

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Gander Mountain Company,

Debtor.

Case No.: 17-30673
Chapter 11 Case

In re:

Overton's, Inc.,

Debtor.

Case No.: 17-30675
Chapter 11 Case

NOTICE OF HEARING AND MOTION FOR ORDER (I) GRANTING EXPEDITED RELIEF; (II) AUTHORIZING DEBTORS TO PAY PREPETITION EMPLOYEE COMPENSATION, BENEFITS, WORKERS' COMPENSATION OBLIGATIONS, AND OTHER RELATED AMOUNTS; AND (III) AUTHORIZING PAYROLL PROVIDER AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH RELIEF

TO: The parties in interest as specified in Local Rule 9013-3(a)(2).

1. The above-captioned debtors and debtors in possession (together, the "Debtors") hereby move this Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at **1:30 p.m. on March 14, 2017**, in **Courtroom 8 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota**.

3. Local Rule 9006-1(c) provides deadlines for responses to this Motion. However, given the expedited nature of the relief sought, the Debtors do not object to written responses being served and filed two (2) hours prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rules 1070-1 and 1073-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The petitions commencing these chapter 11 cases were filed on March 10, 2017 (the "Filing Date"). The cases are currently pending before this Court.

5. This Motion arises under 11 U.S.C. §§ 105(a), 363, 507, 549, 1107, and 1108. This motion is filed pursuant to Local Rules 9013-1 through -3. Expedited relief is requested pursuant to Bankruptcy Rule 9006(c) and Local Rule 9006-1(e). Notice of the hearing on this motion is provided pursuant to Bankruptcy Rule 2002(a) and Local Rules 9013-3 and 2002-1(b). To avoid immediate and irreparable harm, the Debtors request an order authorizing them to pay accrued but unpaid prepetition employee-related amounts—consisting generally of compensation, benefits, and workers' compensation obligations—and to continue various prepetition, ordinary course employee-related benefits, programs, and policies.

GENERAL BACKGROUND

6. On the Filing Date, the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

7. Further general background information about the Debtors and this case is set forth in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial Motions. The additional facts relevant to this motion set forth below are verified by Timothy G. Becker, as evidenced by the attached verification.

RELEVANT FACTS AND RELIEF REQUESTED

8. As of the Filing Date, the Debtors, on a combined basis, employed approximately 6,650 people (collectively, the “Employees”). Of those, approximately 2,690 are full-time and approximately 3,960 are part-time. A majority of the Employees work in the Debtors’ approximately 160 stores located in 27 states; other Employees work at the Debtors’ headquarters in St. Paul, Minnesota, the Overton’s headquarters in Greenville, North Carolina, or at one of the Debtors’ distribution centers. Both Debtors’ Employees are paid on the same schedule and using the same procedures. The Debtors owe their Employees prepetition compensation for work performed by the Employees prepetition and owe prepetition amounts in connection with various benefit programs, as described in detail below (collectively, the “Prepetition Employee Obligations,” as further defined below).

9. The Employees serve in a wide variety of roles critical to the Debtors’ ongoing business operations. To operate during the pendency of the chapter 11 cases, the Debtors must retain their Employees’ skill, knowledge, and understanding of the Debtors’ businesses. The management, marketing, sales, distribution, and technical skills of the Employees are essential to the Debtors’ ability to source branded hunting, fishing and camping gear, sports and outdoor goods and apparel, research customer preferences, develop attractive and efficient services and store layouts, manage inventory to remain in-season in line with customer expectations, and provide customers with positive in-store experiences. In conjunction with these cases, Debtors are seeking to implement a going concern sale of a substantial portion of their assets. The continued and uninterrupted service of the Employees is essential to the Debtors’ ability to maximize the value of their assets and successfully navigate these chapter 11 cases.

10. Continued payment, when due, of the Prepetition Employee Obligations and the continuation of the plans, policies, programs and practices underlying the Prepetition Employee

Obligations, as described herein, are necessary to ensure the ongoing services of the Debtors' Employees.

11. If prepetition compensation, benefit, and reimbursement amounts are not received by the Employees in the ordinary course, they will suffer personal hardship and, in many cases, will be unable to pay their basic living expenses. Such a result would destroy Employee morale and result in unmanageable Employee turnover, causing immediate and pervasive damage to the Debtors' ongoing business operations and ability to maximize value through a going-concern sale for certain of their assets, thereby resulting in immediate and irreparable harm to the Debtors and their estates.

12. Therefore, payment of the Prepetition Employee Obligations in accordance with the Debtors' prepetition business practices will enable the Debtors to continue to operate in an economic and efficient manner with minimal disruption, preserve value, and is in the best interests of the Debtors, their creditors, and all parties in interest.

13. Accordingly, by this Motion, the Debtors seek an order: (a) authorizing, but not requiring, them to pay or cause to be paid, in their sole discretion, all or a portion of the amounts owing (and associated costs) under or related to the Compensation Obligations, the Payroll Provider Obligations, the Employee Funds, the Benefit Plan Obligations, the Other Benefit Obligations, the Reimbursement Obligations, and the Workers' Compensation Obligations (each as individually defined below and, collectively, the "Prepetition Employee Obligations"); (b) unless otherwise set forth herein, authorizing, but not requiring, them to continue, in their sole discretion, their plans, practices, programs and policies for their Employees, as those plans, practices, programs and policies were in effect as of the Petition Date and as may be modified, terminated, amended or supplemented from time to time, in their sole discretion, and to make

payments pursuant to such plans, practices, programs and policies in the ordinary course of business, as well as to pay related administrative obligations; and (c) authorizing the payroll provider and applicable banks and other financial institutions to receive, process, honor and pay any and all checks drawn to the extent that those checks or transfers relate to any of the foregoing. While the self-funded nature of certain insurance benefits offered by the Debtors to Employees makes it difficult to determine with specificity at this time, the Debtors believe that the amount required to satisfy the Prepetition Employee Obligations will not exceed the caps for priority claims imposed by sections 507(a)(4) and (a)(5) for the wages and benefits to which those caps apply.

I. COMPENSATION OBLIGATIONS

14. The Debtors offer their Employees various forms of compensation, including wages, salaries, and certain forms of paid absences. The Debtors seek authorization to pay accrued but unpaid prepetition amounts owed with respect to these forms of compensation (collectively, the “Compensation Obligations”).

A. Wages and Salaries.

15. Wages and Salaries. Of the Debtors’ approximately 6,650 Employees, approximately 780 are paid a fixed salary and approximately 5,870 are paid on an hourly basis. The Debtors’ Employees fill positions ranging from cashiers, to warehouse workers, to buyers, to retail sales, to corporate and administrative positions. The Debtors’ combined average bi-weekly payroll for the Employees totals approximately \$5.6 million. The Employees are paid accrued salaries and wages one week in arrears. Payments are made biweekly on Fridays. Employees were most recently paid today, March 10, 2017, for the biweekly period of February 19, 2017 through March 4, 2017. That payroll was funded prior to the Filing Date. Therefore, the first postpetition payroll will be on March 24, 2017 (with processing to begin earlier that week),

which will cover the biweekly period of March 5, 2017 through March 18, 2017. Accordingly, that payroll will include five prepetition days. Based on that timing and the Debtors' average payroll, the Debtors estimate that they owe their Employees compensation in the form of prepetition accrued but unpaid wages and salaries in the approximate aggregate amount of \$2 million. To the best of the Debtors' knowledge, none of the Debtors' Employees are owed more than \$12,850 in accrued and unpaid general prepetition wages or salaries.¹

16. Payroll Process. For purposes of administration and distribution of payroll, the Debtors utilize ADP as the payroll servicing provider for their Employees (the "Payroll Provider"). The Debtors provide wage and hour information to the Payroll Provider on a bi-weekly basis. Based on this information, the Payroll Provider calculates net wages, taxes, and other withholdings. That calculation is sent to the Debtors for review and any corrections. The amounts required to fund payroll are then withdrawn from the Debtors' accounts by the Wednesday of the payroll week, and transferred to the Payroll Provider.² All Employees are paid by either direct deposit or by a pay card; none are paid by paper check.

17. The Payroll Provider processes each payroll, then later invoices the Debtors for its services. The ongoing services of the Payroll Provider are imperative to the smooth functioning of the Debtors' payroll system. The Debtors pay the Payroll Provider approximately \$58,000 per month for its services, which include payroll processing, tax filing, time and attendance, data processing services, and other related services. The Debtors are current on such payments; however, given that the Payroll Provider invoices after providing services, the next invoice will

¹ Although some Employees may have accrued Paid Absences (defined below), the value of which would cause the amount owed to such Employees to exceed \$12,850, the Debtors do not believe such Employees are currently owed the value of their Paid Absence in cash, as the Debtors seek to continue the Paid Absences policies.

² More information regarding the Debtors' bank accounts can be found in the Debtors' cash management motion, filed contemporaneously herewith.

include some amounts for services provided prepetition. To ensure that the Payroll Provider continues providing its critical services—and timely pays over to the appropriate recipients any funds it is holding related to the March 10 payroll—the Debtor seeks authorization to pay any such prepetition amounts owed to the Payroll Provider (the “Payroll Provider Obligations”).³

18. Taxes, Withholdings, and Employee Funds. In the ordinary course, the Debtors (including via the Payroll Provider) withhold from Employee paychecks certain amounts for transmission to third parties for such purposes as Social Security, Medicare, federal, state, and local income taxes; the employee contribution toward the benefit plans and other benefits described below; and/or payroll deduction payment programs for various garnishment, child support and other similar orders (collectively, these amounts the “Employee Funds”). As part of the payroll calculation process described above, the Payroll Provider calculates the Employee Funds to withhold, as well as the employer’s share of federal, state, and local taxes. Certain of such amounts are then included in the funds transferred from the Debtors’ accounts to the Payroll Provider on the Wednesday prior to the Friday payroll date (the remaining amounts are held by the Debtor to remit to the appropriate recipient, such as insurance coverage providers). The Payroll Provider then distributes such funds to the appropriate recipients.

19. The Employee Funds are the property of the Debtors’ employees, and the Debtors believe that such withheld funds, to the extent that they were in the Debtors’ possession as of the Filing Date and/or remain in the Debtors’ possession, are not property of the Debtors’ bankruptcy estates under section 541 of the Bankruptcy Code. The Debtors request authorization to pay over to (including via the Payroll Provider) the appropriate recipients the Employee Funds

³ The Debtors’ intent to utilize the Payroll Provider postpetition is not to be interpreted as a concession by the Debtors that any agreements with the Payroll Provider are executory contracts and/or that the Debtors intend to assume any agreements with the Payroll Provider pursuant to section 365 of the Bankruptcy Code. The Debtors specifically reserve all rights under section 365 of the Bankruptcy Code.

that the Debtor deducted prepetition or will deduct on account of prepetition obligations to employees paid pursuant to an order granting the relief requested in this Motion, and to continue their ordinary course practices with respect to the Employee Funds.

B. Other Compensation

20. The Debtors offer their Employees other forms of compensation, including paid time off (“PTO”), paid holidays, and paid funeral/bereavement and jury duty/witness leave (collectively, the “Paid Absences”). Other available types of time off are unpaid, so are not discussed herein. The Paid Absences are a form of compensation that is usual, customary, and necessary if the Debtors are to retain qualified Employees to operate their businesses. Accordingly, the Debtors request authority, but not direction, to honor outstanding prepetition obligations with respect to the Paid Absences in the ordinary course of business, and to continue these compensation programs postpetition in the ordinary course of business.

21. PTO and Paid Holidays. During the course of the year, full-time Employees are eligible for PTO and paid holidays. PTO accrues each pay period, and can be used and paid by eligible Employees in the ordinary course of the Debtors’ business during the fiscal year. Eligible employees may earn between 12 and 25 days of PTO per year, with the amount available to the employee based on years of service and work location. Up to 40 hours of unused PTO may be carried over to a new fiscal year, but any unused PTO above 40 hours is forfeited. Earned but unused PTO is paid out at the termination of employment (or a negative PTO balance is deducted from the employee’s final paycheck).⁴ Full-time Employees are also entitled to six scheduled paid holidays each year.

⁴ As a legacy from previous policies providing separate sick and vacation pay (which were then combined into the PTO policy), certain long-term Employees have certain paid days off referred to as “long-term sick” days. The value of all the remaining long-term sick days is approximately \$283,000. As with the other Paid Absences, the

22. Paid Leaves. All employees may also receive up to three days per year of paid funeral or bereavement leave. In addition, all employees are eligible for paid leave for up to two weeks per year to be a juror or a witness at a trial.

23. As of the date hereof, the aggregate cash value of the Debtors' Employees' accrued Paid Absences is approximately \$1.875 million. By this Motion, the Debtors request authority, but not direction, to continue their Paid Absences policies and pay any outstanding prepetition amounts related thereto in the ordinary course.

II. BENEFIT PLAN OBLIGATIONS

24. The Debtors offer various benefit plans to their Employees, including insurance and other plans related to health, vision, dental, life and accidental death and dismemberment, short- and long-term disability, flexible spending accounts, health savings accounts, and retirement. The Debtors seek authorization to pay prepetition amounts owed with respect to these benefit plans, as further described below (collectively, the "Benefit Plan Obligations"), and authorization to continue, modify, or terminate such benefit plans.

A. Insurance Plans and Related Programs

25. The Debtors have established plans and policies to provide their Employees with (a) health benefits, including medical, dental, and vision insurance; (b) other insurance benefits, including short and long-term disability insurance, and life and accidental death and dismemberment insurance; and (c) flexible spending account and health savings account plans. The Debtors fund these medical and other insurance benefits through company contributions or private insurance arrangements, as described below.

Debtors request authority, but not direction, to continue honor this policy and pay any outstanding prepetition amounts related thereto in the ordinary course.

26. Health Benefits. An important component of the benefit plans offered by the Debtors is medical, vision, and dental coverage, which are offered to full-time Employees after one full calendar month of employment.

27. The Debtors provide medical and prescription drug insurance to approximately 1,800 employees and 2,245 dependents through a self-funded plan (the “Medical Plan”) with stop-loss and administrative components. In 2017, the Debtors offered Employees three plan options based on different levels of deductibles.

28. Plan administration is provided by Blue Cross Blue Shield of Minnesota, for which service the Debtors pay a fee. Each Thursday, Blue Cross Blue Shield of Minnesota debits the Debtors’ main deposit account at Wells Fargo (the “Main Deposit Account”) for claims processed and paid in the previous seven days. The Debtors reimburse third party providers’ bills up to a total of \$500,00 per employee per year. Expenses in excess of this amount are paid through a stop-loss insurance policy provided by Blue Cross Blue Shield of Minnesota. The Debtors pay the costs of such insurance monthly, in the approximate amount of \$14,000. That insurance is pre-paid, so the Debtors do not believe there are any unpaid prepetition amounts for the stop-loss insurance policy.

29. Employees contribute approximately 45% of the costs of the Medical Plan through payroll deductions that are adjusted annually based on experience for the prior plan year. The Debtors contribute the remainder of the funds. Because of the manner in which such expenses are incurred and claims are processed under the Medical Plan, it is difficult for the Debtors to determine the extent of their obligations under the Medical Plan outstanding at any particular time. Based on historical experience and expected future trends, the Debtors estimate

that the monthly cost of the Medical Plan (including the administrative fee) is approximately \$1 million.

30. The Debtors also offer vision insurance—with two plan options based on different coverages and deductibles—to approximately 1,371 employees and dependents (the “Vision Plan”). The Vision Plan is fully insured, and the policies are issued and administered by Ameritas. Participating Employees contribute 90% of the costs of the Vision Plan through payroll deductions. There is no administrative fee. The average monthly cost to the Debtors for the Vision Plan is approximately \$1,500. Payments due under the Vision Plan are generally pre-paid, but the March payment is not expected to have cleared the Debtors’ accounts prior to the Filing Date. Accordingly, the Debtors estimate that the prepetition amount owed relating to the Vision Plan is approximately \$400.

31. The Debtors also offer dental insurance—with two plan options based on different coverages and deductibles—to approximately 1,778 employees and dependents through a self-funded plan (the “Dental Plan”). The Dental Plan is administered by Delta Dental. Participating Employees contribute approximately 91% of the costs of the Dental Plan through payroll deductions that are adjusted annually based on experience for the prior plan year. The Debtors are notified weekly of the claims paid in the previous week and required to reimburse Delta Dental for such amounts. Because of the manner in which such expenses are incurred and claims are processed under the Dental Plan, it is difficult for the Debtors to determine the extent of their obligations under the Dental Plan outstanding at any particular time. However, based on historical experience and expected future trends, the Debtors estimate that the monthly cost of the Dental Plan (including the administrative fee to Delta Dental) is approximately \$66,700.

32. The Debtors seek authority, but not direction, to pay the obligations owed under, and to continue their policies and practices related to, the Medical Plan, Vision Plan, and Dental Plan during the postpetition period in the ordinary course of business.

33. Other Life and Accident Insurance Benefits. The Debtors provide various life and accident insurance benefits to their full-time Employees, some of which are paid by the Debtors, and some are voluntary and paid entirely by participating Employees.

34. Full-time Employees are entitled to Debtor-paid basic life and accidental death and dismemberment insurance after a three month waiting period from the date of hire. This insurance is fully insured through MetLife, and provides for a primary benefit equal to an Employee's full basic annual salary upon the death of such Employee, with an additional benefit equal to the primary benefit in the event of accidental death. The Debtors incur an approximately monthly cost of \$12,200 related to this benefit plan. The amounts owed for this basic life and AD&D benefit are generally pre-paid, but the March payment is not expected to have cleared the Debtors' accounts prior to the Filing Date. Accordingly, the Debtors estimate that the prepetition amount owed relating to this benefit is approximately \$3,250.

35. In addition to the Company-paid basic life and AD&D insurance, the Debtors make a voluntary, supplemental life insurance benefit available to Employees (including optional coverage for spouses and children), also through MetLife. The supplemental life insurance benefit is fully paid by Employees electing to participate, and the Debtors incur no costs as a result of this program.

36. For full-time employees, the Debtors also provide short-term disability benefits, and offer long-term disability benefits, after a three month waiting period from the date of hire. Employees disabled due to an injury or illness are entitled, pursuant to the short-term disability

benefit, to 60% of their weekly pay for up to eight weeks (or, for employees with fifteen or more years of service, up to 65% of their weekly pay for up to twelve weeks) after a five calendar day waiting period. This short-term disability benefit is self-administered and self-funded, with an average monthly cost of \$25,000.⁵

37. Employees have the option to purchase additional short-term disability coverage through a policy offered by Unum. This voluntary benefit is fully paid by Employees electing to participate, such that the Debtors incur no costs.

38. Employees also have the option to purchase a long-term disability benefit, which provides 60% of their weekly pay, up to a maximum monthly benefit of \$5,000 (or \$10,000, for Employees who make more than \$75,000 annually), starting 90 days from the date of disability. The duration of the disability payments period under this benefit depends upon the Employee's age at the time of the disability. The voluntary long-term disability benefit is fully insured through MetLife and is fully paid by Employees electing to participate, such that the Debtors incur no costs as a result of this program.

39. The life and accidental death and dismemberment, short-term disability, and long-term disability benefits (collectively the "Life and Accident Insurance Benefits") are important to the maintenance of Employee welfare and morale, and are therefore critical to the uninterrupted operation of Debtors' businesses. The Debtors therefore request authority, but not direction, to pay prepetition amounts in the ordinary course, and to continue their policies and practices related to the Life and Accident Insurance Benefits during the postpetition period in the ordinary course.

⁵ Due to state requirements, the Debtors also provide short-term disability coverage for all Employees (not just full-time Employees) in the state of New York. Coverage is provided through a fully-insured plan with The Hartford. Full-time Employees essentially receive the better of the two coverages (the Debtor-provided and The Hartford-provided), and if the Debtors pay out, they are then reimbursed by The Hartford for amounts otherwise covered by The Hartford policy. Costs related to this policy are included in the stated average monthly cost.

40. As of the Filing Date, some former employees have elected COBRA coverage under various benefit plans offered by the Debtors, as follows:

Number of Employees	Benefit Plan Elected
28	Medical Plan
22	Dental Plan
11	Vision Plan
13	Basic life and AD&D
6	Voluntary life (including some electing spouse and child options)

These former employees contribute 100% of the expected costs to fund the plan plus a 2% administration fee. The Debtors request authority to continue to offer COBRA coverage without interruption unless and until they discontinue the relevant benefit plans in accordance with applicable law, including mandatory notice provisions.

41. Flexible Spending Accounts and Health Savings Accounts. The Debtors provide their full-time Employees with flexible spending account plans pursuant to which some Employees maintain accounts for healthcare and dependent care. Under the flexible spending account plans, Employees have amounts withheld from their paychecks and those amounts subsequently can be used to reimburse Employees for their healthcare expenses and dependent care expenses, such as insurance deductible amounts. Flexible spending accounts are composed entirely of the Employee contributions.

42. For Employees who choose the highest-deductible health insurance plan offered by the Debtors, the Debtors offer a health savings account plan pursuant to which some Employees maintain accounts for certain qualified medical expenses. Under the health savings account plans, Employees have amounts withheld from their paychecks and those amounts subsequently can be used to reimburse Employees for certain healthcare expenses not covered under the high-deductible option of the Medical Plan. The Debtors match all pre-tax

contributions up to a maximum amount of \$500 per employee. The match is paid bi-weekly as part of payroll. The average monthly cost to the Debtors of such matching contribution is approximately \$9,300, plus a nominal administrative fee. Other than that limited match and administrative fee, the health savings accounts are composed entirely of Employee contributions. Both the flexible spending accounts and the health savings accounts are administered by SelectAccount.

43. The Debtors request authority, but not direction, to pay the prepetition match obligations for the health savings accounts in the ordinary course, and to continue their policies and practices related to the flexible spending accounts and health savings accounts during the postpetition period in the ordinary course. As to the Employee-contributed portions of both types of accounts—which represent the bulk of the amounts in such accounts—the Debtors believe these monies are being held in trust for the benefit of those contributing Employees and, therefore, generally are not property of the Debtors' bankruptcy estates. Nevertheless, out of an abundance of caution, the Debtors seek approval of this Court to continue this program and to reimburse Employees in the ordinary course.

B. Retirement Plan

44. 401(k) Plan. 401(k) plans are available to all full-time Employees age 21 and older after six months of employment, and to all part-time Employees age 21 and older after 12 months of employment. The Debtors serve as the plan administrator and ADP Retirement Services serves as the record keeper and Trustee of these plans. The Debtors offer a match contribution of 100% of the first 3% contributed by Employees, and 50% of the next 2% contributed by Employees. The Debtors are current on such contributions, which are made bi-weekly, in conjunction with payroll. The average monthly cost to the Debtors of such matching

contribution is approximately \$66,000, and the Debtors estimate that the total prepetition unpaid match obligation is approximately \$8,800. The Debtors seek authority, but not direction, to pay the prepetition unpaid match amount, and to continue this program in the ordinary course.

III. OTHER BENEFIT OBLIGATIONS

45. In addition to the benefit plans described above, the Debtors offer certain other benefit programs to Employees.⁶ These programs include an employee discount, associate assistance program, associate emergency fund, referral incentive, legal services, and auto and home insurance. As further described below, certain of these programs have no cost to the Debtors. The Debtors believe that these programs are important to maintaining Employee health and morale and retaining the Debtors' workforce, and that failing to honor such programs would have an adverse effect on the operation of the Debtors' businesses. Thus, by this Motion, the Debtors seek authorization to pay amounts owed with respect to these other benefits (collectively, the "Other Benefit Obligations"), and authorization to continue, modify, or terminate such benefit programs.

46. Employee Discount. The Debtors offer their Employees a 20% discount on most merchandise (30% on owned-brand product, which the Debtors encourage their Employees to wear to work) and a 10% discount on ammunitions. When an Employee uses the discount, the resulting reduction in revenue to the Debtors (because the discount decreases the margin to the Debtors) is booked as accrued at the time of use. The Debtors estimate that the average reduction in revenue due to the employee discount programs is approximately \$252,000 per month.

⁶ Certain Employees may have access to other benefits, such as discounts provided by vendors in exchange for Employee completion of product training modules. Such benefits are not administered by and have no cost to Gander, so are not described herein.

47. Associate Assistance Program. The Debtors offer their full-time Employees access to an associate assistance program called LifeWorks, through Ceridian. LifeWorks is a telephone- and internet-based resource for confidential advice, resources, and support with family, work, money, health, and other life issues. The Debtors pay \$2,352 per month to make this service available. The amount is pre-paid, so the Debtors do not anticipate that there will be any unpaid prepetition amount owed in connection with this benefit.

48. Associate Emergency Fund. The Debtors established an associate emergency fund to provide financial resources in times of need. While it was originally funded by a contribution from one or more of the Debtors' former officers, the fund is now funded entirely by voluntary Employee contributions, which are made through bi-weekly payroll deductions. The fund and grants awarded from the fund are administered by the Minneapolis Foundation, to which the Debtors pay a small monthly administrative fee.

49. Referral Incentive. The Debtors offer their Employees an incentive for referring a candidate who is later hired. After 90 days of satisfactory performance by the new hire (or the end of an assignment for a seasonal hire), the referring Employee is entitled to a referral fee ranging from \$50 to \$750, depending on the position hired. The referral fee is paid either by the amount being added to a payroll check, or in the form of a gift card. The Debtors estimate that they pay a monthly average of \$12,600 for such referral fees.

50. Legal Services. The Debtors offer their Employees the ability to enroll in Hyatt Legal, a program for which Employees pay a monthly fee in exchange for unlimited access to a plan attorney for certain types of legal services. The program is funded entirely by Employee contributions, which are made through bi-weekly payroll deductions. There is no administrative fee or other cost to the Debtors for this benefit.

51. Auto and Home Insurance. The Debtors offer their Employees the ability to purchase auto and home insurance through MetLife, which gives Employees the opportunity to take advantage of special group rates and hassle-free payment options. The insurance policies are funded entirely by Employee payments, which are made through bi-weekly payroll deductions. There is no administrative fee or other cost to the Debtors for this benefit.

IV. REIMBURSEMENT OBLIGATIONS

52. Business Expenses. Pursuant to their normal business practices, the Debtors reimburse Employees for certain business expenses within the scope of their employment, including expenses for travel, lodging, meals, supplies, phone, and other miscellaneous expenses. Accordingly, all prepetition reimbursable business expenses were incurred by Employees with the understanding that they would be reimbursed by the Debtors.

53. Tuition. In the ordinary course of business, the Debtors also reimburse certain education expenses of Employees. In particular, after 90 days of employment, full-time Employees are eligible to receive an annual amount of up to \$600 in their first year and \$1,000 each subsequent year for educational costs associated with career and personal development classes that provide credit towards the completion of high school, college, or graduate level degrees, or technical or vocational training. Generally, Employees seeking to utilize this program apply before their classes start, and the Debtors review for eligibility.

54. Moving Expenses. In the ordinary course of business the Debtors pay certain moving expenses, up to a set limit, of store managers, zone managers, gunsmiths, and zone supervisors who are relocated more than 50 miles.

55. Because Employees do not always submit claims for reimbursement promptly, it is difficult for the Debtors to determine the exact amount outstanding at any particular time, but

Employees incur, on average, approximately \$257,000 monthly in reimbursable business expenses, approximately \$6,200 monthly in reimbursable tuition expenses, and approximately \$69,000 monthly in reimbursable moving expenses. It would be inequitable to require the Debtors' Employees to bear personally the business or moving expenses that are incurred on behalf of the Debtors with the expectation that they would be reimbursed, or tuition expenses that were pre-approved for reimbursement. Accordingly, by this Motion, the Debtors seek authority, but not direction, to pay the Reimbursement Obligations in the ordinary course of business, including those incurred prior to the Filing Date for which Employees have not yet been reimbursed, and to continue their policies relating to reimbursable expenses in the ordinary course of business.

V. WORKERS' COMPENSATION OBLIGATIONS

56. The Debtors maintain certain workers' compensation insurance policies with AIG. The Debtors' deductible under the workers' compensation insurance policies is \$1 million per employee. The Debtors are liable for all claim amounts below that deductible (collectively, the "Workers' Compensation Obligations"). The Debtors estimate that they paid approximately \$1.23 million in workers' compensation claims in fiscal year 2016.

57. It is crucial for Employee morale and the operation of the Debtors' businesses that the Debtors have authorization to pay the Workers' Compensation Obligations in the ordinary course of business, including such obligations that arose prepetition. Accordingly, the Debtors seek authority, but not direction, to continue to pay the Workers' Compensation Obligations in the ordinary course and honor any payments owed with respect to the Workers' Compensation Obligations regardless of when such obligations arose.

VI. DIRECTION TO PAYROLL PROVIDER AND BANKS

58. To facilitate the other relief requested herein and prevent delays and interruptions that could otherwise result, the Debtors also seek an order (a) authorizing and directing the Payroll Provider and any other financial institution upon which any checks, drafts, electronic funds transfers, or wire transfers are drawn in payment of the Prepetition Employee Obligations—either before, on, or after the Filing Date—to honor all such checks or drafts issued, upon presentation thereof, or all such wire transfer instructions, upon receipt thereof, provided that sufficient funds are immediately available and on deposit in the applicable accounts and (b) prohibiting the Payroll Provider and any other financial institutions from placing any holds on, or attempting to reverse, any automatic transfers to employees' accounts for Prepetition Employee Obligations. The Debtors request that the Payroll Provider and all other financial institutions be authorized and directed to rely on the representations of the Debtors as to which checks, drafts or wire transfers are in payment of the Prepetition Employee Obligations.

59. The Debtors also request that any party receiving payment from the Debtors be authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by the requested relief.

VII. EXPEDITED RELIEF

60. Because the filing of these bankruptcy cases and provision of full notice of this Motion would otherwise interrupt the Debtors' normal payroll process with the next regular payroll scheduled for March 24, 2017 (with processing beginning earlier that week), the Debtors request expedited relief on this Motion. In addition, if expedited relief is not granted, payments of Employee Funds or other amounts owed to benefit providers may be further disrupted, and coverage jeopardized. As described herein, employee morale and retention is critical in this

case, and both will likely falter if the Employees do not receive timely payment for their work. Thus, the Debtors seek expedited relief so that the regular payroll process and payments to benefit providers can proceed without interruption. In addition, the granting of this Motion on an expedited basis is critical to ensuring the confidence of the Employees and the continuity of business operations.

61. Pursuant to Local Rule 9013-2(a), this Motion is verified and is accompanied by a memorandum of law, a proposed order, and proof of service.

62. Pursuant to Local Rule 9013-2(c), the Debtors give notice that they may, if necessary, call one or more of the following to testify regarding the facts set forth in this Motion: (a) Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota 55112; (b) James A. Bartholomew, the President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota 55112; or (c) Eric R. Jacobsen, the Chief Administrative Officer and Chief Legal Officer for Gander Mountain Company and the Director and Secretary of Overton's, Inc., whose business address is 180 East Fifth Street, Suite 1300, St. Paul, Minnesota 55101.

REQUEST FOR WAIVER OF STAY

63. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. 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.” As set forth above, the Debtors require immediate relief to continue ordinary business operations for the

benefit of all parties in interest. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day (14) stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

64. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors move the Court for an order:

- A. Granting expedited relief;
- B. Authorizing them to pay the Prepetition Employee Obligations, including employee compensation and benefits that accrued prepetition and are unpaid;
- C. Authorizing them to continue to maintain and pay all Prepetition Employee Obligations in the ordinary course of business;
- D. Authorizing them to continue, modify, cancel, discontinue and/or replace any policies, plans, offerings or programs relating to Prepetition Employee Obligations as they deem appropriate, and to pay any amounts necessary to effect such modification, cancellation, discontinuance or replacement in the ordinary course of business without the need for further Court approval;
- E. Authorizing and directing the Payroll Provider and banks that maintain Debtors' payroll and operating accounts to honor checks or fund transfer requests to pay the obligations described herein; and

F. Granting such other relief as the Court may deem just and equitable.

Dated: March 10, 2017

/e/ Sarah M. Olson

Clinton E. Cutler (#0158094)

Cynthia A. Moyer (#0211229)

Ryan T. Murphy (#0311972)

James C. Brand (#387362)

Sarah M. Olson (#0390238)

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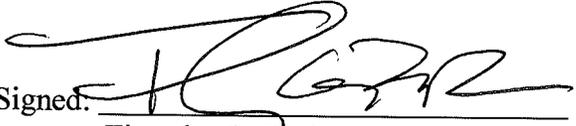
PROPOSED ATTORNEYS FOR DEBTORS

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VERIFICATION

I, Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, declare under penalty of perjury that the facts set forth in the preceding motion are true and correct according to the best of my knowledge, information, and belief.

Dated: March 10, 2017

Signed: 
Timothy G. Becker

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Gander Mountain Company,

Debtor.

Case No.: 17-30673
Chapter 11 Case

In re:

Overton's, Inc.,

Debtor.

Case No.: 17-30675
Chapter 11 Case

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ORDER (I) GRANTING EXPEDITED RELIEF; (II) AUTHORIZING DEBTORS TO PAY PREPETITION EMPLOYEE COMPENSATION, BENEFITS, WORKERS' COMPENSATION OBLIGATIONS, AND OTHER RELATED AMOUNTS; AND (III) AUTHORIZING PAYROLL PROVIDER AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH RELIEF

Gander Mountain Company and Overton's, Inc. (together, the "Debtors") submit this memorandum of law in support of their motion seeking authorization to pay accrued prepetition wages and employee benefits, and to continue employee compensation and benefit programs in the ordinary course of business (the "Motion"). The Motion should be granted because the Debtors have a compelling business justification for paying these obligations. Namely, the Debtors will lose the goodwill of their employees and may permanently lose the employees if these payments are not made, which would interrupt the Debtors' business operations and harm the value of its assets. Thus, the payment of these amounts and continuation of these programs is critical to the Debtors' ongoing operations and effective resolution of these cases.

BACKGROUND

The facts supporting the Motion and referenced herein are set forth in the verified Motion. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

LEGAL ANALYSIS

I. THE DEBTORS' REQUEST FOR EXPEDITED RELIEF SHOULD BE GRANTED.

Pursuant to Fed. R. Bankr. P. 9006(c) and Local Rule 9006-1(d), the Debtors request an order for expedited relief on this Motion. Cause exists to reduce notice of the hearing on this Motion. The relief sought herein is designed to ease the Debtors' transition to chapter 11 and minimize disruptions to the Debtors' business operations. Given the Debtors' critical need to continue their operations uninterrupted, the Court should reduce notice of the hearing on this Motion.

II. THE COURT HAS AUTHORITY TO APPROVE A POSTPETITION PAYMENT OF A PREPETITION CLAIM

Nowhere in the Bankruptcy Code is a debtor expressly prohibited from making postpetition payment of a prepetition claim, as the Debtors propose to do here. Two provisions of the Bankruptcy Code, however, suggest that obtaining court approval is required or, at least, prudent. Section 363(b) of the Bankruptcy Code provides that after notice and a hearing, the debtor may use property of the estate other than in the ordinary course of business. And section 549 of the Bankruptcy Code allows a debtor to avoid the postpetition transfer of property that is not authorized by the Bankruptcy Code or by the court. Thus, the Bankruptcy Code, including these provisions, establishes this Court's authority to approve a postpetition payment of a prepetition claim, as the Debtors propose here.

A. The Bankruptcy Code Authorizes Payment of Certain Prepetition Claims

Section 363 of the Bankruptcy Code allows a debtor to pay claims not in the ordinary course of business, with court authorization. It is in the ordinary course of business for a company to pay wages, salaries, and employee benefits. See In re Tusa-Expo Holdings, Inc., 2008 WL 4857954, *4 (Bankr. N.D. Tex. 2008). Several courts have suggested, however, that satisfaction of such an obligation that accrued prepetition is not in the ordinary course, and therefore requires court approval. See In re K-Mart Corp., 359 F.3d 866, 872 (7th Cir. 2004); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Chapter 11 practice in this District and elsewhere has also generally accepted this understanding, and debtors frequently request court authorization to pay wages, salaries and employee benefits that accrued prepetition.

Paying employee claims that accrued prepetition, like any other use of property outside the ordinary course of business, is appropriate if the debtor demonstrates a “business justification” for making such payments. As stated by the court in the Ionosphere Clubs case,

[s]ection 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances. However, the debtor must articulate some business justification, other than mere appeasement of major creditors, for using, selling or leasing property out of the ordinary course of business, before the court may permit such disposition under section 363(b).

Id.; see also Michigan Bureau of Workers’ Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 281 (Bankr. S.D.N.Y. 1987) (noting that court allowed the debtor to continue payment of prepetition wages and salary, and other benefits with an aggregate value exceeding \$250,000,000 because it was consistent with the debtor’s “imperatives”). Payment of prepetition claims is appropriate when payment will help to “stabilize [the] debtor’s business relationships without significantly hurting any party.” Russell A. Eisenberg and Frances F. Gecker. The Doctrine of Necessity and Its Parameters, 73 Marq. L. Rev. 1, 2 (1989);

see also In re UNR Industries, Inc., 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992)(reversed on other grounds).

Thus, where a debtor can establish the above factors, a court should approve the postpetition payment of prepetition accrued employee wages and benefits and commissions.

B. The Code Recognizes the “Doctrine of Necessity,” which Authorizes Payment of Certain Prepetition Claims

The “doctrine of necessity” recognizes that in certain circumstances it is in the best interest of all concerned to pay certain prepetition creditors out of turn, as an inducement to them to continue working for, or doing business with, the debtor. See Miltenberger v. Logansport, 106 U.S. 286, 310 (1882). As the above citation indicates, this doctrine predated the Bankruptcy Code by many years. Nonetheless, the idea that it is in the best interests of all concerned to pay such claims as are necessary to keep the debtor in business, and to keep the debtor in business and its employees in wage-paying jobs has survived and has been recognized under the Bankruptcy Code. See, e.g., In re Payless Cashways, Inc., 268 B.R. 543, 546 (Bankr. W.D. Mo. 2001); In re Just For Feet, 242 B.R. 821, 824 (D. Del. 1999); In re Equal Net Communications Corp., 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000); In re Gulf Air, Inc., 112 B.R. 152, 153 (Bankr. W.D. La. 1989); In re Ionosphere Clubs, Inc., 98 B.R. at 175. Furthermore, in applying the “doctrine of necessity,” courts have relied on section 105 of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code grants the court authority to issue any order “necessary or appropriate to carry out the provisions” of the Bankruptcy Code, and also provides a basis for authorizing the debtor to pay accrued prepetition wages, salary and benefits. See In re Ionosphere Clubs, Inc., 98 B.R. at 175; In re Quality Interiors, Inc., 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991).

Thus, the Bankruptcy Code furnishes a basis for postpetition payment of prepetition claims in the right circumstances. This is true notwithstanding the decision in the case of In re K-Mart Corp., 359 F.3d at 866. In K-Mart, the court questioned whether the bankruptcy court had authority to approve payments to “critical vendors.” In that case, the appellate court ruled that the court had not established its authority to do so. In so ruling, however, the court also recognized that section 363(b) of the Bankruptcy Code might provide a basis for authorizing such payments in the right circumstance. In re K-Mart Corp., 359 F.3d at 872. The court suggested that to justify a request for authority to pay prepetition claims, the debtor should demonstrate that it will suffer damage if the payment is not made,¹ and that other creditors will be as well-off with the payment as without. Id. Where a debtor can make such a showing, it appears that even the Seventh Circuit would overcome its skepticism and allow postpetition payment of a prepetition claim.

Moreover, as the court recognized in In re Tusa-Expo Holdings, 2008 WL4857954 at *2 (Bankr. N.D. Tex. 2008), employees are not situated similarly with other unsecured creditors. Congress has given a preferred status to employee claims in section 507(a)(4) and (5) of the Bankruptcy Code, and payment of these claims in advance of dealing with claims of lesser status does not disadvantage unsecured creditors. Id. at *2. Even though the wage motion in Tusa-Expo was not opposed, the court deemed it important “that a prospective chapter 11 debtor be confident that, absent a question as to whether continuation of its operations is appropriate, prepetition wage and benefit obligations will continue during chapter 11 to be honored on a timely basis...it would be an abuse of discretion not to grant the payment of the priority

¹ The K-Mart case dealt with payment to critical vendors, and the court suggested that the debtor would need to make a showing that vendors not paid for prepetition deliveries will refuse to make postpetition deliveries. In the employee situation, an analogous damage to the Debtors would be the risk of employees terminating their employment or harboring ill-will which adversely affects performance or operations. Such factors are present here.

prepetition wages within the statutory limit...” Id. at *1. The Debtors believe that many of their Prepetition Employee Obligations constitute priority claims. Thus, the payment of such claims would not harm the Debtors’ general unsecured creditors.

In the overwhelming majority of large corporate chapter 11 filings, including in this district, courts have approved payment of employee prepetition claims for compensation, benefits and expense reimbursements similar to those described herein. See, e.g., In re Archdiocese of Saint Paul and Minneapolis, No. 15-30125 (RJK) (Bankr. D. Minn. Jan. 20, 2015) [ECF No. 47]; In re SCICOM Data Servs., Ltd., No. 13-43894 (MER) (Bankr. D. Minn. Aug. 20, 2013) [ECF No. 19]; In re Wagstaff Minn. Inc., No. 11-43073 (KAC) (Bankr. D. Minn. May 5, 2011) [ECF No. 33]; In re Duke & King Acquisition Corp., No. 10-38652 (GFK) (Bankr. D. Minn. Dec.8, 2010) [ECF No. 37]; In re Schwing Am., Inc., No. 09-36760 (NCD) (Bankr. D. Minn. Oct. 2, 2009) [ECF No. 17]; In re Genmar Holdings, Inc., No. 09-43537 (KAC) (Bankr. D. Minn. June 4, 2009) [ECF No. 25]; In re Polaroid Corp., No. 08-46617 (GFK) (Bankr. D. Minn. Dec. 23, 2008) [ECF No. 22].

II. POSTPETITION PAYMENT OF PREPETITION CLAIMS IS APPROPRIATE IN THESE CASES

In applying the provisions of the Bankruptcy Code and the “doctrine of necessity” discussed above, the Court should be guided by practicality and common sense. In re Payless Cashways, 268 B.R. at 547. This is particularly important when the Court considers payment to employees whose livelihood depends on a debtor’s payments. Courts have long recognized the importance of maintaining the goodwill of employees. In LTV Corp. v. Aetna Cas. & Sur. Co. (In re Chateaugay Corp.), 116 B.R. 887, 898 (Bankr. S.D.N.Y. 1990), the court stated:

Additionally, employee good will and contentment in an asset which is vital to the continuation of a debtor’s operation and its ability to effectively reorganize during the Chapter 11 process.

As the court noted in Tusa-Expo:

Clearly a debtor's employees are among those creditors with whom the debtor must deal. Absent competent personnel, it is doubtful that any debtor would be able to operate its business as contemplated by Code section 1108... [A]s a practical matter, no debtor can afford to lose very many of its employees, especially in a chapter 11 case's early days... Second, continuity of conduct of business is important in a newly filed Chapter 11 case.... Employees familiar with the debtor's operations will be essential to [all of the early case responsibilities.... Third, even if employees remain with a debtor notwithstanding non-payment of prepetition wages and benefits, it is probable that their work would be [adversely] affected by their loss of income.

In re Tusa-Expo Holdings, 2008 WL4857954 at *2-3.

In the Debtors' cases, the Employees are critical to the Debtors' ability to continue their business operations without interruption and to maximize the value of their assets. If payment of wages and benefits are postponed to when a plan is confirmed, the Debtors' going-concern value will be threatened by employee losses and a severe disruption to the provision of goods and services. To the extent the Debtors' operations suffer, creditors also suffer and estate assets will be diminished. It is in the best interest of creditors that wages and benefits be paid to employees to maintain their good will. The issue is really one of timing of payment, and creditors are not harmed; rather, they will benefit by payment of the Prepetition Employee Obligations as the Debtors propose in the Motion.

CONCLUSION

The proposed payments are supported by a good business justification and are consistent with the priority scheme designed by Congress. For these reasons, this Court should enter an order authorizing the Debtors to pay the Prepetition Employee Obligations, and to continue the plans, practices, programs and policies underlying the Prepetition Employee Obligations for their Employees.

Dated: March 10, 2017

/e/ Sarah M. Olson

Clinton E. Cutler (#0158094)
Cynthia A. Moyer (#0211229)
Ryan T. Murphy (#0311972)
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PROPOSED ATTORNEYS FOR DEBTORS

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Gander Mountain Company,

Debtor.

Case No.: 17-30673
Chapter 11 Case

In re:

Overton's, Inc.,

Debtor.

Case No.: 17-30675
Chapter 11 Case

**ORDER GRANTING EXPEDITED RELIEF AND AUTHORIZING DEBTORS TO PAY
PREPETITION EMPLOYEE COMPENSATION, BENEFITS, WORKERS'
COMPENSATION OBLIGATIONS, AND OTHER RELATED AMOUNTS**

This case came before the court on the debtors' Motion for Order (I) Granting Expedited Relief; (II) Authorizing Debtors to Pay Prepetition Employee Compensation, Benefits, Workers' Compensation Obligations, and Other Related Amounts; and (III) Authorizing Payroll Provider and Financial Institutions to Honor and Process Checks and Transfers Related to Such Relief (the "Motion"). Capitalized terms not defined in this order have the meanings ascribed to them in the Motion. Based on the Motion and all of the files, records and proceedings in the case,

IT IS ORDERED:

1. The Motion is granted, including the request for expedited relief.
2. The debtors are authorized, but not required, to pay or cause to be paid, in their sole discretion, all amounts required under or related to the Prepetition Employee Obligations.
3. The debtors are authorized, but not required, to continue to pay and honor, in their sole discretion, their obligations arising under or related to their plans, practices, programs and

policies for their Employees as set forth in the Motion, including, without limitation, those giving rise to the Prepetition Employee Obligations (collectively, the “Employee Programs”), as those Employee Programs were in effect as of the Petition Date and as such Employee Programs may be modified, terminated, amended or supplemented from time to time in the ordinary course of the debtors’ businesses.

4. The debtors are authorized, but not required, to pay, in their sole discretion, prepetition amounts owing in the ordinary course of business to third parties in connection with administering and maintaining the Employee Programs.

5. Payroll provider ADP, and all applicable banks and other financial institutions, are authorized to receive, process, honor and pay any and all checks, drafts, wires, check transfer requests or automated clearing house transfers evidencing amounts paid by the debtors under this Order whether presented prior to or after the Filing Date to the extent the Debtors have good funds standing to their credit with such bank or other financial institution. ADP and such banks and financial institutions are authorized to rely on the representations of the debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the debtors’ instructions.

6. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this order, any authorization contained in this order, or any claim for which payment is authorized hereunder, shall be subject to any orders of this Court approving any debtor in possession financing for, or any use of cash collateral by, the debtors, and any documents providing for such debtor in possession financing and the budget governing such debtor in possession financing and use of cash collateral.

7. Nothing in the Motion or this Order, nor any payments made pursuant to this Order, shall be deemed to be, or constitute, (a) an admission as to the validity or priority of any claim against the debtors, (b) an assumption or postpetition reaffirmation of any agreement, plan, practice, program, policy, executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, (c) a grant of third-party beneficiary status or bestowal of any additional rights on any third party or (d) a waiver of any rights, claims or defenses of the debtors.

8. Nothing in the Motion or this Order shall impair the ability of the debtors to contest the validity or amount of any payment made pursuant to this Order.

9. Nothing in the Motion or this Order shall be construed as impairing the debtors' right to contest the validity or amount of any Prepetition Employee Obligation, including payroll taxes that may be due to any taxing authority.

10. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated:

United States Bankruptcy Judge