

**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 (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**

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 (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* (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**.”



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), 362(d), 363(b), 507(a)(4), 507(a)(5), 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:

(i) pay or cause to be paid, in their sole discretion, all or a portion of the amounts owing (and associated costs) under or related to Wages, the Employer Taxes, the Withholdings, the Reimbursement Obligations, the Relocation Obligations, the Health and Welfare Plan Obligations, the COBRA Obligations, the PTO Obligations, the Disability Obligations, the Workers’ Compensation Obligations, the Non-Insider Severance Obligations, the Non-Insider Retention Obligations, and the Non-Insider Sales Bonus Obligations (each as individually defined below and, collectively, the “**Prepetition Employee Obligations**”); and

(ii) unless otherwise set forth herein, continue, in their sole discretion, their plans, practices, programs, procedures, and policies for their current and former Employees (as defined below) (collectively, the “**Employee Programs**”), as applicable, as those Employee Programs were in effect as of the Petition Date (as defined herein) and as may be modified, terminated, amended, or supplemented from time to time by the Debtors, and to make payments pursuant to the Employee Programs in the ordinary course of business, as well as to pay or cause to be paid related administrative obligations;

(b) permitting current and former Employees holding claims under the Workers’ Compensation Program (as defined below) to proceed with such claims in the appropriate judicial or administrative fora; and

(c) authorizing the applicable financial institutions to receive, process, honor, and pay all checks or wire transfers used by the Debtors to pay the foregoing.

2. By seeking the authorization requested herein, it should not be presumed that the Debtors have determined, as of this time, which of the Prepetition Employee Obligations they will pay or honor, nor should any party rely on this Motion as to any specific claim or benefit. Without limiting the foregoing, the Debtors intend to pay all Employees and, where applicable, former Employees, with respect to validly earned and undisputed Prepetition Employee Obligations that the Debtors would be required to pay in the ordinary course of business; *provided*, that the maximum amounts that the Debtors shall pay in the aggregate on interim and final bases, on account of all Prepetition Employee Obligations owed for periods prior to the Petition Date, shall be \$1,600,000 and \$1,700,000, respectively.

**Jurisdiction, Venue, and Authority**

3. 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.

4. 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 of 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.

5. 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**

6. 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.

7. 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.

8. 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.

9. 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’ Prepetition Employee Obligations**

10. Crucial to their business, the Debtors employ a talented and dedicated workforce that enables the Debtors to maintain their high standards of quality, safety, and sustainability. As of the Petition Date, the Company employs over 400 people with active status working in full-time or hourly positions, including executives, engineers, service technicians, and human resources,

sales, customer service, marketing, accounting, finance, legal, administrative, and other personnel (collectively, with current members of the Debtors' boards of directors (or similar governing bodies) and former personnel in any of the aforementioned positions, "**Employees**"). Approximately 181 of the Company's Employees work in the United States and are employed by the Debtors, the majority of which work at the Company's corporate headquarters located in California.<sup>3</sup>

11. Additionally, in the ordinary course of business, the Debtors retain independent contractors (the "**Independent Contractors**") to perform critical services such as legal and regulatory services. The number of Independent Contracts varies from month to month depending on the needs of the business. The Independent Contractors are critical to the ongoing operation of the Debtors.

*Wages, Salaries, and Other Compensation*

12. The Debtors pay their Independent Contractors and Employees (such payments, the "**Wages**")<sup>4</sup> under three different pay cycles:

- Salaried Employees. Approximately 158 of the Debtors' Employees are paid bi-weekly (every other Wednesday), one week in arrears, and are considered to be current as of each pay date. For each salaried payroll period, the Debtors pay on average approximately \$1,133,295 in the aggregate (in gross amounts). As of the Petition Date, the Debtors believe that they owe \$275,623 in Wages to their salaried Employees.
- Hourly Employees. Approximately 23 of the Debtors' Employees are paid bi-weekly (every other Friday), one week in arrears, and are considered to be current as of each pay date. For each hourly payroll period, the Debtors pay on

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<sup>3</sup> Approximately 70 of the Company's non-Debtor Employees work in Germany (which, in addition to sales operations, functions as the Company's European headquarters), approximately 23 work in Austria (where the Company, among other operations, supports vehicle manufacturing), and approximately 57 work in India (where the Company supports sales and operations). The Company's remaining non-Debtor Employees perform sales-related functions in Canada, Mexico, China, India, and throughout Europe. Non-Debtor employees in foreign jurisdictions are paid by the applicable Fisker foreign entity.

average approximately \$72,280 in the aggregate (in gross amounts). As of the Petition Date, the Debtors believe that they owe \$133,475 in Wages to their hourly Employees.

- Independent Contractors. The terms of each Independent Contractor's pay are determined by their respective arrangements with the Debtors. As of the Petition Date, the Debtors believe that they owe \$14,000 to the Independent Contractors.

13. The Debtors believe that, as of the Petition Date, no Employees are owed Wages in excess of the \$15,150 statutory cap under section 507(a)(4) of the Bankruptcy Code.

14. ADP Inc. ("ADP") serves as the Debtors' payroll administrator, for which the Debtors pay approximately \$12,975 per month for processing payroll, tax withholdings, and other human resources information systems. Generally, ADP impounds Wages, taxes, and garnishments for Employees one day prior to their applicable pay dates.

#### Employer Taxes

15. The Debtors incur certain tax obligations owed directly by the Debtors in connection with or on account of the Wages that the Debtors are required to remit to certain governmental authorities under applicable law, such as Social Security, Medicare, and unemployment employer taxes (collectively, the "**Employer Taxes**"). The Debtors and the Employees share Social Security and Medicare tax obligations; however, the Debtors' internal accounting systems do not differentiate the taxes as either Employee or Debtor obligations. Therefore, the amounts set forth below represent the total amounts that the Debtors paid or owe for Social Security, Medicare, and state unemployment tax. During the first quarter of 2024, the aggregate Employer Taxes averaged approximately \$482,691 per month. The Debtors believe that, as of the Petition Date, they owe approximately \$72,145 on account of the Employer Taxes.

Withholdings

16. The Debtors withhold from applicable Employees' Wages certain amounts that the Debtors are required to transmit to third parties for such purposes as Social Security, Medicare, federal and state income and payroll taxes, contributions for medical, dental, vision, and retirement plans, payroll taxes, and contributions and payroll deductions for various insurance programs, health savings accounts, and other similar mandatory withholdings (collectively, the "Withholdings").

17. The Debtors' average Withholdings are summarized below:

<b>Withholdings</b>	<b>Estimated Amount Per Payroll Period</b>
Employee Taxes <sup>5</sup>	\$363,001
Medical	\$29,568
Dental and Vision	\$2,717
Retirement	\$73,427
Insurance	\$1,910
Health Savings Accounts	\$5,416
Other Withholdings	\$3,276
<b>Total</b>	<b>\$479,315</b>

18. The Debtors estimate that, as of the Petition Date, they owe approximately \$252,628 on account of the Withholdings. The Debtors believe that any such Withholdings may not be property of the Debtors' bankruptcy estates under section 541 of the Bankruptcy Code.

Business Expense Reimbursement

19. In accordance with their corporate policies, the Debtors reimburse applicable Employees who incur business expenses in the ordinary course of performing their business duties on behalf of the Debtors. These reimbursement obligations include, among other things, travel expenses (*e.g.*, airfare, hotels, car rentals, car mileage, gas, cabs, and business parking), business

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<sup>5</sup> Excludes Employer Taxes, estimated at \$108,900 per payroll period and \$72,145 accrued and unpaid as of the Petition Date.

meals and entertainment, communication, educational, and office expenses (collectively, the “**Reimbursement Obligations**”).

20. Reimbursement is made directly to an Employee for business expenses paid by such Employee. During the first quarter of 2024, the aggregate Reimbursement Obligations averaged approximately \$215,862 per month. Although it is difficult for the Debtors to determine the exact amount of the Reimbursement Obligations outstanding at any particular time because of the generally unpredictable and irregular nature of Employees seeking payment thereof, the Debtors estimate that they owe approximately \$26,000 related to Reimbursement Obligations as of the Petition Date.

*Health and Welfare Benefits*

21. The Debtors offer several health and welfare benefit plans (collectively, the “**Health and Welfare Plans**”) to applicable Employees, including coverage for medical, dental, life, and vision insurance, health savings accounts, and accidental death and dismemberment insurance, short-term and long-term disability insurance, workers’ compensation, and COBRA (as defined herein) (collectively, the “**Health and Welfare Plan Obligations**”).

22. The Debtors’ medical and dental plans require the Debtors to pay for the costs arising under such plans up to a prescribed stop-loss amount, including claim payments and associated administrative costs. The Debtors believe that any administrative costs in respect of the medical and dental plans as of the Petition Date are *de minimis* in amount. The medical, dental, vision and health savings accounts plans are insured by and administered through a variety of companies, including Kaiser Permanente, The Cigna Group, and the Guardian Life Insurance Company of America (“**Guardian**”), and Wex. All other Health and Welfare Plans are insured



by and administered through Guardian, which provides life, accident, critical illness, hospital, accidental death, dismemberment, and short-term and long-term disability insurance.

23. During the first quarter of 2024, payments on account of Health and Welfare Plans totaled approximately \$2,844,437, comprised of (a) \$490,048 to Kaiser, \$1,962,889 to Cigna, \$387,925 to Guardian, and \$3,575 to Wex.

24. The Debtors work with a third-party administrator for management, reporting, and processing of certain obligations to former applicable Employees under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”). All Employees have the right under COBRA to elect to receive COBRA coverage, which extends medical, dental, and vision benefits to which an Employee was entitled immediately prior to termination for a specified post-termination period up to 18 months (collectively, the “**COBRA Obligations**”). Employees who elect to receive COBRA coverage are required to pay 100% of the elected premiums plus a three percent administrative fee, a portion of which may be paid by the Debtors during a severance period. COBRA coverage is administered through Wex Inc. As of the Petition Date, thirty-seven former Employees and their dependents had elected to receive COBRA coverage.

25. Because of the manner in which expenses are incurred and claims are processed under the Health and Welfare Plans, it is difficult for the Debtors to determine the extent of their obligations under the Health and Welfare Plans outstanding at any particular time. Based on historical experience and expected future trends, the Debtors estimate that the cost of the Health and Welfare Plan Obligations (including payments to administrators) is approximately \$400,000 per month. The Debtors estimate that, as of the Petition Date, they owe approximately \$418,682 on account of the Health and Welfare Plan Obligations (including payments to administrators).

*Paid Time Off*

26. Pursuant to the Debtors' general paid time off ("PTO") policies, eligible salaried Employees receive unlimited PTO days, while eligible hourly Employees receive 15 (in their first year of employment) to 20 (after their first year of employment) days of vacation days and one sick hour per every 30 hours worked. Upon termination of employment, salaried Employees do not receive compensation for accrued and unused PTO time, while the Debtors pay out all accrued and unused vacation (not sick) time for hourly Employees. The Debtors intend to honor prepetition accrued PTO pay obligations for their Employees (collectively, the "**PTO Obligations**") in the ordinary course of business.

*Disability Benefits*

27. The Debtors also offer disability benefits to their eligible Employees, consisting of short-term and long-term disability benefits. In the event that an Employee becomes eligible for short-term disability benefits, the benefits are provided for up to 12 weeks. If an Employee's disability lasts beyond 90 days, Employees may be eligible for long-term disability benefits as well, which last until retirement. The long-term and short-term disability benefits are administered and insured by Guardian. The Debtors believe that, as of the Petition Date, they do not owe any amounts on account of the obligations related to the benefits described in this paragraph (collectively, the "**Disability Obligations**").

*Workers' Compensation Program*

28. Under applicable law in the United States, the Debtors are required to maintain workers' compensation programs, or similarly required programs, to cover Employees' workers' compensation claims arising from or related to their employment with the Debtors (these programs collectively, "**Workers' Compensation Programs**") and to satisfy the Debtors' obligations

arising under or related to the Workers' Compensation Programs (collectively, the "**Workers' Compensation Obligations**").

29. For each claim under a Workers' Compensation Program, the Debtors file an injury report with a third-party claims administrator, Marsh & McLennan Companies, Inc., which performs an independent investigation of whether the claim is eligible for coverage. American Casualty Company of Reading, PA ("**American Casualty**") administers and pays out claims once deemed eligible. The Debtors do not have any additional obligations outside of paying annual premiums to American Casualty, which were prepaid in January 2024.

30. As of the Petition Date, the Debtors have outstanding Workers' Compensation Obligations that they believe to be *de minimis* in amount.

Severance Obligations

31. The Debtors have certain obligations (collectively, the "**Severance Obligations**") arising out of a severance plan or as memorialized in an employment agreement (as each may be amended, restated, supplemented, or modified from time to time, and collectively, the "**Severance Programs**") maintained by the Debtors in the ordinary course of business for the benefit of their salaried Employees and subject to local laws and regulations in certain jurisdictions. Some of these Employees eligible for severance may be considered insiders of the Debtors (as that term is defined in section 101(31) of the Bankruptcy Code) (collectively, "**Insiders**"). The Severance Programs, based on historical practices or mandated by local law (*i.e.*, the "**Employee Protection Plan**"), provide terminated salaried Employees with cash payments totaling one week's worth of pay for every year of service.

32. The Debtors estimate that, as of the Petition Date, accrued and unpaid Severance Obligations total approximately \$370,478. For the avoidance of doubt, the Debtors are not seeking

authority to continue the Severance Program with respect to Employees who may be considered Insiders, but only with respect to all other Employees who are not Insiders and are eligible to receive payments pursuant to a Severance Program (collectively, the “**Eligible Non-Insider Employees**”).<sup>6</sup> The Debtors believe that having the authority, in their sole discretion, to maintain the Severance Programs for Eligible Non-Insider Employees (the “**Non-Insider Severance Programs**”) is essential to retaining, and providing security to, Eligible Non-Insider Employees and, thereby, preserving the value of the Debtors’ estates. Although it is difficult for the Debtors to estimate the average monthly cost of the Non-Insider Severance Programs, given the generally unpredictable and irregular nature of such obligations, the Debtors believe that the monthly cost of maintaining the Non-Insider Severance Program for Eligible Non-Insider Employees is negligible in the context of the Debtors’ aggregate compensation and benefit obligations.

*Retention Programs*

33. The Debtors have certain retention obligations arising out of *ad hoc* agreements that the Debtors entered into in the ordinary course of business with key Employees who are not Insiders of the Debtors (collectively, the “**Non-Insider Retention Obligations**”). These obligations primarily consist of signing bonuses, half of which is paid six months after the Employee’s start date and the other half is paid six months thereafter.<sup>7</sup> The Debtors estimate that, as of the Petition Date, they owe approximately \$50,327 on account of the Non-Insider Retention Obligations. By this Motion, the Debtors are seeking authority to pay the outstanding Non-Insider Retention Obligations in the ordinary course during the pendency of the Chapter 11 Cases. For

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<sup>6</sup> The Debtors reserve the right to seek, through another motion, approval of a severance program with respect to Insiders that is consistent with section 503(c) of the Bankruptcy Code. Furthermore, the Debtors reserve all of their rights to contest any claim by an Eligible Non-Insider Employee to payment under the Severance Program.

<sup>7</sup> The Debtors estimate that \$156,346 of the signing bonuses already paid by the Debtors are subject to claw-back provisions set forth in the Employees’ employment agreements.

the avoidance of doubt, the Debtors believe that having the authority, in their sole discretion, to pay the Non-Insider Retention Obligations to non-Insider Employees is essential to retaining, and providing security to, eligible non-Insider Employees and, thereby, preserving the value of the Debtors' estates.

*Non-Insider Sales Incentive Plans*

34. The Debtors maintain 4 sales incentive plans for the Employees that are selling Direct to Consumer, to Dealer Partners, for Fleet Sales and Auctions. Pursuant to this Motion, the Debtors seek authority to continue certain of these incentive plans with respect to Employees who are not Insiders, as detailed below. This Motion does not seek to continue any incentive plans with respect to Insiders, which may be addressed in a subsequent motion to be filed with the Court.<sup>8</sup>

35. The Sales Bonus is earned over the course of each month and paid in the following month. For performance in May 2024, the Sales Bonuses earned totaled \$98,700 to eligible Employees, of which \$63,700 was paid to Salaried employees before the petition filing. \$35,000 was earned but not paid. Accordingly, the Debtors seek authority in this Motion to pay the Sales Bonus to non-Insider Employees (collectively, the “**Non-Insider Sales Bonus Obligations**”) for Employee performance during May 2024.

**Basis for Relief**

**A. Withholdings and Certain Prepetition Employee Obligations May Not Be Property of the Debtors' Estates or May Give Rise to Priority Claims Under Sections 507(a)(4), (5) of the Bankruptcy Code**

36. The Withholdings and certain other amounts owed on account of the Prepetition Employee Obligations may be property of the Employees, governmental authorities, or other

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<sup>8</sup> The Debtors reserve the right to seek, through another motion, approval of incentive plans with respect to Insiders that are consistent with section 503(c) of the Bankruptcy Code.

parties and required to be turned over under applicable law; as such, these amounts 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 withheld taxes are property held by debtor in trust for another and, as such, are not property of debtor's estate); *I.R.S. v. Kaplan (In re Kaplan)*, 104 F.3d 589, 591 n.1 (3d Cir. 1997) (classifying certain withheld employment taxes as "trust fund" taxes); *Official 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).

37. To the extent that the amounts owed on account of the Prepetition Employee Obligations are not actually the property of the Employees, governmental authorities, or other parties, failure to pay such amounts may well give rise to priority claims under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code<sup>9</sup> that would, in any event, be entitled to payment in full, and the Debtors would be required to pay such claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B). Thus, granting the relief sought herein would only cause such Employee claims to be paid in the initial stages of the Chapter 11 Cases, rather than at the plan confirmation stage. The amount of such payments would not differ in either scenario and, as such, no economic stakeholder would be harmed by this change in timing. Further, any amounts that are not property of the Debtors' estates are not available for the satisfaction of creditors' claims. Finally, not fulfilling the Prepetition Employee Obligations would have a detrimental effect on the financial and medical well-being and morale of the Employees and lead to the departure of certain

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<sup>9</sup> Pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, an individual's claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date, and claims against the Debtors for contributions to employee benefit plans arising from services rendered within 180 days before the Petition Date, are each afforded unsecured priority status for amounts up to \$15,150 per employee. 11 U.S.C. §§ 507(a)(4), (5).

Employees. Such departures would cause a severe disruption in the Debtors' business and impair the value of the Debtors' estates, to the detriment of all parties in interest.

38. Further, many 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., United States v. Energy Res. Co.*, 495 U.S. 545, 547 (1990) (citing I.R.C. § 6672) (“Should employers fail to pay trust fund taxes, the Government may collect an equivalent sum directly from the officers or employees of the employer who are responsible for collecting the tax.”); *In re Prescription Home Health Care, Inc.*, 316 F.3d at 550 (stating that, under I.R.C. § 6672, the sole shareholder and president of a debtor could be personally liable for the unpaid federal trust fund taxes of the debtor). To the extent that the Debtors collected certain Withholdings and Employer Taxes before the Petition Date and did not remit or pay them to the applicable governmental authorities, certain of the Debtors' directors, officers, and other employees may be subject to lawsuits during the pendency of the Chapter 11 Cases. Payment of these amounts 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 essential to the preservation of the value of the Debtors' estates and the success of the Chapter 11 Cases.

**B. Payment of the Prepetition Employee Obligations Constitutes a Sound Exercise of the Debtors' Business Judgment and is Necessary for the Preservation of the Debtors' Estates**

39. The Debtors believe that the payment of the Prepetition Employee Obligations would be in the ordinary course of their business because (a) they are commonplace and routine in the Debtors' industry and (b) the Debtors consistently and regularly fulfill such obligations. As a result, the Debtors believe that payment of the Prepetition Employee Obligations 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 Prepetition Employee Obligations to the extent that such authorization is required under section 363(b) of the Bankruptcy Code.

40. 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) (cleaned up), *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 Enter. 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))).

41. 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. Any delay in paying the Prepetition Employee Obligations or failure to maintain the Employee Programs and pay related administrative obligations will adversely impact the Debtors relationship with their Employees and could irreparably impair Employees’ morale, dedication, confidence, and cooperation. The Debtors’ business hinges on their relationships with their customers and the ability to deliver superior products and services is vital. The Employees’ support for the Debtors’ efforts in the Chapter 11 Cases is critical to the success of those efforts. At this stage, the Debtors simply cannot risk the substantial damage to their business and their estates’ value that would inevitably attend any decline in their Employees’ morale attributable to the failure to pay the Prepetition Employee Obligations.

42. Absent an order granting the relief requested in this Motion, many Employees would undoubtedly suffer hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors would be undermined, perhaps irreparably, by the possibility that otherwise loyal Employees would seek other employment alternatives. Consequently, the Debtors’ stakeholders would benefit if the requested relief is granted. Moreover, because the Prepetition Employee Obligations either (a) would be

afforded priority status under either section 507(a)(4) or (5) of the Bankruptcy Code or (b) otherwise not property of the Debtors' estates, the Debtors' general unsecured creditors would not be prejudiced by the Court's granting of the relief requested herein.

43. In fact, courts in this jurisdiction routinely grant relief similar to that requested herein. *See, e.g., In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) [D.I. 160]; *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 13, 2023) [D.I. 532]; *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. June 5, 2023) [D.I. 207]; *In re TPC Grp. Inc.*, No. 22-10493 (CTG) (Bankr. D. Del. June 30, 2022) [D.I. 340]; *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. Apr. 20, 2022) [D.I. 177]; *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Feb. 7, 2022) [D.I. 121]. The Debtors submit that the circumstances described herein warrant similar relief.

44. Finally, the Debtors submit that payment of the Prepetition Employee Obligations 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).

45. The United States Supreme Court first articulated the doctrine of necessity over 140 years ago, in *Miltenberger v. Logansport Railway 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).

46. 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 Energy Res. Co.*, 495 U.S. at 549 (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))).

47. The doctrine of necessity is frequently invoked early in a reorganization, 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.

48. Here, the Debtors’ ability to pay the Prepetition Employee Obligations in a timely manner is critical to the ongoing operation of their business, as discussed above, and therefore

necessary to preserve the value of the Debtors' estates and to the success of the Chapter 11 Cases. The Debtors believe that any prepetition amounts that they will pay in respect of the Prepetition Employee Obligations would be modest relative to the size of the Debtors' estates. As noted above, non-payment of the Prepetition Employee Obligations or failure to maintain the Employee Programs and pay related administrative obligations could, among other things, have a detrimental effect on the financial and medical well-being and morale of their Employees and lead to the departure of certain Employees. Such departures would cause a severe disruption in the Debtors' business and impair the value of the Debtors' estates, to the detriment of all parties in interest. The Debtors believe that it is in the best interests of the Debtors, their estates, and all of the Debtors' stakeholders and other parties in interest to avoid such outcomes, particularly given the relatively modest prepetition amounts due on account of the Prepetition Employee Obligations. Accordingly, the payment of the Prepetition Employee Obligations and continuation of the Employee Programs fall within the sound business judgment of the Debtors and would benefit, rather than prejudice, the Debtors' creditors by preserving the property and value of the Debtors' estates.

49. 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 under the doctrine of necessity and section 105(a) of the Bankruptcy Code. 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.

**C. Cause Exists To Authorize the Debtors To Continue to Pay and/or Honor Any and All Workers' Compensation Obligations and To Authorize Current and Former Employees To Proceed with Outstanding Workers' Compensation Claims**

50. It is imperative that the Debtors be permitted (but not, for the avoidance of doubt, directed), to continue to pay and/or honor any and all Workers' Compensation Obligations,

including all prepetition premiums, claims (including claim settlements), losses, and expenses in connection with the Workers' Compensation Obligations, and to pay all costs and expenses associated with the Workers' Compensation Program, including such costs and expenses related to administration, servicing, processing, adjusting, paying, and settling claims and losses under these programs.

51. It is crucial for Employee morale and for the Debtors' ability to retain essential Employees to continue to (a) pay workers' compensation benefits and (b) honor the Workers' Compensation Obligations under the Workers' Compensation Program described herein.

52. Section 362(a) of the Bankruptcy Code operates to stay, among other things:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause."

11 U.S.C. § 362(d)(1).

53. To the extent that any current or former Employees hold claims pursuant to the Workers' Compensation Program, the Debtors seek authorization under section 362(d) of the Bankruptcy Code for such current or former Employees to proceed with such claims in the appropriate judicial or administrative fora. The Debtors believe that cause exists to modify the automatic stay, where the Debtors deem it appropriate to do so, because universally staying such claims would have a detrimental effect on the financial and medical well-being and morale of their Employees and may lead to the departure of certain Employees. Such departures would cause a severe disruption in the Debtors' business and impair the value of the Debtors' estates, to the

detriment of all parties in interest. To this end, the Debtors seek an order granting (a) relief from the automatic stay as it relates to current and former Employee claims under the Workers' Compensation Program and (b) a waiver of the corresponding notice requirements under Bankruptcy Rule 4001(d). The Debtors, however, do not seek a waiver, termination, or modification of the automatic stay with respect to any other claims.

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

54. 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**

55. 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 Prepetition Employee Obligations 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**

56. 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 on account of the Prepetition Employee Obligations during the first 21 days of the Chapter 11 Cases. If the Debtors are not permitted to continue meeting these obligations as they become due, the Debtors and their Employees 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)**

57. 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 (a) operate their business without interruption, (b) ensure that a key stakeholder



contingency, the Employees, is not harmed by these proceedings, and (c) preserve value of their estates for the benefit of the Debtors' economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (y) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (z) 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**

58. 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; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**").

59. 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.

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

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*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 (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**

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), 362(d), 363(b), 507(a)(4), 507(a)(5), and 541 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to (i) pay or cause to be paid, in their sole discretion, all or a portion of the Prepetition Employee Obligations and (ii) unless otherwise set forth herein, continue, in their sole discretion, the Employee Programs, as applicable, as those Employee Programs were in effect as of the Petition Date and as may be modified, terminated, amended, or supplemented from time to time by the Debtors in their sole discretion, and to make or cause to make payments pursuant to

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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.

the Employee Programs in the ordinary course of business, as well as to pay or cause to be paid related administrative obligations, (b) permitting current and former Employees holding claims under the Workers' Compensation Program to proceed with such claims in the appropriate judicial or administrative fora, and (c) 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 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. Except as provided otherwise in this Order, the Debtors are authorized, but not directed, to (a) pay or cause to be paid, in their sole discretion, all amounts required under or related to the Prepetition Employee Obligations in the ordinary course of business and in accordance with the Employee Programs as were in effect prior to the Petition Date and (b) continue, in their sole discretion, to pay and honor, or cause to be paid or honored, their obligations arising under or related to the Employee Programs in the ordinary course of business and in accordance with the Employee Programs as were in effect prior to the Petition Date, as those Employee Programs were in effect as of the Petition Date and as such Employee Programs may be modified, terminated, amended, or supplemented from time to time, in the ordinary course of the Debtors’ business; *provided*, that, absent further order from the Court, payments made on account of Prepetition Employee Obligations shall not exceed \$1,600,000 in the aggregate.

3. Notwithstanding any other provision herein, the Debtors shall not pay Wages to any Employee on account of Prepetition Employee Obligations in excess of the statutory cap pursuant to section 507(a)(4) of the Bankruptcy Code prior to the entry of a final Order.

4. Nothing in this Order (a) authorizes any payment subject to section 503(c) of the Bankruptcy Code, (b) shall prejudice the Debtors’ ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time, or (c) shall constitute a determination by the Court as to whether any individual entitled to payment pursuant to this Order is an Insider.

5. The Debtors are authorized, but not required, to (a) continue, in the Debtors' sole discretion, utilizing third parties for certain services as described in the Motion and to pay or cause to be paid related claims as and when such obligations are due and (b) pay, in the Debtors' sole discretion, prepetition amounts owing in the ordinary course of business to third parties in connection with administering and maintaining the Employee Programs.

6. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow current and former Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative fora, and the Employees are authorized to so proceed. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program. The notice requirements under Bankruptcy Rule 4001(d) with respect to the above are waived.

7. 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.

8. The Debtors are authorized, but not required, to issue or cause to be issued, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be

dishonored or rejected and to reimburse their Employees 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.

9. 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).

10. 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.

11. 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.

12. 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.



13. 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.

14. 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.

15. 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)

(Joint Administration Requested)

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

**FINAL ORDER 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**

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), 362(d), 363(b), 507(a)(4), 507(a)(5), and 541 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to (i) pay or cause to be paid, in their sole discretion, all or a portion of the Prepetition Employee Obligations and (ii) unless otherwise set forth herein, continue, in their sole discretion, the Employee Programs, as applicable, as those Employee Programs were in effect as of the Petition Date and as may be modified, terminated, amended, or supplemented from time to time by the Debtors in their sole discretion, and to make or cause to make payments pursuant to

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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.

the Employee Programs in the ordinary course of business, as well as to pay or cause to be paid related administrative obligations, (b) permitting current and former Employees holding claims under the Workers' Compensation Program to proceed with such claims in the appropriate judicial or administrative fora, and (c) 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 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. Except as provided otherwise in this Order, the Debtors are authorized, but not directed, to (a) pay or cause to be paid, in their sole discretion, all amounts required under or related to the Prepetition Employee Obligations in the ordinary course of business and in accordance with the Employee Programs as were in effect prior to the Petition Date and (b) continue, in their sole discretion, to pay and honor, or cause to be paid or honored, their obligations arising under or related to the Employee Programs in the ordinary course of business and in accordance with the Employee Programs as were in effect prior to the Petition Date, as those Employee Programs were in effect as of the Petition Date and as such Employee Programs may be modified, terminated, amended, or supplemented from time to time, in the ordinary course of the Debtors’ business *provided*, that, absent further order of the Court, payments made on account of Prepetition Employee Obligations shall not exceed \$1,700,000 in the aggregate.

3. Nothing in this Order (a) authorizes any payment subject to section 503(c) of the Bankruptcy Code, (b) shall prejudice the Debtors’ ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time, or (c) shall constitute a determination by the Court as to whether any individual entitled to payment pursuant to this Order is an Insider.

4. The Debtors are authorized, but not required, to (a) continue, in the Debtors’ sole discretion, utilizing third parties for certain services as described in the Motion and to pay or cause to be paid related claims as and when such obligations are due and (b) pay, in the Debtors’ sole discretion, prepetition amounts owing in the ordinary course of business to third parties in connection with administering and maintaining the Employee Programs.

5. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow current and former Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative fora, and the Employees are authorized to so proceed. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program. The notice requirements under Bankruptcy Rule 4001(d) with respect to the above are waived.

6. 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.

7. The Debtors are authorized, but not required, to issue or cause to be issued, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse their Employees 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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