

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:

MIDWEST CHRISTIAN VILLAGES, INC.  
*et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-42473-659  
(Joint Administration Requested)

Hearing Date: July 17, 2024  
Hearing Time: 2:00 p.m. (CT)  
Hearing Location: Courtroom 7

**DEBTORS' MOTION FOR INTERIM AND  
FINAL ORDERS (I) AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO (A) PAY  
PREPETITION WAGES, SALARIES, EMPLOYEE  
BENEFITS, AND OTHER OBLIGATIONS, (B) MAINTAIN EMPLOYEE  
BENEFIT PROGRAMS, AND (C) PAY RELATED ADMINISTRATIVE  
OBLIGATIONS; AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (the "Debtors"), by and through their proposed counsel, submit this motion (the "Motion") for entry of interim and final orders, pursuant to sections 105(a), 363(b), and 507(a) of title 11 of the United States Code (the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing, but not directing the Debtors, in their discretion, to (a) pay Employee Compensation Obligations and Employee Benefit Obligations (each as defined below)

<sup>1</sup> The address of the Debtors headquarters is 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141-7390. The last four digits of the Debtors' federal tax identification numbers are: (i) Midwest Christian Villages, Inc. [5009], (ii) Hickory Point Christian Village, Inc. [7659], (iii) Lewis Memorial Christian Village [3104], (iv) Senior Care Pharmacy Services, LLC [1176], (v) New Horizons PACE MO, LLC [4745], (vi) Risen Son Christian Village [9738], (vii) Spring River Christian Village, Inc. [1462], (viii) Christian Homes, Inc. [1562], (ix) Crown Point Christian Village, Inc. [4614], (x) Hoosier Christian Village, Inc. [3749], (xi) Johnson Christian Village Care Center, LLC [8262], (xii) River Birch Christian Village, LLC [7232], (xiii) Washington Village Estates, LLC [9088], (xiv) Christian Horizons Living, LLC [4871], (xv) Wabash Christian Therapy and Medical Clinic, LLC [2894], (xvi) Wabash Christian Village Apartments, LLC [8352], (xvii) Wabash Estates, LLC [8743], (xviii) Safe Haven Hospice, LLC [6886], (xix) Heartland Christian Village, LLC [0196], (xx) Midwest Senior Ministries, Inc. [3401] and (xxi) Shawnee Christian Nursing Center, LLC [0068].



and (b) maintain, continue to honor, and pay amounts with respect to the Debtors' business practices, programs, and policies for their employees as such were in effect as of the commencement of these chapter 11 cases and as such may be modified or supplemented from time to time in the ordinary course of business. In support of this Motion, the Debtors respectfully represent as follows:

### **BACKGROUND**

1. On July 16, 2024 (the "Petition Date"), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code.

2. The Debtors continue in the operation and management of their business as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. No trustee, examiner or official committee has been appointed in these chapter 11 cases.

4. Simultaneously with the filing of this Motion, the Debtors filed the *Declaration of Kathleen (Kate) Bertram in Support of the Debtors' Chapter 11 Petition and First Day Motions* (the "First Day Declaration"). As described in more detail in the First Day Declaration, the Debtors operate a mix of independent, assisted, and supportive living skilled nursing campuses in 10 locations across the Midwest, serving over 1,000 residents.

5. The Debtors filed these chapter 11 cases to pursue one or more going concern sales and/or going concern affiliates for each of their facilities.

### **JURISDICTION**

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

**RELIEF REQUESTED**

7. By this Motion, the Debtors seek entry of an interim order and, pending a final hearing on the relief requested herein, a final order, pursuant to sections 105(a), 363(b), and 507(a) the Bankruptcy Code, and subject to the DIP Budget (as defined below), for (I) authority to (a) pay Employee Compensation Obligations and Employee Benefit Obligations (each as defined below) and related expenses, fees, and costs incident to the foregoing, including amounts owed to third-party service providers and administrators and tax authorities, and (b) maintain, continue to honor, and pay amounts with respect to the Debtors' business practices, programs, and policies for their employees as such were in effect as of the commencement of these chapter 11 cases and as such may be modified or supplemented from time to time in the ordinary course of business ((a) and (b) collectively, the "Employee Obligations"); and (II) related relief. For the avoidance of doubt, the payment of Employee Compensation Obligations and Employee Benefit Obligations and related expenses, fees, costs, and any other payment sought herein shall be made in compliance with and shall be subject to the budget attached as Exhibit 1 (as may be amended, modified, or supplemented, the "DIP Budget") to the *Interim Order (1) Authorizing Debtors in Possession to Obtain Post-Petition Financing; (2) Authorizing Debtors in Possession to Use Cash Collateral; (3) Providing Adequate Protection; (4) Granting Liens, Security Interests and Superpriority Claims; and (5) Scheduling a Final Hearing* (the "Interim DIP Order"), and all payments shall be subject to all rights and interests granted to UMB Bank, N.A. as DIP Lender. The Debtors further request that the Court authorize financial institutions to receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests related to such obligations.

8. The approximate amount of monetary relief sought in this Motion is discussed in further detail below and summarized in the following chart:

<b>Prepetition Obligations</b>	<b>Total Relief Requested</b>
Employee Compensation Obligations	\$1,939,983
Employee Benefit Obligations	\$640,637
<b>Total Employee Obligations</b>	<b>\$2,580,620</b>

**The Debtors' Workforce and Wage and Benefit Obligations**

**I. The Debtors' Workforce**

9. The Debtors' employees (the "Employees") fill a wide variety of roles and perform a wide range of tasks for the Debtors. Corporate Employees provide the Debtors with the financial, human resources, and coordination services necessary to operate their communities for their residents. Employees who are associates, supervisors, department heads and managers work together to provide care and support services for the Debtors' residents.

10. As of the Petition Date, the Debtors employ approximately 960 Employees, of whom approximately 645 are full-time, approximately 180 are part-time, and approximately 135 are temporary or PRN employees, and all of whom are located in the United States. As of the Petition Date, approximately 100 of the Employees are salaried ("Salaried Employees") and approximately 860 of the Employees are paid on an hourly basis ("Hourly Employees").

**II. Employee Compensation Obligations**

11. The outstanding amounts related to employee compensation (the "Employee Compensation Obligations") are summarized in the following chart and are described in further detail below:

<b>Prepetition Obligations</b>	<b>Description</b>	<b>Total Relief Requested</b>
Base Compensation Obligations	Obligations related to Employees' salaries and wages, including, for certain employees, overtime pay	\$1,348,500
UKG	Fees owed to UKG for payroll processing software and UKG Payment Services for preparing and filing employment tax documents.	\$68,900
Gross Pay Deductions, Governmental Withholdings and Payroll Taxes	Wage-based taxes owing pursuant to applicable federal and local laws	\$522,583
<b>Total Employee Compensation Obligations (\$)</b>		<b>\$1,939,983</b>

**A. Base Compensation**

12. In the ordinary course of business, the Debtors incur and pay obligations relating to Employees' salaries and wages, and for certain Employees, overtime pay (the "Base Compensation Obligations").

13. The Debtors pay Base Compensation Obligations to Employees on different payroll schedules, in arrears on two separate bi-weekly payroll cycles. On average, the Debtors' Base Compensation Obligations total approximately \$3.6 million per month. The Debtors process payroll internally through software provided by UKG (as discussed below).

14. The Debtors estimate that as of the Petition Date, they owe approximately \$1,348,500 on account of prepetition Base Compensation Obligations. The Debtors seek authority to pay such prepetition amounts as they come due in the ordinary course, up to \$15,150 per Employee (the "\$15,150 Cap"),<sup>2</sup> subject to the DIP Budget.

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<sup>2</sup> The Debtors seek to pay each Employee up to \$15,150, in the aggregate, on account of wages and salaries, including vacation, or contributions to an employee benefit plan earned within 180 days before the Petition Date.

**B. Payroll Servicer**

15. To manage the processing and payment of the various obligations described above efficiently (the “Payroll Maintenance Fees”), the Debtors rely on payroll software provided by UKG Inc. (“UKG”).

16. The services that UKG provides are critical to the smooth functioning of the Debtors’ payroll system. UKG is responsible for ensuring, that: (i) Employees are paid on time, (ii) appropriate deductions are made, (iii) payroll reporting is accurate, and (iv) appropriate amounts are reported and remitted to the applicable taxing authorities and other payees. The Debtors pay UKG approximately \$85,000 per quarter, in the aggregate, for the aforementioned services. As of the Petition Date, the Debtors owe UKG approximately \$68,900 on account of prepetition Payroll Maintenance Fees. The Debtors seek authority to pay all Payroll Maintenance Fees in the ordinary course, including all prepetition fees, in accordance with the DIP Budget.

**C. Gross Pay Deductions, Governmental Withholdings and Payroll Taxes**

17. For each applicable pay period, the Debtors routinely deduct certain amounts from each Employee’s gross pay including, without limitation, garnishments, child support, spousal support, other deductions as required by applicable law, service charges, and other pre- and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, including each Employee’s share of health benefit plans, contributions under flexible spending plans, health savings accounts, retirement savings plans, and other miscellaneous deductions (collectively, the “Deductions”).<sup>3</sup> The Debtors make a total of approximately \$191,080 in Deductions from Employees’ pay per month, which the Debtors remit, as necessary, to the appropriate third-party recipients.

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<sup>3</sup> Certain of the Deductions, particularly with respect to the Health Benefits Programs, FSAs, and HSAs (each, as defined below) are discussed further below in connection with the Employee Benefit Obligations.

18. In addition to the Deductions, state and federal law requires the Debtors to withhold amounts from the Employees' gross pay related to federal, state, and local income taxes, including Social Security and Medicare taxes, for remittance to the appropriate federal, state, or local taxing authority (collectively, the "Withholdings"). The Debtors must then match, from their own funds, amounts for 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"). In the aggregate, the Payroll Taxes, including both the Employee and employer portions, total approximately \$1,027,869 per month.

19. As of the Petition Date, the Debtors estimate that they owe approximately \$522,583, in the aggregate, in accrued Payroll Taxes and Deductions. In addition to UKG's payroll services described above, the Debtors also use UKG Payment Services to prepare and submit employment tax filings. As such, the Debtors request authority, subject to the DIP Budget, (i) to direct UKG Payment Services to pay or remit any outstanding prepetition taxes on a postpetition basis as the taxes come due and (ii) to continue to honor and process, or to direct UKG Payment Services to process Payroll Taxes and Deductions on a postpetition basis, in the ordinary course of business and consistent with prepetition practices (whether or not related to the prepetition period).

### **III. Employee Benefit Obligations**

20. In the ordinary course of business, the Debtors make various benefit plans available to their Employees. These benefit plans fall within the following categories: (i) paid time off, including personal time off and holidays (collectively, the "Employee Leave Benefits"); (ii) medical, dental, vision, and prescription drug benefits, flexible spending accounts and health

savings accounts, health reimbursement arrangement plans, life insurance, accidental death and dismemberment insurance (“AD&D”), disability insurance, (collectively, the “Health and Welfare Benefits”); (iii) an ERISA 403(b) retirement plan; and (iv) certain other benefits (each of (i)-(iv), an “Employee Benefit”). The prepetition obligations arising from the Employee Benefits (the “Employee Benefit Obligations”) are summarized in the following chart and are described in further detail below:

<b>Prepetition Obligations</b>	<b>Description</b>	<b>Total Relief Requested</b>
Employee Leave Benefits	Obligations related to Employee paid time off and related benefits	\$117,000
Health and Welfare Benefits	Obligations related to medical benefits, disability benefits, and other health and welfare programs	\$416,137
ERISA 403(b) Retirement Plan	Obligations related to the 403(b) Plan	\$0
Other Benefits	Obligations related to miscellaneous benefits, including general employee assistance, identity theft protection and tuition reimbursement	\$107,500
<b>Total Employee Benefit Obligations (\$)</b>		<b>\$640,637</b>

#### **A. Employee Leave Benefits**

21. The Employee Leave Benefits available to Employees may vary slightly by state to comply with all applicable state laws. As part of the Employee Leave Benefits, the Debtors offer certain paid leave to all Employees, which include, among other things, PTO (as defined below), employee and family sick leave, holidays, bereavement leave, child bereavement leave, jury duty, and military service leave. The Debtors also provide up to twelve (12) weeks unpaid leave to all Employees pursuant to the federally-mandated Family and Medical Leave Act. In addition, the Debtors offer Employees to request unpaid leaves of absence which may be granted at the discretion of the Executive Director/Administrator in accordance with the Debtors’ personal leave of absence policy.



22. Non-temporary Employees are eligible to accrue paid time off (“PTO”), which accrues throughout the year based on actual hours worked. PTO can be carried over from year to year and with no maximum amount of PTO hours that Employees may accrue and carry. Employees are paid for any unused accrued PTO at the time of termination. Employees are also paid accrued unused PTO upon a request to “sellback” PTO if such request was made during the current calendar year provided that the Employee submitted an intention to request a sellback by December 31 of the year prior to the sellback. Employees requesting a sellback must maintain a minimum of 40 hours in their PTO account and Employees hired during the current calendar year are not permitted to sellback PTO. No payments will otherwise be made to Employees based on accrued PTO.

23. In addition to being required by Company policy, payments on account of PTO are required by law in some states in which the Debtors operate.

24. As of the Petition Date, the Debtors estimate that they owe approximately \$117,000 to Employees on account of PTO obligations. The Debtors seek authority to make payments on account of PTO to employees up to the \$15,150 Cap and only after approval of this Motion on a final basis and subject to the DIP Budget.

25. As of the Petition Date, active Employees have accrued approximately \$1.7 million in unused PTO. The Debtors anticipate that they may owe PTO pay to Employees pursuant to reductions-in-force that may be implemented postpetition and postpetition requests to sellback PTO, and seek authority to assess and pay those amounts in accordance with past practice, but only up to the \$15,150 Cap for prepetition services and, for postpetition services, to the extent those claims are entitled to administrative expense treatment under section 503(b)(1) of the

Bankruptcy Code. The Debtors seek authority to pay such amounts only after approval of this Motion on a final basis and subject to the DIP Budget.

**B. Health and Welfare Benefits**

26. The Debtors provide several Health and Welfare Benefits to eligible Employees. The Health and Welfare Benefits include: medical, vision, and dental programs (each, a “Health Benefits Program”); flexible spending accounts, health saving accounts, health reimbursement arrangement plans, and other voluntary welfare programs (collectively, the “Additional Health Benefits”); and disability benefits, AD&D, and life insurance benefits, (collectively, the “Disability Benefits”).

**(i) Health Benefits Programs**

27. The Debtors offer the following Health Benefits Programs, which are administered and insured through Anthem Blue Cross Blue Shield (“Anthem”) effective July 1, 2024 to enrolled Employees and their families. Prior to July 1, 2024, the Health Benefits Programs were administered by Aetna Life Insurance Company (“Aetna”). Anthem is a preferred provider organization under which improved benefits are available when using a doctor, dentist, or other healthcare provider within a network of preferred providers.

28. Medical Program. The Debtors offer eligible Employees medical coverage (the “Medical Program”), which is fully insured by Anthem effective July 1, 2024 and prior to July 1, 2024 was fully insured through Aetna. The Debtors pay a portion of premiums owed to Anthem with the Employees paying the remaining portion of premiums and their share of copays and deductibles to Anthem on account of services rendered to them. The current monthly amount of premiums paid by the Debtors is approximately \$389,611 and the current monthly amount of

premiums paid by the Employees is approximately \$81,864. As of the Petition Date, the Debtors are current with the amount of premiums owed to Anthem and owes Aetna \$412,642.

29. Dental Program. The Debtors offer eligible Employees dental coverage (the “Dental Program”), which is fully insured by Anthem effective July 1, 2024 and prior to July 1, 2024 was fully insured through Aetna. Employees pay 100% of premiums under the Dental Program. Premiums for the Dental Program are deducted from participating Employees’ payroll, and then transferred by the Debtors to Anthem on behalf of the Employees. The Debtors transfer approximately \$13,675 per month in withheld Employee contributions to Anthem. As of the Petition Date the Debtors estimate they owe approximately \$12,285 to Aetna on account of the Dental Program. This outstanding amount is included in the total amount for Deductions, provided above. *See, supra*, section II.C.

30. Vision Program. The Debtors offer all eligible Employees voluntary vision coverage (the “Vision Program”) through Anthem effective July 1, 2024 with coverage prior to July 1, 2024 provided through Aetna. The Vision Program is fully insured, and Employees pay 100% of premiums. Premiums for the Vision Program are deducted from participating Employees’ payroll, and then transferred by the Debtors to Anthem on behalf of the Employees. The Debtors transfer approximately \$1,930 per month in withheld Employee contributions to Anthem. As of the Petition Date the Debtors estimate they owe approximately \$1,930 to Aetna on account of the Vision Program. This outstanding amount is included in the total amount for Deductions, provided above. *See, supra*, section II.C.

31. COBRA. Under COBRA, Employees who are terminated have the right to continue health benefits from their employer for a limited period of time and under certain circumstances. The Debtors provide COBRA benefits to exiting Employees as required by law. The Debtors’

COBRA program is administered by Employee Benefits Corporation (“EBC”). Upon termination of an Employee qualified for COBRA coverage, the Debtors inform EBC, EBC then notifies the terminated Employee of his or her rights, determines if he or she wishes to continue coverage, collects COBRA premiums from the terminated Employee and remits them to the Debtors, and furnishes the Debtors with reports of its activities. In exchange for administration of the Debtors’ COBRA program, EBC retains an ongoing service fee of \$0.61 per enrollee and 2% of the COBRA premiums collected. These obligations owed to EBC total approximately \$250 per month. The Debtors seek authority to pay prepetition amounts owed under COBRA, and to continue providing COBRA benefits in the ordinary course, subject to the DIP Budget.

**(ii) Additional Health Benefits**

32. The Debtors provide additional health benefits to their Employees under various policies and programs, in some cases automatically and in others upon election by a particular eligible Employee.

33. HSA and HRA Programs. The Debtors provide the option for eligible Employees to maintain either a health savings account (“HSA”) or health reimbursement arrangement plan (“HRA,” and together with the HSA, the “Health Accounts”) to pay for qualified health, dental, and vision expenses. The HSAs and HRAs are managed by EBC. The Debtors contribute \$500 for Employees and \$1,000 for Employees and their families to an Employee’s HSA. The Debtors also contribute \$200 for Employees and \$400 for Employees and their families to an Employee’s HRA. Employees may make pre-tax contributions to their HSAs, but not to their HRAs.

34. The Debtors also pay administrative and management fees of approximately \$810.85 per month, in the aggregate, to EBC on account of its services. As of the Petition Date, the Debtors are current with amounts owed to EBC.

35. Flexible Spending Accounts. The Debtors also provide Employees the option to contribute to two types of flexible spending accounts (the “FSAs”), which are administered by EBC. The health care FSA (“HCFSA”) allows Employees to make pre-tax payroll deductions to pay for qualified medical, pharmacy, dental and vision expenses. The dependent care FSA (“DCFSA”) allows Employees to make pre-tax payroll deductions to pay for eligible day care or elderly care expenses. If an Employee is terminated, any balance remaining in her FSA(s) is lost.<sup>4</sup> Furthermore, any balance remaining in the FSAs at the end of each plan year is lost. The Debtors do not make contributions to the FSAs. The Debtors pay EBC administrative fees of approximately \$3.30 per participating Employee per month for its administrative services related to the FSAs. As of the Petition Date, the Debtors are current with amounts owed to EBC.

36. Voluntary Worksite Benefits. The Debtors offer Employees certain voluntary benefits to cover unforeseen out-of-pocket expenses associated with certain unexpected occurrences (“Voluntary Worksite Benefits”) through Anthem effective July 1, 2024 and through Aetna prior to July 1, 2024. Critical illness insurance provides Employees with a lump-sum payment for many conditions, such as invasive cancer, heart attack, stroke, end-stage renal failure, coma, major organ failure requiring a transplant, and permanent paralysis. Accident coverage pays cash to help with out-of-pocket expenses when an accident occurs. Hospital indemnity insurance pays a specified amount when an individual is confined to a hospital. Employees pay 100% of the premium on a post-tax basis for Voluntary Worksite Benefits. Premiums for Voluntary Worksite Benefits are deducted from participating Employees’ payroll, and then transferred by the Debtors to Anthem on behalf of the Employees. The Debtors transfer approximately \$4,920 per month in withheld Employee contributions to Anthem effective July 1, 2024 and Aetna for coverage prior

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<sup>4</sup> An Employee may continue to use the HCFSA if the Employee elects COBRA and continues to make after-tax contributions to the FSA.

to July 1, 2024 in connection with Voluntary Worksite Benefits. As of the Petition Date, the Debtors are current on amount owed in respect of the Voluntary Worksite Benefits with Anthem. As of the Petition Date the Debtors estimate they owe approximately \$5,120 to Aetna on account of the Voluntary Worksite Benefits. This outstanding amount is included in the total amount for Deductions, provided above. *See, supra*, section II C.

**(iii) Disability Benefits Programs**

37. The Debtors offer certain types of insurance or other benefit plans to eligible Employees under various policies and programs, in some cases automatically and in others upon election by a particular eligible Employee. The chart below outlines the available programs and specifies which Employees are eligible and whether those programs are paid by the Debtors or funded through Employee contributions:

Type of Benefit	Provided by Debtors/Voluntary
Basic Life and AD&D	Provided by Debtors
Supplemental Life and AD&D	Voluntary
Short-Term Disability	Voluntary
Long-Term Disability	Provided by Debtors
Voluntary Long-Term Disability	Voluntary

38. Basic Life and AD&D. The Debtors provide eligible Employees with basic life insurance and AD&D insurance coverage (“Basic Life and AD&D Insurance Plans”), which is fully insured by New York Life. The Debtors pay 100% of premiums totaling approximately \$3,050 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$2,850 to New York Life on account of the Basic Life and AD&D Insurance Plans. The Debtors seek authority to pay such amounts, subject to the DIP Budget.

39. Supplemental Life Insurance Plans. All eligible Employees can elect to purchase life insurance coverage for their spouses and/or children, as well as purchase additional life and AD&D insurance coverage for themselves (collectively, the “Supplemental Life Insurance Plans”), at their own expense. The Supplemental Life Insurance Plans are fully insured by New York Life, and Employees pay 100% of premiums. Premiums for the Supplemental Life Insurance Plans are deducted from participating Employees’ payroll, and then transferred by the Debtors to New York Life on behalf of the Employees. The Debtors transfer approximately \$8,270 per month in withheld Employee contributions to New York Life in connection with the Supplemental Life Insurance Plans. As of the Petition Date, the Debtors estimate that they owe approximately \$7,212 in respect of the Supplemental Life Insurance Plans; this amount is included in the total amount for Deductions, provided above. *See, supra*, section II.C.

40. Short Term Disability. All eligible Employees can elect to purchase salary continuation or short-term disability coverage (the “Short-Term Disability Plan”), at their expense. The Short-Term Disability Plan is fully insured by New York Life. Under the Short-Term Disability Plan, eligible Employees receive 60% of their weekly earnings, for a maximum benefit of \$2,500 per week, for up to 12 weeks. Premiums for the Short-Term Disability Plan are deducted from participating Employees’ payroll, and then transferred by the Debtors to New York Life on behalf of the Employees. The Debtors transfer approximately \$3,970 per month to New York Life on account of the Short-Term Disability Plan. As of the Petition Date, the Debtors estimate that they owe approximately \$3,970 to New York Life on account of the Short-Term Disability Plan; this amount is included in the total amount for Deductions, provided above. *See, supra*, section II.C.

41. Long-Term Disability. The Debtors provide eligible Employees with long term disability insurance coverage (the “Long-Term Disability Plan”), which is a fully-insured plan with New York Life. The Debtors pay 100% of premiums related to the Long-Term Disability Plan. Under the Long-Term Disability Plan, beginning on the 91st day of continuous injury or illness, eligible Employees will receive 60% of their monthly earning for a maximum benefit of \$6,000 per month. The Debtors pay approximately \$645 per month to New York Life on account of the Long-Term Disability Plan. As of the Petition Date, the Debtors estimate that they owe approximately \$645 on account of the Long-Term Disability Plan. The Debtors seek authority to pay such amounts, subject to the DIP Budget.

42. Voluntary Long-Term Disability. For those Employees not eligible for the Long-Term Disability Plan provided by the Debtors, the Debtors offer Employees the option to participate in a voluntary long-term disability plan (the “Voluntary Long-Term Disability Plan”), at their own expense. The Voluntary Long-Term Disability Plan is fully insured by New York Life, and Employees pay 100% of premiums. Premiums for the Voluntary Long-Term Disability Plan are deducted from participating Employees’ payroll, and then transferred by the Debtors to New York Life on behalf of the Employees. The Debtors transfer approximately \$3,875 per month in withheld Employee contributions to New York Life in connection with the Voluntary Long-Term Disability Plan. As of the Petition Date, the Debtors estimate that they owe approximately \$3,360 in respect of the Voluntary Long-Term Disability Plan; this amount is included in the total amount for Deductions, provided above. *See, supra*, section II.C.



**C. Other Benefits and Obligations**

43. EAP Program. The Debtors provide all Employees access to an employee assistance program (the “EAP”), which is administered by ComPsych. State law requires that the Debtors offer Employees EAP. *See* 210 ILCS 9/77. The EAP offers Employees and their immediate family members caring and professional assistance for a range of concerns, including stress management, depression and anxiety, relationship or family conflicts, workplace conflicts, legal or financial difficulties, and drug or alcohol abuse. The Debtors pay ComPsych approximately \$3,900 quarterly to maintain the EAP. As of the Petition Date, no amounts are outstanding in respect of these programs.

44. Value-Add Offerings. The Debtors also offer Employees financial, legal and estate support in the form of professional services to assist Employees with issues like debt management, family budgeting, estate planning, law and tax consultations. These services are offered by ComPsych and New York Life, and also help Employees’ health claims and billing issues and also provide advice with respect to pre-trip planning and travel support.

45. Identity Theft Protection. The Debtors also provide their Employees access to identity theft protection offered through LifeLock Benefit Elite (the “Identity Theft Program”). Employees make monthly payments for the Identity Theft Program and such payments are deducted from participating Employees’ payroll, and then transferred by the Debtors to LifeLock on behalf of the Employees. The Debtors transfer approximately \$565 per month in withheld Employee contributions to LifeLock, any outstanding amounts of which are included in the total amount for Deductions, provided above. *See, supra*, section II.C.

46. Tuition Reimbursement. The Debtors also offer certain full-time Employees tuition reimbursement for courses directly related to the Employee’s present position, or part of a job-

related degree or program. As of the Petition Date, the Debtors estimate that they owe approximately \$2,500 to Employees as tuition reimbursement. The Debtors seek authority to pay such amounts, subject to the DIP Budget.

47. Corporate Credit Card Program. Employees pay for a majority of reimbursable expenses they incur through a combination of commercial card accounts and related contractual arrangements with JPMorgan & Chase Co. (“JPMorgan”).

48. The Debtors provide JPMorgan corporate cards (the “Corporate Credit Cards”) to fewer than 15 Employees pursuant to a corporate account agreement with JPMorgan for ordinary course expenses they incur in performing their job functions. Corporate Credit Cards are used by Employees to charge business-related related travel expenses and emergency community expenses. It is essential to the continued operation of the Debtors’ business that the Debtors be permitted to continue reimbursing, or making direct payments on behalf of, Employees for such expenses. On average, the Debtors pay approximately \$16,200 per month to JPMorgan for amounts incurred on the Corporate Credit Cards that are submitted for reimbursement to the Debtors.

49. As of the Petition Date, the Debtors believe they owe approximately \$105,000 on account of the Corporate Credit Cards. Subject to the DIP Budget, the Debtors request authorization to pay all outstanding prepetition amounts incurred on account of the Corporate Credit Cards and to continue paying all outstanding amounts incurred on account of the Corporate Credit Cards postpetition in the ordinary course of business and consistent with their prepetition practices.

**D. ERISA 403(b) Retirement Plan**

50. The Debtors offer eligible Employees the opportunity to participate in an ERISA 403(b) retirement plan (the “403(b) Plan”). Under the 403(b) Plan, Employees can make pretax and/or post-tax ROTH contributions up to the IRS calendar year dollar limit, which is \$23,000 for 2024 (the “403(b) Employee Contributions”).<sup>5</sup> Each eligible Employee’s 403(b) Employee Contributions are deducted automatically from his or her paychecks.

51. The Debtors transfer approximately \$49,500 per month on account of withheld 403(b) Employee Contributions. As of the Petition Date, there are no amounts outstanding.

52. The 403(b) Plan is administered by Ascensus. The fees of Ascensus are approximately \$765 per calendar quarter. The 403(b) Plan participants fund the administrative fees through quarterly charges to their 403(b) Plan accounts. As of the Petition Date, the Debtors do not owe any outstanding amounts on account of the administrative, audit, legal, investment management and oversight fees for the 403(b) Plan (the “403(b) Administration Fees”).

53. By this Motion, the Debtors seek authority to continue the 403(b) Plan and to pay the 403(b) Employee Contributions and the 403(b) Administration Fees in respect of the 403(b) Plan thereunder as they come due in the ordinary course of business. Although the Debtors expect the 403(b) Administration Fees to be funded by the 403(b) Plan participants, in accordance with past practice, to the extent they are not, the Debtors seek authority to pay such amounts, subject to the DIP Budget.

**BASIS FOR RELIEF REQUESTED**

54. The Debtors require a stable workforce to preserve and maximize the value of the Debtors’ estates. To minimize the personal hardship the Employees will suffer in connection with

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<sup>5</sup> Employees over the age of 50 may make an additional catch-up contribution of \$7,500 during the calendar year.

the filing of the Chapter 11 Cases, by this Motion, the Debtors request entry of an order authorizing the Debtors, in their sole discretion, to (i) make certain payments consistent with existing practices, policies, and programs to the extent such payments would otherwise be inconsistent with the provisions of the Bankruptcy Code and (ii) continue to honor certain practices, programs, and policies with respect to their Employees, as such were in effect as of the Petition Date. Notwithstanding anything to the contrary in this Motion, any payments made or to be made by the Debtors and any authorization contained herein shall be in accordance with and shall be subject to the DIP Budget, the Interim DIP Order and any subsequent final order, and all rights and interests granted to UMB Bank, N.A. as DIP Lender. Otherwise, there is a real, immediate risk that, absent the relief requested in this Motion, Employees would no longer support and maintain the operations of the Debtors, thereby crippling the Debtors' ability to maximize successfully the value of their estates during the Chapter 11 Cases.

**A. Payment of the Employee Obligations is Warranted Under Section 363(b)(1) and 105(a) of the Bankruptcy Code and the Doctrine of Necessity**

55. The Court may grant the relief requested herein pursuant to section 363 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). A debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code must be supported by sound business reasons. *See, e.g., In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Nine West Holdings, Inc.*, 588 B.R. 678, 686 (Bankr. S.D.N.Y. 2018). The business judgment rule is highly deferential to debtors and may be satisfied “as long as the proposed action appears to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin,*

LLC), 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc.* (*In re Food Barn Stores, Inc.*), 107 F.3d 558, 566 n.16 (8th Cir. 1997)).

56. In addition, under section 105(a) of the Bankruptcy Code, “[t]he 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); *see also In re NWFEX, Inc.*, 864 F.2d 588, 590 (8th Cir. 1988) (“The overriding consideration in bankruptcy, however, is that equitable principles govern.”); *In re Wehrenberg, Inc.*, 260 B.R. 468, 469 (Bankr. E.D. Mo. 2001) (“Pursuant to 11 U.S.C. § 105(a) the Court may authorize the payment of prepetition claims when such payments are necessary to the continued operation of the Debtor.”). Moreover, Bankruptcy Rule 6003 itself 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.” Fed. R. Bankr. 6003. Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate.

57. Courts in this District have routinely authorized debtors to pay prepetition wage and employee claims pursuant to sections 105(a) and 363 of the Bankruptcy Code when such payment was necessary to ensure the debtor’s continued, uninterrupted operation. *See, e.g., In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 13, 2016) (authorizing payment of prepetition wages, health benefits, severance, and reimbursable employee business expenses, among other things); *In re Bakers Footwear Grp., Inc.*, No. 12-49658 (CER) (Bankr. E.D. Mo. Oct. 10, 2012) (same); *In re US Fidelis*, No. 10-41902 (CER) (Bankr. E.D. Mo. Mar. 9, 2010) (same); *In re Continental AFA Dispensing Co.*, No. 08-45921 (KAS) (Bankr. E.D. Mo. Aug. 8, 2008) (same); *In re Dry Ice, Inc.*, No. 05-49452 (BSS) (Bankr. E.D. Mo. Jul. 11, 2005) (same); *In*

*re Union Fin. Servs. Grp., Inc.*, No. 03-45870 (BSS) (Bankr. E.D. Mo. May 15, 2003) (authorizing payment of wages, salaries, commissions, bonuses, related taxes, reimbursement of business expenses and obligations relating to employee benefit plans, among other things); *In re Bridge Info. Sys., Inc.*, No. 01-41593 (BSS) (Bankr. E.D. Mo. Feb. 16, 2001) (same); *In re Laclede Steel Co.*, No. 98-53121 (BSS) (Bankr. E.D. Mo. Dec. 3, 1998) (same).

58. The relief requested by this Motion represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. Authorizing the Debtors to pay prepetition wages and honor certain employee benefits will benefit the Debtors' estates and their creditors by allowing the Debtors' business operations to continue without interruption, preserving the value of the Debtors' assets and cash flows throughout these chapter 11 cases. Indeed, without the relief requested herein being granted, the Debtors' Employees may seek alternative opportunities, perhaps with the Debtors' competitors. The loss of valuable Employees would deplete the Debtors' workforce, thereby hindering the Debtors' ability to continue to care for their residents and likely diminishing stakeholder confidence in the Debtors' ability to carry out their chapter 11 strategy and sale process successfully.

59. Failure to satisfy certain prepetition obligations will likely lead to significant attrition and jeopardize Employee morale and at a time when Employee support is critical to preserving the value of the Debtors' business. The majority of the Debtors' Employees rely exclusively on their compensation and benefits and the reimbursement of their expenses to satisfy their daily living expenses. These Employees will be exposed to significant financial difficulties and other distractions if the Debtors are not permitted to honor their obligations for unpaid compensation, benefits and reimbursable expenses. Furthermore, Employee attrition would cause

the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at a critical juncture.

**B. Payment of the Employee Obligations Would Not Prejudice Parties in Interest**

60. The Debtors are seeking to pay Employees amounts owed on account of prepetition wages, salaries, PTO, and/or contributions to an employee benefit plan up to the aggregated \$15,150 Cap. The Debtors believe that the vast majority of the prepetition Employee Obligations that the Debtors seek to pay constitute priority claims under sections 507(a)(4) or (5) of the Bankruptcy Code. As priority claims, the Employee Obligations are entitled to payment in full before any general unsecured claims asserted against the Debtors can be satisfied. Thus, the relief requested largely affects only the timing of the payment of the priority Prepetition Employee Obligations and should not prejudice the rights of general unsecured creditors or other parties in interest. Furthermore, the Debtors believe that applying the \$15,150 Cap to all Employees will minimize the administrative burden associated with calculating complex individual accruals and entitlements for each respective benefits.

**C. Payment of Certain Employee Obligations is Required by Law**

61. The Debtors seek authority to pay Deductions and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including contributions to the Employee Benefit Programs and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b). Further, federal and state laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v.*

*Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co., Inc. v. State of Mich (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). The Eighth Circuit has similarly established that a debtor does not have an equitable interest in the property held in trust for another, but rather that the trustee "[holds] bare legal title to the trust res subject to a duty to reconvey it to the rightful owner." *See Chiu v. Wong*, 16 F.3d 306, 310 (8th Cir. 1994) (citation omitted) (allowing plaintiff to impose a constructive trust on former debtor's estate to recover amount former debtor had previously invested). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Payroll Taxes to the proper parties in the ordinary course of business.

**APPLICABLE FINANCIAL INSTITUTIONS SHOULD BE AUTHORIZED TO  
RECEIVE, PROCESS, HONOR, AND PAY CHECKS ISSUED AND TRANSFERS  
REQUESTED TO PAY EMPLOYEE OBLIGATIONS**

62. The Debtors further request that the Court authorize applicable financial institutions (the "Banks") to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Employee Obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or fund transfer requests on account of prepetition Employee Obligations dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.



**BANKRUPTCY RULE 6003(B) HAS BEEN SATISFIED**

63. The Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003, which provides that the Court may grant relief within the first 21 days after the Petition Date to the extent such relief is necessary to avoid immediate and irreparable harm. As described herein and in the First Day Declaration, the relief requested is essential to avoid the immediate and irreparable harm that would be caused by the Debtors' inability to transition smoothly into chapter 11. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

**COMPLIANCE WITH BANKRUPTCY RULE 6004(A) AND WAIVER OF  
BANKRUPTCY RULE 6004(H)**

64. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

**RESERVATION OF RIGHTS**

65. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (vi) an admission as to the validity of any liens satisfied pursuant to this Motion, or (vii) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's

order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

**NO PREVIOUS REQUEST**

66. No previous application for the relief sought herein has been made to this or any other Court.

**NOTICE**

67. This Motion and notice of this Motion will be served respectively on Master Service List No. 1 (dated July 16, 2024) and Master Notice List No. 1 (dated July 16, 2024) (the "Notice Parties"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1). The Debtors submit that, under the circumstances, no other or further notice is required.

**WHEREFORE**, the Debtors respectfully request entry of an order granting the relief requested herein, together with such other and further relief as the Court deems just and proper.

*[Signature page to follow]*

Dated: July 16, 2024

Respectfully submitted,

**DENTONS US LLP**

/s/ Stephen O'Brien

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