

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

In re:	§	Chapter 11
	§	
	§	Case No. 20-43597-399
	§	
BRIGGS & STRATTON CORPORATION, et al.,	§	(Joint Administration Requested)
	§	
Debtors.¹	§	Hearing Date: July 21, 2020
	§	Hearing Time: 10:00 a.m. (Central Time)
	§	Hearing Location: Courtroom 5 North
	§	111 S. 10th St., St. Louis, MO 63102

**MOTION OF DEBTORS FOR INTERIM AND
FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A) PAY
PREPETITION WAGES, SALARIES, COMMISSIONS, EMPLOYEE
BENEFITS, AND OTHER OBLIGATIONS, (B) MAINTAIN EMPLOYEE
BENEFIT PROGRAMS, (C) PAY RELATED ADMINISTRATIVE OBLIGATIONS,
(D) PAY SUPPLEMENTAL WORKFORCE OBLIGATIONS, AND (E) TERMINATE
DEFERRED COMPENSATION PLANS; AND (II) GRANTING RELATED RELIEF**

Briggs & Stratton Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Background

1. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. The Debtors have also filed a motion requesting joint administration

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Briggs & Stratton Corporation (2330), Billy Goat Industries, Inc. (4442), Allmand Bros., Inc. (4710), Briggs & Stratton International, Inc. (9957), and Briggs & Stratton Tech, LLC (2102). The address of the Debtors’ corporate headquarters is 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.



of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the “**Local Rules**”).

2. The Debtors, combined with their non-Debtor affiliates (collectively, the “**Company**”), are the world’s largest producer of gasoline engines for outdoor power equipment and a leading designer, manufacturer and marketer of power generation, pressure washer, lawn and garden, turf care and job site products. The Company’s products are marketed and serviced in more than 100 countries on six continents through 40,000 authorized dealers and service organizations. Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors’ Chapter 11 Petitions and First Day Relief*, sworn to on the date hereof (the “**Ficks Declaration**”),² which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

Jurisdiction

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

4. By this Motion, the Debtors seek entry of an interim order (the “**Proposed Interim Order**”) and, pending a final hearing on the relief requested herein, a final order (the “**Proposed Final Order**”) and, together with the Proposed Interim Order, the “**Proposed**

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration. All dollar (\$) references in this Motion are to the U.S. dollar, unless stated otherwise.

Orders)³ pursuant to sections 105(a), 363(b), and 507(a) the Bankruptcy Code, for (I) authority to (a) pay Employee Compensation Obligations and Employee Benefit Obligations (each as defined below) and related expenses, fees, and costs incident to the foregoing, including amounts owed to third-party service providers and administrators and tax authorities, (b) maintain, continue to honor, and pay amounts with respect to the Debtors’ business practices, programs, and policies for their employees as such were in effect as of the commencement of these chapter 11 cases and as such may be modified or supplemented from time to time in the ordinary course of business, (c) pay Supplemental Workforce Obligations (as defined below) ((a), (b), and (c) collectively, the “**Employee Obligations**”), and (d) terminate the Deferred Compensation Plans (as defined below); and (II) related relief.⁴ The Debtors further request that the Court authorize financial institutions to receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests related to such obligations.

5. The approximate amount of monetary relief sought in this motion and Proposed Order is discussed in further detail below and summarized in the following chart:

Prepetition Obligations	Total Relief Requested	Interim Relief Requested
Employee Compensation Obligations	\$12,910,000	\$7,010,000
Employee Benefit Obligations	\$10,820,000	\$3,010,000
Supplemental Workforce Obligations	\$1,875,000	\$1,875,000
Total Employee Obligations	\$25,605,000	\$11,895,000

³ Copies of the Proposed Orders will be made available on the Debtors’ case information website at <http://www.kccllc.net/Briggs>.

⁴ Employees workers’ compensation claims are addressed in the *Motion of Debtors For Interim and Final Orders (I) Authorizing Debtors to (A) Continue Insurance Policies and Programs, (B) Continue Surety Bond Program, (C) Pay All Insurance and Surety Obligations, (II) Lifting the Automatic Stay for Workers’ Compensation Claims, and (III) Granting Related Relief* (the “**Insurance Motion**”) filed contemporaneously herewith.

The Debtors' Workforce and Wage and Benefit Obligations

I. The Debtors' Workforce

6. The Debtors' employees (the "**Employees**") fill a wide variety of roles and perform a wide range of tasks for the Debtors. Employees generally fall into one of three categories: corporate, operations, and sales. Corporate Employees provide the Debtors with the legal, financial, human resources, and coordination services necessary to operate a global enterprise effectively. Operations Employees manufacture the engines, power equipment, and other products that the Debtors sell worldwide. Sales Employees create, cultivate, and maintain relationships with customers to expand and maintain Debtors' customer and revenue base.

7. As of the Petition Date, the Debtors employ approximately 3,840 Employees, of whom approximately 3,790 are full-time and approximately 50 are part-time, and all of whom are located in the United States. As of the Petition Date, approximately 1,230 of the Employees are salaried ("**Salaried Employees**") and approximately 2,610 of the Employees are paid on an hourly basis ("**Hourly Employees**").

8. In addition, the Debtors' non-Debtor affiliates employ approximately 540 salaried employees and 280 hourly employees across 26 different countries, including China, Australia, Switzerland, and the Netherlands.⁵ Thus, as of the Petition Date, the Company employs approximately 4,660 employees in total, world-wide.

9. Of the Debtors' Hourly Employees, approximately 520 Employees at the Debtors' Milwaukee locations are represented by a union and covered by an expired collective bargaining agreement with the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,

⁵ The Debtors' foreign entities provide compensation and benefits programs to employees in those countries. The Debtors do not seek authority to use funds from any Debtor entity to administer any foreign compensation or benefit program.

Allied Industrial, and Service Workers International Union (the “**CBA**” and the Employees covered by the CBA, the “**CBA Employees**”).⁶ Although, in the past, the Debtors have had other Employees covered by additional CBAs at other locations, all of those locations are now closed. Briggs & Stratton Corporation intends to close the north end of its Burleigh plant (one of its facilities in the Milwaukee area) in the next few months, and reduce operations at the plant, due to a strategic repositioning away from manufacturing power washers and generators.⁷ As a result, the Debtors estimate that by December 2020, the number of CBA Employees the Debtors (or any successors) employ will be reduced to approximately 300 Employees.

10. To operate their businesses efficiently, the Debtors also utilize the services of third party sales representatives, independent contractors, consultants, and temporary workers, to provide, among other things, product sales promotions and front line production and manufacturing work (collectively, the “**Supplemental Workforce**” and, together with the Employees, the “**Workforce**”). The Supplemental Workforce is an integral component of the Debtors’ enterprise and consists of approximately 2,400 individuals as of the Petition Date.

II. Employee Compensation Obligations

11. The outstanding amounts related to employee compensation (the “**Employee Compensation Obligations**”) are summarized in the following chart and are described in further detail below:

Prepetition Obligations	Description	Total Relief Requested	Interim Relief Requested
Base Compensation Obligations	Obligations related to Employees’ salaries and wages, including, for certain employees, overtime pay	\$3,600,000	\$3,600,000

⁶ For the avoidance of doubt, by this Motion, the Debtors are not seeking any relief with respect to the CBA.

⁷ Due to the anticipated closing of certain functions within the Burleigh location, on June 26, 2020, the Debtors issued notices pursuant to the Worker Adjustment and Retraining Notification Act (the “**WARN Act**”) to approximately 220 Employees.

Prepetition Obligations	Description	Total Relief Requested	Interim Relief Requested
Employee Incentive Programs	Obligations related to various bonus programs maintained by the Debtors to incentivize Employee performance	\$3,150,000	\$1,150,000
Reimbursable Expenses	Obligations related to the reimbursement of certain expenses incurred by Employees in the course of performing their job duties	\$80,000	\$80,000
Payroll Servicer	Fees owed to the Payroll Servicer for payroll processing and maintenance	\$20,000	\$20,000
Gross Pay Deductions, Governmental Withholdings and Payroll Taxes	Wage-based taxes owing pursuant to applicable federal and local laws	\$5,360,000	\$2,160,000
Severance	Obligations owed to Employees upon termination of their employment by the Debtors	\$700,000	\$0
Total Employee Compensation Obligations (\$)		\$12,910,000	\$7,010,000

A. Base Compensation

12. In the ordinary course of business, the Debtors incur and pay obligations relating to Employees’ salaries and wages, and for certain Employees, overtime pay (the “**Base Compensation Obligations**”).

13. The Debtors pay Base Compensation Obligations to different types of Employees on different payroll schedules, in arrears. For example, Salaried Employees in the United States are paid semi-monthly, while most Hourly Employees working in the Debtors’ manufacturing plants are paid weekly. On average, the Debtors’ Base Compensation Obligations total approximately \$12.5 million per month. Rather than paying their Employees directly, the Debtors transfer funds sufficient to cover Employees’ salaries to the Payroll Servicer (as defined below) and, in turn, the Payroll Servicer pays all of the Employees the compensation they are owed.

14. The Debtors estimate that as of the Petition Date, they owe approximately \$3,600,000 on account of prepetition Base Compensation Obligations, all of which will become due and owing within the 21 days following the Petition Date (the “**Interim Period**”). The Debtors seek authority to pay such prepetition amounts as they come due in the ordinary course, up to \$13,650 per Employee (the “**\$13,650 Cap**”).⁸

B. Employee Incentive Programs

(i) Cash Bonus Programs

15. The Debtors offer three main forms of cash bonus programs to Employees: (i) Annual Incentive Plans (the “**AIPs**”), (ii) Sales Incentive Plans (the “**SIPs**”), and (iii) the Hourly Employee Incentive Plan (the “**HEIP**” and, collectively with the AIPs and the SIPs, the “**Cash Bonus Programs**”). Generally, all Employees participate in a Cash Bonus Program, although an Employee’s eligibility for each Cash Bonus Program depends on an Employee’s role, location, and/or business unit. The Cash Bonus Programs are described below:

16. Annual Incentive Plan. Most Salaried Employees and certain Hourly Employees participate in a form of AIP.⁹ Under the AIPs, the Debtors calculate individual Employee awards using a number of factors, including the Employee’s salary, the overall performance of the Company (the “**Briggs Value Added**” factor), the performance of the Employee’s particular group or division within the Company, and the Employee’s individual goal achievement.¹⁰ In previous years, the Debtors have paid, in the aggregate, approximately

⁸ The Debtors seek to pay each Employee up to \$13,650, in the aggregate, on account of wages, salaries, or commissions, including vacation and severance, or contributions to an employee benefit plan earned within 180 days before the Petition Date.

⁹ There are three (3) AIPs: (i) the AIP administered by the Compensation Committee, for elected officers, (ii) the Milwaukee Bargaining Unit AIP, and (iii) the AIP administered by the CEO, which covers most Employees who are not included in a different Cash Bonus Program.

¹⁰ The factors are given the following weights: the performance of the Debtors’ business accounts for at least 40% of the bonus, group or division performance accounts for between 0-50% of the bonus, and individual

\$5,300,000 annually to eligible non-insider Employees under the AIPs. In the United States, awards under the AIPs are assessed at the end of the fiscal year and are typically paid in the first quarter of the following fiscal year, at the end of August. For Fiscal Year 2020 (which ended on June 28, 2020), approximately 180 Employees accrued awards under the AIP. The amounts to be awarded to each individual are still being assessed, but no payments owed are attributable to the “Briggs Value Added” performance factor. Most Employees terminated before the measurement date (the end of the fiscal year) are not eligible for accrued AIP awards; however, all Employees terminated after the measurement date are eligible for their AIP awards for the previous year.¹¹ As of the Petition Date, the Debtors estimate that they owe eligible non-insider Employees approximately \$1.4 million on account of the AIPs, none of which will come due during the Interim Period. The Debtors seek relief pursuant to this Motion to pay any amounts owed under the AIPs as they arise in the ordinary course of business, up to the \$13,650 Cap.¹²

17. Hourly Employee Incentive Plan. Hourly Employees¹³ in production facilities who are not included under a different Cash Bonus Program are eligible for the HEIP. HEIP awards are determined using standards of productivity, quality, and safety. Under the HEIP, the target incentive award ranges from 3% of earned wages to a maximum payout of 7.5% for achievement of certain “stretch” goals. The HEIP is a pay-at-risk plan, meaning that bonus payments are made only when predetermined results are achieved. In previous years, the

goal achievement accounts for between 0-30% of bonus. The individual goal achievement factor applies for approximately 180 management/executive Employees, excluding CEO direct reports.

¹¹ Employees terminated before the measurement date are only eligible for accrued AIP payments if those Employees are also eligible for retirement.

¹² For the avoidance of doubt, the Debtors are not seeking authority to pay, pursuant to this Motion, any Cash Bonus Program obligations owed to “Insiders,” as the term is defined in section 101(31) of the Bankruptcy Code.

¹³ Seasonal Employees are eligible for the HEIP, but temporary employees, interns, co-ops, or others specifically designated as non-participating are not eligible for the HEIP.

Debtors have paid, in the aggregate, approximately \$2,500,000 annually to eligible non-insider Employees under the HEIP. Bonuses paid in accordance with the HEIP are typically determined and paid quarterly or semi-annually, with the semi-annual payments being made in February and August. The amounts to be awarded to each individual are currently being assessed. Under the HEIP, Employees do not have to be active Employees at the end of the measurement date. Rather, an Employee may receive a pro rata payout based on that Employee's accrued awards to date, so long as the Employee gives the Debtors timely notice of termination. As of the Petition Date, the Debtors owe approximately \$600,000 to eligible non-insider Employees on account of the HEIP, none of which will come due during the Interim Period. The Debtors seek relief pursuant to this Motion to pay any amounts owed under the HEIPs as they arise in the ordinary course of business, up to the \$13,650 Cap.

18. Sales Incentive Plans. The Debtors maintain SIPs to incentivize and compensate members of their sales teams. The precise goals and compensation structure of the SIPs vary by business and location, but all SIPs involve an individual performance component, tied to gross revenues generated by an Employee and/or product type sold by an Employee. Amounts awarded to participating Employees under the SIPs are typically assessed and disbursed on a quarterly basis, with amounts for the previous quarter generally paid in the following month. In previous years, the Debtors have paid, in the aggregate, approximately \$1,830,000 annually to eligible non-insider Employees under the SIPs. These disbursements constitute a substantial portion of participating Employees' overall compensation packages and many sales Employees rely on the SIP disbursements for their daily living expenses. The amounts to be awarded to each individual are currently being assessed. Employees must be active Employees at the end of the measurement period to be entitled to SIP payments. As of the

Petition Date, the Debtors owe eligible non-insider Employees approximately \$1.15 million on account of the SIPs, all of which will come due and owing during the Interim Period. The Debtors seek relief pursuant to this Motion to pay all amounts owed under the SIPs as they arise in the ordinary course of business, including any amounts in excess of the \$13,650 Cap.¹⁴

(ii) Stock Incentive Programs

19. Historically, the Debtors have maintained a number of Employee incentive programs that primarily involve a stock component (the “**Stock Incentive Programs**”), as set forth below:

- *Officer LTI Program.* The Debtors have maintained the Officer Long Term Incentive Program (“**Officer LTI Program**”) for officers of the Company. Under the Officer LTI Program, the Debtors award elected officers stock options, restricted stock, and performance shares/performance units.¹⁵ In 2016, the Officer LTI Program was restated to add cash performance unit awards.
- *Key Manager LTI Program.* The Debtors have maintained the Key Manager Long Term Incentive Program (“**Key Manager LTI Program**”) for Employees designated as “key managers” by the Company. The Key Manager LTI Program awards restricted stock, and performance shares/performance unit awards.
- *Performance Unit Award Program.* In September 2018, the Company implemented a performance unit award program for non-insider executive Employees who are not elected officers or designated as key managers, but who have a significant impact on the Company’s achievement (the “**Performance Unit Award Program**”). Similar to the LTI Programs, the Performance Unit Award Program awards performance units payable in cash.

¹⁴ The Debtors estimate that approximately \$245,000 of the SIP payments, in the aggregate, will be in excess of the \$13,650 Cap.

¹⁵ The stock options and restricted shares vest in three (3) years. The performance period and performance criteria of performance shares and performance unit awards are determined by the Compensation Committee, but are currently set for a three (3) year performance period and measure operating income.

- *CEO Restricted Stock Grants.* The CEO is authorized to grant restricted stock to eligible Employees, subject to certain parameters (the “**CEO Restricted Stock Grants**”).¹⁶
- *Ad Hoc Restricted Stock Program.* The Company has also maintained an ad hoc restricted stock program, pursuant to which senior team members nominated high contributing Employees for restricted stock grants each year (the “**Ad Hoc Restricted Stock Program**”).¹⁷

20. The Debtors have discontinued and/or limited each of the Stock Incentive Programs. The Debtors will not issue any awards under the Officer LTI Program and/or Ad Hoc Restricted Stock Program in fiscal year 2021. Similarly, the Debtors have ceased granting stock pursuant to the CEO Restricted Stock Grants program. Most Employees who were previously eligible for the Key Manager LTI Program and Performance Unit Award Program are no longer eligible for these Stock Incentive Programs, because those Employees opted to participate in the KERP (as defined below), instead.

21. The Debtors are not seeking relief pursuant to this Motion to pay any amounts under the Stock Incentive Programs.

C. Employee Retention Programs

(i) Sale Retention Program

22. In March 2020, when the Debtors began considering the possibility of a sale transaction, the Debtors entered into retention agreements with nine (9) Employees (the “**Sale Retention Program**”) to incentivize those Employees to continue working for the Debtors through the closing of a sale transaction. The Debtors sent two (2) more offers pursuant to the

¹⁶ The current parameters, adopted in January 2010, are as follows: (i) no individual grant may exceed 4,000 shares, (ii) the aggregate grants may not exceed 20,000 shares (until reviewed by the Compensation Committee), and (iii) no grant may be made to any officer of the Company.

¹⁷ Elected officers, key managers and participants in the Performance Unit Award Program are generally ineligible for the Ad Hoc Restricted Stock Program.

Sale Retention Program on June 22, 2020.¹⁸ The Sale Retention Program generally provides for an Employee to receive a payment if the Employee (i) remains employed by the Debtors through the closing of a sale transaction and (ii) agrees to continue employment with the purchaser. Specifically, under the Sale Retention Program, if the Employee receives a qualifying offer from the purchaser and remains employed with the purchaser for one year, the Employee is entitled to a retention bonus (the “**Sale Retention Bonus**”). If the Employee does not receive a qualifying offer from the purchaser, the Employee is entitled to the Sale Retention Bonus and, in the case of most of these agreements, a severance payment (the “**Severance Pay**”) in addition to any severance that the Employee is entitled to under the Non-Insider Severance Program (as defined below). The Debtors are not seeking any relief with respect to the Sale Retention Bonuses or Severance Pay through this Motion, although the Debtors reserve the right to file a separate motion seeking relief from the Court to honor any existing Severance Pay obligations under the Sale Retention Program.

(ii) KERP

23. As part of their prepetition restructuring initiatives, the Debtors engaged in a review of their existing bonus programs and assessed the need for additional programs to ensure appropriate Employee retention. Based on this review, the Debtors determined that it was necessary, and in the best interests of their stakeholders, to implement an additional program for certain Employees, primarily those in senior management roles, whom the Debtors deemed necessary to maintain operations during the critical period within which the Debtors are seeking to restructure their business and operations and sell the company (the “**Key Employees**”).

¹⁸ These agreements have not yet been executed by the Employee recipients.

24. Accordingly, in June 2020, the Debtors implemented a retention program that collectively provides for the payment of approximately \$5.125 million in the aggregate to the Key Employees (the “**KERP**”).¹⁹ Under the KERP, the Key Employees received a single lump sum payment in exchange for the Employee agreeing to (i) remain with the Company through the earlier of (a) twelve (12) months following the date of each Key Employee’s agreement²⁰ and (b) the completion of a “Restructuring” transaction;²¹ and (ii) forego contractual rights to payments from annual bonus and long-term incentive compensation awards for fiscal year 2021. Importantly, these payments are subject to claw-back, if an employee voluntarily resigns or is terminated for cause prior to the retention period specified in the agreement.

25. As of the Petition Date, no amounts are due and owing under this KERP. The Debtors are not seeking any relief with respect to the KERP through this Motion.

D. Payroll Servicer

26. To manage the processing and payment of the various obligations described above efficiently (the “**Payroll Maintenance Fees**”), the Debtors rely on Ceridian HCM, Inc. (“**Ceridian**” or the “**Payroll Servicer**”) to provide services such as payroll processing, tax computation and withholding, payment preparation, and payroll transfer administration. The Debtors pay Employees on varied payroll periods. For each payroll, the day before the payroll is due, the Debtors make an automated clearing house (“**ACH**”) transfer to

¹⁹ The KERP was publicly disclosed in a form 8-K filed with the Securities and Exchange Commission on June 15, 2020.

²⁰ The date 12 months following each of the Key Employee’s agreements is June 11, 2021 or March 11, 2021, as applicable.

²¹ “Restructuring,” as defined by the KERP agreements, shall mean “a transaction or series of transactions that constitute (i) the sale of all or substantially all of the Company’s assets, including under section 363 of the Bankruptcy Code, or (ii) the recapitalization or restructuring of all or substantially all of the equity and/or debt securities and/or other indebtedness of the Company, which recapitalization or restructuring is effected pursuant to an exchange transaction, tender offer, plan of reorganization or otherwise, such date be determined by the board of directors of the Company in its sole discretion.”

Ceridian in an amount necessary to satisfy the Debtors' payroll obligations. Ceridian then processes direct deposit transfers or paper checks to the Employees on the payroll dates.

27. The services that Ceridian provides are critical to the smooth functioning of the Debtors' payroll system. Ceridian is responsible for ensuring, that: (i) Employees are paid on time, (ii) appropriate deductions are made, (iii) payroll reporting is accurate, and (iv) appropriate amounts are remitted to the applicable taxing authorities and other payees. The Debtors pay Ceridian approximately \$20,000 per month, in the aggregate, for the aforementioned services. As of the Petition Date, the Debtors owe Ceridian approximately \$20,000 on account of prepetition Payroll Maintenance Fees, all of which will come due and owing during the Interim Period. The Debtors seek authority to pay all Payroll Maintenance Fees in the ordinary course, including all prepetition fees.

E. Gross Pay Deductions, Governmental Withholdings and Payroll Taxes

28. For each applicable pay period, the Debtors routinely deduct certain amounts from each Employee's gross pay including, without limitation, garnishments, child support, spousal support, other deductions as required by applicable law, service charges, and other pre- and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, including each Employee's share of health benefit plans, contributions under flexible spending plans, health savings accounts, retirement savings plans, and other miscellaneous deductions (collectively, the "**Deductions**").²² The Debtors make a total of approximately \$2,750,000 in Deductions from Employees' pay per month, which the Debtors remit, as necessary, to the appropriate third-party recipients.

²² Certain of the Deductions, particularly with respect to the Health Benefits Programs, FSAs, and HSAs (each, as defined below) are discussed further below in connection with the Employee Benefit Obligations.

29. In addition to the Deductions, state and federal law requires the Debtors to withhold amounts from the Employees' gross pay related to federal, state, and local income taxes, including Social Security and Medicare taxes, for remittance to the appropriate federal, state, or local taxing authority (collectively, the "**Withholdings**"). The Debtors must then match, from their own funds, amounts for Social Security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance (collectively the "**Employer Payroll Taxes**," and together with the Withholdings, the "**Payroll Taxes**"). In the aggregate, the Payroll Taxes, including both the Employee and employer portions, total approximately \$5,500,000 per month.

30. In response to the COVID-19 pandemic, the federal government enacted relief under the Coronavirus Aid, Relief, and Economic Security Act (the "**CARES Act**") to allow businesses to defer paying the employer portion of contributions under the Federal Insurance Contributions Act ("**FICA Tax**") on account of the Social Security tax imposed on Employee earnings. Under the CARES Act, the total deferred amount of Social Security payroll taxes is required to be paid in two installments –fifty percent (50%) must be paid by December 31, 2021, and the remaining fifty percent (50%) must be paid by December 31, 2022. *See* Pub. L. 116-136, § 2302, 134 Stat 281, 351-52 (2020). In furtherance of the Debtors' liquidity preservation efforts, the Debtors have elected to defer payment of the Social Security portion of their FICA Tax contributions. As of the Petition Date, the Debtors have accrued approximately \$3.2 million related to deferred employer payroll taxes under the CARES act.

31. As of the Petition Date, the Debtors estimate that they owe approximately \$5,360,000, in the aggregate, in accrued Payroll Taxes and Deductions, including amounts that have been deferred under the CARES Act. Excluding the deferred amounts, the Debtors

estimate that they owe approximately \$2,160,000, in the aggregate, in accrued Payroll Taxes and Deductions, all of which will become due and owing during the Interim Period. As such, the Debtors request authority (i) to pay or remit, or to direct third-party administrators to pay or remit, any outstanding prepetition taxes on a postpetition basis as the taxes come due and (ii) to continue to honor and process, or to direct third-party administrators to process Payroll Taxes and Deductions on a postpetition basis, in the ordinary course of business and consistent with prepetition practices (whether or not related to the prepetition period). For the avoidance of doubt, the Debtors intend to continue deferral of the Social Security portion of their FICA Tax contributions until the applicable FICA Tax deferral periods cease.

F. Reimbursable Expenses

32. In the ordinary course of business, the Debtors reimburse certain Employees for expenses, as described below, including cellular phone expenses, relocation expenses, travel expenses, and reasonable and customary expenses incurred in the scope of their employment (collectively, the “**Reimbursable Expenses**”).

33. Phone Stipend. The Debtors offer a \$45 per month stipend to eligible Employees to purchase cellular telephone services (the “**Phone Stipend**”). Field sales Employees and other Employees in certain pay grades who are expected to be available around-the-clock, as part of their employment, are eligible for the Phone Stipend. In total, approximately 300 Employees receive the Phone Stipend. On average, the Debtors reimburse Employees approximately \$14,000 per month, in the aggregate, on account of Phone Stipends. As of the Petition Date, the Debtors are current with respect to amounts owed on account of reimbursements for Phone Stipends.

34. Company Car Program. In the course of their employment, certain Employees, including sales and field service Employees, are reimbursed by the Debtors for the

use of their personal cars (the “**Company Car Program**”). The Company Car Program is administered by Motus, LLC (“**Motus**”). The Debtors pay Motus approximately \$6,000 per month on account of reimbursements owed to Employees for use of their personal cars. The Debtors are current with respect to amounts owed to Motus on account of reimbursements to Employees related to the Company Car Program.

35. Relocation Expenses. The Debtors reimburse Employees for approved relocation expenses (“**Relocation Expenses**”). In the 12 months prior to the Petition Date, the Debtors reimbursed Employees approximately \$109,000 on account of Relocation Expenses. As of the Petition Date, the Debtors are current with respect to amounts owed to Employees on account of Relocation Expenses.

36. The Debtors partner with TRC Global Mobility, Inc. (“**TRC**”) to provide Employee relocation management services. As of the Petition Date, the Debtors are current with respect to amounts owed to TRC on account of prepetition relocation services.

37. Other Reimbursable Expenses. Other Reimbursable Expenses generally include travel-related expenses such as transportation, lodging, and meals, as well as other necessary and pre-approved Employee expenses which Employees incur using their personal funds (collectively, the “**Other Reimbursable Expenses**”). The Other Reimbursable Expenses discussed herein exclude expenses incurred by Employees through a corporate-issued credit card, which are discussed further in the Cash Management Motion²³ and are paid for by the Debtors to

²³ The Debtors have filed the *Motion of Debtors For Entry of Orders (I) Authorizing Debtors to (A) Continue Existing Cash Management System, (B) Honor Certain Prepetition Obligations Related to the Use Thereof, (C) Continue Intercompany Transactions and Provide Administrative Expense Priority For Postpetition Intercompany Claims, and (D) Continue Supply Chain Financing; (II) Waiving Requirements of Section 345(B) of the Bankruptcy Code; and (III) Granting Related Relief* (the “**Cash Management Motion**”) contemporaneously herewith.

U.S. Bank.²⁴ The Other Reimbursable Expenses are incurred by Employees using their own funds, and the Debtors reimburse such amounts to Employees directly. The Debtors review, audit, and approve the Other Reimbursable Expenses before reimbursing an Employee for such expenses. As of the Petition Date, the Debtors estimate that they owe approximately \$50,000 to Employees on account of Other Reimbursable Expenses (excluding those covered by the Corporate Credit Cards), all of which will come due within the Interim Period.

38. As of the Petition Date, the Debtors estimate that approximately \$50,000 in aggregate Reimbursable Expenses owed to Employees remain outstanding, all of which will become due and payable during the Interim Period. The Debtors seek authority to pay such prepetition amounts to Employees as they come due and to continue the reimbursement of Reimbursable Expenses in the ordinary course.

39. In addition, the Debtors use an expense management system through Concur Technologies, Inc. (“Concur”) to help track and process claims by Employees for Reimbursable Expenses. The Debtors pay Concur approximately \$30,000 per quarter in administrative fees. As of the Petition Date, the Debtors estimate that approximately \$30,000 is owed to Concur on account of administrative fees, all of which will come due within the Interim period. The Debtors seek authority to pay such prepetition amounts to Concur.

40. The Debtors have also offered the following reimbursement programs, for which the Debtors do not seek any relief through this Motion:

- *Educational Assistance Program.* The Debtors provided reimbursement to Employees for job related educational expenses at accredited educational institutions for tuition reimbursement of up to 75% of tuition and related expenses, up to a maximum amount of \$5,250 per year.

²⁴ Through the Cash Management Motion, the Debtors have sought authority, but not direction to, in the ordinary course of business, continue their cash management system, including the maintenance of their corporate credit cards issued to Employees.

- *Graduate Educational Assistance Program.* The Debtors provided reimbursement to an Employee for job related educational expenses at the graduate school level. In the twelve months prior to the Petition Date, the Debtors reimbursed \$90,000 in tuition and related expenses.
- *Professional Services.* The Debtors offered reimbursement for professional services related to personal financial consulting, estate planning, and tax preparation. Specifically, the Debtors reimbursed board-elected officers up to \$5,000 per year and reimbursed key managers up to \$2,500 per year.
- *Company Products.* The Debtors offered outside directors up to \$10,000 per year towards purchasing company products.

G. Non-Insider Severance

41. The Debtors do not maintain a formal severance policy. However, in the ordinary course of business, the Debtors typically offer a limited period of severance payments, outplacement services, and certain medical benefits to Salaried Employees and CBA Employees,²⁵ in each case whose employment with the Debtors is terminated through no fault of their own, including reasons such as permanent reductions-in-force, elimination of the Employee's position, or operating facility closures (the "**Non-Insider Severance Program**"). For Salaried Employees, the Debtors apply informal guidelines to determine severance, based on the Salaried Employee's length of time working for the Debtors. Subject to such terminated Employee's entry into a separation and release agreement with the Debtors, the Debtors generally pay terminated Employees severance benefits in the form of salary or wage continuation in accordance with a normal payroll schedule.²⁶ The Debtors also (i) provide

²⁵ The Debtors do not typically pay severance to Hourly Employees that are not CBA Employees. However, the Debtors have offered severance to such Employees in the past.

²⁶ Certain Employees also have contractual agreements with the Debtors, that differ from the traditional severance policy and separation and release agreements. For instance, the Debtors have contractual severance obligations to executive Employees pursuant to the terms of the Debtors' employment contracts with such Employees. As discussed above, the Debtors also entered into agreements for severance with certain Employees under the Sale Retention Program. The Debtors do not seek authority in this motion to pay any

outplacement services through LAK Group, LLC (“**LAK Group**”) to all Employees who receive severance²⁷ and (ii) continue to fund the employer portion of those Employee’s COBRA (as defined below) medical benefits for the period of time that those Employees receive severance from the Debtors.²⁸

42. Subject to entry of the Final Order, the Debtors seek authority, but not direction, to honor their obligations under the Non-Insider Severance Program with respect to non-insider Employees who were terminated prepetition, but only up to the \$13,650 Cap. As of the Petition Date, the Debtors estimate that they owe approximately \$1,400,000 in severance obligations to non-insider Employees who were terminated prepetition, \$700,000 of which falls within the \$13,650 Cap. In addition, the Debtors anticipate that they may owe additional severance obligations to non-insider Salaried Employees and Hourly Employees pursuant to reductions-in-force that may be implemented postpetition, and seek authority to assess and pay those amounts in accordance with past practice, but only up to the \$13,650 Cap for prepetition services and, for postpetition services, to the extent those claims are entitled to administrative expense treatment under section 503(b)(1) of the Bankruptcy Code and subject to effects bargaining with the CBA Employees. The Debtors seek authority to pay such amounts only after approval of this Motion on a final basis.

43. The relief sought is intended to balance the competing interests of the Debtors’ creditors and stakeholders, by reassuring Employees that the Debtors intend to honor

contractual severance obligations (which fall outside of the traditional Non-Insider Severance Program), but the Debtors reserve the right to seek relief with respect to those other severance obligations by separate motion.

²⁷ In the 12 months prior to the Petition Date, the Debtors paid LAK Group \$911,000 on account of outplacement services. The Debtors are current with respect to amounts owed to LAK Group on account of services provided to terminated Employees.

²⁸ The relief sought with respect to paying amounts under COBRA is included in the Health and Welfare Benefits section of this motion. *See, infra*, section IV.B.(i).

their obligations to current Employees during these Chapter 11 Cases—both during and after their tenure with the Debtors—to the extent the Bankruptcy Code permits prioritizing Employee claims over the claims of other creditors. Making the Non-Insider Severance Program payments described above, consistent with the applicable caps under the Bankruptcy Code, will help to assuage the Employees’ concerns and motivate them to continue working for the Debtors during the pendency of these Chapter 11 Cases.

III. Supplemental Workforce Obligations

44. As noted above, the Debtors utilize a Supplemental Workforce to fill certain employment needs which are necessary to the operation of their business. The Supplemental Workforce consists of workers employed through PRO Unlimited, Inc. (“**PRO Unlimited**”), Elwood Staffing Services, Inc. (“**Elwood**”), and Penmac Staffing Services, Inc. (“**Penmac**” and together with Pro Unlimited, the “**Staffing Providers**”),²⁹ along with individual, third party sales representatives (the “**Sales Representatives**”), whom the Debtors either pay directly, or pay third party entities that directly employ Sales Representatives.

45. The outstanding amounts related to compensation of the Supplemental Workforce (the “**Supplemental Workforce Obligations**”) are summarized in the following chart, and are described in further detail below:

Prepetition Obligations	Description	Total Relief Requested	Interim Relief Requested
Staffing Providers	Obligations owed to the Staffing Providers for compensation of workers	\$875,000	\$875,000
Sales Representatives	Obligations related to compensation of the Sales Representatives	\$1,000,000	\$1,000,000

²⁹ Penmac supplies temporary, hourly, production employees to Debtor Billy Goat Industries, Inc., while Pro Unlimited fills the supplemental employment needs for the majority of the Debtors’ other U.S. operations and Elwood supplies a smaller share.

Prepetition Obligations	Description	Total Relief Requested	Interim Relief Requested
Total Supplemental Workforce Obligations (\$)		\$1,875,000	\$1,875,000

A. Staffing Providers

46. The Staffing Providers help the Debtors fill one-off contractor or temporary roles. The Staffing Providers also negotiate larger contracts with local staffing agencies, on behalf of the Debtors, for purposes such as seasonal staffing of front-line workers at the Debtors’ production facilities. The Staffing Providers are paid by the Debtors weekly in lump-sum amounts, which includes the wages or salaries owed to workers, as well as fees to the Staffing Providers for their services. Once the Staffing Providers are paid by the Debtors, they pay the amounts owed to individual members of the Supplemental Workforce on their payroll, or pay other third party entities that directly employ the workers, as applicable. Staying current with respect to payments owed to the Staffing Providers will help minimize unnecessary disruptions to the Debtors’ business by ensuring uninterrupted performance of members of the Supplemental Workforce. On average, the Debtors pay approximately \$22,000,000 to the Staffing Providers each year. As of the Petition Date, the Debtors estimate that they owe approximately \$875,000 to the Staffing Providers, all of which will become due and payable during the Interim Period. Accordingly, the Debtors seek authority to pay any unpaid prepetition amounts owing to the Staffing Providers in the ordinary course of business and consistent with past practice.

B. Sales Representatives

47. The Debtors utilize approximately 40 Sales Representatives to promote the purchase of certain products to the Company’s largest dealers, mass retailers, rental channel customers, and other customers, which in turn, resell those products to end users. The Sales

Representatives encourage dealers and other customers to purchase key products in order to generate more sales volume and revenue for the Company, and in exchange, the Sales Representatives receive a commission, bonus, and/or salary, as described below, for facilitating these sales orders. The Company selects Sales Representatives to be exclusive to dealers or to geographic territories.

48. Sales Representatives exclusive to certain dealers use their best efforts to market, advertise, promote, and solicit the sale of key products to their dealers. These Sales Representatives' services are tailored to generate a mutualistic relationship for both the Company and the dealers. Dealer exclusive Sales Representatives account for an average of eleven percent (11%) of overall Company sales.

49. Geographic territory Sales Representatives are divided into two groups: (i) the retail representatives, who assist retail stores with product display, employee training, and marketing techniques, and (ii) the distributor representatives, who sell the various products to the distributors and warehouses. The geographic territory Sales Representatives cover the following business segments: job site, standby, turf and consumer, and engines. The Sales Representatives have different compensation structures according to business segment.³⁰

50. The Sales Representatives in each business segment have developed a high level of expertise regarding the Company's products and have long-standing relationships with the Company's customers, generating trust and loyalty for the Company. In certain segments, the Sales Representatives account for a very high percentage of the Debtors' overall

³⁰ The job site Sales Representatives are paid commission on the 15th of the following month on account of the previous month's sales. Standby Sales Representatives are paid on a quarterly basis. The Debtors' two (2) engine Sales Representatives are not paid on commission, but rather, the Debtors pay half of the engine Sales Representatives annual salaries, which is accrued on a monthly basis, and amounts to approximately \$190,000, in the aggregate. The Debtors pay these amounts to Power Distributors, LLC ("**Power Distributors**") and Power Distributors pays the Engine Representatives directly. Power Distributors is the Debtors' joint venture in which the Debtors have a 38% ownership interest.

product sales. For example, the job site Sales Representatives are responsible for, on average, seventy percent (70%) of job site sales. Failure to pay any outstanding prepetition amounts to the Sales Representatives could lead to a significant decrease in the Debtors' sales, if the Debtors are unable to find replacement Sales Representatives to promote their products as effectively as the Debtors' current Sales Representatives, which could result in disruption to the Debtors' business operations and value destruction of the Debtors' assets. Moreover, given the Sales Representatives' familiarity with and confidence in the Debtors' products, if the Debtors fail to make payments to the Sales Representatives, it would take several months to find new promoters to replace the Sales Representatives—a distraction and expense that would compound the potential loss of sales experience and goodwill generated by the Sales Representatives.

51. As of the Petition Date, the Debtors estimate that they owe approximately \$1,000,000 to Sales Representatives, in the aggregate, on account of prepetition services, all of which will become due and payable during the Interim Period. Accordingly, the Debtors seek authority to pay any unpaid prepetition amounts owing to the Sales Representatives as they come due in the ordinary course of business and to continue the services of the Sales Representatives in the ordinary course and consistent with past practice.

IV. Employee Benefit Obligations

52. In the ordinary course of business, the Debtors make various benefit plans available to their Employees. These benefit plans fall within the following categories: (i) paid time off, including personal time off and holidays (collectively, the “**Employee Leave Benefits**”); (ii) medical, dental, vision, and prescription drug benefits, flexible spending accounts and health savings accounts, life insurance, accidental death and dismemberment insurance (“**AD&D**”), disability insurance, (collectively, the “**Health and Welfare Benefits**”); (iii) retirement savings plans including a 401(k) plan, pension plans, and health insurance (the

“**Retirement Benefits**”); and (iv) certain other benefits (each of (i)-(iv), an “**Employee Benefit**”). The prepetition obligations arising from the Employee Benefits (the “**Employee Benefit Obligations**”) are summarized in the following chart and are described in further detail below:

Prepetition Obligations	Description	Total Relief Requested	Interim Relief Requested
Employee Leave Benefits	Obligations related to Employee paid time off and related benefits	\$6,087,000	\$0
Health and Welfare Benefits	Obligations related to medical benefits, disability benefits, and other health and welfare programs	\$3,325,000	\$2,026,000
Retirement Benefits	Obligations related to retirement benefits, including the 401(k) Plan, Pension Plans, and retiree health insurance plan	\$1,274,000	\$850,000
Other Benefits	Obligations related to miscellaneous benefits, including travel benefits, general employee assistance, and the use of company vehicles	\$134,000	\$134,000
Total Employee Benefit Obligations (\$)		\$10,820,000	\$3,010,000

A. Employee Leave Benefits

53. The Debtors offer Employee Leave Benefits, which are administered by Prudential Life Insurance Company (“**Prudential**”). The Employee Leave Benefits available to Employees may vary slightly by state to comply with all applicable state laws. As part of the Employee Leave Benefits, the Debtors offer certain paid leave to all Employees, which include, among other things, Vacation Leave (as defined below), employee and family sick leave, holidays, bereavement leave, jury duty, and military service leave. The Debtors also provide up to twelve (12) weeks unpaid leave to all Employees pursuant to the federally-mandated Family and Medical Leave Act and up to six (6) weeks of unpaid leave to Employees based in Wisconsin pursuant to the Wisconsin Family and Medical Leave of Absence (which provides for more comprehensive leave reasons than the Family and Medical Leave Act). In addition, the

Debtors offer up to six (6) months of unpaid leave to Salaried Employees in accordance with the Debtors' personal leave of absence policy.

54. Hourly Employees and non-management Salaried Employees who work 30 hours or more per week³¹ are eligible for paid vacation leave, which accrues throughout the vacation year (“**Vacation Leave**”).³² Hourly Employees earn between 40 hours and 200 hours of Vacation Leave a year, based on their years of service with the Debtors.³³ The Debtors pay Hourly Employees for any accrued but unused Vacation Leave following the end of each vacation year and upon termination, as applicable. Non-management Salaried Employees³⁴ receive between two and five weeks of Vacation Leave, based on their years of service with the Debtors. Salaried Employees can carry over up to one week of Vacation Leave per vacation year. The Debtors pay Salaried Employees for any accrued but unused Vacation Leave upon termination, but not at the end of each vacation year.³⁵ In addition to being required by Company policy, payments on account of Vacation Leave are required by law in some states in which the Debtors operate.

³¹ Hourly Employees and Salaried Employees who work less than 40 hours per week are eligible for prorated Vacation Leave.

³² The vacation year for Hourly Employees is tied to each Hourly Employees' anniversary date of hire. The vacation year for Salaried Employees begins October 1st and runs through September 30th.

³³ Pursuant to the Attendance Award Program, some Hourly Employees may be eligible for an additional vacation day.

³⁴ The Vacation Leave for Salaried Employees described in this section applies only to Salaried Employees in certain pay grades; Salaried Employees in certain top grades are not paid any amounts on account of Vacation Leave upon termination, or otherwise, nor are any amounts accrued for such Vacation Leave.

³⁵ There is a true-up for Vacation Leave at termination whereby any severance benefit may need to be reduced to account for Vacation Leave used in excess of accrual. If a Salaried Employee is terminated with a negative accrual balance (*i.e.*, the Employee borrowed future Vacation Leave against her annual balance), the Debtors deduct the amount of any unearned vacation from the Employee's final paycheck.

55. As of the Petition Date, the Debtors estimate that they owe approximately \$87,000 to employees who terminated prepetition on account of Vacation Leave obligations.³⁶ The Debtors seek authority to make payments on account of Vacation Leave to employees terminated prepetition up to the \$13,650 Cap and only after approval of this Motion on a final basis.

56. As of the Petition Date, active Employees have accrued approximately \$6,000,000 in Vacation Leave. The Debtors anticipate that they may owe Vacation Pay to Employees pursuant to reductions-in-force that may be implemented postpetition, and seek authority to assess and pay those amounts in accordance with past practice, but only up to the \$13,650 Cap for prepetition services and, for postpetition services, to the extent those claims are entitled to administrative expense treatment under section 503(b)(1) of the Bankruptcy Code. The Debtors seek authority to pay such amounts only after approval of this Motion on a final basis.

B. Health and Welfare Benefits

57. The Debtors provide several Health and Welfare Benefits to eligible Employees. The Health and Welfare Benefits include: medical, vision, dental, and prescription drug programs (each, a “**Health Benefits Program**”); flexible spending accounts, health saving accounts, health reimbursement accounts, and other voluntary welfare programs (collectively, the “**Additional Health Benefits**”); and disability benefits, AD&D, and life insurance benefits, (collectively, the “**Disability Benefits**”). The Health and Welfare Benefits are more fully described below.

³⁶ A portion of the Vacation Leave has already been paid out to former employees. The Debtors request authority to pay only those amounts that remain outstanding (and only up to the \$13,650 Cap).

(i) **Health Benefits Programs**

58. The Debtors offer the following Health Benefits Programs, which are primarily self-insured by the Debtors but administered through various insurers to enrolled Employees and their families:

Type of Benefits	Benefits Provider(s)
Medical	Anthem (non-Wisconsin residents)
	United Healthcare (Wisconsin Residents)
Prescription Drugs	Express Scripts
Dental	Delta Dental
Expatriate Medical & Dental	Cigna
Vision	Delta Vision
COBRA	bswift

59. The main benefits providers listed above (each a “**Health Benefits Provider**”) are preferred provider organizations under which improved benefits are available when using a doctor, dentist, or other healthcare provider within a network of preferred providers. With the exception of the vision care component, the Health Benefits Programs are self-funded programs by the Debtors and administered by the respective Health Benefits Provider.

60. As self-funded plans, the Debtors fund a portion of all medical and dental claims submitted to the applicable Health Benefits Provider on account of services rendered to Employee participants (“**Health Benefit Claims**”), with the Employee participant paying the rest. The Debtors’ share of Health Benefit Claims are paid by the Debtors to the Health Benefit Providers, which pay the medical professional providing the service. Employees pay their share (*i.e.*, copays and deductibles) of Health Benefit Claims to medical professionals from their own

pockets, their Health Reimbursement Account, or their Health Savings Account. The average monthly amount of Health Benefits Claims allocable to the Debtors is approximately \$4,000,000.³⁷ As of the Petition Date, the Debtors estimate that approximately \$6,200,000 of Health Benefit Claims have not yet been processed, \$2,400,000 of which are allocable to the Debtors and \$1,200,000 of which will become due and owing during the Interim Period.

61. Medical and Prescription Drug Program. The Debtors offer eligible Employees medical care and prescription drug coverage (the “**Medical and Prescription Drug Program**”), which is self-funded by the Debtors.³⁸ For Employees residing in Wisconsin, the Medical and Prescription Drug Program is administered by United Healthcare Services, Inc. (“**United Healthcare**”) and Express Scripts, Inc. (“**Express Scripts**”).³⁹ For all other Employees, the Medical and Prescription Drug Program is administered by Anthem Blue Cross Blue Shield (“**Anthem**”) and Express Scripts.⁴⁰ Under the Medical and Prescription Drug Program, the Debtors generally pay the following portions of Employee Health Benefit Claims, depending on the type of claim: (i) 100% of the Employee’s in-network claims on account of preventative healthcare, (ii) 90% of all other healthcare claims once the deductible is met, (iii) 100% of preventative medications,⁴¹ and (iv) 60-90% of all other medications.⁴² As of the

³⁷ This figure represents claims relating to active Employees and claims by former employees under COBRA, but does not include retirees.

³⁸ The Debtors offer their Employees two Medical and Prescription Drug Plan options: (i) the “High Deductible PPO with HSA” (the “**HSA Medical Plan**”) and (ii) the “High-Deductible PPO with HRA” (the “**HRA Medical Plan**”). The network deductible for Employees and family care are \$1,850 and \$3,700, respectively. The HSA Medical Plan also has an option for “Employee Plus” dependents; the deductible is \$2,800 under that election.

³⁹ Prior to July 1, 2020, OptumRx administered the prescription portion of the Medical and Prescription Drug Plan to Employees who are residents of Wisconsin. As of July 1, 2020, Express Scripts took over administration of the prescription portion of the Medical and Prescription Drug Plan for all Employees.

⁴⁰ Prior to July 1, 2020, IngenioRx administered the prescription portion of the Medical and Prescription Drug Plan to Employees in all U.S. locations aside from Wisconsin.

⁴¹ The Debtors pay 100% of Health Benefit Claims for preventative medication even before Employees have met their deductible.

Petition Date, the Debtors estimate that the Medical and Prescription Drug Program has approximately 3,530 program participants, including under the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”).

62. Dental Program. The Debtors offer eligible Employees dental coverage (the “**Dental Program**”), which is a self-funded program administered by Delta Dental of Wisconsin (“**Delta Dental**”). Once an Employee has satisfied the deductible requirement,⁴³ the Debtors pay 80% of the Employee’s claims on account of diagnostic and preventative procedures and 50% of the Employee’s claims on account of other approved procedures, up to the maximum program allowance of \$1,250 per person, per benefit accumulation period.

63. The Debtors pay fees for the administrative services provided by the Health Benefits Providers to Employees who subscribe to the Debtors’ self-funded Medical and Prescription Drug Program and Dental Program. On an average monthly basis, the aggregate administrative fees the Debtors owe to the Health Benefits Providers on account of the self-funded Health Benefits Programs is \$184,000.⁴⁴ As of the Petition Date, the Debtors estimate that they owe the Health Benefit Providers approximately \$184,000 on account of administrative fees associated with the Debtors’ self-funded Medical and Prescription Drug Program and Dental Program, all of which will become due and payable during the Interim Period.

64. Vision Program. The Debtors offer all eligible Employees voluntary vision coverage (the “**Vision Program**”) through DeltaVision, which is administered by EyeMed Vision Care, LLC (“**EyeMed**”). The Vision Program is fully insured, and Employees pay 100%

⁴² The applicable percentage depends on the “tier” classification of drug that is purchased, *e.g.* generic or specialty.

⁴³ The Employee deductible for the Dental Plan is \$25 per person, per benefit accumulation period or \$75 per family, per benefit accumulation period, as applicable.

⁴⁴ This figure includes the administrative costs for active Employees and former Employees under COBRA, but does not include the administrative costs for retiree coverage.

of premiums. Premiums for the Vision Program are deducted from participating Employees' payroll, and then transferred by the Debtors to DeltaVision on behalf of the Employees. The Debtors transfer approximately \$30,000 per month in withheld Employee contributions to DeltaVision, any outstanding amounts of which are included in the total amount for Deductions, provided above.⁴⁵ *See, supra*, section II.E.

65. Expatriate Medical & Dental Program. The Debtors offer all employees who are expatriates ("**Expatriate Employees**") medical and dental coverage (the "**Expatriate Medical and Dental Program**") through Cigna Corporation ("**Cigna**"). There are currently no participants enrolled in the Expatriate Medical and Dental Program.

66. COBRA. Under COBRA, Employees who are terminated have the right to continue health benefits from their employer for a limited period of time and under certain circumstances. The Debtors provide COBRA benefits to exiting Employees as required by law. The Debtors' COBRA program is administered by bswift, LLC ("**bswift**"). Upon termination of an Employee qualified for COBRA coverage, the Debtors inform bswift, bswift then notifies the terminated Employee of his or her rights, determines if he or she wishes to continue coverage, collects COBRA premiums from the terminated Employee and remits them to the Debtors, and furnishes the Debtors with reports of its activities. In exchange for administration of the Debtors' COBRA program, bswift retains an ongoing service fee and 2% of the COBRA premiums collected. As explained above, the Debtors fund a portion of Employee COBRA coverage for a limited period of time as part of severance. The Debtors seek authority to pay prepetition amounts owed under COBRA, and to continue providing COBRA benefits in the ordinary course.

⁴⁵ This amount includes amounts on account of administrative fees owed to DeltaVision.

(ii) Additional Health Benefits

67. The Debtors provide additional health benefits to their Employees under various policies and programs, in some cases automatically and in others upon election by a particular eligible Employee. The chart below outlines the available programs:

Type of Benefit	Provider
Health Clinics	Marathon Health
Wellness Program	Marathon Health
Health Savings Account	Optum Bank
Health Reimbursement Account	PayFlex
Flexible Spending Accounts	PayFlex
Health Advocacy	DirectPath

68. Health Clinics. The Debtors offer Employees access to on-site health clinics (the “**Health Clinics**”) at the Debtors’ Milwaukee, Poplar Bluff, and Statesboro facilities. The Health Clinics offer a variety of healthcare services similar to other healthcare providers, but at a reduced cost. When an Employee incurs expenses at a Health Clinic, his or her expenses are submitted to his or her Medical and Prescription Drug Program, as applicable, and then processed as a Health Benefit Claim. Each Health Clinic is managed by Marathon Health, LLC (“**Marathon Health**”). Additionally, Employees have access to a fitness center at the Milwaukee Health Clinic, which is managed by Marathon Health. The Debtors pay Marathon Health approximately \$210,000 per month, in the aggregate, to manage the Health Clinics. As of the Petition Date, the Debtors estimate that they owe approximately \$210,000 to Marathon Health on account of the Health Clinics, all of which will come due during the Interim Period.

69. HSA, HRA, and Wellness Programs. The Debtors provide the option for eligible Employees to maintain either a health savings account (“**HSA**”) or health reimbursement

account (“**HRA**,” and together with the HSA, the “**Health Accounts**”) to pay for qualified health, dental, and vision expenses. The HSAs and HRAs are managed by Optum Bank and PayFlex Systems USA, Inc. (“**PayFlex**” and together with Optum Bank, the “**Health Account Administrators**”), respectively. The Debtors contribute to an Employee’s HSA or HRA if the Employee has earned rewards under the wellness program offered by the Debtors (the “**Wellness Program**”). Contributions related to the Wellness Program are the only contributions Debtors make to the HSAs and HRAs. Employees may make pre-tax contributions to their HSAs, but not to their HRAs.⁴⁶

70. The Wellness Program is administered by Marathon Health and is open to all Employees to participate and earn monetary awards. Under the Wellness Program, Employees earn points for completing certain health-related activities and achieving certain health-related goals, including completing a biometric health screening, obtaining positive results from such biometric screening, receiving a flu shot, and being tobacco-free. The Debtors assign a point value to each identified action or result. The Debtors contribute \$1 to an Employee’s HSA or HRA for each point an Employee earns, up to the applicable maximum contribution amount. For Employees that participate in the Debtors’ Medical and Prescription Drug Program, the Debtors contribute a maximum of \$400 per year for Employee-only coverage and \$600 per year to Employees whose spouses are part of the Debtors’ Medical and Prescription Drug Program. For Employees who do not participate in the Debtors’ Medical and Prescription Drug Program, the Debtors pay up to a maximum of \$200 in cash.⁴⁷ In January 2020, the Debtors

⁴⁶ In that event, the the Debtors withhold Employees’ HSA contributions from their paychecks and the Debtor transfers such withheld amounts to Optum Bank.

⁴⁷ These amounts paid to Employees under the Wellness Program have been modified for January 2021 to reflect the fact that no biometric testing will be completed.

remitted approximately \$900,000 to Optum Bank on account of Debtor contributions related to the 2019 Wellness Program.

71. The 2020 Wellness Program period began on November 16, 2019 and ends on October 31, 2020. Any rewards earned by Employees for the 2020 Wellness Program are due to be paid in January of 2021.⁴⁸ As of the Petition Date, the Debtors estimate that Employees have accrued \$100,000 in rewards related to the 2020 Wellness Program, none of which will come due during the Interim Period. The Debtors also pay administrative and management fees of approximately \$3,000 per month, in the aggregate, to the Health Account Administrators on account of their services. As of the Petition Date, the Debtors are current with amounts owed to the Health Account Administrators.

72. Flexible Spending Accounts. The Debtors also provide Employees the option to contribute to two types of flexible spending accounts (the “FSAs”), which are administered by PayFlex. The health care FSA (“HCFSA”) allows Employees to make pre-tax payroll deductions to pay for qualified medical, pharmacy, dental and vision expenses. The dependent care FSA (“DCFSA”) allows Employees to make pre-tax payroll deductions to pay for eligible day care or elderly care expenses. If an Employee is terminated, any balance remaining in her FSA(s) is lost.⁴⁹ Furthermore, any balance remaining in the FSAs at the end of each calendar year is lost. The Debtors do not make contributions to the FSAs. The Debtors pay PayFlex administrative fees of approximately \$3.00 per participating Employee per month for its

⁴⁸ Wellness Program rewards deposited into HRAs are to be available to Employees on January 1, 2021. Wellness Program rewards deposited into HSAs are to be available on the first paycheck of 2021. Employees who waived the Debtors’ Medical Plan are to be paid on account of Wellness Program rewards by the last payroll in January 2021.

⁴⁹ An Employee may continue to use the HCFSA if the Employee elects COBRA and continues to make after-tax contributions to the FSA.

administrative services related to the FSAs. As of the Petition Date, the Debtors are current with amounts owed to the Health Account Administrators.

73. Health Advocacy. The Debtors provide eligible Employees and their covered dependents with health advocacy services administered by DirectPath, LLC (“**DirectPath**”). Such services include, but are not limited to, the following: access to medical decision resources, assistance with claims resolutions, assistance with locating providers, and scheduling appointments. The Debtors pay DirectPath approximately \$13,000 per month to maintain this program.⁵⁰ As of the Petition Date, no amounts are outstanding in respect of this program.

(iii) Disability Benefits Programs

74. The Debtors offer certain types of insurance or other benefit plans to eligible Employees under various policies and programs, in some cases automatically and in others upon election by a particular eligible Employee. The chart below outlines the available programs and specifies which Employees are eligible and whether those programs are paid by the Debtors or funded through Employee contributions:

Type of Benefit	Provided by Debtors/Voluntary	Eligible Employees
Basic Life and AD&D	Provided by Debtors	Salaried and Hourly Employees
Executive Life	Provided by Debtors	Board-elected officers and key employees
Supplemental Life and AD&D	Voluntary	Salaried and Hourly Employees
Short Term Disability	Provided by Debtors	Salaried and Hourly Employees
Long Term Disability	Provided by Debtors	Salaried Employees

⁵⁰ This figure is inclusive of the participant costs for active Employees and Eligible Retirees.

75. Basic Life and AD&D. The Debtors provide eligible Employees with basic life insurance and AD&D insurance coverage (“**Basic Life and AD&D Insurance Plans**”), which is fully insured by the Prudential. The Basic Life and AD&D Insurance Plans provide coverage to Salaried Employees and certain Hourly Employees equal to two times an Employee’s annual base pay (up to a maximum of \$500,000).⁵¹ Other Hourly Employees are provided coverage in the amount of \$25,000.⁵² The Debtors pay 100% of premiums totaling approximately \$150,000 a month. As of the Petition Date, the Debtors estimate that they owe approximately \$150,000 to Prudential on account of the Basic Life and AD&D Insurance Plans, all of which will become due and payable during the Interim Period. The Debtors seek authority to pay such amounts.

76. Executive Life. The Debtors provide certain eligible board-elected officers and key employees⁵³ with life insurance benefits (the “**Executive Life Insurance Plan**”), which is partially insured by Northwestern Mutual Life Insurance Company (“**Northwestern**”) and Prudential and is administered by Clary Executive Benefits LLC (“**Clary**”).⁵⁴ The Executive Life Insurance Plan provides coverage of two times base salary for eligible executives. The Executive Life Insurance Plan also includes a post-retirement death benefit of \$400,000 for participating board-elected officers and \$100,000 for participating key employees. The Debtors transfer approximately \$250,000 annually in July to Northwestern for

⁵¹ With respect to Hourly Employees, this coverage amount applies to Hourly Employees working at the Debtors’ Sherrill, Milwaukee, Munnsville, and Lee’s Summit locations.

⁵² This coverage amount applies to Hourly Employees working at the Debtors’ Auburn, Poplar Bluff, Tucker and Statesboro locations.

⁵³ There is a small set of Employees eligible for this program, made up of a select group of active executive Employees who were not board-elected officers, plus board elected officers who were elected prior to 2010. Any executive Employee who is not participating in this plan receives the same Basic Life and AD&D as all other Salaried Employees.

⁵⁴ Clary took over administration of the program from Prudential. Prudential provides the first \$50,000 of coverage for active Employees. The remainder of the coverage is provided by Northwestern and, if those two amounts are less than two times the Employee’s base salary, the Company provides the remainder.

the premiums for active and retired participants. As of the Petition Date, the Debtors estimate that they owe approximately \$250,000 in respect of the Executive Life Insurance Plan. The Debtors are not seeking relief with respect to the Executive Life Insurance Plan.

77. Expatriate Life & AD&D. The Debtors offer all Expatriate Employees life and AD&D insurance benefits (the “**Expatriate Life & AD&D Plan**”) through the same Life Insurance and AD&D as other Salaried Employees. There are currently no Expatriate Employees.

78. Supplemental Life Insurance Plans. All Employees can elect to purchase life insurance coverage for their spouses and/or children, as well as purchase additional life and AD&D insurance coverage for themselves (collectively, the “**Supplemental Life Insurance Plans**”), at their own expense. The Supplemental Life Insurance Plans are fully insured by Prudential, and Employees pay 100% of premiums. Premiums for the Supplemental Life Insurance Plans are deducted from participating Employees’ payroll, and then transferred by the Debtors to Prudential on behalf of the Employees. The Debtors transfer approximately \$60,000 per month in withheld Employee contributions to Prudential in connection with the Supplemental Life Insurance Plans. As of the Petition Date, the Debtors estimate that they owe approximately \$34,000 in respect of the Supplemental Life Insurance Plans, all of which will become due and payable during the Interim Period; this amount is included in the total amount for Deductions, provided above. *See, supra*, section II.E.

79. Short Term Disability. The Debtors provide eligible Salaried Employees and Hourly Employees with salary continuation or short-term disability coverage (the “**Short-Term Disability Plan**”), which is a self-funded plan administered by Prudential. Under the Short-Term Disability Plan, eligible Salaried Employees (and Hourly Employees in two

locations) receive full salary continuation for a period that is equal to the lesser of one-half of the Employee's length of service or 180 consecutive calendar days.⁵⁵ The amount of benefits provided to Hourly Employees⁵⁶ under the Short-Term Disability Plan vary by location and the Hourly Employee's length of service with the Debtors, paid as a flat weekly benefit, up to a maximum of 26 weeks.⁵⁷ The Debtors pay 100% of amounts related to the Short-Term Disability Plan. The Debtors pay approximately \$130,000 per month to Employees on account of the Short-Term Disability Plan. As of the Petition Date, the Debtors estimate that they owe approximately \$130,000 to Employees on account of the Short-Term Disability Plan, all of which will come due and owing during the Interim Period. The Debtors also pay administrative fees of approximately \$15,000 per month to Prudential to administer the Short-Term Disability Plan. As of the Petition Date, the Debtors estimate that they owe approximately \$15,000 to Prudential on account of the Short-Term Disability Plan, all of which will come due during the Interim Period. The Debtors seek authority to pay such amounts.

80. Long-Term Disability. The Debtors provide eligible Salaried Employees (and Hourly Employees in two locations) with long term disability insurance coverage (the "**Long-Term Disability Plan**"), which is a fully-insured plan with Prudential.⁵⁸ The Debtors pay 100% of premiums related to the Long-Term Disability Plan. Under the Long-Term Disability Plan, after a qualifying period, during which salary may be continued under the Short-

⁵⁵ Salaried Employees are eligible for the Short-Term Disability Plan if they work at least 30 hours per week and are Domestic Employees.

⁵⁶ Hourly Employees are eligible for the Short-Term Disability Plan if they work at least 40 hours per week and are Domestic Employees.

⁵⁷ Hourly Employees in the Milwaukee location, who work at least 40 hours per week, receive a monthly benefit of \$375 for a period of either 13 weeks, if the Employee's length of service is less than five years, or 26 weeks, if the Employee's length of service is five years or more. Hourly Employees in all other locations receive a monthly benefit equal to 50% of the Employee's weekly earnings (up to a maximum of \$250), for a period of half of the Employee's length of service, up to a maximum of 26 weeks.

⁵⁸ Salaried Employees are eligible for the Long-Term Disability Pan if they work at least 30 hours per week and are Domestic Employees.

Term Disability Plan, the Debtors provide eligible Employees 60% of their basic earnings, up to maximum of \$15,000 per month, until they reach the age of 65.⁵⁹ The Debtors pay approximately \$25,000 per month to Prudential on account of the Long-Term Disability Plan. As of the Petition Date, the Debtors estimate that they owe approximately \$25,000 on account of the Long-Term Disability Plan, all of which will come due and owing during the Interim Period. The Debtors seek authority to pay such amounts.

(iv) Other Health and Welfare Benefits Administrative Fees

81. The Debtors use bswift and Manhattan Life (together with bswift, the “**Benefit Plan Administrators**”) to help manage and administer their Health and Welfare Benefits, as a whole. The Debtors pay approximately \$45,000 per month to the Benefit Plan Administrators on account of their administrative services, all of which will come due and owing during the Interim Period.⁶⁰ The Debtors seek authority to pay these amounts and any amounts as they come due in the ordinary course.

C. Other Benefits

82. EAP Program. The Debtors provide all Employees access to an employee assistance program (the “**EAP**”), which is administered by FEI Behavioral Health, Inc. (“**FEI**”). The EAP offers Employees and their immediate family members professional support with respect to personal or job-related matters, including the following: drug and alcohol abuse, grief, mental health issues, relationship conflicts, work conflicts, and family care and personal needs, including adoption consultation, child or elder care consultation, education and financial aid

⁵⁹ Basic earnings exclude bonuses and overtime pay up to a \$300,000 annual cap.

⁶⁰ These amounts include the administrative fees associated with the Retiree Health and Welfare Benefits (as defined below).

research, and legal referrals. The Debtors pay FEI approximately \$10,000 per month to maintain the EAP. As of the Petition Date, no amounts are outstanding in respect of these programs.

83. Attendance Award Program. The Debtors reward certain Hourly Employees who have exceptional attendance, in each fiscal year (the “**Attendance Award Program**”). Under the Attendance Award Program, Hourly Employees who work all of their mandatory scheduled hours during the Debtors’ fiscal year receive a bonus vacation day plus \$100 in cash.⁶¹ Bonuses paid in accordance with the Attendance Award Program have historically been paid in the fall bonus payment cycle.⁶² In previous years, the Debtors have paid, in the aggregate, approximately \$120,000 annually to eligible non-insider Employees under the Attendance Award Program. The Debtors estimate that they owe, in the aggregate, approximately \$120,000 to Employees on account of the Attendance Award Program, all of which will come due during the Interim Period. The Debtors seek authority to pay these amounts in the ordinary course, subject to the \$13,650 Cap.

84. Work-Related Travel Services. The Debtors partner with Egencia LLC (“**Egencia**”) to provide travel management services to Employees embarking on business-related travel. The Debtors pay an annual subscription fee, plus a charge for each itinerary, to Egencia, and, in turn, receive cost-savings on Employee business-related travel expenses. The Debtors also offer travel insurance (“**Travel Insurance**”) through Cigna to all Domestic Employees.⁶³ The Travel Insurance provides medical insurance coverage, medical assistance services, and medical evacuation, as necessary, to Employees traveling outside of their home country on company business. In addition, the Debtors offer travel AD&D benefits (“**Travel AD&D**”)

⁶¹ This is awarded less any 401(k) contributions.

⁶² The payments to Hourly Employees under the Attendance Award Program coincide with the payments made to Hourly Employees under the HEIP.

⁶³ Expatriate Employees are excluded from this benefit.

through Cigna to Salaried Employees, outside directors, and certain Hourly Employees.⁶⁴ The Debtors pay approximately \$20,000 annually, in the aggregate, to maintain these travel services. As of the Petition Date, the Debtors estimate that they owe approximately \$14,000 on account of the travel services, all of which will come due and owing during the Interim Period. The Debtors seek authority to pay these outstanding prepetition amounts and to continue providing the work-related travel services in the ordinary course of business.

D. Retirement Plans

85. The Debtors provide retirement benefits to Employees and certain Eligible Retirees, though eligibility varies by plan. Employees may be eligible to participate in the following retirement benefits: (i) a 401(k) savings plan (the “**401(k) Plan**”), (ii) other deferred compensation plans, (iii) health and welfare benefits, including life and AD&D insurance, and (iv) Pension Plans (as defined below).

(i) 401(k) Plan

86. The Debtors offer eligible active Employees the opportunity to participate in a 401(k) savings plan (the “**401(k) Plan**”). Under the 401(k) Plan, such Employees can contribute up to seventy five percent (75%) of their gross annual pay up to the maximum amount permitted by the IRS (the “**401(k) Employee Contributions**”). Each eligible Employee’s 401(k) Employee Contributions are deducted automatically from his or her paychecks. The Company provides a matching contribution of up to four percent (4%) of an Employee’s eligible compensation, and a company non-elective contribution of three percent (3%) of an Employee’s eligible compensation (other than for Employees represented by a union) (collectively, the “**401(k) Match**”). The 401(k) Match is fully vested and is made on the applicable pay date.

⁶⁴ The Travel AD&D provides an accidental death benefit to Salaried Employees of ten times base salary, up to a maximum of \$1 million. The accidental death benefit to outside directors is \$150,000.

87. The Debtors transfer approximately \$1,400,000 per month on account of withheld 401(k) Employee Contributions. As of the Petition Date, the Debtors owe approximately \$275,000 in withheld 401(k) Employee Contributions, all of which will become due for transfer during Interim Period, and is included in the total amount for Deductions, provided above. *See, supra*, section II.E. The Debtors contribute approximately \$1,100,000 per month on account of the 401(k) Match. As of the Petition Date, the Debtors owe approximately \$250,000 on account of 401(k) Match, all of which will become due during the Interim Period.

88. The 401(k) Plan is administered by Fidelity Investments. The 401(k) Plan's investment advisor is DiMeo Schneider & Associates, LLC. The fees of Fidelity Investments are approximately \$80,000 per calendar quarter and of DiMeo Schneider & Associates, LLC are approximately \$20,000 per calendar quarter. The 401(k) Plan participants fund the administrative fees through quarterly charges to their 401(k) Plan accounts. As of the Petition Date, the Debtors estimate that \$100,000 is owed on account of the administrative, audit, legal, investment management and oversight fees for the 401(k) Plan (the "**401(k) Administration Fees**").

89. By this Motion, the Debtors seek authority to continue the 401(k) Plan and to pay the 401(k) Match, the 401(k) Contributions and the 401(k) Administration Fees in respect of the 401(k) Plan thereunder as they come due in the ordinary course of business. Although the Debtors expect the 401(k) Administration Fees to be funded by the 401(k) Plan participants, in accordance with past practice, to the extent they are not, the Debtors seek authority to pay such amounts.

(ii) Deferred Compensation Plans

90. The Debtors offer board-elected officers and key managers approved by the Compensation Committee the opportunity to participate in a non-qualified deferred compensation plan that supplements the 401(k) Plan (the “**Key Employee Savings and Investment Plan**”). Under the Key Employee Savings and Investment Plan, such Employees can contribute up to seventy five percent (75%) of their gross annual pay and bonus. The Debtors then provide a matching contribution of fifty percent (50%) of the Employee’s contribution, up to four percent (4%) of an Employee’s eligible compensation, and a company non-elective contribution of three percent (3%) of an Employee’s eligible compensation, when IRS limits are reached under the 401(k) Plan, but subject to reduction for the 401(k) Match. The Key Employee Savings and Investment Plan also provides automatic company contributions for elected officers and key managers. A Rabbi Trust was established in July 2011 to fund account balances in the Key Employee Savings and Investment Plan.

91. The Debtors also offer non-Employee directors the opportunity to participate in a deferred compensation plan (the “**Director Deferred Compensation Plan**,” and together with the Key Employee Savings and Investment Plan, the “**Deferred Compensation Plans**”). Under the Director Deferred Compensation Plan, eligible directors may elect to defer common stock grants and/or cash compensation. Deferred cash compensation is distributed as cash or stock, at the election of the director, in a single lump sum or installments following the director’s separation from service or an earlier designated date, in accordance with the deferral election. Although the Director Deferred Compensation Plan does not have its own trust, there was a Rabbi Trust established in 1989 to provide funding for all officer employment agreements and non-qualified plan benefits on a change in control.

92. Under the Deferred Compensation Plans, deferral elections must be made on or prior to December 31st of the preceding year in which the cash compensation will be earned and/or stock compensation will be granted, as was the case for deferral elections for the 2020 calendar year. The Debtors estimate that deferrals made by participating Employees and directors for calendar year 2020 total approximately \$260,000, in the aggregate, under the Deferred Compensation Plans.

93. Historically, participants have realized certain tax efficiencies by electing to defer payment of a portion of their compensation until after retirement or some other date in the future. However, because the Deferred Compensation Plans are unfunded, unsecured obligation of the Debtors and because the Deferred Compensation Plans' assets, including the Rabbi Trusts, are available to the Debtors' unsecured creditors, if the Deferred Compensation Plans were maintained after the Petition Date, participating Employees and directors would never receive their Deferred Compensation Plans contributions from their postpetition wages and salaries. The Debtors intend to send notices to the trustees under the Rabbi Trusts to release the trust assets. Thus, rather than providing an income-enhancing tax benefit, any contributions or deferrals made on account of the Deferred Compensation Plans will inequitably lower the participant's base compensation. Terminating the future contributions, however, may subject participants to adverse tax consequences absent compliance with Section 409A of the Internal Revenue Code of 1986, as amended, and Treasury Regulations thereunder (the statute and regulations, "**Section 409A**"), unless the Deferred Compensation Plans are terminated in accordance with Section 409A. Section 409A permits termination and liquidation of a nonqualified deferred compensation plan with the approval of a bankruptcy court. Once terminated, the Debtors may pay amounts of postpetition wages and salaries to participants that

would have otherwise been deferred, without adverse tax consequences to the participant, to the extent such distributions would qualify as administrative claims under section 503(b)(1)(A) of the Bankruptcy Code.

94. With respect to the Deferred Compensation Plans, the Debtors are seeking an order of this Court, after a final hearing, pursuant to section 363(b)(1) of the Bankruptcy Code and Rule 6004 of the Bankruptcy Rules, authorizing the Debtors to (i) terminate the Deferred Compensation Plans retroactive to the Petition Date and (ii) pay in full any portion of an Employee's regular postpetition income, earned on account of postpetition services provided for the benefit of the Debtors, that has been deferred or contributed to the Deferred Compensation Plans, or that has been elected for contribution to the Deferred Compensation Plans for the remainder of calendar year 2020 and going forward. In other words, to the extent any postpetition deferrals occur after the Petition Date, but prior to Bankruptcy Court approval of a retroactive termination date of the Deferred Compensation Plans, the Debtors seek authority to pay amounts equal to the participant deferrals to the Deferred Compensation Plans to participants as administrative expenses, in order to make the participating Employees and directors whole with respect to their postpetition wages.

(iii) Retirement Health and Welfare Benefits

95. Until recently, the Debtors maintained various benefits, including medical, prescription drug, dental, and vision benefits, health reimbursement accounts, life insurance, and AD&D insurance (collectively, the "**Retiree Health and Welfare Benefits**") for eligible retired employees ("**Eligible Retirees**"), which are provided under a group insurance plan for Eligible Retirees of Briggs & Stratton Corporation, Plan Number 502 (the "**Retiree Group Insurance Plan**"). Health coverage was provided to approximately 450 Eligible Retirees and life insurance

coverage was provided to approximately 4,000 Eligible Retirees.⁶⁵ Most of the Retiree Health and Welfare Benefits require Eligible Retirees to make contributions, which are paid from Eligible Retirees' pensions and/or through payments by Eligible Retirees to bswift.

96. On July 19, 2020, the Board of Directors of the Company exercised the Company's right to terminate the Retiree Group Insurance Plan. To implement the termination in a way that minimizes disruption to Eligible Retirees and enable them to obtain substitute coverage, coverage will not cease until August 31, 2020. Pursuant to the *Motion of Debtors for Order (I) Confirming Inapplicability of Section 1114 of the Bankruptcy Code, (II) In the Alternative, Approving Debtors' Prepetition Termination of Retiree Benefits Pursuant to Section 1114(L) of the Bankruptcy Code; and (III) Granting Related Relief* (the "**Retiree Benefits Motion**"), filed concurrently herewith, the Debtors have sought entry of an order confirming that section 1114 of the Bankruptcy Code is inapplicable because the Company properly exercised its contractual right to unilaterally terminate the Retiree Group Insurance Plan prepetition.⁶⁶

97. As of the Petition Date, the Debtors estimate that they owe approximately \$1,020,000, in the aggregate, in respect of the Retiree Health and Welfare Benefits, \$596,000 of which will become due and payable during the Interim Period. The Debtors seek authority to pay prepetition payments on account of the Retiree Health and Welfare Benefits and to continue paying postpetition amounts for claims incurred through August 31, 2020 as they come due in the ordinary course.

⁶⁵ In addition, there are approximately 245 active employees currently eligible for retiree health coverage and 260 active employees currently eligible for retiree life insurance coverage, but who have not yet retired.

⁶⁶ In the alternative, if the Court determines that section 1114 of the Bankruptcy Code applies, the Debtors are seeking a determination through the Retiree Benefits Motion that the balance of the equities warrants termination of the Retiree Group Insurance Plan pursuant to section 1114(l) of the Bankruptcy Code.

98. Retiree Health Coverage. Although the health coverage provided to Eligible Retirees varies depending on certain factors, such as an Eligible Retiree's years of service, generally, under the Retiree Health and Welfare Benefits, Eligible Retirees continue with the same medical, dental and vision benefits as active Employees, but participation in the Wellness Program ends at retirement.⁶⁷ The medical, prescription drug, and dental programs provided by the Retiree Group Insurance Plan are self-funded by the Debtors. Pursuant to these self-funded programs, claims are submitted to the applicable benefits provider on account of services rendered to Eligible Retiree participants (the "**Retiree Health Benefit Claims**"). As self-funded plans, the Debtors fund a portion of all medical and dental claims submitted to the applicable Health Benefits Provider on account of services rendered to Retiree participants ("**Retiree Health Benefit Claims**"), with the Retiree participant paying the rest. The Debtors' share of Retiree Health Benefit Claims are paid by the Debtors to the Health Benefit Providers, which pay the medical professional providing the service. Retiree participants pay their share of Retiree Health Benefit Claims (*i.e.*, copays and deductibles) from their own pockets, their Health Reimbursement Account, or their Health Savings Account. The average monthly amount of Retiree Health Benefits Claims allocable to the Debtors has been approximately \$480,000. As of the Petition Date, the Debtors estimate that approximately \$942,000 of Retiree Health Benefit Claims have been incurred, but not yet processed, \$848,000 of which are allocable to the Debtors. The Debtors estimate that approximately \$424,000 of the Retiree Health Benefit Claims will become due and payable during the Interim Period.

99. Administrative Fees. The Debtors also pay fees for the administrative services provided by the benefit providers for Retirees who are participants in the Debtors' self-

⁶⁷ The Retiree Benefits Motion provides more detailed descriptions of the Retiree Health and Welfare Benefits provided under the Retiree Group Insurance Plan.

funded plans. On an average monthly basis, the Debtors' aggregate portion of administrative fees owed to the benefit providers on account of the self-funded Retiree Health and Welfare Benefits is \$25,000. The Debtors also pay administrative fees related to Retiree Group Insurance Plan to a number of other providers for various health-related services, including health advocacy, consulting, plan administration, and a Medicare retiree drug subsidy program, amounting to \$44,000 per month, in the aggregate.⁶⁸ As of the Petition Date, the Debtors estimate that they owe approximately \$69,000 in administrative fees related to the Retiree Group Insurance Plan, all of which will be due and payable during the Interim Period.

100. Retiree Life Insurance. Prior to termination on July 19, 2020 (for coverage through August 31, 2020), the Debtors also maintained life insurance and in some cases, AD&D insurance, for eligible Retirees (the "**Retirement Life Insurance Plan**"), which was fully insured by Prudential. Approximately 4,000 Eligible Retirees participated in the program. The Debtors paid 100% of premiums under the Retirement Life Insurance Plan, totaling approximately \$100,000 a month. As of the Petition Date, the Debtors estimate that they owe approximately \$100,000 to Prudential on account of the Retirement Life Insurance Plan, all of which will become due and payable during the Interim Period.

101. Retiree Supplemental Life & AD&D. Eligible Retirees may also elect to participate in supplemental life and AD&D insurance coverage, which is fully insured by Prudential. Eligible Retirees pay 100% of premiums. The Debtors transfer approximately \$7,000 per month in contributions by Eligible Retirees in connection with the Supplemental Life Insurance Plans. As of the Petition Date, the Debtors estimate that they owe approximately

⁶⁸ This figure represents amounts owed to United Healthcare, Aetna, SilverScripts, AMA, and TransAmerica.

\$7,000 to Prudential on account of Eligible Retiree contributions, all of which will become due and payable during the Interim Period.

(iv) Pension Plans

102. The Debtors sponsor two qualified defined benefit pension plans in the United States, the Briggs & Stratton Corporation Pension Plan (the “**Qualified Pension Plan**”) and the Briggs & Stratton Corporation Cash Balance Retirement Plan (the “**Cash Balance Plan**”, and together with the Qualified Pension Plan, the “**Pension Plans**”), covering certain of the Company’s active and former Employees, including Union employees. The Pension Plans are closed to new entrants, and accrual of benefits under the Pension Plans have been frozen for all participants as of December 31, 2013. As of the Petition Date, approximately \$415,000 is owed for the administration, actuarial, audit, legal, investment management and oversight fees for the Pension Plans (the “**Pension Administrative Costs**”).⁶⁹ The Pension Administrative Costs are paid directly out of the trusts for the Pension Plans. The Debtors are not seeking authority to pay any prepetition Pension Administrative Costs. Furthermore, under the Employee Retirement Income Security Act of 1974 (“**ERISA**”), the Company is not required to make minimum funding contributions in connection with the Pension Plans in either of fiscal years 2020 or 2021. In addition, in connection with the Pension Plans, the Company is obligated, pursuant to ERISA, to make certain statutory insurance premium payments to the Pension Benefit Guaranty Corporation (the “**PBGC Premiums**”). The PBGC Premiums are payable annually and have been historically paid out of the Pension Plans’ trusts. The Company paid \$3,135,000 in PBGC Premiums on April 15, 2020. There are no outstanding amounts owed on account of the PBGC Premiums.

⁶⁹ This figure includes the following aggregate fees: Mercer Investment Fee, Mercer Actuary Fee, Fidelity Benefits Admin Fee, Northern Trust Custodian/Trustee Fee, Northern Trust Benefit Payments Fee, Wipfli Audit Fee and Foley & Lardner ERISA Counsel legal fees.

103. Historically, the Debtors have offered certain Board-elected officers and other employees designated by Company management who were participants in the Qualified Pension Plan as of January 1, 2008 or whose benefits or eligible pension plan pay exceeded IRS limits the opportunity to participate in the Supplemental Executive Retirement Plan and/or the Supplemental Employee Retirement Plan (the “SERPs”). The SERPs provide supplemental benefits in excess of the pension benefits than can be provided under the Qualified Pension Plan. The SERPs are unfunded, nonqualified plans. The Debtors also had arrangements with four former employees and one current employee detailing a monthly payment that the individual is to receive for 121 months after retirement, amounting to approximately \$72,000 annually in payments, in the aggregate. The Debtors do not seek any relief in connection with the SERPs or the five individual arrangements in this Motion.

Basis for Relief Requested

104. The Debtors require a stable workforce to preserve and maximize the value of the Debtors’ estates. To minimize the personal hardship the Employees and Supplemental Workforce will suffer in connection with the filing of the Chapter 11 Cases, by this Motion, the Debtors request entry of an order authorizing the Debtors, in their sole discretion, to (i) make certain payments consistent with existing practices, policies, and programs to the extent such payments would otherwise be inconsistent with the provisions of the Bankruptcy Code, (ii) continue to honor certain practices, programs, and policies with respect to their Employees and Supplemental Workforce, as such were in effect as of the Petition Date, and (iii) discontinue the Deferred Compensation Plans. Particularly given the reductions in force that have recently occurred and are described in the Ficks Declaration, there is a real, immediate risk that, absent the relief requested in this Motion, Employees would no longer support and maintain

the operations of the Debtors, thereby crippling the Debtors' ability to maximize successfully the value of their estates during the Chapter 11 Cases.

A. Payment of the Employee Obligations is Warranted Under Sections 363(b)(1) and 105(a) of the Bankruptcy Code and the Doctrine of Necessity

105. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code, which 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). 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 must be supported by sound business reasons. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Nine West Holdings, Inc.*, 588 B.R. 678, 686 (Bankr. S.D.N.Y. 2018). The business judgment rule is highly deferential to debtors and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997)).

106. In addition, under section 105(a) of the Bankruptcy Code, “[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); *see also In re NWFEX, Inc.*, 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy, however, is that equitable principles govern”); *In re Wehrenberg, Inc.*, 260 B.R. 468, 469 (Bankr. E.D. Mo. 2001) (“Pursuant to 11 U.S.C. § 105(a) the Court may authorize the payment of prepetition claims when such payments are necessary to the continued operation of the Debtor”). Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first 21 days of

a case where doing so is “necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. 6003. Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate.

107. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. Authorizing the Debtors to pay prepetition wages and honor certain employee benefits will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption, preserving the value of the Debtors’ assets and cash flows throughout these chapter 11 cases. Indeed, without the relief requested herein being granted, the Debtors’ Employees may seek alternative opportunities, perhaps with the Debtors’ competitors. The loss of valuable Employees would deplete the Debtors’ workforce, thereby hindering the Debtors’ ability to meet their customer obligations and likely diminishing stakeholder confidence in the Debtors’ ability to carry out their chapter 11 strategy and sale process successfully.

108. Failure to satisfy certain prepetition obligations will likely lead to significant attrition and jeopardize Employee morale and at a time when Employee support is critical to preserving the value of the Debtors’ business. The majority of the Debtors’ Employees rely exclusively on their compensation and benefits and the reimbursement of their expenses to satisfy their daily living expenses. These Employees will be exposed to significant financial difficulties and other distractions if the Debtors are not permitted to honor their obligations for unpaid compensation, benefits and reimbursable expenses. Furthermore,

Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at a critical juncture.

109. Similarly, the Supplemental Workforce is an important component of the Debtors' businesses. Using Staffing Providers for purposes such as fulfilling seasonal shifts to ramp up and ramp down manufacturing allows the Debtors greater flexibility to adjust to market demands, and may be necessary to stabilize the workforce in light of the recent reductions-in-force and planned future reductions. Furthermore, the Sales Representatives promote sales of the Debtors' products to dealers, thus contributing to the Debtors' overall revenues from sales. Accordingly, failure to pay timely the Supplemental Workforce Obligations could endanger the Debtors' manufacturing capabilities and prospects of successful product sales, which could have negative effects on the Debtors' restructuring and asset sale process.

B. Payment of the Employee Obligations Would Not Prejudice Parties in Interest

110. The Debtors are seeking to pay Employees amounts owed on account of prepetition wages, salaries, commissions, Vacation Leave, severance, and/or contributions to an employee benefit plan up to the aggregated \$13,650 Cap. The Debtors believe that the vast majority of the prepetition Employee Obligations that the Debtors seek to pay constitute priority claims under sections 507(a)(4) or (5) of the Bankruptcy Code. As priority claims, the Employee Obligations are entitled to payment in full before any general unsecured claims asserted against the Debtors can be satisfied. Thus, the relief requested largely affects only the timing of the payment of the priority Prepetition Employee Obligations and should not prejudice the rights of general unsecured creditors or other parties in interest. Furthermore, the Debtors believe that applying the \$13,650 Cap to all Employees will minimize the administrative burden associated with calculating complex individual accruals and entitlements for each respective benefits.

C. Payment of Certain Employee Obligations is Required by Law

111. The Debtors seek authority to pay Deductions and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including contributions to the Employee Benefit Programs and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b). Further, federal and state laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (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); *DuCharmes & Co., Inc. v. State of Mich (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). The Eighth Circuit has similarly established that a debtor does not have an equitable interest in the property held in trust for another, but rather that the trustee "[holds] bare legal title to the trust res subject to a duty to reconvey it to the rightful owner." *See Chiu v. Wong*, 16 F.3d 306, 310 (8th Cir. 1994) (citation omitted) (allowing plaintiff to impose a constructive trust on former debtor's estate to recover amount former debtor had previously invested). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Payroll Taxes to the proper parties in the ordinary course of business.

D. The Debtors Should Be Authorized to Terminate the Deferred Compensation Plans Pursuant to Section 363(b) of the Bankruptcy Code

112. Terminating the Deferred Compensation Plans is a sound exercise of the Debtors' business judgment and is in the best interests of the Debtors' estates and stakeholders. Any portion of compensation deferred by an Employee or director pursuant to the Deferred Compensation Plans will only be recoverable as a general unsecured claim against the Debtors' estates, even for amounts earned postpetition. *See, e.g., In re Silicon Graphics, Inc.*, 363 B.R. 690, 700 (Bankr. S.D.N.Y. 2007); *In re The Colonial BancGroup, Inc.*, 436 B.R. 695, 712 (Bankr. M.D. Ala. 2010). Thus, if the Debtors do not terminate the Deferred Compensation Plans, rather than providing a compensation-enhancing benefit to participating Employees and directors, the Deferred Compensation Plans would inequitably lower participants' effective compensation. Putting participants' compensation at risk would negatively impact the morale of key members of the Debtors' workforce and have a negative effect on the administration of the Debtors' chapter 11 cases, to the detriment of all stakeholders. Moreover, the express terms of the Deferred Compensation Plans permit the Debtors to terminate the Deferred Compensation Plans at any time.

113. Accordingly, the Debtors submit that the relief requested with respect to terminating the Deferred Compensation Plans is a valid exercise of the Debtors' business judgment, and that terminating the Deferred Compensation Plans is in the best interests of the Debtors, their estates, and all parties in interest in these chapter 11 cases.

114. Further, termination of the Deferred Compensation Plans absent Bankruptcy Court approval may have adverse tax consequences. Because the Deferred Compensation Plans provide a form of deferred compensation, they are subject to the requirements of Section 409A, which impose a tax penalty (in addition to ordinary income tax)

on participants in nonqualified deferred compensation plans, including plans that are terminated and liquidated “proximate to a downturn in the financial health” of the employer, unless such terminations are made pursuant to bankruptcy court order. Treas. Reg. § 1.409A-3(j)(4)(ix)(C)(1). Nonqualified deferred compensation plans, can, however, be terminated “with approval of a bankruptcy court”. Treas. Reg. § 1.409A-3(j)(4)(ix)(A). Additionally, distributions upon plan termination can be made with respect to a deferred compensation plan subject to IRC Section 409A, without additional penalties, if such payments are authorized by a bankruptcy court pursuant to 11 U.S.C. § 503(b)(1)(A).

115. As discussed above, if the Debtors do not terminate the Deferred Compensation Plans in the near-term, a portion of certain of the participants’ postpetition salaries or fees will be contributed to the Deferred Compensation Plans, inequitably reducing such participants’ postpetition base compensation, negatively impacting the Debtors’ objective of consummating a value-maximizing restructuring for the benefit of all stakeholders. Accordingly, the Court should authorize termination of the Deferred Compensation Plans.

116. Although the Debtors intend to cease Deferred Compensation Plan deferrals postpetition so that these deferrals do not occur after the Petition Date, out of an abundance of caution and to ensure compliance with IRC section 409(A), the Debtors request authority to pay to participating Employees and directors, as an administrative expense under section 503(b)(1)(A), any postpetition deferrals or contributions of the participants’ salaries, earned on account of postpetition services provided to the Debtors, including any amounts that have been elected for deferral for calendar year 2020 but that have not yet been contributed under the Deferred Compensation Plans. Section 503(b)(1)(A) of the Bankruptcy Code expressly provides that “the actual, necessary costs and expenses of preserving the estate”

include “wages, salaries, or commissions for services rendered after the commencement of the case” 11 U.S.C. § 503(b)(1)(A); *see also In re Continental Airlines, Inc.*, 148 B.R. 207, 212 (D. Del. 1992) (wage claims which are paid to induce employees to continue to work for an employer who has filed a petition for Chapter 11 are necessary for the preservation of the estate and thus are an administrative priority).

E. Debtors Do Not Seek to Make Severance Payments Outside the Scope of Section 503(c) of the Bankruptcy Code

117. The Non-Insider Severance Program does not implicate section 503(c)(2) of the Bankruptcy Code because none of the participants in such practice are insiders. In addition, the Non-Insider Severance Plan does not implicate section 503(c)(3) of the Bankruptcy Code because it is within the ordinary course of the Debtors’ business. *See* 11 U.S.C. § 503(c)(3) (prohibiting certain payments “outside of the ordinary course of business”). If section 503(c) is not implicated, the Court may grant the requested relief if it finds that the Non-Insider Severance Program satisfies the requirements of section 363(c)(1) of the Bankruptcy Code. *See In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007) (noting that ordinary course transfers under section 363(c)(1) of the Bankruptcy Code do not implicate section 503(c) of the Bankruptcy Code).

118. Section 363(c)(1) of the Bankruptcy Code authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” The purpose of section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without unneeded oversight by its creditors or the court. *See In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992).

119. For the reasons stated, discretion to continue this practice – like all of the relief sought in this Motion – is critical and necessary to assuage fear and motivate the Workforce to help achieve the Debtors’ chapter 11 objectives. Accordingly, the requested relief should be approved. Courts in this district have routinely granted relief similar to that requested herein. *See, e.g. In re Foresight Energy LP*, No. 20-41308 (KSS) (Bankr. E.D. Mo. Apr. 7, 2020) (authorizing payment of prepetition wages, taxes, various employee benefits, and reimbursable employee business expenses, among other things); *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. Apr. 14, 2016) (same); *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. Feb. 9, 2016) (authorizing payment for production and target-based employee compensation plans, among other things); *In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 13, 2016) (authorizing payment of prepetition wages, health benefits, severance, and reimbursable employee business expenses, among other things); *In re Bakers Footwear Grp., Inc.*, No. 12-49658 (CER) (Bankr. E.D. Mo. Oct. 10, 2012) (same); *In re US Fidelis*, No. 10-41902 (CER) (Bankr. E.D. Mo. Mar. 9, 2010) (same); *In re Apex Oil Co., et al.*, No. 87-43804 (BSS) (Bankr. E.D. Mo. Feb. 1, 1988) (authorizing payment of pre-petition wages, vacation pay, income withholding, medical deductions, maintenance, bonuses, and overtime compensation, among other things).

**Applicable Financial Institutions
Should Be Authorized to Receive, Process, Honor, and
Pay Checks Issued and Transfers Requested to Pay Employee Obligations**

120. The Debtors further request that the Court authorize applicable financial institutions (the “**Banks**”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Employee Obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority to issue new

postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or fund transfer requests on account of prepetition Employee Obligations dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

Bankruptcy Rule 6003(b) Has Been Satisfied

121. The Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first 21 days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the Ficks Declaration, the relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtors' inability to transition smoothly into chapter 11. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

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

122. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

Reservation of Rights

123. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (vi) an admission as to the validity of any liens satisfied pursuant to this Motion, or (vii) an approval, assumption,

adoption, or rejection of any agreement, contract, lease, program, or policy 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 the Debtors' rights to dispute such claim subsequently.

Notice

124. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to JPMorgan Chase Bank, N.A., as the administrative agent and collateral agent under the ABL Credit Facility and DIP Facility; (iv) Pryor Cashman LLP (Attn: Seth H. Liberman, Esq. and David W. Smith, Esq.), as counsel to Wilmington Trust, N.A. as indenture trustee under the Unsecured Notes; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Eastern District of Missouri; (vii) the Securities and Exchange Commission; (viii) the Banks; (ix) the Pension Benefit Guaranty Corporation; and (x) and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union, on behalf of its Local 2-232 AFL-CIO, CLC (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

No Previous Request

125. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

[Remainder of Page Intentionally Left Blank]

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 20, 2020
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

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