

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	)	Chapter 11
	)	
BRISTOW GROUP INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-32713 (DRJ)
	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)
Debtors.	)	
	)	

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

**THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE. A HEARING WILL BE HELD ON THIS MATTER ON MAY 14, 2019, AT 3:00 P.M. (CDT) BEFORE THE HONORABLE DAVID R. JONES, 515 RUSK STREET, COURTROOM 400, HOUSTON, TEXAS 77002.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

<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: Bristow Group Inc. (9819), BHNA Holdings Inc. (8862), Bristow Alaska Inc. (8121), Bristow Helicopters Inc. (8733), Bristow U.S. Leasing LLC (2451), Bristow U.S. LLC (2904), BriLog Leasing Ltd. (9764), and Bristow Equipment Leasing Ltd (9303). The corporate headquarters and the mailing address for the Debtors listed above is 2103 City West Blvd., 4th Floor, Houston, Texas 77042.

The above-captioned debtors and debtors in possession (collectively, the “Debtors” and together with their non-debtor affiliates, the “Bristow Group” or the “Company”) hereby submit this motion (this “Motion”) and respectfully state as follows:

**I. Preliminary Statement**

1. The Bristow Group’s global delivery of the safest and most reliable air transportation and rescue services depends on the commitment, skill and dedication of its workforce. Indeed, as a leading provider of highest quality helicopter transportation, search and rescue (“SAR”) and aircraft support services worldwide, the Bristow Group and its customers trust in the specialized knowledge and work ethic of the Company’s employees to deliver on-time performance, operational excellence and the highest safety standards, at all times. Employees, from top to bottom, share in the Company’ commitment over many years to these core company values. Maintaining the morale and focus of the Debtors’ workforce is essential to the Debtors’ value, operations and a successful balance-sheet reorganization to become financially stronger and more competitive. It is critical, therefore, that the Debtors’ timely pay and perform all employee-related obligations and benefit programs when due in the ordinary course and without disruption.

**II. Relief Requested**

2. It is for these and the other reasons stated herein that the Debtors respectfully seek entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to continue to maintain and pay all pre-petition obligations on account of the Employee Compensation and Benefits (as defined herein) in the ordinary course of business (in an aggregate amount not to exceed \$6.3 million, plus amounts relating to Debtors’ self-insured plans that will become known in the ordinary course, a portion of which may be attributable to pre-bankruptcy periods, but such amounts are not expected to be material); *provided, however,*

that no individual holder of a priority claim under section 507(a)(4) of the Bankruptcy Code will receive in the aggregate a payment in excess of \$13,650 on account of such priority claim.

3. The chart below summarizes the amounts sought pursuant to this Motion.

<b>Relief Sought<sup>2</sup></b>	<b>Amount</b>
<b>Compensation and Withholding Obligations</b>	
Unpaid Wages, Salary and Bonus	<b>\$2,200,000</b>
Withholdings Obligations	<b>\$760,000</b>
Payroll Tax Remittance Fees	<b>\$1,400</b>
Reimbursable Expenses	<b>\$60,000</b>
Staffing Agency Amounts	<b>\$330,000</b>
<b>Employee Benefit Programs</b>	
Medical & Prescription Drug Plans	<b>\$1,090,000</b>
Dental Plans	<b>\$51,000</b>
Vision Plan	<b>\$12,000</b>
Flexible Spending Plan	<b>\$325</b>
Health Savings Plan	<b>\$500</b>
COBRA	<b>\$275</b>
Employee Assistance Program	<b>\$2,000</b>
Telemedicine	<b>\$200</b>
<b>Insurance Programs</b>	
Workers' Compensation Program	<b>\$1,330,000</b>
Life and AD&D Program	<b>\$20,000</b>
Disability Benefits	<b>\$16,500</b>
<b>Retirement Plans</b>	
401(k)	<b>\$302,500</b>
<b>Leave</b>	
Paid Leave	<b>\$0</b>
<b>Additional Programs</b>	
Voluntary Miscellaneous Plans	<b>\$1,500</b>
Relocation Program	<b>\$0</b>
Tax Equalization Program	<b>\$100,000</b>
Charitable Gift Matching Program	<b>\$9,500</b>
<b>Non-Insider Severance</b>	
Unpaid Non-Insider Severance Benefits	<b>\$0</b>
<b>Total</b>	<b>\$6,287,70</b>

### **III. Jurisdiction and Venue**

4. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over these cases, the Debtors, property of the Debtors' estates and this matter under 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United*

<sup>2</sup> Capitalized terms in this chart have the meanings ascribed to them in this Motion.

*States District Court for the Southern District of Texas*, dated May 24, 2012 (the “Amended Standing Order”). This is a core proceeding under 28 U.S.C. § 157(b).

5. Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363(b), and 507(a) of title 11 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Local Rules”).

#### **IV. Background**

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

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

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

#### **V. Bristow’s Dedicated Workforce**

##### **A. Employees**

10. The Bristow Group currently employs approximately 3,000 employees worldwide. Of this total headcount, the Debtors collectively employ approximately 558

individuals (each an “Employee” and collectively, the “Employees”). Of the Employees, 556 are full-time and 2 are part-time. Approximately 557 Employees are paid a salary, and approximately 1 Employee is paid on an hourly basis.

11. The Employees are a critical part of a diverse and dynamic worldwide workforce that is the backbone of the Bristow Group’s business. The Employees include pilots, maintenance personnel and mechanics in the fleet, hangar, and shop, engineers, quality and safety personnel, warehouseman and rearcrew. Employees at the Debtors’ headquarters and in regional offices perform typical corporate management and operational functions, including finance, legal, information technology, fleet management, customer relations and sales and human resources. The Debtors’ Employees are located in the United States (primarily in Texas and Louisiana), Trinidad, and Guyana.

12. Approximately 311 of the Debtors’ Employees (the “Represented Employees”) are members of various unions (the “Unions”) and are employed pursuant to two collective bargaining agreements (each a “CBA” and collectively, the “CBAs”). The CBAs generally provide compensation and benefit standards the Debtors must meet regarding the Represented Employees. Debtors’ Represented Employees are helicopter pilots who are represented by OPEIU AFL-CIO (the “Represented Pilots”), as well as mechanics and shop technicians represented by the OPEIU AFL-CIO & CLC (the “Represented Mechanics and Shop Technicians”).

**B. Supplemental Workforce**

13. In addition to the Employees, the Debtors supplement their workforce with various contractors, consultants and other service-for-hire arrangements, each of whom is necessary for the ongoing operations of the Debtors’ businesses (collectively, the “Independent Contractors”). Among other positions, the Debtors hire independent contractors to perform

informal technology, accounting, procurement and other administrative functions. Certain of the Independent Contractors contract directly with certain of the Debtors, whereas in other instances, the Debtors make payments to third-party placement agencies, who remit wages to the Independent Contractors. The Debtors retain approximately 10-15 Independent Contractors at any given time, all of whom play a critical role in Debtors' day-to-day operations and will be critical to the ultimate success of the Debtors' reorganization process. On average, the Debtors pay these Independent Contractors approximately \$95,000 per month in the aggregate. As of the Petition Date, there is approximately \$500,000 in the aggregate due and owing to the Independent Contractors. The Debtors seek authority to pay any prepetition amounts outstanding to each of the Independent Contractors, and seek to continue their services postpetition in the ordinary course.

14. In addition to the Employees and Independent Contractors, the Debtors also periodically employ temporary workers (the "Temporary Staff") sourced periodically from six staffing agencies (the "Staffing Agencies") to fulfill certain duties on a short-term basis. As of the Petition Date, the Debtors retain between 50 and 100 Temporary Staff. The Temporary Staff are an important supplement to the efforts of the Debtors' Employees. The Debtors' Employees and Temporary Staff perform a wide variety of functions critical to the Debtors' operations. The Temporary Staff provide maintenance and ground support, administration, engineering and search-and-rescue medical support. In many instances, these individuals are highly trained and have an essential working knowledge of the Debtors' business that cannot be easily replaced.

15. The expertise and experience developed by all Employees and Temporary Staff are critical components of the Debtors' ability to operate their fleet of aircraft in accordance with applicable regulatory requirements and the highest safety standards. Without the continued,

uninterrupted services of their Employees and Temporary Staff, the Debtors' reorganization efforts will be threatened.

16. On average, the Debtors pay the Staffing Agencies approximately \$250,000 per month in the aggregate. As of the Petition Date, there is approximately \$300,000 in the aggregate due and owing to the Staffing Agencies. The Debtors seek authority to pay any prepetition amounts outstanding to each of the Staffing Agencies, and seek to continue their services postpetition in the ordinary course.

#### **VI. Employee Compensation and Benefits**

17. The Debtors seek to minimize the personal hardship the Employees would suffer if employee obligations are not paid when due or as expected. Therefore, the Debtors are seeking authority to pay, reimburse, and honor certain prepetition claims relating to, among other things, wages, salaries, and other related obligations, 401(k) plan contributions and loan payments, and health and welfare benefits that the Debtors have historically provided to their Employees (collectively, the "Employee Compensation and Benefits"). The Debtors also seek to pay all costs incident to the Employee Compensation and Benefits.

18. Subject to the Court's approval of the relief requested herein, the Debtors intend to continue their prepetition Employee Compensation and Benefits programs in the ordinary course of business on a postpetition basis and to pay and/or reimburse prepetition amounts (if any) related thereto. To the extent applicable, the Debtors also request authority to modify, change, and discontinue any of their Employee Compensation and Benefits and to implement new programs, policies, and benefits in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law.

19. The Employees rely exclusively on the Employee Compensation and Benefits to pay their daily living expenses and support their families. Thus, Employees will be exposed to

significant financial hardship if the Debtors are not permitted to continue the Employee Compensation and Benefits in the ordinary course of business. Consequently, the relief requested herein is necessary and appropriate.

**A. Employee Compensation**

**1. Unpaid Wages.**

20. The Debtors pay wages, salaries, and other compensation<sup>3</sup> (excluding reimbursable expenses, incentive payments, severance, and paid leave) on a bi-weekly basis, every other Friday for the two-week period through and including the previous Sunday (collectively, the “Employee Compensation”).

21. The final regularly scheduled payroll cycle prior to the Petition Date occurred on May 3, 2019 which covered wages, salaries, and other compensation from April 15, 2019 through April 28, 2019. The Debtors’ first scheduled payroll date following the Petition Date is May 17, 2019, which will cover the payroll period from April 29, 2019 through May 9, 2019. On average, the Debtors’ gross payroll for their Employees is approximately \$2,350,000 in the aggregate.

22. Most Employees receive their Employee Compensation by direct deposit through the electronic transfer of funds directly to these Employees’ accounts (“Direct Deposit”), with the remainder of Employees receiving wires. Because Employees are generally paid 14 days in arrears depending on the applicable Payroll Calendar, certain Employees will be owed accrued but unpaid Employee Compensation as of the Petition Date. Further, Employee Compensation may also be due and owing as of the Petition Date because of, among other things, potential

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<sup>3</sup> The CBAs provide Debtors’ Represented Employees with certain supplemental pay above their base pay based on the Represented Employee’s position, training and work requirements which can vary from month to month.

discrepancies between the amounts paid and the amounts that Employees believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees.

23. Debtors fund their payroll obligations in advance of each pay day and process payroll internally. Debtors do not incur any payroll processing or administration expenses, apart from the expenses paid to Ceridian associated with payroll tax remittance as described herein.

24. As of the Petition Date, the Debtors believe that approximately \$2,200,000 on account of accrued prepetition wages, salaries, overtime, and other compensation (excluding reimbursable expenses, paid time off, and amounts related to the Debtors' 401(k) plan) remains outstanding (collectively, the "Unpaid Wages"), substantially all of which will become payable in the first 21 days of these chapter 11 cases.

25. Thus, the Debtors seek authority, but not direction, to continue to pay Employee Compensation in the ordinary course of business on a postpetition basis, and to pay Employees any Unpaid Wages accrued in the ordinary course of business that come due, up to \$13,650 per eligible Employee (approximately \$2,200,000 in the aggregate). Pursuant to the order, the Debtors seek authority, but not direction, to continue to pay Employee Compensation in the ordinary course of business on a postpetition basis and to pay all Unpaid Wages owed to Employees, *provided, however*, that no individual holder of a priority claim under section 507(a)(4) of the Bankruptcy Code will receive in the aggregate a payment in excess of \$13,650 on account of such priority claim.

2. **Withholding Obligations.**

26. During each applicable pay period, the Debtors routinely deduct certain amounts from Employees' paychecks, including, without limitation, garnishments, levies, child support, and related fees, 401(k) contributions and pre-tax deductions, and certain of the Health and

Welfare Programs (as defined below), and Union dues (collectively, the “Deductions”). Some of the Deductions are forwarded to various third-party recipients. In the 12 months before the Petition Date, monthly Deductions were approximately \$320,000 (excluding taxes and 401(k) contributions).

27. The Debtors also are required by law to withhold from the Employees’ Compensation amounts related to, among other things, federal, state, and local income taxes as well as Social Security and Medicare taxes, (collectively, the “Employee Payroll Taxes”) for remittance to the appropriate federal, state, and local taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance, as well as applicable taxes for the non-United States based employees (the “Employer Payroll Taxes,” and together with the Employee Payroll Taxes, the “Payroll Taxes”). The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, or local taxing authority at the same time the Employees’ payroll checks are disbursed. In the 12 months before the Petition Date, monthly Payroll Taxes averaged approximately \$2,000,000.

28. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Deductions and Payroll Taxes (together, the “Withholding Obligations”) is approximately \$760,000. The Debtors seek authority, but not direction, to transfer any Withholding Obligations to the appropriate recipients in the ordinary course of business and consistent with historical practice and to continue remitting any Withholding Obligations in the ordinary course of business on a postpetition basis.

3. **Payroll Processing.**

29. Debtors provide their own payroll processing. Debtors remit Payroll Taxes to Ceridian Tax Service, Inc. (“Ceridian”), a third-party provider who handles remitting Payroll

Taxes to the appropriate authorities for the Employees of the Debtor. On average, the Debtors pay approximately \$9,000 per year to Ceridian for remitting Payroll Taxes and \$3,000 per year to Ceridian for W2 processing (“Payroll Tax Remittance Fees”). As of the Petition Date, the Debtors owe approximately \$1,400 on account of Payroll Tax Remittance Fees. Failure to pay the Payroll Fees in the future could lead to delayed disbursement of Employee Compensation and related benefits to the appropriate Employees to the detriment of those Employees and the Debtors’ operations. As a result, the Debtors seek authority, but not direction, to pay any unpaid Payroll Fees that have accrued prior to the Petition Date and to continue administering payroll for the Employees in the ordinary course of business consistent with the Debtors’ historical practices.

4. **Reimbursable Expenses.**

30. In the ordinary course of business, Employees are eligible to receive reimbursement for certain reasonable and customary expenses (the “Reimbursable Expenses”) incurred on behalf of the Debtors in the scope of their employment. Reimbursable Expenses typically include expenses associated with transportation, lodging, meals, personal car usage, certain business entertainment incurred, and the purchase of office supplies in connection with business travel and certain other work-related expenses. Employees do not typically have corporate cards,<sup>4</sup> and pay any Reimbursable Expense the Employees incur on their personal credit card. Employees submit an expense report for any Reimbursable Expenses incurred on behalf of the Debtors. Debtors’ Employees (except those located in Trinidad) are reimbursed through the Debtor’s payroll system, and Employees located in Trinidad are paid directly on an

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<sup>4</sup> Debtors have a small number of corporate cards which are typically used for the payment of lunch, supplies, and other miscellaneous office items unrelated to travel and entertainment.

ad hoc basis. The CBA for Debtor's Represented Pilots contains additional guidelines for the reimbursement of mileage and per diems.

31. The Debtors' inability to reimburse Employees for such personally-incurred expenses, without the relief requested herein, would impose hardship on such Employees where the obligations are incurred for the Debtors' benefit.

32. In the 12 months before the Petition Date, monthly Reimbursable Expenses totaled approximately \$130,000, of which approximately \$55,000 was on account of per diems. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid Reimbursable Expenses attributable to the Debtors is approximately \$60,000 based on the recent monthly averages. In addition, it is possible that certain Employees may have incurred prepetition expenses for which they have not yet submitted requests for reimbursement but will submit such requests after the Petition Date. Debtors are unable to fully estimate the reimbursement which Employees have not yet submitted, but based on historical practice do not believe such amounts are material.

33. Failure to reimburse the Reimbursable Expenses will disrupt the Debtors' business operations and cause Employees to be concerned about personal liability for business related charges, thereby distracting the Employees from devoting full attention to their day-to-day responsibilities. Accordingly, the Debtors seek authority, but not direction, to (a) continue paying Reimbursable Expenses in accordance with prepetition practices, (b) modify prepetition policies relating to the Reimbursable Expenses program as the Debtors deem appropriate, and (c) pay or reimburse all Reimbursable Expenses obligations that relate to the prepetition period and may be submitted to the Debtors postpetition.

**B. Incentive Programs.**

34. Debtors have historically maintained various incentive programs to encourage performance and promote the Debtors' cultural emphasis on safety and performance, including among the Debtors' Employees and the employees of non-Debtor affiliates. These programs comprise a material part of an individual's total compensation and have included an annual incentive program, a long-term incentive program, other Bonus Programs (each as defined herein, and collectively, the "Non-Insider Incentive Programs").<sup>5</sup> The Non-Insider Incentive Programs are offered to eligible employees of the Debtors, and all corresponding payments are processed through Debtors payroll account. For certain of the Non-Insider Incentive Programs, the Debtors pay their Employees directly. For the avoidance of doubt, the relief requested herein is for only the Debtors' Employees and reimbursements on account of the Debtors' Employees.

**1. Rank and File Bonus Programs**

35. In the ordinary course of business, the Debtors maintain various bonus programs described in more detail below (collectively, the "Bonus Programs") as an additional component of certain rank-and-file Employees' compensation structure to reward such Employees for their contributions to the Debtors' businesses (the "Bonus Obligations"). Certain of the Bonus Obligations accrue throughout the calendar year and are paid at various intervals. The Debtors describe the Bonus Programs below for purposes of disclosure. In certain instances, there may be amounts that accrued but were not paid prepetition, and in those instances, the Debtors seek authority to make payments of the accrued amounts when due. In other instances, no amounts accrued prepetition, and the Debtors simply seek authorization to continue the relevant Bonus

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<sup>5</sup> The relief sought under this Motion with respect to the Non-Insider Incentive Programs does not include the payment of any obligation to an "insider" (as that term is defined in section 101(31) of the Bankruptcy Code, the "Insiders"). The Debtors will seek separate authority with respect to such parties and reserve all rights with respect to the "insider" status of such parties.

Program in the ordinary course. Notably, the Bonus Programs described below do not apply to any Employee who may be an “insider” as defined under section 101(31) of the Bankruptcy Code.

36. First, in their ordinary course of business, Debtors’ provide sign-on bonuses (the “Sign-On Bonus”) to new to attract employees. Payment of the Sign-On Bonus is discretionary. Debtors seek authorization to continue the Sign-On Bonus Program in the ordinary course.

37. Second, Debtors also provide discretionary, one-time cash incentives to current non-Insider Employees who refer candidates to fill eligible vacant employment position (the “Referral Bonus Program”). The Debtors believe that maintaining the Referral Bonus Program is crucial to attracting and retaining the best talent in the Debtors’ industry. As of the Petition Date, the Debtors do not believe they have any accrued and outstanding amounts due under the Referral Incentive Program. Out of an abundance of caution, the Debtors seek authority to pay any prepetition amounts outstanding under the Referral Bonus Program and to continue the Referral Bonus Program in the ordinary course of business on a postpetition basis and consistent with past practice.

2. **Fiscal Year 2020 Incentive and Retention Plans**

38. The Company has historically maintained an equity-based long-term incentive plan (“LTIP”) and a cash-based annual incentive plan (“STIP”); however, there are insufficient shares available for awards under the Company’s 2007 Long Term Incentive Plan for the Company to continue its equity-based long-term incentive program. The Company’s normal review period for its incentive compensation coincides with the Company’s fiscal year, which runs from April 1 of the current year to March 31 of the following year. The Company and its outside compensation consultant and financial advisor, Alvarez & Marsal, and the Compensation Committee (the “Compensation Committee”) of the Board of Directors of the Company and its

independent compensation consultant, Pearl Meyer, reviewed the Company's incentive plans to determine whether they continued to fulfill their purpose of attracting, retaining and incentivizing employees to perform at a high level to meet the Company's operational and strategic objectives. After reviewing the Company's existing LTIP and STIP, market data and historical compensation, the Compensation Committee, with the advice and assistance of the above-mentioned compensation consultants and advisors, determined that it was appropriate to update the existing LTIP and STIP.

39. As a result of this review process, in order to enhance the Company's ability to attract, retain and incentivize employees necessary to maximize the value of the business, the Compensation Committee elected to make certain changes to the Company's incentive plans for fiscal year 2020 for executives and non-executives. The Compensation Committee elected to combine and modify the Company's existing LTIP and STIP, including (i) changing the payment schedule from annual to quarterly installments in order to incentivize consistent quarterly and annual performance, and (ii) implementing cash retention awards for certain employees. The total cost for the fiscal year 2020 incentive plans and retention awards is commensurate with the targeted value of the fiscal year 2019 LTIP and STIP, but the fiscal year 2020 incentive plan and retention awards replace equity-based awards with cash, providing better alignment with the Company's need to attract, retain, incentivize, and motivate employees to achieve performance goals and reflecting the Company's above-mentioned inability to continue granting equity-based awards under the Company's 2007 Long Term Incentive Plan.

40. The fiscal year 2020 Performance Incentive Plan, covering 9 senior executives, and the fiscal year 2020 Key Employee Incentive Plan, covering 186 non-executives, aligns the incentives of the employee participants with the objectives of the Company, including the

Company's top-to-bottom commitment to safety and operational excellence. The Debtors are not seeking approval of either fiscal year 2020 incentive plan at this time and will address both the fiscal year 2020 Performance Incentive Plan and the fiscal year 2020 Key Employee Incentive Plan by a separate motion on full notice.

41. The Company also entered into retention award letters with many of the same key employees who participate in the Company's incentive plans, including executives. The Debtors offered certain executive and non-executive Employees time-based, cash retention awards (the "Retention Award"). Each Retention Award is subject to a repayment obligation on the part of the Employee if the Employee voluntarily leaves their employment with the Debtors. With respect to non-insiders, the Retention Award is paid in two equal installments. The first installment, totaling \$1,109,500 allocated among 54 non-executive Debtor Employees, was paid in April 2019, and the second installment—subject to prior approval of this Court by separate motion and order—is anticipated to be paid in October 2019. For the Company's nine senior executives and officers, the Retention Awards were paid prior to the Petition Date and totaled \$3,089,348 in aggregate Retention Awards.

#### **VII. Employee Benefit Programs.**

42. The Debtors offer Employees the ability to participate in a number of insurance and benefits programs, including, among other programs, medical, dental, prescription drug, vision plans, life insurance, accidental death and dismemberment insurance, disability benefits, employee assistance programs, workers' compensation, 401(k) plans, and other employee benefit plans as described below (collectively, the "Employee Benefits Programs"). The Employee Benefits Programs are, in each case, available to Employees depending on their status as full-time or part-time Employees, their level with the company, and their length of service (the "Eligible Employees").

43. As described above, failure to continue the Employee Benefits Programs could cause Eligible Employees to experience severe hardship. In light of the substantial benefit the Eligible Employees have provided and will continue to provide to the Debtors' estates, the Debtors wish to avoid imposing such a hardship. Accordingly, and by this Motion, the Debtors seek authority, but not direction, to (a) pay and/or reimburse any unpaid amounts due with respect to the Employee Benefits Programs and (b) continue to provide Employee Benefits Programs in the ordinary course during the administration of these chapter 11 cases. The Employee Benefits Programs are described in greater detail below.

**A. Health Benefit Plans.**

44. The Debtors offer a number of a number of health and welfare benefits programs to eligible current and former Employees, including the Medical Plans, Dental Plan, the Vision Plan, Health Care Flexible Spending Account, Dependent Child Care Flexible Spending Account, and pay certain administrative fees to third-party providers associated with such programs (each as defined herein, and collectively, the "Health Benefit Plans"). Specifically, the Debtors provide the following to the Debtors' Employees:

- Medical Plans: Eligible Employees are entitled to participate in a PPO medical plan or a High Deductible plan (collectively, the "Medical Plans") that are a self-insured plan administered by Aetna, Inc. Included within the Medical Plans, Aetna also administers a pharmacy plan for Employees which provides prescription home delivery and pick up at specified pharmacy providers. Eligible Employees may waive coverage in the Medical Plans, but the Debtors are not liable for any amounts thereunder. The Debtors self-bill and pay Aetna administrative fees for processing the claims, as well as reimbursing Aetna for fees paid to providers by Aetna. The estimated 2019 administration fees to Aetna is \$450,000 for medical and prescription claims. Estimated annual medical claims are \$6,000,000 and estimated annual pharmacy claims are \$1,500,000. The total cost of the Medical Plans is approximately \$670,000 per month, of which \$595,000 is paid by the Debtors and \$75,000 is paid by Employees through premium deductions from paychecks. The Debtors estimate that the ongoing monthly administrative cost of the Medical Plans will be approximately \$40,000. As of the Petition Date, the Debtors estimate that the amount of incurred but not paid medical expenses is approximately \$1,050,000.

- Dental Plan: Eligible Employees are entitled to participate in a dental plan administered by Delta Dental (the “Dental Plan”). As of the Petition Date, the Debtors estimated that they owe approximately \$50,000 on account of the Dental Plan (including employer contributions and employee contributions). The Debtors estimate that the ongoing monthly administrative cost of the Dental Plan is approximately \$2,000.
- Vision Plan: Eligible Employees have the option of participating in a self-insured vision plan administered by United Healthcare (the “Vision Plan”). The total cost of the Vision Plan is approximately \$6,000 each month, which is funded entirely by Employee contributions and former Employee contributions.
- Flexible Spending Plan: Eligible Employees have the ability to contribute a portion of their pre-tax compensation to flexible spending accounts to pay for eligible out-of-pocket health care and dependent day care expenses (the “Flexible Spending Plan”). There is a \$2,650 health care annual limit and a \$5,000 dependent care annual limit for each eligible Employee participating in the Flexible Spending Plan. The Flexible Spending Plan is administered by PayFlex Systems USA, Inc. (“PayFlex”). The Debtors estimate that approximately 38 Employees participate in the Flexible Spending Plan, which is fully funded by the enrolled Employees’ payroll contributions. The Debtors remit Employee contributions every payroll cycle and therefore do not hold contributions withheld from Employee paychecks. The annual administrative fee for the Flexible Spending Plan is \$3,700. As of the Petition Date, the Debtors estimate that they owe approximately \$325 in administrative fees to PayFlex.
- Health Savings Plan: Employees who participate in certain of the Medical Plans may contribute a portion of their compensation into a health savings account (the “HSA”), administered by PayFlex, which may be used for incidental medical expenses. Participating Employees can make before-tax contributions to the HSA through payroll deductions to cover reimbursements under the program up to the maximum amount permitted by the IRS. Additionally, the Debtors provide a one-time contribution to each participating Employee’s HSA in the amount of \$500 per individual Employee or \$1,000 per family. Currently, approximately 223 Employees use the HSA. The Debtors remit Employee contributions every payroll cycle and therefore do not hold contributions withheld from Employee paychecks. The annual administrative fee for the HSA is \$12,000 paid to PayFlex. As of the Petition Date, the Debtors estimate that they owe approximately \$500 in administrative fees to PayFlex.
- COBRA: Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), certain former Employees of the Debtors and their dependents (the “COBRA Participants”) may continue insurance coverage under the Medical Plan, Prescription Plan, Dental Plan, Vision Plan, and Flexible Spending Plan (the “COBRA Benefits”).<sup>6</sup> Approximately 3 COBRA Participants elect to continue coverage through

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<sup>6</sup> Represented Pilots who are injured on the job will receive all insurance benefits for a period of up to 18 months provided the Employee continues to pay the Employee’s portion of the premium, and once exhausted the Employee is eligible for medical insurance under COBRA.

COBRA. The Debtors also subsidize certain premium costs associated with the COBRA Benefits. The Debtors use PayFlex assist in the administration of the COBRA Benefits and, on average, the Debtors pay PayFlex administrative fees of approximately \$175 monthly for these services. As of the Petition Date, the Debtors estimate that they owe approximately \$275 for prepetition administrative service fees to PayFlex

- Employee Assistance Program: Debtors provide the Employees with a confidential counseling and referral service that can assist Employees with a range of personal and health-related issues (the “Employee Assistance Program”). The Employee Assistance Program pairs Employees with masters and doctoral-level clinicians, certified public accountants, certified financial planners, and attorneys. The Employee Assistance Program is administered and fully insured by Aetna. On average, the Debtors pay approximately \$1,000 per month to Aetna on account of the Employee Assistance Program. As of the Petition Date, the Debtors estimate that they owe approximately \$2,000 on account of the Employee Assistance Program.
- Telemedicine: Debtors provide Employees with access to a doctor via phone, mobile and video for non-emergency health issues and behavior health professionals (the “Telemedicine Program”). When using the Telemedicine Program, the Employees pay a consult fee. The Telemedicine Program is linked to the Medical Plans and administered by Aetna, and Debtors’ estimated annual cost for the Telemedicine Program is \$1,000. As of the Petition Date, the Debtors estimate that they owe \$200 on account of the Telemedicine Program.

45. In the aggregate, the Debtors spend approximately \$700,000 per month on the Health Benefit Plans. Of this amount, approximately \$95,000 per month (paid in arrears), including Employee contributions, and \$565,000 per month, excluding such contributions, relates to the costs of medical and dental claims made by Employees. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid obligations under the Health Benefit Plans is approximately \$1.2 million. Pursuant to the order(s), the Debtors seek authority, but not direction, to pay all obligations on account of the Health Benefit Plans and to continue the Health Benefit Plans in the ordinary course of business on a postpetition basis.

**B. Workers Compensation and Other Insurance Programs.**

1. Workers’ Compensation Program.

46. The Debtors maintain workers’ compensation insurance for Employees at the levels required by laws in the locations in which the Debtors operate (collectively, the “Workers’

Compensation Program”). All Employees participate in the Debtors’ Workers’ Compensation Program, which is fully insured.

47. The Debtors’ Workers’ Compensation Program is currently underwritten by Starr Indemnity and Liability Company, with claim administration provided by Gallagher Bassett. The Workers’ Compensation Program includes a \$500,000 per accident deductible and a \$4,000,000 aggregate retention, both of which are eroded by claim, medical and expense payments. The annual risk transfer premium is approximately \$283,000 which includes the costs of claims administration provided by Gallagher Bassett. The Debtors reimburse Gallagher Bassett for any claim payments made on a quarterly basis.

48. Certain benefits under the Workers’ Compensation Program may have been incurred prepetition but have yet to be fully paid, and certain other claims may have been filed prepetition but have yet to be resolved (collectively, the “Unpaid Workers’ Compensation Claims”). To the extent any of the Employees assert any Unpaid Workers’ Compensation Claims, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the Workers’ Compensation Program. This required modification of the automatic stay pertains solely to claims under the Workers’ Compensation Program.

49. Additionally, over the past six years, the Debtors incur an average of approximately 4 workers’ compensation claims per year, and pay an average of approximately \$75,000 per year on account of such incurred claims. As of the Petition Date, there are 6 open claims with a combined current reserve for the claims of \$1,330,000. Gallagher Bassett collects and processes claims submitted pursuant to the Workers’ Compensation Program in exchange for

an administrative fee (the “Workers’ Compensation Administrative Fees”). These Workers’ Compensation Administrative Fees are included in the allocated premiums.

50. The Debtors must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers’ Compensation Program without regard to whether such liabilities are outstanding before the Petition Date to ensure that the Debtors comply with applicable workers’ compensation laws and requirements.<sup>7</sup> There are currently 6 open claims under the Workers’ Compensation Program. As of the Petition Date, the Debtors’ policy premiums through July 1, 2019 are paid in full. Debtors are subject to audit for prior years, and the Debtors are not aware of any amounts due for prior year audits. In addition, as of the Petition date there are no unpaid deductibles or claims payments on account of the Workers’ Compensation Program.

51. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers’ Compensation Program, their inability to do so may result in adverse legal consequences that disrupt the reorganization process. Pursuant to the order on the Motion, the Debtors seek authority, but not direction, to (a) continue the Workers’ Compensation Program in the ordinary course of business on a postpetition basis, including by paying or reimbursing any amounts that come due, (b) modify the automatic stay solely to allow Employees to assert claims under the Workers’ Compensation Program, and (c) pay or reimburse all Unpaid Workers’ Compensation Claims that come due.

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<sup>7</sup>The Debtors’ Workers’ Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations and the Debtors’ ability to meet requirements thereunder. By this Motion, the Debtors request authority to continue the Workers’ Compensation Program postpetition, including making any changes to current policy and practices that become necessary, subject to applicable law.

2. **Life and AD&D Insurance Programs.**

52. The Debtors provide life insurance (the “Basic Life Insurance”) to current and certain former Employees through The Hartford (“Hartford”), which provides maximum coverage of two times an Employee’s base salary up to \$200,000 in the event of an Employee’s death, \$5,000 in the event of an Employee’s spouse’s death, and \$2,000 in the event of an Employee’s child’s death. Basic Life Insurance is provided to all Employees at no cost. Employees may also purchase supplemental life insurance (the “Supplemental Life Insurance”) through Hartford to provide coverage for themselves and their spouses and children. The Debtors provide Employees at no cost with funeral planning services (the “Funeral Planning Services”) through Aetna which provides access to advisors from Everest to assist with funeral planning services.

53. The Debtors are fully insured through the Life and AD&D Insurance. As a fully-insured plan, the Life and AD&D Insurance program does not require the Debtors to make payments on account of claims, so the Debtors do not have any current or contingent liabilities on account of Long-Term Disability Benefits. As such, the Debtors are not responsible for paying claims.

54. In the 12 months before the Petition Date, the Debtors paid approximately \$470,000 on account of their portion of the premiums for the Life and AD&D Insurance. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid premiums on account of the Life and AD&D Insurance is approximately \$20,000. Pursuant to the order, the Debtors seek authority, but not direction, to continue the Life and AD&D Insurance program in the ordinary course of business on a postpetition basis, including paying or reimbursing any amounts that come due on account of administrative fees or premiums.

3. **Disability Benefits.**

55. The Debtors provide Employees with Short and Long-Term Disability Benefits (as defined herein). Under the short-term disability benefits program, Employees are entitled to, among other things, 66 2/3% of their pay up through a maximum of 24 weeks, depending on the medical condition (the “Short-Term Disability Benefit”). The Short Term Disability benefit is capped at \$1,000 per week for non-management Employees. Employees contribute \$1.23 per pay period unless the Employee disenrolls from coverage.

56. Under the long-term disability benefits program, Employees are entitled to, among other things, continuation of 50% of their pay up to \$5,000 per month, in the event of a qualified disability (the “Long-Term Disability Benefits” and, together with the Short-Term Disability Benefits, the “Disability Benefits”).

57. Employees’ Short-Term Disability Benefits begin after an Employee is continuously disabled for 14 days and continue for up to a maximum of 24 weeks. The Long-Term Disability Benefits begin after 24 weeks or the date the Short-Term Disability Benefits end, if later, and continue until the Employee no longer meets the eligibility criteria or has reached the maximum duration of benefits.

58. The Disability Benefits are administered by Aetna/Hartford. The Short-Term Disability Benefits are self-insured by the Debtor, and the Long-Term Disability Benefits are fully insured by Aetna/Hartford.

59. As a fully-insured plan, the Long-Term Disability Benefits do not require the Debtors to make payments on account of claims, so the Debtors do not have any current or contingent liabilities on account of Long-Term Disability Benefits. In the 12 months before the Petition Date, the Debtors paid an average of approximately \$20,000 to provide the Short-Term Disability Benefits. In the 12 months before the Petition Date, the Debtors paid an average of

approximately \$1,500 per month in administrative fees and premiums with respect to the Disability Benefits. As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid obligations on account of the Short-Term Disability Benefits is approximately \$15,000. Pursuant to the order on the Motion, the Debtors seek authority, but not direction, to continue the Disability Benefits in the ordinary course of business on a postpetition basis, including paying and/or reimbursing any amounts that come due on account of administrative fees or premiums.

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

60. All full-time Employees of the Debtors are eligible to participate in a 401(k) savings plan. The 401(k) Plan generally provides for pre-tax salary deductions of compensation through which Employees may contribute to the 401(k) Plan subject to the annual Internal Revenue Service (“IRS”) limits for contributions and eligible compensation (the “Employee 401(k) Contributions”). Each pay period, the Debtors withhold approximately \$200,000 in Employee 401(k) Contributions. Each Employee’s 401(k) Contributions are deducted automatically from each paycheck and remitted to Empower Retirement, Inc. (“Empower”), the 401(k) Plan administrator.

61. The Debtors match Employee 401(k) Contributions of Employees dollar for dollar up to the first 3% of eligible compensation (the “Dollar for Dollar 401(k) Matching”). In addition, Debtors provide Employees with an annual enhanced contribution of 3% of eligible compensation (the “Enhanced Contribution,”<sup>8</sup> together with Dollar for Dollar 401(k) Matching, the “401(k) Matching”). The Dollar for Dollar 401(k) Matching is funded with each payroll, and the Enhanced Contribution is accrued on a monthly basis and paid annually. The Debtors’

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<sup>8</sup> For Employees on leave for active military service, the Debtors accrue the Enhanced Contribution during the time of the Employee’s military service. The Enhanced Contribution remitted to the Employee’s 401(k) upon the Employee’s return to the Debtors following leave for activity military service.

combined 401(k) Matching for 2018 was \$3,830,000. The Debtors' estimated 401(k) Matching for 2019 is \$3,750,000. The estimated 401(k) Matching is subject to change as Employees can make changes to the Employee 401(k) Contributions at any time.

62. Under the 401(k) Plan, the Debtors also make disbursements on account of payroll deductions for repayment of loans that Employees previously drew from their individual 401(k) accounts (the "401(k) Participant Loan Payments").

63. Historically, the Debtors have funded the 401(k) Matching on the day after that Employee Compensation is paid. In the 12 months before the Petition Date, the Debtors' monthly payments and disbursements on account of 401(k) Matching averaged approximately \$150,000. As of the Petition Date, the Debtors estimate that they owe approximately \$300,000 on account of the 401(k) Plan, consisting of the Employee 401(k) Contributions, 401(k) Matching obligations and 401(k) Participant Loan Payments for one Payroll Calendar.

64. The 401(k) Plan is administered by Empower and the costs of administering the 401(k) Plan are approximately \$18,000 per year. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued 401(k) Plan administration charges is approximately \$2,500.

65. Accordingly, pursuant to the interim order and the final order, the Debtors seek the authority, but not direction, to (a) continue the 401(k) Plan in the ordinary course of business on a postpetition basis, (b) remit any 401(k) Plan deductions collected in the ordinary course of business, and (c) pay any unpaid 401(k) matching contributions in the ordinary course of business.

**D. Paid and Unpaid Leave.**

66. The Debtors maintain several paid leave benefit programs for Employees, providing paid leave for PTO, Holidays, Sick Time Off Banks and Other Paid Leave (each as defined below, and together, the “Paid Leave”).

67. In the ordinary course of business, the Debtors provide paid time off (“PTO”) to the Employees as a Paid Leave benefit. PTO accrues at a specified rate based on the Employee’s years of service and date of hire. Non-represented Employees may carry over up to 80 hours of accrued PTO into the next calendar year. Management Employees with more than 80 hours of accrued PTO as of January 1 of the following year forfeit the number of hours in excess of the number the Employee earned during the year. Non-management and non-represented Employees with more than 80 hours of accrued PTO as of January 1 of the following year are entitled to a cash payment of the number of hours in excess of 80 hours the Employee earned during the year. Represented Employees are provided with cash payments for unused PTO as of the end of the year (December 31) pursuant to the terms of the CBAs. Employees who are terminated or resign are entitled to a cash payment in lieu of the accrued but unused PTO.

68. The Debtors estimate that, as of the Petition Date, the aggregate amount of accrued but unused PTO is approximately \$2.5 million. This amount, however, is not a current cash payment obligation except in the event the Employees leave the Debtors’ employment.

69. In addition, the Debtors provide certain other forms of Paid Leave and Unpaid Leave,<sup>9</sup> including:

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<sup>9</sup> Debtors’ do not provide Employees with paid time off for parental leave separate and apart from any accrued and unused PTO.

- Non-management Employees receive eight designated holidays and two floating holidays during which Employees are not required to work and are paid their base rate of pay (the “Holidays”);
- unpaid leave under the FMLA for: (a) birth, adoption, or foster care, (b) family care, (c) medical emergencies, (d) military exigencies, and (e) military caregiving needs (the “FMLA Leave”);
- other paid and unpaid leaves of absence for personal reasons, many of which are required by law, including missed work time in the ordinary course of business for bereavement leave, jury or court attendance, or time spent voting (the “Other Paid Leave”) and unpaid leaves of absence for family medical leaves and military leaves (the “Unpaid Leave”); and
- certain employees have legacy sick time off banks (“Sick Time Off Banks”) which (i) employees may draw upon for paid time off for non-job related illness and injury, (ii) roll over from year to year and (iii) no longer accrue any additional sick time off.

These other forms of Paid Leave and Unpaid Leave do not involve incremental cash outlays beyond standard payroll obligations.

70. The terms of the CBA’s provide additional terms for Paid and Unpaid Leave for the Debtors’ Represented Employees. Represented Employees can designate one-hitch vacations in advance pursuant to the terms of the CBA and if the Represented Employees vacations are involuntarily cancelled by the Debtors, the Debtors must reimburse the Represented Employees for all non-refundable vacation deposits. In addition, Debtors’ Represented Employees are provided with personal leaves of absence not to exceed sixty days in any rolling twelve-month period, absent approval from the Debtors’ for a longer leave (“Represented Unpaid Leave”). At the commencement of the Represented Unpaid Leave, the Represented Employee’s PTO is balanced such that accrued and unpaid PTO is paid to the Represented Employee and any time taken in advance of time accrued is paid to the Debtor.

71. The Debtors believe that the continuation of the Paid Leave and Unpaid Leave policies in accordance with prior practice is essential to maintaining Employee morale during

these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend. The Debtors anticipate that their Employees will utilize any accrued Paid Leave in the ordinary course of business, which will not create any material cash flow requirements beyond the Debtors' normal payroll obligations. Thus, pursuant to order, the Debtors seek authority, but not direction, to (a) continue the Paid Leave and Unpaid Leave in the ordinary course of business on a postpetition basis and (b) pay amounts for PTO that comes due postpetition in the ordinary course of business.

**E. Additional Programs.**

1. **Voluntary Miscellaneous Plans**

72. The Debtors provide Employees with the option to opt into a voluntary legal plan and voluntary identity theft plan (together the "Voluntary Miscellaneous Plans"). The plans are administered respectively by Hyatt/MetLife and InfoArmor. Employees who elect to opt-in to the Voluntary Miscellaneous Plans pay premiums on a bi-weekly basis as a pay roll deduction. Each pay period, Debtors withhold \$8.31 for Employees who opt in to the voluntary legal plan, and between \$4.59 and \$8.28 for voluntary identity theft plan. The withheld premiums are remitted by Debtors to the appropriate administrator. Employee contributions cover the full cost of the Voluntary Miscellaneous Plans, and the estimate total annual costs for the plans paid by Employees is \$37,000. The Debtors seek the authority, but not direction, to (a) continue the Voluntary Miscellaneous Plans in the ordinary course of business on a postpetition basis, and (b) remit any premium payments collected in the ordinary course of business.

2. **Relocation Program**

73. In the ordinary course of business, Debtors provide pay for or reimburse the moving expenses of Employees, which can include payment for the actual moving expense of household effects, enroute expenses, and mileage for driving the Employee's personal vehicle

(the “Relocation Program”). Employees who voluntarily terminate their employment within a specified time of a paid move are required to reimburse the company for all moving expenses.

74. As of the Petition Date, no outstanding obligations exist under the Relocation Program. The Debtors seek authority, but not direction, to continue the Relocation Program in the ordinary course of business on a postpetition basis.

3. **Tax Equalization Program**

75. The Debtors provide certain US-based Employees on international assignments with a taxable presence in a foreign country with tax equalization services pursuant to a tax equalization letter of understanding (“Tax Equalization Program”). The purpose of the Tax Equalization Program is to ensure that the Employee bears approximately the same tax burden that would be born if the Employee were working in their home state. Under the Tax Equalization Program, the Debtors continue to remit U.S. Payroll Taxes for the Employees and as applicable, pay or reimburse host country taxes. The Debtors also provide Employees subject to the Tax Equalization Program with tax preparation and filing services prepared by a third-party provider. Debtors estimate that annual fees paid to third-party providers for the Tax Equalization Program are \$260,000

4. **Charitable Gift Matching Program**

76. The Debtors also have a program in place to match charitable gifts for eligible Employees (the “Charitable Gift Matching Program”). The Debtors believe that maintaining the Gift Matching Program is essential to sustaining Employee morale. On average, the Debtors pay a de minimis amount per month in the aggregate on account of the Gift Matching Program. As of the Petition Date, the Debtors estimate that approximately \$2,000 of accrued and outstanding amounts will be due and owing on account of the Gift Matching Program. However, out of an abundance of caution, the Debtors seek authority, to pay any prepetition amounts outstanding on

account of the Charitable Gift Matching Program and to continue the Charitable Gift Matching Program in the ordinary course on a postpetition basis consistent with past practice.

5. **Tuition Reimbursement Program**

77. In the ordinary course of business, the Debtors maintain a program for their Employees that provides tuition reimbursement to encourage Employees to pursue, at their own initiative, additional relevant formal education from an accredited institution of education (the "Tuition Reimbursement Program"). Employees must receive approval from their local human resources department prior to beginning each course. Employees receive reimbursement for the cost of tuition, books and building use fees of up to \$10,000 per calendar year dependent on the final grade achieved in each course (A=100% reimbursement, B=100% reimbursement, C=75% reimbursement).

78. The Debtors reimburse amounts due under the Tuition Reimbursement Program to eligible Employees through its payroll process. Because Employees are required to complete the applicable coursework before obtaining reimbursement of eligible costs from the Debtors, the Debtors do not currently owe any amounts under the Tuition Reimbursement Program. As of the Petition Date, if the Debtors were to reimburse each Employee currently eligible for benefits under the Tuition Reimbursement Program the maximum amount allowable, the Debtors estimate that they would owe approximately \$16,000. Thus, by this Motion, the Debtors seek authority, but not direction, to (a) pay any prepetition amounts owed on account of the Tuition Reimbursement Program and (b) continue the Tuition Reimbursement Program in the ordinary course of business on a postpetition basis.

**F. Non-Insider Severance Programs.**

79. In the ordinary course of business, the Debtors provide severance benefits to Employees in the event of a termination by the Debtors that is not for "cause," if the Employee

voluntarily resigns, or by reason of disability or death. The Debtors' CBAs also provide for severance benefits to Represented Employees that are similar in nature and scope to the Debtors' other severance programs (all such severance programs as applied to non-insider Employees, both represented and non-union, collectively, the "Non-Insider Severance Programs"). Under the Non-Insider Severance Programs, non-union Employees receive, upon termination, a lump-sum payment and, as to Represented Employees, payments in accordance with and subject to the terms of the applicable CBA in respect of such affected Represented Employee. Such payments are determined by a combination of factors, including the Employee's rank or level, the Employee's base pay, and length of time employed by the Debtors.<sup>10</sup>

80. The Debtors' severance programs are an important part of an overall package of carefully-constructed compensation, retention and incentive programs designed to attract, retain and motivate Employees to achieve the Debtors' strategic and operational objectives. To be sure, such programs are crucial to align Employee interests with those of the Debtors, build loyalty and promote the Debtors' top-to-bottom commitment to safety, operational excellence and superior customer service. Further, maintaining the Non-Insider Severance Programs, together with the Debtors' other compensation and benefit programs described above, is critical to Employee morale and focus. The Debtors' have undergone significant reductions in force this downcycle. It is important for Employee confidence for the Debtors to honor their commitment to Employees under all employee programs, including the Non-Insider Severance Programs. Such programs, including the Non-Insider Severance Programs, therefore, are necessary, benefit the estate and will assist the Debtors reorganize to become financially stronger and more

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<sup>10</sup> Certain of the Debtors' severance programs also apply to insiders. This Motion is not seeking approval of any such severance benefits for insiders at this time and the Debtors reserve the right to seek approval of its severance programs with respect to Insiders by separate motion at a later date.

competitive. Furthermore, as a condition to receiving benefits under the Non-Insider Severance Programs, the Debtors typically require that each Employee execute a release agreement, whereby the participating Employee releases any claims held against the Debtors.

81. As of the Petition Date, the Debtors do not believe that there are any accrued and unpaid obligations under the Non-Insider Severance Programs. Accordingly, the Debtors seek authority to continue to honor the Non-Insider Severance Programs in the ordinary course of business on a post-petition basis and consistent with past practice.

**VIII. Cause Exists to Honor and Pay the Employee Compensation and Benefits**

**A. Most of the Employee Compensation and Benefits are priority claims.**

82. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Employee Compensation and Benefits owed to the Employees to priority treatment. Section 507(a)(4) of the Bankruptcy Code requires the Debtors to pay wages, salaries, commissions, vacation, severance, and sick leave as administrative priority claims up to a limit of \$13,650 per individual. 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 in full of certain allowed unsecured claims for (a) wages, salaries, or commissions, including severance, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). Thus, granting the relief requested herein should only affect the timing of certain payments to the Employees, and should not negatively affect recoveries for general unsecured creditors. Indeed, timely payment of the Employee Compensation and Benefits when due in the ordinary course enhances value for the benefit of all interested parties. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“The need to pay [employee wage] claims in an ordinary course of business time frame is simple common sense.”).

**B. Payment of Certain Employee Compensation and Benefits Is Required by Law.**

83. The Debtors seek authority to pay the Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Furthermore, federal and state laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 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); *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); *In re Chabrand*, 301 B.R. 468, 475-81 (Bankr. S.D. Tex. 2003) (same). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Withholding Obligations to the proper parties in the ordinary course of business.

84. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers' Compensation Program amounts is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring.

**C. Payment of the Employee Compensation and Benefits Is Proper Pursuant to Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.**

85. Section 363 of the Bankruptcy Code provides, in relevant part, 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). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g., Inst’l Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or a debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *see also In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale.”); *In re Terrace Gardens Park P’ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989).

86. Furthermore, section 105(a) of the Bankruptcy Code provides that a court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code, pursuant to the “doctrine of necessity.” 11 U.S.C. § 105(a). The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (recognizing the “doctrine of necessity”); *see also In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding

that a court may authorize payment of prepetition claims if such payment is essential to debtor's continued operation); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for payment of pre-petition claims” under the doctrine of necessity); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (explaining that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to confirmation of a reorganization plan).

87. Moreover, the doctrine of necessity is designed to foster a debtor's rehabilitation, which courts have recognized is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *see also 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 prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

88. Payment of the Employee Compensation and Benefits is warranted under this authority and the facts of these chapter 11 cases. Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Employee Compensation and Benefits.

89. Moreover, Employees provide the Debtors with services necessary to conduct the Debtors' business, and the Debtors believe that absent the payment of the Employee Compensation and Benefits owed to the Employees, the Debtors will suffer Employee turnover and instability at this critical time in these chapter 11 cases. The Debtors believe that without these payments, the Employees may become demoralized and unproductive because of the potential significant financial strain and other hardships the Employees may face. Such Employees may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors' business is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to the Employee Compensation and Benefits is a necessary and critical element of the Debtors' efforts to preserve value and will provide the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their businesses in these chapter 11 cases.

90. Indeed, this Court, recognizing the importance of satisfying employee obligations, has granted relief similar to that requested herein. *See, e.g., In re Jones Energy, Inc.*, No. 19-32112 (DRJ) (Bankr. S.D. Tex. Apr. 15, 2019) (authorizing the debtors to continue the employee compensation and benefits programs on a post-petition basis); *In re Vanguard Natural Resources, LLC*, No. 19-31786 (DRJ) (Bankr. S.D. Tex. Apr. 2, 2019) (same); *In re Parker Drilling Company*, No. 18-36958 (MI) (Bankr. S.D. Tex. Jan. 3, 2019) (same); *In re Westmoreland Coal Company*, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 15, 2018) (same); *In re Goodman Networks, Inc.*, No. 17-31575 (MI) (Bankr. S.D. Tex. Apr. 20, 2017); *In re*

*Midstates Petroleum Co.*, No. 16-32237 (DRJ) (Bankr. S.D. Tex. May 2, 2016); *In re Sherwin Alumina Co., LLC*, No. 16-20012 (DRJ) (Bankr. S.D. Tex. Jan. 13, 2016); *In re BPZ Res., Inc.*, No. 15-60016 (DRJ) (Bankr. S.D. Tex. Mar. 10, 2015). Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay and continue the Employee Compensation and Benefits in the ordinary course of business and consistent with historical practice.

**IX. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate Here.**

91. Section 362(a) of the Bankruptcy Code operates to stay “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .” 11 U.S.C. § 362(a)(1).

92. Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1). Cause exists here to modify the automatic stay to permit the Employees to proceed with workers’ compensation claims in the appropriate judicial or administrative forum. Staying the workers’ compensation claims could have a detrimental effect on the financial well-being and morale of the Employees.

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

93. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and its requested access to cash collateral. In addition, 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 Employee Compensation and Benefits, as

applicable. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct 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 in this Motion.

### **Emergency Consideration**

94. In accordance with Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule. Bankruptcy Rule 6003(b) provides that, if relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may approve a motion to “pay all or part of a claim that arose before the filing of the petition” prior to twenty-one days after the Petition Date. FED. R. BANKR. P. 6003(B). Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. Specifically, the Fifth Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, courts in this Circuit have explained that irreparable harm requires proof that “(1) the harm to plaintiffs is imminent (2) the injury would be irreparable and (3) that Plaintiffs have no other adequate legal remedy.” *See, e.g., GoNannies, Inc. v. GoAuPair.Com, Inc.*, 464 F. Supp. 2d 603, 608 (N.D. Tex. 2006) (citing *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975)).

95. As described in this Motion and in the First Day Declaration, the Debtors ability to pay Employee Compensation and Benefits is essential to the Debtors continuing ongoing operations postpetition. Failure to receive such authorization and other relief during the first twenty-one days of these chapter 11 cases would immediately and severely disrupt the Debtors’ operations at this critical juncture and prejudice all parties in interest. Accordingly, the Debtors

submit that emergency consideration is warranted and that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

96. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

**Reservation of Rights**

97. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of any of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of any of the Debtors’ rights to dispute such claim.

**Notice**

98. Notice of this Motion shall be provided to: (a) the Office of the U.S. Trustee for the Southern District of Texas; (b) the Office of the Attorney General of the states in which the Debtors operate; (c) the thirty (30) largest unsecured creditors for the Debtors on a consolidated basis; (d) Ankura Trust Company, LLC, as administrative agent for the 2019 Term Loan; (e) U.S. Bank National Association, as indenture trustee and collateral agent for the 8.75% Senior Secured Notes due 2023; (f) Wilmington Trust, National Association, as indenture trustee for the 6.25% Senior Notes due 2022 and 4.50% Convertible Senior Notes due 2023; (g) Lombard North Central plc, as administrative agent and security trustee for the BULL Lombard Debt and the BALL Lombard Debt; (h) Macquarie Bank Limited, as administrative agent and security agent for the Macquarie Debt; (i) PK AirFinance S.à r.l., as agent and security trustee for the PK Air Debt; (j) Barclays Bank PLC, as agent and security agent for the ABL Facility; (k) Davis Polk Wardwell LLP, as counsel to the ad hoc group of Secured Notes and Term Lenders; (l) Kramer Levin Naftalis & Frankel LLP, as counsel to the ad hoc group of holders of the Unsecured Notes; (m) the United States Attorney's Office for the Southern District of Texas; (n) the Internal Revenue Service; (o) the United States Securities and Exchange Commission; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that such notice is sufficient and that no further notice of this Motion is required.

*[Remainder of page left intentionally blank]*

WHEREFORE, the Debtors respectfully request entry of an interim and/or final order(s), substantially in the forms attached hereto as **Exhibit A**, respectively, granting the relief requested herein and granting such other relief as is just and proper.

Dallas, Texas  
Dated: May 11, 2019

Respectfully submitted,

**BAKER BOTTS L.L.P.**

/s/ James R. Prince

James R. Prince, State Bar No. 00784791  
Omar J. Alaniz, State Bar No. 24040402  
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-and-

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(*pro hac vice* admission pending)

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*Proposed Co-Counsel to the Debtors and  
Debtors in Possession*

**Certificate of Service**

I certify that on May 11, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ James R. Prince

James R. Prince

**Exhibit A**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:	)	Chapter 11
	)	
	)	Case No. 19-32713 (DRJ)
BRISTOW GROUP INC., <i>et al.</i> , <sup>1</sup>	)	
	)	(Jointly Administered)
Debtors.	)	
	)	

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**ORDER (I) AUTHORIZING THE  
DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER  
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE  
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

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This matter coming before this Court upon the motion (the “Motion”)<sup>2</sup> filed by the above-captioned debtors (collectively, the “Debtors”) for entry of an order (this “Order”), pursuant to sections 105(a), 362(d), 363(b) and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004 and Local Rule 9013-1(i), authorizing the Debtors to (a) pay all prepetition and postpetition obligations on account of the Employee Compensation and Benefits in the ordinary course of business, (b) continue to administer the Employee Compensation and Benefits, including payment of prepetition obligations related thereto, and (c) granting related relief, all as further described in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. §

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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: Bristow Group Inc. (9819), BHNA Holdings Inc. (8862), Bristow Alaska Inc. (8121), Bristow Helicopters Inc. (8733), Bristow U.S. Leasing LLC (2451), Bristow U.S. LLC (2904), BriLog Leasing Ltd. (9764), and Bristow Equipment Leasing Ltd. (9303). The corporate headquarters and the mailing address for the Debtors listed above is 2103 City West Blvd., 4th Floor, Houston, Texas 77042.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at the hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion, in the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as stated herein.
2. The Debtors are authorized, but not directed, to continue and/or modify, change, and discontinue the Employee Compensation and Benefits and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law. The Debtors will provide notice to the U.S. Trustee and any statutory committee of any changes to the Employee Compensation and Benefits or of any new programs, policies, and benefits.
3. The Debtors are authorized, but not directed, to pay and honor prepetition amounts outstanding under or related to the Employee Compensation and Benefits programs in the ordinary course of business and to pay any prepetition amounts due in connection therewith; *provided, further*, that, pending entry of a final order, the Debtors shall not make a payment to

any Employee on account of the Debtors' Employee Compensation and Benefits obligations that exceeds the priority amounts set forth in sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code.

4. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code; *provided that* nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

5. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

6. The Debtors are authorized to continue the Non Insider Severance Programs, and to pay and honor any amounts related thereto in the ordinary course of business and consistent with past practices; provided that, if the Debtors contemplate making any payments on account of any severance obligations in excess of (i) \$100,000 in the aggregate in any calendar month or (ii) \$50,000 to an individual, the Debtors shall provide five (5) days' advance notice to the U.S. Trustee and any statutory of the title of the individual and the amount of severance to be paid.

7. The Debtors shall maintain a matrix/schedule of amounts paid pursuant to the Non-Insider Severance Programs subject to the terms and conditions of this Order, including the following information: (a) the title of the Claimant paid; (b) the amount of the payment to such Claimant; (c) the total amount paid to the Claimant to date; (d) the payment date; and (e) the purpose of such payment. The Debtors shall provide a copy of such matrix/schedule to the U.S.

Trustee and any statutory committee appointed in these chapter 11 cases monthly on the date it files its Monthly Operating Statement.

8. The Debtor is authorized to seek approval of any awards under the 2020 Performance Incentive Plan, the 2020 Key Employee Incentive Plan, and the Retention Award by separate motion on full notice.

9. Nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this Order is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any Debtor and any third party under section 365 of the Bankruptcy Code. Furthermore, any payment made by the Debtors pursuant to this Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of any of the Debtors' rights to dispute such claim.

10. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

11. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored

as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Employee Compensation and Benefits.

12. Notwithstanding entry of this Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion.

14. Notwithstanding anything to the contrary contained herein, any payment made or action taken by any of the Debtors pursuant to the authority granted herein, as well as the exercise of any and all other rights granted or approved hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any use of cash collateral by the Debtors (such order, the "Cash Collateral Order") and any budget in connection therewith. Notwithstanding anything to the contrary in this Order, in the event of any inconsistency between the terms of this Order and the terms of any applicable Cash Collateral Order, the terms of the Cash Collateral Order shall govern.

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

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

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

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

19. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and enforcement of this Order.

Dated: \_\_\_\_\_, 2019

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United States Bankruptcy Judge