IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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| In re: | Chapter 11 |
| **COMFORT CO., INC.,** a Delaware corporation, *et al.*,[1] | Case No. 08-12305 (MFW) |
| Debtors. | **[Joint Administration Pending]** |

**MOTION OF THE DEBTORS FOR AN ORDER (A) AUTHORIZING THE DEBTORS TO (1) PAY AND HONOR CERTAIN PREPETITION CLAIMS FOR (I) WAGES, SALARIES, EMPLOYEE BENEFITS AND OTHER COMPENSATION, (II) WITHHOLDINGS AND DEDUCTIONS AND (III) REIMBURSABLE EXPENSES; (2) CONTINUE TO PROVIDE EMPLOYEE BENEFITS IN THE ORDINARY COURSE OF BUSINESS; (3) PAY ALL RELATED COSTS AND EXPENSES; AND (B) DIRECTING BANKS TO RECEIVE, PROCESS, HONOR AND PAY ALL CHECKS PRESENTED FOR PAYMENT AND ELECTRONIC PAYMENT REQUESTS RELATING TO THE FOREGOING**

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") hereby move the Court (the "**Motion**") for entry of an order (the "**Order**"), in substantially the form attached hereto as Exhibit A, (A) authorizing, but not directing, the Debtors to (1) pay and honor certain prepetition claims for (i) wages, salaries, employee benefits and other compensation, (ii) withholdings and deductions and (iii) reimbursable expenses; (2) continue to provide employee benefits in the ordinary course of business; (3) pay all related costs and expenses; and (B) authorizing and directing banks and other financial institutions to receive, process, honor and pay all checks and transfers drawn on the Debtors' payroll accounts to make the foregoing payments. The facts and circumstances supporting this Motion are set forth in the

[1]The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Comfort Co., Inc. (0360); Sleep Innovations, Inc. (6386); Advanced Innovations Central, LLC (7109); Advanced Innovations East, LLC (2669); Advanced Innovations West, LLC (2116); Advanced Urethane Technologies, Inc. (1725); AUT Brenham, Inc. (7286); AUT Dallas, Inc. (7706); AUT Lebanon, Inc. (7928); AUT Newburyport, Inc. (7032);and AUT West Chicago, Inc. (7561). The address for all of the Debtors is 187 Route 36, Suite 101, West Long Branch, NJ 07764.

Declaration of Richard A. Heller, Chief Executive Officer of Sleep Innovations, Inc., in Support of Chapter 11 Petitions and First Day Motions (the "**First Day Declaration**"), filed concurrently herewith. In support of this Motion, the Debtors respectfully state as follows:

## PRELIMINARY STATEMENT

The Debtors employ approximately 836 employees, of whom approximately 164 are salaried employees (the "**Salary Employees**") and 672 are paid by the hour (the "**Hourly Employees**"). The Debtors also use at least nine (9) staffing agencies which, in the aggregate, provide the Debtors with approximately 230 temporary employees (the "**Temporary Employees**"). In addition, the Debtors currently employ five (5) independent contractors (the "**Independent Contractors**", who, together with the Salary Employees, the Hourly Employees and the Temporary Employees, shall collectively be referred to herein as the "**Employees**").

The Employees are invaluable to the operation of the Debtors' businesses. They perform a variety of critical functions, including procurement, production, sales, marketing and back-office operations, and their institutional knowledge, skills, experience and understanding of the Debtors' infrastructure, operations and customer relations are essential to effect a successful reorganization and maintain the value of the Debtors' assets and businesses.

Absent an order granting the relief requested by this Motion, the Employees will suffer immediate, undue hardship and, in some cases, serious financial difficulties, as the amounts at issue in this Motion are withheld from them. Moreover, the Debtors believe that, without the requested relief, the stability of the Debtors' on-going business operations will be undermined as Employees, who remain crucial to the success of both the Debtors and these proceedings, seek other employment.

Thus, the Debtors request entry of an order as set forth above granting them authority, in their discretion, to pay and honor certain prepetition claims for, among other items, wages, salaries, bonuses, payments to or on behalf of Employees and other compensation, Reimbursable Expenses (as defined herein), federal and state withholding taxes and other amounts withheld (e.g., garnishments, Employees' share of insurance premiums, taxes and 401(k) contributions), Employee health benefits, insurance benefits, workers' compensation benefits, vacation time, disability coverage and all other Employee benefits that the Debtors have historically provided in the ordinary course of business (collectively, and as more fully described in this Motion, the "**Employee Wages and Benefits**"), and to pay all fees and costs incident to the foregoing, including amounts to third-party administrators. In addition, the Debtors seek authority to (i) modify, change or discontinue any of the Employee Wages and Benefits, the policy related to the Reimbursable Expenses and (ii) implement new Employee Wages and Benefits in the ordinary course of business during these Chapter 11 Cases, in each case in the Debtors discretion and without the need for further Court approval. Finally, the Debtors request that banks and other financial institutions (the "**Financial Institutions**") be authorized and directed to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing.

## JURISDICTION

1. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(3) and 507(a)(4) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "**Bankruptcy Code**").

## BACKGROUND

### A. Introduction

3. On the date hereof (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (collectively, the "**Chapter 11 Cases**"). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has yet been appointed in these Chapter 11 Cases.

4. Simultaneous with the filing of this pleading, the Debtors have filed a motion with this Court pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure seeking join administration of the Debtors' estates.

### B. Overview of the Debtors' Businesses

5. The Debtors develop, manufacture, market and distribute foam comfort sleep products (the "**Comfort Products**"), which include pillows, mattresses and mattress toppers, for sale to major retailers in the United States, Canada, Mexico and other countries. The Debtors market the Comfort Products under four nationally recognized brands – Novaform®, Personal Expressions®, Comfort Plus® and Bodipedic® – and also produce Comfort Products under private label programs for retailers such as Target, Sears, Kohl's, Costco and Sam's Club. The Debtors manufacture approximately 90% of their Comfort Products in three end-product manufacturing facilities located in California, Mississippi and Indiana (the "**End Product Facilities**"). The Debtors also manufacture and sell standard and specialty polyurethane foam products (the "**Foam Products**") to end market users, such as manufacturers in the bedding, furniture, automotive, packaging, medical and consumer products industries. The Debtors operate seven facilities (the "**Foam Facilities**"), located in Georgia, Illinois, Iowa, Massachusetts, Mississippi, Missouri and Texas, to manufacture the Foam Products. The

Debtors administer the operations of the End Product Facilities and the Foam Facilities from their executive headquarters (the "**Corporate Headquarters**") in West Long Branch, New Jersey. For the 2007 fiscal year, the Debtors had gross sales of approximately $432,600,000.

6. As of the Petition Date, the Debtors employ 836 full time Employees. As of the Petition Date, 113 of the Employees at the Debtors' Newburyport, Massachusetts, Dubuque, Iowa, and West Chicago, Illinois Foam Facilities were employed pursuant to three separate collective bargaining agreements.

**C. Corporate and Debt Structure**

7. Comfort Co., Inc., a Delaware corporation ("**Comfort**"), is a holding company that owns 100% of the common stock of Sleep Innovations, Inc., a New Jersey corporation ("**Sleep Innovations**"), the Debtors' principal operating entity and the primary obligor on the Debtors' prepetition secured bank debt. Sleep Innovations, in turn, is the direct parent of the following subsidiaries, all of which are wholly-owned: Advanced Innovations East, LLC, Advanced Innovations West, LLC, Advanced Innovations Central, LLC and Advanced Urethane Technologies, Inc. ("**AUT**"). AUT is the direct parent of AUT Brenham, Inc., AUT Dallas, Inc., AUT Lebanon, Inc. AUT Newburyport, Inc. and AUT West Chicago, Inc. (together with AUT, the "**AUT Entities**"). The AUT Entities are responsible for the Foam Products business. An organizational chart is attached as Exhibit A to the First Day Declaration.

8. Sleep Innovations is a borrower under a First Lien Credit Agreement (the "**First Lien Credit Facility**") and a Second Lien Credit Agreement (the "**Second Lien Credit Facility**") each dated as of April 3, 2007, with JPMorgan Chase Bank, N.A., as a lender and administrative agent ("**JP Morgan**"), and several other lenders party thereto (the First Lien Credit Agreement and the Second Lien Credit Agreements, as amended, shall hereinafter be referred to as the "**Credit Facilities**").

9. The First Lien Credit Facility is comprised of a $15 million LIFO revolving line of credit (the "**LIFO Facility**"), a term loan in the original principal amount of $240 million and a $30 million revolving line of credit. The Second Lien Credit Facility is comprised of a term loan in the original principal amount of $50 million. As of the Petition Date, the outstanding principal amounts due under the First Lien Credit Facility (inclusive of swap termination obligations) and the Second Lien Credit Facility were approximately $290,000,000 and $50,000,000 respectively. The obligations of Sleep Innovations under the Credit Facilities are guaranteed by each of the other Debtors, including Comfort, and secured by liens on substantially all of the assets of each Debtor.

10. In addition to the foregoing, the Debtors owe approximately $34,000,000 in ordinary course trade debt as of the Petition Date.

**D. Events Leading to the Debtors' Bankruptcy Filing**

11. A variety of external economic factors have led to a decline in the Debtors' operating performance. The Debtors believe that the leading negative factor has been the sharp rise in the cost of various petrochemicals, such as polyol, TDI and MDI, which are the principle ingredients of both the Comfort Products and the Foam Products. Additionally, the deterioration in the United States housing market, to which the bedding industry is closely tied, has resulted in a significant reduction of the Debtors' revenue. The combination of higher materials costs and lower consumer spending has hindered the Debtors' ability to service their non-trade related debt and resulted in the liquidity crunch that led to this chapter 11 filing.

12. During the first nine months of 2008, the Debtors, in consultation with their professionals, their secured lenders and their stockholders, evaluated a variety of options that the Debtors believed would ease their current financial difficulties and restructure the Debtors' balance sheet to bring it in line with the Debtors' current debt servicing capabilities. In

February 2008, the equity sponsor committed $30,000,000 in equity structured as a $25,000,000 equity capital infusion as preferred stock and a $5,000,000 line of credit. This was in addition to the $9,000,000 equity infusion provided in March 2007. Further, these options included a refinancing on an out of court restructuring of the obligations due under the Credit Facilities, a sale of some or all of the Debtors' assets to a third party and a pre-packaged plan of reorganization. In connection with these efforts, on June 12, 2008, the Debtors entered into the Forebearance Agreements (the "**Forebearance Agreements**") in respect of the Credit Facilities, which also permitted the above referenced LIFO facility. The Debtors believed that the Forebearance Agreement would allow them time to fully explore the strategic options described above. However, further deterioration in the Debtors' businesses and the difficulty of obtaining the 100% consents necessary to achieve an out of court restructuring necessitated the commencement of these cases before any of these strategic options could be implemented. As of the Petition Date, the Debtors had drawn approximately $13,000,000 under the LIFO Facility.

**E. The Plan Support Agreement**

13. Prior to the Petition Date, the Debtors and the Steering Committee of the lenders under the First Lien Credit Facility (the "**First Lien Lenders**") were able to reach agreement in principle on the terms of a prearranged Chapter 11 filing. In this regard, the Debtors and First Lien Lenders holding a majority in principal amount of the First Lien Claims entered into a Plan Support and Voting Agreement (the "**Plan Support Agreement**") pursuant to which the parties have agreed to the terms of, and the timing for the filing and confirmation of, a plan of reorganization (the "**Plan**"). Pursuant to the Plan Support Agreement, the Debtors and the other parties have agreed to use their commercially reasonable efforts to implement an agreed plan of reorganization, including to file a disclosure statement and the Plan within 30 days after

the Petition Date and to take all actions reasonably necessary to obtain an order confirming the Plan within 90 days after the Petition Date on the following general terms:

- Conversion of a portion of the claims of the First Lien Lenders into new equity ("**New Equity**") of Comfort Co., Inc. ("**Holdings**") and a portion into a new second lien term loan;

- Conversion of the claims of the lenders under the Second Lien Credit Facility into New Equity;

- Conversion of unsecured claims into New Equity, except unsecured critical vendor claims anticipated to be paid in full; and

- A DIP Facility refinanced by an exit facility not to exceed $40 million secured by a first liens on substantially all of the assets of Holdings and its subsidiaries.

## THE EMPLOYEE OBLIGATIONS

### 1. Unpaid Compensation and Severance

14. In the months leading up to the Petition Date, the Debtors' average aggregate monthly compensation for Employees, including wages, salaries and bonuses, was approximately $3,000,000. However, on September 23, 2008, the Debtors implemented a reduction in work force (the "**RIF**"). Subsequent to the RIF, the Debtors' average aggregate monthly compensation for Employees, including wages, salaries and bonuses, is expected to be approximately $2,900,000.

15. Salary Employees are paid bi-weekly in arrears, while Hourly Employees are paid every week in arrears. The amounts due and owing to Temporary Employees are paid directly to the appropriate staffing agency weekly while the Independent Contractors either paid monthly in arrears, weekly or bi-weekly in arrears.

16. As of the Petition Date, some of the Debtors' Employees have not been paid all of their prepetition wages earned in arrears. Additionally, compensation may be due and owing to the Employees as of the Petition Date because:

(a) discrepancies may exist between the amounts paid and amounts Employees or others believe should have been paid, which, upon resolution, may reveal that additional amounts are owed to such Employees;

(b) payroll checks issued to Employees prior to the Petition Date may not have been presented for payment or cleared the banking system and, accordingly, have not been honored and paid as of the Petition Date; and/or

(c) variations may exist in the Debtors' various payroll schedules.

17. The Debtors believe that, as of the Petition Date, approximately $1,300,000 in accrued wages, salaries, overtime pay, commissions and other compensation (excluding reimbursable expenses, vacation pay, severance pay, deferred compensation and incentive bonus pay) earned prior to the Petition Date remains unpaid to the Salaried and Hourly Employees. The Debtors also believe that as of the Petition Date, approximately $635,020.74 in accrued wages earned prior to the Petition Date remains unpaid to the Temporary Employees and approximately $52,000 in accrued wages earned prior to the Petition Date remains unpaid to the Independent Contractors. Together, these amounts constitute the "**Unpaid Compensation**." For the reasons set forth below, the Debtors seek authority, in their discretion, to pay such Unpaid Compensation to these Employees.

18. The Debtors also believe that, as a result of the RIF, as of the Petition Date the Debtors owe the individuals affected by the RIF $307,391.87 in severance pay. Of this amount, the Debtors seek to pay approximately $107,516.87[2] (the "**Severance Pay**") to certain individuals affected by the RIF, which amounts will come due postpetition even though earned prepetition. For the reasons set forth below, the Debtors seek authority, in their discretion, to pay such Severance Pay to those individuals affected by the RIF and entitled to the Severance Pay.

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[2] The Severance Pay does not include amounts due and owing to a member of senior management who was affected by the RIF. According to the Debtors' calculations, severance payments to this individual total approximately 199,875.00.

### 2. Remitting and Paying Appropriate Deductions and Withheld Amounts

19. On a bi-weekly basis, the Debtors deduct various amounts from the paychecks of the Employees who work at the Corporate Headquarters (the "**WLB Employees**"), the Employees who work for the AUT Entities (the "**AUT Employees**") and all other Employees of Sleep Innovations (the "**SI Employees**"). The Debtors deduct certain amounts from the paychecks of certain SI Employees, including, without limitation, an Employee's share of state unemployment insurance and state disability insurance, medical insurance (for Hourly Employees only), dental insurance, life insurance, dependent life insurance, short and long-term disability, flexible spending account contributions (for Salary Employees only), 401K contributions, garnishments and child support (collectively, the "**SI Deductions**"). The Debtors also deduct certain amounts from the paychecks of certain AUT Employees, including, without limitation, an Employee's share of union fees (for certain Hourly Employees in Iowa, Illinois and Massachusetts only), medical insurance, dental insurance, life insurance, dependent life insurance, long-term disability, flexible spending accounts contributions (for Salary Employees only), 401K contributions, garnishments and child support (collectively, the "**AUT Deductions**"). Lastly, the Debtors deduct certain amounts from the paychecks of certain WLB Employees, including, without limitation, an Employee's share of state unemployment insurance and state disability insurance, dental insurance, life insurance, dependent life insurance, long-term disability, flexible spending accounts contributions, 401K contributions, garnishments and child support (collectively, the "**WLB Deductions**" and, together with the SI Deductions and the AUT Deductions, the "**Deductions**").

20. The Debtors forward the Deductions (with the exception of amounts owing on account of self-insured programs) to various third-party recipients. Further, the Debtors are required by law to withhold amounts related to federal, state and local income taxes,

social security, Medicare taxes and other amounts from their Employees' wages for remittance to the proper taxing authority (collectively, the "**Withheld Amounts**"). The Debtors must then make matching contributions from their own funds for social security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the "**Employee Payroll Taxes**", and along with the Withheld Amounts the "**Payroll Taxes**").

21. On average, the Deductions equal approximately $80,200 in the aggregate, per two-week period. However, due to the commencement of the Chapter 11 Cases, some funds which were deducted from Employees' earnings may not have been forwarded to the appropriate third-party recipients prior to the Petition Date. Accordingly, the Debtors seek authority, in their discretion, to continue to forward these prepetition Deductions (which the Debtors hold in trust and do not believe constitute property of the Debtors' estates) to the applicable third-party recipients on a postpetition basis, in the ordinary course of business, as routinely done prior to the Petition Date.

22. On average, the Payroll Taxes equal approximately $321,376 in the aggregate for each two-week period, with approximately $73,187 attributable to Employee Payroll Taxes and approximately $248,189 attributable to Withheld Amounts. Before the Petition Date, the Debtors withheld amounts from Employees' earnings for the Employee Payroll Taxes, but such funds may not have been forwarded to the appropriate taxing authorities prior to the Petition Date. The Debtors seek authority, in their discretion, to continue to honor and process the prepetition obligations with respect to the Payroll Taxes on a postpetition basis, in the ordinary course of business, as routinely done prior to the Petition Date.

### 3. Honoring Checks for and Payment of Reimbursable Expenses

23. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors reimbursed Employees for certain expenses incurred on behalf of the Debtors in the scope of their employment (the "**Reimbursable Expenses**"). Employees are required to submit Reimbursable Expenses on the Debtors' "Expense Report" form within fourteen days of incurring the Reimbursable Expense. After the approval of an Employee's Reimbursable Expense, such Reimbursable Expense is paid to the Employee in the Employee's next regularly-scheduled paycheck. The Reimbursable Expenses include, but are not limited to, airfare, lodging, automobile rental, other transportation, business and travel meals and telephone usage. On average, the Debtors spend approximately $170,000 on Reimbursable Expenses per month in the aggregate.

24. Employees have incurred the Reimbursable Expenses as described above on behalf of the Debtors and with the understanding that they would be reimbursed. Accordingly, to avoid harming individuals who may have incurred the Reimbursable Expenses, the Debtors request authority, in their discretion, to (a) continue reimbursing the Reimbursable Expenses in accordance with prepetition practices, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) pay all Reimbursable Expenses that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

### 4. Health Benefits

25. The Debtors provide their full-time Employees with various plans and policies related to health benefits, insurance coverage and other important benefits in the ordinary course of business, including medical coverage and dental coverage (collectively, the "**Health Benefits**"). The Debtors' approximate monthly cost for maintaining the Health Benefits is $429,557 in the aggregate. The Debtors offer the following Health Benefits plans:

(a) **SI Medical Plan**. The Debtors offer the SI Employees and the WLB Employees virtually identical medical and prescription drug insurance coverage under two separate plans administered by Horizon Blue Cross Blue Shield ("**BCBS**") of New Jersey (the "SI Medical Plan"). The SI Employees are covered under a Direct Access Program, and the WLB Employees are covered under a PPO. The SI Medical Plan is 100% self-insured by the Debtors. Under the SI Medical Plan, the participating SI Employees and WLB Employees pay up to a $1,000 deductible for out-of-network services and no deductible for in-network services. The SI Medical Plan offers a range of coverage options with varying co-payments and coinsurance. The Debtors pay 100% of the cost of the SI Medical Plan for Salary Employees and 80% of the cost of the SI Medical Plan for Hourly Employees. The SI Medical Plan costs the Debtors' approximately $161,421 per month in the aggregate.

(b) **AUT Medical Plan**. The Debtors offer the AUT Employees with medical and prescription drug insurance coverage through BCBS of Illinois. The AUT Medical Plan offers a range of coverage options with varying deductibles, co-payments and coinsurance. The Debtors contribute 80% of the cost of maintaining the AUT Medical Plan, and the AUT Employees contribute the other 20%. The Debtors contribute their share in monthly premiums to BCBS of Illinois. The AUT Medical Insurance Plan costs the Debtors approximately $268,136 per month in the aggregate.

(c) **Dental Plan**. Eligible SI Employees and WLB Employees are entitled to participate in a dental care plan (the "**SI Dental Plan**") managed by Guardian Life Insurance Company of America. The SI Employees and WLB Employees pay 100% of the cost of the SI Dental Plan, and the Debtors make no contributions thereto. Eligible AUT Employees are entitled to participate in a dental care plan (the "**AUT Dental Plan**") managed by Dental Source of Missouri and Kansas. As with the SI Dental Plan, the Debtors make no contributions towards funding the AUT Dental Plan – the AUT Employees pay the full cost of the AUT Dental Plan.

26. As of the Petition Date, the Debtors owe approximately $85,100.00 related to the Health Benefits. By this Motion, the Debtors seek authority, in their discretion, to (a) continue the Health Benefits for their Employees in the ordinary course of business on a postpetition basis, (b) modify their prepetition policies relating thereto as they deem appropriate, (c) continue making the above-described contributions to such Health Benefits programs, (d)

continue to pay fees of third-party administrators, as necessary and (e) pay any amounts related thereto, including any premiums and claim amounts that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

**5. Workers' Compensation and Employers Liability**

27. Pursuant to applicable state laws, the Debtors must maintain workers' compensation liability coverage (the "**Workers' Compensation Programs**") in the ordinary course of business to ensure prompt and efficient payment and/or reimbursement to their Employees for workers' compensation claims. The Workers' Compensation Programs are maintained through Liberty Mutual Insurance Company ("**Liberty Mutual**"). The Debtors' policy with Liberty Mutual covers both the Workers' Compensation Programs and certain liabilities of the Debtors to non-Employees arising from bodily injury to Employees (the "**Employers Liability Coverage**"). The Debtors finance the premiums owed to Liberty Mutual for the Workers' Compensation Programs and the Employers Liability Coverage through a premium financing agreement with First Funding Insurance Corp. (the "**Workers' Compensation PFA**"). The Debtors have paid a $149,316 deposit to First Funding Insurance Corp. and are required to pay ten installments of $101,340 under the Workers' Compensation PFA.

28. In order for the claims administration process to operate in an efficient manner and to ensure that the Debtors comply with state law requirements, the Debtors must maintain the Workers' Compensation Programs. The Debtors' estimated cost of maintaining the Workers' Compensation Programs and Employers Liability Coverage are $1,162,716, consisting of $1,149,371 in financed premiums and $13,345 in finance fees. The Debtors believe that as of the Petition Date there are no amounts due and owing under the Workers' Compensation PFA.

29. The Debtors have filed a separate motion concurrently herewith entitled "Motion of the Debtors for Entry of an Order Authorizing the Debtors (A) To Maintain Postpetition Financing of Insurance Premiums and Renewals Thereof and (B) To Pay Prepetition Premiums Necessary to Maintain Insurance Coverage in Current Effect," which seeks authority for the Debtors to, among other things, pay the claims associated with such premium financing agreements (the "**PFA Motion**"). By this Motion, the Debtors request authority, in their discretion, to (a) continue the Workers' Compensation Programs and Employers Liability Coverage on a postpetition basis, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) pay any amounts relating thereto, to the extent not addressed by the PFA Motion, that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

**6. Vacation Time, Holidays and Sick Days**

30. **The WLB and SI Employees**. The Debtors provide all WLB and SI Employees with vacation time ("**Vacation Time**"). WLB and SI Employees who have been employed by the Debtors for fewer than five years earn ten days of Vacation Time per year (accruing at .83 days per month), while WLB and SI Employees who have been employed by the Debtors for more than five years earn fifteen days of Vacation Time per year (accruing at 1.25 days per month). All WLB and SI Employees receive ten days of paid holiday ("**Holidays**"), which includes one floating holiday (the "**Floating Holiday**"). In addition to Vacation Time and Holidays, the WLB and SI Employees also earn four paid personal/sick days per year ("**Sick Days**"), accruing at a rate of .33 days per month.

31. **The AUT Employees**. AUT Employees who are members of a Union (the "**Union Employees**") and who work at the Debtors' facilities West Chicago, Illinois, Newburyport, Massachusetts or Dubuque, Iowa, receive Vacation Time and Holidays pursuant to

collective bargaining agreements with the Debtor (the "**CBA's**"). The Debtor's non-Union Employees who work at the AUT Facilities receive similar Vacation Time and Holidays to the Union Employees. Overall, the AUT Employees who work full-time are entitled to between one and five weeks of vacation per year, increasing with an Employee's seniority and varying across the several AUT Facilities. Additionally, the Debtors provide the AUT Employees with between nine and eleven Holidays per year, varying between the several AUT Facilities.

32. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to honor their Vacation Time, Floating Holidays and Sick Days policies in the ordinary course of business, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) honor and pay any obligations related thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

**7. Employee Insurance Benefits**

33. In addition to the Health Benefits, the Debtors provide their Employees with Life Insurance and Disability Benefits (each as defined herein, and collectively, the "**Employee Insurance Benefits**").

**a. Primary Life Insurance and Supplemental Life Insurance.**

34. The Debtors provide the Salary and Hourly Employees with basic term life insurance and accidental death and dismemberment insurance (as collectively described below, "**Primary Life Insurance**"), with coverage varying based on (i) whether the Employee is a WLB Employee, a SI Employee or an AUT Employee, (ii) whether the Employee is a Salary Employee or an Hourly Employee, (iii) whether an Employee is a Union Employee, and (iv) the duties performed by the Employee.

35. SI and WLB Salaried Employees. The Debtors provides SI Employees and WLB Employees who are paid a salary with Primary Life Insurance through The Guardian

Life Insurance Company of America (the "**<u>SI Salaried Primary Life Insurance</u>**"). SI Salaried Primary Life Insurance consists of basic life insurance in the amount of one times annual base pay, up to $250,000 and accidental death and dismemberment insurance in the amount of one times annual base pay, up to $250,000.

36. <u>SI and WLB Hourly Employees</u>. The Debtors provide SI Employees and WLB Employees paid by the hour with Primary Life Insurance through The Guardian Life Insurance Company of America (the "**<u>SI Hourly Primary Life Insurance</u>**"). SI Hourly Primary Life Insurance consists of basic life insurance in the amount of $10,000 and accidental death and dismemberment insurance in the amount of $10,000.

37. <u>AUT Salaried Employees</u>. The Debtors provide AUT Employees who are paid a salary with Primary Life Insurance through Jefferson Pilot Financial Insurance Company ("the **<u>AUT Salaried Primary Life Insurance</u>**"). AUT Salaried Primary Life Insurance consists of basic life insurance in the amount of two times annual base pay, up to $500,000 and accidental death and dismemberment insurance in the amount of two times annual base pay, up to $500,000.

38. <u>AUT Non-Union Hourly Employees</u>. The Debtors provide AUT Employees who (i) are paid by the hour (the "**<u>AUT Hourly Employees</u>**") and (ii) are not Union Employees, with Primary Life Insurance through Jefferson Pilot Financial Insurance Company ("the **<u>AUT Non-Union Hourly Primary Life Insurance</u>**"). AUT Non-Union Hourly Primary Life Insurance consists of basic life insurance in the amount of one times annual base pay, up to $50,000 and accidental death and dismemberment insurance in the amount of one times annual base pay, up to $50,000.

39. AUT Union Employees: Newburyport and West Chicago. The Debtors provide AUT Hourly Employees who (i) are Union Employees and (ii) work at the Debtors' facilities in either Newburyport, Massachusetts or West Chicago, Illinois, with Primary Life Insurance through Jefferson Pilot Financial Insurance Company ("the **Newburyport/West Chicago Union Primary Life Insurance**"). Newburyport/West Chicago Union Primary Life Insurance consists of basic life insurance in the amount $15,000 and accidental death and dismemberment insurance in the amount of $15,000.

40. AUT Union Employees: Dubuque. The Debtors provide AUT Hourly Employees who (i) are Union Employees and (ii) work at the Debtors' facility in Dubuque, Iowa, with Primary Life Insurance through Jefferson Pilot Financial Insurance Company ("the **Dubuque Union Primary Life Insurance**"). Dubuque Union Primary Life Insurance consists of basic life insurance in the amount $10,000 and accidental death and dismemberment insurance in the amount of $10,000.

41. The Debtors pay 100% of the premiums for the Primary Life Insurance. The Debtors estimate that maintaining the Primary Life Insurance costs the Debtors $7,400 per month in the aggregate.

42. Salary and Hourly Employees are also eligible to purchase supplemental life insurance and dependent life insurance (the "**Supplemental and] Dependent Life Insurance**", and along with the Primary Life Insurance, the "**Life Insurance**"). The Guardian Life Insurance Company of America offers the Supplemental and Dependent Life Insurance to the SI Employees and the WLB Employees, and Jefferson Pilot Financial Insurance Company offers the Supplemental and Dependent Life Insurance to the AUT Employees. The Debtors make no contributions to purchases of Supplemental and Dependent Life Insurance.

b. **<u>Disability and Long-Term Care</u>.**

43. The Debtors provide certain AUT Employees with short term disability benefits ("**<u>Short Term Disability Benefits</u>**") and long-term disability benefits ("**<u>Long Term Disability Benefits</u>**") in the event they are unable to work due to a disabling condition cause by a non-work related illness or injury (collectively, the "**<u>Disability Insurance Benefits</u>**"). Disability Benefits are administered and insured through Jefferson Pilot Financial Insurance Company and provide Employees with up to 60% of their income for approved disabilities. The Debtors pay 100% of the premiums for the Short Term Disability Benefits for all eligible AUT Employees and 100% of the premiums for the Long Term Disability Benefits for eligible AUT Hourly Employees. The Debtors and participating AUT Salary Employees each pay 50% of the premiums for Disability Benefits for AUT Salary Employees. Maintaining the Disability Benefits costs the Debtors approximately $1,400 per month.

44. As of the Petition Date, the Debtors owe approximately $1,202.55 related to the Employee Disability Insurance Benefits in the aggregate. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to provide the Employee Disability Insurance Benefits, including payment of third-party administrators' fees, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) to pay any amounts relating thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

**8. Retirement Savings**

45. The Debtors maintain a retirement savings plan (the "**<u>Savings Plan</u>**"), administered by Principal Financial Group, that meets the requirements of Section 401(k) of the Internal Revenue Code of 1986. The Employees are eligible for the Savings Plan upon hire. The Employees may contribute a percentage of their gross pay to the Savings Plan as a pre-tax contribution (the "**<u>Savings Contribution</u>**"). The Debtors may elect to match part or all of the

Employee's Savings Contribution, at the Debtors' discretion. The Debtors seek authority, in their discretion, to continue such Savings Plan, and to pay over such amounts payable to the Savings Plan as and when due.

### 9. Flexible Spending

46. The Debtors offer WLB and SI Employees who are Salary Employees the ability to contribute a portion of their compensation into flexible spending accounts for health and dependent care (the "**Flexible Spending Program**"). The Flexible Spending Program is administered by BCBS of New Jersey. Participating Employees may contribute between $100 and $3,000 of pre-tax income to the Flexible Spending Program each month, through payroll deductions that are held by the Debtors and paid to BCBS New Jersey to cover reimbursements made under the Flexible Spending Program. Approximately fifty Employees participate in the Flexible Spending Program, and the Debtors anticipate the administration of the Flexible Spending Program to cost $300 per month, in the form of monthly service fees paid to BCBS New Jersey. The Debtors seek authority, in their discretion, to continue making paying the Service Fee and any other obligations on account of the Flexible Spending Program.

### 10. Business Travel Accident Insurance

47. The Debtors provide insurance to certain specified employees (the "**Insured Business Travel Employees**") for losses due to injury or death of the Insured Business Travel Employees while riding as a passenger in an aircraft or automobile during business travel (the "**Business Travel Insurance**"). The Insured Business Travel Insurance covers losses of up to $750,000 for each aircraft-related claim and up to $25,000 for each automobile-related claim. The Debtors incur a cost of $10,400 per year to maintain the Business Travel Insurance and make payments in annual installments. The Debtors seek authority, in their discretion, to (a) continue to maintain the Business Travel Insurance (b) modify their prepetition policies relating

thereto as they deem appropriate and (c) to pay any amounts relating thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

**11. D&O Coverage**

48. The Debtors maintain premium-based directors and officers' liability insurance policies and excess liability policies (collectively, the "**D&O Policies**"). The total amount of annual premiums for the current D&O Policies is approximately $100,587. The Debtors request authority, in their discretion, to (a) continue the D&O Policies on a postpetition basis, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) pay any amounts relating thereto, to the extent not addressed by the PFA Motion, that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

**12. Union Contributions**

49. The Debtors are party to CBAs with three unions representing the Union Employees. The International Chemical Workers Union Council/UFCW represents 15 of the 54 Employees at the Debtors' facility in Newburyport, Massachusetts, pursuant to a CBA expiring in February of 2010. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers' International Union (the "**USW**") represents 33 of the 45 Employees at the Debtors' facility in Dubuque, Iowa (the "**Dubuque Union Employees**"), pursuant to a CBA expiring in May of 2010 (the "**Dubuque CBA**"). The United Steelworkers represents 79 of the 127 Employees at the Debtors' facility in West Chicago, Illinois, pursuant to a CBA expiring in December of 2011.

50. In accordance with the Dubuque CBA, the Debtors are obligated to contribute three percent of the base salary of each Dubuque Union Employee to the Steelworkers Pension Trust on a monthly basis (the "**Union Contributions**"). The Steelworkers Pension Trust uses the Union Contributions to provide employees represented by the USW with certain pension

benefits. The Union Contributions cost the Debtors approximately $1,600 to $2,000 per month. As of the petition date, the Debtors believe that they have paid all outstanding obligations relating to the Union Contributions under the Dubuque CBA. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to pay the Union Contributions, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) to pay any amounts relating thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

**13. COBRA**

51. Every pay period, the Debtors deduct a portion of the Employees' income for COBRA insurance, which provides continuing health benefits to employees in the event they lose their benefits for a variety of reasons, including termination (the "**COBRA Benefits**"). InfiniSource acts as a third-party administrator of the Debtors' COBRA Benefits. The Debtors pay InfiniSource approximately $12,000 per year (the "**COBRA Obligations**") to perform these administrative functions. By this Motion, the Debtors seek authority, in their discretion, to (a) continue to pay the COBRA Obligations, (b) modify their prepetition policies relating thereto as they deem appropriate and (c) to pay any amounts relating thereto that (i) accrued prepetition and (ii) accrued postpetition but relate to the prepetition period.

**RELIEF REQUESTED**

52. To minimize the personal hardship that the Employees will suffer if Employee Wages & Benefits are not paid when due or as expected, and to maintain morale and an essential workforce during this critical time, the Debtors request entry of an order authorizing, but not directing, the Debtors to (1) pay and honor certain prepetition claims for Employee Wages and Benefits as described in this Motion; (2) continue to provide employee benefits in the ordinary course of business; (3) pay all related costs and expenses; and (B) authorizing and

directing banks and other financial institutions to receive, process, honor and pay all checks and transfers drawn on the Debtors' payroll accounts to make the foregoing payments. The Debtors seek authority to pay Employee Wages and Benefits that arose before the Petition Date in an aggregated amount not to exceed $3,000,000.

## Basis for Relief

### A. Ample Cause Exists For the Court to Authorize the Debtors to Pay Employee Wages and Honor Employee Benefits Programs

53. Pursuant to sections 363(b) and 105(a) of the Bankruptcy Code, the Debtors seek authority to continue their Employee Wages and Benefits policies and programs on a postpetition basis, and to pay all of their obligations owed thereunder in the ordinary course of business as of the Petition Date, without regard to whether such obligations accrued before or after the Petition Date.

54. Courts in this District have approved the payment of prepetition claims of employees for wages, salaries, expenses, and benefits on the grounds that the payment of such claims was necessary to effectuate the chapter 11 process. *See, e.g., In re American Home Mortgage Holdings, Inc.*, Case No. 07-11047 (Bankr. D. Del. August 7, 2007) (Sontchi, J.) (authorizing the payment of prepetition wages, salaries and other compensation); *In re The Holliston Mills, Inc.*, Case No. 07-10687 (Bankr. D. Del. May 23, 2007) (Walrath, C.J.) (same); *In re Earthshell Corp.*, Case No. 07-10086 (Bankr. D. Del. January 24, 2007) (Gross, J.) (same); *In re Sea Containers Ltd.*, Case No. 06-11156 (Bankr. D. Del. October 17, 2006) (Carey, J.) (same); *In re Pliant Corp.*, Case No. 06-10001 (Bankr. D. Del. Jan. 31, 2006) (Walrath, C.J.) (same); *In re Foamex Int'l Inc.*, Case No. 05-12685 (Bankr. D. Del. September 20, 2005) (Walsh, J.) (same); *In re Pharm. Formulations, Inc.*, Case No. 05-11910 (Bankr. D. Del. July 12, 2005) (Walrath, C.J.) (same); *In re Meridian Automotive Sys. – Composites Operations, Inc., et*

*al.*, Case No. 05-11168 (Bankr. D. Del. May 27, 2005) (Walrath, C.J.) (same); *In re Maxide Acquisitions, Inc.*, Case No. 05-10429 (Bankr. D. Del. Feb. 15, 2005) (Walrath, C.J.) (same); *In re Ultimate Elects., Inc., et al.*, Case No. 05-10104 (Bankr. D. Del. Jan. 13, 2005) (Walsh, J) (same).

55. Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Courts, in turn, frequently apply section 105(a) to authorize relief in chapter 11 cases, similar to that sought herein, where the debtor has a workforce that is important to the preservation of its business. *See In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the debtor to pay pre-bankruptcy wages, salaries, employee benefits, reimbursements and workers' compensation claims and premiums); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because debtor in possession has fiduciary duties it must meet, it is logical that the bankruptcy court may "authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate" under section 105(a)); *In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (approving payment of certain trade vendors under the "necessity of payment" doctrine); *In re Gulf Air, Inc.*, 112 B.R. 152, 154 (Bankr. W.D. La. 1989) (authorizing the debtor to pay current employees' pre-bankruptcy wages, salaries, medical benefits and business expense claims); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (same).

56. The Court may also grant the relief requested herein pursuant to section 363 of the Bankruptcy Code which provides that "[t]he trustee, 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). In order to do so, "the debtor must articulate some business justification,

other than the mere appeasement of major creditors," *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. Courts have authorized debtors to pay certain prepetition claims pursuant to section 363 of the Bankruptcy Code. *See In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); *In re Calpine Corp.*, Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 21, 2005); *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 13, 2005); *see also In re Enesco Group, Inc.*, Case No. 07-565 (Bankr. N.D. Ill. Jan 12, 2007).

57. The Debtors' request to pay prepetition amounts related to Employee Wages and Benefits policies and programs easily meets the preceding standards. The failure to grant such relief, even for a brief amount of time, could have a material adverse impact on both the reorganization efforts and day-to-day operations of the Debtors' businesses, and would run afoul of the rehabilitative nature of the Bankruptcy Code.

58. The Debtors also submit that, consistent with Bankruptcy Rules 6003(b) and 6004(h), immediate entry of an order approving this motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, in addition to the Employees.

59. The Debtors believe that if they are unable to honor Employee Wages and Benefits for even a short time, Employee morale and loyalty will be jeopardized at a time when Employee support is most critical. Regardless of the length of these Chapter 11 Cases, the Employees will be exposed to significant financial and health-related hardships if the Debtors are not permitted to pay the unpaid Employee Wages and Benefits in the ordinary course of business.

60. The Debtors also believe that the majority of the amounts related to Employee Wages and Benefits that they seek to pay pursuant to this Motion are entitled to priority status under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtors are

therefore required to pay the majority of these claims in full to confirm a plan of reorganization. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed priority claims for wages, salaries, and commissions, and certain allowed unsecured claims for contributions to an employee benefit plan). Thus, granting the relief sought herein would only affect the timing, and not the amount, of the payment with respect to the Employee Wages and Benefits.

61. To the extent the payment to, or on behalf of, Temporary Employees do not fall under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, the Debtors should be authorized to pay prepetition amounts owed to, or on behalf of Temporary Employees because such payments are necessary to the preservation of the Debtors' businesses.

62. To the extent any of the Severance Payments do not fall under sections 507(a)(4) of the Bankruptcy Code, the Debtors should be authorized to pay prepetition amounts owed to those individuals affected by the RIF because such payments are necessary to maintain the morale and support of the Debtors' Employees and workforce throughout the reorganization process, particularly in the first few days and weeks. As discussed above, as of the Petition Date the Debtors owe the individuals affected by the RIF $307,391.87 in severance pay. Of this amount, by this Motion, the Debtors seek to pay only $107,516.87, which amount represents payment in full to 15 of the 16 individuals affected by the RIF. However, according to the Debtors' records, four (4) individuals affected by the RIF are scheduled to receive a severance payment in excess of $10,950. The amounts due and owing to these individuals are as follows: (i) $13,062.15; (ii) $27,911.56; (iii) $20,572.32; and (iv) $199,875.00. Recognizing that a $200,000 payment to a former employee is excessive and unprecedented, the Debtors seek to pay only three individuals Severance Pay in excess of the statutory cap. In the aggregate, these excess payments total only $38,696.02. It is necessary that the Debtors be authorized to honor

the Severance Pay, including the excess payments discussed herein, in order to maintain the morale and support of its current Employees. Without both, the Debtors will suffer immediate and irreparable harm.

63. In addition, the Debtors should be authorized to pay prepetition amounts owed to third-parties for, among other things, administering the Debtors' programs and performing services for Employees related to the Employee Wages and Benefits. The failure to pay any such amounts to third-parties would most likely disrupt the services the various third-parties provide to the Debtors' Employees.

64. The Debtors' request for authorization to continue to honor and remit Deductions, Payroll Taxes and other Withheld Amounts should also be approved. Such amounts principally represent Employee earnings that governments (in the case of taxes), Employees (in the case of voluntarily withheld amounts) and judicial authorities (in the case of involuntarily withheld amounts) have designated for deduction from Employees' paychecks. The failure to pay these benefits could result in hardship to certain Employees as well as administrative problems for the Debtors. Indeed, the Debtors would expect numerous and frequent inquiries from garnishors regarding the Debtors' failure to submit, among other things, child support and alimony payments that are not the Debtors' property, but, rather, have been withheld from Employees' paychecks on such other parties' behalf. Moreover, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors' inability to submit such payments.

65. Additionally, the failure to remit Payroll Taxes and other Withheld Amounts may subject the Debtors and their directors and officers to federal or state liability. *See City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 41 F.3d 92, 94-96 (3d Cir. 1994)

(state law requiring debtor to withhold city income tax from its employees' wages created trust relationship between debtor and city for payment of withheld taxes); *DuCharmes & Co. v. Michigan (In re DuCharmes)*, 852 F.2d 194, 195 (6th Cir. 1988) (noting the special liabilities for failure to pay trust fund taxes). Furthermore, because such funds do not constitute property of the Debtors' estates, the funds are not subject to the normal bankruptcy prohibitions against payment. *See Begier v. IRS*, 496 U.S. 53, 67 (1990) (debtor's payment of employee withholding for federal income and FICA taxes not a preferential transfer because withholding held in trust for taxing authority and not a part of debtor's estate); *Old Republic Nat'l Title Ins. Co. v. Tyler (In re Dameron)*, 155 F.3d 718, 721 (4th Cir. 1998).

66. The Debtors, in an exercise of their business judgment, believe that payment of the amounts requested in this Motion and the continuation of the Employee Wages and Benefits on a postpetition basis is in the best interests of all parties. The Debtors hope to emerge from bankruptcy within a few short months and the Employees are essential to a quick, orderly and successful reorganization of the Debtors. They have an intimate knowledge of the operation of the Debtors' businesses, and any deterioration in Employee morale and welfare at this critical time undoubtedly would adversely impact the Debtors, the value of their assets and businesses, and ultimately their ability to reorganize in short order or even at all. Accordingly, the relief sought by this Motion will allow the Debtors to stabilize and continue to operate their business with minimal disruption and emerge quickly from bankruptcy.

67. Finally, the Debtors do not to seek to assume any executory contracts or obligations at this time, and therefore, nothing contained in this Motion should be deemed to be an assumption or adoption of any policy, procedure or executory contract that may be described or referenced herein. Also, the Debtors will retain the discretion not to make the payments

contemplated by this Motion for particular Employees, and nothing in this Motion will, in and of itself, constitute a promise or guarantee of any payment to any Employee.

## B. The Court Should Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers Relating to Employee Wages and Benefits.

68. As discussed in the Debtors' Cash Management Motion[3] filed simultaneously herewith, the Debtors request that all applicable banks and other financial institutions be authorized and directed to receive, process, honor and pay all checks presented for payment, and to honor all fund transfer requests made by the Debtors related to the Employee Wages and Benefits policies and programs, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date. The Debtors represent that these checks are drawn on identifiable payroll and disbursement accounts. Accordingly, checks other than those for the Employee Wages and Benefits and the Reimbursable Expenses will not be honored inadvertently. Moreover, the Debtors represent that they have sufficient liquidity to promptly pay all claims arising from the Employee Wages and Benefits policies and programs on an ongoing basis and in the ordinary course of their businesses.

69. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of all parties in interest.

## RESERVATION OF RIGHTS

70. Notwithstanding anything in this Motion or the Order to the contrary, the payment of any claims pursuant to the Order (if entered by the Court) and other honoring of the Employee Wages and Benefit claims shall neither (i) make such obligations administrative expenses of the estates entitled to priority status under sections 503 and 507 of the Bankruptcy

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[3] The full title of the Debtors' Cash Management Motion is: Motion of the Debtors' for Entry of an Order (I) Approving Continued Use Of Existing Cash Management System, (II) Authorizing Use Of Prepetition Bank Accounts And Business Forms, And (III) Waiving the Requirements Of 11 U.S.C. § 345(b) On An Interim Basis.

Code nor (ii) constitute approval by this Court of any employee plan or program, including any Bonus Plans and Stock Plans, under any section of the Bankruptcy Code, including section 503(c). To the extent the Debtors seek to assume any employee programs, including Bonus Plans and Stock Plans, prior to the confirmation of any plan of reorganization, the Debtors will seek such assumption by separate motion.

## NOTICE

71. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. The Debtors have provided notice of this Motion to: (a) the United States Trustee; (b) counsel to the administrative agent for the Debtors' prepetition secured lenders under the First Lien Credit Agreement; (c) counsel to the administrative agent for the Debtors' prepetition secured lenders under the Second Lien Credit Agreement; (d) counsel to the administrative agent for the Debtors' proposed debtor in possession lenders; and (e) the creditors identified on the Debtors' consolidated list of thirty largest unsecured creditors, as filed with the chapter 11 petitions. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

## NO PRIOR APPLICATION

72. No prior application for the relief requested herein has been made to this Court or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, (A) authorizing, but not directing, the Debtors to (1) pay and honor certain prepetition claims for (i) wages, salaries, employee benefits and other compensation, (ii) withholdings and deductions and (iii) reimbursable expenses; (2) continue to provide employee benefits in the ordinary course of business; (3) pay all related costs and expenses; (B) directing banks to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing; and (C) granting such other and further relief as the Court deems appropriate.

Dated: October 3, 2008
Wilmington, Delaware

Respectfully submitted,

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