

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re:	:	Chapter 11
	:	
Wordsworth Academy,	:	Case No. 17-14463 (AMC)
	:	
Debtor.	:	(Joint Administration Requested)
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In re:	:	Chapter 11
	:	
Wordsworth CUA 5, LLC,	:	Case No. 17- 14466 (AMC)
	:	
Debtor.	:	(Joint Administration Requested)
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In re:	:	Chapter 11
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Wordsworth CUA 10, LLC,	:	Case No. 17- 14467 (AMC)
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Debtor. <sup>1</sup>	:	(Joint Administration Requested)
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**MOTION OF THE DEBTORS FOR AN ORDER (A) AUTHORIZING THE DEBTORS TO PAY CERTAIN PRE-PETITION (I) WAGES, SALARIES, AND OTHER COMPENSATION, (II) REIMBURSABLE EMPLOYEE EXPENSES, AND (III) EMPLOYEE MEDICAL AND SIMILAR BENEFITS; AND (B) DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

The above-captioned debtors (collectively, the “Debtors”) hereby move the Court, pursuant to this motion (this “Motion”), for the entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing, but not directing, the Debtors to pay certain pre-petition (i) wages, salaries, and other compensation, (ii) reimbursable employee expenses, and (iii) employee medical and similar benefits; and (b) authorizing and directing banks and other financial institutions to receive, process, honor, and pay all checks presented for payment and

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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: Wordsworth Academy (9031); Wordsworth CUA 5, LLC (0983); and Wordsworth CUA 10, LLC (5980). Wordsworth Academy has an address at 3300 Henry Ave., Philadelphia, PA 19129.

electronic payment requests relating to the foregoing. In support of this Motion, the Debtors respectfully state as follows:

**Jurisdiction**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Sections 105(a), 363(b)(1), 363(c)(1), 507(a)(4), 507(a)(5), 541(b), and 1129(a)(9)(B) of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 1002-3, 4002-1 and 5070-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Local Rules”).

**Background**

4. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of title 11 of the Bankruptcy Code.

5. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases (the “Chapter 11 Cases”) and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

7. Concurrently with the filing of this Motion, the Debtors have requested joint administration of these Chapter 11 Cases.

8. Debtor Wordsworth Academy (“Wordsworth”) is a Pennsylvania non-profit corporation. Its mission is to provide education, behavioral health and child welfare services to

children and youth who have emotional, behavioral and academic challenges so that they are empowered to reach their potential and lead productive, fulfilling lives. In addition to other programs, Wordsworth provides services through two Community Umbrella Agencies. Wordsworth is the sole member of Debtors Wordsworth CUA 5, LLC (“CUA 5”) and Wordsworth CUA 10, LLC (“CUA 10”) (together, the “CUAs”), which are Pennsylvania non-profit limited liability companies.

9. The factual background relating to the Debtors’ commencement of these Chapter 11 cases is set forth in detail in the First Day Declaration filed on the Petition Date and incorporated herein by reference.

**A. Employees, Wages, and Benefits**

10. As of the Petition Date, the Debtors employ approximately 619 employees, of whom approximately 501 are full-time employees (the “Full-Time Employees”) and approximately 118 are part-time employees (the “Part-Time Employees,” and together with the Full-Times Employees, the “Employees”).<sup>2</sup>

11. The Debtors’ Employees are not associated with any union.

12. Approximately 418 Employees are paid on an hourly basis and the remaining 201 Employees are paid on a salary basis.

13. The Employees’ skills and their knowledge and understanding of the Debtors’ operations, students, and infrastructure are essential to the effective reorganization of the Debtors’ organizations.

14. Just as the Debtors depend on their Employees to operate, the Employees depend

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<sup>2</sup> In addition, the Debtors have services contracts with various staffing agencies to obtain the services of certain individuals. These individuals are paid directly by their respective staffing agencies. Therefore, because these individuals are not paid wages directly by the Debtors, they are not included in the relief requested herein. Instead, Debtors will address these services contracts via a separate motion under Section 365 of the Bankruptcy Code.

on the Debtors. The vast majority of the Debtors' Employees rely exclusively on their compensation and benefits to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to pay them their unpaid compensation, benefits, and reimbursable expenses in the ordinary course of business (subject to the applicable statutory cap).

15. To minimize the personal hardship that the Employees would suffer if pre-petition Employee-related obligations are not paid when due or as expected, and to maintain morale and stability in the Debtors' workforce during this critical time, the Debtors, by this Motion, seek authority to pay and honor, in their sole discretion, certain pre-petition claims for, among other items: wages, salaries, and other compensation, expense reimbursement, federal and state withholding taxes and other amounts withheld or deducted (including, garnishments, Employees' share of insurance premiums, taxes, and 403(b) contributions), health benefits, insurance benefits, vacation time, sick leave, life insurance, long-term and short-term disability coverage, floating holidays and all other benefits that the Debtors have historically provided in the ordinary course of business and to pay all costs incident to the foregoing.

16. In an abundance of caution, the Debtors request the right to modify, change, and discontinue any of their employee compensation, policies, and/or benefits, and to implement new policies and benefits in the ordinary course of business during these Chapter 11 Cases in their sole discretion without the need for further Court approval.

**B. Employee Obligations**

**(i) Wages**

17. Debtors' Employees, including all hourly and salaried workers, are paid bi-weekly on Fridays. The pay period runs from Sunday to the second Saturday thereafter.

18. ADP manages and administers Debtors' payroll, including withholdings for

related taxes (other deductions are handled by Debtors). The wages portion of payroll is funded to ADP two days prior to pay day (Wednesday) and taxes are funded to ADP one day prior to pay day (Thursday).

19. As of the Petition Date, Debtors' average bi-weekly gross payroll for Employees was approximately \$1,000,000.00, exclusive of amounts for deductions for employee benefits, but including withholdings for taxes.

20. While Debtors historically paid employees two or three weeks in arrears, the Debtors have transitioned to paying employees one week in arrears.

21. The Debtors' most recently closed ordinary course pay period where employees were paid two weeks in arrears ended on June 10, 2017 and was paid in the ordinary course of business on June 23, 2017 in the approximate amount of \$998,329.11 in the aggregate, exclusive of amounts for employee deductions and employer contributions for employee benefits, but including withholdings/payroll taxes. Deductions for employee benefits totaled \$70,426.21.

22. In anticipation of this Chapter 11 filing taking place close to a federal holiday which may impede an expedited first day hearing, and in order to bring Debtors' payroll schedule to one week in arrears, Debtors made an extraordinary payroll on June 30, 2017, which covered the pay period between June 11, 2017 and June 24, 2017. The aggregate amount of the payroll was \$847,317.88, exclusive of amounts for employee deductions and employer contributions for employee benefits, but including withholdings and payroll taxes. Deductions for employee benefits totaled \$60,539.71.

23. Debtors' current pay period covers the period from June 25, 2017 to July 8, 2017 and is payable on July 14, 2017 (the "July 14 Payroll"). The portion of the July 14 Payroll that will be earned but unpaid as of the Petition Date is estimated to be in the approximate gross

amount of \$478,838.23, inclusive of wages and funds sufficient to cover withholdings. Because this amount is an estimate, as further discussed below, the Debtors request that they be authorized to pay a total amount of up to \$550,663.97 (i.e., 15% above \$478,838.23) for the pre-petition portion of the July 14 Payroll, inclusive of wages and funds sufficient to cover withholdings.

**(ii) Benefits**

24. Debtors also generally provide Employees that work at least thirty (30) hours a week with access to third-party insurance for, among other things, health (medical, dental, prescription, and vision), long-term disability, life insurance, and accidental death and dismemberment (the "Employee Insurance").

25. Debtors pay the Employee Insurance via withholdings from the pay of all of their employees (*e.g.*, amounts are withheld from each respective bi-weekly paycheck) and contributions from the Debtors. The Debtors' contributions for medical/vision/prescription insurance total approximately \$188,004 per month. The Debtors' contributions for long-term disability, dental, life insurance, and accidental death or dismemberment coverage total approximately \$6,279.56 per month. Employees that do not enroll in Debtors' health insurance receive \$100 per quarter. These obligations are paid monthly directly by Debtors to the vendors. As of the Petition Date, Debtors owe approximately \$50,000 on account of Employee Insurance, inclusive of employee deductions and employer contributions. Because this amount is an estimate, as further discussed below, the Debtors request that they be authorized to pay a total amount of up to \$57,500 (i.e., 15% above \$50,000) for the Employee Insurance, inclusive of employee deductions and employer contributions.

26. Debtors also provide the Employees with access to a 403(b) program after the

employee has worked 1,000 hours. There is no employer match.

27. Full-time Employees and Part-Time Employees that work twelve (12) months a year and are scheduled to work at least thirty (30) hours a week are entitled to nine (9) paid holidays. Ten-month Employees working in Debtors' schools and scheduled to work at least thirty (30) hours per week are paid when the schools are closed for federal holidays.

28. Full-Time Employees and Part-Time Employees scheduled to work at least thirty (30) hours per week also accrue paid vacation, sick, and personal time ("PTO Time"). PTO Time accrues based upon certain varying formulas that depend on factors such as the position held by each employee, the amount of time employed, and whether the employee is full time (at least thirty-two and a half (32.5) hours per week) or part-time (at least thirty (30) hours per week). Unused vacation time is carried over to the following year, but is subject to limits (full-time (ten days), part-time (five days)). Unused vacation time is paid to employees upon separation of employment if certain criteria is met. Unused sick time and personal time is not paid out to employees upon separation.

29. Debtors also reimburse Employees for employment related expenses, such as gas and travel (the "Expenses"). As of the Petition Date, Expenses in the approximate aggregate amount of \$40,000 are owed to various employees. Debtors can only generally estimate the amount of Expenses because the calculations depend upon receipt of employee reimbursement forms and receipts, which may not have been received or analyzed as of the Petition Date. Because this is an approximation, the Debtors request authority to pay up to \$50,000 (i.e., \$40,000 + 25%) for Expenses.

30. Due to the timing of the Debtors' petitions for relief under Chapter 11, the Employees have accrued the forgoing July 14 Payroll (including withholding and deductions

obligations) and/or similar compensation (collectively, the “Pre-Petition Payroll Obligations”).

31. The Pre-Petition Payroll Obligations are also subject to employer tax for Social Security and Medicare at 7.65%.

32. The Debtors seek authority to pay or otherwise honor the Pre-Petition Payroll Obligations. The Debtors also seek authority to continue to honor their aforementioned employee-related benefits programs, including the Employee Insurance, 403(b), PTO Time, and expenses reimbursement (the “Employment Benefits,” and collectively with the Pre-Petition Payroll Obligations, the “Employee Obligations.”).

33. Prompt payment of the Employee Obligations is necessary to ensure the continued operation of the Debtors’ business and to maintain the morale of its employees, many of whom would suffer significant hardship and financial difficulty if there is any interruption in their wages. Payment of the related tax obligations is crucial in order for the Debtors to remain current with the relevant taxing authorities.

### **Relief Requested**

34. By this Motion, the Debtors seek: (i) authority to pay and honor, in the ordinary course of business and in their sole discretion, all pre-petition claims and obligations related to the Employee Obligations, all as defined and described herein; and (ii) confirmation that they may continue, in their discretion, the underlying wages, salaries, benefits, policies, expense reimbursements, retirement, and other employment arrangements in the ordinary course of business.

35. In addition, the Debtors request that banks and other financial institutions be authorized and directed to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors also request

that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to this Motion.

36. Courts in complex chapter 11 cases have previously approved the same or substantially similar relief as requested herein. See e.g., In re Tropicana Entm't, LLC, No. 08-10856 (KJC) (Bankr. D. Del. May 6, 2008); In re Leiner Health Prods. Inc., No. 08-10446 (KJC) (Bankr. D. Del. April 9, 2008); In re Wickes Holdings, LLC, No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Tweeter Home Entm't Group, Inc., No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); In re Pope & Talbot, Inc., No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Hancock Fabrics, Inc., No. 07-10353 (BLS) (Bankr. D. Del. Mar. 22, 2007).

### **Basis for Relief**

#### **A. Sufficient Cause Exists for the Court to Authorize the Debtors to Honor Employee Obligations**

37. The Debtors seek authority to satisfy their Employee Obligations to ensure the continued operation of the Debtors' organizations and to maintain the morale of their Employees, many of whom would suffer extreme personal hardship and financial difficulty if they are not paid. In addition, the Employee Benefits are an important part of each employee's total compensation. Moreover, as with non-payment of wages or reimbursable expenses, any indication that the Employee Benefits may disappear or may not be honored will prove detrimental to the Debtors' ability to successfully reorganize.

38. Paying pre-petition wages and employee benefits will benefit the estates and their creditors by allowing the Debtors' operations to continue without interruption. Indeed, the Debtors believe that without the requested relief, their Employees may seek alternative employment opportunities. Such a development would deplete the Debtors' workforce, hindering the Debtors' ability to meet their customer obligations and, likely, diminishing

stakeholder confidence in the Debtors' ability to successfully reorganize. The loss of valuable Employees and the resulting recruitment of new employees that would be necessary to find replacements of the caliber of the Debtors' current Employees would be distracting and costly at this critical time when the Debtors are stabilizing operations and continuing operational restructuring in chapter 11. Accordingly, there can be no doubt that the Debtors must do their utmost to retain their workforce by, among other things, continuing to honor all wage, benefit, and related obligations, including the Employee Obligations that accrued pre-petition.

**1. Payment is Appropriate Pursuant to Section 105(a)**

39. The Court may authorize payment of pre-petition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers a 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 section 105(a), courts may permit pre-plan payments of pre-petition obligations when essential to the continued operation of the debtor's business. Specifically, the Court may use its power under section 105(a) to authorize payment of pre-petition obligations pursuant to the "doctrine of necessity."

40. The United States Court of Appeals for 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 that court 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 Cent. Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the 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, 824-845 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay pre-petition claims that are essential to continued operation of their business); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

41. 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. 174, 176 (Bankr. S.D.N.Y. 1989); see also Just For Feet, 242 B.R. at 826 (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 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”); 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); Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of pre-petition worker’s compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”).

42. This flexible approach is particularly critical where a pre-petition creditor provides vital goods or services to a debtor that would be unavailable if the Debtor did not satisfy its pre-petition obligations. For example, in In re Structurlite Plastics Corp., 86 B.R. 922,

931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that “a bankruptcy court may exercise its equity powers under § 105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary to permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately.” *Id.* The court explained that “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932.

## 2. The Proposed Payments Are Accorded Priority Under Section 507

43. Moreover, all of the Employees’ pre-petition wages and other benefits and compensation that the Debtors seek to pay under the authority sought hereby would be entitled in any event to priority treatment to the extent of \$12,850.00 for each individual under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.<sup>3</sup> As priority claims, 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 wages, salaries, and commissions for contributions to an employee benefit plan). Thus, granting the relief sought herein would only cause such employee claims to be paid early in the cases, instead of waiting until confirmation, to the extent they constitute priority claims.

44. Indeed, “wage priority has been a feature of the bankruptcy law since 1898.” *In re Garden Ridge Corp.*, No. 04-10324, 2006 WL 521914, at \*2 (Bankr. D. Del. Mar. 2, 2006) (quoting *4 Collier on Bankruptcy*, § 507.05[1] (15th Ed. 2005)). “Its purpose is to alleviate hardship on workers... who may have no other source of income and to encourage employees to stand by an employer in financial difficulty. This priority extends to certain other benefits that are considered akin to compensation, such as vacation, severance and sick leave pay.” *Id.*

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<sup>3</sup> To the extent that the aggregate amount of such claims accrued prior to the Petition Date exceeds this cap, the Debtors do not seek authority at this time to pay such excess amounts.

(internal citations omitted).

45. The Debtors' failure to pay these amounts would devastate morale at a critical time in the Debtors' restructuring efforts. In addition, all of these amounts have arisen in the ordinary course of the Debtors' operations and are reasonable in relation to the value of the services rendered.

**3. The Proposed Payments Are Appropriate Under Section 363(b)**

46. The Court may also grant the relief requested herein pursuant to section 363(b) of the Bankruptcy Code. Section 363 provides that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain pre-petition claims. See Ionosphere Clubs, Inc., 98 B.R. at 175 (affirming lower court order authorizing payment of pre-petition wage claims pursuant to section 363(b)). To do so, "the debtor must articulate some business justification, other than the mere appeasement of major creditors." Id. at 175.

47. Payment of pre-petition compensation in order to preserve and protect a debtor's business by maintaining the morale and dedication of a debtor's workforce is a sufficient business justification.

48. Accordingly, the requested payments should be permitted.

**4. Payment of the Deductions and Payroll Taxes is Appropriate Under Section 541**

49. In addition, as part of the relief requested herein, the Debtors seek authority to pay to the appropriate entities the deductions and the taxes incident to the Employees' earnings. These amounts principally represent employee earnings that governments, Employees, and judicial authorities have designated for deduction. Indeed, certain deductions, such as

contributions to the Employee Benefits, child support, and alimony payments, are not the Debtors' property, but rather, have been withheld from Employees' paychecks on another party's behalf. See 11 U.S.C. § 541(b). Moreover, the Debtors and their officers are required by federal or state laws to make certain tax payments that have been withheld from their Employees' paychecks. 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) (state law requiring debtor to withhold city income tax from its employees' wages created trust relationship between debtor and city for payment of withheld income taxes); In re DuCharmes & Co., 852 F.2d 194, 196 (6th Cir. 1988) (noting individual officers of a company may be held personally liable for failure to pay trust fund taxes). Further, because the deductions and taxes are not property of the Debtors' estates, these amounts are not subject to the normal bankruptcy prohibitions against payment. See In re Dameron, 155 F.3d 718, 721 (4th Cir. 1998).

50. The Debtors, therefore, request that the Court confirm that such trust fund withholding is not property of the Debtors' estates and that the Debtors may transmit the deductions and taxes to the proper parties in the ordinary course of business.

51. It is also important to note that at this time, the Debtors do not seek to assume any employee-related executory contracts or obligations, and the Motion should not be deemed to be an assumption or adoption of any employee agreements or policies. Rather, the Debtors merely seek to take steps that they believe to be necessary to keep their existing workforce intact to maximize the value of the bankruptcy estates, pending further decisions relevant to the contemplated reorganization. Also, the Debtors will retain the discretion to not make the payments contemplated by the Motion for particular Employees, and nothing in the Motion shall, in and of itself, confer upon any Employees or other parties an entitlement to administrative

priority or other preferences in distribution from the Debtors' estates.

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

52. Under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment in respect of the pre-petition claims of the Employees. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable banks and other financial institutions should be authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the pre-petition claims of the Employees.

**C. Failure to Honor Employee Obligations Within Twenty-One Days of the Petition Date May Cause Immediate and Irreparable Harm**

53. Pursuant to Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a pre-petition claim that arose before the Petition Date within twenty-one (21) days after the filing of the petition if the relief is necessary to avoid immediate and irreparable harm.

54. As discussed above, the Employees are integral to the Debtors' operations. Failure to satisfy obligations with respect to the Employees in the ordinary course of business during the first twenty-one (21) days of these cases will jeopardize the loyalty and trust of the Employees. Certain of the Employees may leave and thereby cause serious disruption to the Debtors' operations during this critical period when the Debtors need the continued support of their Employees to allow for a successful reorganization.

55. Moreover, the vast majority of the Debtors' Employees rely exclusively on their compensation, benefits, and reimbursement of their expenses to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtors

are not permitted to pay the Employees in the ordinary course of business. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of the Employee Obligations.

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

56. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their organizations and preserve value for the benefit of creditors. The Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the critical nature of the relief sought herein justifies immediate relief.

### **Notice**

57. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Eastern District of Pennsylvania; (b) the Commonwealth of Pennsylvania, Department of Labor and Industry; (c) the Commonwealth of Pennsylvania, Department of Revenue; (d) the Office of the Attorney General of Pennsylvania; (e) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (f) the Internal Revenue Service; (g) the City of Philadelphia; (h) the banks that process disbursement in the Debtors’ cash management system (M&T Bank (One M&T Plaza, Buffalo, NY 14203) and TD Bank, N.A (1701 Route 70 East, Cherry Hill, NJ 08034)); and (i) all parties who have requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing, but not directing, the Debtors to pay certain pre-petition amounts for the Employee Obligations (subject to the statutory cap), (b) confirming the Debtors may continue to honor the Employee Benefits in the ordinary course of business; (c) authorizing and directing banks and other financial institutions to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing, and (d) granting such other and further relief as is just and proper.

Dated: June 30, 2017  
Philadelphia, Pennsylvania

/s/ Lawrence G. McMichael

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