

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
)	
OTB HOLDING LLC, <i>et al.</i> , ¹)	Case No. 25-52415 (SMS)
)	
)	
Debtors.)	(Joint Administration Requested)

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING PAYMENT OF PREPETITION WAGES, PAYROLL
TAXES, CERTAIN EMPLOYEE BENEFITS, AND RELATED EXPENSES;
(II) DIRECTING BANKS TO HONOR RELATED PREPETITION
TRANSFERS; AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this *Emergency Motion for Entry of an Order (I) Authorizing Payment of Prepetition Wages, Payroll Taxes, Certain Employee Benefits, and Related Expenses; (II) Directing Banks to Honor Related Prepetition Transfers; and (III) Granting Related Relief* (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over these cases and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.



2552415250304000000000013

2. The bases for the relief requested herein are sections 105(a), 363(b), 507, 541, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 9006-2, 9013-1 and 9013-2 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia (the “Local Rules”) and the *Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (the “Complex Case Procedures”).

BACKGROUND

3. On March 4, 2025 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”). The Debtors have continued in possession of their properties and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in these cases.

4. The factual background relating to the Debtors’ commencement of these cases is set forth in detail in the *Declaration of Jonathan M. Tibus in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) filed on or about the date hereof and incorporated herein by reference.²

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration.

THE EMPLOYEE OBLIGATIONS

5. The Debtors maintain various compensation and benefits programs (each as defined herein and collectively, the “Compensation and Benefits Programs”), and pay various administrative fees and premiums in connection therewith, including:

- (a) Payroll Obligations;
- (b) Independent Contractor Compensation;
- (c) Payroll Processing Fees;
- (d) Payroll Taxes;
- (e) Paid Leave;
- (f) 401(k) Plan;
- (g) Reimbursable Expenses;
- (h) HSA / FSA;
- (i) Employee Health and Welfare Benefits;
- (j) Non-Insider Employee Incentive Programs;
- (k) Non-Insider Severance Programs; and
- (l) Other Employee Programs.

6. An estimate of prepetition obligations related to the Compensation and Benefits Programs is set forth below. The monetary relief sought in the Proposed Order attached hereto as **Exhibit A** is discussed in further detail below and summarized in the following chart:

Employee Obligations	Amount
Payroll Obligations	\$990,000
Independent Contractor Compensation	\$62,000
Payroll Processing Fees	\$60,000
Payroll Taxes	\$470,000
Paid Leave	\$490,000
401(k) Obligations ³	\$25,000
Reimbursable Expenses	\$48,000
HSA / FSA	\$100
Employee Health and Welfare Benefits	\$537,000
Non-Insider Employee Incentive Programs	\$0
Non-Insider Severance Programs	\$0
Other Employee Programs	\$10,000
Total Employee Obligations	\$2,692,100

A. The Debtors' Workforce

7. As of the Petition Date, the Debtors employ approximately 2,800 people (the "Employees"), of which approximately forty (40) operate out of their restaurant support center located in Irving, Texas. Of the Employees, 216 are full-time salaried Employees ("Full-time Salaried Employees"), 375 are full-time hourly Employees ("Full-time Hourly Employees", and together with the Full-time Salaried Employees, "Full-time Employees"), and 2,210 are part-time hourly Employees ("Part-time Employees"). All of the Employees are employed by Debtor OTB Acquisition LLC.

³ For the avoidance of doubt, the 401(k) Obligations include Employee 401(k) Contributions, the Debtors' 401(k) Match, and any administrative and service fees paid in connection with the 401(k) Plans (each as defined and described below).

8. The Debtors employ six (6) independent contractors (the “Independent Contractors”, and together with the Employees, the “Workforce”) to provide accounting, accounts payable, tax reporting and other services. The Independent Contractors are an important component of the Debtors’ enterprise and operations.

9. The Debtors’ businesses are labor intensive and hyper-sensitive to fluctuations in the labor market. In particular, the economy has been marked by escalating wage pressures. The Debtors’ Workforce includes personnel who are intimately familiar with the Debtors’ business, processes, and systems, and possess unique skills and experience with the core business segments of the Debtors. Many of the Employees have developed relationships with customers and vendors that are essential to the Debtors’ business. The Debtors’ Employees perform a wide variety of functions that are critical to the Debtors’ operations and cannot be replaced easily due to the shrinking labor market of willing individuals and the cost associated with hiring replacements on an expedited basis. During these times of turbulent shifts in the labor market, failure to maintain the continued, uninterrupted services of their Workforce would materially and adversely impair the Debtors’ efforts to operate inside a chapter 11 proceeding and jeopardize the value of their businesses as a going concern.

B. Employee Obligations

10. As described more fully below, in the ordinary course of business the Debtors have incurred certain prepetition employee obligations that remain unpaid as of the Petition Date. Even though arising prior to the Petition Date, these obligations (collectively, the “Employee Obligations”) will become due and payable in the ordinary course of the Debtors’ business on and

after the Petition Date.⁴ These obligations can generally be categorized as follows: (a) wages, salaries and other compensation; (b) payroll taxes; (c) vacation and holiday programs; (d) qualified 401(k) plan obligations; (e) health and welfare benefits; (f) bonus and incentive programs; and (g) miscellaneous other employee benefits provided to the Employees in the ordinary course of business. These obligations are described as follows:⁵

- *Wages, Salaries, and Other Compensation.* Wages, salaries, and other compensation consist of prepetition wages and salaries owed to the Debtors' Employees (the "Payroll Obligations"). The Debtors pay the majority of the Employees on a bi-weekly basis ("Bi-weekly Payroll") with a small group of Employees paid on a weekly basis ("Weekly Payroll"). The last Bi-Weekly Payroll was run on March 4, 2025 and the last Weekly Payroll was run on March 4, 2025. The average monthly gross Payroll Obligations in 2024 were approximately \$4,240,000. As of the Petition Date, the Debtors estimate that they owe approximately \$990,000 on account of the Payroll Obligations.⁶ None of the Employees are owed Payroll Obligations as of the Petition Date in an amount exceeding the \$15,150 priority cap imposed by section 507(a)(4) of the Bankruptcy Code. The Debtors request authority to pay the outstanding prepetition Payroll Obligations due to Employees and to continue to pay such obligations in the ordinary course of business.
- *Independent Contractors' Compensation.* These obligations consist of amounts owed as compensation to six (6) Independent Contractors ("Independent Contractor Compensation"). The average monthly gross amount of these obligations is approximately \$110,000. As of the Petition Date, the Debtors estimate that they owe approximately \$62,000 to the Independent Contractors ("Independent Contractor Compensation"). The Debtors request authority to pay the outstanding prepetition Independent Contractor Compensation due to Independent Contractors and to continue to pay such obligations in the ordinary course of business.
- *Payroll Processing.* The Debtors utilize Paycor, Inc. ("Paycor") to administer payroll and several other employee-related benefits programs. Paycor provides,

⁴ No prepetition amount proposed to be paid to any individual Employee will exceed the priority unsecured cap of \$15,150 set forth in 11 U.S.C. §507(a)(4) and (5).

⁵ In addition to the benefits described herein, the Debtors maintain a workers' compensation plan, which is discussed in the Debtors' *Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Continue Prepetition Insurance and Workers' Compensation Policies and to Pay Prepetition Premiums and Related Obligations and (II) Granting Related Relief*.

⁶ This amount excludes prepetition severance obligations (if any).

among other things, the Debtors' payroll processing system, ensures proper tax and benefits withholding and garnishment of wages. The majority of Employees receive the tips directly at the end of the shift and are responsible for reporting for tax purposes. At three (3) of the Debtors' locations, the Debtors pay tips at the end of the following business day via a digital wallet serviced by Instant Financial ("Instant"). The Debtors do not incur any obligations in connection with the services provided by Instant. On average, the Debtors pay Paycor administration fees of approximately \$500,000 (the "Payroll Processing Fees") each year. As of the Petition Date, the Debtors estimate that they owe Paycor approximately \$60,000 in Payroll Processing Fees. The Debtors request authority to pay the outstanding prepetition Payroll Processing Fees due to Paycor and to continue to pay such obligations in the ordinary course of business.

- *Payroll Taxes.* The Debtors are required by law to withhold from U.S. Employees' paychecks amounts related to, among other things, federal, state, and local income taxes and social security and Medicare taxes (the "Payroll Taxes"). The Payroll Taxes include the amounts owed by the Employees that the Debtors withhold from the gross amount of the Employees' wages or salary as well as the amounts separately owed by the Debtors. The Debtors' average Payroll Taxes for each payroll in 2024 were approximately \$720,000 in the aggregate. This includes approximately \$270,000 for the employer obligation, and approximately \$450,000 employee components. As of the Petition Date, the Debtors estimate that they owe approximately \$470,000 in employer and employee prepetition Payroll Taxes in the aggregate. This amount is not included in the Payroll Obligations described in the paragraph above. The Debtors request authority to pay the outstanding prepetition Payroll Taxes and to continue to pay such obligations in the ordinary course of business.
- *Holiday, Vacation and Sick Day Programs.* These obligations consist of time off for vacation, illness, company holidays and other forms of paid leave (collectively, "Paid Leave").
 - *Sick Days.* Employees receive sick days as required by applicable non-bankruptcy law.
 - *Vacation.* Full-time Employees receive paid vacation ("PTO") based on years of service and seniority level. Full-time Employees receive annual PTO as follows: (i) after one (1) year of employment, Full-time Employees receive 10 days of PTO; (ii) after five (5) years of employment, Full-time Employees receive 15 days of PTO; and (iii) after 10 years of employment, Full-time Employees receive twenty (20) days of PTO. On rare occasions, the Debtors negotiate an individualized PTO policy with an Employee. Each pay period Full-time Employees accrue a portion of their PTO as set

forth above. Up to forty (40) hours of PTO are eligible for carry over to the next fiscal year.

- Other Paid Leave. The Debtors' offer certain scheduled or calendared holidays throughout the year, Paid Leave under the Family and Medical Leave Act and other paid leave for personal reasons, many of which are required by law, including statutory sick leave, workers' compensation leave,⁷ missed work time in the ordinary course of business for bereavement leave, military leave, jury or court attendance, and time spent voting.

The Debtors desire to continue to honor their obligations for holidays, sick days and PTO on a going forward basis. As of the Petition Date, the Debtors estimate that their Employees have earned or accrued approximately \$490,000 in the aggregate of unused PTO. This amount is not included in the total Payroll Obligations described above. By way of this Motion, the Debtors seek authority, but not direction, to pay as they come due any "cash out" amounts with respect to earned or accrued but unused PTO only when required by applicable non-bankruptcy law, and to continue to administer the Paid Leave policies in the ordinary course of business. The other forms of Paid Leave do not involve incremental cash outlays beyond standard payroll obligations.

- Qualified 401(k) Plan Obligations. The Debtors maintain a 401(k) plan (the "401(k) Plan") under which eligible Employees can make pre-tax payroll contributions to their 401(k) accounts ("401(k) Contributions") up to the maximum amount permitted by the Internal Revenue Code. The 401(k) Plan is administered by Economic Group Pension Services ("EGPS"). Under the 401(k) Plan, the Debtors match 100% of each participating Employee's contributions for the first 3% of the participating Employee's salary, and 50% of each participating Employee's contributions for the next 2% of the Employee's salary with such match to not exceed 4% of the 401(k) Contributions in the aggregate (the "401(k) Match", and together with the 401(k) Contributions and any administrative and service fees, the "401(k) Obligations"). Each participating Employee's 401(k) Contributions are deducted automatically from their weekly or bi-weekly paychecks, as applicable.

Approximately 200 Employees in total participate in the 401(k) Plan. On account of these participating Employees, the Debtors withhold and remit to EGPS approximately \$31,000 every two weeks on account of 401(k) Plan Contributions,

⁷ The authorization to continue the workers' compensation program in the ordinary course and satisfy any unpaid amounts with respect thereto is addressed in the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Continue Prepetition Insurance and Workers' Compensation Policies and to Pay Prepetition Premiums and Related Obligations and (II) Granting Related Relief*. The Debtors are not separately seeking such relief in this Motion.

and the Debtors remit to EGPS approximately \$15,000 every two weeks on account of 401(k) Matches.

The Debtors also provide a 401(k) loan reimbursement program (“401(k) Loan Reimbursement Program”) whereby participating Employees are able to borrow from their 401(k) account up to a certain amount. If the loan is not timely repaid then the Employee will be required to pay taxes on account of the outstanding balance of the 401(k) loan. The Debtors do not incur any obligations in connection with the administration of the 401(k) Loan Reimbursement Program.

Because the Debtors’ payroll is paid in arrears, as of the Petition Date the Debtors estimate that they owe approximately \$17,000 in accrued 401(k) Contributions that have not yet been remitted to EGPS and owe \$8,000 in 401(k) Matches. As of the Petition Date, the Debtors do not believe that any amounts are due and payable to EGPS approximately on account of administrative fees in connection with the 401(k) Plan. However, out of an abundance of caution, by this Motion, the Debtors seek authority, not direction, to pay prepetition 401(k) Obligations in the ordinary course of business on a postpetition basis.

- *Expense Reimbursement and Other Benefits (collectively, the “Reimbursable Expenses”).*
 - *General Reimbursement.* The Debtors reimburse eligible Employees who incur business expenses in the ordinary course of performing their duties on behalf of the Debtors. These reimbursement obligations include such things as mileage reimbursement, meals, travel expenses, relocation expenses and office supply reimbursements. The average monthly amount of these reimbursement obligations is approximately \$50,000. As of the Petition Date, the Debtors estimate that they owe approximately \$25,000 in expense reimbursements. This amount is not included in the total Payroll Obligations above.
 - *Car and Cellphone Allowance.* Additionally, (i) certain operators receive monthly car allowance payments, and (ii) certain Employees are provided cell phone allowance payments. Each allowance is an annual amount that is divided evenly among twenty-six (26) pay cycles. The Debtors’ payments on the car allowances and cell phone allowances, including any related administrative fees, total approximately \$18,000 with respect to the monthly car allowances and \$5,000 each month with respect to monthly cellphone allowances.
 - *Corporate Credit Cards.* The Debtors provide certain Employees with pre-funded corporate credit cards (the “Corporate Credit Cards”), which Employees can use to make work-related purchases. Approximately 160 Employees have been issued Corporate Credit Cards, each of which was

issued to such Employees in the Debtors name with Elan Financial Services (“Elan”). In 2024, the Debtors funded approximately \$1,910,000, in the aggregate, to Elan on account of the Corporate Credit Cards. The Debtors’ pre-fund the Corporate Credit Cards and, to the extent insufficient funds exist for any purchase, the purchase will be declined. As a result, the Debtors do not anticipate any outstanding obligations under the Corporate Credit Cards as of the Petition Date. However, out of an abundance of caution, the Debtors seek authority, but not direction, to continue the Corporate Credit Card program, paying Corporate Credit Card expenses, each in the ordinary course of business, and to honor any outstanding obligations related to the Corporate Credit Cards, regardless of whether they arose before or after the Petition Date.

The Debtors seek authority, but not direction, to continue reimbursing Employees for the Reimbursable Expenses, regardless of whether they arose before or after the Petition Date. As of the Petition Date, the Debtors estimate that they owe approximately \$48,000 on account of Reimbursable Expenses.

- *HSA and FSA Accounts.* Eligible Employees of the Debtors are eligible for certain tax advantaged accounts through the Debtors.
 - *HSA Account.* The Debtors offer eligible Full-time Employees the option of contributing a portion of their pre-tax wages into tax-exempt health savings accounts (“HSA”) that can be used to pay qualified health care expenses. Currently, approximately 100 Employees contribute to the HSAs. As of the Petition Date, the Debtors are unaware of any obligations outstanding in connection with the HSA. The Debtors request the authority to maintain the HSA program in the ordinary course of business regardless of whether any qualified expenses were incurred before or after the Petition Date.
 - *FSA Accounts.* The Debtors also offer eligible Full-time Employees the alternative option of contributing a portion of their pre-tax wages into tax-exempt Limited Flexible Spending Accounts (“FSA”) that can be used to reimburse qualified health care or dependent care expenses. Currently, approximately 100 Employees contribute to the FSAs. The Debtors pay certain fees to Isolved Inc. (“Isolved”), for administration of the FSAs. In 2024, the Debtors paid Isolved approximately \$6,000 in total administrative fees for the FSAs. As of the Petition Date, the Debtors estimate that they owe approximately \$500 on account of administrative fees for the FSA program. The Debtors request the authority to maintain the FSA program in the ordinary course of business regardless of whether the qualified expenses were incurred before or after the Petition Date.

- *Health and Welfare Benefits.* The Debtors provide several health and welfare benefit plans for their Employees, including insurance plans relating to medical, vision, dental, disability and life insurance (collectively, the “Employee Health and Welfare Benefits”). The Debtors’ estimated average monthly costs in the aggregate on account of the Employee Benefits for 2025 is \$870,500, of which approximately \$725,500 is paid by the Debtors. By way of comparison, the average monthly costs of the plans in aggregate were \$755,652 in 2024.
 - *Medical Plans.* The Debtors maintain and provide two self-insured medical care and prescription drug plans for their Full-Time Employees (collectively, the “Full-Time Medical Plans”), each through United Healthcare. Eligible Employees may enroll in one of two Full-Time Medical Plans offered to them immediately upon employment. The Debtors pay between 60% and 70% of the premiums depending on the applicable Full-Time Medical Plans and the balance of the premium is deducted from the Employees’ paychecks. The total cost of the Full-Time Medical Plans premiums is approximately \$462,000 per month, of which approximately \$287,000 is paid by the Debtors. As of the Petition Date, the Debtors estimate that they owe approximately \$130,000 on account of prepetition premiums for the Full-Time Medical Plans. This amount is not included in Payroll Obligations above.
 - The Debtors’ healthcare costs include health insurance for current and former Employees. There are seven (7) former Employees covered under COBRA (covered 18 months from departure). The Debtors do not pay for any expenses (including administrative fees) to cover Employees under COBRA.
 - *Medical Benefit Claims.* The Debtors partially subsidize the Employee Benefits with Employee-contributions withheld from gross pay. The Debtors pay for all approved medical and other claims (“Medical Benefit Claims”) up to \$175,000 per Medical Benefit Claim and any Medical Benefit Claims in excess of such amount will be covered by stop loss coverage provided by Stealth Partners. The Debtors are unable to ascertain with certainty the prepetition amounts due and outstanding on account of the Medical Benefits Claims because such claims are submitted and processed at varying times. The average monthly amount of all Medical Benefit Claims in 2024 was approximately \$433,000 per month. Based on historical trends, the Debtors estimate that as of the Petition Date they owe approximately \$128,000 on account of prepetition Medical Benefit Claims.

In 2024, the Debtors’ average monthly costs in the aggregate on account of the Full-Time Medical Plans and COBRA was approximately \$740,000. As

of the Petition Date, the Debtors owe approximately \$200,000 on account of the Full-Time Medical Plans and COBRA and hold approximately \$50,000 in premiums collected from Employees but not yet remitted to United Health Care.

- Dental Plan. Eligible Employees are given the opportunity to participate in a dental plan administered by Delta Dental (the “Dental Plan”). The Debtors pay between 14% and 20% of the premiums for the Dental Plan and self-insure claims up to 80% - 90% per claim. The total cost of the Dental Plan is approximately \$53,000 per month in the aggregate, of which approximately \$5,000 is paid by the Debtors. As of the Petition Date, the Debtors estimate that they owe approximately \$2,000 in the aggregate on account of prepetition premiums and claims for the Dental Plan. This amount is not included in Payroll Obligations above.
- Basic Life Insurance. The Debtors provide life insurance to eligible salaried and hourly Employees through Lincoln Financial (“Lincoln Financial”) at no cost to the Employee, which includes an employee assistance program. Salaried Employees receive coverage up to two-times their annual salary and Full-Time Hourly employees receive \$5,000 in coverage. The Debtors’ average monthly premium is approximately \$12,000. As of the Petition Date, the Debtors estimate that they owe approximately \$6,000 on account of basic life insurance.
- Long-Term Disability. Certain of the Debtors’ Employees are eligible to participate in a long-term disability insurance plan that is fully insured by the Debtors and administered by Lincoln Financial (“Long-Term Disability Insurance Plan”). On an average annual basis, the total cost of the Long-Term Disability Insurance Plan is approximately \$5,000 per month, all of which is covered by the Debtors. As of the Petition Date, the Debtors estimate that they owe approximately \$2,500 on account of amounts in connection with the Long-Term Disability Insurance Plan.
- Salary Continuation. The Debtors provide a salary continuation program for eligible Employees during an approved leave of absence (“Salary Continuation Program”). The approval of salary continuation is contingent on an Employee satisfying the requirements under the Family and Medical Leave Act. On an average annual basis, the total cost of the Salary Continuation Program is approximately \$8,500 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$2,200 on account of amounts in connection with the Salary Continuation Program.

The following are “pass through” programs for which the Debtors make no contributions or payments. The Debtors withhold the necessary amounts from the Employee’s paycheck and remit the amounts to the benefit provider. Accordingly, the Debtors ask for authority to remit amounts collected from the Employees prior to the Petition Date but not yet remitted to the carrier.

- Vision Plan. Eligible Employees are given the opportunity to participate in a vision plan administered by EyeMed Vision Care LLC (the “Vision Plan”). The premiums for the Vision Plan are covered fully by the Employee. As of the Petition Date, in connection with the Vision Plan, the Debtors hold approximately \$1,900 in premiums collected from Employees but not yet remitted to the carrier. This amount is not included in the total Payroll Obligations above.
- Additional Life and AD&D Insurance. The Debtors permit all eligible Employees to purchase supplemental life insurance and AD&D insurance. The Debtors collect funds from the Employees and remit to the insurance company, but do not provide any reimbursement for this program. There is no material cost to the Debtors for this program. As of the Petition Date, in connection with the AD&D insurance, the Debtors hold approximately \$3,900 in premiums collected from Employees but not yet remitted to the carrier. This amount is not included in the total Payroll Obligations above.
- MEC Plan and Hospital Indemnity Plan. The Debtors also provide a minimum employment coverage plan (“MEC Plan”) and hospital indemnity plan (“Hospital Indemnity Plan”), each through United Healthcare, that eligible Part-Time Employees can participate in. The premiums for these MEC Plan and Hospital Indemnity Plan are fully paid by the Employee. The Debtors do not incur any obligations on account of the MEC Plan and Hospital Indemnity Plan. As of the Petition Date, in connection with the MEC Plan and Hospital Indemnity Plan, the Debtors hold approximately \$6,600 in premiums collected from Employees but not yet remitted to the carrier. This amount is not included in the total Payroll Obligations above.
- Supplemental Long-Term Disability Insurance. Employees are provided the opportunity to purchase supplemental long-term disability coverage, but such coverage is solely paid for by the Employee. The Debtors collect funds from the Employees and remit the funds to the insurance company, but do not provide any reimbursement for the programs. As of the Petition Date, in connection with supplemental long-term disability insurance coverage, the Debtors hold approximately \$3,800 in supplemental long-term disability insurance premiums collected from Employees but not yet remitted to the carrier. This amount is not included in the total Payroll Obligations above.

- *Non-Insider Incentive Programs.* The Debtors have maintained, in the ordinary course of business, certain incentive programs to motivate and reward certain of their non-insider Employees, preserve Employee morale, and incentivize the Employees to hit specific performance metrics (collectively, the “Non-Insider Employee Incentive Programs”). Awards under the Non-Insider Employee Incentive Programs are calculated based on specific performance metrics and timelines established pursuant to the applicable program and distributed at the discretion of the Company. As stated above, none of the participants that may receive payment under the Non-Insider Employee Incentive Programs is an Insider—they are Employees that report directly or indirectly to an executive and do not make or participate in making any corporate-level decisions and policies.
 - *Manager and Area Director Incentive Plan.* Restaurant managers (“Managers”) and area directors (“Area Directors”) are eligible to participate in a performance incentive plan (“Manager and AD Incentive Plan”). To be eligible to receive payment under the Manager and AD Incentive Plan, an eligible Manager or Area Director must (i) be employed at such level by the for at least 50% of the applicable period and (ii) must be in good standing and actively employed when the bonus is paid. Awards under the Manager and AD Incentive Plan are generally based on the actual performance of the store(s) or regions, as applicable, for which an eligible Manager or Area Director is responsible, but remains subject to discretion. In 2024, the Debtors estimate that the average monthly payout was approximately \$1,700 per eligible Employee under the Manager and AD Incentive Plan. There are no amounts outstanding under the Manager and AD Incentive Plan as of the Petition Date.
 - *RSC Incentive Plan.* Employees at the Debtors’ restaurant support center (“RSC Employees”) are eligible to participate in an annual performance incentive plan (“RSC Performance Incentive Plan”). Awards under the RSC Performance Incentive Plan are generally based on (i) the RSC Employee’s annual compensation and (ii) the performance of the Debtors’ business. In 2024, the Debtors estimate that the average payout was approximately \$3,500 per eligible Employee under the RSC Incentive Program. There are no amounts outstanding under the RSC Performance Incentive Plan as of the Petition Date.
 - *Catering Incentive Plan.* Catering sales team members (“Catering Sale Team Members”) are eligible to participate in a quarterly and annual performance incentive plan (“Catering Incentive Plan”). To be eligible to receive payment under the Catering Incentive Program, an eligible Catering Sale Team Member must (i) achieve their personal revenue target and (ii) be in good standing and actively employed when the bonus is paid. Awards under the Catering Incentive Plan are generally based on the actual sales

collected by the catering team for the applicable period. In 2024, the Debtors estimate that the average payout was approximately \$18,700 per eligible Employee under the Catering Incentive Program. There are no amounts outstanding under the Catering Incentive Plan as of the Petition Date.

The Debtors believe the Non-Insider Employee Incentive Programs are integral to the Debtors' business operations because they align the interests of eligible Employees with those of the Debtors by linking payments under the Non-Insider Employee Incentive Programs to the overall performance and efficiency of the Debtors' operations. Further, the Debtors believe that most Employees who are eligible for awards under the Non-Insider Employee Incentive Programs view such awards as an integral part of their overall compensation and rely on such awards to pay their living expenses and support their families. As of the Petition Date, the Debtors do not believe they owe any amount on account of any Non-Insider Employee Incentive Program. However, by this Motion the Debtors request the authority, but not direction, to continue to honor any obligations under the Non-Insider Incentive Program in the ordinary course of business.

- *Non-Insider Severance Program.* The Debtors, in the ordinary course of business, provide severance for certain Employees on a discretionary basis pursuant to certain informal guidelines and applicable law (if any) (the "Non-Insider Severance Practice"). The Debtors' ability and flexibility to provide severance amounts and other benefits, at its discretion, is critical to maintaining positive Employee morale and loyalty. Failure to continue the Non-Insider Severance Practice could cause premature Employee turnover, which could undermine the Debtors' ongoing efforts to operate inside a chapter 11 proceeding. By this Motion, the Debtors request authority, but not direction, to continue the Non-Insider Severance Practice and honor post-petition severance obligations in the ordinary course, but only with respect to non-Insider Employees whose employment with the Debtors will terminate post-petition. For clarity, the Debtors are not seeking authority to pay severance for employees that were terminated before the Petition Date.
- *Other Employee Programs.* From time to time, the Debtors offer certain Employees various benefits at the sole cost of the Employee ("Other Employee Programs").
 - *Better Together Foundation.* The Debtors operate an employee assistance program whereby Employees can choose to donate money from their paycheck into an emergency Employee fund held by non-Debtor affiliate Better Together Foundation (d/b/a Do the Right Thing Fund) (a not-for-profit corporation) ("Better Together Foundation"). Employees can either have a specified amount deducted from their paycheck, or they can make a one-time donation. All of the money contributed is for the benefit of

Employees experiencing hardship. Eligible Employees can apply for a grant if their hardship meets certain criteria. Grants can range from \$100 to \$3,500, with a lifetime cap per Employee of \$3,500. The Debtors require the Employee to provide invoices for expenses arising from the hardship and the Debtors pay those invoices directly up to the amount of the grant. The Debtors request authority to continue providing this employee assistance program through its non-Debtor affiliate, the Better Together Foundation.

- Wellness Reimbursement. The Debtor offers a wellness reimbursement program (“Wellness Reimbursement Program”) whereby the Debtors reimburse wellness related expenses up to a certain amount for eligible Employees. The Debtors pay the eligible Employees directly and are then reimbursed by United Healthcare up to \$20,000 annually. The Debtors are unaware of any amounts outstanding as of the Petition Date on account of the Wellness Reimbursement Program.

The Debtors are unaware of any amounts due and owing as of the Petition Date in connection with the Other Employee Programs. By way of this Motion, the Debtors request authority to pay any pre-petition obligations arising in connection with the Other Employee Programs and continue providing such benefit programs in the ordinary course of business during these chapter 11 cases.

RELIEF REQUESTED

11. The Debtors seek authority, but not direction, to pay the Employee Obligations that become due and owing during these chapter 11 cases and to continue their practices, programs, and policies that were in effect as of the Petition Date. The Debtors request that all banks and other financial institutions be authorized and directed, when requested by the Debtors and in the Debtors’ sole discretion, to receive, process, honor, and pay any and all checks drawn on the Debtors’ accounts to pay the Employee Obligations, provided that sufficient funds are available in the applicable accounts to make the payments and transfers. The Debtors similarly request that they be authorized to pay any cost or penalty incurred by their Employees in the event that a check issued by the Debtors for payment of the Employee Obligations is inadvertently not honored

because of the filing of the Debtors' bankruptcy cases. Though the Debtors estimate any such costs or penalties to be *de minimis* in amount, if the Debtors are not authorized to pay such costs or penalties, then their Employees will suffer the exact type of harm that this Motion seeks to prevent and the Debtors will suffer from loss of employee goodwill.

BASIS FOR RELIEF REQUESTED

A. Cause Exists to Authorize Payment of the Employee Obligations

12. Payment of the Employee Obligations is justified by sections 363(b), 105(a), and 507(a) of the Bankruptcy Code and similar relief has been granted in numerous cases. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave and employee benefit related contributions be accorded priority in payment in an amount not to exceed \$15,150 for each individual Employee (to the extent such amounts accrued within 180 days of the Petition Date). The Debtors request authority to pay the Employee Obligations within the statutory priority caps.

i. Payment of Certain Payroll Obligations Is Required by Law

13. Certain of the Payroll Obligations represent earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Accordingly, certain of the Payroll Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Furthermore, federal and state laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 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 their employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *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); *In re Chabrand*, 301 B.R. 468, 475-81 (Bankr. S.D. Tex. 2003) (same). Because the Payroll Obligations may not be property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Payroll Obligations on account of the Employees to the proper parties in the ordinary course of business.

ii. A Sound Business Justification Under Section 363(b) Exists for Payment of the Employee Obligations

14. Section 363(b) of the Bankruptcy Code 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). To satisfy section 363(b), "the debtor must articulate some business justification, other than the mere appeasement of major creditors." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (determining whether the "business justification" standard is satisfied depends on the facts and circumstances of the case); *In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 944 (Bankr. S.D. Tex. 1988) (finding that sale outside the ordinary course satisfied the "interests of debtor, creditors and equity holders alike").

15. The Debtors have satisfied the business justification standard. The Debtors have adequate funding available to pay the Employee Obligations and such payment will be included in any budget submitted in these cases. Any delay in paying the Employee Obligations will adversely impact the Debtors' relationships with their Employees and will irreparably impair the Employees' morale, dedication, confidence, and cooperation. The Debtors must have the support

of their Employees in order for the Debtors' reorganization efforts to succeed. At this early stage, the Debtors simply cannot risk the substantial damage to their business that would inevitably result from a decline in their Employees' morale attributable to the Debtors' failure to pay previously earned wages, salaries, benefits, and other similar items.

16. Absent an order granting the relief requested in this Motion, the Debtors' Employees will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain of the Employees to meet their own personal financial obligations. The stability of the Debtors will thus be irreparably undermined by the possibility that otherwise loyal Employees will seek other employment alternatives.

17. The Debtors do not seek to alter their compensation, Paid Leave, and other benefit policies in this Motion, and this Motion is not to be deemed an assumption or adoption of any agreement or policy providing for any such benefits. Instead, this Motion is intended only to permit the Debtors, in their discretion, to make payments consistent with those policies and to continue to honor their practices, programs, and policies with respect to their Employees, as such practices, program, and policies were in effect as of the Petition Date.⁸

⁸ Some courts have also permitted payment of prepetition claims under Bankruptcy Code sections 1107(a) and 1108 as consistent with the Debtors' fiduciary duties in operating their business. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). *CoServ* held that such payments are permitted when (1) it is critical for the debtor to deal with the claimant, (2) the failure to make the payment creates the risk of disproportionate damage to the debtor, and (3) there is no practical alternative to paying the claim. *Id.* at 498. Each of these factors is satisfied here because it is critical for the Debtors to maintain their workforce, without payment of Employee Obligations there is a substantial risk that the Debtors' workforce will be depleted, and there is no viable alternative to paying the claims. *See id.*

iii. *Payment of the Employee Obligations is Warranted by the Doctrine of Necessity*

18. The relief requested in this Motion is supported by the well-established “necessity of payment” doctrine.⁹ The “necessity of payment” doctrine “teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus.” *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Equalnet Commc’ns Corp.*, 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000) (observing that courts within the Fifth Circuit have authorized the payment of prepetition claims “primarily out of common sense and the presence of a legal or factual inevitability of payment”).

19. Similarly, the court in *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989), stated that the “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” In that case, the court permitted Eastern Air Lines, Inc., to pay their current employees’ prepetition wages, salaries, medical benefits, and business expense claims. Judge Lifland relied on his equitable powers under section 105(a) of the Bankruptcy Code and, in particular, the “necessity of payment” doctrine to authorize such payments, recognizing that the debtor had to make the payments in order to retain its current employees and maintain positive employee morale. *Id.* at 176-77 (*citing* H.R. Rep. No. 595 95th Cong. 1st Sess. 16 (1977)). Other courts have also found that the “necessity of payment” doctrine

⁹ The doctrine was first articulated by the Supreme Court in railroad reorganization cases, *see Miltenberger v. Logansport Ry.*, 106 U.S. 286 (1882), and it has been held to be equally applicable to non-railroad debtor cases. *See, e.g., Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (hotel); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (airline).

applies to the payment of prepetition employee compensation and benefits. *See In re Chateaugay Corp.*, 80 B.R. 279, 281 (Bankr. S.D.N.Y. 1987) (under the “necessity of payment” doctrine, bankruptcy courts should defer to the debtor’s business judgment in permitting payment of certain workers’ compensation claims).

20. Payment of the Employee Obligations is warranted under the doctrine of necessity. The Debtors’ Employees provide the Debtors essential services necessary to conduct their business and maintain the value of their estates. Payment of the prepetition claims of the Debtors’ Employees is essential to avoid large-scale attrition and service disruption.

iv. Similar Relief has Been Granted in Numerous Cases

21. This Court has similarly approved the payment of prepetition claims of employees for wages, salaries, expenses, and benefits on the grounds that the payment of such claims was necessary to effectuate a successful reorganization or liquidation. The importance of a debtor’s employees to its operations cannot be understated and has been regularly recognized by bankruptcy courts in this district in granting relief similar to the relief requested herein. *See, e.g., In re Jack Cooper Ventures, Inc.*, Case No. 19-62393 (PWB) (Bankr. N.D. Ga. Aug. 8, 2019) [Docket No. 66]; *In re LakePoint Land, LLC*, Case No. 18-41337 (BEM) (Bankr. N.D. Ga. June 13, 2018) [Docket No. 27]; *In re Beaulieu Grp., LLC*, Case No. 17-41677 (PWB) (Bankr. N.D. Ga. July 20, 2017) [Docket No. 35]; *In re AstroTurf, LLC*, Case No. 16-41504 (PWB) (Bankr. N.D. Ga. June 29, 2016) [Docket No. 31]; *In re S. Reg’l Health Sys., Inc.*, Case No. 15-64266 (WLH) (Bankr. N.D. Ga. Aug. 5, 2015) [Docket No. 39]; *In re Cagle’s, Inc.*, Case No. 11-80202 (JB) (Bankr. N.D. Ga. Oct. 20, 2011) [Docket No. 30]; *In re Pike Nursery Holding, LLC*, Case No. 07-79129 (MGD) (Bankr. N.D. Ga. Nov. 16, 2007) [Docket No. 39]; *In re Allied Holdings, Inc.*, Case

No. 05-12515 (WHD) (Bankr. N.D. Ga. Aug. 2, 2005) [Docket No. 58]; *In re Rhodes, Inc.*, Case No. 04-78434 (MGD) (Bankr. N.D. Ga. Nov. 8, 2004) [Docket No. 61]; *In re Galey & Lord, Inc.*, Case No. 04-43098 (MGD) (Bankr. N.D. Ga. Aug. 19, 2004) [Docket No. 20]; *In re Dan River Inc.*, Case No. 04-10990 (WHD) (Bankr. N.D. Ga. Apr. 1, 2004) [Docket No. 54]; *In re Sport Court, Inc.*, Case No. 04-41107 (PWB) (Bankr. N.D. Ga. Mar. 18, 2004) [Docket No. 17]; *In re Sw. Recreational Indus., Inc.*, Case No. 04-40656 (PWB) (Bankr. N.D. Ga. Feb. 17, 2004) [Docket No. 23]; *In re iPcs, Inc.*, Case No. 03-62695 (MGD) (Bankr. N.D. Ga. Feb. 25, 2003) [Docket No. 32]; *In re Centennial Health Care Corp.*, Case No. 02-74974 (JEM) (Bankr. N.D. Ga. Dec. 24, 2002) [Docket No. 40]; *In re New Power Co.*, Case No. 02-10835 (WHD) (Bankr. N.D. Ga. July 12, 2002) [Docket No. 164].¹⁰

B. Most of the Severance Payments the Debtors Seek to Pay Fall Within 502(b)(7) and/or Section 503(c) of the Bankruptcy Code

22. In an effort to provide comfort to the Employees given the uncertainty attendant to a company operating in chapter 11, the Debtors seek authority, but not direction, to continue the Non-Insider Severance Practice and continue to honor its obligations under the Non-Insider Severance Practice with respect to non-insider Employees who are terminated postpetition; provided, however, that except as otherwise required by non-bankruptcy law, the Debtors will pay such obligations only to the extent that they are entitled to priority treatment under section 507(a)(4) of the Bankruptcy Code (subject to the cap provided therein) or administrative expense treatment under section 503(b)(1) of the Bankruptcy Code. For the avoidance of doubt, the

¹⁰ Because of the voluminous nature of the orders cited herein, they are not attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

Debtors are not requesting authority to and will not make any payments that fall outside the limitations of section 503(c), to the extent applicable.

23. Moreover, the Non-Insider Severance Program does not implicate section 503(c)(3) because it is within the ordinary course of the Debtors' business. 11 U.S.C. § 503(c)(3) (prohibiting certain payments "outside of the ordinary course of business"). If section 503(c) is not implicated, the Court may grant the requested relief if it finds that a non-insider severance program satisfies the requirements of section 363(b) of the Bankruptcy Code. *See In re Mesa Air Group, Inc.*, Ch. 11 Case No. 10-10018 (MG), 2010 WL 3810899, at *3 (Bankr. S.D.N.Y. Sept. 24, 2010) (noting that compensation plans within the ordinary course of business are governed by section 363 of the Bankruptcy Code, not section 503(c)). For the reasons stated, discretion to continue the Non-Insider Severance Plan as set forth in this Motion is critical and necessary to assuage Employee fears and motivate them to achieve the Debtors' chapter 11 objectives. Accordingly, the requested relief should be approved.

24. For the foregoing reasons, payment of the prepetition Employee Obligations is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should authorize the relief requested herein.

C. Banks Should be Directed to Honor and Pay Checks Issued and Make Other Transfers in Respect of the Employee Obligations

25. The Debtors have sufficient funds to pay the Employee Obligations in the ordinary course of business. The Debtors believe that each payment of an Employee Obligation can be readily identified as such. Accordingly, the Debtors believe there is minimal risk that unrelated checks or wire transfer will be inadvertently made. Thus, the Debtors request that this Court

authorize all applicable financial institutions to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Employee Obligations.

EMERGENCY CONSIDERATION

26. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one (21) days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” Here, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

WAIVER OF ANY APPLICABLE STAY

27. The Debtors seek a waiver of any stay of the effectiveness of the order granting this Motion. Pursuant to Bankruptcy Rule 6004(h), any “order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

NOTICE

28. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Northern District of Georgia; (b) the Debtors' thirty (30) largest unsecured creditors; (c) counsel to the Debtors' prepetition lenders; (d) counsel to the Debtors' debtor-in-possession lender; (e) the Internal Revenue Service; (f) the Georgia Department of Revenue; (g) the Attorney General for the State of Georgia; (h) the United States Attorney for the Northern District of Georgia; (i) the state attorneys general for states in which the Debtors conduct business (j) the Debtors' benefit providers; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

NO PRIOR REQUEST

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

RESERVATION OF RIGHTS

30. Nothing contained herein is intended or should be construed as an admission as to the validity of any Tax or Fee against the Debtors, a waiver of the Debtors' right to dispute any Tax or Fee, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claim related to the Taxes and Fees under applicable non-bankruptcy law. Likewise, 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 claim or a waiver of the Debtors' right to dispute such claim subsequently.

CONCLUSION

WHEREFORE, the Debtors request this Court enter an order, substantially in the form of **Exhibit A**, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

[Remainder of Page Intentionally Blank]

Date: March 5, 2025
Atlanta, GA

Respectfully submitted,

KING & SPALDING LLP

/s/ Jeffrey R. Dutson
Jeffrey R. Dutson
Georgia Bar No. 637106
Brooke L. Bean
Georgia Bar No. 764552
Alice Kyung Won Song
Georgia Bar No. 692753
KING & SPALDING LLP
1180 Peachtree Street NE
Atlanta, Georgia 30309
Telephone: (404) 572-4600
Email: jdutson@kslaw.com
Email: bbean@kslaw.com
Email: asong@kslaw.com

Proposed Counsel for the Debtors in Possession

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:)	Chapter 11
)	
OTB HOLDING LLC, <i>et al.</i> , ¹)	Case No. 25-52415 (SMS)
)	
)	
Debtors.)	(Jointly Administered)
)	

**ORDER (I) AUTHORIZING PAYMENT OF PREPETITION WAGES,
PAYROLL TAXES, CERTAIN EMPLOYEE BENEFITS,
AND RELATED EXPENSES; (II) DIRECTING BANKS TO HONOR
RELATED PREPETITION TRANSFERS; AND (III) GRANTING RELATED RELIEF**

This matter is before the Court on the *Emergency Motion for Entry of an Order (I) Authorizing Payment of Prepetition Wages, Payroll Taxes, Certain Employee Benefits, and Related Expenses; (II) Directing Banks to Honor Related Prepetition Transfers; and (III) Granting Related Relief* (the “Motion”) [Docket No. ____] of the above-captioned debtors and debtors in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

possession (the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given them in the Motion.

The Court has considered the Motion, the First Day Declaration, and the matters reflected in the record of the hearing held on the Motion on _____, 2025. It appears that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest, and that good cause has been shown therefore; IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay all Employee Obligations that have accrued by virtue of the services rendered by their Employees prior to the Petition Date. The Employee Obligations that the Debtors are authorized to pay are described in the Motion and include, without limitation, (i) wages, salaries, other compensations and reimbursements; (ii) payroll taxes; (iii) Paid Leave; (iv) qualified 401(k) plan obligations; (v) health and welfare benefits; (vi) life, disability and accident insurance; (vii) non-insider severance programs, (viii) non-insider incentive programs, and (ix) other benefits.
3. The Debtors shall not honor any prepetition claims or obligations on account of the Employee Obligations to any individual that exceeds the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

4. The Debtors are authorized, but not directed, to maintain, honor, and continue the Compensation and Benefit Programs in the ordinary course of business and consistent with the Debtors' prepetition practices and (iii) modify, change, and discontinue any of their Compensation and Benefits Programs and to implement new programs, policies, and benefits for non-insider Employees in the ordinary course of business during these chapter 11 cases.

5. The Debtors are authorized, but not directed, to pay any cost or penalty incurred by their Employees in the event that a check issued by the Debtors for payment of the Employee Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases.

6. The Debtors are authorized, but not directed, to make payments to applicable third parties in connection with the Employee Obligations, including, without limitation, all Payroll Obligations, in accordance with the Debtors' ordinary course of business and stated policies, as set forth in the Motion.

7. The Debtors are further authorized, but not directed, to continue the Non Insider Severance Practice and honor post-petition severance obligations, but only with respect to non-Insider Employees whose employment with the Debtors terminates post-petition.

8. The Debtors are further authorized, but not directed, to continue the Non-Insider Employee Incentive Programs and honor obligations with respect to non-Insider Employees to the extent provided in the Motion.

9. Notwithstanding any other provision of this Order, nothing in this Order shall authorize the Debtors to cash out unpaid PTO, unless applicable non-bankruptcy law requires such payment.

10. Subject to the availability of funds, all applicable banks and other financial institutions are directed to receive, process, honor, and pay any and all checks, drafts and transfer requests evidencing Employee Obligations under this Order, regardless of whether they are drawn prior to the Petition Date or subsequent to the Petition Date.

11. Banks and other financial institutions that process, honor, and pay any and all checks on account of Employee Obligations may rely on the representation of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

12. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to the Employee Obligations.

13. Nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) an agreement or obligation to pay any claims; (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (iv) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim; or (v) an approval, assumption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

14. Nothing in this Order shall be deemed to authorize the payment of any amounts in satisfaction of bonus or severance obligations, including without limitation any obligations subject to section 503(c) of the Bankruptcy Code.

15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), the Bankruptcy Local Rules for the Northern District of Georgia and the Complex Case Procedures are satisfied by such notice.

17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or are otherwise deemed waived.

18. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

19. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

20. Proposed counsel for the Debtors, through Kurtzman Carson Consultants, LLC d/b/a Verita Global (“Verita”) shall, within three (3) days of the entry of this Order, cause a copy of this Order to be served by electronic mail or first class mail, as applicable, on all parties served with the Motion, and Verita shall file promptly thereafter a certificate of service confirming such service.

[END OF ORDER]

Prepared and presented by:

/s/ Jeffrey R. Dutson

Jeffrey R. Dutson

Georgia Bar No. 637106

Brooke L. Bean

Georgia Bar No. 764552

Alice Kyung Won Song

Georgia Bar No. 692753

KING & SPALDING LLP

1180 Peachtree Street NE

Atlanta, Georgia 30309

Telephone: (404) 572-4600

Email: jdutson@kslaw.com

Email: bbean@kslaw.com

Email: asong@kslaw.com

Proposed Counsel for the Debtors in Possession