

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:  
  
FISKER INC., *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11  
  
Case No. 24-11390 (TMH)  
  
(Joint Administration Requested)

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

Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”),<sup>2</sup> each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing (A) Debtors To Continue To Maintain Existing Cash Management System, Bank Accounts, and Business Forms, (B) Debtors To Open and Close Bank Accounts, and (C) Financial Institutions To Administer the Bank Accounts and Honor and Process Related Checks and Transfers, and (II) Waiving Deposit and Investment Requirements* (this “**Motion**”). This Motion is supported by the *Declaration of John C. DiDonato as Chief Restructuring Officer of the Debtors in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings* (the “**DiDonato Declaration**”) filed

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

<sup>2</sup> The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as “**Fisker**” or the “**Company**.”



contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

**Relief Requested**

1. By this Motion, and pursuant to sections 105(a), 345, 363(c)(1), 364(a), and 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit D** and **Exhibit E** (the “**Proposed Orders**”), (a) authorizing, but not directing, the Debtors to (i) continue operating their prepetition cash management system with respect to intercompany cash management, as further described below (the “**Cash Management System**”), (ii) maintain their existing bank accounts (together with any accounts opened after the date hereof, the “**Bank Accounts**” and each, a “**Bank Account**”) located at JPMorgan Chase & Co. (“**JPM**” or the “**Bank**”), with the ability to open and close Bank Accounts post-petition in the ordinary course of business, and (iii) maintain their existing Business Forms (as defined below), (b) authorizing the applicable financial institutions to treat, service, and administer the Bank Accounts in the ordinary course of business and to receive, process, honor, and pay all checks or wire transfers used by the Debtors, and (c) waiving the requirements of section 345(b) of the Bankruptcy Code, rules 2015-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), and section 2 of the U.S. Trustee Guidelines (as defined below) on an interim basis.

**Jurisdiction, Venue, and Authority**

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

#### **A. General Background**

5. On June 17 and 19, 2024 (collectively, the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

6. Contemporaneously herewith, the Debtors have filed a motion requesting the joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

7. Fisker is an American automotive company that designs, develops, markets, and sells electric vehicles. Passionately driven by a vision of a clean future for all, Fisker created the world’s most sustainable and emotional electric vehicles. Headquartered in California, Fisker operates in several countries (including the United States, Austria, Germany, China, and India) and conducts sales operations in North America and throughout Europe.

8. Additional information about the Debtors' business and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the DiDonato Declaration.

**B. The Debtors' Cash Management System**

9. In the ordinary course of business, the Debtors utilize the Cash Management System to collect, disburse, and monitor funds generated by the operations of the Debtors. The Debtors' Cash Management System consists of 12 Bank Accounts with JPM, all of which hold cash denominated in United States Dollars. The Cash Management System also includes 37 non-Debtor bank accounts (the "Non-Debtors Bank Accounts") with JPM, ICICI Bank Limited, China Merchants Bank and Commerzbank AG across 16 different countries. Of the 37 Non-Debtors Bank Accounts, two hold cash denominated in United States Dollars (USD), two holds cash denominated in Chinese Yuan (CNY), two hold cash denominated in Indian Rupees (INR), one holds cash denominated in Mexican Pesos (MXN), 17 hold cash denominated in Euros (EUR), two hold cash denominated in British Pound Sterling (GBP), two hold cash denominated in Canadian Dollars (CAD), two hold cash denominated in Norwegian Kroner (NOK), two hold cash denominated in Danish Kroner (DKK), two hold cash denominated in Swedish Krona (SEK), and three hold cash denominated in Swiss Francs (CHF).

10. A non-exhaustive list of the Bank Accounts (with account numbers partly redacted) is attached hereto as **Exhibit A**. The Debtors believe that all of the Bank Accounts are maintained at a stable financial institution. In addition, a list of the Debtors' outstanding letters of credit (the "**Letters of Credit**") is attached hereto as **Exhibit B**.

11. The Cash Management System has two main components: (a) cash collection and (b) cash disbursement. To provide an overview of the movement of cash through the Cash

Management System, a schematic diagram illustrating the flow of funds through the Cash Management System is attached hereto as **Exhibit C**.

*Cash Collection*

12. A substantial portion of the Debtors' present and expected future revenues consists of income generated from vehicle sales. In addition, the Debtors generate cash receipts from other miscellaneous sources, including software updates and merchandise related to vehicles.

13. Cash generated from operations and other deposits are primarily deposited into (a) a depository account used to collect the majority of customer payments and other deposits (the "**Payment Revenue Account**") or (b) a depository account designated to receive credit card payments relating to deposits for vehicle purchases (the "**Reserved Cars Revenue Account**" and, together with the Payment Revenue Account, the "**Revenue Accounts**"). Pursuant to a blocked account control agreement (the "**BACA**"), the applicable Debtors granted CVI Investments Inc., as collateral agent (the "**Collateral Agent**"), a security interest in the Payment Revenue Account and all funds on deposit therein.

*Cash Disbursements*

14. In the ordinary course of business, the Debtors utilize operating accounts (collectively, the "**Operating Accounts**") to fund their cash disbursements. The applicable Debtors granted the Collateral Agent a security interest in all three of the Operating Accounts and all funds on deposit therein pursuant to a BACA. The primary Operating Account (the "**Main Operating Account**") acts as a central hub for routing funds to (a) the Money Market Accounts (as defined below), (b) the Payroll Account (as defined below), and (c) non-Debtor operating accounts. In addition, the Debtors utilize the Operating Accounts to directly pay vendors and other expenses. The Debtors utilize money market accounts (collectively, the "**Money Market**

**Accounts**”) to invest excess cash in treasuries, asset-backed securities, and other liquid investments with an investment horizon of less than one year. In the ordinary course of business, the Debtors transfer funds from the Money Market Accounts into the Operating Accounts when funds are needed to cover operational disbursements. The Debtors also maintain a disbursement account related to employee payroll and other expenses (the “**Payroll Account**”) and, from time to time in the ordinary course of business, transfer excess funds within the Payroll Account to the Operating Accounts.

15. The Bank Accounts utilized by the Debtors in the Cash Management System are described in further detail below:

<b>Bank Account</b>	<b>Description of Bank Account</b>
<b>Revenue Accounts</b>	
<b>Payment Revenue Account</b>  JPM account ending 8333 Subject to BACA	The Debtors maintain this U.S. deposit account to collect the majority of the customer payments and other deposits in the U.S. The Payment Revenue Account receives wire transfers, electronic fund transfers (“EFTs”), and check deposits in the ordinary course. Funds are regularly distributed from the Payment Revenue Account to the Main Operating Account. As of the Petition Date, the Payment Revenue Account had a balance of \$619,365.
<b>Reserved Cars Revenue Account</b>  JPM account ending 9933	The Debtors maintain this U.S. deposit account to collect the majority of the customer deposits related to vehicle purchases in the U.S. The Reserved Cars Revenue Account only receives credit card payments in the ordinary course. Funds are regularly distributed from the Reserved Cars Revenue Account to the Main Operating Account. As of the Petition Date, the Reserved Cars Revenue Account had a balance of \$112,392.
<b>Operating Accounts</b>	
<b>Main Operating Account</b>  JPM account ending 9867 Subject to BACA	The Debtors maintain this Operating Account to fund operations in the ordinary course of business, typically by direct debit, checks, EFTs, or wire transfers (the “ <b>Main Operating Account</b> ”). The Payment Revenue Account and the Reserved Cars Revenue Account regularly transfer funds to the Main Operating Account to fund the Debtors’ business operations including payroll. Further, the Main Operating Account also transfers excess funds to the Debtors’ Money Market Accounts and to certain non-Debtor operating accounts when required. From time to time, the Debtors transfer excess funds back to the (i) Main Operating Account. As of the Petition Date, the Main Operating Account had a balance of \$968,878.

<b>Bank Account</b>	<b>Description of Bank Account</b>
<b>Terra Energy Operating Account</b>  JPM account ending 9856 Subject to BACA	The Debtors maintain this Operating Account to fund operations in the ordinary course of business for Debtor Terra Energy Inc. (“ <b>Terra Energy Operating Account</b> ”). The Terra Energy Operating Account is a legacy account that is not frequently used, but remains active. As of the Petition Date, the Terra Energy Operating Account had a balance of \$1.
<b>Fisker TN Operating Account</b>  JPM account ending 7106 Subject to BACA	The Debtors maintain this Operating Account to fund operations in the ordinary course of business for Debtor Fisker TN LLC (“ <b>Fisker TN Operating Account</b> ”). The Fisker TN Operating Account is a legacy account that is not frequently used, but remains active. As of the Petition Date, the Fisker TN Operating Account had a balance of \$1,016.
<b>Payroll Account</b>	
<b>Payroll Account</b>  JPM account ending 6539	The Debtors utilize this Payroll Account primarily to fund the Debtors’ payroll administrator for employee wages and benefits. The Main Operating Account transfers funds to the Payroll Account when payroll disbursements and other payroll related expenses become due, with any excess funds transferred back to the Main Operating Account. As of the Petition Date, the Payroll Account had a balance of \$1,309,748.
<b>Money Market Accounts</b>	
<b>Prime Money Market Fund Account</b>  JPM account ending 4563	The Debtors maintain this Money Market Account for cash investments (“ <b>Prime Money Market Fund Account</b> ”) and serves as the main Money Market Account utilized by the Debtors to hold excess cash. The Main Operating Account is the only account in which the Debtors transfer funds to or from the Prime Money Market Fund Account. Historically, the Debtors transferred excess funds not required to fund the Debtors’ business operations to the Prime Money Market Fund Account for short-term cash investments in U.S. treasuries, asset-backed securities, and/or other short-term liquid investments with an investment horizon of less than one year. As of the Petition Date, the Prime Money Market Fund Account had no balance.
<b>Reserved Cars Money Market Account</b>  JPM account ending 7965	The Debtors maintain this Money Market Account for cash investments related to deposits received from customers for the purchase of vehicles (“ <b>Reserved Cars Money Market Account</b> ”). The Reserved Cars Money Market Account is a legacy account that is not frequently used, but remains active. As of the Petition Date, the Reserved Cars Money Market Account had a balance of \$21,481.
<b>L/C Money Market Account</b>  JPM account ending 8759	The Debtors maintain this Money Market Account for cash investments in connection with funds reserved for purposes of supporting the Debtors’ letters of credit (“ <b>L/C Money Market Account</b> ”). Historically, the Debtors disbursed surplus funds not needed to fund the Debtors’ business operations to the L/C Money Market Account from the Main Operating Account for short-term cash investments in U.S. Treasuries, money markets, and/or other short-term investments. As of the Petition Date, the L/C Money Market Account had a balance of \$11.

<b>Bank Account</b>	<b>Description of Bank Account</b>
<b>Corporate Tax Money Market Account</b>  JPM account ending 7809 Subject to BACA	The Debtors maintain this Money Market Account for cash investments in connection with sales and use taxes owed by the Debtors in the ordinary course (“ <b>Corporate Tax Money Market Account</b> ”). The Debtors transfer funds in the amount equivalent of forecasted sales and use taxes for the Debtors’ business operations to the Corporate Tax Money Market Account from the Main Operating Account for short-term cash investments. The Corporate Tax Money Market Account is also utilized for purposes of issuing sales and use tax payments. As of the Petition Date, the Corporate Tax Money Market Account had a balance of \$189,225.
<b>Prime Liquidity Money Market Account</b>  JPM account ending 0312	The Debtors maintain this Money Market Account for cash investments (“ <b>Prime Liquidity Money Market Account</b> ”). The Prime Liquidity Money Market Account is a legacy account that is not frequently used, but still active. As of the Petition Date, the Prime Money Market Fund Account had no balance.
<b>Chase Auto Money Market Account</b>  JPM account ending 2188	The Debtors maintain this Money Market Account to meet required cash reserves from JPM for customer car loans (“ <b>Chase Auto Money Market Account</b> ”). The Main Operating Account transfers funds to the Chase Auto Money Market Account as a reserve for car loans with title registrations that were not fully processed and provided to customers as part of the Debtors’ business operations. As of the Petition Date, the Chase Auto Money Market Account had a balance of \$1,005,510.

*Banking and Processing Fees*

16. In the ordinary course of business, the Debtors pay, honor, or allow the deduction from the appropriate Bank Accounts, certain service charges, and other fees, costs, and expenses (collectively, the “**Bank Fees**”). The Bank Fees are paid by the Debtors monthly via automatic debiting fees to their Bank of approximately \$997 per month in the aggregate. In addition, in the ordinary course of business, credit card processors may charge, and the Debtors may pay, certain fees, charges, refunds, chargebacks, reserves, and other amounts due and owing from the Debtors to the credit card processors (collectively, the “**Merchant Services Obligations**”).

*Corporate Credit Card Programs*

17. In the ordinary course of business, the Debtors maintain two corporate credit card programs to help fund their operations: (a) a corporate program issued by JPM (the “**JPM Program**”) and (b) a corporate program issued by American Express (the “**American Express Program**”) and, together with the JPM Program, the “**Corporate Credit Card Programs**”).



18. The JPM Program is used in the ordinary course of business by the Debtors to purchase products used in the Debtors' supply chains and for general corporate functions. There are approximately 10 corporate credit cards used by the Debtors under the JPM Program. The Debtors incur on average approximately \$151,093.13 in charges through the JPM Program per month. The Debtors estimate that, as of the Petition Date, approximately \$14,035.31 in outstanding prepetition amounts is owed on account of the JPM Program.

19. Under the American Express Program, certain of the Debtors use credit cards issued by American Express for purposes of travel associated with the Debtors' ordinary course of business. There are two American Express Program cards used by the Debtors which are now frozen. The Debtors incur on average approximately \$203,699.52 in charges through the American Express Program per month. The Debtors estimate that, as of the Petition Date, approximately \$6,419.78 in outstanding prepetition amounts is owed on account of the American Express Program.

20. By this Motion, the Debtors seek authority to continue the Corporate Credit Card Programs in the ordinary course of business, including making ordinary course modifications thereto, and to pay any outstanding amounts, regardless of whether such amounts arose before or after the Petition Date, in the ordinary course and consistent with historical practices; *provided*, that the maximum amounts that the Debtors shall pay in the aggregate on account of prepetition balances and fees due and owing owed under the Corporate Credit Card Programs shall be \$20,455.09, all of which shall be paid on an interim basis.

*Business Forms*

21. As part of the Cash Management System, the Debtors utilize numerous preprinted correspondence and business forms, including purchase orders, letterhead, envelopes, promotional

materials, checks, invoices, sales orders, acknowledgements, and other business forms (collectively, the “**Business Forms**”), in the ordinary course of their business. The Debtors also maintain books and records to document, among other things, their profits and expenses. To minimize expenses to their estates and avoid confusion on the part of customers, vendors, and suppliers during the pendency of the Chapter 11 Cases, the Debtors request that the Court authorize their continued use of all correspondence and Business Forms (including letterhead, purchase orders, invoices, as well as preprinted and future checks) as such forms were in existence immediately before the Petition Date, without reference to the Debtors’ status as debtors in possession, rather than requiring the Debtors to incur the expense and delay of ordering entirely new business forms as required under the U.S. Trustee Guidelines.

#### **Basis for Relief**

##### **A. The Continued Use of the Debtors’ Cash Management System, Bank Accounts, and Business Forms is Necessary for the Preservation of the Debtors’ Estates**

22. The office of the U.S. Trustee for the District of Delaware (the “**U.S. Trustee**”) has established guidelines (the “**U.S. Trustee Guidelines**”) to supervise the administration of chapter 11 cases. The U.S. Trustee Guidelines and Local Rules require a chapter 11 debtor to, among other things, (a) close all existing bank accounts over which the Debtor has possession, (b) open new bank accounts in depositories, approved by the U.S. Trustee, and that are designated as debtor in possession accounts (“**DIP Accounts**”), with separate DIP Accounts established for an operating account, a tax account (to the extent that payroll or other taxes are an issue for the debtor), cash collateral (to the extent required by court order), and a payroll account (to the extent that the debtor had a separate payroll account prepetition), (c) obtain and utilize new checks for all DIP Accounts that bear the designation “Debtor in Possession” and contain other information about the debtors’ chapter 11 case, and insure that the signature cards for all DIP Accounts clearly

indicate that the debtor is a “Chapter 11 Debtor in Possession”, (d) deposit all receipts and make all disbursements only through the approved DIP Accounts, with any funds in excess of those required for current operations being maintained in a DIP interest-bearing account, (e) deposit to the tax DIP Account sufficient funds to pay all tax liability, (f) deposit all estate funds into DIP Accounts with a financial institution that agrees to comply with the requirements of the U.S. Trustee (which will be monitored by the U.S. Trustee), with no DIP Account exceeding the insured or collateralized limits of that approved depository, and (g) provide copies of bank statements for prepetition bank accounts and/or post-petition DIP Accounts, or other supporting documentation upon request by the U.S. Trustee. *See U.S. Trustee Guidelines, Information Regarding Bank Accounts*, at §§ A-G. Additionally, section 345(b) of the Bankruptcy Code requires the holders of deposits that are not insured by the United States or backed by the full faith and credit of the United States to obtain a bond or other security. *See* 11 U.S.C. § 345(b). These requirements under the U.S. Trustee Guidelines are designed to establish a clear line of demarcation between prepetition and post-petition claims and payments and to help protect against a debtor’s inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the commencement of the debtor’s chapter 11 cases.

23. The Debtors hereby seek (a) authority to continue using their current centralized, integrated Cash Management System and (b) a waiver of the requirements of the U.S. Trustee Guidelines and Local Rule 2015-2(a), which would require, among other things, the closure of the Bank Accounts, the opening of new deposit accounts, and the immediate ordering of new business forms with a legend identifying each of the Debtors as “Debtor in Possession,” to the extent that they prohibit the Debtors from continuing to utilize their existing Cash Management System. It is essential that the Debtors be permitted to continue to consolidate the management of their cash as

necessary and appropriate to continue the operation of their business and preserve the value of their estates.

24. The basic structure of the Cash Management System constitutes the Debtors' ordinary, usual, and essential business practices. The Cash Management System is similar to those commonly employed by corporate enterprises comparable to the Debtors in size and complexity. The Cash Management System is integrated with the Debtors' accounting processes and software that produce the Debtors' financial statements and includes the necessary accounting controls to enable the Debtors, as well as other interested parties in the Chapter 11 Cases, to trace funds through the system. The design, development, testing, and implementation of this portion of the Debtors' accounting system, and its interfacing with the Cash Management System, require the dedicated efforts of a significant number of the Debtors' employees. If the Debtors were required to dismantle the Cash Management System, it would disrupt the Debtors' day-to-day operations and their accounting processes and software. Dismantling the Cash Management System would also impair the Debtors' ability to generate timely reports of transactions and balances, as well as financial statements required under the Debtors' prepetition credit documents.

25. The widespread use of similar cash management systems is attributable to the numerous benefits they provide, including the ability to tightly control corporate funds, ensure cash availability, and reduce administrative expenses by facilitating the expeditious movement of funds and developing of timely and accurate account balance and presentment information. These controls are particularly important here, given the significant amount of cash that flows through the Cash Management System on an annual basis.

26. It would be very time consuming, difficult, and costly for the Debtors to establish an entirely new system of accounts and a new cash management system, and doing so would

disrupt the Debtors' relationships with their key counterparties and suppliers. The attendant delays from opening new accounts, revising cash management procedures, and instructing their commercial counterparties and countless other entities to redirect payments would negatively impact the Debtors' ability to operate their business and preserve the value of their estates while pursuing these arrangements. Under the circumstances, maintenance of the Cash Management System is essential and clearly in the best interest of the Debtors' estates. Furthermore, preserving the "business as usual" atmosphere and avoiding the unnecessary and costly distractions that would inevitably be associated with any substantial disruption to the Cash Management System would facilitate the Debtors' efforts to maximize the value of their estates in the Chapter 11 Cases. In short, any benefits of the Debtors' strict compliance with the U.S. Trustee Guidelines and Local Rule 2015-2(a) would be far outweighed by the resulting expense, inefficiency, and disruption to the Debtors' business.

27. Similarly, to avoid delays in payments to administrative creditors, to ensure as smooth a transition into chapter 11 as possible with minimal disruption, and to aid in the Debtors' efforts to preserve and enhance the value of the Debtors' estates, it is important that the Debtors be permitted to continue to maintain the Bank Accounts with the same account numbers following the commencement of the Chapter 11 Cases, subject to a prohibition against honoring checks issued or dated before the Petition Date absent a prior order of the Court.

28. By avoiding the disruption and delay to the Debtors' disbursements that would necessarily result from closing the Bank Accounts and opening new Bank Accounts, all parties in interest, including employees, vendors, and counterparties, would be best served by preserving business continuity. The benefit to the Debtors, their business operations, and all parties in interest

would be considerable. The confusion that would ensue absent the relief requested herein would substantially hinder the Debtors' efforts in the Chapter 11 Cases.

29. Further, it would minimize the Debtors' expenses to authorize continued use of the Business Forms, substantially in the forms existing immediately before the Petition Date, without modification to add reference to the Debtors' status as debtors in possession. As a result of the press releases issued by the Debtors and other media coverage, parties doing business with the Debtors undoubtedly would be aware of the Debtors' status as debtors in possession and, thus, in the absence of such relief, the Debtors' estates would be required to bear a potentially significant expense that the Debtors respectfully submit is unwarranted.

30. Once the Debtors' existing checks have been used, the Debtors will, when reordering checks, ensure that the designation "Debtor in Possession" and the corresponding bankruptcy case number will be printed on all checks. With respect to electronic checks and checks that the Debtors or their agents print themselves, the Debtors will begin printing the "Debtor in Possession" legend on such items within twenty-one days of the date of entry of the interim order approving the relief requested herein.<sup>3</sup>

31. Continued use by the Debtors of their Cash Management System, Bank Accounts, and Business Forms in a similar manner as maintained before the Petition Date, with ordinary course changes thereto implemented consistent with past practices, is also appropriate and warranted under sections 363 and 364 of the Bankruptcy Code. Section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to "enter into transactions . . . in the ordinary course of business without notice

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<sup>3</sup> The Debtors reserve the right to seek further extension of the time to begin printing the "Debtor in Possession" legend on checks.

or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). Moreover, section 364(a) of the Bankruptcy Code authorizes a debtor in possession to obtain unsecured credit and incur unsecured debt in the ordinary course of business without notice and a hearing. *See* 11 U.S.C. § 364(a). This provision further supports the relief requested herein and provides the Debtors with the ability, to the extent necessary in the operation of the Cash Management System in the ordinary course, to obtain unsecured credit and incur unsecured debt.

32. The Bankruptcy Code does not define “ordinary course of business.” In determining whether a transaction qualifies as “ordinary course,” the Third Circuit has adopted the “horizontal” dimension test (*i.e.*, whether “from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry”) and “vertical” dimension test (*i.e.*, whether the transaction is consistent with the reasonable expectations of “hypothetical creditor[s]”). *In re Roth Am., Inc.*, 975 F.2d 949, 953 (3d Cir. 1992); *see also Sportsman’s Warehouse, Inc. v. McGillis/Eckman Invs.-Billings, LLC (In re Sportsman’s Warehouse, Inc.)*, No. 09-10990, 2013 WL 492554, at \*9 (Bankr. D. Del. Feb. 7, 2013) (“In determining whether a transaction is in the ordinary course of business, the Third Circuit has adopted the two-part horizontal and vertical dimension test.” (citation omitted)); *In re Blitz U.S.A., Inc.*, 475 B.R. 209, 214 (Bankr. D. Del. 2012) (describing the Third Circuit’s use of the two-part horizontal and vertical dimension test); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007) (“[A] debtor’s pre-petition business practices and conduct is the primary focus of the vertical analysis.”). “The touchstone of ‘ordinariness’ is . . . the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business.” *In re*

*Roth Am., Inc.*, 975 F.2d at 953 (citing *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 394 (S.D.N.Y. 1983)).

33. Included within the purview of section 363(c) of the Bankruptcy Code is a debtor's ability to continue "routine transactions" necessitated by a debtor's business practices. *See In re Roth Am., Inc.*, 975 F.2d at 952 ("The framework of section 363 is designed to allow a trustee (or debtor-in-possession) the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary." (citation omitted)); *Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996) ("A debtor in possession under Chapter 11 is generally authorized to continue operating its business." (citations omitted)); *In re Nellson Nutraceutical, Inc.*, 369 B.R. at 796 (noting that courts have shown a reluctance to interfere in a debtor's making of routine, day-to-day business decisions) (citations omitted). The "routine transactions" necessitated by the Debtors' Cash Management System easily qualify as "ordinary course" under both the "horizontal" dimension test and the "vertical" dimension test—as explained above, the Cash Management System is similar to those commonly employed by corporate enterprises comparable to the Debtors in size and complexity. Accordingly, the Debtors submit that they have authority to continue the collection and disbursement of cash pursuant to their Cash Management System described above under section 363(c)(1) of the Bankruptcy Code and, to the extent such transactions constitute indebtedness, under section 364(a) of the Bankruptcy Code.

34. In fact, courts in this jurisdiction routinely grant relief similar to that requested herein. *See, e.g., In re Cano Health, Inc.*, No. 24-10164 (KBO), (Bankr. D. Del. March 5, 2024) [D.I. 258] (allowing the continued use of cash management systems and prepetition bank



accounts); *In re Revitalid Pharm. Corp.*, No. 23-11704 (BLS) (Bankr. D. Del. Nov. 6, 2023) [D.I. 78] (same); *In re Lincoln Power, L.L.C.*, No. 23-10832 (LSS) (Bankr. D. Del. Apr. 27, 2023) [D.I. 55] (same); *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 20, 2022) [D.I. 176] (same); *In re Salem Harbor Power Dev. LP*, No. 22-10239 (MFW) (Bankr. D. Del. Apr. 19, 2022) [D.I. 111] (same); *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Feb. 7, 2022) [D.I. 123] (same); *In re Alto Maipo Del. LLC*, No. 21-11507 (KBO) (Bankr. D. Del. Dec. 17, 2021) [D.I. 165] (same); *In re PWM Prop. Mgmt. LLC*, No. 21-11445 (MFW) (Bankr. D. Del. Dec. 1, 2021) [D.I. 181] (same). Notably, courts in this district have also allowed debtors to use their prepetition business forms without the “debtor in possession” label with similar conditions. *See, e.g., In re Cano Health, Inc., et al.*, No. 24-10164 (KBO), (Bankr. D. Del. March 5, 2024) [D.I. 258] (authorizing the debtors to continue using their existing business forms and continued performance of intercompany transactions); *In re Revitalid Pharm. Corp.*, No. 23-11704 (BLS) (Bankr. D. Del. Nov. 6, 2023) [D.I. 78] (same); *In re Lincoln Power, L.L.C.*, No. 23-10832 (LSS) (Bankr. D. Del. Apr. 27, 2023) [D.I. 110] (same); *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 20, 2022) [D.I. 176] (same); *In re Salem Harbor Power Dev. LP*, No. 22-10239 (MFW) (Bankr. D. Del. Apr. 19, 2022) [D.I. 111] (same); *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Feb. 7, 2022) [D.I. 123] (same); *In re Alto Maipo Del. LLC*, No. 21-11507 (KBO) (Bankr. D. Del. Dec. 17, 2021) [D.I. 165] (same); *In re PWM Prop. Mgmt. LLC*, No. 21-11445 (MFW) (Bankr. D. Del. Dec. 1, 2021) [D.I. 181] (same). The Debtors submit that the circumstances described herein warrant similar relief.

35. Finally, the Debtors submit that the Debtors’ continued use of the Cash Management System, Bank Accounts, and Business Forms is necessary and appropriate and, therefore, may be authorized by the Court under section 105(a) of the Bankruptcy Code, pursuant

to what is referred to interchangeably as the “doctrine of necessity.” The Court’s power to utilize the “doctrine of necessity” in the Chapter 11 Cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Accordingly, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors’ assets. See *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 235–36 (3d Cir. 2004) (noting that section 105 of the Bankruptcy Code “has been construed to give a bankruptcy court ‘broad authority’ to provide equitable relief appropriate to assure the orderly conduct of reorganization proceedings” (citing *United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990))); *In re Nixon*, 404 F. App’x 575, 578 (3d Cir. 2010) (“It is well settled that the court’s power under § 105(a) is broad.” (citation omitted)); *In re Nortel Networks, Inc.*, 532 B.R. 494, 554 (Bankr. D. Del. 2015) (“The Third Circuit has construed [section 105 of the Bankruptcy Code] to give bankruptcy courts ‘broad authority’ to provide appropriate equitable relief to assure the orderly conduct of reorganization proceedings, and to ‘craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.’” (citation omitted)); *Patrick v. Dell Fin. Servs. (In re Patrick)*, 344 B.R. 56, 58 (Bankr. M.D. Pa. 2005) (“There is no doubt that § 105(a) is a ‘powerful [and] versatile tool’ designed to empower bankruptcy courts to fashion orders in furtherance of the Bankruptcy Code.” (quoting *Joubert v. ABN AMRO Mortg. Grp., Inc. (In re Joubert)*, 411 F.3d 452, 455 (3d Cir. 2005))).

36. The United States Supreme Court first articulated the doctrine of necessity over 140 years ago, in *Miltenberger v. Logansport Ry. Co.*, in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property

and the integrity of the business in receivership. 106 U.S. 286, 311–12 (1882). This doctrine has become an accepted component of modern bankruptcy jurisprudence and its application by courts largely adheres to the Supreme Court’s reasoning in *Miltenberger*. See, e.g., *In re Just for Feet, Inc.*, 242 B.R. at 824-25 (recognizing the use of the “doctrine of necessity”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

37. The Court’s power to utilize the “doctrine of necessity” in the Chapter 11 Cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); see also *United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990) (finding that section 105(a) of the Bankruptcy Code is “consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships” (citations omitted)).

38. Here, continuing the Cash Management System without interruption is vital to the Debtors’ survival and the preservation of the value of the Debtors’ estates. In particular, an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993). The requirement to maintain all accounts separately “would be a huge administrative burden and [be] economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; see also *In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”). The Cash Management System is the mechanism whereby the Debtors are able to transfer their revenue toward the payment of their obligations and without which the

Debtors' operations would be severely disrupted and the value of their estates would be impaired. Similarly, if the Debtors are not permitted to maintain and use their Bank Accounts and continue to use their existing Business Forms as set forth herein, the resulting prejudice would include (a) disruption of the ordinary financial affairs and business operations of the Debtors, (b) delay in the administration of the Debtors' estates, (c) compromise of the Debtors' internal controls and accounting system, and (d) costs to the Debtors' estates to set up new systems, open new accounts, and print new Business Forms. Accordingly, it is well within the Court's equitable power under section 105(a) of the Bankruptcy Code to approve the continued use of the Cash Management System, the Bank Accounts, and Business Forms.

39. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors' estates and stakeholders. Absent this relief, the Debtors' estates would suffer, possibly precipitously and irreparably. Consequently, the Debtors' stakeholders would benefit if the requested relief is granted.

**B. The Debtors Should be Authorized To Open and Close Bank Accounts**

40. Pursuant to this Motion, and for the reasons articulated above, the Debtors also seek authorization to implement changes to the Cash Management System in the ordinary course of business, including opening any additional Bank Accounts or closing any existing Bank Account as they may deem necessary and appropriate. The Debtors request that the Court authorize the Bank to honor the Debtors' requests to open or close, as the case may be, such Bank Accounts or additional Bank Accounts; *provided, however*, that, unless otherwise ordered by the Court, the Debtors shall open any such new Bank Account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee or at a bank willing to immediately execute such an agreement.

41. The Debtors further request that nothing contained in the Proposed Orders granting the relief requested herein shall prevent the Bank from modifying or terminating any Bank

Accounts or related services in accordance with the agreements governing such accounts or services.

**C. The Bank Should be Authorized To Continue To Treat, Service, and Administer the Bank Accounts in the Ordinary Course of Business**

42. The Debtors also seek entry of the Proposed Orders granting the Bank authority to:

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

43. The Debtors request that the Court approve procedures for the Debtors to provide the Bank stop payment orders with respect to all outstanding and unpaid prepetition checks and other items drawn on any Bank Account that the Court has not authorized by court order to be paid. The Debtors also request that all applicable financial institutions be authorized to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors requested authority to pay in the Motion or any other motion approved by the Court, regardless of whether the checks were presented or

fund transfer requests were submitted before, on, or after the Petition Date and (b) rely on the Debtors' designation of any particular check, draft, wire, ACH Transfer, electronic funds transfer payment, or item as approved by the Proposed Orders. Pursuant to the relief requested in this Motion, the Bank shall not be liable to any party on account of (x) following, in good faith, the Debtors' instructions, representations, or presentation as to any order of the Court (without any duty of further inquiry), (y) the honoring of any prepetition check, draft, wire, ACH Transfer, electronic funds transfer payment, or item in a good faith belief, or upon representation by a Debtor that the Court has authorized such prepetition check, draft, wire, ACH Transfer, electronic funds transfer payment, or item, or (z) an innocent mistake and/or human error made despite implementation of reasonable item handling procedures.

44. The Debtors further request that the existing deposit agreements between the Debtors and the Bank continue to govern the post-petition cash management relationship between the Debtors and the Bank, and that all of the provisions of such agreements, including the termination and fee provisions, remain in full force and effect. The Debtors request authority for the Debtors and the Bank to agree to and implement changes to the Cash Management System and cash management procedures in the ordinary course of business, including the opening and closing of Bank Accounts, and for the Bank to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions, *provided*, that the Bank shall not have any liability to any party for relying on such representations in good faith. The Debtors further request that the relief granted in the Proposed Orders extend to any new Bank Account opened by the Debtors after the date thereof and to the bank at which such account is opened.

45. The Debtors also request that, in accordance with current practice and the applicable agreements governing the Bank Accounts, the Bank be authorized to “charge back” to the Debtors’ Bank Accounts any amounts incurred by the Bank resulting from returned checks or other returned items, and the Debtors be authorized, but not directed, to pay, in their sole discretion, any fees and expenses owed to the Bank, in each case, regardless of whether such items were deposited prepetition or post-petition or relate to prepetition or post-petition items.

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

**D. The Deposit and Investment Requirements of Section 345(b) of the Bankruptcy Code Should be Waived on an Interim Basis**

47. Section 345 of the Bankruptcy Code governs a debtor’s deposit and investment of cash during a chapter 11 case and authorizes deposits or investments of money as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code requires the estate to obtain, from the entity with which the money is deposited or invested, a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, unless the court, for cause, orders otherwise. *Id.*

48. Investment of cash in strict compliance with the requirements of section 345(b) of the Bankruptcy Code would, in large chapter 11 cases such as these, be inconsistent with section

345(a) of the Bankruptcy Code, which permits a debtor in possession to make such investments of money of the estate “as will yield the maximum reasonable net return on such money.” Thus, in 1994, to avoid “needlessly handcuff[ing] larger, more sophisticated debtors,” Congress amended section 345(b) of the Bankruptcy Code to provide that its strict investment requirements may be waived or modified if the Court so orders “for cause.” 140 Cong. Rec. H. 10,767 (Oct. 4, 1994), 1994 WL 545773.

49. Pursuant to Local Rule 2015-2(b), and subject to certain exceptions not relevant here, a waiver of the requirements set forth in section 345(b) of the Bankruptcy Code may not be granted without notice and a hearing. However, Local Rule 2015-2(b) also provides that “if a motion for such a waiver is filed on the first day of a chapter 11 case in which there are more than 200 creditors, or otherwise with cause shown, the Court may grant an interim waiver until a hearing on the debtor’s motion can be held.” Del. Bankr. L.R. 2015-2(a).

50. Here, the Debtors satisfy both the procedural and substantive requirements necessary to obtain an interim waiver of section 345(b) of the Bankruptcy Code. The Debtors have filed this Motion on the first day of the Chapter 11 Cases, and the Debtors, collectively, have substantially more than 200 creditors. Accordingly, the Debtors’ present request for an interim waiver is appropriate. *See* Del. Bankr. L.R. 2015-2(a).

51. Moreover, the Debtors submit that cause exists to waive the investment and deposit restrictions of section 345(b) of the Bankruptcy Code on an interim basis to the extent that the Debtors’ cash management deposits do not comply with the proscribed requirements, as set forth in the Proposed Orders, without prejudice to the Debtors’ right to request a further extension or waiver of the requirements of section 345(b) of the Bankruptcy Code in the Chapter 11 Cases. The Bank at which the Debtors maintain all of their Bank Accounts is a financially stable banking



institution, FDIC-insured (up to an applicable unit per account), and a party to a Uniform Depository Account with the U.S. Trustee. The Debtors intend to be in chapter 11 only a short period of time, and the costs of having to obtain additional guaranties or sureties far outweigh the risk of the Debtors continuing to maintain their traditional cash-only Bank Accounts for the short period of time they remain in chapter 11. Finally, courts in this district routinely grant such an interim waiver under similar circumstances. *See, e.g., In re Revitalid Pharm. Corp.*, No. 23-11704 (BLS) (Bankr. D. Del. Oct. 13, 2023) [D.I. 39]; *In re Lincoln Power, L.L.C.*, No. 23-10382 (LSS) (Bankr. D. Del. Apr. 4, 2023) [D.I. 55]; *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 1, 2022) [D.I. 105]; *In re Salem Harbor Power Dev. LP*, No. 22-10239 (MFW) (Bankr. D. Del. Mar. 25, 2022) [D.I. 46]; *In re Alto Maipo Del. LLC*, No. 21-11507 (KBO) (Bankr. D. Del. Nov. 18, 2021) [D.I. 48]; *In re PWM Prop. Mgmt. LLC*, No. 21-11445 (MFW) (Bankr. D. Del. Nov. 3, 2021) [D.I. 56].

**E. Continuation of Corporate Credit Card Programs is Warranted Under Section 363, 364(a), and 105(a) of the Bankruptcy Code**

52. The Corporate Credit Card Programs are essential to the Debtors' operations and the preservation of the value of their estates. The Corporate Credit Card Programs allow the Debtors' employees to charge business-related expenses, thereby allowing the employees to conduct business more efficiently. Continuing the Corporate Credit Card Programs and satisfying the prepetition and post-petition amounts outstanding thereunder would help minimize any adverse effect of the commencement of the Chapter 11 Cases on the Debtors' business and the value of the Debtors' estates. Accordingly, the Debtors request authority to continue the Corporate Credit Card Programs in the ordinary course of business, including making ordinary course modifications thereto, and to pay any outstanding obligations, whether arising prepetition or post-petition, regarding the same.

**Debtors' Reservation of Rights**

53. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims related to the relief requested herein under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment or transfer made pursuant to the Court's order is not intended, and should not be construed, as an admission as to the amount, priority, character, or validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Emergency Consideration**

54. Pursuant to Local Rule 9013-1(m), the Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003(b). Bankruptcy Rule 6003 provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . . ." Fed. R. Bankr. P. 6003. As set forth in this Motion and the DiDonato Declaration, the Debtors believe that an orderly transition into chapter 11 is critical to preserve the value of the Debtors' estates and that any delay in granting the relief requested herein could cause immediate and irreparable harm. If the Debtors are not permitted to continue using their Cash Management System and Business Forms in their current forms, the Debtors could suffer immediate and

irreparable harm. Accordingly, the Debtors submit that the relief requested herein satisfies Bankruptcy Rule 6003.

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

55. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates and economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**Notice**

56. Notice of this Motion will be provided to the following parties: (a) U.S. Trustee; (b) those creditors holding the 30 largest unsecured claims against the Debtors’ estates (on a consolidated basis); (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney’s Office for the District of Delaware; (f) the state attorneys general for states in which the Debtors conduct business; (g) White & Case LLP, as counsel to CVI Investments, Inc. (c/o Heights Capital Management, Inc.); (h) the Bank; (i) American Express; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Notice Parties**”).

57. As this Motion is seeking “first-day” relief, the Debtors will serve copies of this Motion and any order entered in respect thereto as required by Local Rule 9013-1(m). A copy of this Motion and any order entered in respect thereto will also be made available on the Debtors’ case information website located at <https://www.veritaglobal.net/fisker>. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders, substantially in the forms attached hereto as **Exhibit D** and **Exhibit E**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: June 20, 2024  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Evanthea Hammer

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Bank Accounts**

**Exhibit A**  
**Bank accounts**

S. No.	Legal Entity	Bank	Account number	Account type
1	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████2188	Chase Auto Money Market Account
2	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████6539	Payroll Account
3	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████9867	Main Operating Account
4	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████4563	Prime Money Markets Fund Account
5	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████9933	Reserved Cars Revenue Account
6	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████7809	Corporate Tax Money Market Account
7	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████7965	Reserved Cars Money Market Account
8	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████8759	L/C Money Market Account
9	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████8333	Payment Revenue Account
10	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	██████0312	Prime Liquidity Money Market Account
11	Terra Energy Inc.	JPMorgan Chase Bank, N.A.	██████9856	Terra Energy Operating Account
12	Fisker TN LLC	JPMorgan Chase Bank, N.A.	██████7106	Fisker TN Operating Account

**Exhibit B**

**Letters of Credit**



**Exhibit B**  
**Letters of Credit**

Ref	LC Number	FSR Entity	Issuer	Beneficiary	Expiration Date	Currency	Cash Collateralized Amount (USD)
1	NUSCGS049470	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	JPMorgan Chase Bank, N.A.	12/31/2025	CAD	8,044.00
2	NUSCGS049396	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	Credit Suisse First Boston	1/15/2026	CHF	1,248,794.65
3	NUSCGS049439	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	Avalon Risk Management Insurance	12/31/2024	USD	3,605,000.00
4	NUSCGS048571	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	Nordea Bank ABP, Filial I Norge	10/30/2024	NOK	674,506.25
5	NUSCGS044585	Fisker Group Inc.	JPMorgan Chase Bank, N.A.	Nordea Bank ABP, Filial I Norge	10/10/2027	NOK	130,394.00

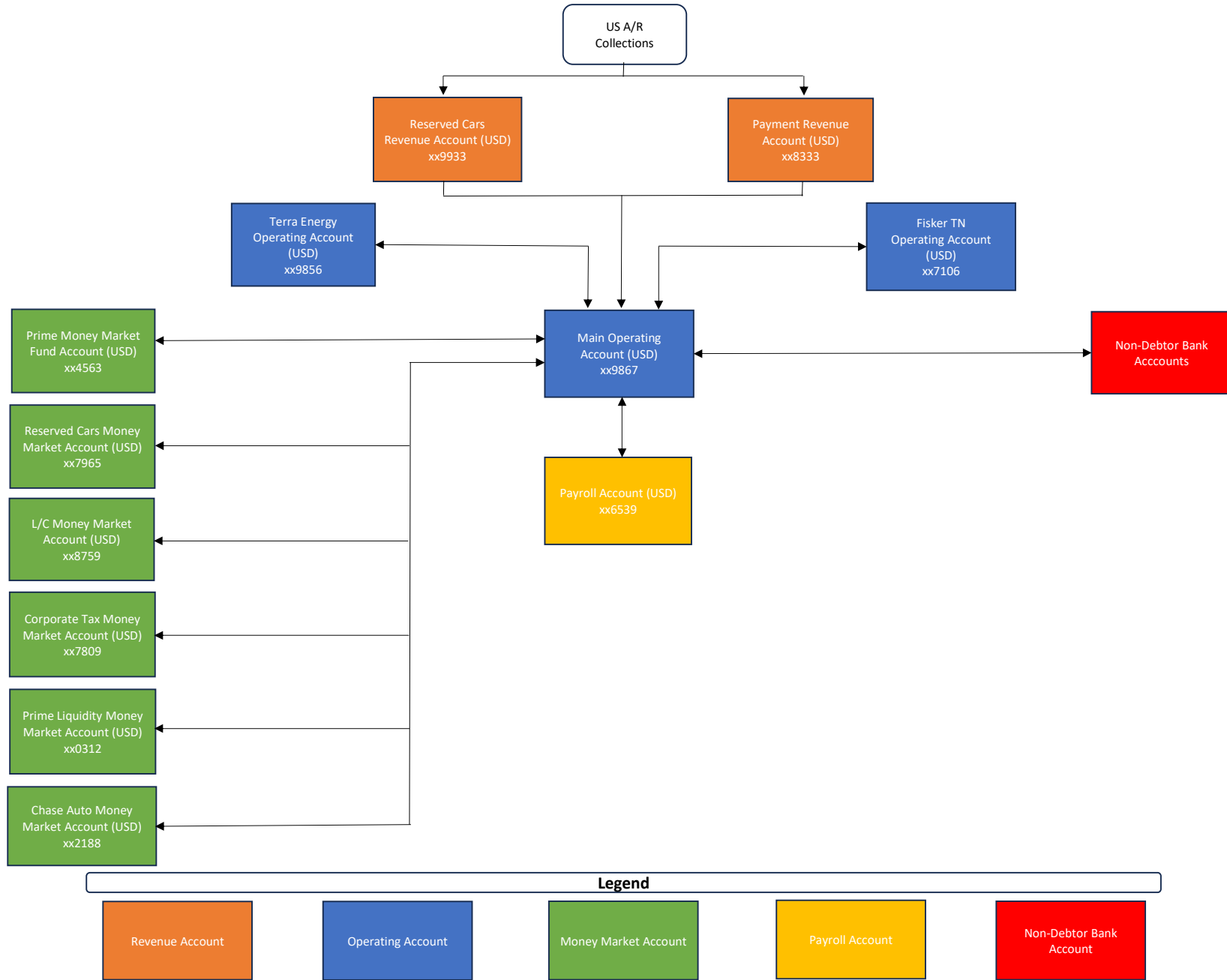
**Notes**

\$420,000 of restricted cash is held by JPM for purposes of cash collateral against the JPM credit cards

**Exhibit C**

**Diagram of Cash Management System**

**Exhibit C**  
**Diagram of Cash Management System**



**Notes**

All of the Debtors' bank accounts are with JPMorgan Chase Bank, N.A.



**Exhibit D**

**Proposed Interim Order**

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

In re:

FISKER INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**Re: Docket No.** \_\_\_\_\_

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

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

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

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

and section 2 of the U.S. Trustee Guidelines on an interim basis, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the DiDonato Declaration; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the DiDonato Declaration and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

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

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

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

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

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

6. The Bank is authorized to:

- (a) continue to treat, service, and administer the Debtors’ Bank Accounts, as accounts of the respective Debtor as a debtor in possession, without interruption, and in the ordinary course of business without the need for further order of the Court;

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

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

8. All applicable financial institutions shall be authorized to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors requested authority to pay in the Motion or any other motion approved by the Court, regardless of whether the checks were presented or fund transfer requests were submitted before, on, or after the Petition Date and (b) rely on the Debtors' designation of any particular check, draft, wire, ACH Transfer, electronic funds transfer payment, or item as approved by this Order. The Bank shall not be liable to any party on account of (x) following, in good faith, the Debtors' instructions, representations, or presentation as to any order of the Court (without any duty of further inquiry), (y) the honoring of any prepetition check, draft, wire, ACH Transfer, electronic funds transfer payment, or item in a good faith belief, or



upon representation by a Debtor, that the Court has authorized such prepetition check, draft, wire, ACH Transfer, electronic funds transfer payment, or item, or (z) an innocent mistake and/or human error made despite implementation of reasonable item handling procedures. Further, the Bank may rely, without a duty of inquiry, upon the failure of the Debtors to issue a stop payment order with respect to any item, whether such item is issued prepetition or post-petition, as a direction by the Debtors that such item will be paid. To the extent that the Debtors have represented to the Bank that a check, draft, wire, ACH Transfer, electronic funds transfer payment, or item should be dishonored, the Bank is hereby authorized to comply with such representations, either through utilizing the Bank's stop-payment system, or through voiding the check, draft, wire, ACH Transfer, electronic funds transfer payment, or item using the Bank's relevant internal procedures.

9. Those certain existing deposit agreements between the Debtors and the Bank shall continue to govern the post-petition cash management relationship between the Debtors and the Bank, and all of the provisions of such agreements, including the termination and fee provisions, shall remain in full force and effect. The Debtors shall be authorized, without further order of the Court, to implement changes to the Cash Management System and cash management procedures in the ordinary course of business, including the opening and closing of Bank Accounts subject to paragraph 10, and for the Bank to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions, *provided* that the Bank shall not have any liability to any party for relying on such representations in good faith. The relief granted herein shall extend to any new Bank Account opened by the Debtors after the date hereof and to the bank at which such Bank Account is opened.

10. The Debtors shall give notice to the U.S. Trustee, the Bank, and counsel to any official committee appointed in the Chapter 11 Cases within 14 days of opening a new Bank Account or closing an existing Bank Account; *provided, however*, that, unless otherwise ordered by the Court, the Debtors shall open any new Bank Account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee or at a bank willing to immediately execute such an agreement.

11. In accordance with current practice and any applicable agreement governing the Bank Accounts, the Bank is authorized to “charge back” to the Debtors’ Bank Accounts any prepetition and post-petition cash management fees and expenses incurred by the Bank resulting from returned checks or other returned items, and the Debtors are authorized, but not directed, to pay, in their sole discretion, the Bank Fees (and the Bank is authorized to debit or charge back the Bank Accounts for any such Bank Fees unless notified by the Debtors that any such Bank Fees are disputed), in each case regardless of whether such items were deposited prepetition or post-petition or relate to prepetition or post-petition items and without need for further order of the Court.

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

13. The Debtors shall have 45 days from the Petition Date (the “**Extension Period**”) within which to comply with section 345(b) of the Bankruptcy Code and Local Rule 4001-3, or to make arrangements to which the U.S. Trustee agrees, and such extension is without prejudice to the Debtors’ right to request a further extension of the Extension Period or waiver of the

requirements of section 345(b) of the Bankruptcy Code and Local Rule 4001-3 in the Chapter 11 Cases. The Debtors may obtain a further extension of the Extension Period referenced above by entering into a written stipulation with the U.S. Trustee and filing such stipulation on the Court's docket without the need for further Court order.

14. Within 14 days of the date of entry of this Order, the Debtors shall (a) contact the Bank, (b) provide the Bank with each of the Debtors' tax identification numbers, and (c) identify each of their Bank Accounts held at the Bank as being held by a debtor in possession in a bankruptcy case.

15. Nothing contained herein shall prevent the Bank from modifying or terminating any Bank Accounts or related services in accordance with the agreements governing such accounts or services.

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

Credit Card Programs shall govern the parties' post-petition transactions with the Debtors including making ordinary course modifications thereto.

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

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

19. The Debtors are authorized, but not directed, to continue, in their sole discretion, to use the Business Forms, including purchase orders, letterhead, envelopes, promotional materials, checks, and other business forms substantially in the forms existing immediately before the Petition Date, without reference to their status as debtors in possession; *provided*, that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, ensure that the designation "Debtor in Possession" and the corresponding bankruptcy case number be printed on all checks; *provided, further*, that, with respect to electronic checks and checks that the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend on such items within twenty-one days of the date of entry of this Order.

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

21. A final hearing to consider the relief requested in the Motion shall be held on \_\_\_\_\_, 2024 at \_\_\_\_\_.m. (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to \_\_\_\_\_, 2024 at \_\_\_\_\_.m. (prevailing Eastern Time).

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

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

24. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

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

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

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

**Exhibit E**

**Proposed Final Order**

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

In re:

FISKER INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**Re: Docket No.** \_\_\_\_\_

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

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

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

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



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

IT IS HEREBY ORDERED THAT:

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

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

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

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

5. The Bank is authorized to:

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

- (d) debit all undisputed prepetition and post-petition amounts owed to the Bank as service charges for the maintenance of the Cash Management System without the need for further order of the Court.

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

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

utilizing the Bank's stop-payment system, or through voiding the check, draft, wire, ACH Transfer, electronic funds transfer payment, or item using the Bank's relevant internal procedures.

8. Those certain existing deposit agreements between the Debtors and the Bank shall continue to govern the post-petition cash management relationship between the Debtors and the Bank, and all of the provisions of such agreements, including the termination and fee provisions, shall remain in full force and effect. The Debtors shall be authorized, without further order of the Court, to implement changes to the Cash Management System and cash management procedures in the ordinary course of business, including the opening and closing of Bank Accounts subject to paragraph 10, and for the Bank to honor the Debtors' directions with respect to the opening and closing of any Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions, provided that the Bank shall not have any liability to any party for relying on such representations in good faith. The relief granted herein shall extend to any new Bank Account opened by the Debtors after the date hereof and to the bank at which such Bank Account is opened.

9. The Debtors shall give notice to the U.S. Trustee, the Bank, and counsel to any official committee appointed in the Chapter 11 Cases within 14 days of opening a new Bank Account or closing an existing Bank Account; *provided, however*, that, unless otherwise ordered by the Court, the Debtors shall open any new Bank Account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee or at a bank willing to immediately execute such an agreement.

10. In accordance with current practice and any applicable agreement governing the Bank Accounts, the Bank is authorized to "charge back" to the Debtors' Bank Accounts any prepetition and post-petition cash management fees and expenses incurred by the Bank resulting

from returned checks or other returned items, and the Debtors are authorized, but not directed, to pay, in their sole discretion, the Bank Fees (and the Bank is authorized to debit or charge back the Bank Accounts for any such Bank Fees unless notified by the Debtors that any such Bank Fees are disputed), in each case regardless of whether such items were deposited prepetition or post-petition or relate to prepetition or post-petition items and without need for further order of the Court.

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

12. Within 14 days of the date of entry of this Order, the Debtors shall (a) contact the Bank, (b) provide the Bank with each of the Debtors’ tax identification numbers, and (c) identify each of their Bank Accounts held at the Bank as being held by a debtor in possession in a bankruptcy case.

13. Nothing contained herein shall prevent the Bank from modifying or terminating any Bank Accounts or related services in accordance with the agreements governing such accounts or services.

14. The Debtors are authorized, but not directed, to continue the Corporate Credit Card Programs in the ordinary course of business, consistent with prepetition practices (subject to ordinary course modifications thereto), including the payment of all past and future obligations as they become due and owing under the accounts (whether pre- or post-petition) on a post-petition basis and performing all obligations thereunder (collectively, the “**Card Obligations**”); *provided, however,* that, absent further order of the Court, any payments made pursuant to this Order on

account of prepetition Card Obligations shall not exceed \$20,455.09 in the aggregate. The issuers of the cards under the Corporate Credit Card Programs are authorized to continue to make advances pursuant to the terms of their existing agreements (in reliance upon section 364(e) of the Bankruptcy Code) with the Debtors, and the Debtors are authorized to incur credit in respect of such advances under sections 364(a) and (c) of the Bankruptcy Code, as applicable. The terms of all existing agreements by and between the Debtors and issuers of the cards under the Corporate Credit Card Programs shall govern the parties' post-petition transactions with the Debtors including making ordinary course modifications thereto.

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

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

17. The Debtors are authorized, but not directed, to continue, in their sole discretion, to use the Business Forms, including purchase orders, letterhead, envelopes, promotional materials, checks, and other business forms substantially in the forms existing immediately before the Petition Date, without reference to their status as debtors in possession. Once the Debtors' existing checks have been used, the Debtors shall not be required to print the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks.

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

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

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

21. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

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

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

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