

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

In re: : X  
: Chapter 11  
: SEQUENTIAL BRANDS GROUP, INC., *et* : Case No. 21-11194 (JTD)  
*al.*<sup>1</sup> :  
: (Jointly Administered)  
Debtors. :  
: Ref. Docket Nos. 10 and 68  
: Objection Deadline: Sept. 17, 2021 at 4:00 p.m. (ET)  
: Hearing Date: Sept. 24, 2021 at 10:00 a.m. (ET)  
: X

**NOTICE OF ENTRY OF INTERIM ORDER AND FINAL HEARING  
REGARDING DEBTORS' MOTION SEEKING ENTRY OF INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE EMPLOYEE  
COMPENSATION AND BENEFIT PROGRAMS AND (B) PAY PREPETITION  
CLAIMS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

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**PLEASE TAKE NOTICE** that on August 31, 2021, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Employee Compensation and Benefit Programs and (B) Pay Prepetition Claims Related Thereto and (II) Granting Related Relief* [Docket No. 10] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). A copy of the Motion is attached hereto as **Exhibit 1**.

**PLEASE TAKE FURTHER NOTICE** that the Debtors presented certain first-day motions at a hearing before the Honorable John T. Dorsey at the Bankruptcy Court on

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1518), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.



September 1, 2021. The Bankruptcy Court granted interim relief on the Motion and entered the *Interim Order (I) Authorizing the Debtors to (A) Continue Employee Compensation and Benefit Programs and (B) Pay Prepetition Claims Related Thereto and (II) Granting Related Relief* [Docket No. 68] (the “Interim Order”), attached hereto as **Exhibit 2**.

**PLEASE TAKE FURTHER NOTICE** that any response or objection to the entry of a final order with respect to the relief sought in the Motion must be filed with the Bankruptcy Court on or before **September 17, 2021 at 4:00 p.m. prevailing Eastern Time**.

**PLEASE TAKE FURTHER NOTICE** that at the same time, you must also serve a copy of the response or objection upon: (i) counsel to the Debtors, (a) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 USA, Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com) and Joshua K. Brody (jbrody@gibsondunn.com), and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801, Attn: Laura Davis Jones (ljones@pszjlaw.com) and Timothy P. Cairns (tcairns@pszjlaw.com); (ii) counsel to the Prepetition Term B Agent, (a) James-Bates-Brannan-Groover-LLP, 3399 Peachtree Road NE, Suite 1700, Atlanta, Georgia 30326, Attn: Sara Kate Rumsey (SKRumsey@JamesBatesLLP.com) and Doroteya Wozniak (DWozniak@JamesBatesLLP.com), and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, Delaware 19801, Attn: Derek Abbott (dabbott@morrisonichols.com) and Curtis Miller (cmiller@morrisonichols.com); (iii) counsel to the Required Lenders, (a) King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, Attn: Roger Schwartz (rschwartz@kslaw.com) and Peter Montoni (pmontoni@kslaw.com) and (b) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, Delaware 19801, Attn: Robert J. Dehney (rdehney@morrisonichols.com); (iv) counsel to the Prepetition BAML Parties,

(a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts 02110, Attn: Julia Frost-Davies (julia.frost-davies@morganlewis.com), Marjorie S. Crider (marjorie.crider@morganlewis.com) and Christopher L. Carter (christopher.carter@morganlewis.com) and (b) Robinson + Cole LLP, 1201 N. Market Street, Suite 1406, Wilmington, DE 19801, Attn: Rachel J. Mauceri (rmauceri@rc.com); and (v) the Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Richard Schepacarter (Richard.Schepacarter @usdoj.gov).

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE FINAL RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

**PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE FINAL RELIEF SOUGHT IN THE MOTION WILL BE HELD ON **SEPTEMBER 24, 2021 AT 10:00 A.M. PREVAILING EASTERN TIME** VIA ZOOM VIDEOCONFERENCE BEFORE THE HONORABLE JOHN T. DORSEY, UNITED STATES BANKRUPTCY COURT JUDGE, AT BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM NO. 5, WILMINGTON, DELAWARE 19801.**

Dated: September 2, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

*/s/ Laura Davis Jones*

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Laura Davis Jones (Bar No. 2436)  
Timothy P. Cairns (Bar No. 4228)  
919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, Delaware 19899 (Courier 19801)  
Tel: (302) 652-4100  
Fax: (302) 652-4400  
Email: ljones@pszjlaw.com  
tcairns@pszjlaw.com

-and-

**GIBSON, DUNN & CRUTCHER LLP**

Scott J. Greenberg (*pro hac vice* pending)  
Joshua K. Brody (*pro hac vice* pending)  
Jason Zachary Goldstein (*pro hac vice* pending)  
200 Park Avenue  
New York, New York 10166  
Tel: (212) 351-4000  
Fax: (212) 351-4035  
Email: sgreenberg@gibsondunn.com  
jbrody@gibsondunn.com  
jgoldstein@gibsondunn.com

*Proposed Counsel to the Debtors and Debtors in Possession*

**EXHIBIT 1**

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

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In re:	)	
	)	Chapter 11
	)	
SEQUENTIAL BRANDS GROUP, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11194 (JTD)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**DEBTORS’ MOTION SEEKING ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO (A) CONTINUE EMPLOYEE  
COMPENSATION AND BENEFITS PROGRAMS AND (B) PAY PREPETITION  
CLAIMS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

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

**Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”):

(a) authorizing, but not directing, the Debtors to (i) maintain, modify and discontinue their employee, contractor and director compensation practices, programs, benefits and policies (together, the “Compensation and Benefits”, and all costs, fees, charges and other obligations

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> The facts and circumstances supporting this motion are set forth in the *Declaration of Lorraine DiSanto in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* (the “First Day Declaration”), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not immediately defined shall have the meanings ascribed to them elsewhere in this motion or in the First Day Declaration, as applicable.

related thereto, the “Compensation and Benefits Obligations”) in the ordinary course of business during these chapter 11 cases without the need for further Court approval, and (ii) pay and honor prepetition claims related to the Compensation and Benefits Obligations in the ordinary course of business, up an aggregate amount not to exceed \$136,400 pursuant to the Interim Order and \$136,400 pursuant to the Final Order; and (b) granting related relief.

### **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. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and 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”), to the entry of a final order by the Court in connection with 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.

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

4. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

### **Background**

5. 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 operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and

1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

6. Information regarding the Debtors' history and business operations, capital structure, primary indebtedness, and the events leading up to the commencement of these chapter 11 cases can be found in the First Day Declaration.

### **Compensation and Benefits**

7. As of the Petition Date, the Debtors and their non-debtor affiliates (together, the "Company") employ nineteen individuals, eleven of whom are employed by the Debtors (the "Employees"). The large majority of the Debtors' workforce is stationed at the Company's headquarters in New York, New York, with the remainder located in Los Angeles, California. Eighteen Employees are salaried and employed on a full-time basis, while one Employee, a graphic designer, is paid and employed on a part-time or periodic basis.

8. In addition to the Employees, the Debtors also use the personal services of individuals who are not Employees but who are employed by the Debtors as independent contractors, temporary workers and consultants (collectively, the "Contractors" and together with the Employees, the "Workforce"). The Contractors include certain IT, advertising and audio-visual personnel, photographers, stylists, designers, and legal and financial support staff, each of whom are employed by the Debtors on a temporary or as-needed basis. As a result, the number of Contractors the Debtors employ fluctuates on a consistent basis. As of the Petition Date, the



Debtors have employed and compensated approximately 39 Contractors during the 2021 calendar year.<sup>3</sup>

9. Together, the Workforce performs a variety of functions critical to the Debtors' operations and the administration of the Debtors' estates, including financial planning and analysis, accounting, brand management, marketing and legal services. In many instances, the Workforce includes personnel who are intimately familiar with the Debtors' businesses, processes, and systems, and who cannot be easily replaced. The Debtors' failure to honor their obligations to the Workforce could lead to considerable attrition, which would severely threaten the Debtors' ability to operate at this crucial juncture. Indeed, without the continued, uninterrupted services of the Workforce, the Debtors simply could not run their businesses and maximize value for the benefit of all stakeholders.

10. More importantly, many of the Employees and Contractors rely on the Compensation and Benefits to pay daily living expenses and secure services central to the Employees' and Contractors' health and welfare. As such, the Workforce would be exposed to significant hardship if the Debtors are not permitted to continue satisfying the Compensation and Benefits Obligations described herein.

## **I. Compensation and Withholding Obligations**

### **A. Compensation Obligations**

11. In the ordinary course, the Debtors incur obligations to their Employees for, among other things, wages, salary and overtime (collectively, the "Employee Compensation").

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<sup>3</sup> One such contractor is the Debtors' former Controller, Charlie Bang, who retired from full-time employment with the Company on December 31, 2020. Following his retirement, Mr. Bang continued to provide financial services to the Company through a certain retirement agreement, whereby he was retained and compensated as a Contractor for nine days out of each calendar month in order to ensure a smooth transition to a successor Controller. That arrangement remains in place as of the Petition Date.

Employees are generally paid in arrears on a bi-weekly basis. As such, certain Employee Compensation was earned, or relates to services provided during the prepetition period. As of the Petition Date, the Debtors estimate that they owe approximately \$57,071 on account of accrued and unpaid Employee Compensation earned by Employees prior to the Petition Date, all of which has come due or will come due during the twenty-one day period immediately following the Petition Date (the “Interim Period”). The Debtors do not seek to pay unpaid Employee Compensation to any Employee in excess of the \$13,650 priority wage cap imposed by section 507(a)(4) of the Bankruptcy Code. As described above, failure to pay the unpaid Employee Compensation could lead to both Employee attrition and significant personal hardship.

12. In addition to the Employee Compensation, the Debtors also incur financial obligations to their Contractors directly, or indirectly through staffing and employment agencies (the “Contractor Compensation”). The Debtors do not pay wages to, withhold taxes for or provide benefits or paid time off to the Contractors. During the 2021 calendar year, the Debtors have paid the Contractors, in the aggregate, approximately \$504,000. As of the Petition Date, the Debtors estimate that they owe approximately \$28,233 in unpaid and outstanding Contractor Compensation. The Debtors believe that the Contractors are likely not subject to the statutory cap under section 507(a)(4) of the Bankruptcy Code. Nevertheless, the Debtors do not intend to pay any Contractor amounts in excess of such statutory cap on account of any unpaid Contractor Compensation.

13. Lastly, the Debtors pay certain fees to the independent directors on the Debtors’ board of directors (the “Independent Director Fees”). As of the Petition Debt, the Debtors’ board is comprised of four directors, each of whom is independent and receives an annual fee of \$200,000, paid on a monthly basis. In addition, the chair of the board’s audit committee receives

an annual fee of \$25,000. As of the Petition Date, the Debtors believe that there are no Independent Director Fees accrued and outstanding. Out of an abundance of caution, the Debtors seek authority to continue to pay the Independent Director Fees that become due and owing in the ordinary course of business on a postpetition basis.

**B. Withholding Obligations**

14. During each applicable payroll period, the Debtors routinely deduct certain amounts from Employees' paychecks, including garnishments, child support, retirement plan contributions and similar legally or contractually mandatory deductions (collectively, the "Deductions"), and forward such amounts to various third-party recipients.

15. In addition to the Deductions, federal and state laws require that the Debtors withhold certain amounts from Employees' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the "Employee Payroll Taxes") for remittance to the appropriate federal, state, or local taxing authorities. The Debtors must then match the Employee Payroll Taxes from their own funds and pay, based upon a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes (together with the Employee Payroll Taxes, the "Payroll Taxes"). The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, and local taxing authorities at the same time the Employees' payroll checks are disbursed.

16. As of the Petition Date, the Debtors estimate that they owe approximately \$2,200 in unpaid Deductions and Payroll Taxes (together, the "Withholding Obligations"), all of which has come due or will come due during the Interim Period. By this motion, the Debtors seek authority, but not direction, to pay in a manner consistent with past practice any unpaid Withholding Obligations and to continue to honor the Withholding Obligations in the ordinary course during the administration of these chapter 11 cases.

**C. Payroll Processing**

17. Certain Withholding Obligations for the Debtors' Employees are processed by Automatic Data Processing, Inc. ("ADP") in the United States. In addition, services provided by ADP include payroll processing, remittance, reporting of payroll taxes for the Employees, and other key administrative functions. The Debtors pay approximately \$2,011 per month for such services. As of the Petition Date, the Debtors estimate that they owe \$389 on account of ordinary course prepetition payroll services (the "Unpaid Payroll Processing Fees"), all of which has come due or will come due during the Interim Period. By this motion, the Debtors seek authority, but not direction, to pay the Unpaid Payroll Processing Fees consistent with past practice and to continue paying payroll processing fees in the ordinary course during the administration of these chapter 11 cases.

**D. Reimbursable Expenses and Credit Card Obligations**

18. Prior to the Petition Date and in the ordinary course, the Debtors reimbursed Employees for approved expenses incurred on behalf of the Debtors in the scope of their employment (the "Reimbursable Expenses"). The Reimbursable Expenses are largely on account of costs related to business travel,<sup>4</sup> work-related meetings and communications, marketing, professional development and supply purchases, each for reasonable business-related purposes. Employees who pay up front for Reimbursable Expenses apply for reimbursement by submitting an expense report. Once the Debtors' financial personnel, including the requesting Employee's direct supervisor and, ultimately, the Chief Financial Officer, have determined that the charges are for legitimate reimbursable business expenses, the Debtors reimburse the appropriate Employee

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<sup>4</sup> In connection with commuting and business travel obligations, the Debtors provide Eric Gul, the Debtors' General Counsel, with a car allowance in a monthly amount of \$1,000.

for such charges. Historically, the Debtors have paid Reimbursable Expenses of approximately \$4,028 per month in the aggregate. As of the Petition Date, the Debtors believe that no Reimbursable Expenses are due and owing.

19. In addition, the Debtors provide two key Employees with corporate credit cards (the “Credit Cards”) issued by Bank of America to be used strictly for upfront payment of Reimbursable Expenses and related charges (the “Permitted Charges”), as overseen by the Debtors’ accounting personnel. In accordance with established company policy, the Permitted Charges are satisfied directly by the Debtors, while Employees are held personally responsible for any amounts that do not qualify as Permitted Charges. Historically, the Debtors have paid between \$15,000 and \$19,000 per month on account of the Permitted Charges and recurring, *de minimis* fees related to maintenance of the Credit Cards (together, the “Credit Card Obligations”). As of the Petition Date, the Debtors estimate that they owe, in the aggregate, approximately \$18,403 on account of the Credit Card Obligations, all of which has come due or will come due during the Interim Period.

20. Employees incur Reimbursable Expenses and Permitted Charges on the Debtors’ behalf and with the understanding that such expenses will be reimbursed fully. Accordingly, to ensure that Employees are not held personally liable for pre-existing, ordinary course business expenses, the Debtors request authority, but not direction, to pay all Reimbursable Expense and Credit Card Obligations<sup>5</sup> relating to the prepetition period and to continue paying the Reimbursable Expenses and Credit Card Obligations in the ordinary course.

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<sup>5</sup> In order to ensure that the Credit Cards remain available for use throughout these chapter 11 cases, the Debtors also request authority to maintain cash collateral in support of the Credit Card Obligations, solely as required by the Bank.

## **II. Employee Benefits Programs**

21. The Debtors offer certain of their Employees the ability to participate in a number of insurance and benefits programs, including, among other programs, medical, vision, dental and life insurance, accidental death and dismemberment insurance, disability benefits, workers' compensation, retirement plans, pre-tax commuter benefits, paid time off and severance programs (collectively, the "Employee Benefits Programs", and all financial obligations related thereto, the "Employee Benefits Obligations"). As of the Petition Date, the Debtors do not believe that any amounts are due and owing on account of the Employee Benefits Programs. The Employee Benefits Programs are described in greater detail below.

### **A. Health Benefit Plans**

22. The Debtors offer full-time Employees the opportunity to participate in a number of health benefit plans, including medical, vision, and dental insurance plans (collectively, the "Health Benefit Plans") upon completion of one calendar month of employment. As is customary, coverage and costs under the Health Benefit Plans differ depending on the particular coverage options selected and whether the applicable Employee's dependents also participate in her or his Health Benefit Plans.

23. The Health Benefit Plans are offered through a Professional Employer Organization (the "PEO"), which, in form, pools the Employees together with employees of other small and mid-sized companies in order to reduce costs and expand the range of coverage options available to participants, including the Debtors. Participating in the PEO allows an organization of the Debtors' size to significantly reduce payroll costs, while offering their Employees coverage options available only to larger institutions. Additional benefits of offering coverage through the PEO include: (i) centralizing administrative functions such as claims management and

administration, (ii) outsourcing management of open enrollment and election modifications, and (iii) allowing the Debtors to avoid the payment of broker fees.

24. The Health Benefit Plans are fully insured by Empire Blue Cross Blue Shield, as carrier, and administered by ADP TotalSource (“ADP”), who serves as third-party plan administrator through the PEO. The Debtors fund the Health Benefits Plans through a combination of regular deductions from Employee wages and direct Debtor contributions. More particularly, the Health Benefit Plans are comprised of the following individual plans:

- Medical Plan: The Debtors’ fully insured medical plan (the “Medical Plan”) is administered by ADP. The Debtors historically pay approximately \$23,107 per month related to the Medical Plan. As of the Petition Date, the Debtors believe that no amounts are due and owing under the Medical Plan.<sup>6</sup>
- Dental Plan: The Debtors also offer their Employees the option of participating in a fully insured dental plan (the “Dental Plan”) administered by ADP. The Debtors historically pay approximately \$1,770 per month related to the Dental Plan. As of the Petition Date, the Debtors believe that no amounts are due and owing under the Dental Plan.
- Vision Plan: Additionally, the Debtors offer their Employees the option of participating in a fully insured vision plan (the “Vision Plan”), also administered by ADP. The Debtors historically pay approximately \$131 per month related to the Vision Plan. As of the Petition Date, the Debtors believe that no amounts are due and owing under the Vision Plan.

25. As required by law, the Debtors also offer coverage under certain of the Health Benefit Plans to their current and former employees who have elected coverage under the

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<sup>6</sup> The Debtors also provide Employees who have enrolled in the Medical Plan the opportunity to contribute to an individually owned health savings account, flexible spending account or dependent care flexible spending account, each of which is maintained by Optum Bank. Funds deposited in health savings accounts and flexible spending accounts may be used to pay for a number of medical needs, including the purchase of eyeglasses, hearing aids and prescriptions. Funds deposited in dependent care flexible spending accounts may be used to cover expenses related to daycare, after-school programs, camp or other care for children under 13 years old or for certain other dependents who suffer from a qualifying disability or otherwise satisfy applicable terms and conditions.

Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). Where a COBRA election is made, the electing employee funds the full cost of coverage, and the Debtors are not responsible for any premium payments or other cash outlays.

**B. Other Insurance and Disability Benefits**

**1. Life and AD&D Insurance Programs**

26. The Debtors provide basic life and accidental death and dismemberment insurance (the “Basic Life and AD&D Insurance”) to Employees who regularly work 24 hours or more per week through ADP. The Basic Life and AD&D Insurance is provided to full-time Employees and is equal to two-times the Employee’s eligible pay up to a maximum of \$750,000. As of the Petition Date, the Debtors believe that no amounts are due and owing on account of the Basic Life and AD&D Insurance.

27. In addition, Employees may choose to purchase voluntary supplemental life insurance and accidental death and dismemberment insurance (the “Supplemental Life and AD&D Insurance”) through ADP. The Debtors’ Supplemental Life and AD&D Insurance is an optional benefit for Employees that wish to supplement the Basic Life and AD&D Insurance. The Supplemental Life and AD&D Insurance is completely funded by participating Employees with after-tax contributions, but is administered by the Debtors. Because Employees pay for the full cost of the Supplemental Life and AD&D Insurance, the Debtors do not believe that they owe any amounts with respect to the Supplemental Life and AD&D Insurance as of the Petition Date. Nevertheless, out of an abundance of caution, they seek authority to continue to offer this benefit in the ordinary course.

**2. Disability Benefits**

28. The Debtors provide their full-time and part-time Employees who regularly work 24 hours or more per week with (i) short-term disability benefits, (ii) a salary continuation program



and (iii) long-term disability benefits (together, the “Disability Benefits”). The Disability Benefits are fully insured through the PEO, and available to qualifying Employees who become disabled due to a non-occupational accident, injury or illness that has been certified by an appropriate medical professional. In certain circumstances, the Debtors also require procurement of a second confirmatory opinion from a company-approved doctor. Job-related illnesses and injuries do not qualify an Employee for Disability Benefits, and instead fall within the purview of the Workers Compensation Program.

29. The short-term disability benefits cover an eligible Employee for up to 26 weeks, unless a longer period is required by applicable state law, and provide for periodic payment of certain statutorily prescribed amounts. In lieu of receiving short-term disability benefits, an otherwise eligible Employee who has been employed by the Debtors for at least six (6) months and works 40 hours or more per week may elect to receive salary continuation benefits, which generally provide for payment of a portion of such Employee’s regular salary for a maximum of 90 calendar days during any rolling 12-month period. The cash payouts made pursuant to the salary continuation program are subject to the following step-down schedule:

<b><u>Period of Time</u></b>	<b><u>Percentage of Pay</u></b>
Five business day waiting period	Funded by Paid Time Off
First four weeks	100% of regular salary
Subsequent four weeks	80% of regular salary
Subsequent four weeks	60% of regular salary

30. The long-term disability benefits cover an eligible Employee during the period after his or her 180<sup>th</sup> consecutive day of qualifying disability, and provide for periodic payment of 60%

of such Employee's monthly salary, up to \$15,000 per month. Long-term disability benefits generally continue so long as the participating Employee suffers from a qualifying disability and remains under the age of 65.

31. As of the Petition Date, the Debtors believe that no amounts are due and owing on account of the Disability Benefits. However, claims related to the Disability Benefits are often submitted up to one month after the underlying expense is incurred. As a result, certain prepetition amounts related to the Disability Benefits may become due and payable during and after the Interim Period.

**C. Workers' Compensation Program**

32. The Debtors maintain workers' compensation insurance (the "Workers' Compensation Program") for all of their Employees at the statutorily required level for each state in which the Debtors' Employees are located. The Debtors maintain such coverage through New Hampshire Insurance Company and American Home Assurance Company. The Workers' Compensation Program is provided at no cost to Employees. Moreover, the Debtors pay a fixed premium, regardless of the number or amount of claims asserted through the Workers' Compensation Program.

33. The Debtors must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers' Compensation Program, without regard to whether such liabilities arose before or after the Petition Date, to ensure that the Debtors comply with applicable workers' compensation laws and requirements. As of the Petition Date, there are no open claims under the Workers' Compensation Program, and no liquidated claims are due and payable.

34. Because the Debtors are statutorily and/or contractually obligated to maintain the Workers' Compensation Program, their inability to do so may result in adverse legal consequences that materially disrupt the Debtors' restructuring process. As such, the Debtors seek (a) authority

to continue the Workers' Compensation Program in the ordinary course of business on a postpetition basis<sup>7</sup> and (b) a modification of the automatic stay solely to allow Employees to assert claims under the Workers' Compensation Program. In connection with this relief, the Debtors will continue contesting in good faith, as appropriate in the Debtors' business judgment, disputed claims and amounts related to the Workers' Compensation Program, if any.

**D. 401(k) Plan**

35. The Debtors offer eligible Employees the opportunity to participate in a 401(k) plan (the "401(k) Plan"). The 401(k) Plan generally provides for pre-tax salary deductions of compensation up to limits set, and periodically reset, by the Internal Revenue Code. The 401(k) Plan is administered by Fidelity Investments (the "401(k) Plan Administrator") and allows for automatic wage deductions in accordance with its terms.

36. Pursuant to the terms of the 401(k) Plan, the Debtors have committed to match 100% of the first 3% of each 401(k) Plan contribution made by an Employee and 50% of the next 2% of each such contribution (the "Matching Contributions"). The Matching Contributions vest immediately, but are customarily paid on an annual basis in January or February of each year. In the aggregate, the Debtors' distributed \$14,450.00<sup>8</sup> in Matching Contributions to the 401(k) Plan Administrator for deposit into eligible Employees' 401(k) Plans during the 2020 calendar year.

37. Each pay period, the Debtors deduct Employees' 401(k) Plan contributions from their paychecks (the "401(k) Deductions") and hold such amounts in trust until they are forwarded

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<sup>7</sup> The Debtors' Workers' Compensation Program may change postpetition in the ordinary course of business due to changes in applicable laws and regulations, and the Debtors' ability to meet requirements thereunder. By this Motion, the Debtors also request authority to make any changes to current policy and practices that become necessary, subject to applicable law.

<sup>8</sup> The amount of Matching Contributions paid out in 2020 was reduced relative to historical averages due to forfeitures related to certain prior employees closing or rolling over their 401(k) Plan accounts prior to the amounts therein fully vesting.

to the 401(k) Plan Administrator on a semi-monthly basis. As of the Petition Date, and due to the timing thereof relative to the Debtors' most recent pay cycle, the Debtors estimate that they owe the 401(k) Plan Administrator \$1,575 in 401(k) Deductions and \$0 in Matching Contributions,<sup>9</sup> each for deposit into the Employees' 401(k) Plan accounts.

38. Many Employees' retirement savings consist solely of amounts administered through the 401(k) Plan. Thus, the Debtors believe that continuing the 401(k) Plan and distributing prepetition amounts with respect thereto is essential to preserving the morale and expectations of their Employees. As such, the Debtors seek authority to (a) continue the 401(k) Plan in the ordinary course of business on a postpetition basis until the Debtors, in their discretion, seek to modify or terminate the 401(k) Plan upon requisite notice to the Employees, and (b) remit all unpaid Matching Contributions and 401(k) Deductions due and owing to the Plan Administrator for the benefit of the Employees, whether related to the period before or after the Petition Date.

**E. Paid Time Off**

39. In the ordinary course of business, and in order ensure the wellbeing and productivity of their workforce, the Debtors provide paid time off (the "Paid Time Off") to certain of their Employees. Paid Time Off accrues on a monthly basis beginning on the eligible Employee's hire date. The specific rate of accrual and maximum amount of accrued Paid Time Off varies based on position, full-time or part-time employment status and time spent with the Company. Generally, full-time Employees accrue Paid Time Off at a rate of 1.25 to 1.67 days per month, up to a maximum amount of 15 to 20 days per calendar year, while eligible part-time Employees accrue Paid Time Off at a rate of 1.00 to 1.30 days per month, up to a maximum amount

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<sup>9</sup> The Debtors distributed year-to-date vested Matching Contributions on or about August 26, 2021, which was comprised of approximately \$81,745 in cash and approximately \$38,946 in forfeitures.

of 12 to 16 days per calendar year. The Debtors encourage their workforce to take advantage of Paid Time Off and, as such, accrued and unused days may not be carried over from one year to the next. Importantly, while the accrual of Paid Time Off does not trigger an incremental, current cash payment obligation, accrued and unused days must be paid out in certain instances, including upon termination or resignation of an Employee.

40. In addition to Paid Time Off, the Debtors provide certain other customary or legally required forms of paid and unpaid leave, including, for example, (a) paid holidays, (b) leave under the Family and Medical Leave Act, (c) supplementary paid maternity leave; and (d) periodic time off due to illness (together with “Paid Time Off”, the “Paid Leave Policy”), none of which implicate an incremental payout obligation. The Debtors believe that continuation of the Paid Leave Policy is essential to maintaining Employee wellbeing during these chapter 11 cases.

41. By this Motion, the Debtors seek authority, but not direction, to pay any “cash out” amounts required under applicable law and preexisting company policy with respect to accrued but unused Paid Time Off, including upon termination or resignation of an Employee, and to continue their Paid Leave Policy in the ordinary course during the pendency of these chapter 11 cases.

**F. Severance**

42. The Debtors maintain a severance plan (the “Severance Plan”) in the ordinary course of business, which is available to both full and part-time Employees who have completed at least three (3) months of employment with the Debtors. The Severance Plan generally comes into effect upon an involuntary termination event. However, the benefits thereunder are only available to those Employees whose involuntary termination is due to certain non-causal factors, including, among other things, a general reduction in the size of the Debtors’ workforce or strategic elimination of certain positions or roles. Subject to certain exclusions, the Debtors generally offer

a lump sum payment equal to two (2) weeks' salary to those eligible Employees who have completed between three (3) and 12 months of employment with the Debtors. Employees who have completed over 12 months of service, on the other hand, generally receive a lump sum payment equal to five (5) weeks' salary or ten (10) weeks' salary, depending on the seniority of such terminated Employee.

43. As of the Petition Date, only one of the Employees is subject to, and participates in the Severance Plan. No amounts are due and owing to that Employee under the Severance Plan as of the Petition Date, and only approximately \$6,536 will become due and owing to that Employee during the postpetition period.<sup>10</sup> Many of the Debtors' Employees relied upon the existence of the Severance Plan in accepting Employment with the Debtors. As such, and in order to maintain the integrity of the Debtors relationship with their Employees and the general morale of their workforce at this critical juncture, the Debtors request authority to maintain the Severance Plan and continue making payments thereunder during the pendency of these Chapter 11 Cases. The Debtors submit that they will only make severance payments that are in compliance with section 503(c)(2) of the Bankruptcy Code.

**G. Commuter Benefits**

44. The Debtors offer Employees the opportunity to participate in a commuters benefits program (the "Commuter Benefits"), administered through Optum Bank. The Commuter Benefits allow participating Employees to deduct qualifying expenses, including amounts related to parking and public transit ticketing, from their paychecks on a pre-tax basis, and submit certain qualifying claims for after-the-fact reimbursement, each subject to an aggregate monthly limit set by the IRS. Aside from ordinary course Administrator Fees (as defined herein), the Debtors are not obligated

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<sup>10</sup> Comprised solely of (i) \$2,436.80 payable on August 31, 2021 and (ii) \$4,098.78 payable on September 15, 2021.

to pay any fees, charges or other amounts related to the Commuter Benefits and, as such, no such fees, charges or other amounts are due and owing as the Petition Date.

**H. Plan Administrator Fees**

45. The Debtors pay, through automatic deductions or otherwise, certain competitive, market-based fees and premiums (the “Administrator Fees”) to the administrators under their various Employee Benefit Programs as consideration for maintenance and day-to-day oversight of such Employee Benefits Programs. As of the Petition Date, the Debtors believe that no Administrator Fees are due and payable. In order to continue offering the employee benefits described herein, the Debtors submit that it is necessary to satisfy, and continue satisfying, all unpaid Administrator Fees as they come due, whether related to the period before or after the Petition Date.

**Basis for Relief**

**I. The Debtors are Required to Honor the Compensation and Benefits Obligations**

46. Both the Bankruptcy Code and applicable non-bankruptcy law require the Debtors to honor the Compensation and Benefits Obligations.

**A. Certain Compensation and Benefits Obligations Are Entitled to Priority Treatment**

47. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code ascribe priority treatment to certain of the Compensation and Benefits Obligations. The Debtors are required to pay such priority claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries, or sick leave pay earned by an individual and (b) contributions to an employee benefit plan). Thus, granting the relief sought herein should only affect the timing of certain payments to the Employees and should not negatively affect recoveries for general unsecured creditors. In fact, the Debtors submit that

payment of the Compensation and Benefits Obligations at this time enhances value for the benefit of all interested parties by ensuring that the Workforce continues to maintain the Debtors' operations and progress their restructuring efforts.

**B. Payment of Certain Compensation and Benefits Obligations Is Required by Law**

48. The Debtors seek authority to pay the Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf and such amounts are being held in trust. *See* 11 U.S.C. §§ 541(b)(1), (d). Further, 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 its 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). Because the Withholding Obligations may not be property of the Debtors' estates, the Debtors request that the Court authorize them to remit the Withholding Obligations to the proper parties in the ordinary course of business.

49. Similarly, various state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Go-forward payment of all amounts



related to the Workers' Compensation Program is therefore crucial to the Debtors' continued operations and the success of the Debtors' chapter 11 process.

**II. Payment of the Compensation and Benefits Obligations Is Proper Pursuant to Sections 363 and 105 of the Bankruptcy Code**

50. Section 363(c)(1) of the Bankruptcy Code expressly grants the Debtors the authority to "enter into transactions . . . in the ordinary course of business" and "use property of the estate in the ordinary course of business without notice or a hearing." The Debtors believe they are permitted to pay all amounts due under the Compensation and Benefits programs as such amounts arise in the ordinary course of the Debtors' business. Out of an abundance of caution, however, the Debtors seek entry of an order granting the relief requested herein to avoid any disruptions to their business operations.

51. The relief requested herein may also be granted by the Court pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Section 363 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). Under section 363(b), courts require only that the debtor "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted) (requiring that the debtor show a "sound business purpose" to justify its actions under section 363 of the Bankruptcy Code); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on

the merits is a near-Herculean task”). Here, payment of the Compensation and Benefits Obligations, and postpetition maintenance of all programs related thereto is essential to protecting the livelihood and morale of the Debtors’ Workforce during these chapter 11 cases.

52. In addition to sections 363(c) and 363(b), the Court may authorize payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code. Section 105(a), which codifies the bankruptcy courts’ inherent equitable powers, empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of the Compensation and Benefits Obligations under the “necessity of payment” rule (also referred to as the “doctrine of necessity”).

53. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New England Ry. Co.* 657 F.2d 570, 581 (3d Cir. 1981). There, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”).

54. The necessity of payment doctrine is designed to foster a debtor’s rehabilitation, which courts have recognized is “the paramount policy and goal of Chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the

Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”).

55. Payment of the Compensation and Benefits Obligations is warranted under the doctrine of necessity and the facts of these chapter 11 cases. The majority of the Employees and Contractors rely on the Compensation and Benefits to satisfy their daily living expenses and, oftentimes, important healthcare needs, among other things. Consequently, the Workforce will be exposed to significant hardship and potentially negative health outcomes if the Debtors are not permitted to honor obligations for unpaid Compensation and Benefits. Additionally, continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors’ ongoing business operations.

56. Moreover, the Workforce provides the Debtors with services required to conduct the Debtors’ business, and the Debtors believe that absent payment of the Compensation and Benefits Obligations, the Debtors may experience turnover and instability at this critical time. The Debtors believe that without these payments, the Workforce may become demoralized and unproductive because of the potential significant financial strain and other hardships these Employees and Contractors may face. Indeed, such Employees could elect to seek alternative employment opportunities. Additionally, a large portion of the value of the Debtors’ business is integrally supported by their Workforce, which cannot be replaced without significant efforts—efforts that might not be successful given the overhang of these chapter 11 cases. Enterprise value, as well as the value of the Debtors’ individual brands, may be materially impaired to the detriment

of all stakeholders in such a scenario. The Debtors therefore believe that payment of the Compensation and Benefits Obligations is a necessary and critical element of the Debtors' efforts to maximize value for the benefit of all stakeholders.

57. Courts in this district have recognized the importance of satisfying employee obligations in cases requesting relief similar to that requested here. *See, e.g., In re Clover Techs. Grp., LLC*, No. 19-12690 (KBO) [D.I. 131] (Bankr. D. Del. Jan. 21, 2020) (authorizing Debtors to pay prepetition compensation and benefit obligations and to maintain programs related thereto); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) [D.I. 103] (Bankr. D. Del. Dec. 3, 2019) (same); *In re Destination Maternity Corp., et al.*, No. 19-12256 (BLS) [D.I. 231] (Bankr. D. Del. Nov. 12, 2019) (same); *In re Forever 21, Inc.*, No. 19-12122 (KG) [D.I. 336] (Bankr. D. Del. Oct. 28, 2019) (same); *In re PES Holdings, LLC*, No. 19-11626 (KG) [D.I. 75] (Bankr. D. Del. July 23, 2019) (same).<sup>11</sup> Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay all Compensation and Benefits Obligations, including prepetition claims related thereto, and to maintain the Compensation and Benefits in the ordinary course of business on a postpetition basis and consistent with past practice.

### **III. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate Here**

58. Section 362(a)(1) of the Bankruptcy Code operates to stay:

[T]he commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .

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<sup>11</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” 11 U.S.C. § 362(d)(1).

59. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with claims against the Workers’ Compensation Program in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the Employees’ workers’ compensation claims (to the extent any arise in the postpetition period) could have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of certain Employees who are critical at this juncture. Such departures could cause a severe disruption in the Debtors’ business to the detriment of all stakeholders. In addition, as noted above, if the Debtors fail to maintain the Workers’ Compensation Program, state laws may prohibit the Debtors from operating in those states. Accordingly, the Debtors request a limited waiver of the automatic stay for purposes of allowing the Debtors to maintain their Workers’ Compensation Program in the ordinary course of business on a postpetition basis

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

60. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, as well as anticipated access to cash collateral and the Debtors’ proposed debtor-in-possession financing facility. Under the Debtors’ existing cash management system, the Debtors have made arrangements to readily identify checks, wire transfer requests, or automated clearing house transfers with respect to authorized payments related to this motion, as applicable. Accordingly, the Debtors believe that checks, wire transfer requests, or automated clearing house transfers that are not related to authorized payments will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested

by the Debtors, to receive, process, honor, and pay any and all checks, wire transfer requests, or automated clearing house transfers in respect of the relief requested in this motion.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

61. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. For the reasons discussed above, the relief requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases and maintain the value of their estates postpetition. Failure to receive the authorization requested herein during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations and threaten both the viability of these chapter 11 cases and the livelihood and health of the Debtors’ Employees. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003.

**Reservation of Rights**

62. Nothing contained in this motion or any actions taken by the Debtors pursuant to relief granted in the Interim Order and Final Order is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors’ or any other party-in-interest’s rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) 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 (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this motion are valid and the Debtors and all other parties-in-interest expressly reserve

their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

63. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

64. 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) the United States Attorney's Office for the District of Delaware; (d) the United States Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) counsel to the BoA Credit Agreement agent, (i) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Marjorie Crider, Esq. (marjorie.crider@morganlewis.com); Julie Frost-Davies, Esq. (julia.frost-davies@morganlewis.com)), and (ii) Robinson & Cole LLP, 1201 N. Market Street, Suite 1406, Wilmington, DE 19801 (Attn: Rachel J. Mauceri (rmauceri@rc.com)); (g) counsel to the Term B Lenders and DIP Lenders, (i) King & Spalding, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Roger Schwartz, Esq. (rschwartz@kslaw.com); Peter Montoni, Esq. (pmontoni@kslaw.com); Timothy Fesenmyer, Esq. (tfesenmyer@kslaw.com)); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, Suite 1600, Wilmington, DE 19801, (Attn:

Robert J. Dehney (rdehney@morrisonichols.com)); and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking “first day” relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m).

**No Prior Request**

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



WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** respectively, (a) granting the relief requested herein and (b) granting such other relief as is just and proper.

Dated: August 31, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

/s/ Laura Davis Jones

Laura Davis Jones (Bar No. 2436)  
Timothy P. Cairns (Bar No. 4228)  
919 North Market Street, 17th Floor  
P.O. Box 8705  
Wilmington, Delaware 19899 (Courier 19801)  
Telephone: (302) 652-4100  
Facsimile: (302) 652-4400  
Email: ljones@pszjlaw.com  
tcairns@pszjlaw.com

-and-

**GIBSON, DUNN & CRUTCHER LLP**

Scott J. Greenberg (*pro hac vice* pending)  
Joshua K. Brody (*pro hac vice* pending)  
Jason Zachary Goldstein (*pro hac vice* pending)  
200 Park Avenue  
New York, New York 10166  
Tel: (212) 351-4000  
Fax: (212) 351-4035  
Email: sgreenberg@gibsondunn.com  
jbrody@gibsondunn.com  
jgoldstein@gibsondunn.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**

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In re:	)	
	)	Chapter 11
	)	
SEQUENTIAL BRANDS GROUP, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11194 (JTD)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) CONTINUE EMPLOYEE COMPENSATION AND BENEFITS PROGRAMS  
AND (B) PAY PREPETITION CLAIMS RELATED THERETO  
AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”): (a) authorizing, but not directing, the Debtors to (i) continue, modify and discontinue the Compensation and Benefits in the ordinary course of business during these chapter 11 cases without the need for further Court approval, and (ii) pay and honor prepetition claims related to the Compensation and Benefits Obligations in the ordinary course of business and (b) 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 of Reference* from the United States District Court for the District of Delaware, dated February 29,

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> Capitalized terms used in this Interim Order but not immediately defined have the meanings given to such terms in the Motion.

2012; 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. §§ 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 final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2021, at \_\_\_:\_\_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2021, and shall be served on: (a) proposed counsel to the Debtors, (i) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Scott Greenberg (sgreenberg@gibsondunn.com) and Joshua Brody (jbrody@gibsondunn.com)); and (ii) Puchulski, Stang, Ziehl & Jones LLP, 919 North Market Street #1700, Wilmington, DE 19801 (Attn: Laura Davis Jones (ljones@pszjlaw.com)); (b) counsel to any statutory committee appointed in these chapter 11 cases; and (c) the Office of the United States Trustee for the District of Delaware. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, in their sole discretion, to: (a) continue, modify and discontinue the Compensation and Benefits in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law, and (b) pay and honor prepetition claims related to the Compensation and Benefits Obligations in the ordinary course of business, *provided* that pending entry of the Final Order, the Debtors shall not pay to or on behalf of any individual employee, any Compensation and Benefits Obligations that exceed the priority amounts set forth in sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code; *provided, further* that pending the entry of the Final Order, the Debtors shall not pay any Compensation and Benefits Obligations in excess of the following amounts:

<u>Compensation and Benefits Obligations</u>	<u>Amount</u>
Employee Compensation	\$68,000.00
Contractor Compensation	\$34,000.00
Withholding Obligations	\$2,600.00
401(k) Deductions	\$1,800.00
Unpaid Payroll Processing Fees	\$500.00
Reimbursable Expenses	\$500.00
Credit Card Obligations	\$22,000.00
Severance	\$7,000.00
<b>Total</b>	<b>\$136,400.00</b>

4. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized, but not directed, to continue the Workers' Compensation Program in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

5. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

6. The Debtors are authorized to continue to use the Credit Cards and are authorized, but not directed, to pay outstanding prepetition and postpetition balances, charges, and fees due with respect to the Credit Cards, in each case, pursuant to the terms and conditions of the Credit Card program by and between the Debtors and the Bank existing immediately before the Petition Date, or as may be amended from time to time by the Debtors and the Bank. The Bank is authorized to make advances under the Credit Cards from time to time to the Debtors, with a maximum exposure at any time up to \$50,000.00, and the Debtors are authorized to provide and maintain cash collateral to secure the Credit Card Obligations in an amount acceptable to the Bank (and the Bank is authorized to debit such cash collateral without further order of this Court for postpetition amounts due from, but unpaid by, the Debtors in connection with the Credit Cards). The Bank may rely on representations of the Debtors with respect to their use of the Credit Cards, and the Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

7. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Compensation and Benefits Obligations, including all Administrator Fees, Unpaid Payroll Processing Fees and other administrative and processing costs.

8. Nothing herein shall be deemed to authorize the payment of any amounts which violate section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

9. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the

Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) 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 (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Interim Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

10. 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 without any duty of further inquiry and without liability for following the Debtors' instructions.

11. The Debtors are authorized 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 prepetition amounts owed in connection with any Compensation and Benefits Obligations.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

13. 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) and the Local Rules are satisfied by such notice.

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

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

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



**EXHIBIT B**

**Proposed Final Order**

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

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In re:	)	
	)	Chapter 11
	)	
SEQUENTIAL BRANDS GROUP, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11194 (JTD)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) CONTINUE EMPLOYEE COMPENSATION AND BENEFITS PROGRAMS  
AND (B) PAY PREPETITION CLAIMS RELATED THERETO  
AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): (a) authorizing, but not directing, the Debtors to (i) continue, modify and discontinue the Compensation and Benefits in the ordinary course of business during these chapter 11 cases without the need for further Court approval, and (ii) pay and honor prepetition claims related to the Compensation and Benefits Obligations in the ordinary course of business and (b) 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 of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> Capitalized terms used in this Final Order but not immediately defined have the meanings given to such terms in the Motion.

this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that 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 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. All objections to entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized, but not directed, in their sole discretion, to:
  - (a) continue, modify and discontinue the Compensation and Benefits in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law, and
  - (b) pay and honor prepetition claims related to the Compensation and Benefits Obligations in the ordinary course of business, in an amount not to exceed:

<u>Compensation and Benefits Obligations</u>	<u>Amount</u>
Employee Compensation	\$68,000.00
Contractor Compensation	\$34,000.00
Withholding Obligations	\$2,600.00
401(k) Deductions	\$1,800.00
Unpaid Payroll Processing Fees	\$500.00

Reimbursable Expenses	\$500.00
Credit Card Obligations	\$22,000.00
Severance	\$7,000.00
<b>Total</b>	<b>\$136,400.00</b>

4. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized, but not directed, to continue the Workers' Compensation Program in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

5. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

6. The Debtors are authorized to continue to use the Credit Cards and are authorized, but not directed, to pay outstanding prepetition and postpetition balances, charges, and fees due with respect to the Credit Cards, in each case, pursuant to the terms and conditions of the Credit Card program by and between the Debtors and the Bank existing immediately before the Petition Date, or as may be amended from time to time by the Debtors and the Bank. The Bank is authorized to make advances under the Credit Cards from time to time to the Debtors, with a maximum exposure at any time up to \$50,000.00, and the Debtors are authorized to provide and maintain cash collateral to secure the Credit Card Obligations in an amount acceptable to the Bank (and the Bank is authorized to debit such cash collateral without further order of this Court for postpetition amounts due from, but unpaid by, the Debtors in connection with the Credit Cards). The Bank may rely on representations of the Debtors with respect to their use of the Credit Cards,

and the Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

7. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Compensation and Benefits Obligations, including all Administrator Fees, Unpaid Payroll Processing Fees and other administrative and processing costs.

8. Nothing herein shall be deemed to authorize the payment of any amounts which violate section 503(c) of the Bankruptcy Code; provided that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

9. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) 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 (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Final Order should not be construed as an admission as

to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

10. 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 without any duty of further inquiry and without liability for following the Debtors' instructions.

11. The Debtors are authorized 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 prepetition amounts owed in connection with any Compensation and Benefits Programs.

12. 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) and the Local Rules are satisfied by such notice.

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

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

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

**EXHIBIT 2**

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

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In re:	)	
	)	Chapter 11
	)	
SEQUENTIAL BRANDS GROUP, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 21-11194 (JTD)
	)	
Debtors.	)	(Jointly Administered)
	)	<b>Docket Ref. No. 10</b>

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**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) CONTINUE EMPLOYEE COMPENSATION AND BENEFITS PROGRAMS  
AND (B) PAY PREPETITION CLAIMS RELATED THERETO  
AND (II) GRANTING RELATED RELIEF**

---

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”): (a) authorizing, but not directing, the Debtors to (i) continue, modify and discontinue the Compensation and Benefits in the ordinary course of business during these chapter 11 cases without the need for further Court approval, and (ii) pay and honor prepetition claims related to the Compensation and Benefits Obligations in the ordinary course of business and (b) 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 of Reference* from the United States District Court for the District of Delaware, dated February 29,

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> Capitalized terms used in this Interim Order but not immediately defined have the meanings given to such terms in the Motion.



2012; 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. §§ 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 final hearing (the "Final Hearing") on the Motion shall be held on September 24, 2021, at 10:00 a.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on September 17, 2021, and shall be served on: (a) proposed counsel to the Debtors, (i) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: Scott Greenberg (sgreenberg@gibsondunn.com) and Joshua Brody (jbrody@gibsondunn.com)); and (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17<sup>th</sup> Floor, Wilmington, DE 19801 (Attn: Laura Davis Jones (ljones@pszjlaw.com)); (b) counsel to any statutory committee appointed in these chapter 11 cases; and (c) the Office of the United States Trustee for the District of Delaware. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, in their sole discretion, to:

(a) continue, modify and discontinue the Compensation and Benefits in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law, and (b) pay and honor prepetition claims related to the Compensation and Benefits Obligations in the ordinary course of business, *provided* that pending entry of the Final Order, the Debtors shall not pay to or on behalf of any individual employee, any Compensation and Benefits Obligations that exceed the priority amounts set forth in sections 507(a)(4) or 507(a)(5) of the Bankruptcy Code; *provided, further* that pending the entry of the Final Order, the Debtors shall not pay any Compensation and Benefits Obligations in excess of the following amounts:

<u>Compensation and Benefits Obligations</u>	<u>Amount</u>
Employee Compensation	\$68,000.00
Contractor Compensation	\$34,000.00
Withholding Obligations	\$2,600.00
401(k) Deductions	\$1,800.00
Unpaid Payroll Processing Fees	\$500.00
Reimbursable Expenses	\$500.00
Credit Card Obligations	\$22,000.00
Severance	\$7,000.00
<b>Total</b>	<b>\$136,400.00</b>

4. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized, but not directed, to continue the Workers' Compensation Program in the ordinary course. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

5. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

6. The Debtors are authorized to continue to use the Credit Cards and are authorized, but not directed, to pay outstanding prepetition and postpetition balances, charges, and fees due with respect to the Credit Cards, in each case, pursuant to the terms and conditions of the Credit Card program by and between the Debtors and the Bank existing immediately before the Petition Date, or as may be amended from time to time by the Debtors and the Bank. The Bank is authorized to make advances under the Credit Cards from time to time to the Debtors, with a maximum exposure at any time up to \$50,000.00, and the Debtors are authorized to provide and maintain cash collateral to secure the Credit Card Obligations in an amount acceptable to the Bank (and the Bank is authorized to debit such cash collateral without further order of this Court for postpetition amounts due from, but unpaid by, the Debtors in connection with the Credit Cards). The Bank may rely on representations of the Debtors with respect to their use of the Credit Cards, and the Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

7. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Compensation and Benefits Obligations, including all Administrator Fees, Unpaid Payroll Processing Fees and other administrative and processing costs.

8. Nothing herein shall be deemed to authorize the payment of any amounts which violate section 503(c) of the Bankruptcy Code; *provided* that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

9. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the

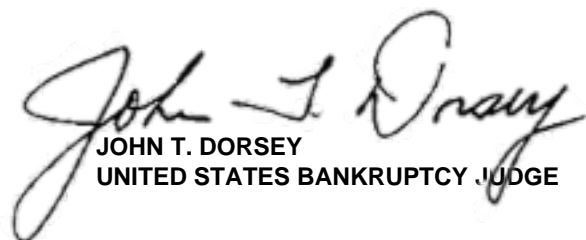
Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) 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 (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim Order are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens. Any payment made pursuant to this Interim Order should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

10. 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 without any duty of further inquiry and without liability for following the Debtors' instructions.

11. The Debtors are authorized 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 prepetition amounts owed in connection with any Compensation and Benefits Obligations.

12. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).
13. 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) and the Local Rules are satisfied by such notice.
14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.
15. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.
16. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

**Dated: September 1st, 2021**  
**Wilmington, Delaware**

  
**JOHN T. DORSEY**  
**UNITED STATES BANKRUPTCY JUDGE**