

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

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In re:	:	Chapter 11
	:	
CELADON GROUP, INC., <i>et al.</i> , ¹	:	Case No. 19-_____ (____)
	:	
Debtors.	:	(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION WAGES
AND COMPENSATION AND MAINTAIN AND CONTINUE EMPLOYEE BENEFIT
PROGRAMS FOR THE CONTINUING EMPLOYEES AND (II) AUTHORIZING AND
DIRECTING BANKS AND COMDATA TO HONOR AND PROCESS CHECKS AND
TRANSFERS RELATED TO SUCH EMPLOYEE OBLIGATIONS**

Celadon Group, Inc. and its affiliated debtors (collectively, the “Debtors”), by and through their proposed counsel, DLA Piper LLP (US), hereby submit this motion (the “Motion”) for entry of interim and final orders, substantially in forms attached hereto as Exhibit A and Exhibit B respectively, (i) authorizing the Debtors to: (a) pay prepetition wages and other compensation, taxes and withholdings and (b) maintain and continue Employee Benefit Programs (defined below), solely for the Continuing Employees (defined below), and (ii) authorizing and directing the applicable bank and financial institution at which the Debtors maintain disbursement and other accounts (collectively, the “Banks”) and Comdata Network, Inc. (“Comdata”), a third-party

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celadon Group, Inc. (1050); A R Management Services, Inc. (3604); Bee Line, Inc. (5403); Celadon Canadian Holdings, Limited (2539); Celadon E-Commerce, Inc. (2711); Celadon International Corporation (5246); Celadon Logistics Services, Inc. (0834); Celadon Mexicana, S.A. de C.V. (6NL7); Celadon Realty, LLC (2559); Celadon Trucking Services, Inc. (6138); Distribution, Inc. (0488); Eagle Logistics Services Inc. (7667); Hyndman Transport Limited (3249); Jaguar Logistics, S.A. de C.V. (66D1); Leasing Servicios, S.A. de C.V. (9MUA); Osborn Transportation, Inc. (7467); Quality Companies LLC (4073); Quality Equipment Leasing, LLC (2403); Quality Insurance LLC (7248); Servicios Corporativos Jaguar, S.C. (78CA); Servicios de Transportación Jaguar, S.A. de C.V. (5R68); Stinger Logistics, Inc. (3860); Strategic Leasing, Inc. (7534); Taylor Express, Inc. (9779); Transportation Insurance Services Risk Retention Group, Inc. (7197); Vorbas, LLC (8936). The corporate headquarters and the mailing address for the Debtors listed above is 9503 East 33rd Street, One Celadon Drive, Indianapolis, IN 46235.

paperless payroll processor, to honor and process checks and transfers related to such employee obligations. In support of this Motion, the Debtors rely upon, and incorporate by reference the *Declaration of Kathryn Wouters in Support of Chapter 11 Filings and First Day Pleadings* (the “First Day Declaration”),² filed contemporaneously with this Motion. In further support of this Motion, the Debtors respectfully state as follows::

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over these chapter 11 cases, the Debtors, property of the Debtors’ estates and this matter under 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 February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these chapter 11 cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested in this Motion are sections 105(a), 363(b)(1), 363(c)(1), 507(a), 1107, and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 4001, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 9013-1(m).

² Capitalized terms not otherwise defined in this Motion shall have the meanings given to them in the First Day Declaration.

BACKGROUND

5. Celadon Group, Inc. and its affiliated debtors are one of the largest North American truckload freight transportation carriers, providing point-to-point shipping, warehousing, supply chain logistics, tractor leasing and other transportation and logistics services for major customers throughout North America. Specifically, the Debtors provide long haul, regional, local, dedicated, intermodal, temperature-protect, and expedited freight services across the United States, Canada and Mexico. Amid industry-wide headwinds, including falling freight rates, the Debtors began to experience liquidity constraints and worked with their key stakeholders to identify a solution that would maximize enterprise value for the benefit of all stakeholders. On the date hereof (the “Petition Date”), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors continue to be in possession of their assets, oversee their businesses, and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors’ chapter 11 cases. No date has been set for a meeting pursuant to section 341 of the Bankruptcy Code.

7. Additional factual background regarding the Debtors, including their business operations, capital and debt structures, and the events leading to the filing of these chapter 11 cases, is set forth in detail in the First Day Declaration, which is fully incorporated into this Motion by reference.

RELIEF REQUESTED

8. By this Motion, the Debtors seek to eliminate any personal hardship to their employees and independent contractors as a result of the filing of these chapter 11 cases and to

minimize the disruption to the Debtors' efforts to wind down their operations. As of the Petition Date, certain of the Debtors' prepetition obligations to their Employees, Independent Contractors (each as defined below) or other third parties (collectively, the "Prepetition Workforce Obligations"), remain unpaid or not yet provided because, among other things: (a) the Debtors commenced these chapter 11 cases in the beginning of a payroll period and payroll is paid in arrears, (b) checks previously issued on account of employee and independent contractor obligations may not have been presented for payment or may not have cleared the banking system, (c) amounts related to prepetition services, while accrued in whole or in part, had not yet become due and payable by the Debtors, and (d) amounts deducted from Employee paychecks were not then due to be paid over to the intended recipient or account, including (i) deductions taken from Employees' paychecks to make payments on behalf of the Employees for or with respect to the Debtors' Employee Benefit Programs (as defined below) or amounts due to third parties in connection therewith, and (ii) withholdings from Employees' paychecks on account of various federal, state or local income, state disability, unemployment and other taxes for remittance to the appropriate federal, state or local taxing authority.

9. By this Motion, the Debtors seek authority, but not to be directed, in accordance with the budget approved by the Debtors' lenders to pay or provide as they become due all Prepetition Workforce Obligations and the related administrative fees that have already accrued. The Debtors also request confirmation of their right to continue to perform their obligations with respect to the Employee Benefit Programs (as defined below), solely for the Continuing Employees (defined below), in accordance with the budget approved by the Debtors' lenders. Such relief, including any and all authorizations or payments requested herein, shall be subject to and implemented in accordance with the provisions of any orders of this Court approving any

debtor in possession financing, or any use of cash collateral by the Debtors, including any approved budget in connection therewith.

10. The Debtors seek authority to pay or honor, in their discretion, the following Prepetition Workforce Obligations, subject to the limits in the chart below:

Prepetition Workforce Obligations	Amount
Unpaid Compensation (including Withholding Taxes and Obligations)	\$3,900,000
Independent Contractors	\$528,000
Termination Bonus Program	\$1,015,000
Employee Benefit Programs ³	\$0
Total	\$5,443,000.00

11. The Debtors further request that the Court: (a) authorize and direct the Banks and Comdata to receive, process, honor, and pay all of the Debtors' prepetition checks and fund transfers on account of any of the Prepetition Workforce Obligations; (b) prohibit the Banks and Comdata from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Prepetition Workforce Obligations; and (c) authorize the Debtors to issue new postpetition checks or effect new postpetition fund transfers on account of the Prepetition Workforce Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

THE DEBTORS' WORKFORCE, COMPENSATION, AND BENEFITS

I. The Debtors' Workforce

12. As of the Petition Date, the Debtors' workforce total approximately 3,800 Employees. Approximately 2,500 of the Debtors' Employees are truck drivers, working

³ Effective as of the Petition Date, the Debtors have terminated the Employee Benefit Programs for all Employees except the Continuing Employees (defined below).

nationwide and peripherally across the United States, Mexico and Canada (the “Driver Employees”). Non-Driver Employees perform largely administrative functions (the “Administrative Employees” and, collectively with the Driver Employees, the “Employees”), the majority of whom work at the Debtors’ headquarters in Indianapolis, Indiana with the remainder based at the Debtors’ other operating locations across the United States, Mexico, and Canada.

13. In addition to the Employees, the Debtors supplement their workforce with approximately 380 independent contractors (collectively, the “Independent Contractors”). The Independent Contractors work across the Debtors’ business units and are critical to day-to-day operations. The Independent Contractors have varied roles, including but not limited to supplementing the Debtors’ Driver Employee workforce. On average and in aggregate, the Debtors pay the Independent Contractors approximately \$5,040,000 per month. As of the Petition Date, the Debtors estimate that approximately \$528,000 remains due and owing to the Independent Contractors for services rendered through the Petition Date. As with their Employees, any delay in payments to the Independent Contractors, would cause severe personal hardship as a result of the filing of these chapter 11 cases and would significantly disrupt the Debtors’ ability to proceed with an orderly wind down of their operations. Accordingly, the Debtors seek authority, but not direction, to pay any pre-petition amounts outstanding up to the statutory cap of \$13,650 to the Independent Contractors and seek to continue to utilize such Independent Contractors as necessary or appropriate in the orderly wind down of the Debtors’ operations.

II. Prepetition Wages, Salaries, and Other Compensation

A. Unpaid Compensation

14. In the ordinary course of business, the Debtors pay their Employees on a biweekly, weekly or semi-monthly bases, in arrears. Employees are salaried, hourly, or paid by the mile. In addition, certain Employees are eligible for overtime pay at 1.5 times their hourly wage. While

the majority of the Employees are paid on Fridays, certain Administrative Employees are paid on Wednesday or Thursday, or whichever dates bifurcate the month, while others are always paid on the tenth and twenty-fifth of the month. The Debtors' first postpetition scheduled payroll date for the Employees is December 10, which will compensate Employees for prepetition services. On average, the Debtors' monthly payroll for their Employees is approximately \$12,768,000. As of the Petition Date, the Employees are owed approximately \$3,900,000 in accrued and unpaid compensation (the "Unpaid Compensation").

15. The Debtors utilize the services of ADP, LLC ("ADP"), a third-party payroll administrator, to process their Administrative Employee payroll and coordinate the remittance of Withholding Taxes and Obligations (as defined below) for Administrative Employees. The Debtors remit a lump sum payment into a specified ADP account, which ADP uses to fund payroll. ADP deducts a service fee in the amount of approximately \$1,800 per week (the "ADP Service Fee"). The Debtors seek authority to continue to administer and process their Administrative Employee payroll and to pay ADP amounts owed by allowing the Debtors to transfer the amount due to ADP to the Debtors' ADP payroll account and thus allowing ADP to deduct the prepetition ADP Service Fee from the amounts transferred to the payroll account to the extent ADP has not already deducted the ADP Service Fee

16. The Debtors also utilize the services of Comdata to coordinate payroll for most Driver Employees. The Debtors administer payroll for most Driver Employees through Comdata by loading funds on to paperless PIN-activated payroll cards ("Paycards") provided by Comdata and issued by Regions Bank for each participating Driver Employee every Wednesday, allowing for payroll to be paid that Friday. Comdata charges a load fee in the amount of \$0.75 and a direct deposit fee in the amount of \$0.25 per Paycard, per pay period (the "Comdata Service Fee"). The

Debtors seek authority to continue to administer and process their Driver Employee payroll through Comdata and to pay Comdata amounts owed, including any prepetition Comdata Service Fee.

17. In addition, the Debtors process payroll and coordinate the remittance of Withholding Taxes and Obligations for certain other Employees, which the Debtors seek authority through this Motion to continue.

18. In connection with the wages and salaries paid to their Employees, the Debtors are required by law to withhold from their Employees' paychecks certain amounts for federal, state, and local income taxes and other payments, employee benefits, employee programs, and unemployment insurance (collectively, the "Withholding Taxes and Obligations") and to remit the withheld amounts to the appropriate taxing and other governmental authorities in the United States, Mexico and Canada (collectively, the "Authorities"). As part of the service they provide to the Debtors, ADP remits the Withholding Taxes and Obligations directly to the appropriate Authorities for certain Employees. The Debtors remit the Withholding Taxes and Obligations to the appropriate Authorities regarding the Driver Employees and other Employees where the Debtors process and administer payroll internally. The Debtors seek authority through this Motion to continue with both practices.

B. Termination Bonus Program

19. The Debtors will incentivize the Driver Employees and Independent Contractors to complete the truckload haul trips in progress on the Petition Date and to return the Debtors' equipment to designated areas in the United States, Mexico and Canada directly afterwards through a bonus program (collectively, the "Termination Bonus Program"). Payments pursuant to the Termination Bonus Program will be paid in respective lump sum payments when rolling stock is returned to specific locations to the applicable Driver Employee or Independent

Contractor. The Debtors anticipate that approximately \$1,015,000 will become due and owing in connection with the Termination following the Petition Date. The Debtors seek authority to implement the Termination Bonus Program in an amount not to exceed \$1,015,000.

C. Employee Benefit Programs

20. In the ordinary course of business, the Debtors maintain various employment benefit plans and policies, including, without limitation, medical plans, dental plans, vision plans, life insurance plans, short term and long term disability plans (collectively, the “Employee Benefit Programs”) as described in greater detail below.

- (a) Medical Plan. The Debtors are self-insured for the vast majority of its United States-based Employee medical plans (collectively, the “Medical Plan”). The Debtors pay claims arising under the Medical Plan as they come due. The average cost per month for the Medical Plan is approximately \$1,042,000.
- (b) Dental Insurance Plan. The Debtors offers dental plans (collectively, the “Dental Insurance Plan”) through Delta Dental and other providers. The Debtors’ average cost per month for the Dental Insurance Plan is approximately \$36,000.
- (c) Vision Insurance Plan. The Debtors offer vision plans (collectively, the “Vision Insurance Plan”) through Anthem Vision and other providers. The average cost per month for the Vision Insurance Plan is approximately \$7,500.
- (d) Disability Insurance Plan. The Debtors offer short term and long term disability plans (collectively, the “Disability Insurance Plan”) through Guardian Life Insurance Company of America and other providers. The average cost per month for the Disability Insurance Plan is approximately \$7,200.

21. The Employee Benefit Programs are, in each case, available to all full-time Employees. Plan participants’ contributions to the Employee Benefit Programs are deducted from payroll. However, except for certain employees that will be continuing with Debtors to assist in the orderly wind down of the Debtors’ operations (the “Continuing Employees”), effective as of the Petition Date, the Debtors have discontinued the Employee Benefit Programs, and such programs will no longer be available to the Debtors’ terminated Employees. The Debtors will still

provide and administer the Employee Benefit Programs to the Continuing Employees until the date of their respective terminations. Further, the Debtors will offer COBRA insurance for the Continuing Employees to cover certain periods post-termination.

22. Accordingly, by this Motion, the Debtors seek authority to continue the Employee Benefit Programs and to provide COBRA insurance solely for the Continuing Employees, subject to the Debtors' discretion regarding the modification or discontinuation such programs.

BASIS FOR RELIEF REQUESTED

I. The Proposed Payments are Accorded Priority Under Section 507 of the Bankruptcy Code.

23. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave, and employee benefit contributions be accorded priority in payment in an amount not to exceed \$13,650 for each employee (to the extent such amounts accrued within 180 days of the Petition Date). None of the Employees are owed amounts for accrued and unpaid prepetition wages or salaries, including outstanding and uncashed payroll checks, in excess of the statutory caps of Bankruptcy Code sections 507(a)(4) and 507(a)(5). Granting the relief requested is consistent with the Bankruptcy Code's purpose in ensuring employees are paid in full on account of the priority status of their claims, up to the statutorily imposed limit. Accordingly, the Debtors submit that no prejudice to creditors or other parties in interest would result from granting the relief requested herein.

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

24. The Debtors also seek authority to pay certain deductions, withholdings, and payroll taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain deductions, including contributions varies benefits

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

25. Further, federal and state laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co., Inc. v. State of Mich. (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes).

26. Because the deductions and payroll taxes are not property of the Debtors' estates, the Debtors request that this Court authorize them to transmit the deductions and payroll taxes to the proper parties.

III. The Proposed Payments and Continuation of the Employee Benefit Programs for the Continuing Employees are Appropriate Under Sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code, and the Doctrine of Necessity.

A. Valid Business Justification Under Section 363(b)

27. Under section 363(b) of the Bankruptcy Code, after notice and a hearing, a bankruptcy court may authorize a chapter 11 debtor to use property of the estate other than in the ordinary course of business. Under the same section, a court should authorize non-ordinary course business transactions where the debtor has articulated a valid business justification for the requested use of estate assets. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authority to pay prepetition wages) (section 363(b) gives the court “broad flexibility” to make payments outside of ordinary course of business as long as the debtor articulates a business justification); *In re Cont’l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”).

28. The payment of the Prepetition Workforce Obligations serves the sound business purpose of alleviating the severe hardship on the Debtors’ Employees and Independent Contractors resulting from the filing of these chapter 11 cases and the wind down of operations. Absent such relief, the Debtors’ Employees and Independent Contractors would likely not be compensated for the work done between the last payroll date and the Petition Date. Accordingly, this Court should grant the requested relief under section 363 of the Bankruptcy Code.

29. Further, in the sound exercise of the Debtors’ business judgment, the maintenance and continuation of the Employee Benefit Programs solely for the Continuing Employees provides necessary incentive and comfort for the few Continuing Employees who have agreed to assist with the wind down of the Debtors’ operations. Absent such benefits, it is likely that there would be significant disruption to the Debtors’ orderly wind down of their operations.

B. Sound Exercise of the Debtors' Fiduciary Duties

30. The Debtors, 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.* 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 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.

31. Payment of the Prepetition Workforce Obligations meets each element of the *CoServ* court’s standard. As described above, the Employees likely maintain priority claims against the Debtors for the Prepetition Workforce Obligations. In addition, any failure by the Debtors to pay the Prepetition Workforce Obligations would cause severe hardship on the Debtors’ terminated Employees and Independent Contractors.

32. With respect to the Employees and Independent Contractors, 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' orderly wind down of their operations, there exists no practical or legal alternative to payment of such obligations. 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.

C. Proper Application of the Doctrine of Necessity

33. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, 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). A Bankruptcy Court’s use of its equitable powers 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.” *Ionosphere Clubs*, 98 B.R. at 175; *see also Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts are authorized to approve orders allowing payment of prepetition claims, which is necessary for the debtors to have a successful reorganization). Moreover, “[u]nder Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177). The authority to pay such prepetition obligations is known as the “necessity of payment” rule (also referred to as the “doctrine of necessity”).

34. The doctrine of necessity “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991)

(“[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

35. The doctrine of necessity is an accepted component of modern bankruptcy jurisprudence. *See Just For Feet*, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); *In re Payless Cashways, Inc.*, 268 B.R. 543, 546–47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers’ claims when such suppliers agree to provide postpetition trade credit); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. at 175; *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994). Moreover, courts have recognized the applicability of the doctrine of necessity with respect to the payment of prepetition employee compensation and benefits. *See, e.g., Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–89 (S.D.N.Y. 1987) (under “necessity of payment” doctrine, it is appropriate for bankruptcy court to defer to Debtors’ business judgment in permitting payment of certain workers’ compensation claims); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176 (“This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.”).

36. The relief requested represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is therefore justified under the applicable authority.

37. Courts in this and other jurisdictions have routinely has approved the payment of prepetition claims of employee wages, salaries, expenses and benefits in various chapter 11 cases. *See, e.g., In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG) [D.I. 49] (Bankr. D. Del. June

11, 2019) (authorizing the debtors to pay prepetition wages, compensation, and maintain and continue benefits in the ordinary course); *In re Hosp. Acquisition LLC*, Case No. 19-10998 (BLS) [D.I. 51] (Bankr. D. Del. May 9, 2019) (same); *In re Southcross Energy Partners, L.P.*, Case No. 19-10702 (MFW) [D.I. 54] (Bankr. D. Del. Apr. 2, 2019 (same); *In re Checkout Holding Corp.*, Case No. 18-12794(KG) (Bankr. D. Del. Jan. 10, 2019) [D.I. 187] (same); *In re ATD Corp.*, Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 5, 2018) [D.I. 100] (same); *In re Welded Constr., L.P.*, Case No. 18-12378 (KG) (Bankr. D. Del. Oct. 23, 2018) [D.I. 38] (same); *In re Brookstone Holdings Corp.*, Case No. 18-11780 (BLS) (Bankr. D. Del. Aug. 3, 2018) [D.I. 67] (same).

38. Accordingly, for the foregoing reasons, the Debtors submit that cause exists for granting the relief requested herein.

THE DEBTORS SATISFY THE REQUIREMENTS OF BANKRUPTCY RULE 6003(B)

39. Bankruptcy Rule 6003(b) provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” Immediate and irreparable harm exists where the absence of relief would significantly disrupt a debtor’s business and operations, thereby challenging a debtor’s ability to resolve a bankruptcy case in an orderly manner. *See, e.g., In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 469 (Bankr. S.D.N.Y. 2014). Specifically, without authority to pay Prepetition Workforce Obligations, the Debtors face the bleak reality that the Employees and Independent Contractors will abandon the Debtors and property of their estates on a large scale; physically across the country. Based on the foregoing, the Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm, and therefore, the Debtors satisfy the requirements under Bankruptcy Rule 6003 for the payment of pre-petition

claims. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to effect an orderly wind down of their operations and preserve the maximum value of their estates. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

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

40. For the successful implementation of the foregoing, 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 set forth above and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors. The Debtors submit that ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent both apply.

RESERVATION OF RIGHTS

41. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ or any party in interest’s rights to dispute any claim; or (c) an approval or assumption of any agreement under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the interim order or final order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to dispute such claim at a later date.

NOTICE

42. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the parties included on the Debtors’ consolidated list of fifty (50) largest unsecured creditors; (iv) the

Internal Revenue Service; (v) the Securities and Exchange Commission; (vi) Schulte Roth & Zabel LLP and Landis Rath & Cobb LLP, co-counsel to Blue Torch Finance, LLC; (vii) King & Spalding LLP, counsel to Luminus Energy Partners Master Fund, Ltd.; (viii) Goldberg Kohn Ltd. and Morris, Nichols, Arsht & Tunnell LLP, counsel to MidCap Funding IV Trust; and (ix) any other party in interest entitled to notice of this Motion. As this Motion is seeking “first day” relief, notice of this Motion and any order entered in connection with this Motion will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief in it, the Debtors respectfully submit that no further notice of this Motion is required.

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WHEREFORE, the Debtors respectfully request that the Court (i) enter an interim order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion, (ii) schedule a final hearing on the Motion and thereafter enter a final order substantially in the form attached hereto as **Exhibit B**, and (iii) grant such other and further relief as the Court may deem proper.

Dated: December 8, 2019
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Stuart M. Brown

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Proposed Counsel to the Debtors

EXHIBIT A

(Interim Order)

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

	X	
	:	Chapter 11
In re:	:	
	:	Case No. 19-____ (____)
CELADON GROUP, INC., <i>et al.</i> , ¹	:	
	:	(Jointly Administered)
Debtors.	:	
	X	Re D.I.: ____

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN
PREPETITION WAGES AND COMPENSATION AND MAINTAIN AND CONTINUE
EMPLOYEE BENEFIT PROGRAMS FOR THE CONTINUING EMPLOYEES AND (II)
AUTHORIZING AND DIRECTING BANKS AND COMDATA TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED
TO SUCH EMPLOYEE OBLIGATIONS**

This matter coming before the court upon the *Motion of the Debtors for the Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Wages and Compensation and Maintain and Continue Employee Benefit Programs for the Continuing Employees and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Employee Obligations* (the “Motion”)² filed by the above-captioned debtors (collectively, the “Debtors”) for entry an interim order (this “Interim Order”), (i) authorizing the Debtors to: (a) pay prepetition wages and other compensation, taxes and withholdings and (b) maintain and continue Employee

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celadon Group, Inc. (1050); A R Management Services, Inc. (3604); Bee Line, Inc. (5403); Celadon Canadian Holdings, Limited (2539); Celadon E-Commerce, Inc. (2711); Celadon International Corporation (5246); Celadon Logistics Services, Inc. (0834); Celadon Mexicana, S.A. de C.V. (6NL7); Celadon Realty, LLC (2559); Celadon Trucking Services, Inc. (6138); Distribution, Inc. (0488); Eagle Logistics Services Inc. (7667); Hyndman Transport Limited (3249); Jaguar Logistics, S.A. de C.V. (66D1); Leasing Servicios, S.A. de C.V. (9MUA); Osborn Transportation, Inc. (7467); Quality Companies LLC (4073); Quality Equipment Leasing, LLC (2403); Quality Insurance LLC (7248); Servicios Corporativos Jaguar, S.C. (78CA); Servicios de Transportación Jaguar, S.A. de C.V. (5R68); Stinger Logistics, Inc. (3860); Strategic Leasing, Inc. (7534); Taylor Express, Inc. (9779); Transportation Insurance Services Risk Retention Group, Inc. (7197); Vorbas, LLC (8936). The corporate headquarters and the mailing address for the Debtors listed above is 9503 East 33rd Street, One Celadon Drive, Indianapolis, IN 46235..

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

Benefit Programs, solely for the Continuing Employees, and (ii) authorizing and directing the Banks and Comdata to honor and process checks and transfers related to such employee obligations; all as further described in the Motion; and upon consideration of the First Day Declaration and the record of these chapter 11 cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 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 February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court (the “Hearing”); and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Interim Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and 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 in this Interim Order.
2. The Debtors are authorized, but not directed, to pay and/or honor (including to any third parties that provide or aid in the monitoring, processing or administration of the Prepetition Workforce Obligations, including ADP and Comdata), in their sole discretion, the Prepetition Workforce Obligations, subject to an aggregate maximum during the interim period of

\$5,443,000.00 as reflected below, including any processing costs related to the foregoing that have accrued and remain unpaid (including those amounts that remain unpaid as a result of dishonoring of checks due to the filing of these chapter 11 cases) as of the Petition Date to or for the benefit of their Employees, subject to the limitations set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and entry of a final order.

Prepetition Workforce Obligations	Amount
Unpaid Compensation (including Withholding Taxes and Obligations)	\$3,900,000
Independent Contractors	\$528,000
Termination Bonus Program	\$1,015,000
Employee Benefit Programs ³	\$0
Total	\$5,443,000.00

3. The Debtors are authorized, but not directed, in their sole discretion, to honor and continue the Employee Benefit Programs, solely with respect to the Continuing Employees, *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Programs under section 365(a) of the Bankruptcy Code.

4. The Debtors' Banks and Comdata are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors pursuant to this Interim Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable amounts to make such payments.

³ Effective as of the Petition Date, the Debtors have terminated the Employee Benefit Programs for all Employees except the Continuing Employees.

5. All Withholding Taxes and Obligations are hereby authorized to be paid by the Debtors, through ADP where necessary, in the ordinary course of the Debtors' business.

6. For the avoidance of doubt, the Debtors are authorized to pay compensation owed to Independent Contractors.

7. Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims pursuant to this Interim Order, shall be deemed or construed as: (a) an admission as to the validity, priority or amount of any claim against the Debtors or their estates; (b) a limitation on any claim; (c) a waiver of the rights of the Debtors and their estates to dispute any claim on any grounds; (d) a promise to pay any claim; (e) an implication or admission that any particular claim is a claim for any Prepetition Workforce Obligations, or processing costs related to the foregoing; (f) an approval or assumption of any contract or agreement pursuant to section 365 of the Bankruptcy Code; (g) the waiver of any cause of action of the Debtors and their estates; or (h) impairing, prejudicing, waiving or otherwise affecting any rights of the Debtors and their estates on account of any amounts owed or paid on account of Prepetition Workforce Obligations, or processing costs related to the foregoing.

8. Payments made pursuant to this Interim Order are not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently. The Debtors retain the sole discretion whether to pay any claim that the Court authorizes under this Interim Order.

9. Notwithstanding anything to the contrary contained in this Interim Order, any payment, deposit, or other transfer made or to be made under this Interim Order, any authorization contained in this Interim Order, or any claim for which payment is authorized hereunder, shall be subject to the terms and provisions of any orders of this Court approving any debtor in possession

financing for, or any use of cash collateral by, the Debtors and any budget (subject to permitted variances thereto) in connection therewith.

10. Notwithstanding any other provision of this Interim Order, no payments to any individual Employee shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

11. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2020 at ____:____.m. (Eastern Standard Time). Any objections or responses to entry of a final order on the Motion (each, an “Objection”) shall be filed on or before 4:00 p.m. (Eastern Standard Time) on _____, 2020, and served on the following parties: (i) proposed counsel for the Debtors, DLA Piper LLP (US), 1201 N. Market Street, Suite 2100, Wilmington, Delaware 19801 (Attn: Stuart M. Brown, Esq. and Matthew S. Sarna, Esq.) and 1251 Avenue of the Americas, New York, New York 10020 (Attn: Richard A. Chesley, Esq. and Jamila Justine Willis, Esq.); (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, Delaware 19801 (Attn: [*]); (iii) counsel to Blue Torch Finance, LLC, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022 (Attn: Adam Harris) and Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam Landis); (iv) counsel to Luminus Energy Partners Master Fund, Ltd., King & Spalding LLP, 1180 Peachtree Street, NE, Suite 1600, Atlanta, GA 30309 (Attn: W. Austin Jowers); (v) counsel to MidCap Funding IV Trust and MidCap Financial Services, LLC, Goldberg Kohn Ltd., 55 East Monroe Street, Suite 3300, Chicago, IL 60603 (Attn: Danielle Juhle); and (vi) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases. In the event no Objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

12. The requirements of Bankruptcy Rule 6003(b) are satisfied.

13. The requirements of Bankruptcy Rule 6004(a) are waived.

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

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

16. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Interim Order.

Exhibit B

(Proposed Final Order)

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

	X	
	:	Chapter 11
In re:	:	
	:	Case No. 19-____ (____)
CELADON GROUP, INC., <i>et al.</i> , ¹	:	
	:	(Jointly Administered)
Debtors.	:	
	X	Re D.I.: ____ & ____

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN
PREPETITION WAGES AND COMPENSATION AND MAINTAIN AND CONTINUE
EMPLOYEE BENEFIT PROGRAMS FOR THE CONTINUING EMPLOYEES AND (II)
AUTHORIZING AND DIRECTING BANKS AND COMDATA TO HONOR AND
PROCESS CHECKS AND TRANSFERS RELATED
TO SUCH EMPLOYEE OBLIGATIONS**

This matter coming before the Court on the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Wages and Compensation and Maintain and Continue Employee Benefit Programs for the Continuing Employees and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Employee Obligations* (the “Motion”),² filed by the above-captioned debtors (the “Debtors”), (i) authorizing the Debtors to: (a) pay prepetition wages and other compensation, taxes and withholdings and (b) maintain and continue Employee Benefit Programs, solely for the Continuing Employees, and (ii)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celadon Group, Inc. (1050); A R Management Services, Inc. (3604); Bee Line, Inc. (5403); Celadon Canadian Holdings, Limited (2539); Celadon E-Commerce, Inc. (2711); Celadon International Corporation (5246); Celadon Logistics Services, Inc. (0834); Celadon Mexicana, S.A. de C.V. (6NL7); Celadon Realty, LLC (2559); Celadon Trucking Services, Inc. (6138); Distribution, Inc. (0488); Eagle Logistics Services Inc. (7667); Hyndman Transport Limited (3249); Jaguar Logistics, S.A. de C.V. (66D1); Leasing Servicios, S.A. de C.V. (9MUA); Osborn Transportation, Inc. (7467); Quality Companies LLC (4073); Quality Equipment Leasing, LLC (2403); Quality Insurance LLC (7248); Servicios Corporativos Jaguar, S.C. (78CA); Servicios de Transportación Jaguar, S.A. de C.V. (5R68); Stinger Logistics, Inc. (3860); Strategic Leasing, Inc. (7534); Taylor Express, Inc. (9779); Transportation Insurance Services Risk Retention Group, Inc. (7197); Vorbas, LLC (8936). The corporate headquarters and the mailing address for the Debtors listed above is 9503 East 33rd Street, One Celadon Drive, Indianapolis, IN 46235.

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

authorizing and directing the Banks and Comdata to honor and process checks and transfers related to such employee obligations; all as further described in the Motion; and upon consideration of the First Day Declaration and the record of these chapter 11 cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 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 February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this proceeding and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court (the “Hearing”); and the Court having entered the relief requested in the Motion on an interim basis [D.I ____]; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Final Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and 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 in this Final Order.
2. The Debtors are authorized, but not directed, to pay and/or honor (including to any third parties that provide or aid in the monitoring, processing or administration of the Prepetition Workforce Obligations, including ADP and Comdata), in their sole discretion, the Prepetition Workforce Obligations, subject to an aggregate maximum during the final period of

\$5,443,000.00, as reflected below, including any processing costs related to the foregoing that have accrued and remain unpaid (including those amounts that remain unpaid as a result of dishonoring of checks due to the filing of these chapter 11 cases) as of the Petition Date to or for the benefit of their Employees, subject to the limitations set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

Prepetition Workforce Obligations	Amount
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3. The Debtors are authorized, but not directed, in their sole discretion, to honor and continue the Employee Benefit Programs, solely with respect to the Continuing Employees, *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Programs under section 365(a) of the Bankruptcy Code.

4. The Debtors' Banks and Comdata are hereby authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtors pursuant to this Interim Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable amounts to make such payments.

³ Effective as of the Petition Date, the Debtors have terminated the Employee Benefit Programs for all Employees except the Continuing Employees.

5. All Withholding Taxes and Obligations are hereby authorized to be paid by the Debtors, through ADP where necessary, in the ordinary course of the Debtors' business.

6. For the avoidance of doubt, the Debtors are authorized to pay compensation owed to Independent Contractors.

7. Nothing in the Motion, the Interim Order, or this Final Order, nor the Debtors' payment of claims pursuant to this Interim Order, shall be deemed or construed as: (a) an admission as to the validity, priority or amount of any claim against the Debtors or their estates; (b) a limitation on any claim; (c) a waiver of the rights of the Debtors and their estates to dispute any claim on any grounds; (d) a promise to pay any claim; (e) an implication or admission that any particular claim is a claim for any Prepetition Workforce Obligations, or processing costs related to the foregoing; (f) an approval or assumption of any contract or agreement pursuant to section 365 of the Bankruptcy Code; (g) the waiver of any cause of action of the Debtors and their estates; or (h) impairing, prejudicing, waiving or otherwise affecting any rights of the Debtors and their estates on account of any amounts owed or paid on account of Prepetition Workforce Obligations, or processing costs related to the foregoing.

8. Payments made pursuant to this Final Order are not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently. The Debtors shall retain the sole discretion whether to pay any claim that the Court authorizes under this Final Order.

9. Notwithstanding anything to the contrary contained in this Final Order, any payment, deposit, or other transfer made or to be made under this Final Order, any authorization contained in this Final Order, or any claim for which payment is authorized hereunder, shall be subject to the terms and provisions of any orders of this Court approving any debtor in possession

financing for, or any use of cash collateral by, the Debtors and any budget (subject to permitted variances thereto) in connection therewith.

10. Notwithstanding any other provision of this Final Order, no payments to any individual Employee shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

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

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

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

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