

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

In re:)	
	)	Chapter 11
)	
PROTERRA INC, <i>et al.</i> , ¹	)	Case No. 23-11120 (___)
)	
Debtors.	)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING MAINTENANCE,
ADMINISTRATION, AND CONTINUATION OF DEBTORS’
CUSTOMER PROGRAMS AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (this “Motion”):²

Relief Requested

1. The Debtors seek entry of an interim order (the “Interim Order”) and a final order (the “Final Order” and, together with the Interim Order, the “Proposed Orders”), substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) authorizing, but not directing, the Debtors to maintain and administer certain customer-related warranty programs in the ordinary course of business and in a manner consistent with past practice as described herein (collectively, the “Customer Programs”), (b) authorizing, but not directing, the Debtors to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to these chapter 11 cases and supporting this Motion, is set forth in the *Declaration of Gareth T. Joyce in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference. Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.



judgment and in the ordinary course of business, without further Court order, (c) authorizing banks and other financial institutions (collectively, the “Banks”) to honor and process check and electronic transfer requests related to the foregoing, and (d) granting related relief. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing to consider approval of this Motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

4. Venue of these chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105(a) and 363(b) of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”).

Background

6. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized

to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have contemporaneously filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

The Customer Programs

7. In the ordinary course of business, the Debtors provide warranty programs to accompany sold products. These warranties, as part of the Debtors' general approach toward providing their customers with excellent dependable product support, and are a critical component of the promotion, sale, and customer acceptance of the Debtors' products. The warranty services supporting these programs typically include, among other things, training for operators and technicians, onsite delivery support, field support, engineering escalation support, procurement of spare or replacement parts, and reimbursement of repair costs. The Debtors' warranty obligations service each of their respective business segments: the Transit Business; the Powered Business; and the Energy Business, which warranty obligations are each described below. The Debtors reserve a warranty liability on their balance sheet for these obligations, which includes, among other things, costs for parts and services purchased to satisfy such obligations, as well as an allocation for labor provided by the Debtors' employees to service the warranty obligations. Accordingly, warranty claims are satisfied both through employee labor and existing parts, which may not impose an incremental cost on the Debtors, as well as through expenditures made to third parties, including for the acquisition of additional or replacement parts and services.

8. The warranty reserves described below are each calculated as of June 30, 2023. Since that time, the Debtors have accrued incremental warranty reserves contemporaneous with additional sales of their products for which the Debtors offer a warranty. Similarly, since

June 30, 2023, certain warranty obligations have expired, thus reducing the Debtors' warranty reserves. As of the Petition Date, the net effect of the incremental reserves less the expirations has not been finalized.

9. By this Motion, the Debtors request authority, in their sole discretion, to honor prepetition obligations associated with the Customer Programs and to maintain and continue honoring the warranty obligations constituting the Customer Programs in the ordinary course of business, or modify the Customer Programs as the Debtors deem appropriate in their business judgment and in the ordinary course of business.

A. The Electric Transit Bus Warranty Program (Transit Business)

10. The Debtors' electric transit bus warranty is comprised of a one-year complete bus, bumper-to-bumper warranty, a twelve-year warranty on the composite bus body, and warranties on other components generally ranging from one to three years. Transit agencies will often request additional coverage as part of the initial capital purchase, in part to minimize their operational costs, which extended warranties are priced into the contract bids for the respective electric buses. Additionally, under fleet defect provisions included in certain electric transit bus purchase contracts, the Debtors are required to proactively prevent re-occurrences of a defect in an entire fleet of electric transit buses delivered under a contract if the same defect occurs in more than a specified percentage of the fleet within the base warranty period (or, in certain circumstances, the base warranty period plus one year) following delivery. The costs of satisfying warranties for the transit business include replacement materials to resolve issues with the electric transit buses sold by the Debtors, as well as the field service costs to physically service and repair the buses.

11. As of the Petition Date, the Debtors have approximately \$215,000 in outstanding warranty claims related to the Transit Business. As of June 30, 2023, the Debtors had

recorded approximately \$15,238,000 in warranty reserves for the Transit Business, which consists of projected but unrealized warranty claims with respect to electric transit buses sold by the Debtors.

B. The Battery and Powertrain System Warranty Program (Powered Business)

12. The Debtors' battery system warranties vary by the vehicle and the battery usage. The Debtors offer a six-year standard warranty and twelve-year extended warranty on batteries for materials and workmanship, and an energy capacity warranty that depends on vehicle capacity and expected usage. The Debtors typically offer two to five-year warranties on other ancillary components of the powertrain system. The Debtors' standard warranty on battery systems reserves the right to replace components with different items of equal or better performance to keep pace with improvements in battery technology development.

13. As of the Petition Date, the Debtors have approximately \$426,000 in outstanding warranty claims related to the Powered Business. As of June 30, 2023, the Debtors had recorded \$14,800,000 in warranty reserves for the Powered Business, which consists of projected but unrealized warranty claims with respect to batteries and powertrain systems sold by the Debtors.

C. The Charging Station Warranty Program (Energy Business)

14. The Debtors offer a standard two-year warranty on their charging hardware. Warranties for installed third party hardware can extend up to five years. The Debtors also offer extended warranty coverage, which extended warranties are priced into the contract bids for the respective charging hardware sales.

15. As of the Petition Date, the Debtors do not have any outstanding warranty claims related to the Energy Business. As of June 30, 2023, the Debtors had recorded \$140,000

in warranty reserves for the Energy Business, which consists of projected but unrealized warranty claims with respect to charging hardware sold by the Debtors.

Bases for Relief

I. Honoring Customer Program Commitments is Warranted Under Sections 105(a) and 363(b) of the Bankruptcy Code

16. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) ("The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept."). In doing so, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

17. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides "broad flexibility" to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Indeed, courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the pre-plan satisfaction of a prepetition claim." *In re CoServ, L.L.C.*, 273 B.R. at 499.

18. Section 105(a) of the Bankruptcy Code and the "doctrine of necessity" permit the bankruptcy court to exercise its broad grant of equitable powers to authorize the payment of prepetition obligations when such payment is "essential to the continued operation" of

the debtor's business. *See, e.g., In re Lehigh & New England Railway. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999).

19. The above-referenced sections of the Bankruptcy Code empower the Court to authorize the postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor's estate, as is the case here. *See, e.g., In re Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims of certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re CoServ, L.L.C.*, 273 B.R. at 497 (“[I]t is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the pre-petition claim in aid of preservation or enhancement of the estate.”).

20. For the reasons described herein and in the First Day Declaration, the Debtors submit that satisfaction of the Customer Programs is necessary to the Debtors' continued and uninterrupted operations during these chapter 11 cases. Continuing to administer the Customer Programs without interruption during the pendency of these chapter 11 cases, as the Debtors market substantially all of their assets for sale in connection therewith, will help preserve value and customer good will during these chapter 11 cases, and make the Debtors' business more attractive to prospective purchasers. Indeed, if the Debtors are unable to satisfy certain of the warranty obligations, the Debtors' good will in the market place could be significantly diminished.

21. In addition, the Debtors respectfully request authority to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order. The Debtors submit that the circumstances of these chapter 11 cases

warrant granting the requested relief, and that doing so is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest, and therefore should be granted.

22. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to maintain and administer the Customer Programs and pay certain prepetition claims related thereto on the terms set forth in the Proposed Orders. Furthermore, while the Debtors expect to satisfy many of the existing warranty claims owed prior to a final hearing on the Motion with Debtors' employees' labor and parts on hand, the Debtors are requesting authority to make payments to third parties (excluding third party staff augmentation that are otherwise considered wages) of up to \$154,000 (approximately 25% of all currently outstanding warranty claims) to satisfy or facilitate the satisfaction of any warranty claims that may require payment or other expenditures prior to a final hearing on this Motion.

II. Processing of Checks and Electronic Funds Transfers Should Be Authorized

23. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

Immediate Relief is Necessary

24. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As described above and in the First Day Declaration, any disruption of the Customer Programs, on the terms proposed, would substantially diminish or impair the Debtors’ efforts in these chapter 11 cases to preserve and maximize the value of their estates. For this reason and those set forth above and in the First Day Declaration, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied because the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

Waiver of Stay Under Bankruptcy Rule 6004(h)

25. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As provided herein, and to implement the foregoing successfully, the Debtors request that the Proposed Orders include a finding that the Debtors have established cause to exclude such relief from the fourteen (14)-day stay period under Bankruptcy Rule 6004(h).

26. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders.

Reservation of Rights

27. Nothing contained herein or any actions taken pursuant to such relief requested is intended to be or should be construed as: (a) an implication or admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s

right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; (h) a waiver of the obligation of any party in interest to file a proof of claim; or (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

Notice

28. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Cowen Parties; (d) counsel to Bank of America; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (g) the state attorneys general for states in which the Debtors conduct business; (h) the Banks; and (i) the Securities and Exchange Commission; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank]

Conclusion

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: August 7, 2023
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Andrew L. Magaziner

Pauline K. Morgan (No. 3650)
Andrew L. Magaziner (No. 5426)
Sheila Borovinskaya (No. 6758)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: pmorgan@ycst.com
amagaziner@ycst.com
sborovinskaya@ycst.com

- and -

**PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP**

Paul M. Basta (*pro hac vice* admission pending)
Robert A. Britton (*pro hac vice* admission pending)
Michael J. Colarossi (*pro hac vice* admission pending)
1285 Avenue of the Americas
New York, New York 10019
Tel: (212) 373-3000
Fax: (212) 757-3990
Email: pbasta@paulweiss.com
rbritton@paulweiss.com
mcolarossi@paulweiss.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Interim Order

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

In re:)	
	)	Chapter 11
)	
PROTERRA INC, <i>et al.</i> , ¹	)	Case No. 23-11120 (___)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket No. ___

**INTERIM ORDER (I) AUTHORIZING MAINTENANCE, ADMINISTRATION,
AND CONTINUATION OF DEBTORS’ CUSTOMER PROGRAMS AND
(II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the Debtors² for entry of an interim order (this “Interim Order”) (a) authorizing the Debtors to maintain and administer customer-related programs as described in the Motion (collectively, the “Customer Programs”) in the ordinary course of business and in a manner consistent with past practice, (b) authorizing the Debtors to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (c) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (9565); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

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

§§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs and to honor the obligations thereunder in the ordinary course of business and in a manner consistent with past practice or as set forth in the Motion.
3. The Debtors are authorized, but not directed, to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, including making payments to third parties (excluding third party staff augmentation that are otherwise considered wages) in connection with Customer Programs obligations arising prior to the Petition Date, in an aggregate amount of \$154,000, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order.
4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests

when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

5. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and accordingly, Bankruptcy Rule 6003(b) has been satisfied.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order.

9. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

10. The final hearing on the Motion shall be held on _____, 2023, at ___:___
_.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion must be filed with the Court on or before 4:00 p.m., prevailing Eastern Time, on _____, 2023, and served on the following parties: (a) counsel to the Debtors; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Cowen Parties; (d) counsel to Bank of America; and (e) the statutory committee of unsecured creditors, if any has been appointed. If no objections to entry of a final order on the Motion are timely received, the Court may enter such final order without need for the final hearing.

Exhibit B

Proposed Final Order

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

)	
In re:	)	Chapter 11
)	
PROTERRA INC, <i>et al.</i> , ¹	)	Case No. 23-11120 (___)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket Nos. __ & __

**FINAL ORDER (I) AUTHORIZING MAINTENANCE, ADMINISTRATION,
AND CONTINUATION OF DEBTORS’ CUSTOMER PROGRAMS AND
(II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of the Debtors² for entry of a final (this “Final Order”)

(a) authorizing the Debtors to maintain and administer customer-related programs as described in the Motion (collectively, the “Customer Programs”) in the ordinary course of business and in a manner consistent with past practice, (b) authorizing the Debtors to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (c) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that

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

venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs and to honor the obligations thereunder in the ordinary course of business and in a manner consistent with past practice or as set forth in the Motion.
3. The Debtors are authorized, but not directed, to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, including making payments to third parties (excluding third party staff augmentation that are otherwise considered wages) in connection with Customer Programs obligations arising prior to the Petition Date, in an aggregate amount of \$1,200,000, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order.
4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are

authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

5. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

8. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.