

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BEAVEX HOLDING CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-10316 (\_\_\_\_)

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION EMPLOYEE  
OBLIGATIONS, INCLUDING WAGES, SALARIES, AND OTHER  
COMPENSATION; (II) CERTAIN EMPLOYEE BENEFITS AND OTHER  
ASSOCIATED OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (the “Motion”) for the entry of interim and final orders, substantially in the forms attached hereto as Exhibit A (the “Proposed Interim Order”) and Exhibit B (the “Proposed Final Order”) and together with the Proposed Interim Order, the “Proposed Orders”), respectively, pursuant to sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of title 11 of the United States Code (the “Bankruptcy Code”) authorizing, but not directing, the Debtors to: (i) pay accrued prepetition employee obligations, including wages, salaries, and other compensation; (ii) continue to honor and pay certain employee benefits and other associated obligations (items (i) and (ii), all as described further below, and any additional obligations to employees not expressly included herein, collectively, the “Employee Obligations”);<sup>2</sup> and (iii) granting such other and further relief as the Court deems just and proper. The facts and

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Inc. (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

<sup>2</sup> The Debtors believe that the below list of compensation, benefits, and other obligations is a comprehensive list of obligations arising from the Debtors’ employee compensation and benefits programs. To the extent any program or obligation was inadvertently omitted, the term “Employee Obligations” includes such obligation.

circumstances supporting this Motion are set forth in the concurrently filed *Declaration of Donald Van der Wiel in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration").<sup>3</sup> In further support of this Motion, the Debtors respectfully state as follows:

### **JURISDICTION AND VENUE**

1. 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 District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final 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. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code.

### **BACKGROUND**

3. On the date hereof (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases, and no request has been made for the appointment of a trustee or examiner.

4. Additional information regarding the Debtors' business, capital structure and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

### **RELEVANT BACKGROUND**

#### **A. The Debtors' Workforce**

5. As of February 14, 2019, the Debtors employed approximately 369 employees (collectively, the "Employees"). Approximately 349 of the Debtors' Employees are full-time Employees and approximately 20 of the Debtors' Employees are part-time Employees. Of the Employees, approximately 162 are salaried and approximately 207 accrue wages on an hourly basis. None of the Employees are union members. Additionally, from time to time the Debtors employ temporary workers (the "Temporary Workers") through approximately ten temporary staffing agencies (the "Staffing Agencies") for, among other things, customer service, billing, warehousing and corporate back-office support functions. As of February 14, 2019, the Debtors retained approximately 117 Temporary Workers. Like the Debtors' Employees, the Debtors' operations rely on the continued availability and access to the Temporary Workers. Without the Temporary Workers, the Debtors would be required to train and hire replacement staff to perform the same necessary functions.

6. The Debtors' Employees, as with any business entity, perform a variety of critical functions for the Debtors and their knowledge, skills, and understanding of the Debtors' infrastructure, business operations, and vendor relations is essential to the success of these chapter 11 cases. The Employees are vital to preserving the Debtors' customer relationships,

maintaining brand value, and contributing to the integrity of the Debtors' services. Without the continued service and dedication of the Employees, it will be difficult, if not impossible, to operate the Debtors' business without an unexpected or inopportune interruption, and to maximize the value of the Debtors' estates. If the Debtors' payroll is interrupted, or the Debtors cannot promptly pay the prepetition Employee Obligations and continue to honor their Employee Benefits (as defined below) as described in this Motion, Employees may seek employment elsewhere, at a time where their continued dedication to the Debtors is most critical. Absent the requested relief, many Employees will suffer undue hardship and, in many instances, face serious financial duress. The negative impact on employee morale, and the potential loss of Employees and valuable customer relationships, at this critical juncture, would have a material adverse impact on the Debtors' businesses and chapter 11 efforts.

**B. Prepetition Wages and Related Obligations**

*i. Wages, Salaries and Other Compensation*

7. The Employees perform a broad spectrum of functions for the Debtors, including information technology services, customer service, product distribution, quality and compliance control, sales, marketing and administrative functions. For the past twelve (12) months, the Debtors' average gross weekly Employee compensation (including wages, salaries and commissions) totaled approximately \$385,000 ("Employee Wages").

8. The Debtors retain Choice Payroll, Inc. ("Choice") as their third party payroll processor to manage all of their payroll functions. Choice administers the payroll to Employees via direct deposit, ACH transfer or check. The Employees are paid bi-weekly on an alternating schedule, with hourly Employees being paid one week and salaried Employees the next. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued

Employee Wages (including the Employee share of Payroll Taxes and Deductions, defined and discussed below) earned prior to the Petition Date that remain unpaid by the Employees totals approximately \$1.0 million (collectively, the “Unpaid Wages”).

9. By this Motion, the Debtors request authority to pay all Unpaid Wages to their Employees in the ordinary course of business. The Debtors also request authority to pay all amounts owed to the Temporary Workers and the Staffing Agencies in the ordinary course of business (the “Temporary Worker Fees”). The Debtors do not believe that any of their Employees or Temporary Workers are owed more than \$12,850 for Unpaid Wages or Temporary Worker Fees as of the Petition Date. Accordingly, the Debtors believe that no individual Employee or Temporary Worker will be paid more than the statutory cap in Unpaid Wages or Temporary Worker Fees if this Court grants the requested relief, and the Debtors will not honor Unpaid Wages or Temporary Worker Fees in excess of \$12,850 without further order of the Court if they subsequently discover otherwise.

*ii. Employee Business Expenses*

10. Prior to the Petition Date, and in the ordinary course of the Debtors’ business, the Employees incurred various expenses on behalf of the Debtors in the scope of their employment, including, without limitation, expenses for meals, travel, car rentals, and other business-related expenses (the “Reimbursable Expenses”). In all cases, reimbursement is contingent on the Debtors’ determination that the charges are for legitimate reimbursable business expenses. The Debtors’ Employees typically incur Reimbursable Expenses on behalf of the Debtors through the use of their personal/corporate cards. The Debtors reimburse these Employees through accounts payable after the Employees submit and obtain approval of their

expenses. Based on expenses incurred in the preceding 12 months, the Debtors spend, on average, approximately \$40,000 per month on Reimbursable Expenses.

11. Because Employees do not always submit expense reports on an immediate basis, the Debtors are unable to determine precisely the aggregate amount of outstanding Reimbursable Expenses at any given time. Based on historical payments, the Debtors estimate that, as of the Petition Date, no more than \$25,000 in Reimbursable Expenses have been incurred and remain unpaid.

12. The Employees incurred all of the Reimbursable Expenses on the Debtors' behalf and with the understanding that they would be reimbursed in accordance with the Debtors' historic reimbursement practices. To avoid harming the individual Employees who have incurred such costs, the Debtors request authority to pay the Reimbursable Expenses, including paying any and all unpaid Reimbursable Expenses that accrued prepetition, subject to a cap of \$25,000 for Reimbursable Expenses accrued prepetition without further order of the Court.

*iii. Prepetition Withholdings and Deductions*

13. In general, Choice processes and forwards the employer's share of taxes due in connection with the Debtors' payroll (the "Payroll Taxes") to the appropriate federal, state, or local taxing authorities at the same time that it administers the Debtors' payroll checks and direct deposits. As of the Petition Date, accrued and unpaid prepetition Payroll Taxes total approximately \$105,000.

14. During each applicable pay period, Choice, in processing the Debtors' payroll, also deducts other amounts from certain paychecks, which Choice or the Debtors remit to various third party recipients (the "Deductions," and together with the Payroll Taxes, the

“Withholding Obligations”). These Deductions include: (a) the Employees’ portion of the applicable Payroll Taxes; (b) garnishments, child support, and similar deductions; (c) uniform deductions; and (d) other pre-tax and after-tax deductions payable pursuant to certain of the employee benefit plans discussed below (*e.g.*, an Employee’s share of health care benefits, insurance premiums, or 401(k) contributions, as applicable). The Debtors seek authority to continue processing the Withholding Obligations in the ordinary course of business, and to forward prepetition Withholding Obligations to the applicable third-party recipients.

**C. Employee Administrator Obligations**

15. The Debtors contract with Choice to process their payroll and coordinate the payment of Withholding Obligations. The ongoing services of Choice are imperative to the smooth functioning of the Debtors’ payroll system. The Debtors pay Choice approximately \$8,000 per month for their services (the “Payroll Administrator Obligations”). As of the Petition Date, the Debtors believe that they are current on the Payroll Administrator Obligations and that no amounts are due and owing on account of Choice’s prepetition services.

16. The Debtors seek authority, but not direction, to pay the Payroll Administrator Obligations in the ordinary course, regardless of when such obligations accrued.

**D. Employee Benefits and Programs**

17. In the ordinary course of business, the Debtors provide their full-time Employees, directly or indirectly, with a number of employee benefits (the “Employee Benefits”), including but not limited to: (a) a range of medical, dental, vision, long and short-term disability, accidental death and dismemberment coverage, life insurance coverage, and health and flexible spending accounts (collectively, the “Health Care Programs”); (b) vacation, holiday, sick, and other leave benefits (collectively the “PTO Benefits”); and (c) certain

retirement savings plans, including a 401(k) plan for certain Employees (the “Retirement Benefits,” and together with the Health Care Programs and the PTO Benefits, the “Employee Benefit Programs”).<sup>4</sup> Employee contributions for the Employee Benefit Programs, where applicable, are processed through payroll deductions from the participating Employees.

18. As of the Petition Date, approximately \$175,000 of unpaid prepetition obligations have accrued with respect to the Employee Benefit Programs. By this Motion, the Debtors seek authority to: (a) continue to provide the Employee Benefit Programs for their Employees in the ordinary course of business; (b) continue to honor their obligations under the Employee Benefit Programs, including any premiums and administrative fees; and (c) pay any amounts owed under the Employee Benefit Programs to the extent that they remain unpaid as of the Petition Date. The Employee Benefit Programs include:

(a) *Health Care Programs*

19. The Debtors offer Health Care Programs to their Employees and such Employees’ eligible dependents. The Health Care Programs include coverage for medical (the “Medical Plans”), dental (the “Dental Plan”), vision (the “Vision Plan”), long and short-term disability, and life and accidental death insurance (together, the “Income Protection Plans”), flexible spending accounts.

20. Medical Plans. The Debtors offer Medical Plans administered by HealthScope Benefits. The Medical Plans offer an array of coverage options, which include, among other things, preventative care, in-patient and out-patient services, prescription drug coverage, and urgent care. The Medical Plans are hybrid self-insured policies. The estimated

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<sup>4</sup> Where required under applicable non-bankruptcy law, including COBRA, the Debtors provide eligible Employees with the opportunity to continue participating in the applicable Employee Benefit Programs following their termination by the Debtors. The Debtors intend for the relief requested herein to apply to such former employees consistent with the Debtors’ prepetition practices and the requirements of applicable law.



monthly payment by the Debtors for the Medical Plans totals \$315,000. Following application of the monthly payments, the Debtors are responsible for Employee claims under the Medical plans up to a maximum of \$1.2 million, with all remaining claims being covered entirely by HealthScope Benefits. The Debtors estimate that, as of the Petition Date, they owe approximately \$225,000 in connection with accrued prepetition liabilities for the Medical Plans.

21. Dental Plan. The Debtors offer a Dental Plan administered by The Guardian Life Insurance Company of America (“Guardian”). The Dental Plan offers enrolled Employees coverage for, among other things, preventive and diagnostic services and dental procedures. The Dental Plan is partially funded through Employee paycheck withholdings.

22. Vision Plan. In addition, the Debtors offer a Vision Plan administered by Guardian. The Vision Plan offers enrolled Employees coverage for, among other things, vision exams, contact lenses, and glasses frames and lenses. The Vision Plan is partially funded through Employee paycheck withholdings.

23. Income Protection Plans. The Debtors maintain certain Income Protection Plans for the Employees, which are administered through Guardian. Specifically, the Debtors offer eligible Employees basic life and accidental death and dismemberment insurance equal to \$10,000, the cost of which is fully paid by the Debtors. The Debtors also provide certain short- and long-term disability benefits to their full-time Employees, which are also fully funded by the Debtors. The Debtors pay invoices on the Income Protection Plans, Dental Plan and Vision Plan together. The aggregate estimated monthly payment by the Debtors for the Income Protection Plans, Dental Plan and Vision Plan is approximately \$38,000. The Debtors estimate that, as of the Petition Date, approximately \$13,500 remains outstanding in connection with the Income Protection Plans, Dental Plan and Vision Plan. In addition, Employees can elect to purchase

supplemental coverage plans, including additional life insurance, critical illness insurance, accident insurance, and hospital indemnity (the “Supplemental Coverage”). The Supplemental Coverage is paid entirely by participating Employees through paycheck withholdings.

24. Flexible Spending Accounts & Health Savings Accounts. The Debtors provide Employees with flexible spending accounts (the “FSAs”) and health savings accounts (“HSAs”) through GIS Benefits – Boon Chapman and Health Equity Bank, respectively. The FSAs and HSAs work similar to a savings account—each pay period, funds are deducted from eligible Employees’ pay on a pre-tax basis and deposited into the Employees’ FSAs or HSAs. The Debtors do not make contributions to the FSAs or HSAs. By this Motion, the Debtors seek authority to continue to provide the FSAs and HSAs and to make the necessary pay-period deductions in the ordinary course of business.

*(b) PTO Benefits*

25. The Debtors provide their full-time Employees with paid time off (the “Paid Time”), which is calculated based on length of service and accrued on a monthly basis. Employees are entitled to carry over a maximum of 40 hours of unused Paid Time per year. In addition, Employees are eligible to receive pro-rated Paid Time based on the full-time schedule and receive up to 20 sick/personal days per year (the “Personal Leave”). Employees also receive paid holiday time, in an approximate amount of six holidays per year. In addition to these PTO Benefits, the Debtors offer additional leave policies to eligible Employees, such as bereavement and jury duty leave.

26. Historically, the Debtors have paid eligible Employees accrued and unused PTO Benefits upon termination. In addition, Employees may be required by applicable state law to receive a cash payment on account of certain of their accrued PTO Benefits upon

separation from the Debtors, and the Debtors honor these obligations when they arise. Other than upon termination or as required under applicable state law, the Debtors do not pay Employees cash in lieu of time off on account of PTO Benefits.

27. The Debtors herein request authority, in their discretion, to continue in the ordinary course of business to provide the PTO Benefits, consistent with current policies and to honor accrued PTO Benefits. No Employee will be paid more than \$12,850, in the aggregate, for PTO Benefits and Unpaid Wages unless required by applicable state law, without further order of the Court.

(c) *Retirement Programs*

28. Certain of the Debtors' Employees are eligible for a 401(k) retirement savings plan (the "401(k) Plan"). In addition, subject to a six-year vesting schedule, the Debtors offer a matching contribution to the 401(k) Plan of 10 cents on the dollar invested by certain eligible Employees, up to six (6%) percent of such Employee's salary. The 401(k) Plan is maintained through Fidelity Management & Research Company in accordance with section 401 of the Internal Revenue Code.

29. The Debtors request authority, but not direction, to maintain the 401(k) Plan in the ordinary course during the administration of these chapter 11 cases, to make the necessary payroll deductions in the ordinary course of business, and to honor obligations under the 401(k) Plan, regardless of when such obligations arose.

**E. Workers' Compensation Program**

30. The laws of various states require the Debtors to maintain workers' compensation insurance (the "Workers' Compensation Program") to provide their Employees with coverage for injury claims arising from or related to their employment with the Debtors.

The Debtors request authority to continue their Workers' Compensation Program in the ordinary course and to honor any payments owed related thereto, including policy premiums and any deductibles, regardless of when such obligations arose.

31. To implement the Workers' Compensation Program, the Debtors maintain a workers' compensation policy with One Beacon Insurance Group (the "One Beacon"), which was renewed through and including December 31, 2019. The annual premium on the One Beacon policy totals approximately \$132,296. The Debtors have no deductible under the One Beacon policy.

32. The Debtors seek authority, but not direction, to continue to pay all amounts associated with the Workers' Compensation Program, including, without limitation, related premium amounts, in the ordinary course, and honor any payments owed with respect to the Workers' Compensation Program, regardless of when such obligations arose.

### **RELIEF REQUESTED**

33. By this Motion, the Debtors seek interim and final authority under sections 105(a), 363(b), 507(a)(4), and 507(a)(5) of the Bankruptcy Code to: (i) authorizing, but not directing, the Debtors to (a) honor their prepetition Employee Obligations, (b) continue their Employee Benefit Programs and their Workers' Compensation Program on a postpetition basis, including honoring prepetition amounts related thereto, and (c) pay all fees and costs related thereto, including, without limitation, to Choice; (ii) authorizing the Banks to receive, process, honor, and pay all checks and electronic funds transfers related thereto; and (iii) granting related relief.

### **BASIS FOR RELIEF**

34. The uninterrupted provision of the Employee Obligations is crucial to the success of the Debtors' reorganization efforts. Any delay in paying the Debtors' Employees or

Temporary Workers could severely disrupt the Debtors' relationship with their Employees and dedicated non-employee personnel and irreparably harm morale at the very time that their dedication, confidence, support and cooperation is most critical. At this stage, the Debtors cannot risk the substantial disruption of their business operations that would attend any decline in workforce morale attributable to the Debtors' failure, or worse, inability to pay or honor, the Employee Wages, Employee Benefits, and related obligations described herein.

35. In addition, absent payment and honoring of the Employee Wages and Employee Benefits, Employees and Temporary Workers would suffer hardship and, in many instances, financial duress. The Debtors' workforce depends on its employment income to meet personal financial obligations.

**A. A Significant Portion of the Employee Obligations Is Entitled to Priority Treatment**

36. Section 507(a)(4)(A) of the Bankruptcy Code grants priority status to up to \$12,850 for employee claims for "wages, salaries, or commission, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date. 11 U.S.C. § 507(a)(4)(A). Similarly, section 507(a)(5) of the Bankruptcy Code grants priority to contributions to employee benefit plans, up to an aggregate amount of \$12,850 multiplied by the number of employees covered, less any amounts paid to such employees under section 507(a)(4) of the Bankruptcy Code.

37. Indeed, "[w]age priority has been a feature of the bankruptcy law since 1898." *In re Garden Ridge Corp.*, No. 04-10324 (KJC), 2006 WL 521914, at \*2 (Bankr. D. Del. Mar. 2, 2006) (citing 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 507.05[1] (15th ed. 2005)). Its purpose is to "alleviate hardship on workers . . . who may have no other source of income and "to encourage employees to stand by an employer in financial difficulty."

*Id.* (citing 4 *Collier on Bankruptcy* ¶ 507.05[1]). This priority extends to certain other “benefits that are considered akin to compensation, such as vacation, severance and sick leave pay.” *Id.*

38. The Debtors believe that a substantial portion of the Employee Obligations relating to the period prior to the Petition Date constitutes priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. Amounts that are paid on account of priority claims for the majority of the Employee Obligations would not otherwise be available for distribution to general unsecured creditors. Therefore, the Debtors’ general unsecured creditors will not be prejudiced by permitting priority obligations to be satisfied in the ordinary course of business during these chapter 11 cases. Indeed, the Debtors submit that payment of Employee Obligations at this time enhances value for the benefit of the Debtors and all interested parties by retaining the Debtors’ Employees.

**B. The Debtors Should Be Authorized to Pay the Employee Obligations Under Sections 1107(a) and 1108 of the Bankruptcy Code**

39. 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, LLC*, 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.*

40. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims is 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 is 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.

41. Payment of the Employee Obligations as set forth herein meets each element of the *CoServ* court's standard. The Debtors' operations are complex, and rely on the skill and expertise of their Employees. Many Employees possess unique knowledge regarding specific aspects of the Debtors' operations, which would be virtually irreplaceable should such Employees be lost through a failure to pay their obligations. In addition, any failure by the Debtors to pay the Employee Obligations as set forth herein would negatively impact Employee morale at a critical time for the Debtors and their business. The Employees are also critical to the Debtors' ability to maintain their operations consistent with past practices, which would be impossible without the Employees' continued efforts. The damage to the value of the Debtors' business and, hence, the costs to creditors as a whole, would be immediate and irreparable if the Employee Obligations were not met. In short, the potential harm and economic disadvantage that would stem from the failure to pay the Employee Obligations as set forth herein greatly outweighs the amount of any prepetition claims that the Debtors are seeking authorization to pay.

42. The Debtors have determined in their business judgment that to avoid significant disruption to their business operations there exists no practical or legal alternative to the payment of the Employee Obligations as set forth herein. Therefore, the Debtors can only

meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code if they continue to pay and honor the Employee Obligations as set forth herein.

**C. Payment of the Employee Obligations is Warranted Pursuant to Sections 105(a) and 363 of the Bankruptcy Code**

43. Sections 105(a) and 363(b) of the Bankruptcy Code authorize the requested relief. Section 105(a) of the Bankruptcy Code allows the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code.]” 11 U.S.C. § 105(a). It permits a bankruptcy court to take whatever action “is appropriate or necessary in aid of the exercise of its jurisdiction.” 2 *Collier on Bankruptcy* ¶ 105.01, at 105-6 (15th ed. rev. 2008). Similarly, section 363(b)(1) of the Bankruptcy Code authorizes a debtor to use property of the estate other than in the ordinary course of business after notice and a hearing. 11 U.S.C. § 363(b)(1).

44. Courts have routinely authorized debtors to pay prepetition wage and employee claims pursuant to sections 105 and 363 of the Bankruptcy Code where such payment was necessary to ensure the debtor’s continued, uninterrupted operation. *See, e.g., Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 288 (S.D.N.Y. 1987) (affirming a bankruptcy court decision to authorize the debtor to pay prepetition wages, salaries and various employee benefits); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (authorizing debtor to pay employee prepetition wages, salaries and benefits).

45. The well-settled “necessity of payment” doctrine also supports the requested relief. This rule authorizes postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286, 311 (1882) (articulating



legal theory later termed the “doctrine of necessity” or the “‘necessity of payment’ doctrine” and holding that payment of pre-receivership claim prior to reorganization was permitted to prevent stoppage of crucial business relations); *In re Boston and Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation); *Southern Ry. Co. v. Flournoy*, 301 F.2d 847, 852 (4th Cir. 1962) (“The principle of necessity of payment [espoused in *Miltenberger*] has since been carried into different factual surroundings as the basis for granting superiority to business-operating accounts.”); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (granting approval to pay prepetition claims of certain trade vendors which were critical to the debtors’ reorganization); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business).

46. Debtors frequently invoke the necessity of payment doctrine early in a chapter 11 case when preservation of the estate proves most critical and often extremely difficult. For that reason, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay certain critical prepetition claims under section 105(a) if “authorizing the payment of the prepetition debt creates ‘the greatest likelihood of . . . payment of creditors in full or at least proportionately.’” *In re Structurelite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988); *see also In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (stating that “to justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the [c]hapter 11 process”); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (“necessity of payment” rule “recognizes the existence

of the judicial power to authorize a debtor in a chapter 11 case to pay prepetition claims where such payment is essential to the continued operation of the debtor”).

47. Courts have recognized that the “necessity of payment rule” squarely applies where a debtor’s employees must be paid on time to assure their continued service and loyalty during a chapter 11 case. *See, e.g., Ionosphere Clubs*, 98 B.R. at 174 (permitting Eastern Air Lines to pay its employees’ prepetition wages, salaries, medical benefits and business expense claims under the “necessity of payment” doctrine). This Court, in other cases, has routinely approved the payment of prepetition claims of employees and independent contractors for wages, salaries, expenses and benefits, on the grounds that the payment of such claims was necessary to a successful chapter 11 outcome.

**D. Payment of the Withholding Obligations Is Appropriate Under Section 541 of the Bankruptcy Code**

48. The Debtors submit that further cause exists to authorize the payment to the appropriate entities of the Withholding Obligations. The Withholding Obligations principally comprise Employee earnings that governments, Employees and judicial authorities have designated for deduction from pay. The Debtors do not believe that such amounts are property of the Debtors’ estates under section 541 of the Bankruptcy Code, and, therefore, such funds are not available for general distribution to the Debtors’ creditors. *See* 11 U.S.C. § 541(b)(7) (amounts withheld from employee paychecks by employer for contribution to employee benefit plan are not property of the estate).

49. In addition to causing undue hardship to certain Employees, the failure to pay the Withholding Obligations may result in the Debtors being inundated with inquiries from taxing authorities and garnishors regarding their failure to submit, among other things, taxes and child support and alimony payments, which are not the Debtors’ property, but have been

withheld from Employee paychecks. Moreover, if the Debtors cannot remit these amounts, the affected Employees may face legal action and/or imprisonment due to the Debtors' failure to submit these payments.

50. Further, many federal, state and local taxing authorities impose personal liability on the officers and directors of entities responsible for collecting taxes from employees to the extent any such taxes are collected but not remitted. Accordingly, if these amounts remain unpaid, there is a risk that the Debtors' officers and directors may be subject to lawsuits on account of any such nonpayment during the pendency of these chapter 11 cases. Such lawsuits obviously would constitute a significant distraction for officers and directors at a time when they should be focused on the Debtors' restructuring efforts. To avoid the serious disruption of the Debtors' restructuring efforts that could result from the nonpayment of any withholding taxes, the Debtors seek authority to remit all Withholdings Obligations collected on behalf of the Employees, including prepetition Withholdings Obligations, to the applicable taxing authorities to the extent that they have not already been remitted.

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

51. The Debtors also request that the Court authorize all applicable Banks to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Employee Obligations, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

**SATISFACTION OF BANKRUPTCY RULE 6003(b)**

52. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims

within twenty-one days of the Petition Date requires the Debtors to demonstrate that such relief “is necessary to avoid immediate and irreparable harm.” Fed R. Bankr. P. 6003(b). There is no question that the Debtors’ failure to honor their Employee Obligations as provided herein would likely result in immediate and irreparable harm to the Debtors.

53. For this reason, the Debtors will suffer immediate and irreparable harm without Court authorization to pay the Employee Obligations and other related relief requested herein. Accordingly, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**WAIVER OF BANKRUPTCY RULE 6004(h)**

54. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion, any delay in paying the Employee Obligations would be detrimental to the Debtors, their estates, and creditors. Indeed, the Debtors’ ability to operate their businesses without unexpected or inopportune interruption requires, in large part, an able and willing workforce, which the Debtors currently have in the Employees. Any delay in paying the Employee Obligations would cause irreparable harm to the Debtors, their creditors and their estates.

55. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the notice requirements under Bankruptcy Rule 6004(a) and fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders.

**DEBTORS' RESERVATION OF RIGHTS**

56. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' or any party in interest's rights to dispute and/or contest any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute and/or contest such claim.

**NOTICE**

57. Notice of this Motion has been or will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Debtors' Banks; (v) the Debtors' thirty (30) largest unsecured creditors; and (vi) counsel to the Debtors' prepetition secured lenders and proposed post-petition secured lender. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors request entry of the Proposed Orders, granting the relief requested herein and such other and further relief as is just and proper.

Dated: Wilmington, Delaware  
February 18, 2019

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Donald J. Bowman, Jr.*

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Joseph M. Barry (No. 4221)  
Matthew B. Lunn (No. 4119)  
Donald J. Bowman, Jr. (No. 4383)  
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*Proposed Counsel for the Debtors  
and Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	Chapter 11
BEAVEX HOLDING CORPORATION, <i>et al.</i> , <sup>1</sup>	Case No. 19-10316 (___)
Debtors.	Jointly Administered
	Ref. Docket No. _____

**INTERIM ORDER AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION  
EMPLOYEE OBLIGATIONS, INCLUDING WAGES, SALARIES, AND OTHER  
COMPENSATION; (II) CERTAIN EMPLOYEE BENEFITS AND OTHER  
ASSOCIATED OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an interim order (the “Interim Order”), pursuant to sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors to: (i) pay accrued prepetition employee obligations, including wages, salaries, and other compensation; (ii) continue to honor and pay certain employee benefits and other associated obligations (items (i) and (ii), all as described further in the Motion, and any additional obligations to employees not expressly included therein, collectively, the “Employee Obligations”); and (iii) granting such other and further relief as the Court deems just and proper; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Inc. (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.



pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order herewith consistent with Article III of the U.S. Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; 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. Except as otherwise set forth herein, the Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor: (i) Unpaid Wages, in an amount not to exceed \$650,000 on an interim basis, (ii) Temporary Worker Fees, in an amount not to exceed \$290,000 on an interim basis, (iii) Reimbursable Expenses, in an amount not to exceed \$25,000 on an interim basis, (iv) Withholding Obligations, in an amount not to exceed \$90,000 on account of Payroll Taxes on an interim basis, (v) Payroll Administrator Obligations; (vi) Employee Benefit Programs, and (vii) the Workers' Compensation Program. Notwithstanding anything to the contrary contained herein, except as provided by further order of this Court, the Debtors shall not make any payments in excess of the \$12,850 statutory cap provided under 11 U.S.C. § 507(a)(4) on account of Unpaid Wages or any other Employee Obligations, as applicable to any one Employee, or on account of any Temporary Worker Fees owed to any one Temporary Worker; *provided, however,* that payments to any Employee on account of PTO shall not exceed \$12,850,

less any amounts received by such Employee on account of Unpaid Wages, except to the extent required under applicable nonbankruptcy law.

3. The Debtors are authorized, but not directed, in their discretion, to maintain, and to continue to honor and pay all amounts with respect to the Employee Obligations and Employee Benefit Programs as such were in effect as of the commencement of these chapter 11 cases and as such may be modified, amended, or supplemented from time to time, in the ordinary course of business and to honor and pay any fees, costs, and expenses incident to the Employee Obligations and Employee Benefit Programs, including amounts owed to third-party administrators.

4. The Banks are authorized to honor prepetition payroll checks, drafts and transfers on or after the Petition Date and, to the extent any Bank may have honored any prepetition payroll checks, drafts and transfers prior to the Petition Date, such honoring is ratified. The Banks are authorized to process and honor all other checks and transfers issued for payments approved by this Interim Order and/or reissue checks for any payments approved by this Interim Order where checks may have been dishonored postpetition.

5. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' or any party in interest's rights to subsequently dispute and/or contest such claim or lien, (c) the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code, or (d) a grant of third-party beneficiary status or bestowal of any additional rights on any third party.

6. A final hearing on the relief sought in the Motion shall be conducted on \_\_\_\_\_, 2019 at \_\_:\_\_\_.m. (prevailing Eastern Time). Any party-in-interest objecting to the relief sought at the Final Hearing or the Proposed Final Order shall file and serve a written objection, which objection shall be served upon (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn: Donald Van der Wiel ([dvanderwiel@beavex.com](mailto:dvanderwiel@beavex.com))); (ii) counsel to the Debtors; (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Joseph M. Barry, Esq. ([jbarry@ycst.com](mailto:jbarry@ycst.com)), Matthew B. Lunn, Esq. ([mlunn@ycst.com](mailto:mlunn@ycst.com)), and Donald J. Bowman, Jr., Esq. ([dbowman@ycst.com](mailto:dbowman@ycst.com))); (iii) counsel to the Debtors' prepetition secured lenders and proposed postpetition secured lenders, Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn. Carey D. Schreiber, Esq. ([cschreiber@winston.com](mailto:cschreiber@winston.com))) and, Ashby & Geddes, 500 Delaware Avenue, P.O. 1150, Wilmington, Delaware 19899 (Attn. Gregory Taylor, Esq. ([gtaylor@ashbygeddes.com](mailto:gtaylor@ashbygeddes.com))); and (iv) counsel to any statutorily appointed committee in the Chapter 11 Cases so as to be received no later than \_\_\_\_\_, 2019 at 4:00 p.m. (ET). If no objections to the entry of the Proposed Final Order are timely filed, this Court may enter the Proposed Final Order without further notice or a hearing.

7. Nothing in this Interim Order authorizes any payment subject to section 503(c) of the Bankruptcy Code.

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

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

10. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Interim Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge

**EXHIBIT B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BEAVEX HOLDING CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-10316 (\_\_\_)

Jointly Administered

Ref. Docket Nos. \_\_\_ & \_\_\_

**FINAL ORDER AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION  
EMPLOYEE OBLIGATIONS, INCLUDING WAGES, SALARIES, AND OTHER  
COMPENSATION; (II) CERTAIN EMPLOYEE BENEFITS AND OTHER  
ASSOCIATED OBLIGATIONS; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of a final order (the “Final Order”), pursuant to sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors to: (i) pay accrued prepetition Employee wages, salaries, and other compensation; (ii) continue to honor and pay accrued prepetition compensation of temporary workers and third-party sales representatives; (iii) reimburse Employees for business expenses incurred prepetition on behalf of the Debtors in the ordinary course of business; (iv) honor prepetition obligations in respect of, and continue in the ordinary course of business, the Debtors’ paid time off policies, and Employee benefit programs and plans (all as described more fully below, the “Employee Benefits”); (v) pay all prepetition payroll taxes and other deductions and withholdings; (vi) continue their Workers’ Compensation Program and honor obligations related thereto; and (vii) pay any prepetition claims of third-party

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Inc. (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

<sup>2</sup> All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

payroll and other administrators (items (i) through (vii), and any additional obligations to Employees not expressly included herein, collectively, the “Employee Obligations”); and (b) authorizing and directing banks and other financial institutions (the “Banks”) to honor and pay all checks and transfers drawn on the Debtors’ accounts related to the foregoing obligations; and upon consideration of the First Day Declaration; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order herewith consistent with Article III of the U.S. Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and the Court having entered that certain interim order with respect thereto; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; 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. Except as otherwise set forth herein, the Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, but not obligated or directed, in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor: (i) Unpaid Wages, in an amount not to exceed \$1 million, (ii) Temporary Worker Fees, in an amount not to exceed \$450,000, (iii) Reimbursable Expenses, in an amount not to exceed \$25,000, (iv) Withholding Obligations, in an amount not to exceed \$105,000 on account of

Payroll Taxes, (v) Payroll Administrator Obligations, (vi) Employee Benefit Programs, and (vii) Workers' Compensation Program. Notwithstanding anything to the contrary contained herein, except as provided by further order of this Court, the Debtors shall not make any payments in excess of the \$12,850 statutory cap provided under 11 U.S.C. § 507(a)(4) on account of Unpaid Wages or any other Employee Obligations, as applicable to any one Employee, or on account of any Temporary Worker Fees owed to any one Temporary Worker; *provided, however*, that payments to any Employee on account of PTO shall not exceed \$12,850, less any amounts received by such Employee on account of Unpaid Wages, except to the extent required under applicable nonbankruptcy law.

3. The Debtors are authorized, but not directed, in their discretion, to maintain, and to continue to honor and pay all amounts with respect to the Employee Obligations and Employee Benefit Programs as such were in effect as of the commencement of these chapter 11 cases and as such may be modified, amended, or supplemented from time to time, in the ordinary course of business and to honor and pay any fees, costs, and expenses incident to the Employee Obligations and Employee Benefit Programs, including amounts owed to third-party administrators.

4. The Banks are authorized to honor prepetition payroll checks, drafts and transfers on or after the Petition Date and, to the extent any Bank may have honored any prepetition payroll checks, drafts and transfers prior to the Petition Date, such honoring is ratified. The Banks are authorized to process and honor all other checks and transfers issued for payments approved by this Final Order and/or reissue checks for any payments approved by this Final Order where checks may have been dishonored postpetition.



5. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute, (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' or any party in interest's rights to subsequently dispute and/or contest such claim or lien, (c) the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code, or (d) a grant of third-party beneficiary status or bestowal of any additional rights on any third party.

6. Notwithstanding anything to the contrary contained herein, (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any orders regarding the use of cash collateral or access to postpetition debtor-in-possession financing approved by the Court in these chapter 11 cases (including with respect to any budgets governing or relating to such use) and (b) to the extent there is any inconsistency between the terms of such cash collateral and debtor-in-possession financing orders and any action taken or proposed to be taken hereunder, the terms of such cash collateral and debtor-in-possession financing orders shall control.

7. Nothing in this Final Order authorizes any payment subject to section 503(c) of the Bankruptcy Code.

8. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a).

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

10. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the implementation of this Final Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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United States Bankruptcy Judge