

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

IN RE: KNIGHT ENERGY HOLDINGS, LLC, <i>ET AL.</i> ¹ DEBTORS	CASE NO. 17-51014 (JOINT ADMINISTRATION REQUESTED) CHAPTER 11 CHIEF JUDGE ROBERT SUMMERHAYS
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**MOTION FOR ENTRY OF AN ORDER UNDER 11 U.S.C. §§ 105(a), 363(b), 507(a)(8),
AND 541 (I) AUTHORIZING THE DEBTORS TO PAY TAXES AND FEES AND
(II) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

Knight Energy Holdings, LLC; Knight Oil Tools, LLC; Knight Manufacturing, LLC; KDCC, LLC f/k/a Knight Well Services, LLC; Tri-Drill, LLC; Advanced Safety & Training Management, LLC; Knight Security, LLC; Knight Information Systems, LLC; El Caballero Ranch, Inc.; Rayne Properties, LLC; Knight Aviation, LLC; Knight Research & Development, LLC; Knight Family Enterprises, LLC; HMC Leasing, LLC; and HMC Investments, LLC (collectively, the “Debtors”), as debtors-in-possession, file this *Motion for an Order Under 11 U.S.C. §§ 105(a), 363(b), 507(a)(8) and 541 (I) Authorizing the Debtors to Pay Taxes and Fees*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Knight Energy Holdings, LLC (1930) (Case No. 17-51014); Knight Oil Tools, LLC (2667) (Case No. 17-51015); Knight Manufacturing, LLC (0600) (Case No. 17-51016); KDCC, LLC, f/k/a Knight 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); Knight Security, LLC (0923) (Case No. 17-51020); Knight 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); Knight Aviation, LLC (3329) (Case No. 17-51024); Knight Research & Development, LLC (3760) (Case No. 17-51025); Knight 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 Knight Manufacturing, LLC and Advanced Safety & Training Management, LLC. Knight 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 70518.

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and (II) Directing Financial Institutions to Honor and Process Related Checks and Transfers (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).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. On this date (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of title 11 of the U.S. Code (the “Bankruptcy Code”). 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 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.

Relief Requested

7. By this Motion, the Debtors request entry of an order authorizing, but not directing, the Debtors to pay certain pre-petition sales, use, employment and miscellaneous taxes (collectively, the “Taxes”) as well as prepetition fees for licenses, permits, and other similar charges and assessments (collectively, the “Fees”) owed to the Authorities (as defined below), as they arise after the Petition Date.²

8. The Debtors also request that this Court authorize and direct banks and financial institutions at which the Debtors maintain disbursement and other accounts, at the Debtors’ instruction, to receive, honor, process, and pay, to the extent of funds on deposit, any and all checks or electronic funds transfers relating to such Taxes and Fees.

Basis for Relief

9. In the ordinary course of business, the Debtors: (a) incur and/or collect Taxes; (b) incur Fees in connection with obtaining licenses and permits necessary to operate their business; and (c) remit such Taxes and Fees to various taxing, licensing, and other governmental authorities (collectively, the “Authorities”).

10. The Debtors pay the Taxes and Fees monthly, quarterly, or annually in each case as required by applicable laws and regulations. The Taxes and Fees generally fall into the following categories: Certain State and Local Income Taxes, Sales and Use Taxes, Franchise Taxes, License Permit and Environmental Fees, and Other Taxes (collectively, the “Taxes and Fees”) (each as defined and described below).

² Debtors reserve the right to pay any pre-petition Taxes and Fees through a plan of reorganization.

A. Certain State and Local Income Taxes

11. Under certain applicable laws, state or local Authorities, or both, levy taxes based on the Debtors' income (the "State and Local Income Taxes"). In certain states, state and local Authorities are entitled to statutory liens on the Debtors' property located in, or subject to tax, in the respective state if these income taxes are not paid. Moreover, in certain states, the Debtors' directors and officers have personal liability for failure to timely pay these taxes.

12. The Debtors estimate that a total of approximately \$1,009.29 in pre-petition amounts remain outstanding with respect to State and Local Income Taxes. Therefore, the Debtors request the authority pursuant to the Order to pay all pre-petition and post-petition State and Local Income Taxes in the ordinary course of business, as they become due.

B. Sales and Use Taxes

13. The Debtors are required to pay state and local sales and use taxes (the "*Sales and Use Taxes*") to the Authorities in connection with the sale and use of certain goods and services. The Debtors typically pay Sales and Use Taxes in the ordinary course of business and on a monthly basis. As of the Petition Date, the Debtors estimate that their accrued but unpaid liability for the Sales and Use Taxes totals approximately \$240,220.49. Therefore, the Debtors request the authority pursuant to the Order to pay all pre-petition and post-petition Sales and Use Taxes in the ordinary course of business, as they become due. Further, the Debtors are in the process of reviewing several Sales and Use Tax audits in various taxing jurisdictions. The ultimate result of these audits is unknown at this time, but the Debtors request authority to pay all unpaid pre-petition and post-petition Sales and Use Taxes uncovered in these audits.

C. License, Permit, and Environmental Fees

14. Local governments sometimes require the Debtors to obtain a business license and pay fees associated with the obtaining and renewal of a business license or related to environmental rules and regulations. To obtain business licenses and permits, payment of a fee is usually required (the “License, Permit, and Environmental Fees”). The way in which the License Permit, and Environmental Fees are computed varies according to the tax law of the applicable jurisdiction. License, Permit, and Environmental Fees are paid on an as needed basis. As of the Petition Date, the Debtors estimate that a total of approximately \$401.61 in pre-petition amounts remain outstanding with respect to License, Permit, and Environmental Fees. Therefore, the Debtors request the authority pursuant to the Order to pay all pre-petition and post-petition License, Permit, and Environmental Fees in the ordinary course of business, as they become due.

D. Franchise Taxes

15. The Debtors are required to pay various state franchise taxes and fees (the “*Franchise Taxes*”) in order to continue conducting their businesses pursuant to state and local laws. The Franchise Taxes are assessed annually and are necessary for the Debtors to remain in good standing and conduct their businesses in the applicable jurisdictions. As of the Petition Date, the Debtors estimate that their accrued but unpaid liability for Franchise Taxes total approximately \$223,777.00. Therefore, the Debtors request the authority pursuant to the Order to pay all pre-petition and post-petition Franchise Taxes in the ordinary course of business, as they become due.

B. Other Taxes

16. In addition to the foregoing taxes, charges, and fees, the Debtors collect, withhold, or incur various other taxes, fees, and charges, including, but not limited to, backup

withholding under 3406 of the Internal Revenue Code, withholding on certain payments to foreign persons, state and local taxes imposed on overall gross receipts, vehicle use taxes, and other federal, state or local taxes, charges, and fees for which an officer, director or employee of the Debtors could have personal liability (including without limitation, any amounts required to be withheld or collected under applicable law) (collectively, “Other Taxes”). The Debtors are required to remit or pay Other Taxes to the applicable Authorities on a periodic basis.

17. As of the Petition Date, the Debtors estimate that a total of approximately \$6,048.00 in pre-petition amounts remain outstanding with respect to Other Taxes. Therefore, the Debtors request the authority pursuant to the Order to pay all pre-petition and post-petition Other Taxes in the ordinary course of business, as they become due.

18. There are several bases for granting the relief requested in the Motion: (a) certain of the Taxes and Fees are not property of the Debtors’ estates pursuant to Bankruptcy Code § 541(d); (b) portions of the Taxes and Fees may be entitled to priority status pursuant to Bankruptcy Code § 507(a)(8); (c) governmental entities may sue the Debtors’ directors and officers for unpaid Taxes and Fees, and thus distract the Debtors’ directors and officers from the Debtors’ reorganization efforts; and (d) the Bankruptcy Code and applicable case law give the Debtors authority to remit payment on account of such Taxes and Fees in the ordinary course of business under the “doctrine of necessity.”

I. Certain of the Taxes and Fees May Not Be Property of the Debtors’ Estates

19. Bankruptcy Code § 541(d) provides, in relevant part:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (a)(2) of this section only to the extent of the [D]ebtors’ legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d). The Debtors' sales and use Taxes and certain other Taxes and Fees likely constitute "trust fund" taxes, which are required to be collected from customers and held in trust for payment to the Authorities. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not an avoidable preference since funds are not the debtor's property); *Shank v. Wash. State Dep't of Revenue, Excise Tax Div. (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same); *DuCharmes & Co., Inc. v. Michigan*, 852 F.2d 194 (6th Cir. 1988) (per curiam); *In re Maranatha Trucking Co.*, Case No. 587-1438, 1988 WL 212742, at *2 (Bankr. N.D. Ohio Dec. 22, 1988); *In re Shreve Steel Erection, Inc.*, 92 B.R. 214 (Bankr. W.D. Mich. 1988). To the extent these "trust fund" taxes are collected, they are not property of the Debtors' estates under Bankruptcy Code § 541(d). *See In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 104–105 (Bankr. E.D. Pa. 1987). The Debtors, therefore, do not have an equitable interest in certain of the Taxes or Fees and should be permitted to pay them to the Authorities as they become due.

II. Portions of the Taxes and Fees May Be Entitled to Priority Status Pursuant to Bankruptcy Code § 507(a)(8)

20. Claims for some of the Taxes and Fees are or may be priority claims entitled to payment prior to general unsecured creditors. *See* 11 U.S.C. § 507(a)(8). These include unsecured claims of governmental units for a tax on or measured by income or gross receipts for a taxable year ending on or before the Petition Date (11 U.S.C. § 507(a)(8)(A)), a tax required to be collected or withheld and for which the debtor is liable in whatever capacity (11 U.S.C. § 507(a)(8)(C)), and, under certain circumstances, an employment tax on wages, salaries or commissions (11 U.S.C. § 507(a)(8)(D)). Obligations labeled as "fees" or "charges" may also be

entitled to priority status as taxes. 11 U.S.C. § 507(a)(8). A fee or charge is a tax if it is an involuntary pecuniary burden: (i) laid upon the individual or property; (ii) imposed by, or under authority of the legislature; (iii) assumed for the public purposes, including the purposes of defraying expenses of government undertakings authorized by it; and (iv) assessed under the police or taxing power of the state. *See LTV Steel Co., Inc. v. Shalala (In re Chateaugay Corp.)*, 54 F.3d 478, 498 (2d Cir. 1995). Here, all or substantially all of the pre-petition Taxes and Fees are involuntary pecuniary burdens imposed by the authority of a federal, state or local legislature under its policing power.

21. Regardless of their statutory characterization as “fees” or “charges,” many, if not all, of the prepetition Taxes and Fees qualify for priority under Bankruptcy Code § 507(a)(8). Thus, payment of certain of the Taxes and Fees likely will give the Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and will save the Debtors the potential interest expense, legal expense, and penalties that otherwise might accrue on the Taxes and Fees during these Chapter 11 Cases. Moreover, to the extent that the Taxes and Fees are entitled to priority treatment under Bankruptcy Code § 507(a)(8)(B), the governmental units also may attempt to assess interest and penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). Thus, to the extent any Taxes and Fees are outstanding, the payment of certain Taxes and Fees at this time would affect only the timing of payment and, therefore, should not unduly prejudice the rights of other creditors.

III. Payment of the Taxes and Fees Will Avoid Unnecessary Distractions in These Chapter 11 Cases

22. Certain Authorities may impose personal liability on the Debtors’ directors and officers to the extent the Debtors fail to meet their obligations to remit pre-petition Taxes and

Fees, including, notably for sales and use Taxes, even if the failure to pay such Taxes and Fees was not a result of any malfeasance on the Debtors' part. In addition, the Debtors' failure to pay certain Taxes and Fees could cause some states to challenge the Debtors' rights to operate within such states' jurisdictions. Addressing any subsequent action taken by such states would be costly and administratively burdensome for the Debtors' management during these Chapter 11 Cases and would be an unnecessary distraction for the Debtors, the named officers and directors and, this Court, which could be asked to entertain various motions seeking injunctions with respect to the potential state and federal court actions. *See, e.g.*, I.R.C. § 6672 (personal liability in connection with non-payment of Transportation Taxes); 21 U.S.C. § 136(a)(e) (personal liability in connection with non-payment of APHIS Fees); I.R.C. § 4301 (personal liability in connection with Fuel Taxes). Therefore, it is in the best interest of the Debtors' estates and the Debtors' prospects for reorganization to eliminate the possibility of the foregoing distractions.

IV. Ample Authority Exists to Support Payment of the Taxes and Fees Under the “Doctrine of Necessity”

23. Courts have also authorized payment of pre-petition claims in appropriate circumstances pursuant to Bankruptcy Code § 105(a) of the Bankruptcy Code. Section 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); *see also In re Jacobsen*, 609 F.3d 647 (5th Cir. 2010) (the bankruptcy court is provided equitable powers under section 105); *In re McKenzie*, 2000 WL 284026, 1 (5th Cir. 2000) (“Section 105 of the Bankruptcy Code provides the court with vast equitable powers”); *Admiral Ins. Co., Inc. v. Arrowood Indem. Co.*, 2012 WL 1081776, *12 (N.D. Tex. 2012) (“section 105 grants a bankruptcy court authority to exercise its equitable powers”).

24. Under § 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. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay pre-petition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor.)

25. The "doctrine of necessity" or the "necessity of payment" rule originated in railway cases and was first articulated by the United States Supreme Court in *Miltenberger v. Logansport, C.&S.W.R. Co.*, 106 U.S. 286 (1882). The doctrine was expanded to non-railroad debtors in the mid-century. *See Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in hotel reorganization case, that the court was not "helpless" to apply the rule to supply creditors of non-railroad debtors where alternative was cessation of operations).

26. The Third Circuit recognized the "necessity of payment" doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of pre-petition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of pre-petition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding necessity of payment doctrine permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the

business until their pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-26 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay pre-petition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

27. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *see also Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation . . .” is appropriate); *In re Just For Feet*, 242 B.R. 821, 826 (Bankr. D. Del 1999) (finding that payment of pre-petition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code”, but “[a] general practice has developed ... where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of pre-petition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); Collier on Bankruptcy P 105.02[4][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay pre-petition claims immediately).

28. 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.*

29. 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). Specifically, the business judgment standard requires that a debtor “articulate some business justification, other than mere appeasement of major creditors.” *Ionosphere Clubs*, 98 B.R. at 175.

30. Here, the Debtors’ payment of the Taxes and Fees are necessary to permit a successful reorganization and an exercise of sound business judgment. As discussed above, the

Debtors must continue to pay the Taxes and Fees to continue operating in certain jurisdictions and to avoid costly distractions during these chapter 11 cases. Indeed, it is possible that Authorities would seek to interfere with the Debtors' businesses if the Taxes and Fees are not paid on a timely basis. Additionally, the relief requested herein merely expedites the treatment and distribution to the Authorities that would otherwise be made at a later date under the proposed plan of reorganization.

31. Relief similar to the relief requested in this Motion has been granted by this Court and others. *See, e.g., 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.*, 15-51336 (Banks. W.D. La. Oct. 16, 2015); *In re Harvest Oil & Gas, LLC*, Case No. 15-50748 (Bankr. W.D. La. June 25, 2015); *In re Louisiana Riverboat Gaming P'ship*, Case No. 12-12013 (Bankr. W.D. La. Aug. 3, 2012); *In re Commc'ns Corp. of Am.*, Case No. 06-50410 (Bankr. W.D. La. June 7, 2006); *In re OCA, Inc.*, Case No. 06-10179 (Bankr. E.D. La. 2006); *In re Babcock & Wilcox Co.*, Case No. 00-10992 (Bankr. E.D. La. 2000); *In re Cajun Elec. Power Coop., Inc.*, Case No. 94-2763-B2 (Bankr. M.D. La. 1994). The Debtors submit that the present circumstances warrant similar relief in these Chapter 11 Cases.

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

32. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and DIP financing. Also, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Taxes and Fees. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments,

will not be honored inadvertently and that this Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein.

Request for Waiver of Stay

33. To implement the foregoing successfully, the Debtors seek a waiver of any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h) or otherwise.

Reservation of Rights

34. Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any Taxes and Fees that the Debtors may owe to any Authority, and the Debtors expressly reserve all of its rights with respect thereto.

Subject to DIP Orders

35. 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

36. 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; (vi) 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. No other or further notice need be provided.

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

Dated: August 8, 2017.

Respectfully submitted,

/s/ William H. Patrick, III

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