

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

In re:

Supply Source Enterprises, Inc., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-11054 (\_\_\_\_)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN  
PREPETITION CLAIMS OF TRADE CLAIMANTS, FOREIGN CLAIMS,  
LIENHOLDER CLAIMS, AND 503(b)(9) CLAIMS; (II) AUTHORIZING  
BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER  
REQUESTS RELATED THERETO; AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Proposed Interim Order” and “Proposed Final Order,” respectively), (i) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, certain prepetition amounts on account of certain Trade Claims (as defined herein), (ii) authorizing banks and other financial institutions to honor and process checks and electronic transfer requests related to the foregoing, and (iii) granting related relief. In support of this motion (this “Motion”), the Debtors respectfully state as follows:

**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over the above-captioned chapter 11 cases (these “Chapter 11 Cases”), the Debtors, property of the Debtors’ estates, and these matters under 28 U.S.C. §§ 157 and 1334 and the

---

<sup>1</sup> The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors’ headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.



*Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

3. Venue of these Chapter 11 Cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(b), 503(b), 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9013-1(m).

### **GENERAL BACKGROUND**

5. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their business and managing their properties, as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made, and no official committees have been appointed in these Chapter 11 Cases.

6. The Debtors are leading distributors of branded and private label personal protective equipment and janitorial, safety, hygiene, and sanitation products. The Debtors' key products fall into the categories of gloves, core cleaning, safety, and food service. Working directly with suppliers and vendors in the United States and Asia, the Debtors source, supply, and ship their products to a diverse customer base, including janitorial and sanitation providers, supply distributors, safety products resellers and wholesalers, and food service and food processing distributors and retailers. Additionally, the Debtors offer advanced customization capabilities, hot stamping, pad printing, and silk-screening labeling services for unique design, logo, or packaging specification requested by customers.

7. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these Chapter 11 Cases is set forth in the *Declaration of Thomas Studebaker in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), which is incorporated herein by reference.<sup>2</sup>

### **RELIEF REQUESTED**

8. By this Motion, the Debtors seek entry of the Proposed Interim Order and the Proposed Final Order (a) authorizing, but not directing, the Debtors, in their discretion, to pay Trade Claims (as defined herein) of up to \$8,000,000, of which \$6,750,000 may come due during the Interim Period (as defined below); (b) authorizing banks and other financial institutions to honor and process checks and electronic transfer requests related thereto, and (c) granting related

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

relief. By this Motion, the Debtors are only seeking to pay amount necessary to preserve the value of the Debtors' estates.

9. The Debtors further request that they be authorized, but not required, in their reasonable business judgment, to condition the payment of any Trade Claims, on the agreement of each Trade Claimant (as defined below) to continue supplying goods or services to the Debtors according to Customary Trade Terms (as defined below).

10. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services pursuant to Customary Trade Terms, then the Debtors reserve the right to seek any appropriate remedy.

#### **FACTS RELEVANT TO THIS MOTION**

11. As described in the First Day Declaration, the Debtors commenced these Chapter 11 Cases to pursue a value-maximizing going-concern sale transaction. The success of the Debtors' business derives in large part from their ability to sell a broad range of products across dozens of product categories. Moreover, the Debtors' ability to maintain their longstanding customer relationships is predicated on the ability to deliver competitive pricing. To this end, the Debtors have built a global supply chain that can respond effectively to the Debtors' product needs. This supply chain network is comprised of the Debtors' Vendors and 503(b)(9) Vendors (each as defined below, and collectively the "Trade Claimants," and the claims owed to the Trade Claimants, the "Trade Claims").

12. The Trade Claimants allow the Debtors to offer the breadth and depth of products their customers require, making it difficult for the Debtors to replace and/or consolidate vendors on short notice. Notably, the Debtors' product ordering timeline spans several months over the

course of a calendar year between the issuance of a purchase order, the manufacturing of the product, and the shipping of such product. Replacing the Debtors' vendors would, thus, not only be cost-prohibitive but could also lead to production delays or a reduction in the quality or quantity of the Debtors' inventory.

## **I. VENDORS.**

### **A. Critical Vendors.**

13. In the ordinary course of business, the Debtors incur various obligations to vendors that provide essential products for their gloves, core cleaning, safety, and food service business segments (collectively, the "Critical Vendors" and the claims owed to the Critical Vendors, the "Critical Vendor Claims"), including vendors located outside the United States (such subset of Critical Vendors, the "Foreign Vendors"). The Debtors do not typically engage with their Critical Vendors pursuant to long-term contracts. Rather, the Debtors typically purchase products from Critical Vendors on a purchase order basis. Thus, the Debtors do not have the ability to compel contractual performance across a broad base of their suppliers. Even if such rights generally existed, they may be of limited utility in this regard, as the majority of the Critical Vendors are also Foreign Vendors, who are primarily located in China.

14. Many of the Critical Vendors may refuse to continue to provide materials or services to the Debtors or may alter the terms they have historically provided to the Debtors. Any such disruption or change of historical terms would be devastating to the Debtors' business, and the resulting harm would likely far outweigh the cost of payment of the Critical Vendor Claims and jeopardize the Debtors' efforts in these Chapter 11 Cases to preserve and maximize the value of their estates as they work to effectuate a sale process.

15. The Debtors also believe that most, if not all, of the Foreign Vendors may not be familiar with chapter 11. As a result, despite the commencement of these Chapter 11 Cases and

the imposition of the automatic stay, in the event of nonpayment of prepetition amounts or upon learning of the commencement of these Chapter 11 Cases, these Foreign Vendors, who are creditors, could take actions that would cause immediate and irreparable harm to the Debtors' operations. Although the scope of the automatic stay set forth in section 362 of the Bankruptcy Code is universal, the Court is well aware of the difficulty (if not impossibility) of enforcing the stay in foreign jurisdictions.

16. The Foreign Vendors may also have guarded reactions to the U.S. bankruptcy process, as they may be unfamiliar or uncomfortable with the unique debtor in possession mechanisms at the heart of chapter 11. Accordingly, there is a significant risk that the nonpayment of even a single invoice could cause a Foreign Vendor to stop providing goods and services to the Debtors on a timely basis or completely sever its business relationship with the Debtors. If the Debtors were unable to obtain products and services from the Foreign Vendors on a timely basis or on commercially reasonable terms, the Debtors' operations would be severely harmed, diminishing the Debtors' chances of successfully effectuating a sale process in these Chapter 11 Cases.

17. Given the importance the Critical Vendors play in the Debtors' global operations, even a temporary disruption could have a negative effect on the operation of the Debtors' business. Accordingly, the Debtors seek authorization to pay, in their discretion, certain Critical Vendor Claims to ensure the Debtors' continued receipt of goods and services and favorable credit terms from the Critical Vendors.

18. The Debtors have thoroughly reviewed their business relationships and identified Critical Vendors whose particular goods or services are essential to the Debtors' operations and, if not obtained, would cause immediate and irreparable harm to the Debtors' business. In this

process, the Debtors, with the assistance of their advisors, assessed a variety of factors, including:

(a) the goods or services provided by a vendor or supplier; (b) whether goods or services are provided pursuant to a contract or on a purchase order basis; (c) whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to ship inventory or provide critical services on a postpetition basis; (d) whether failure to pay a particular vendor could result in contraction of trade terms; (e) whether the vendor is a sole-source, limited-source, or high-volume supplier for "in-demand" inventory; (f) whether alternative vendors are available that could provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business to those vendors; (g) whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor, resulting in the inability of the vendor to provide goods or services; and (h) the extent to which suppliers may have an administrative expense claim pursuant to section 503(b)(9) of the Bankruptcy Code.

19. As a result of this analysis, the Debtors have identified the universe and type of vendors that are essential to the Debtors' continuing operations.

**B. Lien Claimants.**

20. The Debtors' business depends on the uninterrupted flow of goods through their supply chain and distribution network, including common carriers, consolidators, transportation service providers, freight forwards, and other related parties (the "Shippers"), warehousemen (the "Warehousemen"), and other lien claimants (collectively, with the Shippers and Warehousemen, the "Lien Claimants," and together with the Critical Vendors, the "Vendors"), who hold claims against the Debtors (the "Lien Claims," and together with the Critical Vendor Claims, the "Vendor Claims"). The Lien Claimants are responsible for the importation, warehousing, and shipment of

the Debtors' inventory and other materials related to their ongoing operations. The Debtors' ability to operate in the ordinary course depends on their ability to transport and take delivery of inventory in a timely fashion.

21. Certain vendors ship goods to the Debtors either "free on board" ("FOB") or "delivery duty paid" ("DDP"). Under an FOB arrangement, the Debtors pay freight forwarders to transport merchandise and other goods from abroad to U.S.-based warehouses and title passes to the Debtors when merchandise and goods are loaded for shipment to the United States. Under the DDP arrangements, vendors pay to ship goods to U.S.-based warehouses and title to the merchandise and goods does not pass to the Debtors until it arrives at the warehouse. Under either arrangement, the Shipper transporting the goods may refuse (and have in the past refused) to release merchandise or other goods for shipment to the United States if they are not paid current.

22. The inability to ship or receive essential goods for use in the ordinary course of the Debtors' business would leave the Debtors unable to properly function. Failure to pay the amounts owed to the Shippers could preclude the Debtors from obtaining the property currently in the possession of the Shippers and would make it difficult or impossible for the Debtors to obtain postpetition shipping services.

23. In the ordinary course of business, the Debtors also store their goods and inventory for periods of time during the course of distribution and rely on the services of third-party Warehousemen to provide storage. If the Debtors fail to pay their Warehousemen in a timely manner, the Warehousemen may seek to assert statutory or possessory liens against the Debtors' property that is in their possession for the amounts owed, potentially blocking the Debtors' access to goods and other materials that are necessary for business operations.



24. To ensure continued access to the goods and services provided by the Vendors, the Debtors request authority, but not direction, to continue paying the Vendor Claims as they become due in the ordinary course of business in these Chapter 11 Cases. Additionally, the Debtors request the authority, but not direction, to pay prepetition Vendor Claims in an amount not exceed \$4,000,000 during the first 30 days of these Chapter 11 Cases (the “Interim Period”) and on a final basis.

## **II. 503(b)(9) CLAIMS.**

25. The Debtors have certain vendors who may be entitled to administrative expense status under section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Vendors”). Specifically, the Debtors have identified certain claims that may be entitled to priority status under section 503(b)(9) of the Bankruptcy Code because they are undisputed obligations for goods received by the Debtors in the ordinary course of business in the 20 days prior to the Petition Date (such claims, the “503(b)(9) Claims”). The Debtors seek, in their discretion, to pay certain 503(b)(9) Claims as they come due in the ordinary course of business, instead of satisfying the 503(b)(9) Claims later in, or at the conclusion of, these Chapter 11 Cases. By altering the timing of payments that certain 503(b)(9) Vendors are entitled to receive as a matter of statute, such payments may induce the individual 503(b)(9) Vendors to adhere to more favorable trade terms and conduct business with the Debtors.

26. Many of the Debtors’ relationships with the 503(b)(9) Vendors are not governed by long-term contracts. Rather, the Debtors often products from the 503(b)(9) Vendors on a purchase order basis. As a result, a 503(b)(9) Vendors may refuse to supply new orders without payment of its prepetition claims. The Debtors also believe certain 503(b)(9) Vendors could reduce the

Debtors' existing trade credit—or demand payment in cash on delivery—further diminishing the Debtors' available liquidity.

27. Accordingly, the Debtors request authority, but not direction, to continue paying the 503(b)(9) Claims as they become due in the ordinary course of business in these Chapter 11 Cases. Additionally, the Debtors request the authority, but not direction, to pay prepetition 503(b)(9) Claims in an amount not exceed \$2,750,000 during the Interim Period and \$4,000,000 on a final basis.

### **CUSTOMARY TRADE TERMS**

28. Despite the critical need for the essential goods and services provided by the Trade Claimants, the Debtors historically have sought to bargain with their vendors to achieve the lowest price, the best service and quality, and the most favorable payment terms possible for each necessary product or service. Nonetheless, the Debtors recognize that efficiency in procurement is critical to achieving profitability and, to that end, the Debtors have developed valued relationships with many vendors who have met the Debtors' standards for price, service, quality, and payment terms. The Debtors hope to maintain and improve upon those vendor relationships on a postpetition basis.

29. To further ensure that the Debtors' business operations will be minimally impacted during these Chapter 11 Cases, the Debtors will use commercially reasonable efforts to condition payment of the Trade Claims upon each Trade Claimant's agreement, as applicable, to continue supplying goods and services on terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, availability, and other programs) that were in place in the 120 days immediately prior to the

Petition Date, or on such terms that are otherwise acceptable to the Debtors, in light of customary industry practices (the “Customary Trade Terms”).

**BASIS FOR RELIEF**

**I. THE COURT SHOULD AUTHORIZE, BUT NOT DIRECT, THE DEBTORS TO PAY THE TRADE CLAIMS IN THEIR DISCRETION.**

**A. The Trade Claimants Are Essential to Avoiding any Unexpected or Inopportune Interruption to the Debtors’ Business Operations.**

30. The Debtors believe the goods and services provided by the Trade Claimants are necessary to ensure that there are not any unexpected or inopportune interruptions to the Debtors’ operations. The Trade Claimants are the most cost-efficient and, in many cases, the only source from which the Debtors can procure critical goods and services within a timeframe that would permit the Debtors to avoid unanticipated interruptions, delays, or shutdowns in their operations. In addition, the Trade Claimants may argue that they are not subject to the jurisdiction of this Court or the provisions of the Bankruptcy Code that would otherwise protect the Debtors’ assets and business operations and may take actions that would disrupt the Debtors’ operations.

31. Any failure to pay the Trade Claims could, in the Debtors’ business judgment, result in many of the Trade Claimants refusing to provide necessary goods and services to the Debtors. Any disruption, delay, or shutdown in the Debtors’ operations resulting from a refusal by the Trade Claimants to do business with the Debtors on a postpetition basis would have disastrous effects on the Debtors’ business and undermine the Debtors’ ability to preserve and maximize the value of their estates. Maintaining the business and avoiding disruptions in their operations until the consummation of a sale process is in the best interest of the Debtors, their creditors, and stakeholders.

32. As noted above, the Debtors have reviewed their accounts payable and undertaken a process to identify those vendors who are essential to avoid any disruption of their operations.

The Debtors have further developed certain procedures that, if and when implemented, in their reasonable business judgment, will ensure that the Trade Claimants receiving payment on account of prepetition claims will continue to provide goods and services to the Debtors based upon Customary Trade Terms.

33. The Debtors believe that authority to pay the Trade Claims is vital to their efforts to preserve and maximize the value of their estates and to their sale efforts. If the Debtors are not authorized to pay the Trade Claims, the Debtors believe that many of the Trade Claimants may refuse to do business with the Debtors and some may have to cease their own operations. Such a result would be devastating to the Debtors' efforts to successfully navigate these Chapter 11 Cases, to the detriment of the Debtors' estates and creditors. Moreover, the continued availability of trade credit in amounts and on terms consistent with the Debtors' prepetition trade terms is critical. The retention or reinstatement of the Customary Trade Terms will enable the Debtors to maximize the value of their business.

34. For the foregoing reasons, the Debtors respectfully submit that payment of the Trade Claims is in the best interests of the Debtors, their estates, and creditors.

**B. Payment of the Trade Claims is Warranted Pursuant to Sections 105(a) and 363 of the Bankruptcy Code.**

35. The Court may authorize payment of the Trade Claims pursuant to section 363 of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides that a 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 this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Hancock Fabrics, Inc.*, Case No. 07-10353 (BLS) (Bankr. D. Del. Apr. 13, 2007) (authorizing payment of prepetition claims to certain vendors deemed critical by debtors pursuant to section 363); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr.

S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain claims).

36. Additionally, section 105(a) of the Bankruptcy Code empowers a bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Bankruptcy courts have invoked the equitable power of section 105 of the Bankruptcy Code to authorize the postpetition payment of prepetition claims of “critical vendors” where such payment is necessary to preserve the value of a debtor’s estate. *See, e.g., Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”). Courts have likewise acknowledged that “[u]nder [section] 105, the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989)); *see In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (citing *In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972)) (holding that the court is authorized under section 105(a) of the Bankruptcy Code to allow immediate payment of prepetition claims of vendors found to be critical to the debtor’s continued operation).

37. In a long line of well-established cases, courts have consistently permitted postpetition payment of prepetition obligations when necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C. & S. W. Ry. Co.*, 106 U.S. 286, 312 (1882) (permitting payment of pre-receivership claim to prevent “stoppage of [crucial] business relations”); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to [the commencement of

the bankruptcy case] is essential to the continued operation of the . . . [business] during [the bankruptcy case], payment may be authorized even if it is made out of [the] corpus”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases).

38. This legal principle—known as the “doctrine of necessity”—functions in chapter 11 cases as a mechanism by which a bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See Just for Feet*, 242 B.R. at 826 (finding that “to invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is critical to the debtor’s [continued operation]”); *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that “[i]f payment of a prepetition claim is essential to the continued operation of [the debtor], payment may be authorized”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation). The doctrine of necessity is frequently invoked early in a bankruptcy case, particularly in connection with those Bankruptcy Code sections that relate to payment of prepetition claims. In one case, the court indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary ‘to permit the greatest likelihood of . . . payment of creditors in full or at least proportionately.’” *In re Structurelite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S. D. Ohio 1988).

39. As explained above, the goods and services provided by the Trade Claimants are essential to ensure that there is no disruption in the operation of the Debtors’ business. The Debtors submit that the total amount to be paid to the Trade Claimants is minimal compared to the

importance and necessity of the Debtors' uninterrupted receipt of the necessary goods and services provided by the Trade Claimants. Moreover, the Debtors do not believe there are cost-effective or readily accessible alternatives to the Trade Claimants. In light of the foregoing, the Debtors submit that payment of the Trade Claims is a sound discretion of their business judgment and is plainly in the best interests of their estates and creditors.

40. Accordingly, the Debtors submit that the Court should exercise its equitable power to grant the relief requested herein.

**C. The Court Should Authorize Payment of the Trade Claims as a Valid Exercise of the Debtors' Fiduciary Duties.**

41. Authority for satisfying the Trade Claims also may be found in sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors, operating their business as debtors in possession under sections 1107(a) and 1108, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.*

42. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," and also when the payment was to "sole suppliers of a given product." *Id.* at 497-98. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant.  
Second, unless it deals with the claimant, the debtor risks the

probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.*

43. Payment of certain of the Trade Claims meets each element of the *CoServ* court's standard. As described above, the Debtors believe that certain Trade Claimants will refuse, or be unable to, provide goods or services to the Debtors on a postpetition basis if their prepetition balances are not paid, thereby creating the significant risk that the Debtors will experience an unexpected or inopportune interruption to their operations. Any such interruption would diminish estate value and frustrate the Debtors' pursuit of a plan of reorganization. The harm and economic disadvantage that would stem from the failure of any of the Trade Claimants to perform is disproportionate to the amount of Trade Claims.

44. Finally, the Debtors have examined other options short of payment of the Trade Claims and have determined that, to avoid an unexpected or inopportune interruption to their business operations, there exists no practical alternative to their payment of such claims. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Trade Claims.

**D. Payment of Certain Trade Claims Will Have Little to No Effect on Creditor Recoveries in these Chapter 11 Cases.**

45. As stated previously, certain of the Trade Claims may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code. Certain of the Trade Claimants may be entitled to request an administrative expense priority claim to the extent that the Debtors received goods, in the ordinary course of business, within the 20 day period immediately prior to the Petition Date. Because such claims are entitled to priority status under section 503(b)(9) of the Bankruptcy



Code, the Debtors must pay the claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A) (requiring payment in full of claims entitled to priority). Although section 503(b)(9) of the Bankruptcy Code does not specify a time for payment of these expenses, bankruptcy courts have the discretion to allow for distributions to administrative claimants prior to confirmation if the debtor has the ability to pay and there is a need to pay. Indeed, nothing in the Bankruptcy Code prohibits the Debtors from paying such claims sooner if they choose to do so, or the Court from exercising its discretion to authorize the postpetition payment of such obligations prior to confirmation of a chapter 11 plan. Thus, for those Trade Claims that would otherwise qualify for administrative expense status pursuant to section 503(b)(9) of the Bankruptcy Code, payment of these Trade Claims now affects the timing, but not the amount, of such payment. As a result, the Debtors respectfully submit that they should have the authority (but not the direction) to pay such claims, in the ordinary course of business, during the pendency of these Chapter 11 Cases, to the extent necessary to preserve and maximize the value of the Debtors' estates.

46. Since the enactment of section 503(b)(9) of the Bankruptcy Code, courts in this jurisdiction have exercised their discretion and have routinely authorized the payment of prepetition claims under section 503(b)(9) of the Bankruptcy Code at the outset of a chapter 11 case. *See, e.g., In re Restoration Forest Prod. Group, LLC*, No. 24-10120 (KBO) (Bankr. D. Del. Feb. 22, 2024) (approving payment of claims under section 503(b)(9) of the Bankruptcy Code); *In re The Rockport Co., LLC*, No. 23-10774 (BLS) (Bankr. D. Del. July 10, 2023) (same); *In re DeCurtis Holdings, LLC*, No. 23-10548 (JKS) (Bankr. D. Del. June 5, 2023) (same); *In re Trittek*

*Int'l Inc.*, No. 23-10520 (TMH) (Bankr. D. Del. May 22, 2023) (same); *In re Boxed, Inc.*, No. 23-10397 (BLS) (Bankr. D. Del. Apr. 25, 2023) (same).<sup>3</sup>

47. As explained above, it is critical to the Debtors' chapter 11 efforts that they continue to receive goods and services, as applicable, from the Trade Claimants on an uninterrupted basis throughout these *Chapter 11* Cases. The Debtors believe that without the relief requested herein, many of the Trade Claimants may cease delivering goods or providing services to the Debtors, which could have devastating consequences for the Debtors and their estates.

48. *Accordingly*, for all of the foregoing reasons, the Debtors submit that cause exists for granting the relief requested herein.

## **II. FAILURE TO MAKE TIMELY PAYMENT OF THE LIEN CLAIMS WOULD THREATEN THE DEBTORS' ABILITY TO OPERATE.**

49. As noted above, certain Lien Claimants may be entitled to assert certain possessory liens on the Debtors' goods in their possession under applicable non-bankruptcy law (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded *from* the automatic stay. As a result, the Debtors anticipate that certain Lien Claimants may assert or perfect liens, simply refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' inventory or products, mere possession or retention could disrupt the Debtors' operations.

---

<sup>3</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.

50. Furthermore, paying the Lien Claims should not impair unsecured creditor recoveries in these Chapter 11 Cases in instances where the amount owed to a Lien Claimant is less than the value of the goods that *could* be held to secure a Lien Claim, leaving such Lien Claimant as a fully secured creditor of the Debtors' estates.<sup>4</sup> In such instances, payment now only provides such party with what they may be entitled to under a chapter 11 plan, without any interest costs that might accrue during these Chapter 11 Cases. Conversely, all creditors will benefit from the seamless transition of the Debtors' operations into bankruptcy.

**III. THE COURT SHOULD AUTHORIZE THE BANKS TO HONOR AND PROCESS THE DEBTORS' PAYMENTS ON ACCOUNT OF THE TRADE CLAIMS.**

51. The Debtors also request the Court to authorize the Debtors' banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all of the Debtors' banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

**RESERVATION OF RIGHTS**

52. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any appropriate party-in-interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors or rights of setoff asserted against the Debtors; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption,

---

<sup>4</sup> To the extent that a Lien Claim is greater than the value of the goods securing such claim, the Debtors will not pay the Lien Claimant the unsecured portion of such Lien Claim, unless the Debtors determine, in the exercise of their sound business judgment, that such Lien Claimant satisfies the requirement for payment as a Critical Vendor.

adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

**IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY**

53. The Court may grant the relief requested in this Motion immediately if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bank. P. 6003; *In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). The Third Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the Third Circuit has instructed that irreparable harm is that which “cannot be redressed by a legal or an equitable remedy following a trial.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). The Debtors submit that, for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

54. Accordingly, the Debtors request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**NOTICE**

55. Notice of this motion will be provided to the following parties or their respective counsel: (a) the Office of the United States Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (c) the DIP Lender; (d) the Prepetition Secured Parties; (e) the Internal Revenue Service; (f) the United States Attorney's Office for the District of Delaware; (g) the state attorneys general for all states in which the Debtors conduct business; (h) banks and financial institutions where the Debtors maintain accounts; (i) the Trade Claimants; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within 48 hours of the entry of an order with respect to this Motion, the Debtors will serve copies of this Motion and any order entered with respect to this Motion as required by Local Rule 9013-1(m). The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice is necessary.

*[Remainder of Page Intentionally Left Blank]*

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that this Court enter the Proposed Interim Order and the Proposed Final Order, substantially in the forms annexed hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: May 21, 2024  
Wilmington, Delaware

Respectfully submitted,

*/s/ M. Blake Cleary*

---

M. Blake Cleary (No. 3614)  
R. Stephen McNeill (No. 5210)  
Katelin A. Morales (No. 6683)  
**POTTER ANDERSON & CORROON LLP**  
1313 N. Market Street, 6<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Telephone: (302) 984-6000  
Facsimile: (302) 658-1192  
Email: bcleary@potteranderson.com  
rmcneill@potteranderson.com  
kmorales@potteranderson.com

-and-

Felicia Gerber Perlman  
Bradley Thomas Giordano  
Carole M. Wurzelbacher  
**McDERMOTT WILL & EMERY LLP**  
444 West Lake Street  
Chicago, IL 60606-0029  
Telephone: (312) 372-2000  
Facsimile: (312) 984-7700  
Email: fperlman@mwe.com  
bgiordano@mwe.com  
cwurzelbacher@mwe.com

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**Proposed Interim Order**

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

In re:

Supply Source Enterprises, Inc., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-11054 (\_\_\_)

(Joint Administration Requested)

Re: Docket No. \_\_

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN  
PREPETITION CLAIMS OF TRADE CLAIMANTS, FOREIGN CLAIMS,  
LIENHOLDER CLAIMS, AND 503(b)(9) CLAIMS, (II) AUTHORIZING  
BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER  
REQUESTS RELATED THERETO, AND (III) 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”), (i) authorizing, but not directing, the Debtors, in their discretion, to pay certain Trade Claims in the ordinary course of business, (ii) authorizing banks and other financial institutions to honor and process check and electronic transfer requests related thereto, and (iii) 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 in accordance with 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 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 these Chapter 11 Cases is proper pursuant

---

<sup>1</sup> The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors’ headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.



to 28 U.S.C. §§ 1408 and 1409; 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 determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates, their creditors and all parties in interest; and upon all of the proceedings had before the Court 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 \_\_\_\_\_, 2024, at \_\_: \_\_ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served so as to be **received** by the following parties, **by no later than 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2024**: (i) proposed counsel to the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6<sup>th</sup> Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com), R. Stephen McNeill (rmcneill@potteranderson.com), and Katelin A. Morales (kmorales@potteranderson.com)); (ii) Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Benjamin A. Hackman (benjamin.a.hackman@usdoj.gov) and Malcolm M. Bates (malcolm.m.bates@usdoj.gov)); (iii) counsel for the DIP Lender and the Prepetition Secured Parties, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Ray C. Schrock, Esq. (ray.schrock@weil.com) and Kevin Bostel, Esq. (kevin.bostel@weil.com)) and (b) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq.

(shapiro@rlf.com)); and (iv) if any statutory committee has been appointed in these Chapter 11 Cases, counsel to such committee (collectively, the “Notice Parties”).

3. The Debtors are authorized, but not directed, to pay, in their discretion, the Trade Claims up to \$6,750,000 during the Interim Period; *provided, however*, that the Debtors are not authorized to pay any Trade Claims held by vendors that are bound by an executory contract to continue to supply goods or services to the Debtors, except for claims falling under section 503(b)(9) of the Bankruptcy Code. For the avoidance of doubt, nothing in this Interim Order authorizes the Debtors to pay the prepetition claims of any professionals.

4. The Debtors are authorized, but not directed, in their reasonable business judgment, to condition payment of the Trade Claims upon such Trade Claimant’s agreement to continue supplying goods or services to the Debtors on terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, availability, and other programs) that were in place in the 120 days immediately prior to the Petition Date, or on such terms that are otherwise acceptable to the Debtors in light of Customary Trade Terms. The Debtors shall provide a copy of this Interim Order to the applicable party prior to such party’s acceptance of any payment hereunder. Any party that accepts payment from the Debtors on account of a Trade Claim shall be deemed to have agreed to the terms and provisions of this Interim Order, and if such party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with Customary Trade Terms after agreeing to do so, then the Debtors reserve the right to seek any appropriate remedy.

5. Nothing contained herein is or should be construed as: (i) an implication or admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors’ or any other party-in-interest’s rights to dispute the amount of, basis for, or validity of any claim against

the Debtors, (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (iv) a promise to pay any claim, (v) a concession by the Debtors that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to the Motion are valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved), (vi) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease between the Debtors and any third party under section 365 of the Bankruptcy Code, (vii) a waiver of the obligation of any party in interest to file a proof of claim, or (viii) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Interim Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

6. The banks on which checks are 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.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests made in payment of the prepetition obligations approved herein that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any prepetition claims of the Trade Claimants.

8. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Interim Order, including the following information: (a) the names of the payees; (b) the date,

category, nature, and amount of payment; and (c) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to counsel to the DIP Lender on a confidential basis on May 31, 2024 and every Friday thereafter.

9. Upon the Debtors' payment of any Lien Claim, any lien securing same shall be immediately released, void, and of no further force and effect, without further action by the Debtors.

10. All payments authorized by this Interim Order may be made solely to the extent in compliance with the Approved DIP Budget (as defined in the interim or final order authorizing the Debtors to obtain postpetition senior secured financing and related relief) then in effect.

11. This Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the interim relief requested is necessary to avoid immediate and irreparable harm.

12. The notice requirement of Bankruptcy Rule 6004(a) is waived.

13. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon entry hereof.

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

15. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Interim Order.

**EXHIBIT B**

**Proposed Final Order**

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

|   |  |
|---|--|
| In re:<br><br>Supply Source Enterprises, Inc., <i>et al.</i> , <sup>1</sup><br><br>Debtors. | Chapter 11<br><br>Case No. 24-11054 (____)<br><br>(Joint Administration Requested)<br><br>Re: Docket Nos. ____ |
|---|--|

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN  
PREPETITION CLAIMS OF TRADE CLAIMANTS, FOREIGN CLAIMS,  
LIENHOLDER CLAIMS, AND 503(b)(9) CLAIMS, (II) AUTHORIZING  
BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER  
REQUESTS RELATED THERETO, AND (III) 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 a final order (this “Final Order”), (i) authorizing, but not directing, the Debtors, in their discretion, to pay certain Trade Claims in the ordinary course of business, (ii) authorizing banks and other financial institutions to honor and process check and electronic transfer requests related thereto, and (iii) 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 in accordance with 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 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 these Chapter 11 Cases is proper pursuant

---

<sup>1</sup> The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors’ headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

to 28 U.S.C. §§ 1408 and 1409; 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 determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates, their creditors and all parties in interest; and upon all of the proceedings had before the Court after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT,**

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to pay, in their discretion, the Trade Claims; *provided that* the Debtors shall only be authorized to pay Trade Claims up to \$8,000,000 on account of prepetition Trade Claims on a final basis; *provided further, however,* that the Debtors are not authorized to pay any Trade Claims held by vendors that are bound by an executory contract to continue to supply goods or services to the Debtors, except for claims falling under section 503(b)(9) of the Bankruptcy Code. For the avoidance of doubt, nothing in this Interim Order authorizes the Debtors to pay the prepetition claims of any professionals.
3. The Debtors are authorized, but not directed, to, in their reasonable business judgment, condition payment of the Trade Claims, upon such Trade Claimant's agreement to continue *supplying* goods or services to the Debtors on terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, availability, and other programs) that were in place in the 120 days immediately prior to the Petition Date, or on such terms that are otherwise acceptable to the Debtors, in light of Customary Trade Terms. The Debtors shall provide a copy of this Final Order to the applicable party prior to such party's acceptance of any payment hereunder. Any party that

accepts payment from the Debtors on account of a Trade Claim shall be deemed to have agreed to the terms and provisions of this Final Order, and if such party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with Customary Trade Terms after agreeing to do so, then the Debtors reserve the right to seek any appropriate remedy.

4. Nothing contained herein is or should be construed as: (i) an implication or admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any other party-in-interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (iv) a promise to pay any claim, (v) a concession by the Debtors that any liens (contractual, *common* law, statutory or otherwise) satisfied pursuant to the Motion are valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved), (vi) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease between the Debtors and any third party under section 365 of the Bankruptcy Code, (vii) a waiver of the obligation of any party in interest to file a proof of claim, or (viii) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Final Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

5. The banks on which checks are 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.



6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests made in payment of the prepetition obligations *approved* herein that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any prepetition claims of the Trade Claimant.

7. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Final Order, including the following information: (a) the names of the payees; (b) the date, category, nature, and amount of payment; and (c) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to counsel to the DIP Lender on a confidential basis on May 31, 2024 and every Friday thereafter.

8. Upon the Debtors' payment of any Lien Claim, any lien securing same shall be immediately released, void, and of no further force and effect, without further action by the Debtors.

9. All payments authorized by this Final Order may be made solely to the extent in compliance with the Approved DIP Budget (as defined in the interim or final order authorizing the Debtors to obtain postpetition senior secured financing and related relief) then in effect.

10. This Final Order shall be immediately effective and enforceable upon its entry. The fourteen-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

11. All objections to entry of this Final Order, to the extent not withdrawn or settled, are overruled.

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

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