

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

FISKER INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. 9 & 345

**SECOND INTERIM ORDER (I) AUTHORIZING (A) DEBTORS TO CONTINUE TO MAINTAIN EXISTING CASH MANAGEMENT SYSTEM, BANK ACCOUNTS, AND BUSINESS FORMS, (B) DEBTORS TO OPEN AND CLOSE BANK ACCOUNTS, AND (C) FINANCIAL INSTITUTIONS TO ADMINISTER THE BANK ACCOUNTS AND HONOR AND PROCESS RELATED CHECKS AND TRANSFERS, AND (II) WAIVING DEPOSIT AND INVESTMENT REQUIREMENTS**

Upon the motion (the “**Motion**”)<sup>2</sup> of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of interim and final orders, pursuant to sections 105(a), 345, 363(c)(1), 364(a), and 503(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to (i) continue operating their Cash Management System, (ii) maintain their existing Bank Accounts located at the Bank and open and close Bank Accounts post-petition in the ordinary course of business, and (iii) maintain their existing Business Forms, (b) authorizing the applicable financial institutions to treat, service, and administer the Bank Accounts in the ordinary course of business and to receive, process, honor, and pay all checks or wire transfers used by the Debtors, and (c) waiving the requirements of section 345(b) of the Bankruptcy Code, Local Rule 2015-2,

<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

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



and section 2 of the U.S. Trustee Guidelines on an interim basis, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the DiDonato Declaration; and the Court having held a hearing, if necessary, to consider the relief requested in the Motion (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the DiDonato Declaration and at the Hearing, if any, establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent set forth in this order (this “**Order**”).

2. Subject to the limitations of this Order, the Debtors are authorized, but not directed, pursuant to sections 105(a), 363(c)(1), and 364(a) of the Bankruptcy Code, to continue, in their sole discretion, to maintain, operate, and make transfers under their Cash Management System as described in the Motion.

3. The Debtors shall maintain full, accurate, and complete records of all transfers within the Cash Management System, including transfers between Debtors, so that transactions may be readily ascertained, traced, recorded properly, and distinguished between prepetition and post-petition transactions. The Bank shall not be required to monitor, and the Bank shall not be liable to any party on account of, compliance or noncompliance by the Debtors with the foregoing conditions and limitations.

4. For the avoidance of doubt, nothing herein overrides the cash collateral order and approved budget.

5. To the extent that cash, including cash collateral (as defined in the Bankruptcy Code), of any Debtor or non-Debtor is used by another Debtor, the Debtor or non-Debtor funding such use shall have an allowed administrative expense claim pursuant to sections 503(b) and 507(a) of the Bankruptcy Code.

6. For the avoidance of doubt, there shall be no intercompany transfers to non-Debtors by Debtors absent further order of the Court, and subject to the Austrian Transfer as provided by the *Order (I) Authorizing and Approving the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests, and (II) Authorizing the Debtors to Enter Into and Perform Under the Fleet Sales Agreement, and (III) Granting Related Relief* [D.I. 243].

7. The Debtors are authorized, but not directed, to continue, in their sole discretion, to maintain the Bank Accounts with the same account numbers following the commencement of the Chapter 11 Cases.

8. The Bank is authorized to:

- (a) continue to treat, service, and administer the Debtors' Bank Accounts, as accounts of the respective Debtor as a debtor in possession, without interruption, and in the ordinary course of business without the need for further order of the Court;
- (b) receive, process, honor, debit, and pay any and all checks, drafts, wires, check transfer requests, and/or ACH Transfers drawn on the Bank Accounts by the holders or makers thereof, including all checks that are cashed at the Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date or under the Order whether presented prior to, on, or after the Petition Date, as the case may be, to the extent that the Debtors have sufficient funds standing to their credit with the Bank;
- (c) receive, process, honor, debit, and pay any and all checks, drafts, wires, check transfer requests, and/or ACH Transfers drawn on the Bank Accounts by the holders or makers thereof, including all checks that are cashed at the Bank's counters or exchanged for cashier's checks by the payees thereof evidencing amounts paid by the Debtors under the Proposed Orders whether presented prior to, on, or after the Petition Date, as the case may be, to the extent that the Debtors have sufficient funds standing to their credit with the Bank; and
- (d) debit all undisputed prepetition and post-petition amounts owed to the Bank as service charges for the maintenance of the Cash Management System without the need for further order of the Court.

9. Claims on account of post-petition Bank Fees or Merchant Service Obligations shall have administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code.

10. All applicable financial institutions shall be authorized to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors requested authority to pay in the Motion or

any other motion approved by the Court, regardless of whether the checks were presented or fund transfer requests were submitted before, on, or after the Petition Date and (b) rely on the Debtors' designation of any particular check, draft, wire, ACH Transfer, electronic funds transfer payment, or item as approved by an Order of the Court, regardless of whether such items are dated or made prior to, on, or subsequent to the Petition Date. The Bank shall not be liable to any party on account of (x) following, in good faith, the Debtors' instructions, representations, or presentation as to any order of the Court (without any duty of further inquiry), (y) the honoring of any prepetition check, draft, wire, ACH Transfer, electronic funds transfer payment, or item in a good faith belief, or upon representation by a Debtor, that the Court has authorized such prepetition check, draft, wire, ACH Transfer, electronic funds transfer payment, or item, or (z) an innocent mistake and/or human error made despite implementation of reasonable item handling procedures. Further, the Bank may rely, without a duty of inquiry, upon the failure of the Debtors to issue a stop payment order with respect to any item, whether such item is issued prepetition or post-petition, as a direction by the Debtors that such item will be paid. To the extent that the Debtors have represented to the Bank that a check, draft, wire, ACH Transfer, electronic funds transfer payment, or item should be dishonored, the Bank is hereby authorized to comply with such representations, either through utilizing the Bank's stop-payment system, or through voiding the check, draft, wire, ACH Transfer, electronic funds transfer payment, or item using the Bank's relevant internal procedures.

11. The Debtors shall deposit all proceeds of sales or other collateral into a JPMorgan Chase Bank N.A. account subject to a BACA in favor of the Collateral Agent.

12. Those certain existing deposit agreements between the Debtors and the Bank shall continue to govern the post-petition cash management relationship between the Debtors and the Bank, and all of the provisions of such agreements, including the termination and fee provisions,

shall remain in full force and effect. The Debtors shall be authorized, without further order of the Court, to implement changes to the Cash Management System and cash management procedures in the ordinary course of business, including the opening and closing of Bank Accounts subject to paragraph 10, and for the Bank to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions, provided that the Bank shall not have any liability to any party for relying on such representations in good faith; *provided* that the Debtors shall provide two (2) business days' advance notice to the advisors to the Committee before the Debtors make any material changes to the Cash Management System. The relief granted herein shall extend to any new Bank Account opened by the Debtors after the date hereof and to the bank at which such Bank Account is opened.

13. The Debtors shall give notice to the U.S. Trustee for the District of Delaware, the Bank, counsel to CVI Investments, Inc. (c/o Heights Capital Management, Inc.), counsel to the Committee, and counsel to any other statutory committee within 14 days of opening a new Bank Account or closing an existing Bank Account; *provided, however*, that, unless otherwise ordered by the Court, the Debtors shall open any new Bank Account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee for Region 3 or at a bank willing to immediately execute such an agreement.

14. In accordance with current practice and any applicable agreement governing the Bank Accounts, the Bank is authorized to "charge back" to the Debtors' Bank Accounts any prepetition and post-petition cash management fees and expenses incurred by the Bank resulting from returned checks or other returned items, and the Debtors are authorized but not directed, to pay, in their sole discretion, the Bank Fees (and the Bank is authorized to debit or charge back the

Bank Accounts for any such Bank Fees unless notified by the Debtors that any such Bank Fees are disputed), in each case regardless of whether such items were deposited prepetition or post-petition or relate to prepetition or post-petition items and without need for further order of the Court.

15. Any payment from a Bank Account at the request of the Debtors made by the Bank prior to the Petition Date (including any ACH Transfer the Bank is or becomes obligated to settle), or any instruments issued by the Bank on behalf of any Debtor pursuant to a “midnight deadline” or similar protocol, shall be deemed to be paid prepetition, whether or not actually debited from the Bank Account prepetition.

16. The Debtors shall have until August 19, 2024 (the “**Extension Period**”) to comply with section 345(b) of the Bankruptcy Code and Local Rule 4001-3, or to make arrangements to which the U.S. Trustee agrees, and such extension is without prejudice to the Debtors’ right to request a further extension of the Extension Period or waiver of the requirements of section 345(b) of the Bankruptcy Code and Local Rule 4001-3 in the Chapter 11 Cases. The Debtors may obtain a further extension of the Extension Period referenced above by entering into a written stipulation with the U.S. Trustee and filing such stipulation on the Court’s docket without the need for further Court order.

17. Upon entry of this Order, the Debtors shall as soon as possible (a) contact the Bank, (b) provide the Bank with each of the Debtors’ tax identification numbers, and (c) identify each of their Bank Accounts held at the Bank as being held by a debtor in possession in a bankruptcy case.

18. Nothing contained herein shall prevent the Bank from modifying or terminating any Bank Accounts or related services in accordance with the agreements governing such accounts or services; *provided*, that the Bank shall provide two (2) business days’ advance notice to the advisors to the Committee before doing so.

19. The Debtors are authorized, but not directed, to continue the Corporate Credit Card Programs in the ordinary course of business, consistent with prepetition practices (subject to ordinary course modifications thereto), including the payment of all past and future obligations as they become due and owing under the accounts (whether pre- or post-petition) on a post-petition basis and performing all obligations thereunder (collectively, the “**Card Obligations**”); *provided, however,* that, absent further order of the Court, any payments made pursuant to this Order on account of prepetition Card Obligations shall not exceed \$20,455.09 in the aggregate. The issuers of the cards under the Corporate Credit Card Programs are authorized to continue to make advances pursuant to the terms of their existing agreements (in reliance upon section 364(e) of the Bankruptcy Code) with the Debtors, and the Debtors are authorized to incur credit in respect of such advances under sections 364(a) and (c) of the Bankruptcy Code, as applicable. The terms of all existing agreements by and between the Debtors and issuers of the cards under the Corporate Credit Card Programs shall govern the parties’ post-petition transactions with the Debtors including making ordinary course modifications thereto.

20. The Debtors are authorized, but not directed, to continue to maintain the L/C Money Market Account for purposes of collateralizing the Card Obligations for the benefit of JPM, and all cash from time to time on deposit in such account shall remain subject to an exclusive first-priority lien in favor of JPM as security for the Card Obligations.

21. The Debtors are authorized, but not directed, to continue to operate and perform under the Merchant Processing Agreement, including paying and reimbursing the credit card processors for Merchant Services Obligations, whether such Merchant Service Obligations are incurred prepetition or post-petition, in accordance with the Merchant Processing Agreement. The credit card processors are authorized to receive or obtain payment for such Merchant Services



Obligations, as provided under, and in the manner set forth in, the Merchant Services Agreement, including, without limitation, by way of recoupment or setoff without further order of the Court.

22. For the avoidance of doubt, JPM is authorized, but not directed, to apply funds from any cash collateral account it maintains with the Debtors in the event of a valid draw request from a beneficiary of a prepetition letter of credit for which a Debtor is an applicant, in each case, in accordance with the terms and conditions set forth in the relevant letter of credit agreement between the Debtors and JPM without further order of this Court. To the extent necessary, JPM is hereby granted relief from the stay imposed under section 362(d) of the Bankruptcy Code for purposes of this paragraph. JPM shall provide five (5) calendar days' notice (which may be via email) to the Debtors and the Committee of any such proposed application of cash collateral in JPM's possession in satisfaction of letter of credit obligations, and such parties shall retain the right to object; provided, that a dispute between the Debtors and a beneficiary of a letter of credit regarding a draw by such beneficiary on such letter of credit (or the amount of such draw) shall not be a valid basis for any party in interest to object to such draw.

23. The Debtors are authorized, but not directed, to continue, in their sole discretion, to use the Business Forms, including purchase orders, letterhead, envelopes, promotional materials, checks, and other business forms substantially in the forms existing immediately before the Petition Date, without reference to their status as debtors in possession; *provided*, that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, ensure that the designation "Debtor in Possession" and the corresponding bankruptcy case number be printed on all checks; *provided, further*, that with respect to electronic checks and checks that the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend on such items by no later than August 19, 2024.

24. The Debtors shall maintain accurate and detailed records of all transfers, including intercompany transactions, in accordance with their prepetition practices, so that all transactions may be ascertained, traced, recorded properly, and distinguished between prepetition and post-petition transactions. The Debtors shall make all such records described in this paragraph available upon request by counsel to the Committee.

25. The Debtors shall maintain a matrix summarizing any intercompany transactions and intercompany claims on a monthly basis for the preceding month applicable to such report that shall include (a) the name of the transferor; (b) the name of the transferee; (c) the amount of the transfer; (d) the purpose of the payment; and (e) explanations of changes in balances from the immediately preceding month. The summary referenced herein shall be provided to the Committee's advisors by no later than the tenth (10th) calendar day following the end of the month applicable to such summary. The Debtors shall provide the advisors to the Committee with reasonable access to the Debtors and their advisors with respect to such summary. The Debtors shall not perform intercompany transactions with any non-U.S. Debtor affiliates without obtaining the prior written consent (email being sufficient) of the Committee.

26. The rights of the Committee (a) to seek additional disclosures from the Debtors is expressly reserved, and (b) with respect to any payments made by the Debtors on account of any intercompany claim are expressly reserved and shall not be prejudiced by entry of the interim order [Docket No. 76] or this Order.

27. Upon reasonable request, the Debtors shall provide the Committee with copies of agreements governing the business relationships between the Debtors and their Debtor and non-Debtor affiliates, as applicable, in a timely manner and shall provide the Committee with prompt notice if the Debtors are unable to provide any such agreements due to confidentiality restrictions

or otherwise. The Debtors shall also provide the Committee's advisors with reports on a monthly basis of financial information with respect to entities in which the Debtors hold a controlling or substantial interest as set forth in Bankruptcy Rule 2015.3.

28. Notwithstanding anything contained herein, despite the Debtors' use of a consolidated cash management system, each Debtor shall calculate its quarterly fees due under 28 U.S.C. § 1930(a)(6) based on disbursements made on its behalf, regardless of who pays those disbursements.

29. A final hearing to consider the relief requested in the Motion shall be held on August 19, 2024, at 1:00 p.m. (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to August 7, 2024, at 4:00 p.m. (prevailing Eastern Time).

30. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

31. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

32. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, basis for, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any

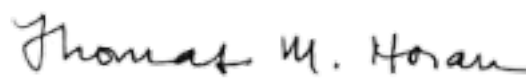
third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' or any other party in interest's right (including by the Committee) to dispute the amount, basis, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by the Debtors to pay any claim, (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order, or (f) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Order except as otherwise provided for in this Order. The Committee expressly reserves all rights with respect to disputing or challenging the amount, priority, character, or validity of any claim against the Debtors on any grounds.

33. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

34. The Debtors are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

35. The Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

**Dated: July 31st, 2024**  
**Wilmington, Delaware**



**THOMAS M. HORAN**  
**UNITED STATES BANKRUPTCY JUDGE**