

**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 AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION  
TAXES, GOVERNMENTAL ASSESSMENTS, AND FEES AND (II) FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

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 Authorizing (I) Debtors to Pay Certain Prepetition Taxes, Governmental Assessments, and Fees and (II) Financial Institutions to Honor and Process Related Checks and Transfers* (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 contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

---

<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 Dr, La Palma, CA 90623.

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



**Relief Requested**

1. By this Motion, and pursuant to sections 105(a), 363(b), 507(a)(8), and 541 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 A** and **Exhibit B** (the “**Proposed Orders**”), (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, Taxes and Fees (as defined below) as described herein, whether asserted prior to, on, or after the Petition Date (as defined below); *provided*, that the maximum amounts that the Debtors shall pay in the aggregate on interim and final bases, on account of all Taxes and Fees owed for periods prior to the Petition Date, shall be \$1,200,000 and \$2,000,000, respectively, and (b) authorizing the applicable financial institutions to receive, process, honor, and pay all checks or wire transfers used by the Debtors to pay the foregoing.

**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 rule 9013-1(f) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), 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 (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’ Taxes and Fees**

9. In the ordinary course of the Debtors’ business, the Debtors collect, withhold, and/or incur (a) Income Taxes, (b) Sales and Use Taxes, (c) Franchise and Corporate Taxes,

(d) Property Taxes, (e) Customs and Import Duties, (f) Safety and Recall Obligations, and (g) Other Taxes and Fees (each, as individually defined below and, collectively (excluding all tax-related Withholdings and Employer Taxes), the “**Taxes and Fees**”).<sup>3</sup> The Debtors remit the Taxes and Fees to the federal government, various state and local governments, other applicable taxing authorities (both domestic and foreign), and related inspectors, vendors, and agents (collectively, the “**Governmental Authorities**”).

10. The Debtors believe that, as of the Petition Date, approximately \$2,000,000 of the Taxes and Fees have accrued and remain outstanding, \$1,200,000 of which will become payable within the first 30 days of the Chapter 11 Cases. The Debtors seek authority to pay such outstanding amounts as soon as possible or as they come due in the ordinary course of business.<sup>4</sup>

#### Income Taxes

11. The Debtors incur federal, state, and local tax obligations related to their income and similar taxes (collectively, “**Income Taxes**”). For the year of 2023, the Debtors paid approximately \$0 on account of Income Taxes. The Debtors believe that, as of the Petition Date, they have no material accrued and unremitted Income Taxes. The Debtors’ practice generally is to pay Income Taxes to the appropriate Governmental Authorities on various dates during the year, and no later than when they come due, as interest and penalties may accrue if such Income Taxes are not timely paid. Paying outstanding Income Taxes in the ordinary course of business, therefore,

---

<sup>3</sup> The Debtors also are required by applicable law to withhold from domestic employees’ wages and pay various amounts related to such wages as federal, state, and local taxes. The Debtors are not seeking any relief in this Motion relating to such employment and wage-related tax withholdings, as they are addressed in the *Motion of Debtors For Entry of Interim and Final Orders Authorizing (I) Debtors To (A) Pay Prepetition Employee Obligations and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Current and Former Employees To Proceed with Outstanding Workers’ Compensation Claims, and (III) Financial Institutions To Honor and Process Related Checks and Transfers* filed contemporaneously herewith (the “**Wages Motion**”). As used herein, “Withholdings” and “Employer Taxes” shall have the meanings ascribed to such terms in the Wages Motion.

<sup>4</sup> From time to time, the Debtors also receive tax credits for overpayments or refunds, which the Debtors use in the ordinary course of business to, among other things, offset against future Taxes and Fees.

would reduce costs to the Debtors' estates by minimizing interest and penalty charges. Accordingly, while the Debtors do not believe that there are any material prepetition Income Taxes owed, out of an abundance of caution, the Debtors request authority to remit, in their sole discretion, payment on account of any outstanding Income Taxes due or that may become due in the ordinary course of business, and to continue remitting, in their sole discretion, Income Taxes in the ordinary course of business on a post-petition basis.

*Sales and Use Taxes*

12. On occasion, the Debtors incur various general sales and use taxes, gross receipts taxes, and other similar taxes (collectively, "**Sales and Use Taxes**") on goods or services used, consumed, or sold in connection with the Debtors' operations. Sales and Use Taxes are general consumption taxes charged at the point of sale on goods and services, which are usually set by a Governmental Authority as a percentage of the retail price of the applicable good or service. Generally, as required by applicable laws and regulations, the Debtors remit Sales and Use Taxes on a monthly, quarterly, or annual basis, depending on the nature and incurrence of the particular Sales and Use.

13. For the year of 2023, the Debtors paid approximately \$19,976,769.64 on account of Sales and Use Taxes. The Debtors believe that, as of the Petition Date, they have approximately \$650,000 in accrued and unremitted Sales and Use Taxes. The Debtors' practice generally is to pay such amounts either (i) through a third-party which handles registration and titling of our vehicles (i.e., Motor Vehicle Software Corp. DBA "VITU" and "DMV-Desk"), or (ii) directly to the appropriate Governmental Authorities on various dates during the year, and no later than when they come due, as interest and penalties may accrue if such Sales and Use Taxes are not timely paid. Paying these Sales and Use Taxes in the ordinary course of business, therefore, would reduce

costs to the Debtors' estates by minimizing interest and penalty charges. Accordingly, out of an abundance of caution, the Debtors request authority to remit, in their sole discretion, payment on account of any outstanding Sales and Use Taxes due or that may become due in the ordinary course of business, and to continue remitting, in their sole discretion, Sales and Use Taxes in the ordinary course of business on a post-petition basis.

*Franchise and Corporate Taxes*

14. The Debtors are required to pay various state franchise taxes, corporate taxes, annual report fees, privilege fees, and business license or permitting fees (collectively, "**Franchise and Corporate Taxes**") in order to continue conducting their business within particular jurisdictions. For the year of 2023, the Debtors incurred Franchise and Corporate Taxes in 19 domestic jurisdictions of approximately \$376,044 in the aggregate. In addition, the Debtors estimate that approximately \$5,012 of Franchise and Corporate Taxes have accrued and remain outstanding as of the Petition Date. The Debtors estimate that approximately \$1,262 of such accrued prepetition Franchise and Corporate Taxes will become payable during the first 30 days of the Chapter 11 Cases. The Debtors' practice generally is to pay such amounts to the appropriate Governmental Authorities on various dates during the year, and no later than when they come due. Failing to pay these Franchise and Corporate Taxes could cause the Debtors to lose the ability to conduct their business in the jurisdictions where such Franchise and Corporate Taxes and Fees are due.<sup>5</sup> Accordingly, the Debtors request authority to remit, in their sole discretion, payment on account of the outstanding Franchise and Corporate Taxes in the ordinary course of business, and

---

<sup>5</sup> The Debtors are required to pay franchise taxes to Governmental Authorities in the State of Delaware. The State of Delaware may refuse to qualify a debtor to do business in the state, or issue certificates of good standing or other documents, if such taxes are not paid. *See* Del. Code Ann. tit. 8, § 502.

to continue remitting, in their sole discretion, Franchise and Corporate Taxes in the ordinary course of business on a post-petition basis.

Property Taxes

15. The Debtors have property tax obligations to certain Governmental Authorities for their personal property holdings (collectively, “**Property Taxes**”). The timing for the Debtors’ payment of Property Taxes, in accordance with applicable laws and regulations, depends on the nature and incurrence of the particular Property Tax. For the year 2023, as of the Petition Date, the Debtors paid Property Taxes of approximately \$92,370 in the aggregate. The Debtors believe that, as of the Petition Date, they have approximately the same amount in accrued and unremitted Property Taxes. The Debtors’ practice generally is to pay such amounts to the appropriate Governmental Authorities on an annual basis, and no later than when they come due, as interest and penalties may accrue if such Property Taxes are not timely paid. Paying these Property Taxes in the ordinary course of business, therefore, would reduce costs to the Debtors’ estates by minimizing interest and penalty charges. It is critical that the Debtors are authorized to pay any Property Taxes where under applicable law the failure to pay gives rise to a secured state law lien. Accordingly, while the Debtors do not believe that there are any material prepetition Property Taxes owed, out of an abundance of caution, the Debtors request authority to remit, in their sole discretion, payment on account of any outstanding Property Taxes due or that may become due in the ordinary course of business, and to continue remitting, in their sole discretion, Property Taxes in the ordinary course of business on a post-petition basis.

Customs and Import Duties

16. The Debtors also remit certain customs and import duties (“**Customs and Import Duties**”) to various customs agencies around the world. The amounts that the Debtors remit to the

applicable Governmental Authorities on account of Customs and Import Duties varies from month to month. For the year of 2023, the Debtors incurred approximately \$5,425,541 in Customs and Import Duties. In addition, the Debtors estimate that approximately \$0 of Customs and Import Duties have accrued as of the Petition Date. The Debtors estimate that \$0 of such accrued prepetition Customs and Import Duties will become payable during the first 30 days of the Chapter 11 Cases. Failing to pay the Customs and Import Duties when due could disrupt the Debtors' supply chain and potentially prevent Debtors from importing vehicles and/or parts necessary to the Debtors' business. Accordingly, the Debtors request authority to remit, in their sole discretion, payment on account of the outstanding Customs and Import Duties in the ordinary course of business, and to continue remitting, in their sole discretion, Customs and Import Duties in the ordinary course of business on a post-petition basis.

*Safety and Recall Obligations*

17. Historically, the Debtors also pay amounts related to safety and recall measures associated with vehicle software and certain automotive components in the ordinary course of their business (“**Safety and Recall Obligations**”). The Debtors pay Safety and Recall Obligations to certain third-party vendors in order to maintain the Debtors' safety and recall standards. The Debtors estimate that \$405,013 of accrued Safety and Recall Obligations will become payable during the first 30 days of the Chapter 11 Cases. Failing to pay the Safety and Recall Obligations when due could negatively impact the Debtors' operations. Accordingly, the Debtors request authority to pay, in their sole discretion, amounts outstanding for Safety and Recall Obligations in the ordinary course of business, and to continue paying, in their sole discretion, Safety and Recall Obligations in the ordinary course of business on a post-petition basis.



Other Taxes and Fees

18. The Debtors also remit various other taxes and fees required in certain jurisdictions in the ordinary course of business, including federal, state, or local charges, licensing fees, goods and services taxes, commercial activity taxes, net worth taxes, and penalties and assessments related to business operations in connection with various laws and regulations (including any amounts required to be withheld, incurred, or collected under applicable law) (collectively, “**Other Taxes and Fees**”). The Debtors estimate that, as of the Petition Date, approximately \$38,739 of Other Taxes and Fees have accrued and remain outstanding. The Debtors estimate that approximately \$38,739 of such accrued prepetition Other Taxes and Fees will become payable during the first thirty (30) days of the Chapter 11 Cases. The Debtors’ practice generally is to pay such amounts to the appropriate Governmental Authorities on various dates during the year, and no later than when they come due, as interest and penalties may accrue if such Other Taxes and Fees are not timely paid. Paying these Other Taxes and Fees in the ordinary course of business, therefore, would reduce costs to the Debtors’ estates by minimizing interest and penalty charges. Accordingly, the Debtors request authority to remit, in their sole discretion, payment on account of any outstanding Other Taxes and Fees due or that may become due in the ordinary course of business, and to continue remitting, in their sole discretion, Other Taxes and Fees in the ordinary course of business on a post-petition basis.<sup>6</sup>

---

<sup>6</sup> The Debtors utilize third-party vendors to facilitate payment of certain Other Taxes and Fees. For example, the Debtors utilize third-party vendors in connection with the title and registration of the Debtors’ vehicles, including to facilitate payment of fees on account thereof. For the avoidance of doubt, by this Motion, the Debtors seek authority to remit, in their sole discretion, payment on account of any outstanding Other Taxes and Fees due or that may become due in the ordinary course of business, and to continue remitting, in their sole discretion, Other Taxes and Fees in the ordinary course of business on a post-petition basis, in each instance, including any payments to third-party vendors relating to any such Other Taxes and Fees.

**Basis for Relief**

19. The Debtors believe that certain of the Taxes and Fees collected, withheld, and/or incurred before the Petition Date are not property of the Debtors' estates and, for that reason, must be turned over to the relevant Governmental Authorities. Moreover, to the extent that the Taxes and Fees are not actually the property of the Governmental Authorities, failure to pay such amounts may well give rise to priority or secured claims that would, in any event, be entitled to payment in full. The Debtors also seek to pay prepetition Taxes and Fees in order to prevent the Governmental Authorities from charging interest and/or penalties and taking actions that might interfere with the preservation of the value of the Debtors' estates, such as blocking the receipt or renewal of licenses required for the Debtors' continued operations or possibly bringing personal liability actions against the Debtors' directors, officers, and other employees in connection with non-payment of the Taxes and Fees. Actions against the Debtors' directors, officers, and other employees would likely distract key personnel, whose full-time attention to the Chapter 11 Cases is required, and would likely cause potential business disruptions. Any such business disruptions would likely impair the value of the Debtors' estates and negatively affect the Chapter 11 Cases. Accordingly, and as further detailed below, the Debtors submit that the proposed relief is in the best interest of the Debtors' estates.

**A. Certain of the Taxes and Fees Are Not Property of the Debtors' Estates**

20. Section 541(d) of the Bankruptcy Code provides, in relevant part, as follows:

Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(d).

21. Certain of the Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Governmental Authorities and are held in trust by the Debtors. *See, e.g.*, I.R.C. § 7501 (stating that certain taxes are held in trust). As such, these Taxes and Fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g., Begier v. I.R.S.*, 496 U.S. 53, 67 (1990) (stating that withholding taxes are property held by debtor in trust for another and, as such, are not property of debtor's estate); *In re Calabrese*, 689 F.3d 312, 321 (3d Cir. 2012) (holding that sales taxes are "trust fund" taxes); *I.R.S. v. Kaplan (In re Kaplan)*, 104 F.3d 589, 591 n.1 (3d Cir. 1997) (classifying certain withholding taxes as "trust fund" taxes); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 96 (3d Cir. 1994) (describing how, when a debtor withheld city income taxes, a trust was created so that the debtor held the funds in trust for the city); *Off. Comm. of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1059–60 (3d Cir. 1993) (indicating that even if a statute does not establish an express trust, a constructive trust may be found); *EBS Pension LLC v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231, 235 (Bankr. D. Del. 2000) ("[P]roperty which a debtor holds in trust (express or constructive) for another does not become property of the estate when the debtor files for bankruptcy."). Because certain of the Taxes and Fees are the property of the relevant Governmental Authorities and are not property of the Debtors' estates, such funds are not available for the satisfaction of creditors' claims and, as such, the Court should authorize the Debtors to remit payment of any such Taxes and Fees to the relevant Governmental Authorities.

**B. Certain of the Taxes and Fees May be Property of the Debtors' Estates and Give Rise to Priority Claims Under Section 507(a)(8) of the Bankruptcy Code**

22. To the extent that any amounts of the Taxes and Fees are property of the Debtors' estates under section 541 of the Bankruptcy Code, many claims in respect thereof would likely be

afforded priority status under section 507(a)(8) of the Bankruptcy Code. As priority claims, those portions of the Taxes and Fees must be paid in full before any general unsecured obligations of the Debtors can be satisfied. Accordingly, to the extent that the Taxes and Fees are property of the Debtors' estates and give rise to priority claims, the relief requested herein may only affect the timing of the payment of these priority Taxes and Fees and would not prejudice the rights of general unsecured creditors.

23. In this respect, it should be noted that obligations labeled as “fees” or “charges” may also be entitled to priority status as taxes. *See* 11 U.S.C. § 507(a)(8). Courts consider a number of relevant factors in determining whether a fee or charge constitutes a tax, including (a) if it is an involuntary pecuniary burden laid upon the individual or its property, (b) if it is imposed by or under authority of a legislative body, (c) if it is assessed for public purposes, including the purposes of defraying expenses of government or undertakings authorized by it, (d) if it is assessed under the police or taxing power of the state, (e) if it is universally applicable to similarly situated entities, and (f) whether granting priority status to the government would disadvantage nongovernmental creditors with similar claims. *See In re Szczyporski*, 34 F.4th 179 (3d Cir. 2022) (citing *Reconstituted Comm. of Unsecured Creditors v. New Jersey (In re United Healthcare Sys., Inc.)*, 396 F.3d 247, 253 (3d Cir. 2005)). Substantially all of the Taxes and Fees are involuntary pecuniary burdens imposed by the authority of a federal, state, or local legislature under its police or taxing power. Regardless of their statutory characterization as “fees” or “charges,” many of the claims in respect of the Taxes and Fees may well qualify for priority status under section 507(a)(8) of the Bankruptcy Code and, as such, must be paid in full before any general unsecured obligations of the Debtors may be satisfied. Thus, payment of these Taxes and Fees may affect only the timing

of the payment and would not prejudice the rights of the general unsecured creditors of these estates.

**C. Non-payment of Certain Taxes and Fees Could Cause Immediate and Irreparable Harm to the Debtors' Estates**

24. Federal and state statutes may prevent the issuance of certain licenses to an entity if it or certain related entities have outstanding or delinquent penalties or assessments for violations of certain laws or regulations. Non-payment of such penalties or assessments could preclude the receipt or renewal of licenses required for the Debtors' continued operations and, thus, could interfere with the Debtors' attempts to maximize the value of their assets for the benefit of their estates.

25. Similarly, non-payment of the Taxes and Fees may cause certain Governmental Authorities to take precipitous action, including conducting audits and filing liens against the Debtors' assets, and seeking to lift the automatic stay, any of which would disrupt the Debtors' day-to-day operations and could potentially impose significant costs and burdens on the Debtors' estates. Further, failure to satisfy the Taxes and Fees may jeopardize the Debtors' maintenance of good standing to operate in the jurisdictions in which they conduct business. Prompt payment of the Taxes and Fees would avoid these unnecessary and potentially costly and burdensome governmental actions. *See, e.g., In re FCC*, 217 F.3d 125 (2d Cir. 2000) (where lack of court authority to make prompt payments to governmental authorities delayed such payments and resulted in extensive litigation).

26. Finally, certain non-U.S., federal, and state statutes hold certain directors, officers, and other employees of entities responsible for collecting, withholding, or remitting certain taxes personally liable for those taxes. *See, e.g., Cal. Code Regs., tit. 18, § 1702.5* (imposing personal liability in connection with non-payment of sales and use taxes); *Broustein v. United States*, 979

F.2d 952, 954 (3d. Cir. 1992) (finding that the “person responsible for withholding and paying over taxes who willfully fails to do so is liable for a penalty equal to the total amount of the unpaid taxes”); *In re Branagan, Jr.*, 345 B.R. 144, 161 (Bankr. E.D. Pa. 2006) (noting that, in certain circumstances, where a company fails to remit taxes it was obligated to collect and withhold, “certain individuals can be held personally liable for this corporate obligation”); John F. Olson, et al., *Director & Officer Liability: Indemnification and Insurance* § 3.04, at 3-20.27 (rel.10-1999) (providing that “some states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation, regardless of cause”).

27. To the extent that such Taxes and Fees were incurred or collected by the Debtors before the Petition Date and are not remitted or paid over by the Debtors, certain of the Debtors’ directors, officers, and other employees may be subject to lawsuits during the pendency of the Chapter 11 Cases. Payment of the Taxes and Fees would avoid the loss of focus and morale that would result from the risk of personal liability. A lawsuit and any ensuing liability would distract personnel from important tasks to the detriment of all parties in interest in the Chapter 11 Cases. The dedicated and active participation of the Debtors’ directors, officers, and other employees is not only integral to preserving the value of the Debtors’ estates, but is also essential to the success of the Chapter 11 Cases.

28. Accordingly, to the extent that the relief requested herein involves the use of property of the Debtors’ estates, payment of the Taxes and Fees is consistent with Bankruptcy Rule 6003 because (a) it is critical to preserving the value of the Debtors’ estates and (b) failure to pay the Taxes and Fees would cause immediate and irreparable harm to the Debtors.

**D. Payment of the Taxes and Fees Constitutes a Sound Exercise of the Debtors' Business Judgment and is Necessary for the Preservation of the Debtors' Estates**

29. The Debtors believe that the payment of the Taxes and Fees to the applicable Governmental Authorities would be in the ordinary course of their business because (a) they are commonplace and routine in the Debtors' industry and (b) the Debtors have frequently collected, withheld, and/or incurred similar taxes and fees. As a result, the Debtors believe that payment of the Taxes and Fees is warranted under section 363(c) of the Bankruptcy Code, which authorizes a debtor to "enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing." 11 U.S.C. § 363(c)(1). Nevertheless, out of an abundance of caution, the Debtors seek entry of orders authorizing the Debtors to pay the Taxes and Fees to the applicable Governmental Authorities to the extent that such authorization is required under section 363(b) of the Bankruptcy Code.

30. Section 363(b)(1) of the Bankruptcy Code empowers a court to allow a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor's decision to use, sell, or lease assets outside the ordinary course of business, however, must be based upon a "sound business purpose" of the debtor. *In re ICL Holding Co., Inc.*, 802 F.3d 547, 551 (3d Cir. 2015); *see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). The business judgment rule entails "a presumption that, in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company." *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (citation omitted), *overruled on other grounds by Gantler v. Stephens*, 965 A.2d 695 (Del. 2009). Courts emphasize that the business judgment rule is not an onerous standard. *See In re*

*AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (explaining that the business judgment rule is “not a difficult standard to satisfy” (citing *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006))). As such, courts exhibit great judicial deference to a debtor’s exercise of business judgment. See *Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”); *Parnes v. Bally Entertainment Corp.*, 722 A.2d 1243, 1246 (Del. 1999) (“The presumptive validity of a business judgment is rebutted in those rare cases where the decision under attack is ‘so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any ground other than bad faith.’” (citing *In re J.P. Stevens & Co., Inc.*, 542 A.2d 770, 780–81 (Del. Ch. 1988))).

31. The Debtors submit that, to the extent that the use of property of the estate is implicated here, the relief requested in this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm, and is justified under section 363 of the Bankruptcy Code. As noted above, if the Taxes and Fees are not paid, the Governmental Authorities may take actions that would be costly and distracting to the Debtors and interfere with the Debtors’ operations, which would negatively affect all of the Debtors’ stakeholders. Moreover, because most of the Taxes and Fees either (a) would be afforded priority status under section 507(a)(8) of the Bankruptcy Code or (b) are otherwise “trust fund” taxes and are, therefore, not property of the Debtors’ estates anyhow, the Debtors’ general unsecured creditors would not be prejudiced by the Court’s granting of the relief requested herein.

32. In fact, courts in this jurisdiction routinely grant relief similar to that requested herein. See, e.g., *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 15, 2023) [D.I. 569]; *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. June 5, 2023) [D.I. 212]; *In re*



*ExpressJet Airlines LLC*, No. 22-10787 (MFW) (Bankr. D. Del. Sep. 13, 2022) [D.I. 93]; *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 20, 2022) [D.I. 170]; *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Feb. 7, 2022) [D.I. 118]; *In re Alto Maipo Del. LLC*, No. 21-11507 (KBO) (Bankr. D. Del. Dec. 16, 2021) [D.I. 145]. The Debtors submit that the circumstances described herein warrant similar relief.

33. Finally, the Debtors submit that payment of the Taxes and Fees 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” or “necessity of payment rule.” The doctrine of necessity functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable powers to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that a court may authorize payment of prepetition claims when payment is essential to continued operation of the debtor, such as where there is a “possibility that the creditor will employ an immediate economic sanction, failing such payment”); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (noting that the doctrine of necessity “permit[s] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for the payment of pre-petition claims” under the doctrine of necessity).

34. 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. *See Miltenberger v. Logansport Ry. Co.*, 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 (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

35. 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)). As such, 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 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.’” (citations 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 doctrine of necessity is frequently invoked early in a restructuring, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. For instance, courts have acknowledged that the “doctrine of necessity stands for the proposition that a bankruptcy court may allow payment outside of a plan of reorganization on account of a prepetition obligation where such payment is critical to the reorganization process.” *Friedman’s Inc. v. Roth Staffing Cos., L.P. (In re Friedman’s Inc.)*, No. 09-10161 (CSS), 2011 WL 5975283, at \*3 (Bankr. D. Del. Nov. 30, 2011) (cleaned up); *see also Off. Comm. of Unsecured Creditors v. Motor Coach Indus. Int’l (In re Motor Coach Indus. Int’l)*, No. 09-078-SLR, 2009 WL 330993, at \*2 n.5 (D. Del. Feb. 10, 2009) (“The ‘doctrine of necessity’ or ‘necessity of payment’ doctrine is a general rubric for the proposition that a court can authorize the payment of prepetition claims if such payment is essential to the continued operation of the debtor.” (citations omitted)). Accordingly, pursuant to section 105(a) of the Bankruptcy Code, the Court is empowered to grant the relief requested herein.

37. Here, the Debtors’ ability to pay Taxes and Fees in a timely manner is critical to preserve the value of the Debtors’ estates, as discussed above, and therefore necessary to their successful Chapter 11 Cases. The Debtors believe that any prepetition amounts that they will pay in respect of Taxes and Fees would be small relative to the size of the Debtors’ estates. As noted above, non-payment of Taxes and Fees could, among other things, cause certain Governmental Authorities to take precipitous action, including conducting audits, filing liens, pursuing payment of the Taxes and Fees from the Debtors’ directors, officers, and other employees, and seeking to lift the automatic stay, thus potentially substantially diminishing the value of the Debtors’ estates.

Failure to pay the Taxes and Fees may also lead to the assertion of interest thereon or the loss of critical operational licenses. For the Debtors to pay what would be relatively small prepetition amounts due as Taxes and Fees to avoid such outcomes is in the best interests of the Debtors, their estates, and all of the Debtors' stakeholders and other parties in interest. Accordingly, the payment of Taxes and Fees falls within the sound business judgment of the Debtors and would benefit, rather than prejudice, the Debtors' creditors by preserving the property of the Debtors' estates. The Debtors, therefore, submit that the relief requested herein is appropriate under the doctrine of necessity and section 105(a) of the Bankruptcy Code.

38. 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 value of the Debtors' estates would suffer, possibly precipitously. Consequently, the Debtors' stakeholders would benefit if the requested relief is granted.

**E. The Court Should Authorize Applicable Financial Institutions To Honor and Process Related Checks and Transfers**

39. 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 request authority to pay in this Motion, 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 as approved by the Proposed Orders.

**Debtors' Reservation of Rights**

40. 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 Taxes and Fees 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**

41. 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. The Debtors also believe that they may need to make upcoming payments to Governmental Authorities during the first 21 days of the Chapter 11 Cases. If the Debtors are not permitted to continue paying the Taxes and Fees as they become due, 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)**

42. 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**

43. Notice of this Motion will be provided to the following parties: (a) the office of the United States Trustee for the District of Delaware; (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 Debtors’ banks and financial institutions; (i) each applicable Governmental Authority; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Notice Parties**”).

44. 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 the page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, 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/ Brenna A. Dolphin

Robert J. Dehney, Sr. (No. 3578)  
Andrew R. Remming (No. 5120)  
Brenna A. Dolphin (No. 5604)  
Sophie Rogers Churchill (No. 6905)  
Evanthea Hammer (No. 7061)  
1201 N. Market Street, 16th Floor  
Wilmington, Delaware 19801  
Tel: (302) 658-9200  
rdehney@morrисnichols.com  
aremming@morrисnichols.com  
bdolphin@morrисnichols.com  
srchurchill@morrисnichols.com  
ehammer@morrисnichols.com

-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (*pro hac vice* pending)  
Darren S. Klein (*pro hac vice* pending)  
Steven Z. Szanzer (*pro hac vice* pending)  
Richard J. Steinberg (*pro hac vice* pending)  
450 Lexington Avenue  
New York, New York 10017  
Tel.: (212) 450-4000  
brian.resnick@davispolk.com  
darren.klein@davispolk.com  
steven.szanzer@davispolk.com  
richard.steinberg@davispolk.com

*Proposed Counsel to the Debtors and Debtors in Possession*



**Exhibit A**

**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 AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION TAXES, GOVERNMENTAL ASSESSMENTS, AND FEES AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

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), 363(b), 507(a)(8), and 541 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, the Taxes and Fees, whether asserted prior to, on, or after the Petition Date and (b) authorizing the applicable financial institutions to receive, process, honor, and pay all checks or wire transfers used by the Debtors to pay the foregoing, 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

---

<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 Dr, 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.

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. The Debtors are authorized, but not directed, to pay, in their sole discretion, the Taxes and Fees to the applicable Governmental Authorities; *provided, however*, that, absent further order of the Court, any payments made pursuant to this Order on account of Taxes and Fees owed for periods prior to the Petition Date shall not exceed \$1,200,000 in the aggregate.

3. Subject to paragraph 2 of this Order, the Debtors are authorized, but not directed, to continue remitting, in their sole discretion, the Taxes and Fees in the ordinary course of business on a post-petition basis.

4. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. The Debtors are authorized, but not required, to (a) issue new post-petition checks or effect new fund transfers (in each case, in their sole discretion) for the Taxes and Fees to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and (b) reimburse the relevant Governmental Authority or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

6. 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).

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

**Exhibit B**

**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 AUTHORIZING (I) DEBTORS TO PAY CERTAIN PREPETITION  
TAXES, GOVERNMENTAL ASSESSMENTS, AND FEES AND (II) FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

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), 363(b), 507(a)(8), and 541 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, the Taxes and Fees, whether asserted prior to, on, or after the Petition Date and (b) authorizing the applicable financial institutions to receive, process, honor, and pay all checks or wire transfers used by the Debtors to pay the foregoing, 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

---

<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 Dr, 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.

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. The Debtors are authorized, but not directed, to pay, in their sole discretion, the Taxes and Fees to the applicable Governmental Authorities; *provided, however*, that, absent further order of the Court, any payments made pursuant to this Order on account of Taxes and Fees owed for periods prior to the Petition Date shall not exceed \$2,000,000 in the aggregate.
3. The Debtors are authorized, but not directed, to continue remitting, in their sole discretion, the Taxes and Fees in the ordinary course of business on a post-petition basis.



4. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. The Debtors are authorized, but not required, to (a) issue new post-petition checks or effect new fund transfers (in each case, in their sole discretion) for the Taxes and Fees to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and (b) reimburse the relevant Governmental Authority or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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