

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

<p>In re:</p> <p>KP ENGINEERING, LP, <i>et al.</i>,</p> <p style="text-align: right;">Debtors.¹</p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p>Chapter 11</p> <p>Case No. 19-34698 (DRJ)</p> <p>(Joint Administration Requested)</p> <p>(Emergency Hearing Requested)</p>
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**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF AN
ORDER (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION WORKFORCE
OBLIGATIONS, INCLUDING COMPENSATION, EXPENSE REIMBURSEMENTS,
BENEFITS, AND RELATED OBLIGATIONS, (II) CONFIRMING RIGHT TO
CONTINUE WORKFORCE PROGRAMS ON POSTPETITION BASIS, (III)
AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLL-RELATED TAXES,
(IV) CONFIRMING THE DEBTORS’ AUTHORITY TO TRANSMIT PAYROLL
DEDUCTIONS, AND (V) AUTHORIZING BANKS TO HONOR PREPETITION
CHECKS AND FUND TRANSFERS FOR AUTHORIZED PAYMENTS**

EMERGENCY RELIEF HAS BEEN REQUESTED. A HEARING WILL BE CONDUCTED ON THIS MATTER ON MONDAY, AUGUST 26, 2019 AT 12:00 PM (PREVAILING CENTRAL TIME) IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, LOCATED IN COURTROOM 400 AT 515 RUSK AVENUE, HOUSTON, TEXAS.

IF YOU OBJECT TO THE RELIEF REQUESTED HEREIN OR YOU BELIEVE THAT EMERGENCY CONSIDERATION OF THIS MATTER IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

RELIEF IS REQUESTED NOT LATER THAN AUGUST 26, 2019.

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) respectfully state the following in support of this emergency motion (the “**Motion**”):

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: KP Engineering, LP (7785) and KP Engineering, LLC (0294). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 5555 Old Jacksonville Highway, Tyler, TX 75703.

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of an order (the “**Order**”) substantially in the form attached hereto:

- (i) authorizing the Debtors to pay certain prepetition amounts owing to or for the benefit of employees, independent contractors and temporary workers for compensation, reimbursable expenses, and benefits;
- (ii) confirming the Debtors’ right to continue postpetition, in the ordinary course of business, the workforce-related plans, programs, and policies in effect immediately prior to the filing of these cases;
- (iii) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes relating to prepetition periods;
- (iv) confirming the Debtors’ right to continue to deduct and to transmit deductions from payroll checks as authorized by employees, as required under any workforce-related plan, program, or policy, or as required by law;
- (v) authorizing all banks to receive, process, honor, and pay all of the Debtors’ prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant hereto; and
- (vi) granting related relief.

2. The Debtors estimate that the aggregate amount of Prepetition Workforce Obligations they seek authority to pay under this Motion and all costs and administrative expenses relating thereto is approximately \$365,700.00:

Relief Sought	Amount Requested
Prepetition Workforce Compensation [Section I]	\$161,800.00
Employee Reimbursement Obligations [Section II]	\$6,100.00
Employee Benefits Obligations [Section III]	\$207,800.00 ²

² Of this amount, approximately \$128,000.00 is attributable to the Retirement Savings Plans. As discussed in greater detail below, the Debtors are required to fund approximately \$15,000.00 of this amount by September 30, 2019 and

JURISDICTION AND VENUE

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334.

4. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution.

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

6. The statutory predicates for the relief requested herein are sections 105(a), 362(d), 363(b), 363(c), 364, 507(a), 541, 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended and modified, the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

BACKGROUND

7. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and commenced these chapter 11 cases (the “**Chapter 11 Cases**”). The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases, and no official statutory committees have been appointed or designated by the Office of the United States Trustee (the “**U.S. Trustee**”).

\$45,000.00 of this amount by December 31, 2019 on account of matching contributions under the Retirement Savings Plans. The Debtors are required to fund the remaining approximately \$68,000.00 by March 31, 2020.

9. The facts and circumstances supporting this Motion are set forth in the *Declaration of Kyle McCoy, Executive Vice President and Chief Financial Officer of Debtor KP Engineering, LP, in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),³ filed concurrently herewith. A description of the Debtors’ business, the reasons for commencing these Chapter 11 Cases, and the relief sought from the Court are set forth in the First Day Declaration. The Debtors hereby adopt and incorporate such description as if fully set forth herein.⁴

THE DEBTORS’ WORKFORCE

10. In connection with the Debtors’ operations, the Debtors currently employ 57 Employees, comprised of 30 Employees paid a fixed salary (“**Salaried Employees**”) and 27 Employees paid on an hourly basis (the “**Hourly Employees**”). Included in the Employee headcount are 57 full time Employees (the “**Full Time Employees**”)⁵ and no part time Employees (the “**Part Time Employees**”). Each of the Employees is employed by Debtor KP Engineering, LP. The Debtors’ Employees are primarily located at the Debtors’ offices in Tyler, Texas, and approximately seven of the Debtors’ Employees are located at offices in Houston, Texas. In addition to the Employees, the Debtors’ currently also utilize two independent contractors.

11. In the ordinary course of business, the Debtors incur payroll and various other obligations and provide other benefits to their Workforce. Maintaining the Debtors’ Workforce with minimal interruption is critical to maintaining the Debtors’ business and operations and to

³ All capitalized terms used but not otherwise defined herein shall have the meanings in the First Day Declaration.

⁴ The First Day Declaration and other relevant case information is available on the following website maintained by the Debtors’ proposed claims and noticing agent, Omni Agent Solutions, in connection with these Chapter 11 Cases: www.omniagentsolutions.com/KPEngineering.

⁵ For purposes of this Motion, Employees who work 30 or more hours per week are considered Full Time Employees, as such Employees are eligible to receive Employee Benefits (as defined below).

their ability to maximize value in these Chapter 11 Cases. If the Debtors cannot assure their Workforce that they will promptly pay the Prepetition Workforce Obligations to the extent allowed under the Bankruptcy Code, and continue to honor, as applicable, the Workforce Programs, certain members of the Workforce will likely seek employment elsewhere. The loss of the Workforce at this critical juncture would have a material adverse impact on the Debtors' businesses and the Debtors' ability to maximize value through these Chapter 11 Cases.

I. Prepetition Workforce Compensation

A. Payroll Related Obligations

12. All of the Debtors' Employees are paid directly by Debtor KP Engineering, LP. The Debtors pay both Salaried Employees and Hourly Employees on a bi-weekly basis on every other Friday (or, if such Friday is a holiday, then on the immediately preceding business day). The Debtors' average payroll each two-week pay period is approximately \$350,000.00. In the ordinary course of business, the Debtors' Salaried Employees are paid one week in arrears, and each pay period ends on the Sunday prior to the applicable pay date. In the ordinary course of business, the Debtors' Hourly Employees are paid one week in arrears, and each pay period ends on the Sunday prior to the applicable pay date. The last date all Employees were compensated prior to the Petition Date was August 22, 2019, which primarily included all wages earned through August 18, 2019.

13. In the ordinary course of their businesses, the Debtors make deductions from Employees' paychecks for payments to third parties on behalf of Employees (collectively, the "**Deductions**"). Deductions are made for amounts related to local, state, and federal income taxes, Social Security and Medicare taxes, child support and other court-ordered garnishments, as well as for savings programs, insurance premiums and other similar benefit programs. The Deductions made by the Debtors each two-week period average approximately \$95,000.00.

14. Employees are owed certain prepetition amounts on account of regular compensation earned through the Petition Date. As such, the applicable Deductions have not yet been taken. Additionally, even where Deductions have been withheld from the applicable Employee's paycheck, the Debtors may not yet have forwarded the Deductions to the various third parties to which the Deductions are required to be distributed.

15. The Debtors estimate that, as of the Petition Date, accrued but unpaid wages owed to the Employees total approximately \$99,000.00. The Debtors estimate that, as of the Petition Date, accrued Deductions total approximately \$52,000.00.

B. Paid Time Off; Leave

16. As part of their overall compensation, Full Time Employees are eligible, in certain circumstances, to receive paid time off ("**PTO**") for, among other things, vacation, personal days, and holidays. The Debtors' PTO programs are typical and customary, and continuing to offer them is necessary for the Debtors to retain Employees during these Chapter 11 Cases. The specifics of the Debtors' PTO policies vary based upon length of employment and scheduled work hours per week. Annual vacation hours that may be accrued by the Debtors' Full Time Employees range from 0 hours to 200 hours, and a Full Time Employee's unused PTO hours may be carried over to the following year, up to a maximum amount of 40 hours.

17. The Debtors' Full Time Employees are also entitled to sick leave, and in some circumstances leaves of absence may be taken with the Debtors' approval or in accordance with applicable laws such as the Family and Medical Leave Act. A Full Time Employee's unused sick leave may not be carried over to the following year.

18. Because PTO is accrued and used by Full Time Employees on a continuous basis, it is difficult to quantify precisely the cost of accrued PTO as of the Petition Date. However, the

Debtors estimate that as of the Petition Date the value of accrued and unused or unpaid PTO is approximately \$295,000.00. Of this amount, the Debtors seek authority to pay \$10,800.00 pursuant to this Motion on account of two employees who are voluntarily terminating their employment with the Debtors effective August 23, 2019. This amount reflects the total PTO these individuals are entitled to be paid out upon their termination. The remainder of this amount is not a current cash pay obligation, since Employees are only entitled to be paid for accrued and unused vacation time, and holidays (if payable by law) in the event they resign or are terminated, if at all.⁶ Because PTO is an essential feature of the employment package provided to the Debtors' Full Time Employees, and failure to provide this benefit would harm Employee morale and encourage the premature departure of valuable Employees, the Debtors request authority to honor all of their PTO obligations as and when they come due in the ordinary course of business.

II. Employee Reimbursement Obligations

19. The Debtors customarily reimburse their Employees for a variety of ordinary, necessary, and reasonable business-related expenses incurred as part of their official duties and in furtherance of the Debtors' business. These include expenses for business travel (including airfare, lodging, taxi costs, automobile rentals, meals, and internet charges), and other general business-related expenses. Employees are expected to use sound judgment and good business sense when incurring the expenses, and in order to be reimbursed, an Employee must submit his or her receipts through the Debtors' expense reporting software program and such expenses must be approved by the Employee's supervisor or manager. Employees are generally reimbursed for approved out of pocket business-related expenses through the normal payroll process.

⁶ Under the laws of certain states in which the Debtors' Employees are located, the Debtors may be required to pay accrued and unused PTO upon termination.

20. All prepetition business-related expenses were incurred by Employees within the scope of their employment by the Debtors with the understanding that they would be reimbursed for such business-related expenses. To avoid harming the Employees who incurred expenses on behalf of the Debtors, the Debtors request the authority to reimburse any Employee for business-related expenses that may have been incurred prepetition including, as applicable.

21. During the twelve months prior to the Petition Date, the monthly amount of business-related expenses incurred by the Employees was, on average, approximately \$45,000.00, based on the historical average for the first seven months of this calendar year.⁷ The Debtors believe that their total prepetition obligations owed in respect of reimbursement of business-related expenses described above will not exceed \$6,100.00 as of the Petition Date.

III. Employee Benefits Obligations

22. Prior to the Petition Date, the Debtors offered eligible Employees⁸ and their eligible spouses and dependents various standard employee benefits, including, without limitation, (a) medical insurance, (b) dental insurance, (c) vision insurance (d) basic term life and accidental death and dismemberment insurance, (e) long-term and short-term disability insurance, (f) savings and related types of benefits, (g) workers' compensation, (h) severance benefits, and (i) miscellaneous other benefits provided to the Employees in the ordinary course of business

⁷ Although the Debtors believe the historical average provided is accurate, the business-related expenses vary greatly from month to month based on the then-active projects and travel needs of Employees.

⁸ All Full Time Employees are eligible for Employee Benefits. New hires are eligible to receive Employee Benefits, with the exception of the Retirement Savings Plan, starting on the first day of the month following the date of hire, unless the date of hire is the first day of the month, in which case new hires are eligible to receive Employee Benefits starting immediately. New hires are eligible to participate in the Retirement Savings Plan starting on the first day of the calendar quarter following 90 days after the date of hire (i.e. a new hire with hire date of October 15, 2018 would have the 90 day service period run on January 15, 2019 and would be eligible to participate April 1, 2019).

(collectively, the “**Employee Benefits**”). As of the Petition Date, the Debtors were obligated to pay certain contributions to or provide benefits under such plans, programs, and policies.

A. Health Care Benefits Plans

23. The Debtors offer several health and welfare programs to Full Time Employees and their eligible dependents, including medical, prescription drug, dental and vision care coverage, (the “**Health Care Benefits Plans**”). Health Care Benefits Plans are provided to Full Time Employees through programs administered by UnitedHealthcare (“**United**”), through UMR, United’s third-party administrator, which administers the medical and prescription drug plans, Dental Select, Inc., which administers the dental plan, and Superior Vision, an affiliate of Versant Health (“**Superior Vision**”), which administers the vision plan.

24. *Medical and Prescription Drug Plans.* The Debtors’ eligible Employees have the opportunity to choose from among two medical plans administered by United, which are similar in the types of services they cover, but vary in terms of cost and provider access. Under both plans, preventive care services are covered at 100% with no calendar year deductible when services are received from in-network providers. One of the medical plans offered is a high deductible health plan (“**HDHP**”) under which the Employees may deposit money into health saving accounts (“**HSA**”), which can be used to pay for eligible medical expenses, including the applicable deductible. The HDHP does not pay benefits until the applicable deductible is satisfied (except for routine preventive care, which is covered at 100%). The other medical plan offered is a co-pay plan. Employees with a co-pay plan are not eligible for an HSA but may deposit money into flexible spending accounts (“**FSA**”), which can be used to pay for eligible medical expenses. The amount deposited into an Employee’s FSA account varies based on the election of the Employee.

25. In connection with the Debtors' self-insured medical plans, the Debtors maintain an account (the "**Health Management Account**") which is used for the payment of medical costs incurred by the Debtors' Employees.⁹ Although United and UMR do not require the Debtors to maintain a minimum balance in the Health Management Account, the Debtors paid a deposit of \$28,000.00 to UMR to secure its obligations with respect to the self-insured medical plans, which funds are still on deposit with UMR. The Debtors pay approximately \$140,000.00 per month to United, with respect to the self-insured medical plans. In addition, the Debtors pay approximately \$35,000.00 per month to UMR in administrative fees. Participating Employees do not pay premiums and there are no payroll deductions associated with the medical plans.

26. *Dental Plans.* The Debtors' eligible Employees have one dental plan administered by Dental Select. The Debtors' dental plans are fully insured. The plan covers preventive services at 100% (after applicable copays), basic services at 80% (after applicable copays), and major services at 75% (after applicable copays). The Debtors pay monthly dental insurance premiums totaling approximately \$7,500.00 per month. Participating Employees do not pay premiums and there are no payroll deductions associated with the dental plan.

27. *Vision Plan.* The Debtors' eligible Employees have the opportunity to participate in a vision coverage plan administered by Superior Vision. The Debtors' vision plan is fully insured. The Debtors pay monthly vision insurance premiums totaling approximately \$1,700.00 per month. Participating Employees do not pay premiums and there are no payroll deductions associated with the vision plan.

⁹ As described in the Debtors' *Emergency Motion for Entry of an Order Authorizing the Debtors to Continue to (I) Operate Their Cash Management System, (II) Use Existing Checks and Business Forms and (III) Maintain Existing Bank Accounts; and for Related Relief*, (the "**Cash Management Motion**") the Health Management Account is funded on an as-needed basis from the Debtors' Main Operating Account to cover debits by UMR.

28. The Debtors estimate that as of the Petition Date approximately \$55,000.00 is outstanding on account of the Health Care Benefits Plans. By this Motion, the Debtors seek authority, but not direction, to continue to pay all prepetition amounts relating to the Health Care Benefits 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.

B. Flexible Spending Accounts

29. The Debtors additionally offer their Full Time Employees the opportunity to contribute, through pre-tax compensation deductions, to flexible spending accounts (“**FSAs**”) to be used for healthcare related expenses and dependent care expenses, subject to limits imposed by federal law. FSA deductions are made from Employees’ paychecks. Total Administrative Services Corporation (“**TASC**”), which administers the claims under the FSAs, provides participating Employees a debit card that may be used to pay for eligible expenses directly. In order to be reimbursed for eligible expenses not paid for with the debit card, Employees must submit eligible claims to TASC, which remits reimbursements on eligible claims directly to the Employees. As of the Petition Date, the Debtors estimate that they are holding FSA deductions to be remitted to TASC of approximately \$2,700.00.

C. Life and Accidental Death and Dismemberment Insurance, Short-Term and Long-Term Disability Insurance

30. Full Time Employees receive, at the Debtors’ cost, \$15,000.00 in basic life insurance (“**Basic Life**”), and a matching \$15,000.00 basic accidental death and dismemberment (“**Basic AD&D**”) benefit, each through Lincoln Financial Group. Full Time Employees also have the opportunity to purchase, for themselves and in some circumstances their spouses and children, voluntary life insurance (“**Voluntary Life**”) and voluntary AD&D coverage (“**Voluntary AD&D**”), each through Lincoln Financial Group, up to maximum coverage of seven times a

participating Employee's annual salary up to a maximum of \$500,000.00, for each of Voluntary Life and Voluntary AD&D coverage for the Employee and up to maximum coverage of 100% of the Employee's annual salary up to a maximum of \$150,000.00 for each of Voluntary Life and Voluntary AD&D coverage for an Employee's spouse.

31. The Debtors provide, at the Debtors' cost, short-term disability ("**STD**") and long-term disability ("**LTD**") insurance, through Lincoln Financial Group, providing benefits of 60% of monthly earnings. The STD benefits begin to accrue on the eighth day after an approved claim for illness or injury and continue up to the end of the maximum benefit period of 26 weeks. The LTD benefits pick up where the STD benefits leave off and begin to accrue 180 days after an approved claim for illness or injury and continue up to the normal retirement age of the Employee.

32. On average, the Debtors pay approximately \$3,500.00 per month on account of Basic Life, Basic AD&D, STD and LTD insurance premiums, and participating Employees pay monthly premiums through payroll deductions totaling approximately \$5,200.00 per month on account of Voluntary Life and Voluntary AD&D insurance premiums. As of the Petition Date, the Debtors estimate that they owe approximately \$8,100.00 to Lincoln Financial Group on account of Basic Life, Basic AD&D, STD and LTD insurance premiums, and approximately \$14,000.00 has been deducted from Employees' paychecks but not yet transferred to Lincoln Financial Group on account of Voluntary Life and Voluntary AD&D insurance premiums.

D. Retirement Savings Plan

33. Prior to the Petition Date, and in the ordinary course of business, the Debtors maintained a safe harbor 401(k) retirement savings plan (the "**Retirement Savings Plan**"), which is administered by John Hancock Life Insurance Company (U.S.A.) ("**John Hancock**"). The Retirement Savings Plan generally allows Employees to contribute pre-tax earnings to traditional

401(k) retirement accounts, subject to limits imposed by federal law. Amounts contributed to 401(k) accounts by Employees are generally deducted automatically from each participating Employee's paycheck.

34. Approximately 57 Employees currently participate in the Retirement Savings Plan, and they contribute approximately \$56,000.00 of their own funds each month. The Debtors also make "matching" contributions with respect to the Retirement Savings Plan equal to 100% of the first 3% of eligible compensation contributed by a participating Employee. The Debtors make matching contributions with respect to the Retirement Savings Plan of approximately \$16,000.00 per month. The safe harbor then makes an additional 3% required installment.

35. Employees participating in the Retirement Savings Plan have the option to borrow money from their 401(k) accounts, and the Debtors then facilitate repayment of such loans by deducting repayment amounts from applicable Employees' paychecks. Approximately \$4,000.00 is deducted from Employees' paychecks each month on account of loan repayments under the Retirement Savings Plan. Deductions with respect to Employee contributions to the Retirement Savings Plan, as well as with respect to repayment of loans under the Retirement Savings Plan, are remitted by the Debtors to John Hancock on the Wednesday following Friday payroll.

36. The Debtors' matching 401(k) contributions and safe harbor installments are a critical component of the Employees' compensation. Failure to make such payments would negatively impact morale and place undue hardship on Employees that could result in losses of Employees during these Chapter 11 Cases. Accordingly, by this Motion, the Debtors seek authority to pay all amounts owed under the Retirement Savings Plan and to continue to perform their obligations under the Retirement Savings Plan postpetition in the ordinary course of business.

The Debtors estimate that approximately \$128,000.00 in matching and safe harbor contributions by the Debtors are outstanding as of the Petition Date on account of the Retirement Savings Plan.¹⁰

E. Workers' Compensation

37. Under the laws of the various states in which they operate, the Debtors are required to maintain workers' compensation policies and programs, or participate in workers' compensation programs administered by state governments, to provide their Employees with workers' compensation coverage for claims arising from or related to their employment with the Debtors (the "**Workers' Compensation Programs**"). The Debtors' Employees are covered under a policy through Starr Indemnity & Liability Company ("**Starr**") under which Debtor KP Engineering, LP is the insured party. The Debtors paid an annual, up front premium of \$31,155.00 under the current policy, financed through a premium financing agreement with Heritage Premium Assignment Co., which runs from March 31, 2019 through March 31, 2020.¹¹ The Debtors' workers' compensation policy provides for coverage limits of \$1,000,000 per Employee for each accident or disease.

38. As of the Petition Date, there were approximately no open workers' compensation claims (the "**Workers' Compensation Claims**") against the Debtors arising out of alleged injuries or death incurred by Employees during the course of their employment with the Debtors, which the Debtors expect to continue to resolve in the ordinary course of business. There is no deductible under the Debtors' workers' compensation policy, and thus Starr pays amounts owed on account

¹⁰ The Debtors are not required to fund the matching and safe harbor contributions contemporaneously with each payroll but instead are required to fund the matching and safe harbor contributions in accordance with the provisions of the Retirement Savings Plan. Of the total estimated \$128,000.00 outstanding, the Debtors are required to fund approximately \$15,000.00 by September 30, 2019 and \$45,000.00 by December 31, 2019 on account of matching contributions. The Debtors are required to fund the remaining approximately \$68,000.00 by March 31, 2020.

¹¹ As described in the *Debtors' Emergency Motion for Entry of an Order Authorizing the (I) Payment of Prepetition Insurance Obligations, (II) Maintenance of Postpetition Insurance Coverage, and (III) Maintenance of Postpetition Financing of Insurance Premiums* (the "**Insurance Motion**"), R-T Specialty, LLC ("**RTS**") acts as a broker for the Debtors with respect to their insurance policies, including the Debtors' workers' compensation policy.

of any Workers' Compensation Claim filed by an Employee of the Debtors, up to the applicable coverage limits. The Debtors expect to continue to resolve any Workers' Compensation Claims in the ordinary course of business in accordance with applicable state law.

39. Because the Workers' Compensation Programs are required for the continued operation of the Debtors' business under the laws of the various states in which they operate, the Debtors request authority to pay any and all prepetition amounts due or that may become due with respect to the Workers' Compensation Programs. The Debtors further seek authority to maintain and continue their prepetition practices with respect to the Workers' Compensation Programs, including, among other things, renewing their workers' compensation policy and allowing claimants, to the extent they hold valid Workers' Compensation Claims, to proceed with their claims in the ordinary course of business in accordance with applicable state law.

IV. Continuation of Workforce Programs Postpetition

40. The Debtors also request confirmation of their right to continue to perform their obligations with respect to all Workforce Programs, as described herein, except as otherwise indicated herein. The Workforce Programs are essential to the Debtors' efforts to maintain Workforce morale and minimize attrition. The Debtors believe that the expenses associated with the Workforce Programs are reasonable and cost-efficient in light of the potential attrition, loss of morale, and loss of productivity that would occur if the Workforce Programs were discontinued.

41. Notwithstanding the foregoing, the Debtors reserve the right to evaluate all Workforce Programs and to make such modifications, including terminating any particular plan, program, or policy, as may be necessary or appropriate during the pendency of these cases.

BASIS FOR RELIEF

42. The relief requested in this Motion is necessary for the Debtors' business to continue to operate in the ordinary course of business to maximize value for all stakeholders. The Employees are vital to the success of these Chapter 11 Cases. Any delay or failure to pay wages, salaries, benefits, and other similar items would irreparably impair the Employees' morale, dedication, confidence, and cooperation, and would adversely impact the Debtors' relationship with their Employees at a time when the Employees' support is critical to these Chapter 11 Cases. At this early stage, the Debtors simply cannot risk the substantial damage to their business that would inevitably result from a rapid decline in their Employees' morale.

43. Absent the relief requested herein, the Employees will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable the Employees to meet their own personal financial obligations. Likewise, any interruption to the Employee Benefits provided by the Debtors could have a material, negative effect on the well-being and morale of the Debtors' employees and their families. Without the requested relief, the stability of the Debtors' business will be undermined, perhaps irreparably, by the possibility that otherwise loyal and valuable Employees will seek other employment alternatives. In addition, to the extent the Debtors owe Employees for business expenses incurred prepetition, it would be inequitable to require the Debtors' Employees to bear personally the cost of any business expenses they incurred prepetition, for the benefit of the Debtor, with the understanding that they would be reimbursed. Further, Employees could become concerned about personal liability for business charges, which could distract them from devoting attention to the Debtors' business.

I. Payment of the Priority Portion of Prepetition Workforce Obligations Should be Authorized under Section 507(a) of the Bankruptcy Code

44. The Debtors believe that most, if not all, of the Prepetition Workforce Obligations constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, Employee claims for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date are afforded priority unsecured status to the extent of \$13,650 per Employee. Similarly, section 507(a)(5) of the Bankruptcy Code provides that Employees’ claims for contributions to certain employee benefit plans also are afforded priority unsecured status to the extent of \$13,650 per Employee covered by such plan, less any amount paid pursuant to Section 507(a)(4). As priority claims, the Prepetition Workforce Obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Accordingly, the relief requested herein may affect only the timing of the payment of these priority obligations and should not prejudice the rights of general unsecured creditors or other parties in interest. Indeed, as of the Petition Date, the Debtors believe that no Employees are owed in excess of \$13,650 on account of prepetition compensation.

II. Payment of Certain of the Prepetition Workforce Obligations is Appropriate under Section 541 of the Bankruptcy Code

45. The payment of the Employee contribution component of the Retirement Savings Plan or payment of other Deductions will not prejudice the Debtors’ estates because such withholdings are derived from Employee funds and held in trust for the benefit of the related payees and, thus, do not constitute property of the Debtors’ estates under section 541 of the Bankruptcy Code. *See Begier v. IRS*, 496 U.S. 53, 58-59 (1990). *See also In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1059 (3d Cir. 1993) (concluding that property that debtor holds in trust

– either express or constructive – for another does not become property of the estate when the debtor files for bankruptcy, and stating that “Congress clearly intended the exclusion by section 541(d) to include not only funds held in express trust, but also funds held in constructive trust.”); *EBS Pension L.L.C. v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231 (Bankr. D. Del. 2000) (same).

46. With respect to payroll-related taxes in particular, the payment of such taxes will not prejudice other creditors of the Debtors’ estates, as the relevant taxing authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code in respect of such obligations. Moreover, the portion of the payroll-related taxes withheld from an Employee’s wages on behalf of an applicable taxing authority is held in trust by the Debtors.

III. Payment of the Prepetition Workforce Obligations is Authorized under Sections 1107(a) and 1108 of the Bankruptcy Code

47. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

48. According to the *CoServ* court, there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *See Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

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 prepetition 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.

Id. at 498.

49. Payment of the Prepetition Workforce Obligations meets each element of the *CoServ* court's standard. First, any failure by the Debtors to pay the Prepetition Workforce Obligations would have a severe negative impact on the morale of the Debtors' Workforce at a critical time for the Debtors and their businesses. Second, the potential harm and economic disadvantage that would stem from the failure to pay the Prepetition Workforce Obligations is grossly disproportionate to the amount of any prepetition claim that may be paid. Absent payment of the Prepetition Workforce Obligations, Workforce morale would decrease dramatically, likely leading to the loss of key personnel and other severe business disruptions costing far in excess of the amount of such obligations. Third, the Debtors have examined other options short of payment of the Prepetition Workforce Obligations and have determined that to avoid significant disruption of the Debtors' business operations there exists no practical or legal alternative to payment of such obligations. Moreover, as described above in Section A, the Employees likely maintain priority claims against the Debtors for all, or the vast majority of, the Prepetition Workforce Obligations.

50. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Prepetition Workforce Obligations.

IV. Payment of the Prepetition Workforce Obligations Is Warranted under Sections 105(a), 363(b) and 364 of the Bankruptcy Code

51. To the extent that payment of any of the Prepetition Workforce Obligations sought to be paid under this Motion would be deemed to constitute a use of property outside the ordinary course of business, a basis for authorizing payment of the amounts associated with such obligations is found under section 363(b) of the Bankruptcy Code. Section 363(b)(1) authorizes courts, after notice and a hearing, to permit a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances.”). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business upon a finding that such use is supported by sound business reasons. *See, e.g., Institutional Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (holding that Section 363(b) of the Bankruptcy Code requires that “there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business”); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.”).

52. The relief requested herein is also supported by section 105(a) of the Bankruptcy Code, which empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); *see also In re CoServ*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“[I]t is only logical that the bankruptcy court be able to use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim

in aid of preservation or enhancement of the estate.”); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (recognizing that a bankruptcy court’s use of its equitable powers under Section 105(a) of the Bankruptcy Code to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”).

53. Courts in this Circuit and elsewhere have consistently held that under the “doctrine of necessity” and section 105(a) of the Bankruptcy Code, the bankruptcy court can exercise its broad grant of equitable powers to authorize the payment of certain prepetition claims prior to the completion of the reorganization process when essential to the continued operation of the debtor’s business. *See CoServ*, 273 B.R. at 497 (recognizing the “doctrine of necessity” in noting that payment of certain prepetition claims is appropriate where such payment is the “only means to effect a substantial enhancement of the estate”); *In re Equalnet Commc’ns Corp.*, 258 B.R. 368, 369–70 (Bankr. S.D. Tex. 2001) (holding that business transactions critical to the survival of the business of the debtor are exceptions to the general rule of nonpayment of prepetition claims prior to plan confirmation); *In re CEI Roofing, Inc.*, 315 B.R. 50, 56, 60–61 (Bankr. N.D. Tex. 2004) (holding that payment of certain prepetition claims under the doctrine of necessity is “based on both common sense and the express provisions of the Bankruptcy Code”); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2004) (authorizing the debtors to pay certain prepetition claims because “the court d[id] not wish Debtors’ businesses seriously damaged”).

54. The doctrine of necessity is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *see also CoServ*, 273 B.R. at 497. Moreover, authorizing payment of prepetition claims is appropriate where, as in these Chapter 11 Cases, such payment would not: (a) “effect a different priority scheme than the priorities established by Congress in the Bankruptcy Code”; or

(b) “result in an unfair and impermissible discrimination among holders of general unsecured claims.” *CEI Roofing*, 315 B.R. at 60.

55. The Debtors do not seek to alter their compensation, vacation, or other benefit policies at this time. This Motion is intended only to permit the Debtors, in their discretion, to make payments consistent with the Debtors’ existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and to permit the Debtors, in their discretion, to continue to honor their practices, programs, and policies with respect to their Workforce, as such practices, programs, and policies were in effect as of the Petition Date. Consistent with prepetition practice, however, the Debtors request authority to offer reasonable, ordinary course, cost of living wage increases to their Employees. Payment of all Prepetition Workforce Obligations in accordance with the Debtors’ prepetition business practices is in the best interests of the Debtors’ estates, their creditors, and all parties in interest and will enable the Debtors to continue to operate their business in an economic and efficient manner, without disruption. The Debtors’ Employees are central to their operations and are vital to the success of these Chapter 11 Cases.

56. Accordingly, the Debtors submit that they have satisfied the standard applied to requests under sections 105(a), 363(b) and 364 of the Bankruptcy Code, and this Court should authorize the payment of the Prepetition Workforce Obligations on such basis.

V. Section 363(c) of the Bankruptcy Code Supports the Debtors’ Request To Maintain Workforce Programs

57. With respect to the aspects of the Motion that seek authorization to satisfy all of the Debtors’ postpetition commitments with respect to the Workforce Programs, the Debtors submit that section 363(c) of the Bankruptcy Code authorizes such actions. In pertinent part, section 363(c)(1) of the Bankruptcy Code provides that “unless the court orders otherwise, the trustee may

enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The maintenance of the Workforce Programs and honoring postpetition obligations arising thereunder, including undertaking renewals of Workforce Programs as they expire, or entering into new arrangements, would appear to fit squarely within the foregoing provision. To the extent, however, that this Court believes that any such actions are not properly characterized as transactions in the ordinary course of the Debtors’ business, the Debtors request that this Court authorize such actions pursuant to section 363(b) of the Bankruptcy Code as a reasonable exercise of their business judgment.

VI. A Limited Waiver of the Automatic Stay for Workers’ Compensation Claims is Appropriate

58. Section 362(a) of the Bankruptcy Code operates to stay “the 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” 11 U.S.C. § 362(a)(1).

59. 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.” *Id.* at § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with Workers’ Compensation Claims in the appropriate judicial or administrative forum. Staying the Workers’ Compensation Claims could have a detrimental effect on the financial well-being and morale of the Employees and would only delay efficient adjudication of such claims.

60. Similarly, state law requires the Debtors to maintain the Workers’ Compensation Programs. If the Debtors fail to maintain the Workers’ Compensation Programs, state law may

prohibit the Debtors from operating in the various states in which they operate. Payment of all amounts relating to the Workers' Compensation Programs is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring.

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

61. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, cash on hand, and use of cash collateral for which the Debtors seek approval contemporaneously herewith.¹² In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Prepetition Workforce Obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. 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.

EMERGENCY CONSIDERATION

62. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Local Rule 9013-1(i) and Bankruptcy Rule 6003, which authorizes a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtors believe that an immediate and orderly transition into chapter 11 is critical to the viability of their operations and the success

¹² Contemporaneously herewith, the Debtors have filed their *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtor to (A) Obtain Postpetition Financing on a Secured, Superpriority Basis and (B) Use Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (the "**DIP Motion**") seeking authority to obtain post-petition financing and use of cash collateral.

of these Chapter 11 Cases. As discussed above and in the First Day Declaration, any delay in granting the relief requested could negatively impact the Debtors' Workforce at this critical juncture. As such, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003, and the Debtors believe that emergency consideration is necessary and request that this Motion be heard at the first day hearing.

WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)

63. To implement the foregoing immediately, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-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 finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

RESERVATION OF RIGHTS

64. Nothing contained herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against any of the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of any Debtor's or any other party in interest's rights to dispute any claim; (c) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (d) an admission as to the validity, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of any Debtor's estate; or (e) a waiver of any claims or causes of action which may exist.

NOTICE

65. The Debtors have provided notice of this Motion to (a) the Office of the United States Trustee for the Eastern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (c) Texas Capital Bank, as Prepetition Lender; (d) counsel Texas Capital Bank; (e) BTS Enterprises, Inc., as proposed DIP Lender; (f) the United States Attorney's Office for the Southern District of Texas; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; (i) the state attorneys general for states in which the Debtors conduct business; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required or needed under the circumstances.

[The remainder of this page is intentionally left blank.]

WHEREFORE, the Debtors respectfully requests that the Court enter the proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: August 23, 2019
Houston, Texas

Respectfully submitted,

/s/ Gregory G. Hesse

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CERTIFICATE OF SERVICE

I certify that on August 23, 2019, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Gregory G. Hesse

Gregory G. Hesse

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: KP ENGINEERING, LP, <i>et al.</i> , Debtors. ¹	§ § § § § § § §	Chapter 11 Case No. 19-34698 (DRJ) (Joint Administration Requested) (Emergency Hearing Requested)
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ORDER (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION WORKFORCE OBLIGATIONS, INCLUDING COMPENSATION, EXPENSE REIMBURSEMENTS, BENEFITS, AND RELATED OBLIGATIONS, (II) CONFIRMING RIGHT TO CONTINUE WORKFORCE PROGRAMS ON POSTPETITION BASIS, (III) AUTHORIZING PAYMENT OF WITHHOLDING AND PAYROLL-RELATED TAXES, (IV) CONFIRMING THE DEBTORS’ AUTHORITY TO TRANSMIT PAYROLL DEDUCTIONS, AND (V) AUTHORIZING BANKS TO HONOR PREPETITION CHECKS AND FUND TRANSFERS FOR AUTHORIZED PAYMENTS

[Relates to the Motion at Docket No. 6]

Upon the motion (the “**Motion**”)² of the Debtors for an order (i) authorizing the Debtors to pay certain prepetition amounts owing to or for the benefit of employees, independent contractors and temporary workers for compensation, reimbursable expenses, and benefits; (ii) confirming the Debtors’ right to continue postpetition, in the ordinary course of business, the workforce-related plans, programs, and policies in effect immediately prior to the filing of these Chapter 11 Cases; (iii) authorizing the Debtors to pay any and all local, state, and federal withholding and payroll-related or similar taxes relating to prepetition periods; (iv) confirming the Debtors’ right to continue to deduct and to transmit deductions from payroll checks as authorized by employees, as required under any workforce-related plan, program, or policy, or as required by law; and

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: KP Engineering, LP (7785) and KP Engineering, LLC (0294). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 5555 Old Jacksonville Highway, Tyler, TX 75703.

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

(v) authorizing all banks to receive, process, honor, and pay all of the Debtors' prepetition checks and fund transfers on account of any obligations authorized to be paid pursuant hereto; and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States Constitution; and the 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 the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances and that no other or further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Motion and the hearing with respect to the Motion establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Debtors are authorized to pay or otherwise honor the Prepetition Workforce Obligations described in the Motion, to, or for the benefit of, the Workforce.

2. Unless otherwise provided in this Order, the Debtors are authorized to (a) continue each of the Workforce Programs, including but not limited to maintaining the Employee Benefits described in the Motion, in the ordinary course of business during the pendency of these cases in the manner and to the extent that such Workforce Programs were in effect immediately prior to the filing of these cases, and (b) continue to fund and to make payments in connection with the costs of and the expenses incurred in connection with any Workforce Program.

3. The Debtors are authorized, in their sole discretion, to transmit any Deductions previously withheld or deducted from the Employee payroll to the appropriate third party recipient.

4. The Debtors are authorized to pay any and all local, state, and federal withholding and payroll-related or similar taxes related to the Prepetition Workforce Obligations including, but not limited to, all withholding taxes, social security taxes, and Medicare taxes, whether withheld from Employees' wages or paid directly by the Debtors to governmental entities and whether such taxes relate to the period before or after the Petition Date.

5. The Debtors are authorized to reimburse the Employees for all Employee Reimbursement Obligations incurred prior to the Petition Date. In addition, the Debtors are authorized to make direct payments to third parties on account of amounts owed in connection with the Employee Reimbursement Obligations.

6. The Debtors are authorized to continue their Workers' Compensation Programs and to pay any outstanding prepetition claims, taxes, charges, assessments, premiums, and third party administrator fees arising under the workers' compensation policies and or programs in which they participate. In addition, the automatic stay of section 362 of the Bankruptcy Code is hereby lifted to allow Workers' Compensation Claims to proceed under the applicable workers' compensation policy and to allow the Debtors' insurance providers and/or third party administrators to negotiate, settle, and/or litigate Workers' Compensation Claims, and pay resulting amounts, whether such claims arose before or after the Petition Date.

7. Neither this Order, nor any payments made by the Debtors pursuant to the Motion or this Order, shall be deemed to change the classification of any claim or to in any way change the rights or create new rights of any Employee or other person, including without limitation, the

creation of any right to payment entitled to administrative expense priority pursuant to sections 503 and 507 of the Bankruptcy Code.

8. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against any of the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of any Debtor's or any other party in interest's rights to dispute any claim on any grounds; (c) an assumption, adoption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion, this Order or any order granting the relief requested by the Motion; (e) an admission as to the validity, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of any Debtor's estate; (f) a waiver of any Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (g) waiver of any claims or causes of action which may exist against any entity.

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 and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized and directed to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order, and the Debtors are authorized to replace any prepetition checks or electronic transfers relating to the prepetition obligations approved herein that may be dishonored or rejected.

10. Authorizations given to the Debtors in this Order empower but do not direct the Debtors to effectuate the payments specified herein. The Debtors retain the business judgment to

make or not make such payments. All payments are subject to the condition that funds are available to effect any payment and in no event shall any person (Debtor, officer, director or otherwise) be personally liable for any amounts authorized for payment herein but not paid.

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

12. 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 Bankruptcy Local Rules for the Southern District of Texas are satisfied by such notice.

13. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall take effect immediately upon its entry.

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

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

Signed: _____, 2019
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE