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*Proposed Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: )  
 ) Chapter 11  
HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup> )  
 ) Case No. 19-11608 (\_\_\_)  
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Debtors. ) (Joint Administration Requested)  
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**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES,  
OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE  
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

**Relief Requested**

1. By this motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) authorizing the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses, and (ii) continue employee benefits programs in the ordinary course of business, including payment of certain

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

prepetition obligations related thereto, each subject to the caps and limits set forth herein, and (b) granting related relief. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing within approximately 25 days from the date hereof (the “Petition Date”) to consider approval of this motion on a final basis.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

### **Background**<sup>2</sup>

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products.

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<sup>2</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Marc Pfefferle, Chief Executive Officer of Hollander Sleep Products, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein.

The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of the date hereof, the Debtors have approximately \$233 million in funded debt.

6. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

#### **The Debtors' Workforce**

7. As of the Petition Date, the Debtors employ approximately 2,370 employees working on a salary or hourly basis in the United States and Canada, including approximately 2,369 full-time employees (the "Full-Time Employees") and approximately one part-time employee (the "Part-Time Employee") (collectively, the "Employees").<sup>3</sup>

8. The majority of the Debtors' Employees are not represented by a labor union. Debtor Hollander Sleep Products, LLC is party to collective bargaining agreements (each, a "CBA," and together, the "CBAs") with the Southwest Regional Joint Board Workers United, Southern Regional Joint Board of Workers United, SEIU on Behalf of Local 2420,

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<sup>3</sup> Generally, the Part-Time Employee works no more than 30 hours per week.

Mid-Atlantic Joint Board of Workers United, and Workers United, Western States Regional Joint Board. Approximately 511 Employees are employed under a CBA (the “Represented Employees,” and Employees who are not Represented Employees, the “Non-Represented Employees”). None of the Employees in Canada are represented by a labor union. By this motion, the Debtors seek the authority to continue to provide compensation and benefits to the Represented Employees pursuant to the CBA in the ordinary course of business and consistent with past practice.<sup>4</sup>

9. In addition to the Employees, the Debtors also periodically retain personnel as independent contractors (the “Independent Contractors”) or temporary workers (the “Temporary Staff”). There are approximately 12 Independent Contractors, some of whom perform crucial roles for the Debtors’ various business (i.e., sourcing), while others perform discrete consulting services (i.e., IT and marketing). There are approximately 31 Temporary Staff employed in-house. Temporary Staff fulfill certain duties on both a short- and long-term basis including, among other things, warehouse duties and general office services. The number of Temporary Staff and Independent Contractors fluctuates based on the Debtors’ specific needs at any given time.

10. The Independent Contractors and Temporary Staff are a critical supplement to the efforts of the Employees and provide the Debtors with the flexibility to adapt their work force to fluctuating labor needs. Certain of these individuals are highly trained and have an essential working knowledge of the Debtors’ business that the Debtors cannot easily replace. Without the services of these individuals, the Debtors’ reorganization efforts will be threatened.

11. The Employees, Independent Contractors, and Temporary Staff rely on their compensation and benefits to pay their daily living expenses and support their families. If the

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<sup>4</sup> Although the Debtors request authority to honor obligations relating to the CBAs, the Debtors do not seek, pursuant to this motion, to assume or affirm any contract, agreements, programs, or to agree to the applicability of any law related to the CBAs, and the Debtors reserve all rights with respect thereto.

Debtors are unable to meet and sustain their payroll and benefits obligations as set forth herein, these workers may suffer significant financial harm. Consequently, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

**Employee Compensation and Benefits Programs**

12. To minimize the personal hardship the Employees could suffer if prepetition employee-related obligations are not paid when due or as expected and to maintain stability in the Debtors’ workforce during the administration of these chapter 11 cases, the Debtors seek the authority to: (a) pay and honor certain prepetition claims relating to, among other things, wages, salaries, and other compensation, payroll services, federal and state withholding taxes and other amounts withheld (including garnishments, Employees’ share of insurance premiums, and taxes), reimbursable expenses, health insurance, workers’ compensation benefits, life insurance, short- and long-term disability coverage, and certain other benefits that the Debtors have historically provided in the ordinary course, all as described more fully herein (collectively, the “Employee Compensation and Benefits Programs”); and (b) pay all costs incident to the Employee Compensation and Benefits Programs.

13. The Debtors seek authority to pay the aggregate amounts related to prepetition amounts owed on account of the Employee Compensation and Benefits Programs set forth in the table below:

<b>Employee Compensation and Benefit Programs</b>	<b>Interim Amount</b>	<b>Final Amount</b>
<b><u>Compensation, Deductions, and Payroll Taxes</u></b>		
Unpaid Compensation	\$2.0 million	\$2.0 million
Independent Contactors Unpaid Compensation	\$31,000	\$31,000
Non-Insider Severance	\$110,000	\$132,000
Expenses	\$172,000	\$172,000

<b>Employee Compensation and Benefit Programs</b>	<b>Interim Amount</b>	<b>Final Amount</b>
Deductions	\$17,500	\$17,500
Payroll Taxes	\$519,000	\$519,000
Payroll Processing Fees	\$3,400	\$3,400
Independent Director Compensation	\$0	\$0
<b><u>Employee Benefit Programs</u></b>		
Plan Administration Fees	\$15,000	\$15,000
Health Benefit Plans	\$567,700	\$567,700
Supplemental Plans	\$38,350	\$38,350
Stop-Loss Coverage	\$135,000	\$135,000
Health Savings Accounts	\$0	\$0
Flexible Spending Accounts	\$7,200	\$7,200
Life and AD&D Benefits	\$5,000	\$5,000
Disability Benefits	\$29,000	\$29,000
Workers' Compensation Premium	\$26,500	\$26,500
Legacy Workers' Compensation Claims	\$155,000	\$860,000
Business Travel Insurance	\$0	\$0
401(k) Deductions	\$122,000	\$122,000
401(k) Match	\$67,000	\$67,000
Time-Off Benefits	\$1.5 million	\$1.5 million
Additional Programs	\$63,000	\$63,000
<b><u>Former Employee Benefits</u></b>		
COBRA	\$0	\$0
<b>Total</b>	<b>\$5,583,650</b>	<b>\$6,310,650</b>

14. For the vast majority of Employees, the Debtors believe that there will be no prepetition amounts owed on the Petition Date in excess of the statutory cap of \$13,650 set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. Certain Employees, however, may have claims in excess of the statutory cap. For the avoidance of doubt, the Debtors do not seek authority to pay any amounts in excess of \$13,650 pursuant to this motion.

15. Subject to the Court's approval, the Debtors intend to continue their applicable prepetition Employee Compensation and Benefits Programs in the ordinary course. Out of an abundance of caution, the Debtors request confirmation of their right to modify, change, and discontinue any of their Employee Compensation and Benefits Programs and to implement new programs, policies, and benefits in the ordinary course during these chapter 11 cases in the

Debtors' sole discretion and without the need for further Court approval, subject to applicable law.<sup>5</sup>

**I. Employee Compensation.**

**A. Unpaid Compensation.**

16. In the ordinary course of business, the Debtors incur payroll obligations for their Employees' and Temporary Staff's salaries, wages, overtime, and other obligations (collectively, the "Employee Compensation"). The Debtors have two pay cycles and pay Employees weekly or bi-weekly, depending on the business segment.

17. The Debtors estimate that their average bi-weekly Employee Compensation will be approximately \$3.7 million during the course of these chapter 11 cases. The Debtors pay the majority of the Employee Compensation via checks, and the Debtors pay the remainder of their Employees and Temporary Staff by direct deposit through the electronic transfer of funds to the Employees' or Temporary Staff's bank accounts or by other electronic means.

18. As of the Petition Date, the Debtors estimate that they owe approximately \$2.0 million on account of accrued wages, salaries, overtime, and other compensation (excluding reimbursable expenses, time-off benefits, and other benefits described herein) (the "Unpaid Compensation"), substantially all of which will come due within the first 25 days after the Petition Date.<sup>6</sup>

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<sup>5</sup> The Debtors reserve the right to request authority to grant future amounts pursuant to incentive and/or retention bonus programs. Any such request will be made pursuant to proper notice and hearing with this Court.

<sup>6</sup> Additional Unpaid Compensation may be due and owing as of the Petition Date because of, among other things, potential discrepancies between the amounts paid and the amounts that Employees believe should have been paid, which, upon resolution, may reveal that the Debtors do in fact owe additional amounts to Employees. Accordingly, the Debtors seek the authority to pay their Employees and Temporary Staff any Unpaid Compensation in the ordinary course of business and consistent with past practice, and to continue paying the Employee Compensation on a postpetition basis in the ordinary course of the Debtors' business.

**B. Independent Contractor Unpaid Compensation.**

19. As noted above, the Debtors rely on Independent Contractors in the ordinary course of their business. The Independent Contractors perform a wide range of services critical to the Debtors' operations, including, among other things, with respect to sourcing materials in India or marketing and merchandising products in the Debtors' New York showroom. The Employees rely on the support of the Independent Contractors to complete certain tasks in furtherance of the Debtors' business. The Debtors believe the authority to continue paying their Independent Contractors is critical to maintaining and administering their estates.

20. On average, the Debtors pay approximately \$25,000 to the Independent Contractors on a monthly basis. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Independent Contractor obligations is approximately \$31,000, substantially all of which will come due within the first 25 days after the Petition Date.

**C. Non-Insider Severance.**

21. In the ordinary course of business, the Debtors maintain a severance program for non-insider Employees (the "Non-Insider Severance Program"). By this motion, the Debtors do not request authorization to make any severance payments to any "insider" as the term is defined in section 101(31) of the Bankruptcy Code, pursuant to the Non-Insider Severance Program. Consequently, the Debtors submit that section 503(c)(2) of the Bankruptcy Code with respect to severance payments to insiders does not apply to the relief requested herein.

22. Under the Non-Insider Severance Program, severance payments are calculated based on the terminated Employee's job level and their time of service with the Debtors prior to termination. Employees may be eligible for severance benefits if terminated involuntarily due to,

among other things, reductions in staff or layoffs; position elimination; closure of a business unit; or organization restructuring.<sup>7</sup>

23. As of the Petition Date, 14 former employees may be eligible to receive Non-Insider Severance Benefits. The Debtors are seeking the authority to pay Non-Insider Severance Benefits up to the statutory cap of \$13,650 set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued but unpaid obligations under the Non-Insider Severance Program is approximately \$132,000, of which approximately \$110,000 will come due within the first 25 days after the Petition Date.

**D. Expenses.**

24. The Debtors reimburse certain Employees for certain expenses incurred in the scope of their duties and pay fees related to tracking reimbursements (collectively, and as further defined herein, the “Expenses”). The Expenses are typically associated with costs related to travel but can include other work-related expenses. As of the Petition Date, the Debtors estimate that they owe approximately \$172,000 in Expenses, substantially all of which will come due within the first 25 days after the Petition Date.

25. When an Employee uses their personal credit card or cash for necessary Expenses (the “Employee Reimbursable Expenses”), the Employees can either manually submit expense reports to the Debtors’ corporate department or submit expense reports to Concur Technologies, Inc. (“Concur”), the Debtors’ Employee Expense reporting firm. Charges submitted manually are paid by the Debtors by check. Charges submitted to Concur by 5:00 p.m., prevailing Eastern Time,

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<sup>7</sup> All former employees receiving Non-Insider Severance Benefits were terminated in the 180 days prior to the Petition Date. The Debtors reserve the right to modify or terminate the Non-Insider Severance Program, consistent with past practice, upon reasonable notice.

on Tuesday are reimbursed to Employees on the Friday of that same week via direct deposit. Employee Reimbursable Expenses to be paid by Concur are charged by Concur to the Debtors and subsequently paid by Concur to the Employee. As of the Petition Date, the Debtors estimate that there is approximately \$170,000 outstanding on account of Employee Reimbursable Expenses, substantially all of which will come due within the first 25 days after the Petition Date.

26. In addition to reimbursing Employees for certain Expenses, Concur also provides Expense tracking. The Debtors pay Concur approximately \$2,000 each month for these services (the “Concur Fees”). As of the Petition Date, the Debtors estimate that they owe approximately \$2,000 on account of the Concur Fees, substantially all of which will come due within the first 25 days after the Petition Date.

**E. Deductions and Payroll Taxes.**

27. During each applicable pay period, the Debtors deduct certain amounts from Employees’ paychecks, including garnishments, child support and similar deductions, legally ordered deductions, union dues, and miscellaneous deductions (collectively, the “Deductions”), and forward such amounts to various third-party recipients. For example, the Debtors deduct union dues from Employee paychecks and forward those amounts to Workers United, Western States Regional Joint Board. The Debtors deduct approximately \$20,000 in the aggregate per month on account of union dues.

28. On a monthly basis, the Debtors deduct approximately \$65,000 in the aggregate from Employees’ paychecks on account of the Deductions. As of the Petition Date, the Debtors estimate that they owe approximately \$17,500 in unpaid Deductions, substantially all of which will come due within the first 25 days after the Petition Date.

29. In addition to the Deductions, certain federal and state laws require that the Debtors withhold certain amounts from Employees’ gross pay related to federal, state, and local income

taxes (both in the U.S. and Canada, as applicable), as well as Social Security and Medicare taxes and other taxes in Canada (collectively, the “Employee Payroll Taxes”) for remittance to the appropriate federal, state, or local taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance, Social Security and Medicare taxes, and other other contributions in Canada (the “Employer Payroll Taxes,” and together with the Employee Payroll Taxes, the “Payroll Taxes”). The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, and local taxing authorities at the same time then the Debtors disburse Employees’ payroll. As of the Petition Date, the Debtors estimate that they owe approximately \$519,000 in unpaid Payroll Taxes, substantially all of which will come due within the first 25 days after the Petition Date.

**F. Payroll Processing Fees.**

30. The Debtors contract with Certipay America LLC (“Certipay”) and ADP Canada Co. (“ADP Canada”) as third-party payroll service providers that process and administer the Debtors’ payroll and provide W-2 preparation services. The Debtors pay Certipay and ADP Canada approximately \$106,000 and \$6,100 CAD, respectively, per month on account of these services. As of the Petition Date, the Debtors estimate they owe Certipay and ADP Canada approximately \$3,400 on account of prepetition payroll services (the “Payroll Processing Fees”), substantially all of which will come due within the first 25 days after the Petition Date.

**G. Independent Director Compensation.**

31. Debtors Dream II Holdings, LLC and Hollander Sleep Products Canada Limited maintain boards of directors that include one non-employee independent director (the “Independent Director”). The Debtors pay fees of approximately \$100,000 per year to the Independent Director in the aggregate, payable on a monthly basis (the “Independent Director

Fees”). The Independent Director is also entitled to expense reimbursement for out-of-pocket expenses (together with the Independent Director Fees, the “Independent Director Compensation”). As of the Petition Date, the Debtors estimate that they do not owe any unpaid accrued Independent Director Compensation but intend to continue paying the Independent Director Compensation in the ordinary course of business on a postpetition basis and consistent with past practice.

## **II. Employee Benefits Programs.**

32. The Debtors offer Employees and their dependents a comprehensive benefits package for medical, dental, and vision care coverage, and certain other benefits (collectively, and as described in more detail below, the “Employee Benefits Programs”), including:

- medical plans;
- dental and vision plans;
- health savings accounts and flexible spending accounts;
- life and accidental death and dismemberment insurance;
- disability benefits;
- business travel accident insurance;
- time-off benefits;
- 401(k) plans;
- additional employee programs; and
- other employee benefit plans and programs as described below.

### **A. Plan Administration Services.**

33. The Debtors’ U.S. Medical Plans, Vision Plans, U.S. Dental Plans, U.S. Standard Life and AD&D Insurance, U.S. Disability Benefits plans, and Employee Assistance Program (each as defined below) are administered by Mercer Investment Management, Inc. (“Mercer”).

Additionally, the Debtors' Canada Medical Plans, Canada Dental Plans, Canada Standard Life and AD&D Insurance, and Canada Disability Benefits (each as defined below) are administered by The Lesly Group Ltd. ("The Lesly Group"). The Debtors pay Mercer approximately \$7,800 in aggregate monthly administrative fees. The Debtors do not pay The Lesly Group for its administration services but, rather, The Lesly Group is paid by benefit provider Manulife Financial Corporation ("Manulife") on account of its administration of the benefits plans in Canada. By this motion, the Debtors seek the authorization to pay Mercer for its prepetition administration services of the above mentioned plans. As of the Petition Date, the Debtors estimate that they owe Mercer approximately \$15,000 for their administration services, substantially all of which will come due within the first 25 days after the Petition Date.

**B. Health Benefit Plans.**

34. The Debtors offer eligible Employees the opportunity to participate in a number of health benefit plans, including medical, dental, and vision plans (collectively, the "Health Benefit Plans"). The Debtors seek to pay approximately \$567,700 on account of the prepetition expenses related to the Health Benefit Plans, substantially all of which will come due within the first 25 days after the Petition Date.

**1. Medical Plans.**

35. The Debtors provide (a) self-insured medical coverage to most of its Represented and Full-Time Employees in the United States through Blue Cross Blue Shield and fully insured coverage to the rest of their eligible Employees through Kaiser Permanente and Geisinger Health, depending on the business segment, (b) self-insured prescription drug coverage to all eligible Employees in the United States through OptumRX (collectively, the "U.S. Medical Plans"), and (c) medical coverage to Employees in Canada through Manulife (the "Canada Medical Plans," and together with the U.S. Medical Plans, the "Medical Plans"). The U.S. Medical Plans are

administered by Mercer, and the Canada Medical Plans are administered by The Lesly Group. Under the Blue Cross Blue Shield plan, eligible Full-Time Employees have a choice of five policies, and Represented Employees have a choice between two and three policies, depending on the facility where such Employees work.<sup>8</sup> Under the Geisinger Health plans, Represented Employees have a choice of two policies. Under the Manulife and Kaiser Permanente plans, eligible Employees have a choice of one policy. Employee's monthly cost will vary based on the plan the Employee has enrolled in, whether the plan is for individual or family coverage, and whether the Employee and covered family members use tobacco.

36. Employees contribute approximately \$250,000 each month to the costs of the Medical Plans, which the Debtors deduct directly from the respective Employee's paychecks. The Debtors contribute approximately \$415,000 monthly to the cost of the Medical Plans. As of the Petition Date, the Debtors estimate that they hold approximately \$70,000 in Employee-contributed costs for the Medical Plans, substantially all of which will come due within the first 25 days after the Petition Date. As of the Petition Date, the Debtors estimate that they owe approximately \$480,000 in Employer-contributed costs for the Medical Plans, substantially all of which will come due within the first 25 days after the Petition Date.

## **2. Vision Plans.**

37. The Debtors also offer to most of their Represented Employees and Full-Time Employees the option to enroll into fully-insured vision plans through VSP Vision Care (the "VSP Vision Plan") and, to some of their Represented Employees, in fully insured vision plans through Guardian Life Insurance Company of America ("Guardian") (the "Guardian Vision Plan," and

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<sup>8</sup> Employees' medical coverage through the Blue Cross Blue Shield plan also includes the prescription drug coverage through OptumRX.

together with the VSP Vision Plan, the “Vision Plans”), depending on the business segment. The Debtors pay all premiums on account of the Guardian Vision Plan, and contribute approximately \$1,000 each month to the costs of the Guardian Vision Plan. Employees contribute approximately \$12,000 each month to the costs of the VSP Vision Plan, which the Debtors deduct directly from the respective Employee’s paychecks. As of the Petition Date, the Debtors estimate that they owe approximately \$1,400 to Guardian on account of the Guardian Vision Plan, substantially all of which will come due within the first 25 days after the Petition Date. As of the Petition Date, the Debtors estimate that they hold approximately \$3,800 in Employee-contributed costs for the VSP Vision Plan, substantially all of which will come due within the first 25 days after the Petition Date.

### **3. Dental Plans.**

38. Finally, the Debtors offer eligible Employees in the United States the option of participating in fully insured dental plans through Delta Dental or Guardian (the “U.S. Dental Plans”), depending on the business segment, and their Employees in Canada the option to participate in dental plans through Manulife (the “Canada Dental Plans,” and together with the U.S. Dental Plans, the “Dental Plans”). The Debtors deduct employee contributions on account of the Dental Plans directly from the respective Employee’s paychecks. As of the Petition Date, the Debtors estimate that they hold approximately \$12,500 in Employee-contributed costs for the Dental Plans, substantially all of which will come due within the first 25 days after the Petition Date.

#### **C. Supplemental Plans.**

39. In addition to the Health Benefit Plans, Employees have the ability to enroll in the following supplemental plans (collectively, the “Supplemental Plans”), which are fully paid by the Employees:

- Accident insurance, hospital indemnity insurance, and critical illness insurance provided by Aflac Inc. and voluntary hospital, voluntary group life, and voluntary term life provided by Guardian (collectively, the “Supplemental Health Plans”), depending on the business segment. Employees contribute approximately \$12,500 each month to the costs of the Supplemental Health Plans, which the Debtors deduct directly from the respective Employee’s paychecks. As of the Petition Date, the Debtors estimate that they hold approximately \$36,500 in Employee-contributed costs for the Supplemental Health Plans, substantially all of which will come due within the first 25 days after the Petition Date.
- Identity, financial, and privacy protection (the “Privacy Protection Plan”) provided by InfoArmor, Inc. Employees contribute approximately \$1,000 each month to the costs of the Privacy Protection Plan, which the Debtors deduct directly from the respective Employee’s paychecks. As of the Petition Date, the Debtors estimate that they hold approximately \$600 in Employee-contributed costs for the Privacy Protection Plan, substantially all of which will come due within the first 25 days after the Petition Date.
- Pet protection (the “Pet Protection Plan”) through Nationwide Mutual Insurance Company. Employees contribute approximately \$200 each month to the costs of the Pet Protection Plan, which the Debtors deduct directly from the respective Employee’s paychecks. As of the Petition Date, the Debtors estimate that they hold approximately \$150 in Employee-contributed costs for the Pet Protection Plan, substantially all of which will come due within the first 25 days after the Petition Date.
- Legal insurance (the “Legal Protection Plan”) through ARAG Legal. Employees contribute approximately \$1,000 each month to the costs of the Legal Protection Plan, which the Debtors deduct directly from the respective Employee’s paychecks. As of the Petition Date, the Debtors estimate that they hold approximately \$1,100 in Employee-contributed costs for the Legal Protection Plan, substantially all of which will come due within the first 25 days after the Petition Date.

40. As of the Petition Date, the Debtors estimate that they owe approximately \$38,350 on account of the Supplemental Plans, substantially all of which will come due within the first 25 days after the Petition Date.

**D. Stop-Loss Coverage.**

41. The Debtors self-insure their Blue Cross Blue Shield medical plans up to specified amounts depending on the business segment. The Debtors are self-insured for the first \$250,000

of costs per claimant per incident, with stop-loss coverage from H.M. Life Insurance Company (“H.M. Life”) providing coverage for any additional amounts.

42. Historically, the aggregate monthly amount that the Debtors pay H.M. Life for stop-loss premiums is approximately \$83,000. As of the Petition Date, the Debtors estimate that they owe approximately \$135,000 on account of premium costs for stop-loss coverage, substantially all of which will come due within the first 25 days after the Petition Date.

**E. Health Savings Accounts.**

43. Employees in the United States who select a high-deductible health plan as their Medical Plan may contribute a portion of their compensation into a health savings account (the “HSA”) that HSA Bank administers. Employees may make pre-tax contributions (collectively, the “HSA Deductions”) to their HSA through payroll deductions to cover reimbursements of amounts paid for qualified medical expenses under the Health Benefit Plans up to the maximum amount permitted by the Internal Revenue Service. Currently, approximately 55 Employees have a Debtor-sponsored HSA. Although the Debtors believe that they do not hold HSA Deductions as of the Petition Date, they request the authority to pay any HSA Deductions to the extent that it is later determined that they hold any such amounts.

44. The Debtors make an annual contribution to each Employee’s HSA of \$300 for single plan HSAs and \$600 for family plan HSAs (the “HSA Contributions”). As of the Petition Date, the Debtors estimate that they owe HSA Bank a de minimis amount, if any, on account of HSA Contributions and on account of HSA Bank’s administration services, but request, for the avoidance of doubt, the authority to pay any such amounts.

**F. Flexible Spending Accounts.**

45. The Debtors provide Employees with two flexible spending (reimbursement) account options to make pre-tax contributions through payroll deductions to pay for certain health

and welfare needs (collectively, the “FSAs”). The two FSAs are (a) an FSA for eligible health care (medical, dental, and vision) expenses such as prescriptions, hearing aids, orthopedic goods, and doctor and dentist appointments (the “Care FSA”) and (b) an FSA for dependent care expenses (the “Dependent Care FSA”). The Debtors do not make contributions to the FSAs. At the end of each calendar year, Employees may carry an FSA balance of \$500 over to the next year. Dependents may not carry their FSA balances over to the next year.

46. Historically, on a monthly basis, the Debtors deduct approximately \$4,500 from their Employee’s paychecks on account of Employee contributions to their respective Care FSAs and approximately \$4,000 on account of Employee contributions to their respective Dependent Care FSAs. As of the Petition Date, the Debtors estimate that they hold approximately \$5,500 in FSA Employee contributions, substantially all of which will come due within the first 25 days after the Petition Date.

47. The FSAs are administered by Discovery Benefits, Inc. The Debtors pay Discovery Benefits, Inc. a monthly administrative fee of approximately \$1,000 on account of the FSAs. Discovery Benefits also administers the payment of premiums to former Employees on account of COBRA (as defined herein). As of the Petition Date, the Debtors owe approximately \$1,700 in the aggregate in outstanding administrative costs on account of the FSAs and COBRA, substantially all of which will come due within the first 25 days after the Petition Date.

**G. Life and AD&D Insurance.**

48. The Debtors automatically enroll all Full-Time Employees in life and accidental death and dismemberment insurance provided by MetLife, Inc. (“MetLife”) in the United States (the “U.S. Standard Life and AD&D Insurance”) and by Manulife in Canada (the “Canada Standard Life and AD&D Insurance,” and together with the U.S. Standard Life and AD&D Insurance, the “Standard Life and AD&D Insurance”). The Standard Life and AD&D Insurance

provides benefits of one time an Employee's base earnings up to a maximum amount of \$25,000 or \$250,000, depending on the business segment and the employee classification, for covered losses, including accidental death and dismemberment.

49. The Debtors pay all of the expenses on account of the Standard Life and AD&D Insurance, which historically has cost approximately \$13,000 per month. As of the Petition Date, the Debtors owe approximately \$5,000 on account of the prepetition expenses related to the Standard Life and AD&D Insurance, substantially all of which will come due within the first 25 days after the Petition Date.

**H. Disability Benefits.**

50. The Debtors automatically enroll eligible Employees in the United States in short- and long-term disability benefits (collectively, the "U.S. Disability Benefits") plans through MetLife at no cost for the eligible Employees. The U.S. Disability Benefits plans are administered by Mercer. In Canada, most Full-Time Employees may enroll in long-term disability benefits (the "Canada Disability Benefits," and together with the U.S. Disability Benefits, the "Disability Benefits") plans through Manulife, which plans are fully paid by the eligible Employees. The Canada Disability Benefits plans are administered by The Lesly Group.

51. Under the short-term U.S. Disability Benefits program, in the event of a qualified non-work related illness or injury, Employees are entitled to 60 percent of base weekly earnings for the first two weeks following the event, with a weekly maximum of \$1,000 for a continuous period of up to thirteen weeks (the "U.S. Short-Term Disability Benefits"). As of the Petition Date, the Debtors owe approximately \$16,500 on account of the U.S. Short-Term Disability Benefits, substantially all of which will come due within the first 25 days after the Petition Date.

52. If after thirteen weeks of receiving U.S. Short-Term Disability Benefits an Employee still qualifies for U.S. Disability Benefits, then the Employee is entitled to continue

receiving 50 percent or 60 percent of their base monthly salary until the Employee turns 65 years old, with a maximum monthly benefit of \$1,000 and \$10,000, respectively (collectively, the “U.S. Long-Term Disability Benefits”), depending on whether the Employee is salaried or compensated hourly. As of the Petition Date, the Debtors owe approximately \$12,500 on account of the U.S. Long-Term Disability Benefits, substantially all of which will come due within the first 25 days after the Petition Date.

53. Under the Canada Disability Benefits program, eligible Employees are entitled to receive 66.7 percent of their base monthly earnings, with a maximum monthly benefit of \$5,000 CAD. Once an Employee receives Canada Disability Benefits, the Employee may continue to receive Canada Disability Benefits on account of the Employee’s qualified disability until the Employee turns 65 years old. Employees contribute approximately \$5,400 CAD each month to the costs of the Canada Disability Benefits, which the Debtors deduct directly from the respective Employee’s paychecks. Although the Debtors believe there that they do not hold any employee contributions on account of the Canada Disability Benefits program, they request the authority to pay any such contributions to the extent that it is later determined that any amounts are outstanding.

**I. Workers’ Compensation.<sup>9</sup>**

54. In the ordinary course of business, the Debtors maintain workers’ compensation insurance for their Employees at the statutorily required level for each state in which the Debtors have Employees (the “Workers’ Compensation Program”). Because the Debtors are statutorily and/or contractually obligated to maintain the Workers’ Compensation Program, their inability to

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<sup>9</sup> The Debtors have filed contemporaneously herewith the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered into Prepetition and Satisfy Prepetition Obligations Related Thereto, (B) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (C) Continue to Pay Brokerage Fees, and (II) Granting Related Relief*, but only seek relief related to the Workers’ Compensation Program (as defined herein) in this motion.

do so may result in adverse legal consequences that could potentially disrupt the reorganization process.<sup>10</sup>

55. The Debtors maintain a workers' compensation policy administered by Safety First Insurance Co. ("Safety First"). The workers' compensation policy with Safety First is not subject to a deductible. This policy provides unlimited statutory coverage per incident for each claim and up to \$1,000,000 for any liability of the Debtors.

56. The Debtors pay a premium to Safety First for the workers' compensation policy on a monthly basis, based on the Debtors' estimated gross payroll for the applicable policy year. The premium is expected to be approximately \$3.3 million for the 2019 policy year. Although the Debtors believe there is no unpaid premium on account of the 2018 and 2019 policy year, they request the authority to pay any premium to the extent that it is later determined that there are prepetition amounts outstanding. By this motion the Debtors also seek authority to make premium payments for the 2019 policy year in the ordinary course of business on a postpetition basis.

57. In addition, the Debtors separately maintain workers' compensation policies for the state of Washington and in Canada, which require the Debtors to receive coverage through a state-operated insurance fund (the "State Funds"). The Debtors pay premiums to the State Fund in Washington on a quarterly basis, which was approximately \$10,000 in the aggregate in 2018, and to the State Fund in Canada on a monthly basis, which is approximately \$15,000 on average. The Debtors estimate that, as of the Petition Date, approximately \$26,500 in accrued but unpaid

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<sup>10</sup> The Debtors' Workers' Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. By this motion, the Debtors request authority to continue the Workers' Compensation Program postpetition, including making any changes to current policy and practices that may become necessary.

obligations are owed to the State Funds on account of the Workers' Compensation Program, substantially all of which will come due within the first 25 days after the Petition Date.

58. Finally, the Debtors pay in the ordinary course of business certain claims in connection with legacy workers' compensation policies (the "Legacy Workers' Compensation Claims") to Hartford Fire Insurance Company, which payment is secured by outstanding letters of credits in the aggregate amount of \$3.6 million. The Debtors pay approximately \$155,000 per month for Legacy Workers' Compensation Claims. As of the Petition Date, the Debtors owe approximately \$860,000 in outstanding Legacy Workers' Compensation Claims, approximately \$155,000 of which will come due within the first 25 days after the Petition Date.

**J. Business Travel Accident Insurance.**

59. The Debtors provide benefits to Employees who are injured or experience a medical emergency while traveling on a company-paid and approved business or relocation trip. Specifically, the Debtors contract with the Insurance Company of the State of Pennsylvania ("ICSP") to provide Employees with business travel accident insurance (the "Business Travel Insurance"). The Debtors provide Business Travel Insurance to Employees at no cost and the Debtors pay all costs in full. The Debtors pay approximately \$10,000 per year to ICSP for fees related to the Business Travel Insurance. Although the Debtors believe there that they do not owe ICSP any amount on account of the Business Travel Insurance, they request the authority to pay any premium to the extent that it is later determined that any amounts are outstanding.

**K. 401(k) Plan.**

60. The Debtors maintain a retirement savings plan for the benefit of their Full-Time Employees with no minimum service requirement (the "401(k) Plan"). Transamerica administers the 401(k) Plan. The 401(k) Plan allows for pre-tax salary deductions of eligible compensation up to the limits set forth by the Internal Revenue Code. Represented Employees who have been

employed by the Debtors for at least twelve months are able to elect to make pre-tax salary deductions under the National Plus Plan negotiated by the Debtors as part of the CBAs (the "NPP"). Additionally, Employees in Canada are able to elect to make pre-tax salary deductions under a Registered Retirement Savings Plan (the "RRSP") administered by Royal Bank of Canada ("RBC"). The Debtors deduct approximately \$215,000, \$1,500, and \$10,000 CAD from Employees' pay in the aggregate each month for Employee contributions to the 401(k) Plan, NPP, and RRSP, respectively (collectively, the "401(k) Deductions"). As of the Petition Date, the Debtors believe they hold approximately \$122,000 in 401(k) Deductions, substantially all of which will come due within the first 25 days after the Petition Date.

61. With respect to the 401(k) Plan, the Debtors match 100 percent up to the first one percent of an Employee's annual Employee compensation and 50 percent of the next five percent of an Employee's annual Employee compensation (the "401(k) Plan Match"). Under the CBAs, the Debtors (i) match 100 percent up to the first \$50 the Represented Employee contributes, 50 percent for the next \$100 the Represented Employee contributes, up to an aggregate maximum of \$100 annually, (ii) match 50 percent for the first \$240 annual contribution, up to a maximum of \$120 annually, or (iii) match 50 percent for the first \$200 annual contribution, up to a maximum of \$100 annually, depending on the applicable CBA (the "401(k) NPP Match"). Under the RRSP, the Debtors (i) match 50 percent for contribution representing up to 6 percent of the Employee's weekly compensation, and (ii) match 3 percent for contribution representing more than 6 percent of the Employee's weekly compensation (the "RRSP 401(k) Match," and together with the 401(k) Plan Match and the 401(k) NPP Match, the "401(k) Match"). The Debtors contribute approximately \$96,000, \$700, and \$3,700 CAD per month on account of the 401(k) Plan Match, 401(k) NPP Match, and RRSP 401(k) Match, respectively. As of the Petition Date, the Debtors

believe they owe approximately \$67,000 for the 401(k) Match, substantially all of which will come due within the first 25 days after the Petition Date.

**L. Time-Off Benefits.**

62. The Debtors provide vacation time of between five to twenty-three days each calendar year to their Full-Time Employees and Part-Time Employee as a paid time-off benefit (“Paid Time-Off,” collectively with “Other Paid Leave” (as defined herein) and “NY Paid Family Leave” (as defined herein), the “Time-Off Benefits”). The amount of Paid Time-Off available to a particular Employee and the rates at which Paid Time-Off is earned are generally determined by the Employee’s length of service and employment classification. When an Employee elects to take Paid Time-Off, that Employee is paid his or her regular hourly or salaried rate. The majority of Employees cannot carry over Paid Time-Off from year to year. Depending on the business segment, some Employees are allowed to carry over such Paid Time-Off from one year to the next, but the Paid Time-Off that such Employees can receive for each calendar year in that case is capped to one and a half times the annual allotment.

63. The Debtors permit eligible Full-Time Employees and Part-Time Employees to take certain paid leaves of absence for personal reasons, many of which are required by law. The Debtors pay Full-Time Employees and Part-Time Employees for missed work time such as bereavement leave, jury duty, sick leave, and wedding leave (the “Other Paid Leave”). Full-Time Employees and Part-Time Employees are not entitled to any separate cash payments in addition to their normal compensation for the Other Paid Leave.

64. The Debtors also provide most of their eligible Employees with up to twelve weeks of unpaid parental leave following the birth or adoption of a child in accordance with the Family and Medical Leave Act, up to seventy weeks of parental and maternity or paternity leave under Quebec’s Act Respecting Labour Standards, or up to sixty-three weeks of parental and pregnancy

leave under Ontario's Employment Standards Act. New York state law requires that employers with one or more employees located in the state obtain Paid Family Leave insurance ("NY Paid Family Leave"). NY Paid Family Leave is funded by New York-based Employee payroll contributions and provides wage replacement and job protection to Employees who require a leave of absence due to qualifying circumstances. As of the Petition Date, the Debtors does not hold any Employee contributions for NY Paid Family Leave coverage.

65. As of the Petition Date, the Debtors estimate that there is approximately \$1.5 million accrued on account of Time-Off Benefits. Accordingly, the Debtors seek authority to allow eligible Employees to use their Time-Off Benefits in the ordinary course of business on a postpetition basis.

**M. Additional Employee Programs.**

66. In addition to the foregoing, the Debtors offer Employees the opportunity to participate in a range of ancillary benefits (the "Additional Programs"). Each Additional Program has different requirements to qualify and is in addition to Employee Compensation and other benefits described herein.

- Tuition Reimbursement. After one year of employment, Full-Time Employees are eligible to receive tuition reimbursement for job-related courses ("Tuition Reimbursement"). The Debtors reimburse 100 percent of the tuition fees, but the Employee must repay such amount to the Debtors if the Employee resigns within one year after receiving the Tuition Reimbursement. Although the Debtors believe there is no Tuition Reimbursement costs outstanding, they request the authority to pay any such amount to the extent that it is later determined that they owe any such amounts on account of Tuition Reimbursement costs.
- Employee Assistance Program. Employees are eligible for an employee assistance program that offers qualified counselors to help Employees cope with problems such as marital or family distress, alcoholism, drug abuse, and financial hardships (the "Employee Assistance Program"). The Employee Assistance Program is provided by Metlife and administered by Mercer. The costs associated with the administration of the Employee Assistance Program are absorbed by Mercer as part of Mercer's other administration services it provides to the Debtors. Accordingly, although the Debtors believe there is no Employee Assistance Program costs

outstanding, they request the authority to pay any such amount to the extent that it is later determined that they owe any such amounts on account of Employee Assistance Program costs.

- Employee Relocation Program. Employees are eligible, at the discretion of the Debtors, for an employee relocation program whereby the Debtors agrees to pay costs related to the relocation of an Employee. Under the Employee Relocation Program, the Debtors have in the past agreed to pay, in full or in part, for temporary housing or storage, moving fees, or mortgage closing fees. As of the Petition Date, the Debtors believe that they owe approximately \$63,000 on account of the Employee Relocation Program, substantially all of which will come due within the first 25 days after the Petition Date.

### III. COBRA.

67. Pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA") former Employees and their dependents who lose their health benefits have the right to choose to continue group health benefits provided by the Debtors' Health Benefit Plans for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. Each month, certain former Employees pay either full or subsidized premiums for continuing their Health Benefits Plans through COBRA. As of the Petition Date, approximately one former employee receives subsidized COBRA in connection with severance, and approximately 12 former employees make full premium payments for coverage under COBRA. Although the Debtors believe they do not owe any amounts with respect to COBRA premium on behalf of former Employees, they request the authority to pay any such amounts to the extent that it is later determined that any amounts are outstanding.

**Basis for Relief**

**I. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee Compensation and Benefits Programs.**

**A. Certain of the Employee Compensation and Benefits Are Entitled to Priority Treatment.**

68. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle the majority of the obligations under the Employee Compensation and Benefits Programs to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for (a) wages, salaries or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than \$13,650 on account of claims entitled to priority, the relief sought with respect to compensation only affects the timing of payments to Employees and should not affect the recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of the Employee Compensation and Benefits Programs at this time enhances value for the benefit of all interested parties.

**B. Payment of Certain Employee Compensation and Benefits Is Required by Law.**

69. The Debtors seek authority to pay the Deductions and Payroll Taxes to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Deductions and Payroll Taxes are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Further, federal and state laws require

the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (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); *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). Because the Deductions and Payroll Taxes may not be property of the Debtors' estates, the Debtors request authorization to transmit the Deductions and Payroll Taxes to the proper parties in the ordinary course of business.

70. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all obligations related to the Workers' Compensation Program is therefore crucial to the Debtors' continued operations and the success of these chapter 11 cases.

## **II. Payment of the Employee Compensation and Benefits Is Warranted Under Section 363(b)(1) of the Bankruptcy Code and the Doctrine of Necessity.**

71. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers who were potential lien claimants); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In so doing, these courts have found that sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

72. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the pre-plan satisfaction of a prepetition claim.” *CoServ*, 273 B.R. at 497.

73. Section 105(a) codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s reorganization); *Ionosphere Clubs*, 98 B.R. at 176 (holding that a court may authorize payments of prepetition obligations under section 105(a) of the Bankruptcy Code pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”)).

74. The Debtors submit that the payment of the Employee Compensation and Benefits Programs represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying prepetition wages, employee benefits, and similar obligations will benefit the Debtors’ estates and their creditors by allowing the

Debtors' business operations to continue without interruption. Indeed, the Debtors believe that without the relief requested herein, Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Debtors' workforce, thereby hindering the Debtors' ability to operate their business and potentially diminishing stakeholder confidence in the Debtors' ability to successfully reorganize. The loss of valuable Employees and the resulting need to recruit new personnel (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on stabilizing their business operations. Accordingly, there can be no doubt that the Debtors must do their utmost to retain their workforce by, among other things, continuing to honor all wage, benefits, and related obligations, including the prepetition obligations pursuant to the Employee Compensation and Benefits Programs.

75. In addition, the majority of Employees rely exclusively on the Employee Compensation and Benefits Programs to satisfy their daily living expenses. Consequently, Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor their obligations related thereto. Moreover, failure to satisfy such obligations will jeopardize Employee morale and loyalty at a time when Employee support is critical to the Debtors' business. Furthermore, if this Court does not authorize the Debtors to honor their various obligations under the insurance programs described herein, Employees will not receive health coverage and, thus, may be obligated to pay certain health care claims that the Debtors have not satisfied. The loss of health care coverage will result in considerable anxiety for Employees (and likely attrition) at a time when the Debtors need such Employees to perform their jobs at peak efficiency.

76. The importance of a debtor's employees to its operations has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief

requested herein. *See, e.g., In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr. S.D.N.Y. Apr. 22, 2019) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re Aegean Marine Petrol. Network Inc.*, No. 18-13374 (MEW) (Bankr. S.D.N.Y. Dec. 6, 2018) (same); *In re Nine West Holdings, Inc.*, No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7 2018) (same); *In re Cenveo, Inc.*, No. 18-22178 (RDD) (Bankr. S.D.N.Y. Feb. 6, 2018) (same); *In re 21st Century Oncology Holdings, Inc.*, No. 17-22770 (RDD) (Bankr. S.D.N.Y. June 20, 2017) (same).<sup>11</sup>

77. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay any prepetition amounts accrued and unpaid on account of the Employee Compensation and Benefits Programs and to continue the Employee Compensation and Benefits Programs on a postpetition basis in the ordinary course of business and consistent with past practices.

### **III. The Debtors Seek a Waiver of the Automatic Stay as It Applies to Workers' Compensation Claims.**

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

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .

Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." 11 U.S.C. § 362(d)(1).

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<sup>11</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

79. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit Employees to proceed with their workers' compensation claims in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the workers' compensation claims could have a detrimental effect on the Employee's financial well-being and Employee morale and lead to the departure of certain Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors' business to the detriment of all parties in interest.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

80. The Debtors have sufficient funds to pay any amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and postpetition financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion; provided that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

81. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief

requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture. For the reasons discussed herein, the relief requested is necessary for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

82. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

83. Nothing contained herein or any actions taken pursuant to such relief requested is intended to or should be construed as (a) an admission as to the validity of any prepetition claim against a Debtor entity, (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds, (c) a promise or requirement to pay any prepetition claim, (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion, (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the relief requested in this motion are valid, and

the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

**Motion Practice**

84. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

**Notice**

85. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

86. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York  
Dated: May 19, 2019

/s/ Joshua A. Sussberg  
Joshua A. Sussberg, P.C.  
Christopher T. Greco, P.C.  
**KIRKLAND & ELLIS LLP**  
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- and -

Joseph M. Graham (*pro hac vice* pending)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: )  
 ) Chapter 11  
 )  
HOLLANDER SLEEP PRODUCTS, LLC, *et al.*,<sup>1</sup> ) Case No. 19-11608 (\_\_\_)  
 )  
 )  
Debtors. ) (Joint Administration Requested)  
 )  
 )  
 ) **Re: Docket No.** \_\_\_

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**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION  
EMPLOYEE WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE  
EMPLOYEE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS  
AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to (i) pay certain prepetition employee wages, salaries, other compensation, and reimbursable employee expenses, and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto, (b) scheduling a final hearing to consider approval of the Motion on a final basis, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; 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

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

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

the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; 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. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2019, at \_\_\_:\_\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion must be filed with the Court on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2019.
3. The Debtors are authorized, but not directed, to continue and/or modify, change, or discontinue the Employee Compensation and Benefits Programs all in accordance with historical practice and to honor and pay, in the ordinary course and in accordance with the Debtors' prepetition policies and prepetition practices, any obligations on account of the Employee Compensation and Benefits Programs, irrespective of whether such obligations arose prepetition or postpetition.
4. Nothing herein shall be deemed to authorize the payment of any prepetition amounts above the statutory cap imposed by section 507(a)(4) of the Bankruptcy Code with respect to prepetition amounts owed on account of the Employee Compensation and Benefits Programs, except upon further order of this Court.

5. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

6. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code, *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

7. Pursuant to section 362(d) of the Bankruptcy Code, (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

8. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume

any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, *provided* that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

11. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition

debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

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

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

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**Proposed Final Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:	)	
	)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 19-11608 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No. ___</b>

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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION  
EMPLOYEE WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE  
EMPLOYEE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS  
AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing the Debtors to (i) pay certain prepetition employee wages, salaries, other compensation, and reimbursable employee expenses, and (ii) continue employee benefits programs in the ordinary course, including payment of certain prepetition obligations related thereto, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this Court having the power to enter a final order consistent with Article III of the United States Constitution; 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

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

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

and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; 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. The Debtors are authorized, but not directed, to continue and/or modify, change, or discontinue the Employee Compensation and Benefits Programs all in accordance with historical practice and to honor and pay, in the ordinary course and in accordance with the Debtors' prepetition policies and prepetition practices, any obligations on account of the Employee Compensation and Benefits Programs, irrespective of whether such obligations arose prepetition or postpetition.
3. Nothing herein shall be deemed to authorize the payment of any prepetition amounts above the statutory cap imposed by section 507(a)(4) of the Bankruptcy Code with respect to prepetition amounts owed on account of the Employee Compensation and Benefits Programs, except upon further order of this Court.
4. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code, *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

5. Pursuant to section 362(d) of the Bankruptcy Code, (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

6. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense or other priority claim; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the rights of any party in interest under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, whether such checks or other requests were submitted prior to, or after, the Petition Date, *provided* that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Notwithstanding the relief granted in this Final Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court approving the Debtors' entry into any postpetition debtor-in-possession financing facility and any budget in connection therewith and/or authorizing the Debtors' use of cash collateral and any budget in connection therewith.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

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

13. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

New York, New York

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE