

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

IN RE:

KNIGHT ENERGY HOLDINGS, LLC, *ET AL.*<sup>1</sup>

DEBTORS

CASE NO. 17-51014

(JOINT ADMINISTRATION REQUESTED)

CHAPTER 11

CHIEF JUDGE ROBERT SUMMERHAYS

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS  
(A) TO PAY ALL OUTSTANDING PRE-PETITION WAGES, SALARIES, OTHER  
ACCRUED COMPENSATION, EXPENSE REIMBURSEMENTS, BENEFITS,  
AND RELATED AMOUNTS; AND (B) TO CONTINUE SPECIFIED BENEFIT  
PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

Knicht Energy Holdings, LLC; Knicht Oil Tools, LLC; Knicht Manufacturing, LLC; KDCC, LLC, f/k/a Knicht Well Services, LLC; Tri-Drill, LLC; Advanced Safety & Training Management, LLC; Knicht Security, LLC; Knicht Information Systems, LLC; El Caballero Ranch, Inc.; Rayne Properties, LLC; Knicht Aviation, LLC; Knicht Research & Development, LLC; Knicht Family Enterprises, LLC, HMC Leasing, LLC; and HMC Investments, LLC (collectively, the “Debtors”), as debtors-in-possession, file this *Motion for Entry of an Order Authorizing Debtors (A) to Pay All Outstanding Pre-Petition Wages, Salaries, Other Accrued Compensation, Expense Reimbursements,*

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Knicht Energy Holdings, LLC (1930) (Case No. 17-51014); Knicht Oil Tools, LLC (2667) (Case No. 17-51015); Knicht Manufacturing, LLC (0600) (Case No. 17-51016); KDCC, LLC, f/k/a Knicht Well Services, LLC (4156) (Case No. 17-51017); Tri-Drill, LLC (4957) (Case No. 17-51018); Advanced Safety & Training Management, LLC, (0510) (Case No. 17-51019); Knicht Security, LLC (0923) (Case No. 17-51020); Knicht Information Systems, LLC (0000) (Case No. 17-51021); El Caballero Ranch, Inc. (7345) (Case No. 17-51022); Rayne Properties, LLC (0000) (Case No. 17-51023); Knicht Aviation, LLC (3329) (Case No. 17-51024); Knicht Research & Development, LLC (3760) (Case No. 17-51025); Knicht Family Enterprises, LLC (7190) (Case No. 17-51026); HMC Leasing, LLC (0814) (Case No. 17-51027) and HMC Investments, LLC (0000) (Case No. 17-51029). The Debtors’ service address is 2272 SE Evangeline Thruway, Lafayette, Louisiana 70508 other than Knicht Manufacturing, LLC and Advanced Safety & Training Management, LLC. Knicht Manufacturing, LLC’s service address is 2810-A Melancon Road, Broussard, Louisiana 70518 and Advanced Safety & Training Management, LLC’s service address is 1042 Forum Drive, Broussard, Louisiana

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*Benefits, and Related Amounts; and (B) to Continue Specified Benefit Programs in the Ordinary Course of Business* (the “Motion”) and in support thereof, respectfully represent as follows:

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(4), 507(a)(5) and 1114(e) of title 11 of the United States Code 11 U.S.C. § 101, et seq. (the “Bankruptcy Code”).

### **Background**

3. On this date (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code commencing the above-captioned cases (the “Chapter 11 Cases”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

4. An official committee of unsecured creditors has yet to be appointed in these Chapter 11 cases. Further, no trustee or examiner has been requested or appointed in any of these Chapter 11 cases.

5. The Debtors have filed with the Court the *Statement of Background Information and Declaration in Support of Debtors’ Chapter 11 Petitions and First-Day Motions* (the “First Day Declaration”), which is incorporated by reference in this Motion.

6. The Debtors have filed with the Court the *Debtors’ Motion for an Order Authorizing the Debtors to (A) Use Cash Collateral, (B) Obtain Post-Petition Financing, (C) Granting Security*

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*Interests and Superpriority Administrative Expense Status to the DIP Agent and the DIP Lenders, (D) Granting Adequate Protection to Existing Lienholders, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* (the “DIP Motion”) seeking entry of interim and final orders (the “DIP Orders”) which includes a Debtor-proposed 13-week budget (the “Budget”). The terms of the DIP Motion, the DIP Orders, and the Budget are incorporated by reference in this Motion.

7. As of the Petition Date, the Debtors employ 146 salaried employees (“Salaried Employees”), 183 hourly employees (“Hourly Employees”) and have three independent contractors (“Independent Contractors” and together with Salaried Employees and the Hourly Employees, the “Employees”). The Employees are responsible for the ongoing business operations of the Debtors. The Employees’ skills, knowledge and understanding with respect to the Debtors’ operations are essential to the effective reorganization of the Debtors’ financial affairs.

### **Relief Requested**

8. By this Motion, the Debtors seek authority under Bankruptcy Code §§ 105(a), 507(a)(4) and 507(a)(5) and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to pay certain pre-petition obligations owed to either their Employees and Independent Contractors or those who provide employee benefits, to honor and continue certain employee benefits (collectively, and as described herein, the “Employee Obligations”)<sup>2</sup> and to authorize and direct financial institutions to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to pre-petition Employee Obligations. As more fully described below, Employee Obligations include amounts owed to or on behalf of the

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<sup>2</sup> The summary of the Debtors’ various Employee Obligations provided herein is qualified entirely by the Debtors’ official policies or other practices, programs or agreements, whether written or unwritten, evidencing an arrangement among the Debtors and their Employees (as defined herein) (each, an “Official Policy”). In the event of any inconsistency or ambiguity between the summary contained in the Motion and an Official Policy, the terms of such Official Policy shall govern.

Employees for wages, salaries, reimbursement of expenses and other benefits as described below. Each of the Employee Obligations described herein have been included in the budget approved by Clear Lake Capital Group, LP in connection with the Debtors' request for authority to enter into a debtor-in-possession financing agreement and is subject thereto.

9. The Debtors seek this authorization to minimize the personal hardship that the Employees would suffer if they are not paid when due and to maintain the morale of their essential workforce at this critical time.

**I. Pre-Petition Wages, Payroll and Other Compensation.**

**A. Wage Obligations**

10. In the ordinary course of business, the Debtors pay their Salaried Employees and Hourly Employees on separate schedules. Salaried Employees and Independent Contractors are paid on the 15th and last day of each month, while Hourly Employees are paid bi-weekly, one week in arrears. The Debtors pay the majority of their Employees through direct deposit, with a very small number of Employees paid via ComData Pay Cards. The Debtors' aggregate gross monthly payroll is approximately \$2,287,022.46 for wages and benefits for all of the Employees.

11. The only pre-petition wages and salaries owed to Employees are those that accrued during the period from July 30, 2017 through the Petition Date. The Debtors estimate that as of the Petition Date, total pre-petition wages and salaries (excluding expense reimbursements and vacation time) earned by the Employees prior to the Petition Date that have accrued and remain unpaid (collectively, the "Wage Obligations") total approximately \$625,435.73 (and include Independent Contractors and amounts withheld for taxes, garnishments, and 401(k) contributions).

12. The Debtors do not believe any Employees are owed more than \$12,850.00 with respect to their accrued but unpaid wages and salary earned within the 180 days prior to the Petition

Date pursuant to Bankruptcy Code § 507(a)(4), and therefore, these Wage Obligations would be entitled to be paid as a priority claim pursuant to 11 U.S.C. § 507(a)(4).

13. By this Motion, the Debtors seek authority to pay and honor the pre-petition Wage Obligations and to continue to honor the Wage Obligations on a post-petition basis in the ordinary course of business.

**B. Operators Pay, Service Pay, and Out of Town Pay**

14. As more fully discussed in the First Day Declaration, a significant aspect of the Debtors' business is the Debtors' "fishing" operations.<sup>3</sup> In addition to receiving salary, the Debtors' "fishermen" are also entitled to receive additional compensation for the work performed at a customer's well site. This additional payment is earned based on various factors, including the location of the work performed, the length of time spent at the location, and the amount charged to the customer ("Operator Pay"). Operator Pay is paid out on the 15th of each month for the Operator Pay accrued during the previous month. The last payment of Operator Pay occurred on July 15, 2017. During the previous six months, average monthly Operator Pay has been approximately \$117,650.42. The Debtors are seeking authority to make payments to fishermen for all Operator Pay that has accrued pre-petition.

15. The Debtors also seek authority to make payments to field employees for additional pay they are entitled to receive for work performed at customers' well sites ("Service Pay"). The amount of Service Pay is dependent on the work performed, the length of time spent at the location, and the amount charged to the customer. The last payment of Service Pay was in the amount of \$18,840.00 made on August 4, 2017. The average monthly Service Pay is \$21,625.07. While no

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<sup>3</sup> As more fully explained in the First Day Declaration, fishing refers to the process of retrieving tools or other broken or loose components in a well, or otherwise removing an obstruction from a well.

prepetition amounts are anticipated to be unpaid at the time of filing, the Debtors would like to continue this program, and thus seek the Court's authority to make any such payments, and if any prepetition amounts are discovered, Debtor seeks authorization to pay such amounts.

16. The Debtors also make supplemental payments to certain employees when those employees are required to work out of town as outlined in the Debtors' out-of-town policy ("Out-of-Town Pay"). Out-of-Town Pay is paid out during each payroll period. Due to the nature of Out-of-Town Pay, the amount of Out-of-Town Pay paid by the Debtors varies from payroll period to payroll period. The last of such payment was made on August 4, 2017 in the amount of \$100.00. While no prepetition amounts are anticipated to be unpaid at the time of filing, the Debtors would like to continue this program, and thus seek the Court's authority to make any such payments, and if any prepetition amounts are discovered, Debtor seeks authorization to pay such amounts.

17. By this Motion, the Debtors seek authority to pay and honor the pre-petition Out-of-Town Pay obligations and to continue to pay Out-of-Town Pay on a post-petition basis in the ordinary course of business.

### **C. Safety Bonus Program**

18. Another component of the Debtors' compensation is the Debtors' safety bonus program (the "Safety Bonus Program"). Safety bonuses are paid out on a quarterly basis based on a number of factors, including, among other things, whether the Employee was involved in a recordable accident during the applicable quarter, the Employee's attendance at specified safety meetings, and the occurrence of certain safety training programs at the Employee's facility (the "Safety Bonuses"). The Safety Bonus Program is intended to promote a safe work culture for the Debtors' Employees and is an integral component of the Debtors' business. The Debtors' 2<sup>nd</sup> quarter Safety Bonus payments totaled approximately \$32,683.75 and were paid out to a total of 132

Employees. The Debtors are scheduled to make their 3<sup>rd</sup> quarter Safety Bonus payments on October 27, 2017.

19. By this Motion, the Debtors seek authority to pay and honor the pre-petition Safety Bonuses and to continue to pay Safety Bonuses on a post-petition basis in the ordinary course of business.

**D. Commission Program**

20. Employees of Tri-Drill, the Debtors' inspection arm, are paid commissions (the "Tri-Drill Commissions"), in addition to their regular payroll amounts. The Tri-Drill Commissions are determined by the number of inspections conducted by each eligible Employee in a given month. The Tri-Drill Commissions are paid monthly by the second payroll of the month based on the commissions earned during the prior month. On the July 21, 2017 payroll, nine Tri-Drill Employees received Tri-Drill Commissions totaling \$2,863.38.

21. The Tri-Drill Commissions are an integral component of the Tri-Drill Employees' compensation. By this Motion, the Debtors seek authority to pay and honor the pre-petition Tri-Drill Commissions and to continue to pay Tri-Drill Commissions on a post-petition basis in the ordinary course of business.

**E. Unpaid Payroll and Payroll Tax Service Fees, Deductions and Payroll Taxes**

22. As mentioned above, the majority of the Wage Obligations are paid by direct deposit through the electronic transfer of funds from the Debtors' payroll account directly to each Employee's bank account. In addition, Ceridian HCM, Inc. ("Ceridian"), a payroll services provider, Ultimate Software Group, Inc. ("USG") the payroll platform and tracking software, and ADP, LLC ("ADP") time and attendance tracking software, complete the Debtors' payroll tax filings, including federal, state, and local tax filings, and wage garnishments.

23. As of the Petition Date, the Debtors estimate that Ceridian will be owed \$3,465.16, USG will not be owed any dollars, and ADP will be owed \$6,196.63 dollars for services rendered pre-petition have been paid (the “Unpaid Payroll & Payroll Tax Service Fees”). The Debtors seek authority, in their discretion, to remit any Unpaid Payroll and Payroll Tax Service Fees and continue to use Ceridian and USG in the ordinary course of business on a post-petition basis.

24. During each applicable pay period, Ceridian drafts the applicable amounts from the Debtors’ payroll account including for garnishments, child support, or similar deductions (collectively, the “Deductions”), which Ceridian then forwards appropriately. As of the Petition Date, the Debtors are not aware of any collected but not remitted Deductions (collectively, the “Unremitted Deductions”); however, to the extent there are Unremitted Deductions, the Debtors request authority to pay such amounts.

25. In addition to the Deductions, the Debtors are required by law to withhold amounts from Employees’ wages that are related to federal, state, provincial, and local income taxes, including social security, Medicare taxes, and unemployment insurance, for remittance to the appropriate taxing authorities (collectively, the “Payroll Taxes”). As with the Deductions, Ceridian drafts the applicable amounts from the Debtors’ payroll account and remits all Payroll Taxes to the appropriate governmental entity. The Debtors are not aware of any collected but unremitted Payroll Taxes (collectively, the “Unremitted Payroll Taxes”); however, to the extent there are Unremitted Payroll Taxes, the Debtors request authority to pay such amounts.

26. The Debtors do not believe they are in the possession of any Unremitted Deductions or Unremitted Payroll Taxes except as noted above. The Payroll Taxes are held in trust for payment to third parties, and thus, do not constitute property of the Debtors’ estates. The Debtors, in an abundance of caution, seek authority to cause Ceridian to remit the Unremitted Payroll Taxes and

Unremitted Deductions, if any, and to continue collecting and remitting the Deductions and Payroll Taxes in the ordinary course of business on a post-petition basis.

**F. Vacation and Other Benefits**

27. The Debtors provide the Employees with vacation time and holidays (“Vacation”). Vacation accrues at the beginning of each calendar year and the amount is dependent upon an Employee’s length of employment. If an Employee does not use his or her vacation time in a given year, the Employee loses that year’s vacation time. Vacation does not carry over to the next year. If an Employee is terminated or resigns, such Employee is paid for any unused vacation time since vacation is granted at the beginning of each year (the “Unused Vacation”). By this Motion, the Debtors seek authority to honor their respective vacation and other leave policies to all Employees in the ordinary course of Debtors’ business. The Debtors request authority to permit their Employees to use accrued Unused Vacation and other leave in accordance with their pre-petition policies.

**G. Expense Reimbursements and Company Credit Cards**

28. Employees occasionally incur qualified company expenses on their personal credit cards or for cash for items such as travel reimbursement expenses, mileage, professional association fees and other expenses. When an Employee incurs qualified company expenses (“Reimbursable Expenses”), the Employee submits an expense report to the accounting department for reimbursement. To the extent an Employee has not yet submitted an expense report or has not yet been reimbursed for Reimbursable Expenses incurred prior to the Petition Date, the Debtors are seeking authority to reimburse Employees for such amounts. The Debtors seek authority to pay the Reimbursable Expenses to Employees for pre-petition amounts incurred on behalf of the Debtors and to continue to process and pay Reimbursable Expenses incurred by Employees in the ordinary course of business and consistent with past practice.

29. Certain Employees also have company credit cards with Whitney Bank (the “Company Cards”), which Employees use for travel and business related expenses. The Debtors estimate that as of August 3, 2017, \$29,767.27 is outstanding on the Company Cards. The Debtors seek authority to pay amounts accrued pre-petition on the Company Cards and to continue to process and pay expenses incurred on the Company Cards.

30. The Debtors also provide monthly car and cell phone allowances to Employees. 39 Employees receive car allowances at a monthly cost of approximately \$37,746.00. 133 Employees receive cell phone allowances at a monthly cost of approximately \$6,600.00. The Debtors seek authority to continue paying the monthly car and cell phone allowances to Employees (“Phone/Car Allowances”).

## **II. Employee Benefit Plans**

31. The Debtors maintain various employee benefit plans and policies for health care, dental, vision, disability, life, accidental death and dismemberment insurance, flexible spending, cancer and critical illness and 401(k) savings plan (collectively, and as discussed in more detail below, the “Employee Benefits”).

### **A. Health Benefits**

32. All regular Employees that work over thirty hours per week are eligible to receive medical, prescription drug, cancer and critical illness, dental, and vision insurance coverage.

33. Medical insurance and prescription drug coverage is provided through a self-funded health plan (the “Medical Plan”) administered by Blue Cross Blue Shield of Louisiana (“BCBS”). A total of 329 of the Debtors’ employees are covered under the Health Plan.<sup>4</sup> The Employee portion of the cost of the Medical Plan is deducted each payroll period from the Employee’s total pay. The

Employees' portion of the premium amount ranges from \$152.00 per month for Employee only coverage to \$397.00 per month to insure the Employee plus the Employee's family. Each month, the Debtors pay a monthly administration fee to BCBS totaling approximately \$39,822.50 for the administration of the Medical Plan. In addition to paying the administration fee, because the Medical Plan is self-funded, each week the Debtors' pay for claims that have been incurred by the Employees under the Medical Plan. Because of the nature of a self-funded plan, it is impossible to predict the amount of claims that the Debtors will be required to pay for any given week. Over the last six months, the average weekly claims cost paid by the Debtors was \$52,345.00. Because there is a deductible and an out-of-pocket payment requirement, the claim amounts paid by the Debtors under the Medical Plan become larger as the year progresses and employees meet their deductibles and out-of-pocket payment requirements. For this reason, the Debtors anticipate that the weekly claims cost will be lower than the last six month average due to the timing of these bankruptcy filings.

34. Claims relating to prescription drugs are paid out separately under the Medical Plan. Prescription claims are paid out on a monthly basis. Over the last three months, the average weekly prescription claims cost was \$18,546.13.

35. Dental and vision insurance is provided ("Dental and Vision Plan" and together with the Medical Plan the "Health Benefits") through AlwaysCare ("AlwaysCare"). Approximately 329 Employees participate in the Dental and Vision Plan. Each month, the Debtors make a premium payment to AlwaysCare in the approximate amount of \$13,423.77. The Employee portion of the cost of the Dental and Vision Plan is deducted each payroll period from the Employee's total pay. The Employees' portion of the premium amount is approximately \$6,770.96 per month.

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<sup>4</sup> There are an additional approximately 13 COBRA beneficiaries.

36. The Employees are also eligible to set up flexible spending accounts (the “FSA Accounts”). Approximately 23 Salary Employees and 12 Hourly Employees have FSA Accounts. Each payroll period a portion of the participating Employees’ payroll is deducted and placed in the Employee’s FSA Account. The Debtors do not make any contributions into the FSA Accounts.

37. Finally, the Employees who have selected a high deductible insurance plan may additionally utilize and contribute to a Healthcare Savings Account administered by Health Equity Employer Benefits. Knight Oil Tools, LLC currently has 43 employees who have chosen to use this service.

38. Considering that the Health Benefits are vital to the Debtors’ Employees and that the vast majority of the funds constituting unpaid Health Benefits are held in trust for the Employees and are not property of the Debtors’ estates, the Debtors seek authority to remit all pre-petition amounts owing for Health Benefits, and to continue providing the Health Benefits in the ordinary course of business on a post-petition basis.

**B. Life and Accidental Death and Dismemberment Insurance**

39. All regular Employees that work over thirty hours per week are eligible to receive life insurance (the “Life Insurance”), accidental death and dismemberment insurance (the “ADD Insurance”), long and short-term disability insurance (the “Disability Insurance” and together with the Life Insurance and ADD Insurance the “Life and Disability Insurance”). The Life and Disability Insurance are provided through various policies with Cigna. The Debtors’ monthly premium payment to Cigna totals approximately \$19,452.17. The Employees are not required to make any contribution to participate in the Life and Disability Insurance. The Debtors pay long term disability insurance while the Employees pay for short term disability insurance

40. All regular Employees that work over thirty hours per week are also eligible to opt into coverage for accident insurance (“Accident Insurance”) with Combined Insurance and cancer and critical illness insurance (“CCI Insurance”) with Allstate. Premiums for the Accident Insurance and CCI Insurance are deducted from the participating Employees’ payroll. The Debtors do not pay any of the premiums relating to the Accident Insurance and the CCI Insurance.

41. The Debtors request authority to continue making premium payments for the Life and Disability Insurance and to continue to allow Employees to participate in the Accident Insurance and CCI Insurance.

**C. 401(k) Employee Savings Plan**

42. All regular Employees that work over thirty hours per week are eligible to participate in a 401k plan (the “401k Plan”) managed by PNC Retirement Solutions. The Debtors do not provide matching funds or otherwise incur costs relating to the management of the 401k Plan. For participating Employees, 401k funds are deducted from the Employees’ payroll and deposited in the 401k Plan.

43. The Debtors request authority to continue offering Employees the ability to participate in the 401k Plan.

44. The failure to continue to maintain and pay the Employee Benefits would have a very negative impact on Employee morale and result in a reduction in performance that would be detrimental to the Debtors’ businesses.

**Basis for Relief Requested**

**I. Certain of the Employee Obligations are Entitled to Priority Treatment.**

45. Pursuant to Bankruptcy Code §§ 507(a)(4) and (5), certain of the unpaid pre-petition Employee Obligations — including Wage Obligations — are entitled to priority treatment in an

amount up to \$12,850 for each individual Employee. To the extent such claims are afforded priority status, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries or commissions, including vacation, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). As such, these claims would be entitled to payment in full under any plan of reorganization. Therefore, authorizing the Debtors to make these payments at this time will affect only the timing of such payments.

## **II. Payment of Certain of the Employee Wages and Benefits Is Required by Law.**

46. The Debtors also seek authority to pay Deductions 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 Employee contributions to the Employee Benefit Plans, 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 US 53 (1990) (withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor's estate).

47. Further, federal and state laws require the Debtors and their officers to remit 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). Because the Deductions and Payroll Taxes are not property of the Debtors'

estates, the Debtors request that this Court authorize them to remit the Deductions and Payroll Taxes to the proper parties in the ordinary course of business.

### **III. Ample Authority Exists to Authorize the Debtors to Honor Employee Obligations.**

48. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of pre-petition obligations in appropriate circumstances. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174 (Bankr. S.D.N.Y. 1989) (granting authority to pay pre-petition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay pre-petition claims of suppliers who were potential lien claimants). As set forth herein, in authorizing payments of certain pre-petition obligations, courts have relied on several legal theories, based on Bankruptcy Code §§ 1107(a), 1108, 363(b), and 105(a).

49. Pursuant to Bankruptcy Code §§ 1107(a) and 1108, debtors in possession 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 fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a pre-petition claim.” *Id.* The *CoServ* court specifically noted that the preplan satisfaction of pre-petition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate . . . .” *Id.*

50. Consistent with a debtor’s fiduciary duties, courts have also authorized payment of pre-petition obligations under Bankruptcy Code § 363(b) where a sound business purpose exists for doing so. *See, e.g., Ionosphere Clubs*, 98 B.R. at 175 (discussing prior order authorizing payment of

pre-petition wage claims pursuant to Bankruptcy Code § 363(b); relief appropriate where payment was needed to “preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale.”); *see also Armstrong*, 29 B.R. at 397 (relying on Bankruptcy Code § 363 to allow contractor to pay pre-petition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

51. Courts have also authorized payment of pre-petition claims in appropriate circumstances pursuant to Bankruptcy Code § 105(a). Bankruptcy Code § 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy 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). Under Bankruptcy Code § 105(a), courts may permit preplan payments of pre-petition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a pre-petition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. Accordingly, this Court has authority pursuant to 11 U.S.C. § 105(a) to authorize the payment of pre-petition wage and benefit claims. *See, e.g. In re Idearc, Inc.*, 423 B.R. 138, 153-54 (Bankr. N.D. Tex. 2009) subsequently *aff’d sub nom, In re Idearc, Inc.*, 662 F.3d 315 (5th Cir. 2011) (finding that the employees should be paid for vacation time in accordance with pre-petition benefit plan); *In re Tusa-Expo Holdings, Inc.*, 08-45057, 2008 WL 4857954, \*2 (Bankr. N.D. Tex. Nov. 7, 2008) (noting the importance of entitlement to priority treatment in deciding whether a pre-petition unsecured claim may be paid at the initial stages of a chapter 11 case); *In re Gulf Air, Inc.*, 112 B.R. 152 (Bankr. W.D. La. 1989) (authorizing payment of pre-petition amounts due for wages, benefits, and health insurance premiums).

52. In *In re Tusa-Expo*, the United States Bankruptcy Court for the Northern District of Texas noted that satisfying employees' pre-petition claims was essential because, among other reasons, absent paying these claims there would be significant turnover which would interrupt the continuity of the debtor's business. In addition, the court went on to note that even if an employee remains with a debtor despite nonpayment of prepetition wages and benefits, the employee's work would be affected as the employee would likely be preoccupied with his or her personal economic issues which would obstruct the employee's performance of work. Likewise, here, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably attend a rapid decline in Employee morale.

53. Courts have repeatedly recognized the importance of employees to a debtor's reorganization and the severe harm to employees that can arise if courts do not grant motions such as this one. *In re Braniff, Inc.*, 218 B.R. 628, 633 (Bankr. M.D. Fla. 1998) (approving payment of pre-petition employee wage claims due to the vital role the employees play to the debtor's reorganization). Numerous bankruptcy courts, including this Court, have recognized the importance of paying employees' pre-petition claims and authorized payment of pre-petition employee compensation and benefits as appropriate under Bankruptcy Code § 105(a). See, e.g., *In re Acadiana Management Group, L.L.C., et al.*, (Bankr W.D. La. June 23, 2017); *In re Rooster Energy, L.L.C, et al.*, 17-50705 (Bankr. W.D. La. June 6, 2017); *In re A&B Valve and Piping Systems, L.L.C.*, No. 15-51336 (Bankr. W.D. La. Oct. 16, 2015); *In re Harvest Oil & Gas, LLC, et al.*, No. 15-50748 (Bankr. W.D. La. June 25, 2015); *In re Port Aggregates, Inc.*, 14-51580 (Bankr. W.D. La. Dec. 19, 2014); *In re Bass, Ltd.*, 11-51393 (Bankr. W.D. La. Oct. 20, 2011); *In re T & M Aviation, Inc.*, 10-51520 (Bankr. W.D. La. Oct. 6, 2010). See also *In re Pilgrim's Pride Corp.*, 08-45664 (Bankr. N.D. Tex. Dec. 02, 2008); *In re Louisiana Riverboat Gaming Partnership, et al.*, No. 12-

12013 (Bankr. W.D. La. March 19, 2008); *In re Communications Corporation of America, et al.*, No. 06-50410 (Bankr. W.D. La. June 7, 2006); *In re OCA, Inc. et al.*, No. 06-10179 (Bankr. E.D. La. 2006); and *In re Entergy New Orleans, Inc.*, No. 05-17697 (Bankr. E.D. La. 2006).

54. The Debtors are engaged in a highly competitive business and depend on their ability to retain their existing dedicated Employees. Absent the relief requested herein, existing Employees and their families will suffer undue hardship because the payments the Debtors seek to pay are needed to enable the Employees and their families to meet their financial obligations. If the Court does not grant the requested relief, the Debtors believe that their Employees may seek alternative employment opportunities. The Debtors' ability to preserve their business and assets and ultimately reorganize will be adversely affected if they are unable to retain their dedicated and loyal Employees. Accordingly, it is critical that any hardship and disruption caused by these Chapter 11 proceedings be minimized in order to preserve morale and maintain the Debtors' workforce.

55. The Debtors do not seek to alter their compensation, vacation, or other benefit policies at this time. This Motion is intended only to permit the Debtors, in their discretion, to make payments consistent with the Debtors' existing policies to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and to permit the Debtors, in their discretion, to continue to honor their practices, programs, and policies with respect to its Employees, as such practices, programs, and policies were in effect as of the Petition Date. Payment of all Employee Obligations in accordance with the Debtors' pre-petition business practices is in the best interests of the Debtors' estates, their creditors, and all parties-in-interest and will enable the Debtors to continue to operate their businesses in an economic and efficient manner without disruption. The Employees are central to the Debtors' operations and are vital to these cases. A significant deterioration in employee morale at this critical

time undoubtedly would have a devastating impact on the Debtors, their customers and vendors, the value of the Debtors' assets and business, and the Debtors' ability to continue operations.

56. Nothing in this Motion is intended, nor should it be construed, to impair the Debtors' rights to contest the amount, basis or validity of any Employee Obligations that may be allowed to be due, and the Debtors expressly reserve all rights with respect thereto.

57. The Debtors further request that the Court authorize and direct the Banks to receive, process, and pay any and all checks, electronic fund transfers, and automatic payroll transfers drawn on the Debtors' bank accounts with Regions, IberiaBank, Chase Bank, and Wells Fargo to the extent that such checks or transfers relate to any of the pre-petition Employee Obligations. The Debtors also seek authority to issue new post-petition checks, or effect new electronic fund transfers, on account of such claims to replace any pre-petition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the bankruptcy cases.

#### **Request for Waiver of Stay**

58. To the extent that the relief sought in the Motion constitutes a use of property under Bankruptcy Code § 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied because the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of the estates.

**Subject to DIP Orders**

59. Notwithstanding any provision herein to the contrary, this Motion and all relief sought hereby shall be subject in all respects to the DIP Orders, the Budget, and any other cash collateral order financing orders granted in the Cases.

**Notice**

60. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) the Debtors and their counsel; (iii) Clearlake Capital Group, L.P. and/or its counsel; (iv) Cantor Fitzgerald Securities and/or its counsel; (v) Whitney National Bank and/or its counsel; (vi) JP Morgan Chase Bank and/or its counsel; (vii) Iberia Bank and/or its counsel; (viii) all other secured creditors; (ix) any party whose interests are directly affected by this specific pleading; (x) those persons who have formally appeared and requested notice and service in these proceedings pursuant to Bankruptcy Rules 2002 and 3017; (xi) counsel for and the members of any official committees appointed by this Court; (xii) the consolidated 30 largest unsecured creditors of the Debtors; and (xiii) all governmental agencies having a regulatory or statutory interest in these cases; and (xiv) the Cash Management Banks. No other or further notice need be provided.

WHEREFORE, the Debtors respectfully request that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

[signature on next page]

Dated: August 8, 2017.

Respectfully submitted,

/s/ William H. Patrick III

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