administrative fees and employee contributions to the Employee 401(k) plan (the "401(k) Obligations" and, together with the Employee Claims, the Employee Benefit Obligations, the Employee Expense

Obligations and the Employee Taxes collectively, the “Prepetition Employee Obligations”), all in accordance with prepetition practices.

7. In addition, the Debtors request entry of an order authorizing, but not directing, the applicable banks and other financial institutions (collectively, the “Banks”) to receive, process and pay any and all checks drawn on the Debtors’ payroll and general disbursement accounts and other forms of payment, including fund transfers and electronic payment requests, to the extent they relate to any of the foregoing and to rely on the Debtors’ direction to pay amounts authorized under this Motion provided that sufficient funds are available in the applicable accounts to make the payments.

8. For the reasons set forth herein, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, their creditors, and other parties in interest, and therefore, respectfully submit that such relief should be granted.

### **THE DEBTORS’ WORKFORCE**

#### **A. Employees and Compensation**

9. The Debtors’ workforce comprises a total of approximately 5,000 employees, as follows (collectively, the “Employees”):<sup>3</sup>

- a. approximately 465 full-time salaried employees (the “Salaried Employees”);
- b. approximately 3,060 full-time hourly employees (the “Hourly Employees” and together with the Salaried Employees, the “Full Time Employees”);
- c. approximately 40 part-time salaried employees (the “Salaried Part Time Employees”); and

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<sup>3</sup> None of the Employees are unionized.

- d. approximately 1,450 regular part-time hourly employees (“Hourly Part Time Employees” and together with the Salaried Part Time Employees, the “Part Time Employees”).

10. The Debtors have three payroll cycles. For each payroll cycle, Employees are paid one week in arrears every two weeks (on either a Tuesday or Wednesday depending on the payroll cycle) by either pay cards or direct deposit into his/her bank account. The Debtors’ aggregate payroll (for all three payroll cycles) averages approximately \$4.35 million per pay period. The Debtors estimate that approximately \$4.8 million in salary, wages and other compensation is owing to their Employees for work performed prior to the Petition Date and seek authority to pay such amounts. No Employee is owed more than \$12,850 on account of Prepetition Employee Obligations. The Debtors’ next scheduled payroll dates for Employees for the three payroll cycles are March 13, 2018, March 14, 2018 and March 20, 2018.

11. In addition, the Debtors utilize the services of six (6) staffing agencies (collectively, the “Employment Agencies”) to provide nurses, licensed practical nurses, certified nursing assistants and other supplemental and temporary employees to the Debtors’ Facilities (collectively, the “Supplemental Employees”) to meet staffing needs with the requisite ratio of staff to residents pursuant to requirements established by Medicare and Medicaid. The Debtors pay a monthly fee and additional amounts to the Employment Agencies based upon the number of hours worked by the Supplemental Employees and, in turn, the Employment Agencies pay the Supplemental Employees’ wages and other amounts to which the Supplemental Employees are entitled. Currently, the Debtors employ approximately forty (40) Supplemental Employees. Historically, on average, the Debtors pay to the Employment Agencies approximately \$385,000 each month. As of the Petition Date, the Debtors estimate that approximately \$214,000 remains

due and outstanding to the Employment Agencies on behalf of the Supplemental Employees. Accordingly, the Debtors request authority to pay the Employment Agencies the pre-petition amounts due and owing to the Employment Agencies on behalf of the Supplemental Employees and continue to utilize such Supplemental Employees, as necessary or appropriate in the ordinary course of business.

12. The Debtors also utilize the services of medical directors for each of their Facilities, all of whom are independent contractors (the “Independent Contractors”). On average, the Debtors pay approximately \$1,500 to \$3,000 per month for each Facility. As of the Petition Date, approximately \$165,000 is owed to the Independent Contractors. The Debtors seek authority, but not direction, to pay any pre-petition amounts outstanding, up to the statutory cap of \$12,850, to the Independent Contractors, and to continue their services post-petition in the ordinary course.

13. The Debtors use Ceridian Tax Service (“Ceridian”) to remit employer payroll taxes to the relevant taxing authorities, and retain a non-Debtor affiliate, Health Care Navigator, LLC (“HCN”) to file W-2 forms and maintain and administer the employee benefit programs pursuant to the Consulting and Advisory Services Agreement, dated November 27, 2013, as described in further detail in the First Day Declaration.<sup>4</sup>

14. Pursuant to this Motion, the Debtors seek to (a) pay the outstanding amounts owed to Employees and Employment Agencies (on account of the Supplemental Employees), as of the Petition Date for accrued and unpaid wages and salaries, (b) remit amounts that the Debtors are required by law to withhold from Employee payroll checks in respect of federal, state and local income taxes, garnishment contributions, social security and Medicare taxes and

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<sup>4</sup> By this Motion, the Debtors are not seeking to pay any prepetition amounts owed to HCN under the Consulting and Advisory Services Agreement.

the payroll administration fee, (c) pay any fees owed to third party administrators (including Ceridian) in the course of providing services in connection with payroll and employees, whether or not such fees accrued prepetition, and (d) continue to pay for other Employee benefits in the ordinary course of business.<sup>5</sup>

## **B. Paid Time Off**

15. Prior to the Petition Date, the Debtors offered their Employees other forms of compensation, including paid time off, and other earned time off. These forms of compensation are usual, customary and necessary if the Debtors are to retain qualified employees to operate their businesses.

16. Holiday Time. The Debtors observe seven (7) paid holidays per year.<sup>6</sup> The Debtors seek authorization to continue the Holiday Time policy in the ordinary course of business in accordance with prepetition practices.

17. Vacation Time. Vacation Time is based on length of service and is made available to Full Time Employees.<sup>7</sup> Vacation Time begins accruing on the date of hire, or the date on which the Employee becomes a Full Time Employee, in the following manner:

<b>Milestone – Year(s)</b>	<b>Vacation Hours Accrued for Each Regular Hour Worked</b>	<b>Maximum Annual Accrued/Earned Vacation Hours</b>
Hire Date to 1 Year <sup>8</sup>	0.019231	40
Year 1 to Year 6	0.038462	80
Year 7 to Year 14	0.057692	120
Year 15+	0.076923	160

18. Forty (40) hours of accrued but unused Vacation Time may be carried into the following calendar year but must be used by June 30th. Any unused Vacation Time in excess of

<sup>5</sup> By this Motion, the Debtors are not seeking to pay bonus amounts to any Employees during the pendency of these Chapter 11 Cases absent further order of the Court.

<sup>6</sup> Holidays observed: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day. Hourly Employees who provide direct resident care and are required to work on a company recognized holiday will be compensated at time and half for the hours worked on the holiday.

<sup>7</sup> Vacation Time may not be taken until after ninety (90) days of full time employment.

40 hours will be forfeited on January 1 of each year. Vacation accruals will discontinue on the date an Employee’s status changes to “Part Time Employee”, but previously accrued Vacation Time will continue to be available to the Employee.

19. Generally, Vacation Time is paid out to an Employee when he/she resigns or retires and gives proper notice, unless otherwise required by state law. Employees who do not provide proper notice or those whom are terminated for cause are not eligible to receive any payment on account of accrued and unused Vacation Time, unless otherwise required by state law. The Debtors seek to continue their Vacation Time policies in the ordinary course, provided however, that during the interim period, the Debtors are only authorized to pay accrued Vacation Time to those Employees that resign or retire postpetition to the extent required under applicable state law.

20. Sick / Personal Leave. Full Time Employees are eligible for sick or personal leave (“Personal Days”) equal to one week’s regular work schedule, not to exceed 40 hours. New Full Time Employees are provided a prorated amount of Personal Days the first calendar year of employment as follows:<sup>9</sup>

<b>Date of Hire/Status Change</b>	<b>Personal Days Granted in Year One</b>
January 1 – February 24	100% of one week’s regular work schedule
February 25 – April 19	80% of one week’s regular work schedule
April 20 – June 13	60% of one week’s regular work schedule
June 14 – August 7	40% of one week’s regular work schedule
August 8 – October 2	20% of one week’s regular work schedule
October 3 – December 31	0% of one week’s regular work schedule

<sup>8</sup> Executive level employee’s vacation is based on his/her agreement. Additionally, corporate salaried employees with “Director” in their position title, Regional CSC, Regional CSR, Regional BOC, Regional Human Resource Managers, Administrators and Directors of Nursing will accrue Vacation Time at a maximum rate of 120 hours per year beginning at the time of hire, unless agreed to otherwise, until they reach the Year 15+ milestone, at which time their Vacation Time will increase to a maximum of 160 hours per year.

<sup>9</sup> Personal Days may not be taken until after ninety (90) days of employment.

21. The Debtors will not be making cash payments in lieu of Personal Days after an employee is terminated absent entry of a final order approving this Motion. The Debtors estimate that as of the Petition Date, Full Time Employees have accrued approximately 185,000 of personal hours totaling approximately \$3.9 million in Personal Days. The Debtors seek to continue their Sick/Personal Leave policy in the ordinary course in accordance with prepetition practices.

22. Other Time Off Policies. The Debtors also maintain policies for requests by Employees for time off work as the result of, among other things, jury duty, military obligations, family and medical leave, bereavement and personal leaves of absence. The Debtors do not make any cash payments in connection with these time off policies. The Debtors seek to continue their Other Time Off Policies in the ordinary course in accordance with prepetition practices.

**C. Business Expenses**

23. The Debtors have expense reimbursement policies for certain travel, lodging, ground transportation, meals, cell phone, automobile usage (gas or mileage), and miscellaneous business expenses (collectively, the "Business Expenses"). Certain Employees have been issued American Express Corporate Cards (the "Amex Cards") to which they may charge their Business Expenses. The Business Expenses are ordinary course expenses that certain of the Debtors' Employees incur in performing their job functions. The Employee is personally liable for amounts charged to the Amex Cards. On average, the Debtors pay approximately \$158,000 per month to American Express and approximately \$152,000 per month in reimbursements to the Debtors' Employees with respect to Business Expenses. As of the Petition Date, the Debtors

estimate that American Express is owed approximately \$136,000 and approximately \$16,000 is expected to be reimbursed to Employees for Business Expenses.

24. By this Motion, the Debtors seek authority to continue reimbursing all remaining Business Expenses to pursuant to their prepetition practices, including any amounts accrued prior to the Petition Date, *provided however*, that following the entry of the Proposed Interim Order, the Debtors shall only be authorized to reimburse Business Expenses to the non-insider Employees.

**D. Employee Benefits Plans**

25. Prior to the Petition Date, the Debtors offered their Full Time Employees, who work a minimum of thirty (30) hours per week, various standard employee benefits including, without limitation, (a) medical, dental, vision, and prescription drug coverage, (b) life and accidental death and dismemberment insurance, (c) disability benefits, and (d) miscellaneous other benefits provided to the Full Time Employees in the ordinary course of business. Such benefits are administered pursuant to consolidated plans, programs and policies that cover the Employees. The amounts set forth below reflect the approximate cost of such programs and benefit plans, which the Debtors are seeking to continue to pay in the ordinary course of business, regardless of whether such obligations arose pre- or postpetition.

26. Medical Plans. The Debtors provide their Employees and their dependents with medical, dental, vision and prescription drug benefits pursuant to several different medical plans (collectively, the "Medical Plans"). The Debtors' medical and prescription drug benefits programs are self-funded and are administered through Anthem Blue Cross Blue Shield ("Anthem"). Medical claims are processed by Anthem and the Debtors reimburse Anthem on a

weekly basis for claims paid by Anthem, which average approximately \$185,000 per week. The Debtors also pay Anthem a monthly administration fee of approximately \$89,000.

27. Employee coverage is effective the first of the month following (i) thirty (30) days of full time service for Salaried Employees, and (ii) sixty (60) days of full time service for Hourly Employees (collectively, "Eligible Employees"). The cost of medical and prescription drug coverage is borne partially by the Employees through payroll deductions for medical and prescription drug coverage with the remainder funded by the Debtors. Employee contributions are deducted from their paychecks to pay for that month's coverage.

28. The Debtors offer a voluntary dental plan through Metropolitan Life Insurance Company ("Metlife") (dental) and a vision plan through VSP Vision Care ("VSP"), the costs of which are borne by the Employees through payroll deductions. The Debtors seek authorization to continue to provide the Medical Plans, including paying any prepetition amounts that may be owed in connection therewith.

29. Life and AD&D Insurance. Eligible Employees automatically receive basic life insurance coverage, basic accidental death and dismemberment insurance ("Life and AD&D Insurance") through The Lincoln National Life Insurance Company ("Lincoln") at no cost to the Employee. The benefit amount equals the Employee's annual base salary up to a maximum of \$100,000. The Debtors pay approximately \$22,600 per month for Life and AD&D Insurance and as of the Petition Date, the Debtors approximately \$21,800. Eligible Employees may also purchase (at the Employee's cost) coverage for additional voluntary life insurance, dependent life insurance, voluntary AD&D insurance, dependent AD&D insurance, through Lincoln. Eligible Employees may also purchase (at the Employee's cost) coverage for voluntary accident insurance, and voluntary critical illness insurance through MetLife.

30. Employee Assistance Program. Eligible Employees are automatically entitled to receive a variety of benefits and support under the Employee Assistance Program provided through Metlife at no cost to the Employee. The cost of the Employee Assistance Program is included in the cost of the Medical Plans.

31. Disability Insurance Plans. Eligible Employees have the option of enrolling in employee-paid short term or long term disability insurance (together, the “Disability Insurance Plans”), which are offered at a discounted group rate through Metlife and paid by Employees through payroll deductions.

32. COBRA. The Debtors maintain an account with Benefit Express Services, LLC (“Benefit Express”) to provide health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) to employees who have been terminated. There are typically fifteen (15) former employees who participate in COBRA insurance at any given time. The Debtors do not pay for the COBRA insurance for these former employees; rather, such costs are paid by the former employees. The Debtors do not owe any administrative fees to Benefits Express. The Debtors seek authority to continue the COBRA insurance program.

33. Health Savings Plans. Eligible Employees also have the option to enroll in a Health Savings Account (“HSA”) or a Health Care Flexible Spending Account (“FSA” and together with the HSA, the “Health Savings Plans”) depending on their selection of medical plan. Under the Health Savings Plans, the Debtors offer their Employees the ability to contribute a portion of their pre-tax compensation to an HSA or FSA to pay for health benefits and eligible out-of-pocket health care premiums and expenses. Approximately 290 Employees have an HSA or participate in the FSA. The Employees’ contributions to the Health Savings Plans are withheld through payroll deductions.

34. The Debtors pay approximately \$1,000 per month in administrative fees related to the Health Savings Plans. To the extent there are any outstanding administrative fees owed as of the Petition Date, the Debtors seek authority, but not direction, to continue to pay all prepetition amounts due under the Health Savings Plans as and when they come due and to continue to honor their obligations thereunder in the ordinary course during the administration of these Chapter 11 Cases.

35. Honoring of Prepetition Benefits. As of the Petition Date, certain of the employee benefits described above remained unpaid or not yet provided because the obligations of the Debtors under the applicable plan, program or policy had accrued either in whole or in part prior to the commencement of these Chapter 11 Cases, but are not required to be paid in the ordinary course until a later date. The Debtors seek authority to pay as they become due all prepetition Employee benefits and the related administrative fees described above that have already accrued.

36. Continuation of Employee Benefit Plans Postpetition. The Debtors also request confirmation of their right to continue to perform their obligations with respect to these employee benefit plans during the pendency of these Chapter 11 Cases. These programs are an important component of the total compensation offered to the Employees and are essential to the Debtors' efforts to maintain Employee morale and minimize attrition. The Debtors believe that the expenses associated with such programs are reasonable and necessary in light of the potential attrition, loss of morale and loss of productivity that would occur if such programs were discontinued.

37. 401(k) Plan. The Debtors' 401(k) plan (the "401(k) Plan") is administered by John Hancock (the "401(k) Plan Administrator"), provides Employees with a tax-effective way to save for retirement. Employees who are at least 21 years of age, employed for one year, and

work a minimum of 1,000 in a calendar year are eligible to participate. Employees may make elective contributions to the 401(k) Plan and such contributions are 100% vested. The Debtors do not make matching contributions to the 401(k) Plan. The Debtors are requesting authorization to continue to process the employee contributions to the 401(k) Plan.

38. Payments to Third Party Administrators. As stated above, the Debtors utilize Ceridian for remittance of garnishments and payroll taxes and seek to continue using during the pendency of these cases. The Debtors pay Ceridian \$2,600 per month for these services on the 15th of each month. The Debtors submit that payment of any prepetition claims of Ceridian and the postpetition use of Ceridian's services is in the best interests of the Debtors' estates in order to avoid delay or interruption in the remittance of garnishments and payroll taxes.

39. Social Security, Payroll Taxes and Other Withholdings. The Debtors, through their payroll administrators, routinely withhold from Employee paychecks amounts that the Debtors are required to transmit to third parties. Examples of such withholding include social security, FICA, medicare, federal, state and local income taxes, garnishments, 401(k) contributions, and health care premiums. Specifically, health and benefit deductions, and 401(k) contributions are computed and withheld by HCN and funded to the 401(k) Plan Administrator, and carriers by the Debtors. Garnishments of approximately \$30,000 per pay period are withheld by HCN and remitted to the applicable entities by Ceridian. Social security, FICA, medicare, federal, and state and local income taxes are computed by HCN and the applicable amounts are withheld from the employee paycheck and balances. HCN withdraws funds from the Debtors' bank account for such withholdings, the employer share of FICA and Medicare, and unemployment taxes, and Ceridian remits taxes to the applicable entities. The Debtors believe that withheld funds, to the extent that they remain in the Debtors' possession, constitute funds

held in trust and therefore are not property of the Debtors' bankruptcy estates. Thus, the Debtors believe that they have authority to direct such funds to the appropriate parties.

40. Miscellaneous Employee-Related Obligations. The Debtors may determine that there are additional *de minimis* Prepetition Employee Obligations, which have not been identified in the Motion. Consequently, the Debtors request authority to pay any such additional obligations in an amount not to exceed \$15,000 (*i.e.*, approximately \$3 per Employee) in the aggregate unless either (a) both Omega and any Official Committee appointed in these Chapter 11 Cases consent in writing or (b) this Court approves such disbursements, after notice and a hearing.

#### **BASIS FOR RELIEF**

**A. The Proposed Payments Are Accorded Priority Under Section 507 of the Bankruptcy Code.**

41. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave and employee benefit contributions be accorded priority in payment in an amount not to exceed \$12,850 (the "Priority Limit") for each employee (to the extent such amounts accrued within 180 days of the Petition Date). None of the Employees is owed amounts in excess of the Priority Limit. Thus, granting the relief requested is consistent with the Bankruptcy Code's purpose in ensuring employees are paid in full on account of the priority status of their claims, up to the statutorily imposed limit. Accordingly, the Debtors submit that no prejudice to creditors or other parties in interest would result from granting the relief requested herein.

**B. The Payment of the Prepetition Employee Obligations Is Appropriate Under Section 541 of the Bankruptcy Code.**

42. The Debtors also seek authority to pay certain deductions, withholdings and payroll taxes to the appropriate entities. These amounts principally represent Employee earnings

that governments, Employees and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain deductions, including contributions to various Employee benefit programs and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b); *Begier v. IRS*, 496 U.S. 53, 59 (1990) (holding that taxes such as excise taxes, FICA taxes and withholding taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate); *see also Old Republic Nat'l Title Ins. Co. v. Tyler (In re Dameron)*, 155 F.3d 718, 721 (4th Cir. 1998) (holding that deposits subject to an express trust are excluded from the bankruptcy estate); *City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 41 F.3d 92, 98-103 (3d Cir. 1994) (finding that funds withheld from employees' paychecks may be subject to a trust, and thus are not property of a debtor's estate, even where such funds were commingled with the debtor's other property). Accordingly, such funds are not available for general distribution to a debtor's creditors.

43. Further, federal and state laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also In re Sharon Steel Corp.*, 41 F.3d at 95-97 (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co., Inc. v. State of Mich. (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes).

44. Because the deductions and payroll taxes are not property of the Debtors' estates, the Debtors request that the Court authorize them, including through HCN and Ceridian, as applicable, to transmit the deductions and payroll taxes to the proper parties.

**C. The Proposed Payments Are Appropriate Under Sections 363(b) and 105(a) of the Bankruptcy Code.**

45. This Court may grant the relief requested herein pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Section 363(b)(1) authorizes the trustee to use property of the estate other than in the ordinary course of business after notice and a hearing. *See* 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a) of the Bankruptcy Code, "the court may 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).

46. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain claims); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) ("Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.").

47. The Debtors have a strong business purpose for paying the Prepetition Employee Obligations. The Debtors' success in these Chapter 11 Cases cannot be accomplished without the contribution of their Employees. Failure to pay the Prepetition Employee Obligations would negatively impact the moral of the Debtors' Employees at a critical time for the Debtors and their

business and potentially jeopardize the Debtors' restructuring efforts. Indeed, maintaining the goodwill of the Employees and ensuring the uninterrupted availability of their services now and in the future will (a) assist the Debtors in maintaining the necessary "business as usual" atmosphere and, in turn, protect the going-concern value of the estates and maximize the value ultimately available to creditors and (b) preserve the Debtors' relationships with their customers. The creditors of the Debtors will ultimately benefit from the payment of these prepetition claims.

**D. This Court May Allow Payment of Prepetition Employee Obligations Under the Necessary of Payment Doctrine.**

48. Courts have authorized payment of prepetition obligations under the doctrine of necessity when payment of certain prepetition claims is necessary or appropriate to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (noting that "it is only logical that the bankruptcy court be able to use section 105(a) of the Code to authorize satisfaction of the pre-petition claim in aid of preservation or enhancement of the estate"); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279 (S.D.N.Y. 1987) (approving lower court order authorizing debtor prior to plan stage of case to pay pre-petition wages, salaries, business expenses, and benefits). Although the "necessity of payment" doctrine has not been codified in the Bankruptcy Code, "courts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization." *In re Just for Feet*, 242 B.R. 821, 824 (Bankr. D. Del. 1994). Indeed, the Supreme Court recently recognized application of the "necessity of payment" doctrine is wholly warranted in this circumstance scenario. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973 (2017). In *Jevic*, the Supreme Court expressly recognized that bankruptcy courts may authorize the payment of prepetition

claims, or claims outside of the Bankruptcy Code's priority structure, if there are Bankruptcy Code-related objectives that are being served. *Id.* at 985. Here, the objective is to maintain a workforce, without which the Debtors could not operate. Indeed, *Jevic* noted that this is a common and accepted justification for “first-day” wage orders that allow payment of employees’ prepetition wages. *Id.*

49. Furthermore, courts have long recognized that paying some categories of prepetition obligations outside a plan of reorganization is often necessary to realize the paramount purpose of chapter 11, which is to prevent the forced liquidation of the debtor and preserve its potential for financial rehabilitation. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that the doctrine of necessity 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 Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor’s continued operation); *In re CoServ*, 273 B.R. at 497 (applying a form of the doctrine of necessity in noting that payment of unsecured prepetition claims is appropriate where such payment is the “only means to effect a substantial enhancement of the estate”). As one court noted, “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *In re Structurlite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988).

50. Courts in the Fifth Circuit have set out a three-part test to determine whether a prepetition claim of a “critical vendor” may be paid outside of the plan process on a postpetition basis:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's pre-petition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*In re CoServ*, , 273 B.R. at 498; *In re Mirant Corp.*, 296 B.R. 427, 429-30 (Bankr. N.D. Tex. 2003).

51. The Debtors' Employees are clearly among those creditors with whom the Debtors must deal. As noted above, the Debtors' Employees are essential to the continuity of the business in these Chapter 11 Cases. Failure to pay the Prepetition Employee Obligations would likely lead to a mass exodus of Employees which would effectively shut down the Debtors' operations and risk the health and safety of the residents under their care. Moreover, even if Employees remained without being paid prepetition wages and benefits, it is likely their work would be adversely affected.

52. Similarly, the Independent Contractors and the Employment Agencies are equally critical and are parties with whom the Debtors must deal. As discussed above, the Employment Agencies provide Supplemental Employees (including nurses, licensed practical nurses, certified nursing assistants) to meet the daily staffing needs in each Facility and to comply with the requirements established by Medicare and Medicaid to maintain a certain ratio of staff to residents. The Independent Contractors consist of medical directors who provide a myriad of services including but not limited to, providing guidance on medical policy at the Facility, overseeing the medical services provided to the residents, and consulting with nurses with respect to the condition of the residents at the Facility.

53. Any disruption to the foregoing services, even if for a short period of time, would disrupt not only the Debtors' operations but also risk the health and safety of their residents. Needless to say, the Debtors' Employees, Supplemental Employees, and the Independent Contractors are the main asset and lifeblood of the Debtors, and without them, the Debtors would not be able to continue as a going concern, preserve value, or reorganize.

54. 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 ADPT DFW Holdings LLC*, Case No. 17-31432 (SGJ) (Bankr. N.D. Tex. May 19, 2017) [Dkt. No. 207] (authorizing payment of prepetition wages and benefits); *In re Reddy Ice Holdings, Inc.*, Case No. 12-32349 (SGJ) (Bankr. N.D. Tex. Apr. 17, 2012) (same); *In re Erickson Retirement Communities, LLC*, Case No 09-37030 (SGJ) (Bankr. N.D. Tex. Oct. 22, 2009) (same); *In re Tusa-Expo Holdings, Inc., et al.*, Case No. 08-45057 (DML) (Bankr. N.D. Tex. Nov. 6, 2008) [Dkt. No. 18] (same); *In re Home Interiors & Gifts, Inc.*, Case No. 08-31961 (BJH) (Bankr. N.D. Tex. May 2, 2008) (same); *In re Manchester, Inc., et al.*, Case No. 08-30703(BJH) (Bankr. N.D. Tex. Mar. 7, 2008) (same). Accordingly, for all of the foregoing reasons, the Debtors submit that ample cause exists for granting the relief requested herein.

**E. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.**

55. The Debtors also request that all applicable banks and other financial institutions 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 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 such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment

request as approved pursuant to this Motion. The Debtors represent that they have sufficient availability of funds to pay any amounts described herein.

56. Also, the Debtors represent that checks or wire transfer requests will be readily identified as relating to an authorized payment made with respect to the Prepetition Employee Obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests with respect to the Prepetition Employee Obligations.

#### **RESERVATION OF RIGHTS**

57. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of any of the Debtors' rights to dispute such claim.

#### **THE DEBTORS SATISFY BANKRUPTCY RULE 6003(b)**

58. Bankruptcy Rule 6003(b) provides that, if relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may approve a motion to "pay all or part of a claim that

arose before the filing of the petition” prior to twenty-one (21) days after the Petition Date. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. Specifically, the Fifth Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, courts in this Circuit have explained that irreparable harm requires proof that “(1) the harm to Plaintiffs is imminent (2) the injury would be irreparable and (3) that Plaintiffs have no other adequate legal remedy.” *See, e.g., GoNannies, Inc. v. GoAuPair.Com, Inc.*, 464 F. Supp. 2d 603, 608 (N.D. Tex. 2006) (citing *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975)).

59. The Debtors estimate that there are Prepetition Employee Obligations currently outstanding and due, or will become due and payable within the next twenty-one (21) days, and will need to be paid to avoid the harmful consequences noted above to its business and restructuring efforts. Based on the foregoing, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and therefore, Bankruptcy Rule 6003 is satisfied.

**REQUEST FOR WAIVER OF BANKRUPTCY RULES 6004(a) AND (h)**

60. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day (14) stay

imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

**NOTICE**

61. Notice of this Motion shall be provided to: (a) U.S. Trustee; (b) the Office of the Attorney General of the states in which the Debtors operate Facilities; (c) the Debtors' forty (40) largest unsecured creditors on a consolidated basis; (d) counsel for Sterling National Bank; (e) counsel for OHI Asset RO, LLC and the DIP Lender; (f) Health Care Navigator; (g) American Express; (h) Ceridian; (i) the insurance providers described in the Motion; (j) the Internal Revenue Service; and (k) the Department of Medicaid, Department of Health, and Division of Health Services Regulation in each state in which the Debtors operate Facilities. The Debtors respectfully submit that such notice is sufficient and that no further notice of this Motion is required.

*[remainder of page left intentionally blank]*

**CONCLUSION**

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: March 6, 2018  
Dallas, Texas

Respectfully submitted,

**DLA PIPER LLP (US)**

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*Proposed Counsel for the Debtors*

**EXHIBIT A****(Sorted Alphabetically)**

	<b>Debtor Name</b>	<b>EIN</b>
1.	4 West Holdings, Inc.	9732
2.	4 West Investors, LLC	6021
3.	Aiken RE, LLC	1814
4.	Ambassador Rehabilitation and Healthcare Center, LLC	1636
5.	Anchor Rehabilitation and Healthcare Center of Aiken, LLC	9448
6.	Anderson RE TX, LLC	3630
7.	Anderson RE, LLC	1806
8.	Ark II Real Estate, LLC	3628
9.	Ark III Real Estate, LLC	0121
10.	Ark Mississippi Holding Company, LLC	3765
11.	Ark Real Estate, LLC	6014
12.	Ark South Carolina Holding Company, LLC	0002
13.	Ark Texas Holding Company, LLC	3739
14.	Battle Ground RE, LLC	1818
15.	Brushy Creek Rehabilitation and Healthcare Center, LLC	3292
16.	Bryan RE, LLC	3633
17.	Burleson RE, LLC	1777
18.	Capstone Rehabilitation and Healthcare Center, LLC	7871
19.	Charlottesville Pointe Rehabilitation and Healthcare Center, LLC	4467
20.	Charlottesville RE, LLC	0836
21.	Cleveland RE, LLC	6013
22.	Clinton RE, LLC	8109
23.	Cobblestone Rehabilitation and Healthcare Center, LLC	1612
24.	Collierville RE, LLC	8845
25.	Columbia RE, LLC	8838
26.	Columbia Rehabilitation and Healthcare Center, LLC	6772
27.	Comfort RE, LLC	1902
28.	Connersville RE, LLC	9824
29.	Corinth RE, LLC	1777
30.	Cornerstone Rehabilitation and Healthcare Center, LLC	8841
31.	Crystal Rehabilitation and Healthcare Center, LLC	8842
32.	Delta Rehabilitation and Healthcare Center of Cleveland, LLC	7212
33.	Descending Dove, LLC	8081
34.	Diboll RE, LLC	1939
35.	Easley RE II, LLC	1819
36.	Easley RE, LLC	1817
37.	Edgefield RE, LLC	3574
38.	Farmville RE, LLC	3442
39.	Farmville Rehabilitation and Healthcare Center, LLC	4464
40.	Fleetwood Rehabilitation and Healthcare Center, LLC	9615
41.	Fortress Health & Rehab of Rock Prairie, LLC	1314
42.	Granbury RE, LLC	1999
43.	Great Oaks RE, LLC	1731

	<b>Debtor Name</b>	<b>EIN</b>
44.	Great Oaks Rehabilitation and Healthcare Center, LLC	4357
45.	Greenville RE II, LLC	1798
46.	Greenville RE, LLC	1797
47.	Greenville Rehabilitation and Healthcare Center, LLC	3920
48.	Greenwood RE, LLC	1654
49.	Greer RE, LLC	1795
50.	Greer Rehabilitation and Healthcare Center, LLC	9462
51.	Grenada RE, LLC	1623
52.	Grenada Rehabilitation and Healthcare Center, LLC	8843
53.	Heritage Park Rehabilitation and Healthcare Center, LLC	9055
54.	Hillsville RE, LLC	2195
55.	Hillsville Rehabilitation and Healthcare Center, LLC	4463
56.	Holly Lane Rehabilitation and Healthcare Center, LLC	9103
57.	Holly RE, LLC	1816
58.	Holly Springs RE, LLC	1559
59.	Holly Springs Rehabilitation and Healthcare Center, LLC	6524
60.	Indianola RE, LLC	6022
61.	Indianola Rehabilitation and Healthcare Center, LLC	7203
62.	Italy RE, LLC	2086
63.	Iva RE, LLC	1801
64.	Iva Rehabilitation and Healthcare Center, LLC	0384
65.	Johns Island Rehabilitation and Healthcare Center, LLC	4898
66.	Joy of Bryan, LLC	4072
67.	Lampstand Health & Rehab of Bryan, LLC	2002
68.	Linley Park Rehabilitation and Healthcare Center, LLC	0525
69.	Macon Rehabilitation and Healthcare Center, LLC	9644
70.	Magnified Health & Rehab of Anderson, LLC	9060
71.	Manna Rehabilitation and Healthcare Center, LLC	9441
72.	Marietta RE, LLC	1809
73.	McCormick RE, LLC	1808
74.	McCormick Rehabilitation and Healthcare Center, LLC	3193
75.	Memphis RE, LLC	8846
76.	Midland RE, LLC	5138
77.	Midland Rehabilitation and Healthcare Center, LLC	9679
78.	Moultrie RE, LLC	9943
79.	Mountain View Rehabilitation and Healthcare Center, LLC	9227
80.	Natchez RE, LLC	6019
81.	Natchez Rehabilitation and Healthcare Center, LLC	6773
82.	New Ark Master Tenant, LLC	7893
83.	New Ark Operator Holdings, LLC	7623
84.	New Redeemer Health & Rehab of Pickens, LLC	5321
85.	Olive Leaf Holding Company, LLC	0129
86.	Olive Leaf, LLC	0001
87.	Omega Health & Rehab of Greenville, LLC	9461
88.	Orianna Health Systems, LLC	5160
89.	Orianna Holding Company, LLC	1323
90.	Orianna Investment, Inc.	1141

	<b>Debtor Name</b>	<b>EIN</b>
91.	Orianna SC Operator Holdings, Inc.	0383
92.	Palladium Hospice and Palliative Care, LLC	1873
93.	Patewood Rehabilitation and Healthcare Center, LLC	9457
94.	Picayune RE, LLC	9749
95.	Picayune Rehabilitation and Healthcare Center, LLC	9183
96.	Pickens RE II, LLC	1823
97.	Pickens RE, LLC	1821
98.	Piedmont RE, LLC	1800
99.	Poinsett Rehabilitation and Healthcare Center, LLC	0713
100.	Poplar Oaks Rehabilitation and Healthcare Center, LLC	4771
101.	Portland RE, LLC	1822
102.	Provo RE, LLC	3568
103.	Rainbow Rehabilitation and Healthcare Center, LLC	4772
104.	River Falls Rehabilitation and Healthcare Center, LLC	9788
105.	Riverside Rehabilitation and Healthcare Center, LLC	3951
106.	Rock Prairie RE, LLC	3636
107.	Rocky Mount RE, LLC	5904
108.	Rocky Mount Rehabilitation and Healthcare Center, LLC	4466
109.	Roy RE, LLC	5142
110.	Scepter Rehabilitation and Healthcare Center, LLC	1630
111.	Scepter Senior Living Center, LLC	1621
112.	Simpsonville RE II, LLC	1804
113.	Simpsonville RE, LLC	1802
114.	Simpsonville Rehabilitation and Healthcare Center, LLC	3564
115.	Snellville RE, LLC	9933
116.	Southern Oaks Rehabilitation and Healthcare Center, LLC	1141
117.	The Bluffs Rehabilitation and Healthcare Center, LLC	9314
118.	The Ridge Rehabilitation and Healthcare Center, LLC	1456
119.	Trinity Mission Health & Rehab of Connersville, LLC	8787
120.	Trinity Mission of Burleson, LLC	2585
121.	Trinity Mission of Comfort, LLC	2573
122.	Trinity Mission of Diboll, LLC	2581
123.	Trinity Mission of Granbury, LLC	2582
124.	Trinity Mission of Italy, LLC	2576
125.	Trinity Mission of Winnsboro, LLC	2583
126.	Utah Valley Rehabilitation and Healthcare Center, LLC	9661
127.	Vicksburg RE, LLC	0150
128.	Victory Rehabilitation and Healthcare Center, LLC	9485
129.	Wadesboro RE, LLC	9929
130.	Wide Horizons RE, LLC	5144
131.	Wide Horizons Residential Care Facility, LLC	9387
132.	Winnsboro RE, LLC	2134
133.	Woodlands Rehabilitation and Healthcare Center, LLC	9127
134.	Yazoo City RE, LLC	8844
135.	Yazoo City Rehabilitation and Healthcare Center, LLC	7216

**EXHIBIT B**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	
	§	
	§	Chapter 11
	§	
4 West Holdings, Inc. <i>et al.</i> , <sup>1</sup>	§	Case No. 18-30777
	§	
Debtors.	§	(Jointly Administered)
	§	
	§	

**INTERIM ORDER AUTHORIZING DEBTORS TO (I) PAY PREPETITION WAGES, COMPENSATION, AND EMPLOYEE BENEFITS, (II) CONTINUE CERTAIN EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY COURSE, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), pursuant to sections 105(a), 363(b), 507(a), 541, 1107(a) and 1108 and Bankruptcy Rules 6003 and 6004(h), authorizing, but not directing, the Debtors to (i) pay prepetition wages and other compensation, reimbursable employee expenses, taxes and withholdings, (ii) honor and continue certain employee benefit programs in the ordinary course of business in accordance with prepetition practices, and (iii) grant related relief, all as further described in the Motion; and upon consideration of the First

<sup>1</sup> A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, is attached to the Motion as Exhibit A.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. Subject to the limitations contained in sections 507(a)(4) and (a)(5) of the Bankruptcy Code, the Debtors are hereby authorized, but not directed, to pay and/or honor, in their sole discretion, the Employee Claims, the Employee Benefit Obligations, the Employee Expense Obligations and the Employee Taxes, and 401(k) Obligations (collectively, the "Prepetition Employee Obligations"), including payment to any third parties that provide or aid in the monitoring, processing or administration of the Prepetition Employee Obligations, including, but not limited to Ceridian and Employment Agencies, as and when such obligations are due; *provided, however*, notwithstanding any other provision of this Interim Order, no payments on account of the prepetition period to any individual Employee or Independent Contractor shall exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the

Bankruptcy Code. Notwithstanding the foregoing, the Debtors shall provide to the DIP Lender a schedule all invoices from the Employment Agencies at least one (1) business day prior to payment of any prepetition claims of the Employment Agencies.

3. Nothing herein shall be deemed to authorize the payment of any amounts in satisfaction of severance obligations or which are otherwise subject to section 503(c) of the Bankruptcy Code.

4. Nothing herein shall be deemed to authorize the Debtors to pay in cash any unpaid Vacation Time unless applicable non-bankruptcy law requires such payment.

5. The Debtors are authorized, but not directed, in their sole discretion, to honor and continue their expense reimbursement programs (including payments to American Express on account of the corporate cards), Employee Benefit Obligations, and policies, plans, programs, practices, and procedures, in the ordinary course in accordance with prepetition practices, that were in effect as of the Petition Date and to pay any prepetition amounts associated therewith; *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Obligations, under section 365(a) of the Bankruptcy Code, *provided further*, that the Debtors shall only be authorized to reimburse Business Expenses to the non-insider Employees upon entry of this Interim Order.

6. The Debtors (including through Ceridian and HCN, as applicable) may pay any and all withholding, including social security, FICA, federal, state and local income taxes, garnishments, health care premiums, retirement fund withholding, and other types of withholding, whether or not these relate to the period prior to the Petition Date.

7. The Debtors are authorized to pay for any additional miscellaneous obligations related to the Employees in an amount not to exceed \$15,000 in the aggregate; provided,

however, that to the extent the Debtors seek additional miscellaneous obligations in excess of such amount, any additional amounts shall not be paid unless either (a) both OHI Asset RO, LLC and any Official Committee appointed in these Chapter 11 Cases consent in writing or (b) this Court approves such disbursements, after notice and a hearing.

8. In accordance with this Interim Order, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related to the Prepetition Employee Obligations, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

9. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

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. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code. Furthermore, any payment made by the Debtors pursuant to this Interim Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of any of the Debtors' rights to dispute such claim.

12. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

13. The Debtors are authorized to take all actions they deem necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion.

15. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2018 at \_\_\_:\_\_\_ \_\_.m. (prevailing Central Time). Any objections or responses to entry of a final order on the Motion (each, an "Objection") shall be filed on or before 4:00 p.m. (prevailing Central Time) on \_\_\_\_\_, 2018, and served on the following parties: (a) proposed counsel for the Debtors, DLA Piper LLP (US), 1251 Avenue of the Americas, New York, NY 10020 (Attn: Thomas R. Califano, Esq. and Dienna Corrado, Esq.),

One Atlantic Center, 1201 West Peachtree Street, Suite 2800, Atlanta, GA 30309 (Attn: Daniel Simon, Esq.), 1717 Main Street, Suite 4600, Dallas, TX 75201 (Attn: Andrew Zollinger, Esq.), (b) the Office of the United States Trustee for the Northern District of Texas, Earle Cabell Federal Building, 1100 Commerce Street, Room 976, Dallas, TX 75242 (Attn: Lisa Lambert), (c) counsel to Sterling National Bank, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Arthur Steinberg, Esq., and Terry Novetsky, Esq.), (d) counsel to OHI Asset RO, LLC and the DIP Lender, Bryan Cave, LLP, One Atlantic Center, 1201 West Peachtree Street, Suite 1400, Atlanta, GA 30309 (Attn: Mark Duedall, Esq.), JP Morgan Chase Tower, 2200 Ross Avenue, Suite 3300, Dallas, TX 75201 (Attn: Keith Aurzada, Esq.), and One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, MO 63102 (Attn: David Unseth, Esq.), and (e) counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases. In the event no Objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

16. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

18. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Interim Order.

**### End of Order ###**

Order submitted by:

**DLA PIPER LLP (US)**

/s/ Andrew Zollinger

Andrew Zollinger, State Bar No. 24063944

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**EXHIBIT C**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	
	§	
	§	Chapter 11
4 West Holdings, Inc. <i>et al.</i> , <sup>1</sup>	§	
	§	Case No. 18-30777
Debtors.	§	(Jointly Administered)
	§	
	§	

**FINAL ORDER AUTHORIZING DEBTORS TO (I) PAY PREPETITION  
WAGES, COMPENSATION, AND EMPLOYEE BENEFITS, (II) CONTINUE  
CERTAIN EMPLOYEE BENEFIT PROGRAMS IN THE ORDINARY  
COURSE, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors (collectively, the “Debtors”) for entry of a final order (this “Final Order”), pursuant to sections 105(a), 363(b), 507(a), 541, 1107(a) and 1108 and Bankruptcy Rules 6003 and 6004(h), authorizing, but not directing, the Debtors to (i) pay prepetition wages and other compensation, reimbursable employee expenses, taxes and withholdings, (ii) honor and continue certain employee benefit programs in the ordinary course of business in accordance with prepetition practices, and

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<sup>1</sup> A list of the Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, is attached to the Motion as Exhibit A.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

(iii) grant related relief, all as further described in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. Subject to the limitations contained in sections 507(a)(4) and (a)(5) of the Bankruptcy Code, the Debtors are hereby authorized, but not directed, to pay and/or honor, in their sole discretion, the Employee Claims, the Employee Benefit Obligations, the Employee Expense Obligations and the Employee Taxes, and 401(k) Obligations (collectively, the "Prepetition Employee Obligations"), including payment to any third parties that provide or aid in the monitoring, processing or administration of the Prepetition Employee Obligations, including, but not limited to but not limited to Ceridian and Employment Agencies, as and when such obligations are due; *provided, however*, notwithstanding any other provision of this Final Order, no payments on account of the prepetition period to any individual Employee or

Independent Contractor shall exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors shall provide to the DIP Lender a schedule all invoices from the Employment Agencies at least one (1) business day prior to payment of any prepetition claims of the Employment Agencies.

3. Nothing herein shall be deemed to authorize the payment of any amounts in satisfaction of severance obligations or which are otherwise subject to section 503(c) of the Bankruptcy Code.

4. The Debtors are authorized, but not directed, to make cash Vacation Time payments to the Employees on account of their Vacation Time if such Employees are terminated by the Debtors postpetition or if such payment is otherwise required by applicable non-bankruptcy law.

5. The Debtors are authorized, but not directed, in their sole discretion, to honor and continue their expense reimbursement programs (including payments to American Express on account of the corporate cards), Employee Benefit Obligations, and policies, plans, programs, practices, and procedures, in the ordinary course in accordance with prepetition practices, that were in effect as of the Petition Date and to pay any prepetition amounts associated therewith; *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Obligations, under section 365(a) of the Bankruptcy Code.

6. The Debtors (including through Ceridian and HCN, as applicable) may pay any and all withholding, including social security, FICA, federal, state and local income taxes, garnishments, health care premiums, retirement fund withholding, and other types of withholding, whether or not these relate to the period prior to the Petition Date.

7. The Debtors are authorized to pay for any additional miscellaneous obligations related to the Employees in an amount not to exceed \$15,000 in the aggregate; provided, however, that to the extent the Debtors seek additional miscellaneous obligations in excess of such amount, any additional amounts shall not be paid unless either (a) both OHI Asset RO, LLC and any Official Committee appointed in these Chapter 11 Cases consent in writing or (b) this Court approves such disbursements, after notice and a hearing.

8. In accordance with this Final Order, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related to the Prepetition Employee Obligations, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

9. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' Chapter 11 Cases.

10. 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.

11. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code. Furthermore, any payment made by the Debtors pursuant to this Final Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of any of the Debtors' rights to dispute such claim.

12. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

13. The Debtors are authorized to take all actions they deem necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion.

15. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

17. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Final Order.

**### End of Order ###**

Order submitted by:

**DLA PIPER LLP (US)**

/s/ Andrew Zollinger

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