

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

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (___)

(Joint Administration Requested)

**MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS AUTHORIZING THE DEBTORS TO
PAY PREPETITION WAGES, COMPENSATION, EMPLOYEE
BENEFITS AND OTHER ASSOCIATED OBLIGATIONS**

The above-captioned debtors and debtors-in-possession (the “Debtors”) by and through their proposed undersigned counsel, hereby submit this *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Wages, Compensation, Employee Benefits and Other Associated Obligations* (the “Motion”). In support of the Motion, the Debtors rely on the *Declaration of Matthew R. Manning in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”),² and respectfully state as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

² Except where otherwise indicated, capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.



JURISDICTION AND VENUE

1. 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. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.³

2. The statutory predicates for the relief sought herein are sections 105(a), 363, 507(a), and 541 of title 11 of chapter 11 of the United States Code (as amended or modified, the “Bankruptcy Code”) and rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

GENERAL BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession, pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

³ Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors hereby confirm their consent to entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors' businesses and capital structure is set forth in detail in the First Day Declaration filed contemporaneously with this Motion and incorporated herein by reference.

RELIEF REQUESTED

7. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto (a) authorizing the Debtors to: (i) pay and/or perform, as applicable, prepetition obligations to current employees and the independent contractors including accrued prepetition wages, salaries and other cash and non-cash compensation claims (collectively, the "Employee Wage Obligations"); (ii) maintain and continue to honor its practices, programs and policies for their Employees (defined herein) that were in effect as of the Petition Date, as such may be modified, amended or supplemented from time to time in the ordinary course, including without limitation, the continuation and maintenance of the Debtors' various employee benefit and savings plans and programs (and to pay all fees and costs in connection therewith, including those that arose prepetition) (collectively, the "Employee Benefit Obligations"); (iii) reimburse Employees for prepetition expenses incurred on behalf of the Debtors in the ordinary course of business (the "Employee Expense Obligations"); (iv) continue to pay and/or contest in good faith all amounts related to workers' compensation claims that arose prepetition (the "Workers' Compensation Obligations"); and (v) pay all related prepetition withholdings and payroll-related taxes and deductions (the "Employer Taxes and Deductions" and collectively with the Employee Wage Obligations, Employee Benefit Obligations, Employee Expense Obligations, and Workers' Compensation Obligations, the "Employee Obligations") associated with the Employee Wage Obligations and Employee Benefit Obligations (each, as described herein) and (b) authorizing

and directing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests for payment of any prepetition Employee Obligations.

THE DEBTORS' EMPLOYEE OBLIGATIONS

A. Overview of the Debtors' Workforce

8. As explained in the First Day Declaration, the Debtors own and operate forty-seven (47) restaurants in sixteen (14) states (Connecticut, Florida, Illinois, Indiana, Kansas, Michigan, Missouri, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Texas, and Virginia).⁴ As of the Petition Date, the Debtors employ a total of 899 full-time and 2,514 part-time employees. Sixty-nine (69) employees are located at the Debtors' headquarters in Leawood, Kansas (the "HQ Employees"). The other 3,358 employees are located at the Debtors' restaurant locations or in the field overseeing one or more groups of restaurants in the regions in which the Debtors operate (the "Restaurant Employees," and together with the HQ Employees, the "Employees").

9. Of the Debtors' 3,427 total Employees, 315 have their wages paid via salary ("Salary Employees"), which includes all but two (2) HQ Employees and 248 Restaurant Employees who serve in a managerial role either at a single restaurant location or in the field at one or more groups of restaurants. The Debtors' remaining Restaurant Employees and the two (2) HQ Employees are paid hourly wages ("Hourly Employees").

10. The Debtors' Employees perform a variety of critical functions, including running their restaurant operations, performing general and administrative services, providing legal, financial and human resource services, and other related tasks. The Employees' skills,

⁴ In May 2018 the Debtors acquired seventeen (17) of these restaurants located primarily in New Jersey and New York (the "NJ/NY Restaurants") from A.C.E. Restaurant Group, Inc. ("A.C.E."). Prior to the acquisition, A.C.E. maintained certain benefit and incentive plans for its employees in the NJ/NY Restaurants (the "NJ/NY Employees"). Instead of changing the benefit plans for the NJ/NY Employees following the 2018 acquisition, the Debtors have kept those plans in place for the NJ/NY Employees. Accordingly, as explained herein, in certain instances the Debtors maintain different benefits for their Employees based on their locale. Those outside of the New York and New Jersey area are referred to as the "Central Employees."

knowledge and understanding of the Debtors' operations, business relations and infrastructure are essential to the effective operation of the Debtors' businesses.

11. In addition to the Employees, the Debtors retain eleven (11) independent contractors (the "Independent Contractors") who provide, among other essential services, accounting, financial, reporting, licensing, architectural, marketing, web and graphic design services. The Employees rely on the support of the Independent Contractors to complete certain tasks in furtherance of the Debtors' businesses. Four (4) of the Independent Contractors are retained through staffing agencies, while the remainder are engaged directly by the Debtors.

12. Just as the Debtors depend on the Employees and the Independent Contractors to operate their businesses on a daily basis, these individuals also depend on the Debtors. Indeed, the vast majority of these individuals rely exclusively on payments received from the Debtors for their basic living necessities. The Debtors must take all necessary steps to retain their Employees and Independent Contractors and bolster their morale to preserve and maximize the value of the Debtors' estates.

B. Employee Wage Obligations⁵

i. Wages and Salaries

13. In the ordinary course of business, the Debtors incur payroll obligations for salaries and hourly wages owed to their Employees and the Independent Contractors. With the exception of the Debtors' Hourly Employees in New York who are paid weekly in accordance with applicable state law, the Debtors pay all other Salary and Hourly Employees bi-weekly in one of two pay cycles depending on their geographic location. For example, Employees located

⁵ In the ordinary course of business, the Debtors paid certain of their expenses and obligations in the days leading up to the bankruptcy filing. Because it is unclear whether such amounts cleared prior to the Petition Date, the Debtors have included such amounts in the estimates contained herein.

in Connecticut are paid in cycle 1 with the next payday being on November 15, 2019 and Employees in Kansas are paid in cycle 2 with the next payday being on November 22, 2019.

The Independent Contractors are paid pursuant to the specific terms of their contracts.

14. The Debtors' average monthly payroll obligations are approximately: (i) \$700,000 for HQ Employees; (ii) \$3,380,000⁶ for Restaurant Employees and (iii) \$73,000 for the Independent Contractors.

15. The Debtors administer their payroll in-house as a function of their accounting department. With the exception of approximately 324 Employees who have chosen to receive live checks and 480 Employees who have elected to be paid by Paycard (defined below), Employees are paid by direct deposit. Unless the particular restaurant location has sufficient cash on hand, gratuities paid by guests to the Debtors' Employees collected by the Debtors via credit card are distributed to tipped Restaurant Employees through electronic funds deposited by the next business day onto a card (the "Paycard") administered and processed by Netspend. The Paycard functions similar to a debit card from which Restaurant Employees can withdraw the gratuities that have been deposited onto his or her individual Paycard. The Debtors' Independent Contractors are paid by live check issued by the Debtors or, in the case of those engaged through an agency, by the agency directly pursuant to the terms of their engagement.

16. As of the Petition Date, the Debtors estimate that they owe the following amounts to their Employees and the Independent Contractors for prepetition Employee Wage Obligations (collectively, the "Prepetition Wage Obligations"):

⁶ This amount does not include gratuities collected by the Debtors for tipped Restaurant Employees, which are distributed daily and deposited onto the Restaurant Employees' Paycard (as defined below) and, pursuant to applicable wage laws, are not property of the Debtors.

WAGE TYPE	ESTIMATED AMOUNT
Salary HQ Employees	\$715,000
Hourly HQ Employees	\$1,500
Salary Restaurant Employees	\$1,850,000
Hourly Restaurant Employees	\$1,250,000
Independent Contractors	\$15,000

17. All of the Prepetition Wage Obligations will come due within the first twenty-one (21) days of these Chapter 11 Cases, but in no case is any individual Employee owed in excess of \$13,650 for Prepetition Wage Obligations. By this Motion, the Debtors seek authority to pay and honor Prepetition Wage Obligations in an amount not to exceed the \$13,650 cap under Bankruptcy Code section 507(a)(4) per eligible Employee and not to exceed \$3,831,500 in the aggregate, and to continue to honor the Employee Wage Obligations on a postpetition basis in the ordinary course of business.

ii. The Incentive Programs, Referral Bonuses & Banquet Commissions

18. As is typical in the restaurant industry, in addition to their regular salary, certain Employees⁷ participate in performance incentive programs in the ordinary course of business (the “Performance Programs”).⁸ The Performance Programs are designed to incentivize and reward eligible Employees based on the Debtors’ performance at the company and restaurants and are an important part of these Employees overall compensation packages.

19. Specifically, under the Performance Programs, eligible Restaurant Employees are entitled to either monthly or quarterly incentive payments (collectively, the “Incentives”) based on achieving certain performance targets. In addition, Managers who train new management

⁷ Eligible Restaurant Employees include field managers, general managers, chefs and kitchen managers (collectively, the “Managers”). None of the eligible Employees are “insiders” as such term is defined by Bankruptcy Code section 101(31).

⁸ The Debtors also maintain a year-end Performance Program for HQ Employees in the ordinary course of business. However, the Debtors are not seeking authority to pay any amounts thereunder through this Motion.

hires are eligible to receive a bonus upon the new hire's completion of the management training program. To be eligible to receive an Incentive, the eligible Employee must be both in good standing and employed by the Debtors at the time of the payout. Based on current projections, the Debtors expect that an aggregate of approximately \$240,000 (comprised of \$90,000 for November monthly Incentives and \$150,000 for fourth quarter 2019 Incentives) will be owed to eligible Employees for Incentives earned but not paid prepetition under the Performance Programs (collectively, the "Unpaid Incentives").

20. In addition, certain Managers are selected by the Vice President of Operations to participate in the Debtors' Managing Partner Program, which functions as a retention program with a long term incentive component for the specific roles of general managers, kitchen managers and chefs. Selection for the Managing Partner Program is based upon demonstrated consistency in meeting key operating standards, including but not limited to: (i) quality of operations, (ii) guest satisfaction, (iii) profitability, and (iv) employee management. As of the Petition Date, approximately thirty-six (36) Managers have been selected by management to participate in the Debtors' Managing Partner Program. Under this program, participants that continue to be employed by the Debtors after four (4) years receive an Incentive between \$24,000 and \$48,000 depending on the eligible Manager's position within the company. While certain amounts accrued prepetition, the Debtors estimate that there are no outstanding amounts due and owing to any Employee under the Managing Partner Program as of the Petition Date. While the Debtors request authority to continue the Managing Partner Program in the ordinary course of business, the Debtors are not seeking authority to pay any prepetition amounts under the Managing Partner Program through this Motion.

21. The Debtors also offer all Employees referral bonuses for referring an Hourly Employee candidate or Manager candidate in amounts up to \$200 and \$500, respectively (the “Referral Program”). Under the Referral Program, the amounts are paid out in two (2) installments. The first installment, equal to fifty percent (50%) of the referral bonus, is paid upon hiring of the referral. The second installment, equal to the remaining fifty percent (50%) of the bonus, is paid out ninety (90) days from the referral’s completion of training. The amounts are processed through payroll and only paid if the referring Employee and referred Employee are still employed and in good standing at the time of payment. Based on current projections, the Debtors estimate that \$500 was earned but not paid prepetition under the Referral Bonus Program (the “Unpaid Referral Bonus”).

22. Additionally, certain of the Debtors’ restaurants have banquet facilities. Those restaurants employ a banquet manager (the “Banquet Managers”). The Banquet Managers are responsible for, among other things, generating banquet sales and coordinating logistics with customers. As part of their compensation, Banquet Managers receive commission on the banquet sales for their locations (the “Banquet Commissions” and together with the Performance Program, the Referral Program, and the Managing Partner Program as the “Incentive Programs”). The Debtors estimate that they owe approximately \$3,500 in prepetition Banquet Commissions that were earned but unpaid as of the Petition Date (the “Unpaid Banquet Commissions”).

23. The Incentive Programs are critical to incentivizing Employee performance, particularly in the context of these Chapter 11 Cases. As a result, the Debtors seek authority to (i) pay and honor all unpaid prepetition amounts owed under the Incentive Programs (the “Unpaid Incentive Obligations”) as they come due in the ordinary course of business, provided

that the Debtors are not seeking authority to pay any individual in excess of \$13,650 on account of amounts owed for Unpaid Incentive Obligations and the total amount of Unpaid Incentive Obligations to be paid will not exceed \$244,000 in the aggregate and (ii) continue to honor the Incentive Programs on a postpetition basis in the ordinary course of business.

iii. Paid Time Off

24. The Debtors offer certain of their Employees vacation time and other personal time off. These benefits are usual and customary, and they are necessary to enable the Debtors to retain qualified Employees to operate their businesses. With certain exceptions and variations discussed below, the Debtors' full-time Employees are eligible to accrue paid vacation time ("Vacation Time") and, in certain instances, personal time off ("Personal Time") and together with Vacation Time, "Paid Time Off"). Only those Employees who work a minimum of thirty (30) hours per week are eligible for Paid Time Off.

25. With the exception of Hourly NJ/NY Employees who receive paid time off only as required by applicable state law, full-time Hourly Employees earn Vacation Time after one (1) full year of continuous employment (the "Central FT Hourly Employees"). The number of weeks provided to the Central FT Hourly Employees for Vacation Time is based on each employee's number of years of service as follows:

HOURLY EMPLOYEES	
Length of Service	Maximum Accrual Per Employment Year
1 Year	1 Week
2-9 Years	2 Weeks
10-19 Years	3 Weeks
20+ Years	4 Weeks

With the exception of tipped Central FT Hourly Employees who are paid at minimum wage minus applicable tip credit, Vacation Time for Central FT Hourly Employees is paid at the

employee’s current hourly rate and is based on the average number of hours worked per week over the six (6) months preceding the Vacation Time. Central FT Hourly Employees must use their Vacation Time within the twelve (12) month period following their anniversary date on which it was earned. Accrued, unused Vacation Time for Central FT Hourly Employees is paid out upon termination, but cannot otherwise be cashed out.

26. Full-time Salary Central Employees accrue Vacation Time beginning the first month after ninety (90) days of continual employment. Such Vacation Time is accrued based on continual employment during a calendar month with credit received the last day of each full calendar month employed based on length of service as follows:

SALARY EMPLOYEES		
Length of Service	Accrued Hours Per Month	Maximum Accrual Per Employment Year
91 st Day-4 Years	6.664	80 Hours
5-9+ Years	10	120 Hours
For those employed since October 31, 2008 or earlier	13.36	160 Hours

For the full-time Salary NJ/NY Employees, Vacation Time is accrued based on continual employment during a calendar month based on length of service as follows:

SALARY NJ/NY EMPLOYEES		
Length of Service	Accrued Days Per Month	Maximum Accrual Per Employment Year
First Year	.42	5 days
Second Year	.83	10 days
Third Year	1.25	15 days
10+ Years	1.67	20 days

All Full-time Salary Employees who are on leave of absence during any part of a calendar month do not receive credit for that month’s accrual. Full-time Salary Employees forfeit any accrued but unused vacation on either the first day of January for NJ/NY Employees or the last day of the

month of such Employee's work anniversary Central Employees (the "VT End Date"). The amount of Vacation Time forfeited will be the amount accrued as of the last day of the month prior to the VT End Date that remains unused on the VT End Date except vacation that accrued during the month prior to their work anniversary, which carries overs for one (1) month. Full time Salary Employees, with the exception of the NJ/NY Employees, have the option to sell back unused vacation to the Debtors at a discount. In the ordinary course of business, it is the Debtors' policy to "cash out" accrued but unpaid Vacation Time for Central Employees upon separation or termination.

27. In addition to Vacation Time, full-time Salary HQ Employees also receive Personal Time. Each full-time Salary HQ Employee receives ten (10) days of Personal Time to be used at the Employee's discretion — subject to supervisor approval — for personal, business or other needs, including holidays. Personal Time may not be cashed out or bought back by the Debtors.

28. Most state laws require Employees be paid certain Paid Time Off upon termination of their employment. For example, for the Debtors' Employees that work in the state of New York, state labor law requires the Debtors to pay any obligations under "an agreement to pay or provide benefits or wage supplements" promised to employees, such as "reimbursement for expenses; health, welfare, and retirement benefits; and vacation, separation or holiday." N.Y. LAB. LAW § 198-c (2008). The same is true regardless of the reason for termination. *See id.* Numerous states in which the Debtors operate have similar requirements under applicable state law laws.⁹

⁹ *See, e.g.*, 820 ILL. COMP. STAT. 115/5 (2019); IND. CODE § 22-2-9-2 (2019); NEB. REV. STAT. § 48-1229 (2019); N.Y. LAB. LAW §§ 190, 198-c (2019); 43 PA. CONS. STAT. §§ 260.3, 260.5 (2019); TENN. CODE ANN. § 50-2-103 (2019); TEXAS ADMIN. CODE ANN. § 821.25 (2019); WIS. STAT. §§ 109.01, 109.03 (2019).

29. In total, the Debtors estimate that approximately \$810,000 in Paid Time Off has accrued, but not been used as of the Petition Date. Accruals of Paid Time Off, however, are not a current cash payment obligation. By this Motion, the Debtors seek authority to pay any “cash out” amounts required under applicable law with respect to earned but unused Paid Time Off in a total amount not to exceed \$810,000 (the “Prepetition Paid Time Off”) and to continue their Paid Time Off policies in the ordinary course of business on a postpetition basis. For the avoidance of doubt, the Debtors seek authority to pay any “cash out” amounts required under applicable law with respect to earned but unpaid Paid Time Off in excess of the statutory cap of \$13,650 solely pursuant to the final order.

C. Employee Expense Obligations

30. The Debtors routinely reimburse eligible Employees for certain expenses within the scope of their employment, including expenses for travel, cell phone service, out-of-pocket business related expenses, and auto allowances (collectively, the “Reimbursable Expenses”). The Debtors maintain an expense reimbursement policy that requires Employees to submit expense reports with receipts to their supervisor for approval and subsequent reimbursement. The Debtors typically process complete expense reports within two (2) weeks after submission and the approved Reimbursable Expenses are paid in the Employee’s next paycheck following approval.

31. As of the Petition Date, certain Employees have not yet been reimbursed for Reimbursable Expenses previously incurred. The Debtors typically pay approximately \$142,000 per month in Reimbursable Expenses. The Debtors estimate that they have approximately \$33,000 in prepetition Reimbursable Expenses outstanding as of the Petition Date, which includes typical amounts for monthly Reimbursable Expenses and approximately \$20,000 related to the prepetition closure and vacancy of certain locations immediately prior to the filing where a

reimbursement request has not yet been received by the Debtors (collectively, the “Unpaid Reimbursable Expenses”).

32. To avoid unnecessary disruption, and due to the nature of delay sometimes associated with the timely submission of expense reports, the Debtors seek authority to pay the Unpaid Reimbursable Expenses in an amount not to exceed \$33,000 and to continue to honor such Reimbursable Expenses in the ordinary course of business postpetition.

D. Employee Benefit Obligations

33. The Debtors provide their eligible full-time Employees (i.e., those working an average of thirty (30) hours or more per week) with the opportunity to participate in medical, dental, vision, disability insurance, life insurance, critical illness insurance, accident insurance, accidental death and dismemberment insurance, pet insurance, legal protection insurance, and identify theft insurance plans (collectively, the “Employee Benefit Plans”) the first of the month following ninety (90) days of full-time employment for Salary Employees and after twelve (12) months of employment for Hourly Employees. The Debtors utilize the services of Lockton Companies as their insurance broker with respect to the Employee Benefit Plans. An Employee’s contribution for coverage under the Employee Benefit Plans is deducted directly from his or her paycheck and are remitted to the plan providers by the Debtors.

i. Medical, Dental and Vision Plans

34. The Debtors offer eligible full-time Employees and their dependents medical benefits through medical plans (including a high deductible health savings plan option) (collectively, the “Medical Plans”) administered by Blue Cross Blue Shield of KC (“Blue Cross”). The Debtors provide dental coverage to Employees (the “Dental Plan”) through a plan administered by Reliance Standard (“Reliance”). The Debtors also offer their full-time Employees vision coverage (the “Vision Plan” and together with the Medical Plans and the

Dental Plan, the “Health Plans”) through a plan administered by Reliance. As of the Petition Date, the following number of full-time Employees and their dependents obtain coverage through the Medical Plans, the Dental Plan and the Vision Plan:

Full-Time Employees Medical, Dental and Vision Insurance Coverage		
Insurance Plan	Number of Employees Covered	Number of Employee-Dependents Covered
Medical	546	388
Dental	276	306
Vision	316	262

35. The Debtors estimate that they pay approximately \$128,000 per month in fixed premiums to Blue Cross and Reliance (collectively, the “Health Insurance Companies”) for coverage under the Health Plans. As of the Petition Date, the Debtors estimate that approximately \$140,000 (the “Unpaid Health Plan Premiums”) is owed to the Health Insurance Companies for premiums under the Health Plans. Additionally, the Medical Plans include a self-insured component by which Blue Cross sends an invoice each month for claims made by persons covered under the Medical Plans (each, a “Covered Person”). The Debtors pay Blue Cross for claims made, up to \$200,000 per Covered Person (the “Self-Insured Obligations”). As of the Petition date, the Debtors estimate that approximately \$250,000 in Self-Insured Obligations are outstanding (together with the Unpaid Health Plan Premiums, the “Unpaid Employee Benefit Premiums”).

36. By this Motion, the Debtors seek authority to pay the Unpaid Employee Benefit Premiums owed to the Health Insurance Companies for the Health Plans in an amount not to exceed \$390,000, pay any outstanding Self-Insured Obligations and to continue offering the Health Plans in the ordinary course of business.

37. The Debtors offer their full-time and part-time Hourly Employees the opportunity to elect medical indemnity, dental and vision plans through The American Worker underwritten

by Nationwide Insurance Company (the “American Worker Plans”). The American Worker plans are completely paid by the participating Employee through pre-tax payroll deductions taken out of their paycheck. As of the Petition Date, the following number of Hourly Employees obtain coverage through the American Worker Plans:

Hourly Employees American Worker Coverage	
Insurance Plan	Number of Employees Covered
American Worker Medical Indemnity	227
American Worker Dental	85
American Worker Vision	87

ii. Employee Life & Optional Insurance

38. The Debtors provide eligible Salary Employees basic life insurance administered by Reliance (the “Salary Life Insurance”). The Debtors pay one hundred percent (100%) of the premium for the Salary Life Insurance. Under the Salary Life Insurance program, each participating Employee receives a multiple of their salary up to certain capped amounts in life insurance coverage based on their position within the company. As of the Petition Date, the Debtors’ total cost per month for the Salary Life Insurance program is approximately \$2,500.

39. The Debtors also offer their full-time Employees the opportunity to elect optional whole life, spousal life, dependent life, accident, critical illness, long term disability, short term disability, pet, identity, and legal insurance (collectively, the “Optional Insurance”). The Optional Insurance programs are funded entirely by deductions from each participating Employee’s paycheck. The chart below identifies the number of full-time Employees enrolled in these Optional Insurance programs on the Petition Date.

Insurance Plan	Number of Employees Enrolled
Life and Accidental Death & Dismemberment	77
Whole Life	73
Spousal Life	33
Dependent Life	32
Accident	22
Critical Illness	88
Long-Term Disability	127
Short-Term Disability	163
LegalShield	19
Identity Theft	5

The total cost per month for the Optional Insurance is approximately \$17,000, all of which is paid by participating Employees through amounts withheld by the Debtors from their paychecks.

40. In addition, the Debtors offer their full-time and part-time Hourly Employees optional short-term disability and life insurance through The American Worker (the “American Worker Life and Disability Plans”). The chart below identifies the number of Hourly Employees enrolled in these American Worker Life and Disability Plans on the Petition Date.

Insurance Plan	Number of Employees Enrolled
American Worker Short Term Disability	40
American Worker Life	46

The total cost per month for the American Worker Life and Disability Plans is approximately \$1,100, all of which all is paid by Employees and is withheld by the Debtors from the participating Hourly Employees’ paycheck.

41. The Debtors also offer their NJ/NY Employees additional optional insurance such as accident and short-term disability, among others, through Aflac (the “Aflac Plans”). The total cost per month for the Aflac Plans is approximately \$3,900, all of which all is paid by Employees and is withheld by the Debtors from the participating NJ/NY Employees’ paycheck.

42. In total, the Debtors collect from Employees and remit those collected amounts of approximately \$24,000 per month for premiums due under the Optional Insurance, the Aflac Plans and the American Worker Life and Disability Plans (collectively, the “Optional Insurance Programs”). As of the Petition Date, the Debtor estimates that \$41,000 is due under the Optional Insurance Programs for amounts either contributed by the Debtors or collected from Employees but unremitted prior to the Petition Date (the “Unpaid Optional Insurance Premiums”). By this Motion, the Debtor seeks authority to pay the Optional Insurance Premiums in an amount not to exceed \$41,000 on account of prepetition obligations and to continue offering the Optional Insurance Programs in the ordinary course of business postpetition.

iii. 401(k) Plans and FSA Plans

43. In the ordinary course of business, the Debtors maintain certain 401(k) savings plans for the benefit of their Salary Employees (the “401(k) Plans”), which are administered by Principal and Mass Mutual. The 401(k) Plans generally provide for the pre-tax deduction (subject to certain statutory limits) of compensation automatically from a participating Salary Employee’s paycheck at his or her election. As of the Petition Date, 149 Salary Employees participate in the 401(k) Plans. The monthly amount withheld from Salary Employee paychecks on account of the 401(k) Plans is approximately \$52,000 in the aggregate. As of the Petition Date, the Debtors estimate that they hold \$15,000 plus an additional \$3,000 in 401(k) loan repayments in trust for contributions made by Salary Employees related to the 401(k) Plans (the “Unremitted 401(k) Contributions”).

44. By this Motion, the Debtors seek authority to release any Unremitted 401(k) Contributions in an amount not to exceed \$18,000 on account of prepetition obligations. The Debtors also seek authority to continue operating the 401(k) Plans in the ordinary course of business on a postpetition basis.

45. The Debtors also provide eligible Central Employees with the option of having specified amounts automatically deducted from their paychecks to fund certain dependent and healthcare related costs (the “FSA Plans”). As of the Petition Date, the Debtors estimate that they hold \$0 in trust for contributions made by eligible Employees related to the FSA Plans (the “Unremitted FSA Contributions”).

46. In addition, the Debtors provide eligible Central Employees with the option of having specified amounts automatically deducted from their paychecks to fund a health savings account (the “HSA Plans”). As of the Petition Date, the Debtors estimate that they hold \$550 in trust for contributions made by eligible Central Employees related to the HSA Plans (the “Unremitted HSA Contributions” and together with the Unremitted FSA Contributions, the “Unremitted FSA/HSA Contributions”). To help offset their medical costs, Eligible Employees can contribute a maximum of \$3,500 for individual coverage and \$7,000 for family coverage annually to their HSA. The Debtors match the participating Employee’s contributions dollar for dollar up to \$500 for single coverage and \$1,000 for family coverage.

47. By this Motion, the Debtors seek the authority to release any Unremitted FSA/HSA Contributions in an amount not to exceed \$550 on account of prepetition obligations. The Debtors also seek authority to continue operating the FSA Plans and HSA Plans in the ordinary course of business on a postpetition basis.

iv. Other Miscellaneous Benefits

48. The Debtors provide other miscellaneous programs and benefits to certain Employees and may discover other *de minimis* prepetition obligations that are owed with respect to Employees (the “Miscellaneous Benefits”). For example, Hourly Employees are entitled to reduced-price meals for each shift worked. Additionally, NJ/NY Employees may elect to have amounts withheld from their wages to use to dine at one of the Debtors’ New York or New Jersey restaurant locations for themselves and up to three (3) guests. The Debtors also offer eligible Employees \$100 per year towards a gym membership. Additionally, full-time Salary Employees who have completed at least six (6) months of service are eligible to receive reimbursement for certain tuition and book expenses subject to certain caps for continuing education, college and sommelier classes that relate to current or projected future positions. The Debtors also provide General Managers of the NJ/NY Restaurants a monthly auto allowance that ranges between \$200 and \$500 based upon seniority (the “NJ/NY Auto Allowance”). As of the Petition Date the Debtors estimate that \$5,000 is accrued and unremitted for the NJ/NY Auto Allowance.

49. In addition, the Debtors provide certain managerial and HQ Employees with a monthly stipend to evaluate the quality of the Debtors’ food, service and facilities (the “Gold Card Program”). The Gold Card Program may be used for dine-in service only during non-peak hours at any company-owned restaurant across all four of the Debtors’ concepts. After each visit, the Employee is required to complete an online evaluation to review their experience, including the quality of the food, beverages, service, and facilities. Thus, the Gold Card Program serves as both a benefit for the eligible Employees and also provides the Debtors with invaluable information about the quality of their restaurants and the level of execution against standards.

50. The Debtors estimate \$5,000 related to Miscellaneous Benefits was outstanding as of the Petition Date (the “Unsatisfied Miscellaneous Benefits”). The Debtors request authority to continue to honor these Miscellaneous Benefits in the ordinary course postpetition and to pay any Unsatisfied Miscellaneous Benefits up to a maximum amount of \$5,000.

E. Workers’ Compensation Obligations

51. The Debtors are participants in a workers’ compensation insurance policy through Travelers (the “Workers’ Compensation Policy”) for their Employees. The Debtors Workers’ Compensation Policy is maintained at the mandated levels required by each state in which the Debtors have Employees (the “Workers’ Compensation Program”).

52. The Debtors must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers’ Compensation Program without regard to whether such liabilities are outstanding before the Petition Date to ensure that the Debtors comply with applicable workers’ compensation laws and requirements. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers’ Compensation Program, their inability to do so may result in adverse legal consequences that could disrupt the restructuring process.

53. By this Motion, the Debtors request the authority to pay an amount not to exceed \$117,000 (the “Workers’ Compensation Premiums”) to maintain coverage under the Workers’ Compensation Program and to continue the Workers’ Compensation Program in the ordinary course of business on a postpetition basis.

F. Employer Taxes and Deductions

54. The Debtors routinely withhold from Employee paychecks amounts that the Debtors are required to transmit to third parties (the “Employer Taxes and Deductions”). The Employer Taxes and Deductions include deductions for garnishments and child support and withholdings related to social security, Medicare and Medicaid, federal, state, and local income

taxes, and employment insurance. As noted above, the Debtors administer their payroll in-house as a function of their accounting department, including administering the withholdings and the necessary disbursements to the relevant taxing or other authorities for the Employer Taxes and Deductions.

55. As of the Petition Date, the Debtors estimate that they hold approximately \$1.1 million in accrued but unremitted Employer Taxes and Deductions for their Employees (the “Unremitted Employer Taxes and Deductions”). By this Motion, the Debtors seek authority to remit any Unremitted Employer Taxes and Deductions in an amount not to exceed \$1.1 million for Employees on account of prepetition obligations and to continue collecting and disbursing the Employer Taxes and Deductions in the ordinary course of business on a postpetition basis.

BASIS FOR RELIEF

56. The Debtors seek the relief requested in this Motion because any delay in paying any of the Employee Obligations described herein could severely disrupt the Debtors’ relationship with their Employees, and irreparably impair their Employees’ morale at the very time their dedication, confidence and cooperation are most critical to the success of the Debtors’ businesses and the sale of their assets for maximum value. Accordingly, the Debtors face the risk that their operations may be severely impaired if the Debtors are not immediately granted authority to pay any prepetition Employee Obligations all of which (with the exception of Prepetition Paid Time Off that is only payable upon termination for certain Employees) is estimated to come due within twenty-one (21) days of the Petition Date. At this critical stage of these Chapter 11 Cases, the Debtors simply cannot risk the substantial disruption of their business operations that would accompany any decline in workforce morale resulting from the Debtors’ failure to pay the Employee Obligations in the ordinary course of their business. Further, many of the requests are regarding funds of employees that the Debtors process and

remit to third parties.

57. If the relief requested herein is not granted, the Debtors' Employees would suffer hardship and, in many instances, financial difficulties, since these monies and benefits are needed to enable them to meet their personal obligations. Additionally, without the requested relief, the Debtors' stability would be undermined by the potential threat that otherwise loyal employees would seek other employment.

58. Bankruptcy Code sections 507(a)(4) and (a)(5) provide that the Debtors' Employees have priority claims for accrued wages, salaries, commissions, vacation, severance, sick leave and contributions to employee benefit plans. 11 U.S.C. §§ 507(a)(4) and (a)(5). Each Employee's aggregate priority claim is limited to \$13,650 under the Bankruptcy Code. *Id.* The Debtors believe that the Prepetition Wage Obligations and other benefits earned within one hundred and eighty (180) days of the Petition Date that the Debtors seek to pay are entitled to priority status under Bankruptcy Code sections 507(a)(4) and (a)(5)¹⁰ and, with certain exceptions related to potential Paid Time Off amounts, do not exceed the statutory cap of \$13,650 per Employee.

59. Additionally, the Court has the authority under Bankruptcy Code sections 105(a), 1107(a) and 1108, 363(b) and the "necessity of payment" doctrine to grant the relief requested herein. The payments to Employees are vital to the Debtors' ability to transition smoothly into Chapter 11 and preserve their going concern value.

¹⁰ For the purposes of the priority treatment of wages, salaries, and related benefits under Bankruptcy Code section 507(a)(4), courts recognize that individuals who are "independent contractors" are entitled to the same priority as "employees." *See, e.g., In re Corcoran*, 2010 Bankr. LEXIS 4721, at *2-3 (Bankr. D. Haw. Dec. 16, 2010) (" . . . Congress has steadily broadened the scope of the 'wage priority' provisions, in part expressly to overrule court decisions that independent contractors were not entitled to priority. . . . Recent cases hold that independent contractors can assert wage priority claims."); *In re Wang Lab.*, 164 B.R. 404, 408 (Bankr. D. Mass. 1994) ("the term "'wages' [is intended by Congress] to include compensation paid to [all natural] persons, whether employees or independent contractors").

60. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition employee obligations in appropriate circumstances. Pursuant to Bankruptcy Code sections 1107(a) and 1108, debtors-in-possession are authorized to operate the business while maintaining a “fiduciary duty to act in the best interest of the estate as a whole, including its creditors, equity interest holders and other parties in interest.” *LaSalle Nat’l Bank v. Perelman*, 82 F.Supp.2d 279, 292 (D. Del. 2000). Implicit in the fiduciary duties of any debtor-in-possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Some courts have noted there are instances in which a debtor can fulfill this fiduciary duty “by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* In the instant cases, the Debtors are operating as debtors-in-possession consistent with Bankruptcy Code sections 1107(a) and 1108 and payment of the Employee Obligations is necessary to protect and preserve the Debtors’ business operations and going concern value. Thus, the Court should authorize the relief requested in this Motion.

61. Additionally, Bankruptcy Code section 363(b)(1) states in pertinent part that: “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” If the debtor’s determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use. Moreover, this Court has approved the payment of prepetition claims of employees for wages, salaries, expenses, and benefits on the ground that the payment of such claims was necessary to effectuate a successful reorganization or liquidation. *See, e.g., In re Bertucci’s Holdings, Inc.*, Case No.

18-10894 (MFW) (Bankr. D. Del. Apr. 17, 2018); *In re Seastar Holdings, Inc.*, Case No. 18-10039 (CSS) (Bankr. D. Del. Jan. 9, 2018); *In re MAC Acquisition LLC.*, Case No. 17-12224 (MFW) (Bankr. D. Del. Oct. 19, 2017); *In re Swift Energy Co.*, Case No. 15-12670 (MFW) (Bankr. D. Del. Jan. 5, 2016); *In re Endeavour Operating Corp.*, Case No. 14-12308 (KJC) (Bankr. D. Del. Oct. 15, 2014); *In re Filene's Basement, LLC*, Case No. 11-13511 (KJC) (Bankr. D. Del. Nov. 4, 2011); *In re Indianapolis Downs, LLC*, Case No. 11-11046 (BLS) (Bankr. D. Del. Apr. 8, 2011). Bankruptcy Code section 105(a) further provides, in pertinent part, that a “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The “necessity of payment” doctrine also authorizes the relief requested in this Motion because the Employees are indispensable to both the Debtors’ operations and the successful resolution of these Chapter 11 Cases.

62. As set forth herein and in the First Day Declaration, the Employees are essential to the continued operation of the Debtors’ businesses, and the Employees’ morale directly affects their effectiveness and productivity. Consequently, it is critical that the Debtors continue, in the ordinary course, those personnel policies, programs and procedures that were in effect prior to the Petition Date. If the checks issued and electronic fund transfers requested in payment of any of the compensation or other Employee Obligations are dishonored, or if such obligations are not timely paid postpetition, the Employees may likely suffer extreme personal hardship and may be unable to pay their daily living expenses. A loss of employee morale and goodwill at this critical juncture would undermine the Debtors’ stability, and undoubtedly would have an adverse effect on the Debtors, their customers, the value of their assets and businesses, and their ability to achieve their objectives in chapter 11. As noted by the court in *In re Equalnet Communications Corp.*, 258 B.R. 368 (Bankr. S.D. Tex. 2000), “the need to pay pre-petition employee wage

claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.” *Id.* at 370.

63. As part of the foregoing relief, the Debtors also seek authority to pay all Employer Taxes and Deductions. The failure to make such payments may also subject the Debtors and their officers to federal or state liability. *See City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92 (3d Cir. 1994) (state law requiring debtor to withhold city income tax from its employees’ wages created trust relationship between debtor and city for payment of withheld taxes); *DuCharmes & Co. v. Michigan (In re DuCharmes & Co.)*, 852 F.2d 194 (6th Cir. 1988) (noting the special liabilities for failure to pay trust fund taxes). Moreover, the monies payable for amounts held in trust like the Employer Taxes and Deductions generally are not property of a debtor’s estate. *See Begier v. IRS*, 496 U.S. 53, 59 (1990) (because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not “property of the estate”). The failure to transfer these withheld funds could result in hardship to certain Employees or others. Furthermore, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors’ failure to submit these payments.

64. Additionally, payment of Employer Taxes and Deductions that constitute “trust fund” taxes will not prejudice general unsecured creditors of the Debtors’ estates as the relevant taxing authorities would hold priority claims under Bankruptcy Code section 507(a)(8) in respect of such obligations. Moreover, the monies payable for trust fund taxes, as well as the other funds that are held in trust for the benefit of third parties, such as withheld funds with respect to the Debtors’ 401k plans, are not property of the Debtors’ estates.

65. With respect to certain Employees, such as those working in the state of New York, applicable labor law requires the Debtors to honor certain unused Paid Time Off as wages for such Employees in the event of termination. The Debtors propose to pay Employees such unused Paid Time Off in an amount not to exceed the statutory cap of \$13,650 on account of all Employee Obligations; provided, however, that such obligations can be paid in excess of the limitations contained in Bankruptcy Code section 507(a) to the extent that such payments are required to be made pursuant to applicable state law. *See, e.g., In re Mervyn's Holdings, LLC*, Case No. 08-11586 (KG) (Bankr. D. Del. Aug. 26, 2008).

66. The relief requested in this Motion is necessary to the viability of the Debtors' businesses and maximization of the value of the Debtors' assets. Accordingly, the Debtors submit that the relief sought herein is consistent with Bankruptcy Code sections 105(a), 507(a) and 541.

67. Nothing in this Motion, nor any payments made by the Debtors pursuant to this Motion, shall be deemed an assumption or rejection of any Employee Benefit Plan, employment agreement, other program or contract, or otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract between the Debtors and any Employee, plan administrator or service provider.

**BANKRUPTCY RULE 6003 SATISFIED AND
REQUEST FOR WAIVER OF STAY**

68. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

69. Specifically, Bankruptcy Rule 6003 provides:

Except 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, grant relief regarding the following: . . . (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, but not a Motion under Rule 4001.

Fed. R. Bankr. P. 6003.

70. The Third Circuit Court of Appeals has interpreted language similar to that used in Bankruptcy Rule 6003 in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. Appx. 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle County*, 40 F.3d 645, 653-55 (3d Cir. 1994).

71. The Debtors' Employees are integral to the Debtors' operations. Failure to satisfy obligations to Employees in the ordinary course of business will jeopardize Employee loyalty and trust, possibly causing Employees to leave the Debtors' employ and thereby disrupting the Debtors' operations to the detriment of all parties in interest. Moreover, the Debtors' Employees rely on the Debtors' timely payment of their compensation and provision of benefits. Accordingly, the Debtors respectfully submit that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and seeks authority to pay and honor the Employee Obligations described herein.

72. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[an] 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.” As set forth above, the relief requested herein is essential to prevent irreparable damage to the Debtors’ operations and going-concern value.

73. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rules 6003 and 6004(h).

RESERVATION OF RIGHTS

74. Nothing contained in this Motion or any actions taken by the Debtors pursuant to any order granting the relief requested by this Motion is intended or should be construed as: (a) an admission as to the validity, priority or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors’ right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any agreement, contract or lease pursuant to Bankruptcy Code section 365; (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity, priority or amount of any particular claim or a waiver of the Debtors’ or any other party-in-interest’s rights to subsequently dispute such claim.

NOTICE AND NO PRIOR REQUEST

75. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors' petitions; (c) the Lenders; (d) the Internal Revenue Service; (e) the United States Department of Justice; and (f) all parties who have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

76. No prior request for the relief sought in this Motion has been made to this or any other court.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, (a) authorizing the Debtors, in their discretion, to pay and remit in the ordinary course of business (i) Prepetition Wage Obligations, (ii) Unpaid Incentive Obligations, (iii) Prepetition Paid Time Off, (iv) Unpaid Reimbursable Expenses, (v) Unpaid Employee Benefit Premiums, (vi) Unpaid Optional Insurance Premiums, (vii) Unremitted 401(k) Contributions, (viii) Unremitted FSA & HSA Plan Contributions, (ix) Workers' Compensation Premiums, (x) Unsatisfied Miscellaneous Benefits, and (xi) Unremitted Employer Taxes and Deductions; (b) authorizing, but not directing, the Debtors to continue in the ordinary course of business on a postpetition basis their (i) Employee Wage Obligations, (ii) Employee Benefit Obligations, (iii) Employee Expense Obligations, (iv) Workers' Compensation Obligations and (vi) Employer Taxes and Deductions; (c) authorizing and directing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests related to the foregoing; and (d) granting such other relief as is just and proper.

Dated: November 14, 2019
Wilmington, Delaware

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*Proposed Counsel for the Debtors
and Debtors-In-Possession*

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

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (____)

(Joint Administration Requested)

Ref. No. ____

**INTERIM ORDER AUTHORIZING THE DEBTORS TO PAY
PREPETITION WAGES, COMPENSATION, EMPLOYEE
BENEFITS, AND OTHER ASSOCIATED OBLIGATIONS**

Upon the *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Wages, Compensation, Employee Benefits and Other Associated Obligations* (the “Motion”)² and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter 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; and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

² Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Motion.

given; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates; and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED on an interim basis as set forth herein; and it is further

ORDERED that the final hearing (the "Final Hearing") to consider the relief requested in the Motion shall be held on _____, 2019 at ____:____.m. (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion must be filed on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2019 and served on the following parties: (i) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 North King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy, Esq.), (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Kimberly A. Brown, Esq. and Matthew R. Pierce, Esq.) and (iii) counsel for the DIP Agent and Pre-Petition Agent, Katten Muchin Rosenman LLP, 575 Madison Ave, New York, New York 10022 (Attn: William B Freeman, Esq. and Karen B. Dine, Esq.) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Sean Beach, Esq. and Jaime Luton Chapman, Esq.). In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

ORDERED that the Debtors are authorized to continue to honor, in their sole discretion, the Employee Obligations; and it is further

ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to pay and remit in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, prepetition amounts outstanding on account of the following prepetition

Employee Obligations on an interim basis: (a) Prepetition Wage Obligations in an amount not to exceed \$3,831,500 in the aggregate; (b) Unpaid Incentive Obligations in an amount not to exceed \$244,000 in the aggregate; (c) Prepetition Paid Time Off in an amount not to exceed \$810,000 in the aggregate; (d) Unpaid Reimbursable Expenses not to exceed \$33,000 in the aggregate; (e) Unpaid Employee Benefit Premiums not to exceed approximately \$390,000 in the aggregate; (f) Unpaid Optional Insurance Premiums not to exceed approximately \$41,000 in the aggregate; (g) Unremitted 401(k) Contributions not to exceed \$18,000 in the aggregate; (h) Unremitted FSA/HSA Contributions not to exceed \$550 in the aggregate; (i) Unsatisfied Miscellaneous Benefits not to exceed \$5,000 in the aggregate; (j) Workers' Compensation Premiums not to exceed \$117,000 in the aggregate; and (k) Unremitted Employer Taxes and Deductions not to exceed \$1,100,000 in the aggregate; and it is further

ORDERED that no Employee or Independent Contractor shall receive payment in excess of the statutory caps set forth in Bankruptcy Code sections 507(a)(4) and 507(a)(5) on account of any prepetition Employee Obligation, except with respect to any New York Employee or any other Employee owed payment on account of unpaid Paid Time Off as may be required by applicable law; and it is further

ORDERED that the Debtors are authorized, but not directed, to continue the following in the ordinary course of business on a postpetition basis, in accordance with the Debtors' prepetition policies and practices and in the Debtors' sole discretion, and to pay and honor claims related thereto: (a) Employee Wage Obligations; (b) Employee Benefit Obligations; (c) Employee Expense Obligations; (d) Workers' Compensation Obligations; and (e) Employer Taxes and Deductions; and it is further

ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to pay all postpetition costs and expenses incidental to payment of the obligations described above, including all administrative and processing costs and payments to outside professionals identified in the Motion in the ordinary course of business; and it is further

ORDERED that notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this interim order nor any payments made by the Debtors pursuant to the Motion, shall be deemed an assumption or rejection of any Employee Benefit Plan, employment agreement, other program or contract, or otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract between the Debtors and any Employee, Independent Contractor, plan administrator, or service provider. Nothing contained herein shall (a) create, nor is 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 postpetition claim into an administrative expense claim; and it is further

ORDERED that nothing in this order is authorizing or approving any payment subject to Bankruptcy Code section 503(c); and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to 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; and it is further

ORDERED that Bankruptcy Rule 6003 has been satisfied; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted in this order; and it is further

ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November ____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

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

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (____)

(Joint Administration Requested)

Ref. Nos. _____

**FINAL ORDER AUTHORIZING THE DEBTORS TO PAY
PREPETITION WAGES, COMPENSATION, EMPLOYEE
BENEFITS, AND OTHER ASSOCIATED OBLIGATIONS**

Upon the *Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Prepetition Wages, Compensation, Employee Benefits and Other Associated Obligations* (the “Motion”)² and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter 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; and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

² Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

given; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates; and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED on a final basis as set forth herein; and it is further

ORDERED that the Debtors are authorized, except to the extent provided in the paragraphs below, to continue to honor, in their sole discretion, the Employee Obligations; and it is further

ORDERED that the Debtors are authorized, in their sole discretion, to pay and remit in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, prepetition amounts outstanding on account of the following prepetition Employee Obligations on a final basis: (a) Prepetition Wage Obligations in an amount not to exceed \$3,831,500 in the aggregate; (b) Unpaid Incentive Obligations in an amount not to exceed \$244,000 in the aggregate; (c) Prepetition Paid Time Off in an amount not to exceed \$810,000 in the aggregate; (d) Unpaid Reimbursable Expenses not to exceed \$33,000 in the aggregate; (e) Unpaid Employee Benefit Premiums not to exceed approximately \$390,000 in the aggregate; (f) Unpaid Optional Insurance Premiums not to exceed approximately \$41,000 in the aggregate; (g) Unremitted 401(k) Contributions not to exceed \$18,000 in the aggregate; (h) Unremitted FSA/HSA Contributions not to exceed \$550 in the aggregate; (i) Unsatisfied Miscellaneous Benefits not to exceed \$5,000 in the aggregate; (j) Workers' Compensation Premiums not to exceed \$117,000 in the aggregate; and (k) Unremitted Employer Taxes and Deductions not to exceed \$1,100,000 in the aggregate; and it is further

ORDERED that no Employee or Independent Contractors shall receive payment in excess of the statutory caps set forth in Bankruptcy Code sections 507(a)(4) and 507(a)(5) on

account of any prepetition Employee Obligation, except with respect to any New York Employee or any other Employee owed payment on account of unpaid Paid Time Off as may be required by applicable law; and it is further

ORDERED that the Debtors are authorized, but not directed, to continue the following in the ordinary course of business on a postpetition basis, in accordance with the Debtors' prepetition policies and practices and in the Debtors' sole discretion, and to pay and honor claims related thereto: (a) Employee Wage Obligations; (b) Employee Benefit Obligations; (c) Employee Expense Obligations; (d) Workers' Compensation Obligations; and (e) Employer Taxes and Deductions; and it is further

ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to pay all postpetition costs and expenses incidental to payment of the obligations described above, including all administrative and processing costs and payments to outside professionals identified in the Motion in the ordinary course of business; and it is further

ORDERED that notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this final order nor any payments made by the Debtors pursuant to the Motion, shall be deemed an assumption or rejection of any Employee Benefit Plan, employment agreement, other program or contract, or otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract between the Debtors and any Employee, Independent Contractor, plan administrator, or service provider. Nothing contained herein shall (a) create, nor is 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 postpetition claim into an administrative expense claim; and it is further

ORDERED that nothing in this order is authorizing or approving any payment subject to Bankruptcy Code section 503(c); and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to 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; and it is further

ORDERED that Bankruptcy Rule 6003 has been satisfied; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted in this order; and it is further

ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE