

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

**WESCO AIRCRAFT HOLDINGS, INC.,
et al.,¹**

Debtors.

Case No. 23-90611 (DRJ)

Chapter 11

(Joint Administration Requested)

**DEBTORS' EMERGENCY
MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THEM TO (A) PAY
PREPETITION WAGES, SALARIES,
BENEFITS AND OTHER COMPENSATION
AND (B) MAINTAIN EMPLOYEE BENEFIT
PROGRAMS AND (II) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 1:00 p.m. (Central Time) on June 1, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must either appear at the hearing or file a written response prior to the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on June 1, 2023 at 1:00 p.m. (Central Time) in Courtroom 400 (Jones), 4th Floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

¹ The Debtors operate under the trade name Incora and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.



Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1 (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones' conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones' home page. The meeting code is "Judge Jones". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jones' home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

The above-captioned debtors and debtors in possession (the “**Debtors**” and, together with their non-Debtor subsidiaries, “**Incora**”) respectfully state as follows.

RELIEF REQUESTED

1. By this motion (the “**Motion**”), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**: (i) authorizing them to (a) pay prepetition wages, salaries and other compensation and reimbursable expenses, (b) pay and honor obligations arising under employee benefit programs, and (c) maintain those benefit programs in the ordinary course of business postpetition; and (ii) granting related relief.

2. The principal statutory bases for the relief sought in this Motion are sections 105(a), 363, and 507(a) of title 11 of the U.S. Code (as amended, the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”), and Rule 9013-1(a) of the Procedures for Complex Cases in the Southern District of Texas (the “**Complex Case Procedures**”).

3. In support of this Motion, the Debtors rely upon the *Declaration of Raymond Carney in Support of Chapter 11 Petitions and First Day Motions*, filed concurrently with this Motion (the “**First Day Declaration**”).²

JURISDICTION AND VENUE

4. The U.S. Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This Motion is a core proceeding under 28 U.S.C. § 157(b). Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

² Capitalized terms not defined in this Motion have the meanings ascribed to them in the First Day Declaration.

BACKGROUND

I. GENERAL BACKGROUND

5. Incora is a provider of supply chain management services in several industries and the largest independent distribution and supply chain services provider in the global civilian and military aerospace industry. In its distribution business, Incora offers aerospace hardware and parts, electronic products, chemicals, and tooling products, which it procures, tracks and provides to customers from service centers around the world. In its service business, Incora manages all aspects of its customers' supply chains, including procurement, warehouse management, and on-site customer services, offering both customized supply-chain management plans and ad hoc direct sales. In both lines, timely delivery of necessary hardware and chemicals is critical to the business operations of Incora and its civilian and military customers.

6. On June 1, 2023 (the "***Petition Date***"), each Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. The Debtors have requested joint administration of their chapter 11 cases for procedural purposes. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner or official committee has been appointed.

7. Additional information regarding the Debtors' businesses, assets, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First-Day Declaration.

II. THE DEBTORS' WORKFORCE

8. As one of the largest providers of supply chain and distribution services, Incora employs approximately 3,750 individuals around the world (the "***Employees***"), mostly on a full-time, permanent basis. Approximately 1,600 of the Employees earn hourly wages (the "***Hourly Employees***"), and approximately 2,150 earn a salary (the "***Salaried Employees***"). The Debtors also rely on the services of staffing agencies and independent contractors (the "***Staffing Agencies***"), who currently provide finance and accounting

contractors, as well as short-term employees. The largest of the Debtors' Staffing Agencies is Grupo American Industries, S.A. de C.V. ("**Grupo American Industries**"), who provides approximately 300 contractors filling finance and accounting support roles at Debtor Haas TCM de Mexico, S. de R.L. de C.V.'s shared service center in Chihuahua, Mexico (as discussed below). The remaining Staffing Agencies currently provide approximately 100 individuals who fill short-term positions that are economically infeasible to fill through direct hires.³

9. Approximately 1,500 Employees are employed by the Debtors domiciled in the United States (the "**U.S. Employees**"), approximately 800 Employees are employed by the Debtors domiciled in the United Kingdom (the "**UK Employees**"), and approximately 800 Employees in the aggregate are employed by the Debtors domiciled in Argentina, Canada, Israel, and Mexico (the "**ROW Employees**"). The Debtors' non-debtor subsidiaries employ the remaining approximately 650 Employees in various countries, including China, France, Germany, India, Italy, Malaysia, Poland, and Singapore.

10. Employees perform a wide variety of functions, including warehouse operations, customer operations, quality, supply chain services, safety, sales and marketing, accounting and treasury, billing operations, legal and compliance, financial planning and analysis, human resources and payroll, information technology, procurement and administrative support. Their skills and knowledge of the Debtors' supply chain solutions, infrastructure, inventory, customers and business operations are essential to the Debtors' continued operations. Without the continued, uninterrupted services of the Employees and Staffing Agencies, the Debtors' reorganization efforts will be jeopardized.

11. The Debtors incur a number of obligations to, or on account of, their Employees, including those related to compensation (the "**Employee Compensation**

³ The remaining Staffing Agencies include, but are not limited to, Adecco, Aerotek, Astrix, Gigworld, KForce, Jim Kyle, Quantum, Randstad, Regal Staffing, REMX, Robert Half, Ternio Solutions Group, and Sky Recruitment.

Obligations”) and benefits (the “*Employee Benefit Obligations*” and, together with the Employee Compensation Obligations, the “*Employee Obligations*”). Separately, the Debtors incur obligations to their payroll servicers (the “*Employee Payroll Servicer Obligations*”).

12. The Debtors estimate that, as of the Petition Date, they owe approximately \$25,553,000 on account of Employee Obligations. No individual Employee is owed Wages and earned but unpaid Employee Bonuses (as defined below) in excess of the \$15,150 priority cap set forth in section 507(a)(4) of the Bankruptcy Code as of the Petition Date.⁴ The Debtors estimate that, as of the Petition Date, they owe approximately \$70,000 on account of Employee Payroll Servicer Obligations. The estimated amounts of the outstanding prepetition Employee Obligations are set forth in the following chart:

Employee and Payroll Obligations	Approx. Amount Outstanding as of Petition Date
Employee Compensation Obligations	\$16,955,000
Employee Benefit Obligations	\$8,598,000
Employee Payroll Servicer Obligations	\$70,000
Total Obligations	\$25,623,000

A. Employee Compensation Obligations

13. The Debtors’ prepetition Employee Compensation Obligations are summarized in the following chart:

Category	Est. Amount Accrued as of Petition Date
Wages	\$9,000,000
Employee Bonuses	\$55,000

⁴ For the avoidance of doubt, such calculations do not include the value of accrued and unused PTO (as defined below).

Category	Est. Amount Accrued as of Petition Date
Severance ⁵	\$0
Director Compensation	\$0
Expenses	\$1,000,000
Deductions and Payroll Taxes	\$3,800,000
Staffing Agency Obligations	\$3,100,000
Total Employee Compensation Obligations	\$16,955,000

1. ***Wages***

14. The Debtors incur payment obligations for wages, salaries, overtime, and other obligations to their U.S. Employees (the “***U.S. Wages***”), their UK Employees (the “***UK Wages***”) and their ROW Employees (the “***ROW Wages***” and, together with the U.S. Wages and the UK Wages, the “***Wages***”). The Debtors pay the U.S. Wages every other week, the UK Wages monthly, and the ROW Wages a combination of weekly, bi-weekly, and monthly. The Debtors encourage their Employees to take their pay through direct deposit, and nearly all of them have elected that option. On average, the Debtors pay approximately the following amounts in Wages monthly:

Category	Est. Monthly Wages
U.S. Wages	\$9,000,000
UK Wages	\$3,700,000
ROW Wages	\$1,300,000
Total	\$14,000,000

15. As of the Petition Date, the Debtors estimate that they owe approximately \$9,000,000 on account of unpaid Wages.

16. The Debtors also process and fund payroll for Pattonair Poland Sp. z. o. o. (“***Pattonair Poland***”) and Haas Group International SP z.o.o. (“***Haas Group International***”).

⁵ Although certain prepetition severance obligations were outstanding as of the Petition Date, the Debtors are not seeking authority through this Motion to pay them.

SP”), non-Debtor entities whose operations are based in Poland. Pattonair Poland and Haas Group International SP collectively employ approximately 330 individuals and their average combined monthly payroll is approximately \$700,000. Such payroll amounts are funded by Pattonair Limited and settled via intercompany accounting. Additional information regarding the Pattonair Poland and Haas Group International SP intercompany payroll transfers can be found in the Cash Management Motion, filed contemporaneously herewith. Segregating Pattonair Poland’s and Haas Group International SP’s payroll processing would be time consuming, burdensome, and inefficient. Further, Pattonair Poland and Haas Group International SP support the Debtors’ operations by providing shared services for the benefit of the Debtor entities domiciled in Europe, including the UK-based Debtors. Accordingly, the Debtors seek authority to continue processing such payroll in the ordinary course and otherwise in accordance with the Debtors’ Cash Management Motion.

17. The Debtors seek authority to pay their Employees any Wages accrued but unpaid as of the Petition Date and to continue honoring their Wages obligations in the ordinary course of business consistent with past practices.

2. ***Employee Bonus Programs***

18. As a part of their Employee Compensation Obligations, the Debtors maintain, in the ordinary course, a variety of bonus programs (the “***Employee Bonus Programs***” and payments thereunder, the “***Employee Bonuses***”) for their Employees that are linked to a participating Employee’s continued employment and/or the results of corporate financial and business line goals established annually by the Debtors. The Employee Bonus Programs are developed by management.

19. In addition to the Employee Bonus Programs described below, the Debtors also offer a “Targeted Incentive Plan” for certain managers. Although the Debtors believe that program is consistent with section 503(c) of the Bankruptcy Code, the Debtors are not seeking approval of it on an emergency basis through the present Motion and instead

reserve the right to request authority to continue the program (or to seek approval of new retention or incentive programs) at a later date.⁶

20. With the exception of certain Employees' accrued PTO (as defined below), the Debtors do not believe that they owe prepetition Wages and Employee Bonuses to any individual Employee in excess of the priority cap set forth in section 507(a)(4) of the Bankruptcy Code. In any event, the Debtors will pay accrued PTO only in the ordinary course of business, consistent with existing policies, as individual Employees take vacations or leave the Debtors' employ. The Debtors believe that such payments are appropriate under the circumstances.

a. Commissions

21. Certain commercial non-insider team Employees are entitled to payments, in addition to Wages, under the Debtors' commission program (the "*Sales Incentive Plan*" and payments thereunder, the "*Commissions*"). The Sales Incentive Plan entitles eligible Employees to a percentage payout based upon certain financial metrics including margin growth, contract average annual EBITDA, gross profit and net bookings. The Sales Incentive Plan rewards Employees for obtaining sales and growth based on the type of sales role and individual goals. The Sales Incentive Plan motivates eligible Employees to meet defined targets, and the Commissions constitute part of such Employees' ordinary course compensation on which they depend.

22. As of the Petition Date, Employees have accrued approximately \$55,000 on account of unpaid Commissions. In the twelve months before the Petition Date, the Debtors paid approximately \$2,200,000 in Commissions. The Debtors seek authority to pay accrued

⁶ Prior to the Petition Date, the Board approved retention payments to certain employees who may be considered insiders of the Debtors in an aggregate amount of \$4,831,515. These retention bonus payments were paid by the Debtors in order to incentivize, retain and motivate these key individuals through the pendency of the bankruptcy process. These bonus payments are subject to clawback in the event the Employee resigns voluntarily or is terminated for cause prior to December 31, 2023.

but unpaid Commissions and to continue to pay Commissions in the ordinary course of business and consistent with past practices.

b. Management Incentive Program

23. The Debtors have historically maintained a management incentive plan to motivate, reward, and retain certain non-insider managerial Employees as an additional component of overall compensation (the “*Management Incentive Program*”). The Debtors believe the Management Incentive Program drives Employee performance, aligns Employees’ interests with the Debtors’ business interests, and promotes the overall efficiency of the Debtors’ operations. Under the Management Incentive Program, the Debtors have provided annual discretionary bonuses based on certain target metrics. Payments to Employees vary based on an Employee’s base salary and require executive approval. Approximately 560 Employees were paid approximately \$1,300,000 pursuant to the 2022 Management Incentive Program, with the average payment to Employees being approximately \$2,300.

24. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of the Management Incentive Program. Further, the next payment date under the Management Incentive Program will not occur until fiscal year 2024. Out of an abundance of caution, however, to safeguard Employee morale and optimize performance during these chapter 11 cases, the Debtors seek authority to honor all obligations under the Management Incentive Program in the ordinary course of business and on a postpetition basis.

c. Employee Incentive Program

25. The Debtors have historically maintained an employee incentive plan to motivate, reward, and retain non-insider individual contributor Employees (the “*Employee Incentive Program*”). These individual contributors occupy vital operational, support, and professional roles and the Employee Incentive Program offers them individualized awards as an additional component of overall compensation. The Debtors believe the Employee

Incentive Program drives Employee performance, aligns Employees' interests with the Debtors' business interests, and promotes the overall efficiency of the Debtors' operations. Under the Employee Incentive Program, the Debtors have provided annual discretionary bonuses based on certain target metrics. Payments to Employees vary based on an Employee's base salary. Payments require executive approval. Approximately 2,200 Employees were paid approximately \$740,000 pursuant to the 2022 Employee Incentive Program, with the average payment to Employees being approximately \$350.

26. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of the Employee Incentive Program. Further, the next payment date under the Employee Incentive Program will not occur until fiscal year 2024. Out of an abundance of caution, however, to safeguard Employee morale and optimize performance during these chapter 11 cases, the Debtors seek authority to honor all obligations under the Employee Incentive Program in the ordinary course of business and on a postpetition basis.

d. Legislative Incentive Program

27. The Debtors have also historically maintained a legislative incentive plan for certain non-insider ROW Employees as required by local law (the "***Legislative Incentive Program***"). For example, in Mexico, ROW Employees are entitled to receive 10% of pre-tax profits pursuant to Section A.IX of Article 123 in the Mexican Constitution.

28. As of the Petition Date, the Debtors do not believe they owe any prepetition amounts on account of the Legislative Incentive Program. Out of an abundance of caution, however, to safeguard Employee morale, optimize performance during these chapter 11 cases, and because such amounts are required by law in the applicable jurisdictions, the Debtors seek authority to honor all obligations under the Legislative Incentive Program in the ordinary course of business and on a postpetition basis.

3. ***Severance Obligations***

29. The Debtors provide certain eligible former non-insider Employees with severance obligations. Certain U.S. Employees may receive (a) one week of their annual

base salary for each year of service (up to a maximum of 26 weeks) and (b) for Employees at or above the level of director, also up to \$2,000 of outplacement services through RiseSmart (collectively, the “*U.S. Severance Obligations*”).

30. UK Employees may receive one to 30 weeks of their annual base salary depending on their tenure, pursuant to applicable statutory mandates (collectively, the “*UK Severance Obligations*”). UK Employees accrue UK Severance Obligations based on a combination of such UK Employee’s age and years of service with Incora.

31. ROW Employees may also receive severance obligations (collectively, the “*ROW Severance Obligations*” and, together with the U.S. Severance Obligations and UK Severance Obligations, the “*Severance Obligations*”). For example, ROW Employees in Canada are entitled to similar severance benefits as U.S. Employees.

32. In the twelve months before the Petition Date, the Debtors paid approximately \$60,000 per month in Severance Obligations. As of the Petition Date, the Debtors estimate that they do not owe any amounts on account of the Severance Obligations. The Debtors seek authority to honor any amounts due on account of the Severance Obligations postpetition in the ordinary course of business and consistent with past practices as described in paragraphs 29 through 31 above. For the avoidance of doubt, the Debtors do not seek authorization to make any severance payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code), to Employees with individual severance agreements, to any person whose employment was terminated prior to the Petition Date, or outside the ordinary course of business. *Cf.* 11 U.S.C. § 503(c)(2) (limiting severance payments to insiders); § 503(c)(3) (limiting transfers outside the ordinary course of business).

4. *Director Compensation*

33. Incora’s board of directors includes Patrick Bartels, a non-Employee director (the “*Director*”). The Debtors pay the Director an average annual cash retainer of \$360,000. The Director is generally entitled to reimbursement for reasonable out-of-pocket

expenses in connection with travel related to his duties (together with annual retainer payments, the “*Director Compensation*”). The Director is a critical component of the Debtors’ governance structure and vital to ensuring that the Debtors continue to adhere to governance best practices.

34. The Debtors do not presently owe any prepetition amounts on account of the Director Compensation. As such, the Debtors seek authority to continue paying Director Compensation in the ordinary course of business on a postpetition basis and consistent with past practices.

5. *Expense Reimbursements*

35. The Debtors reimburse their Employees for certain reasonable and necessary expenses incurred and paid by an Employee on the Debtors’ behalf in the scope of the Employee’s employment (the “*Expenses*”). Most of the Expenses are travel related, such as airfare, lodging, meals and incidentals such as gas and mileage.

36. As of the Petition Date, the Debtors estimate that Employees are owed approximately \$1,000,000 on account of Expenses incurred prepetition. However, the Debtors believe that there may be Expenses incurred prior to the Petition Date that have not yet been submitted by current or former Employees. The Debtors seek authority to reimburse all accrued but unpaid Expenses and to continue reimbursing Expenses postpetition in the ordinary course of business and consistent with past practices.

6. *Payroll Deductions, Withholdings and Taxes*

37. For each applicable pay period, the Debtors deduct certain amounts from each Employee’s gross pay including garnishments, such as tax levies, child support, spousal support, 401(k) contributions, tax efficient childcare costs, and transit ticket (commuter) costs as well as other pre- and post-tax deductions payable under certain employee benefit plans discussed below (collectively, the “*Deductions*”). The Debtors deduct approximately \$1,750,000 in the aggregate from Employees’ pay per month, which the Debtors remit to the appropriate third-party recipients. As of the Petition Date, the

Debtors estimate that they hold approximately \$1,070,000 in unremitted amounts on account of the Deductions.⁷

38. In addition to the Deductions, the Debtors are obligated by law to withhold amounts from the Employees' gross pay related to federal, state, and local income taxes, including Social Security and Medicare taxes (or the equivalent in each country) for remittance to the appropriate federal, state, or local taxing authority (collectively, the "*Withholdings*"). The Debtors also must match, from their own funds, Social Security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance (collectively, the "*Employer Payroll Taxes*") and, together with the Withholdings, the "*Payroll Taxes*").⁸ In the aggregate, Payroll Taxes, including both the Employee and the Debtors' portions, total approximately \$4,100,000 per month. As of the Petition Date, the Debtors estimate that they hold approximately \$2,730,000 in unremitted amounts on account of the Payroll Taxes.

39. The Debtors seek authority to remit the Deductions and Payroll Taxes in the ordinary course of business, consistent with past practice. To the extent any Deductions or Payroll Taxes have not been forwarded to the relevant third-party recipients as of the Petition Date, the Debtors seek authority to forward such Deductions and Payroll Taxes in the ordinary course of business, consistent with past practice. As of the Petition Date, the Debtors estimate that they hold approximately \$3,800,000 in unremitted amounts on account of the Deductions and Payroll Taxes.

⁷ Additionally, the Debtors formerly maintained a deferred compensation program whereby certain Employees could defer payment of their accrued Wages. While the program is no longer active, the Debtors continue to hold approximately \$600,000 in unremitted amounts owed to approximately ten non-insider Employees. For the avoidance of doubt, the Debtors seek authority to remit such Deductions to the applicable non-insider Employees in the ordinary course of business.

⁸ For instance, United Kingdom law requires debtors to assess and withhold income tax and national insurance contributions from UK Employees' salary payments under the Pay As You Earn system.

7. *Staffing Agencies*

40. As noted above, the Debtors make payments to the Staffing Agencies that compensate for the services of independent contractors provided by each Staffing Agency, among other associated fees and costs. Such individuals are not employees of the Debtors.

41. The most significant of the Debtors' Staffing Agencies is Grupo American Industries, who provides approximately 300 finance and accounting, commercial, procurement and human resources support staff for Haas TCM de Mexico, S. de R.L. de C.V.'s shared service center located in Chihuahua, Mexico. The Debtors pay Grupo American Industries approximately \$870,000 each month on account of such services.

42. In the year prior to the Petition Date, the Debtors paid the Staffing Agencies approximately \$19,000,000. As of the Petition Date, the Debtors estimate that the Staffing Agencies are owed approximately \$3,100,000 for services rendered prior to the Petition Date. The Debtors seek authority to continue paying the Staffing Agencies on account of compensation earned postpetition, consistent with past practices.

B. Employee Benefit Obligations

43. In the ordinary course of business, the Debtors provide various benefits to their Employees. These benefits fall within the following categories: (a) paid time off, including personal time off, sick days, and holidays (collectively, the "*Employee Leave Benefits*"), (b) medical, dental, vision and prescription drug benefits, life insurance, accidental death and dismemberment ("*AD&D*") insurance, disability insurance, and flexible spending accounts (collectively, the "*Health and Welfare Benefits*"), (c) retirement programs, and (d) certain other benefits (each of the foregoing, an "*Employee Benefit*," and the related plans, the "*Employee Benefit Plans*"). The Employee Benefit Plans vary by jurisdiction and most of the Employee Benefit Plans are administered through third parties.

44. The Debtors' Employee Benefit Plans are summarized in the following chart:

Category	Est. Amount Accrued as of Petition Date
Employee Leave Benefits	\$6,650,000
Health and Welfare Benefits	\$1,338,000
Retirement Plans	\$470,000
Other Benefits	\$140,000
Total Employee Benefit Obligations	\$8,598,000

1. ***Employee Leave Benefits***

45. The Employee Leave Benefits vary by jurisdiction but include paid time off ("***PTO***") and are described in detail below.

a. U.S. Employee Leave Benefits

46. U.S. Employees receive a variety of Employee Leave Benefits (the "***U.S. Employee Leave Benefits***"). U.S. Employees are entitled to between 5 and 28 days of vacation as paid-time-off ("***U.S. PTO***") a year and may carry over up to 10 days of accrued but unused U.S. PTO from year to year. As of the Petition Date, the Debtors estimate that their liability for the accrued U.S. PTO is \$4,750,000.

47. In addition, the Debtors provide U.S. Employees with other U.S. Employee Leave Benefits that do not involve incremental cash outlays beyond the Debtors' standard payroll obligations and do not require payments upon termination of employment, including:

- paid holidays throughout the year, during which most U.S. Employees are not required to work and are paid at their base rate;
- leave under the Family and Medical Leave Act and similar state laws for birth, adoption, foster care, family care, medical emergencies, military exigencies and the like; and
- other leaves, such as sick leave, personal time off, disability leave, bereavement leave and leave for jury duty.

b. UK Leave Benefits

48. UK Employees also receive various Employee Leave Benefits (the “***UK Employee Leave Benefits***”). In the United Kingdom, Employees are entitled to between 25 and 34 days of vacation as paid-time-off (“***UK PTO***”) a year. UK Employees may not carry over accrued UK PTO from year to year. As of the Petition Date, the Debtors estimate that their liability in connection with accrued UK PTO is \$1,500,000. UK Employees are entitled to receive their accrued but unused UK PTO in cash upon termination.

49. In addition, the Debtors provide UK Employees with certain other UK Employee Leave Benefits, which do not involve incremental cash outlays beyond the Debtors’ standard payroll obligations and do not require payments upon termination of employment, including:

- paid holidays throughout the year, during which most UK Employees are not required to work and are paid at their base rate;
- leave under certain provisions of UK law for birth, adoption, foster care, family care, medical emergencies, military exigencies and the like;
- 52 weeks of paid parental leave for the birth or adoption of a child; and
- other leaves, such as statutory sick leave, disability leave, bereavement leave and leave for jury duty.

c. ROW Leave Benefits

50. ROW Employees also receive a variety of Employee Leave Benefits (the “***ROW Employee Leave Benefits***”). For Example, ROW Employees in Canada are entitled to similar leave benefits as U.S. Employees. As of the Petition Date, the Debtors estimate that their liability in connection with accrued ROW paid time off (“***ROW PTO***”) is \$400,000.

51. In addition, depending upon the jurisdiction, the Debtors provide ROW Employees with certain other ROW Employee Leave Benefits, which do not involve

incremental cash outlays beyond the Debtors' standard payroll obligations and do not require payments upon termination of employment, including:

- paid holidays throughout the year, during which certain ROW Employees are not required to work and are paid at their base rate;
- leave under certain provisions of applicable law for birth, adoption, foster care, family care, medical emergencies, military exigencies and the like;
- paid parental leave for the birth or adoption of a child; and
- other leaves, such as statutory sick leave, disability leave, bereavement leave and leave for jury duty.

52. The Debtors believe that the continuation of the Employee Leave Benefits, on which Employees have come to depend is essential to maintaining Employee morale throughout these cases. Although the Debtors estimate that Employees had accrued approximately \$6,650,000 in unpaid Employee Leave Benefits prior to the Petition Date, the Debtors anticipate that the vast majority of the accrued leave time will be used in the ordinary course of business, which will not require any incremental cash outlays beyond the Debtors' normal payroll expense. The Debtors therefore request authority to continue to provide Employee Leave Benefits, as well as pay obligations that accrued prior to the Petition Date.

2. ***Health and Welfare Benefits***

53. The Debtors offer a comprehensive Health and Welfare Benefit plan for full-time Employees. As more fully described below, the offered benefits include (i) medical, vision, dental and prescription drug plans, (ii) life insurance and AD&D insurance, and (iii) short-term and long-term disability benefits.

a. U.S. Health and Welfare Benefits

i. *Medical, Vision, Dental and Prescription Drug Plans*

54. The Debtors provide the following plans (the "***U.S. Health Insurance Plans***") to subscribing U.S. Employees and their families, as well as post-termination

coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (“**COBRA**”):

Type of Plan	Provider
Medical Insurance	BlueCross BlueShield of Texas Kaiser (only in California)
Prescription Drug Insurance	BCBS Prime Therapeutics
Dental Insurance	MetLife Dental
Vision Insurance	MetLife Vision

55. The Debtors and their U.S. Employees share the cost of the premiums and administrative fees under the U.S. Health Insurance Plans. The Debtors’ share averages approximately \$902,000 per month. As of the Petition Date, the Debtors owe approximately \$902,000 in accrued and unpaid premiums and administrative fees on account of the U.S. Health Insurance Plans.

56. The Debtors offer medical insurance (the “**Medical Insurance**”) and prescription medication coverage (the “**Prescription Drug Insurance**”) to all eligible U.S. Employees. The Medical Insurance also includes coverage under COBRA, post-termination. The Medical Insurance also provides U.S. Employees with access to mental health, legal, and financial assistance. The Medical Insurance and Prescription Drug Insurance are self-funded programs. The Debtors pay fixed costs to use the carrier’s network and variable costs for the members’ claims. Each U.S. Employee contributes between zero and 20 percent of the cost of the Medical Insurance, depending on the type of coverage they select and the applicable laws of the jurisdictions in which the U.S. Employee is located. The applicable insurance providers adjudicate and pay claims to healthcare providers, pharmacies, or U.S. Employees, as applicable. As of the Petition Date, the Debtors estimate that they owe approximately \$860,000 on account of Medical Insurance and Prescription Drug Insurance obligations, including claim reimbursement and administrative fees.

57. The Debtors offer dental insurance to full-time U.S. Employees (the “**Dental Insurance**”). The Dental Insurance is administered by MetLife Dental. In the twelve months before the Petition Date, the Debtors paid approximately \$370,000 to MetLife Dental in premiums and administrative fees. As of the Petition Date, the Debtors owe approximately \$40,000 on account of the Dental Insurance.

58. The Debtors offer vision insurance to full-time U.S. Employees (the “**Vision Insurance**”) that the Debtors purchase from MetLife Vision. In the twelve months before the Petition Date, the Debtors paid approximately \$10,000 to MetLife Vision in premiums and administrative fees. As of the Petition Date, the Debtors estimate that they owe approximately \$2,000 on account of the Vision Insurance.

ii. *Life Insurance, AD&D, Disability, and Long-Term Care Plans*

59. The Debtors also offer life insurance, AD&D insurance, and short-term and long-term disability insurance (collectively, the “**U.S. Casualty Insurance Plans**”) to U.S. Employees. The chart below lists the available programs and the applicable provider:

Type of Plan	Provider
Basic Life/AD&D Insurance	Prudential
Voluntary Life Insurance	Prudential
Voluntary AD&D Insurance	Prudential
Basic Short-Term Disability	Prudential
Voluntary Short-Term Disability	Prudential
Basic Long-Term Disability	Prudential

60. The Debtors premiums and fees for the U.S. Casualty Insurance Plans average approximately \$80,000 per month. As of the Petition Date, the Debtors owe approximately \$80,000 in accrued and unpaid premiums and administrative fees on account of the U.S. Casualty Insurance Plans.

61. The Debtors provide full time U.S. Employees’ basic life and AD&D insurance (the “**U.S. Basic Life/AD&D Insurance**”) and the option to participate in supplemental voluntary life insurance and/or AD&D insurance. The U.S. Basic

Life/AD&D Insurance pays the applicable U.S. Employee's annual Wages in the event of such Employee's death. The annual cost of the U.S. Basic Life/AD&D Insurance is approximately \$200,000. As of the Petition Date, the Debtors estimate that they owe approximately \$20,000 on account of the U.S. Basic Life/AD&D Insurance premiums.

62. The Debtors offer both basic short term disability insurance (the "***U.S. Basic Short-Term Disability Insurance***") and voluntary short term disability insurance (the "***U.S. Voluntary Short-Term Disability Insurance***"). The U.S. Basic Short Term Disability Insurance is available to U.S. Employees at no cost and entitles them to sixty percent of their weekly wages for up to twenty-six weeks in the event the U.S. Employee is partially or fully disabled for a short time. The U.S. Voluntary Short Term Disability Insurance entitles U.S. Employees to seventy percent of their weekly wages for up to twenty-six weeks in the event the U.S. Employee is partially or fully disabled for a short time. The U.S. Basic and Voluntary Short-Term Disability Insurance begins on the eighth day after the event giving rise to disability. The Debtors' annual costs on account of these programs is approximately \$380,000. As of the Petition Date, the Debtors estimate they owe approximately \$40,000 on account of accrued short term disability benefit obligations.

63. The Debtors also offer U.S. Employees long-term disability benefits at no cost (the "***U.S. Long-Term Disability Insurance***"). The U.S. Long-Term Disability Insurance provides eligible U.S. Employees with sixty percent of their normal wages after 180 days following the qualified event. The Debtors' annual costs on account of the U.S. Long-Term Disability Insurance is approximately \$190,000. As of the Petition Date, the Debtors estimate they owe approximately \$20,000 on account of accrued U.S. Long Term Disability Insurance obligations.

b. UK Health and Welfare Benefits

64. Similar to the coverage provided to U.S. Employees, the Debtors provide various health and benefit plans (the "***UK Insurance Plans***") to subscribing UK Employees and their families. The UK Insurance Plans include private medical insurance, life

insurance, and various other plans. As of the Petition Date, the Debtors estimate they owe approximately \$72,000 on account of accrued UK Insurance obligations.

c. ROW Health and Welfare Benefits

65. Likewise, the Debtors provide various health and benefit plans (the “**ROW Insurance Plans**”) to subscribing ROW Employees and their families. For example, the ROW Insurance Plans for ROW Employees in Canada include medical and dental insurance, life insurance, AD&D insurance, long-term disability, and various other plans. As of the Petition Date, the Debtors estimate they owe approximately \$204,000 on account of accrued ROW Insurance obligations.

3. **Retirement Plans**

66. The Debtors maintain various retirement savings plans for their Employees (the “**Retirement Plans**”). For U.S. Employees, the Debtors maintain a plan that satisfies the requirements of section 401(k) of the Internal Revenue Code (the “**401(k) Plan**”). The 401(k) Plan is available to all U.S. Employees over the age of twenty who have been employed by the Debtors for at least one month. Eligible U.S. Employees may contribute up to sixty percent of their eligible Wages to the 401(k) Plan. The Debtors match (i) one hundred percent of the contributions of the participating U.S. Employee up to a maximum of one percent of the U.S. Employee’s base salary and (ii) fifty percent of the contributions of the participating U.S. Employee for the next five percent of the U.S. Employee’s base salary (collectively, the “**401(k) Matching Contributions**”). The 401(k) Plan is administered by Fidelity Investments. As of the Petition Date, approximately 2,225 current and former U.S. Employees participate in the 401(k) Plan (U.S. Employees may maintain their 401(k) Plan account if they change jobs). UK Employees are entitled to participate in a government pension plan (the “**UK Pension Plan**”). The UK Pension Plan allows UK Employees to invest in master trusts established and supervised in accordance with the pension fund laws of the United Kingdom. The Debtors maintain Retirement Plans similar to the 401(k) Plan and UK Pension Plan for the benefit of ROW Employees.

67. In the year before the Petition Date, the Debtors paid approximately \$220,000 per month in the 401(k) Matching Contributions. As of the Petition Date, the Debtors estimate that they owe approximately \$470,000 in accrued Retirement Plan obligations, including \$130,000 in accrued 401(k) Matching Contributions, \$310,000 in accrued obligations under the UK Pension Plan, and \$30,000 related to Retirement Plans for the benefit of ROW Employees. The Debtors seek authority to continue the Retirement Plans in the ordinary course of business postpetition consistent with past practices, as well as to pay any prepetition 401(k) Matching Contributions and similar amounts.

4. ***Other Benefit Programs***

68. The Debtors also provide a variety of other benefit programs (the “***Other Benefit Programs***”) to eligible Employees, which include the following:

69. Flexible Spending Accounts: The Debtors provide full-time U.S. Employees with access to a flexible spending account (the “***FSA***”) administered by AmeriFlex, Inc. (“***AmeriFlex***”). Each U.S. Employee may contribute pre-tax dollars to an FSA and use such funds to pay eligible expenses, such as healthcare costs not covered by insurance (the “***FSA Program***”). The Debtors remit U.S. Employees’ FSA contributions to AmeriFlex and do not make any contributions to the U.S. Employees’ FSAs. U.S. Employees may submit claims to AmeriFlex for the reimbursement of qualified expenses. As of the Petition Date, the Debtors estimate that they hold approximately \$10,000 in unremitted amounts on account of the FSAs, and owe *de minimis* administrative fees to AmeriFlex on account of the FSAs.

70. Health Savings Accounts: As an alternative to the FSA Program, the Debtors also provide full-time U.S. Employees with access to a health savings account (the “***HSA***”) administered by HSA Bank, a division of Webster Bank, N.A. (“***HSA Bank***”). Each U.S. Employee may contribute pre-tax dollars to their HSA and use such funds to pay qualified healthcare expenses (the “***HSA Program***”). To participate in the HSA Program, U.S. Employees must be enrolled in a high deductible health plan. U.S. Employees own

their HSAs, and each U.S. Employee may roll over their HSA funds year-to-year and maintain the HSA if they change jobs. The Debtors also make HSA contributions on behalf of a number of U.S. Employees of up to \$500 per year for certain individuals and up to \$1,000 per year for families. The Debtors remit HSA contributions to HSA Bank. As of the Petition Date, the Debtors estimate that they owe approximately \$20,000 in accrued but unremitted amounts owed on account of the HSAs. The Debtors also estimate that participating U.S. Employees owe a total of approximately \$20,000 in accrued but unremitted amounts owed on account of the HSAs, and owe *de minimis* administrative fees to HSA Bank on account of the HSAs .

71. Supplemental Health Programs: The Debtors, through Voya Financial, Inc. (“*Voya*”), offer certain U.S. Employees several elective supplements to their medical insurance, including supplemental accident, critical illness, and hospital indemnity coverage (collectively, the “*Supplemental Health Programs*”). Accident coverage covers expenses related to accidental injuries that occur outside of work. Critical illness coverage pays a lump-sum benefit if an U.S. Employee is diagnosed with a covered disease or condition. Hospital indemnity coverage provides a cash payment if a U.S. Employee is admitted to a hospital or an intensive care unit for a covered stay. The Debtors remit U.S. Employees’ Supplemental Health Program contributions to Voya and do not make any contributions to the Supplemental Health Programs. As of the Petition Date, the Debtors estimate that they hold approximately \$10,000 in unremitted amounts on account of the Supplemental Health Programs.

72. Prepaid Legal Coverage: The Debtors, through ARAG Legal, offer low-cost access to attorneys for U.S. Employee’s personal legal services (the “*Prepaid Legal Coverage*”). Payments are made through payroll deductions. The Prepaid Legal Coverage includes such services as estate planning, identity-theft defense, divorce, real estate matters, and document review, among others. To the extent there are any *de minimis*

amounts outstanding on account of the Prepaid Legal Coverage relating to the prepetition period, the Debtors seek authority to pay such amounts.

73. Travel Assistance Program: The Debtors, through International Medical Group, Inc. (“**IMG**”), provide certain Employees with travel assistance services that include 24/7 medical and security management services, claims administration, and multilingual customer service professionals (the “**Travel Assistance Program**”). To the extent there are any *de minimis* amounts outstanding on account of the Travel Assistance Program relating to the prepetition period, the Debtors seek authority to pay such amounts.

74. Miscellaneous Benefit Programs: The Debtors also provide a variety of other, similar, benefit programs to UK Employees and ROW Employees (the “**Miscellaneous Benefit Programs**”). For example, the Debtors provide education allowances, childcare programs, and transportation benefits for UK and ROW Employees. As of the Petition Date, the Debtors estimate that they owe approximately \$80,000 in accrued Miscellaneous Benefit Programs obligations.

C. Payroll Services

75. To efficiently manage the processing and payment of the various Employee Obligations, the Debtors rely on third-party service providers to facilitate payroll processing and administration (the “**Payroll Services**”). Such services are provided by ADP in the United States (the “**U.S. Payroll Servicer**”) and by ADP, Out Helping, APSI, and BDO in other relevant jurisdictions (the “**ROW Payroll Servicers**”) and, together with the U.S. Payroll Servicer, the “**Payroll Servicers**”).⁹ These services are crucial to the Debtors’ payroll system. With the Payroll Servicers’ assistance, the Debtors can ensure that Employees are paid on time, appropriate deductions and withholding are made, payroll reporting is accurate, and appropriate amounts are remitted to the applicable taxing authorities and other recipients.

⁹ Certain UK Employees provide Payroll Services for the Debtors in the UK.

76. The Debtors pay the Payroll Servicers approximately \$700,000 per year for Payroll Services, consisting of \$600,000 owed to the U.S. Payroll Servicer and \$100,000 owed to the ROW Payroll Servicers. The Debtors estimate that, as of the Petition Date, they owe approximately \$70,000 on account of Payroll Services

BASIS FOR RELIEF

I. THE COURT SHOULD AUTHORIZE THE DEBTORS TO HONOR EMPLOYEE OBLIGATIONS.

A. Ample Authority Exists to Allow the Debtors to Honor Prepetition Employee Obligations.

77. Authorization for the Debtors to pay and otherwise honor prepetition Employee Obligations and Employee Payroll Servicer Obligations may be granted under section 363(b) of the Bankruptcy Code, which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 363(b) permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification).

78. Thus, where debtors are able to “articulate some business justification, other than the mere appeasement of major creditors,” courts in this circuit have authorized them to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App’x 429, 435 (5th Cir. 2016); *Institutional Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use

of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion.”). Once the debtor articulates a reasonable basis for its business decisions, “courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is 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.” *Off. Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

79. Paying and otherwise honoring the Employee Obligations and Employee Payroll Servicer Obligations undoubtedly has ample business justification and represents a sound exercise of the Debtors’ business judgment because failure to do so would have a severe impact on the day-to-day operations of the Debtors’ businesses, potentially jeopardizing the Debtors’ reorganization.

80. The Debtors’ business cannot function without the Employees. A significant portion of the value of the Debtors’ business is tied to their workforce, which cannot be replaced without significant time and effort—effort that might not be successful while the Debtors are in bankruptcy. Absent the payment or honoring of the Employee Obligations, the Debtors may experience declining productivity, significant turnover and general instability. At this critical time, the Debtors cannot risk demoralizing their workforce.

81. Most of the Employees rely on the Debtors’ satisfying the Employee Compensation Obligations to meet their daily living expenses. Consequently, Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor the Employee Obligations. Continuing ordinary course benefits will help maintain employee morale and minimize the adverse effect of the commencement of these cases on the Debtors’ business operations.

82. In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the “implied duty . . . to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)). Indeed, Bankruptcy Rule 6003 implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.” Accordingly, postpetition payment of prepetition claims may be authorized where, as here, such payment is critical to preserving the going-concern value of the Debtors’ estates.

83. In addition, the requested relief is also authorized under section 105(a) of the Bankruptcy Code and the equitable doctrine of necessity. Section 105(a) of the Bankruptcy Code codifies the inherent equitable powers of bankruptcy courts by authorizing them to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Section 105(a) therefore provides a statutory basis the payment of prepetition claims under certain circumstances. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. at 497 (holding that section 105(a) provides a statutory basis for payments where necessary to fulfill the debtor’s fiduciary duties under section 1107(a)); *see also In re Scotia Dev.*, No. 07-20027, 2007 WL 2788840 at *1-2 (Bankr. S.D. Tex. Sept. 21, 2007); *In re CEI Roofing, Inc.*, 315 B.R. at 56.

84. This understanding of section 105(a) has its basis in the “doctrine of necessity” or the “necessity of payment” doctrine. Under this longstanding doctrine, a bankruptcy court may exercise its equitable power to allow a debtor to pay critical prepetition claims that are not explicitly authorized by the Bankruptcy Code. *See In re CoServ*, 273 B.R. at 497 (authorizing payment of certain prepetition claims pursuant to “doctrine of necessity”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (authorizing payment of prepetition claims as “necessary to avert a serious threat to the [c]hapter 11 process”). Preservation of the estate is often most critical and

extremely difficult early in reorganization cases. For that reason, where failure to make payments of certain essential prepetition claims threatens to disrupt a debtor's efforts to reorganize, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay such claims in light of the paramount goal of chapter 11: "facilitating the continued operation and rehabilitation of the debtor" *In re Ionosphere Clubs*, 98 B.R. at 176.

85. Courts in this jurisdiction have often granted the relief sought in the Motion. *In re Strike, LLC*, Case No. 21-90054 (DRJ) (Bankr. S.D. Tex. Dec. 6, 2021) [ECF No. 57]; *In re Carlson Travel, Inc.*, Case No. 21-90017 (MI) (Bankr. S.D. Tex. Nov. 12, 2021) [ECF No. 100]; *In re Basic Energy Services, Inc.*, Case No. 21-90002 (DRJ) (Bankr. S. D. Tex. Aug. 17, 2021) [ECF No. 44]; *In re Washington Prime Grp. Inc.*, Case No. 21-31948 (MI) (Bankr. S.D. Tex. June 14, 2021) [ECF No. 78]; *In re Gulfport Energy Corp.*, Case No. 20-35562 (DRJ) (Bankr. S.D. Tex. Nov. 16, 2020) [ECF No. 119].

B. Certain Employee Obligations Are Entitled to Priority Treatment Under the Bankruptcy Code.

86. Section 507(a)(4)(A) of the Bankruptcy Code affords priority status to claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay," that are "earned within 180 days before" the date on which a debtor's chapter 11 case is commenced, up to the amount of \$15,150 per individual. *See* 11 U.S.C. § 507(a)(4)(A). Similarly, section 507(a)(5) grants priority to claims for contributions to certain employee benefit plans, up to \$15,150 per individual, *minus* the aggregate amount paid under section 507(a)(4) to employees covered by the benefit plan. *See* § 507(a)(5). To be confirmed, a chapter 11 plan must provide for payment in full of these priority claims. *See* § 1129(a)(9)(B).

87. Many prepetition Employee Compensation Obligations and Employee Benefit Obligations fall within the scope of section 507(a)(4) and section 507(a)(5),

respectively.¹⁰ Thus, granting the majority of the relief sought herein should only affect the timing of payments to Employees and should not negatively affect recoveries of general unsecured creditors. In fact, payment of the Employee Obligations at the outset of the chapter 11 cases enhances value for the benefit of all interested parties. *See In re Equalnet Commc 'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“The need to pay [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.”).

C. Payment of Certain Employee Obligations Is Required by Law.

88. Moreover, some of the requested relief is mandated by law. For instance, the Deductions and Payroll Taxes are held by the Debtors in trust for payment to appropriate taxing authorities, such as the Social Security Administration. As such, those withheld amounts are likely not property of the Debtors’ estates under section 541(d) of the Bankruptcy Code. *See, e.g., Begier v. IRS*, 496 U.S. 53, 57–60 (1990) (holding that payment of trust fund taxes is not subject to avoidance because such funds are not debtor’s property); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994) (holding that wages required to be withheld by state law is held in trust for the taxing authority); *Shank v. Wash. State Dept. of Rev. (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that sales tax collected by sellers from customers is a “trust fund” tax); *DeChiaro v. N.Y. State Tax Comm’n*, 760 F.2d 432, 435 (2d Cir. 1985) (same). Indeed, a constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question. *See In re Integrated Health Servs., Inc.*, 344 B.R. 262, 270 (Bankr. D. Del. 2006).

¹⁰ The Debtors do not believe that they owe any material Employee Obligations that accrued more than 180 days prior to the Petition Date or that they owe more than the statutory cap to any individual.

89. The Bankruptcy Code respects these non-bankruptcy doctrines by excluding from the estate any equitable interest in property where “the debtor holds, as of the commencement of the case, only legal title and not an equitable interest” 11 U.S.C. § 541(d). Because the Debtors do not have an equitable interest in the funds held on account of “trust fund” taxes under non-bankruptcy law, section 541 excludes any equitable interest to those funds from the Debtors’ estates. Accordingly, the Debtors request that the Court authorize them to transmit prepetition Deductions and Payroll Taxes to the proper payees in the ordinary course of business.

D. The Requested Relief Is Consistent with Section 503(c).

90. Section 503(c) of the Bankruptcy Code prohibits a debtor from allowing or paying (a) “a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor’s business,” absent certain findings (11 U.S.C. § 503(c)(1)); (b) “a severance payment to in insider of the debtor,” unless certain conditions are met (*Id.* at § 503(c)(2)); or (c) “other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case” *Id.* at § 503(c)(3).

91. The proposed Order is consistent with section 503(c) of the Bankruptcy Code, in that it specifically disclaims any authorization for the Debtors to make, among other things, (a) any payments or transfers to or for the benefit of an insider for the purpose of inducing such person to remain with the Debtors’ business, (b) any severance payment to an insider, or (c) any other payment or transfer to or for the benefit of an Employee that is outside the ordinary course of business. *See* Proposed Order ¶ 7.

II. THE COURT SHOULD DIRECT FINANCIAL INSTITUTIONS TO HONOR AUTHORIZED PAYMENTS.

92. To facilitate the relief described above, the Debtors further request that the Court authorize and direct all applicable banks and financial institutions to receive, process, honor and pay any and all checks drawn or electronic fund transfers from its accounts

whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are expressly identified by the Debtors as relating directly to the authorized payments of the Employee Obligations and Employee Payroll Servicer Obligations. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the chapter 11 cases.

93. The Debtors believe that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from business operations and from the anticipated authorization to use the prepetition lenders' cash collateral. Through the Debtors' existing cash management system, the Debtors believe that checks or other transfer requests can be readily identified as an authorized payment on account of Employee Obligations and Employee Payroll Servicer Obligations, and the Debtors are prepared to assist their banks by confirming whether particular transfers are authorized by an order granting this Motion. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Employee Obligations and Employee Payroll Servicer Obligations.

EMERGENCY CONSIDERATION

94. Bankruptcy Rule 6003 allows a bankruptcy court to grant relief within the first 21 days of a case "to the extent that relief is necessary to avoid immediate and irreparable harm," and paragraph 17 of the Complex Case Procedures requires that all non-emergency motions be filed on at least 21 days' notice. Pursuant to those rules and Bankruptcy Local Rule 9013-1(i), the Debtors request emergency consideration of this Motion. Entry of the proposed Order will prevent dire consequences that might result if the

Debtors are unable to pay or otherwise honor prepetition Employee Obligations and Employee Payroll Servicer Obligations in the usual amounts and on the usual schedule. For these reasons, the Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003, and the Motion should be granted on an emergency basis. Likewise, to ensure that all payments of Employee Obligations and Employee Payroll Servicer Obligations can be paid on time, the Debtors request that the 14-day stay of Bankruptcy Rule 6004(h) be waived.

95. The Debtors also submit that emergency relief on a final basis is appropriate under paragraph 4(a) of the Complex Case Procedures because the proposed Order does not include (and indeed disclaims) “relief of the nature specified in 11 U.S.C. § 503(c) or . . . a request for [authorization to make] payments outside the ordinary course of the [Debtors’] business.” Complex Case Procs. ¶ 4(a); *cf.* Proposed Order ¶ 8.

RESERVATION OF RIGHTS

96. Nothing in this Motion is intended or should be construed as (a) an implication, admission, or concession as to the validity, amount or priority of, or basis for, any claim against any Debtor; (b) a waiver of any Debtor’s or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of any claim or cause of action that any Debtor or other party in interest may have against any entity; (e) a ratification, adoption, rejection or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (f) a waiver or limitation of any Debtor’s or other party in interest’s rights under any agreement, the Bankruptcy Code or other applicable law; or (g) an implication, admission, concession, or finding (i) that any particular claim is of a type specified or defined in the Motion or (ii) any lien, security interest, other encumbrance on property of any Debtor or (ii) that any lien, security interest, other encumbrance on property of any Debtor or right of setoff is valid, enforceable or perfected (and the Debtors and all other parties in interest expressly reserve and preserve their rights to contest or to seek avoidance of, the same). 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 of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

NOTICE

97. Notice of this Motion will be provided to (a) the Office of the U.S. Trustee for Region 7; (b) the creditors holding the thirty largest unsecured claims, according to the list filed by the Debtors with their petitions and their counsel; (c) the administrative agent for the ABL Facility and its counsel; (d) the indenture trustee for the 1L Notes and its counsel; (e) the indenture trustee for the 1.25L Notes and its counsel; (f) the indenture trustee for the Unsecured Notes and its counsel; (g) the indenture trustee for the PIK Notes and its counsel; (h) Davis Polk & Wardwell LLP and Porter Hedges LLP, as counsel to an ad hoc group of holders of 1L Notes (the "***First Lien Noteholder Group***"); (i) Carlyle Global Credit Investment Management, LLC, and its counsel; (j) Senator Investment Group LP and its counsel; (k) Kobre & Kim LLP as counsel to an ad hoc group of holders of Unsecured Notes; (l) Langur Maize, L.L.C. and its counsel; (m) Katsumi and its counsel; (n) Platinum and its counsel; (o) each of the Debtors' depositories and their respective counsel; (p) each of the Unions; (q) the Internal Revenue Service; (r) the Office of the U.S. Attorney for the Southern District of Texas; and (s) any other party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that no further notice is required under the circumstances.

Remainder of page intentionally blank

Upon the foregoing Motion, the Debtors respectfully request that the Court (a) enter an order, substantially in the form attached as **Exhibit A**, granting this Motion and (b) grant such other relief as is just and proper.

Dated: June 1, 2023

Respectfully submitted,

/s/ Kelli S. Norfleet

Kelli S. Norfleet (TX Bar No. 24070678)
Charles A. Beckham, Jr. (TX Bar No. 02016600)
Martha Wyrick (TX Bar No. 24101606)
HAYNES AND BOONE, LLP
1221 McKinney Street, Suite 4000
Houston, TX 77010
Telephone: 1 (713) 547-2000
Email: Kelli.Norfleet@HaynesBoone.com
Charles.Beckham@HaynesBoone.com
Martha.Wyrick@HaynesBoone.com

- and -

Dennis F. Dunne (*pro hac vice* pending)
Samuel A. Khalil (*pro hac vice* pending)
Benjamin M. Schak (*pro hac vice* pending)
MILBANK LLP
55 Hudson Yards
New York, NY 10001
Telephone: 1 (212) 530-5000
Email: DDunne@Milbank.com
SKhalil@Milbank.com
BSchak@Milbank.com

*Proposed Counsel to the
Debtors and Debtors in Possession*

CERTIFICATE OF ACCURACY

I certify, pursuant to Local Bankruptcy Rule 9013-1(i), that the foregoing statements regarding the nature of the emergency set forth in the foregoing Motion are true and accurate to the best of my knowledge.

Dated: June 1, 2023

/s/ Kelli S. Norfleet
Kelli S. Norfleet

CERTIFICATE OF SERVICE

I certify that, on June 1, 2023, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' proposed noticing agent.

Dated: June 1, 2023

/s/ Kelli S. Norfleet
Kelli S. Norfleet

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re

**WESCO AIRCRAFT HOLDINGS, INC.,
et al.,¹**

Debtors.

Case No. 23-90611 (DRJ)

Chapter 11

(Jointly Administered)

**ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY
PREPETITION WAGES, SALARIES,
BENEFITS AND OTHER COMPENSATION
AND (B) MAINTAIN EMPLOYEE BENEFIT
PROGRAMS AND (II) GRANTING RELATED RELIEF**

¹ The Debtors operate under the trade name Incoira and have previously used the trade names Wesco, Pattonair, Haas, and Adams Aviation. A complete list of the Debtors in these chapter 11 cases, with each one's federal tax identification number and the address of its principal office, is available on the website of the Debtors' noticing agent at <http://www.kccllc.net/incora/>. The service address for each of the Debtors in these cases is 2601 Meacham Blvd., Ste. 400, Fort Worth, TX 76137.

Upon the motion (the “*Motion*”),² of the above-captioned debtors (collectively, the “*Debtors*”), for entry of an order (i) authorizing them to (a) maintain all Employee compensation and benefit programs postpetition in the ordinary course of business, and (b) pay prepetition Wages, salaries and other compensation, including Employee Bonuses, Payroll Taxes, Withholdings, and Expenses, (b) pay and honor obligations arising under Employee Benefit Programs, and (ii) granting certain related relief; and the Court having jurisdiction to decide the Motion and to enter this Order pursuant to 28 U.S.C. § 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided, such notice being adequate and appropriate under the circumstances; and after notice and a hearing, as defined in section 102 of the Bankruptcy Code; and the Court having determined that the legal and factual bases set forth in the Motion and in the record establish just cause for entry of this Order; and it appearing that entry of this Order on an emergency basis is in the best interests of the Debtors’ estates; it is hereby **ORDERED** that:

1. The Debtors are authorized, but not directed, to maintain, fund, and otherwise honor all Employee Obligations and Employee Payroll Servicer Obligations in the ordinary course of business, in accordance with their prepetition policies and practices, as such may be modified, amended, or supplemented from time to time.

2. The Debtors are further authorized, but not directed, to pay amounts accrued in connection with the Employee Obligations and Employee Payroll Servicer Obligations prior to or on the Petition Date; *provided* that, notwithstanding any other provision of this Order, the Debtors shall not pay any individual Employee on account of prepetition obligations accrued in connection with the Employee Obligations, other than payments of accrued PTO in the ordinary course of business, an amount that exceeds the caps set forth in sections 507(a)(4) or 507(a)(5) of the

² Capitalized terms used but not defined in this Order have the meanings ascribed to them in the Motion.

Bankruptcy Code nor pay to “insiders” of the Debtors as the term is defined in section 101(31) of the Bankruptcy Code without seeking authority from the Court.

3. The Debtors are authorized, but not directed, to pay any accrued but unused Employee Leave Benefits to any Employee whose employment terminates postpetition.

4. The Debtors are authorized to modify any Employee Benefit Plan in the ordinary course of business; *provided* that the Debtors shall provide five (5) business days’ notice to the counsel to the First Lien Noteholder Group of any material change thereto.

5. The Debtors are authorized and empowered to remit any Deductions, Withholdings, and Payroll Taxes to the appropriate taxing authorities or other recipients in accordance with the Debtors’ prepetition policies and practices.

6. Nothing contained in this Order is intended or should be construed to confer administrative status on any claim, including any claim that arises on account of any Employee Obligation or Employee Payroll Servicer Obligation.

7. Notwithstanding anything to the contrary in this Order, nothing in this Order allows, or authorizes the Debtors to make any payment or transfer, or incur an obligation, (a) pursuant to the Debtors’ “Targeted Incentive Plan” or (b) of the kind described in section 503(c) of the Bankruptcy Code.

8. Notwithstanding anything to the contrary in this Order, this Order does not authorize the Debtors to make: (a) any payments or transfers to or for the benefit of an insider (as defined in the Bankruptcy Code) for the purpose of inducing such person to remain with the Debtors’ business; (b) any severance payment to an insider (as defined in the Bankruptcy Code) or to any Employee with a separately negotiated severance agreement, (c) any payment on account of Severance Obligations with respect to a former Employee whose employment was terminated prior to the Petition Date, or (d) any other payment or transfer to or for the benefit of an Employee that is outside the ordinary course of business.

9. The Debtors shall maintain a matrix of payments made on account of Severance Obligations that includes the following information: (a) the title of the payee; (b) the date and amount of the payment; (c) the category of payment, as set forth in the Motion; and (d) the Debtor or Debtors that made the payment. Within 20 days after the end of each month, commencing with the first full month after entry of this Order, the Debtors shall provide a copy of that matrix to the U.S. Trustee, on a confidential and professional eyes' only basis (or on such other terms as mutually agreed) to the counsel to the First Lien Noteholder Group, and on terms to be mutually agreed with counsel to any statutory committee appointed in these chapter 11 cases.

10. All banks and financial institutions are authorized and required to receive, process, honor and pay any and all checks and other transfer requests with respect to payments made by the Debtors pursuant to this Order, whether presented before, on or after the Petition Date. However, a bank or other financial institution is not required to honor any such check or transfer request if insufficient funds are on deposit to cover the requested payment.

11. All banks and financial institutions are authorized to rely on the representations of the Debtors and their agents as to whether a particular payment is authorized to be paid pursuant to this Order.

12. The banks and financial institutions subject to this Order shall have no liability in connection with honoring any prepetition checks or transfer requests contemplated by this Order.

13. The Debtors are authorized, but not directed, in their sole discretion, to issue new postpetition checks, or effect new transfers, on account of the Employee Obligations and Employee Payroll Servicer Obligations, to replace any prepetition checks or transfer requests issued that are dishonored or rejected as a result of the commencement of these chapter 11 cases.

14. Notwithstanding the relief granted in this Order, all authorizations herein and all payments and actions pursuant thereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors To (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting*

Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief filed contemporaneously herewith (collectively, such interim and final orders, the “**DIP Order**”), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order and the terms of this Order, the terms of the DIP Order shall control.

15. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing contained in the Motion or this Order (nor any actions or payments pursuant to the relief granted herein) shall constitute, nor is it intended to constitute: (a) an implication, admission, concession or finding as to the validity, priority, amount, basis for, or secured status of any particular claim against any Debtor; (b) a waiver of the Debtors’ or other party in interest’s right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) a waiver of any claim or cause of action that any Debtor or other party in interest may have against any entity; (e) a ratification, adoption, rejection or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (f) a waiver or limitation of any Debtor’s or other party in interest’s rights under any agreement, the Bankruptcy Code or other applicable law; or (g) an implication, admission, concession or finding (i) that any particular claim is of a type specified or defined in this Order or the Motion or (ii) that any lien, security interest, other encumbrance on property of any Debtor or right of setoff is valid, enforceable or perfected (and the Debtors and all other parties in interest expressly reserve and preserve their rights to contest or to seek avoidance of the same). Any payment made pursuant to this Order 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.

16. Notwithstanding Bankruptcy Rule 6004(h) or any other provision of the Bankruptcy Rules or Local Rules, the terms of this Order shall be immediately effective and enforceable upon its entry.

17. The Debtors, the administrators of the Employee Benefit Plans, and the Debtors' other agents are authorized to take all steps necessary or appropriate to carry out this Order.

18. The Court shall retain jurisdiction over all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: _____
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE