

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al.</i> ¹)	
)	Case No. 24-90377 (MI)
Debtors.)	(Joint Administration Requested)
)	Re: Docket No. 12

**ORDER (I) AUTHORIZING THE DEBTORS (A) TO PAY
PREPETITION WAGES, SALARIES, OTHER COMPENSATION,
AND REIMBURSABLE EXPENSES AND (B) TO CONTINUE EMPLOYEE
BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), pursuant to sections 105(a), 363(b), 503(c)(1), and 507 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and the Bankruptcy Local Rules, (a) authorizing the Debtors (i) to pay prepetition wages, salaries, compensation, and reimbursable expenses to employees and independent contractors as well as remit amounts withheld from the Compensation to applicable taxing authorities and applicable third party benefits administrators, (ii) to continue providing employees with benefits pursuant to the Employee Benefits Programs in the ordinary course of business, including payment of certain prepetition obligations related thereto and (b) granting related relief; all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this

¹ The last four digits of Zachry Holdings, Inc.’s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kcellc.net/zhi>. The location of the Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

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



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 due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Bankruptcy Local Rules, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “**Hearing**”); and upon consideration of the First Day Declaration and the record of the Hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and all other parties in interest, and that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized to pay, honor, and/or reimburse all prepetition and postpetition obligations on account of the Compensation and Benefits as set forth in the Motion, including, without limitation, Compensation Obligations, Reimbursement Obligations, Withholdings Obligations, Employee Benefits Obligations, 401(k) Plan Obligations, and Independent Contractor Obligations, subject to and in accordance with the Cash Collateral Order (defined below); *provided*, that the Debtors shall not make any payments to any member of their employees or Independent Contractors that exceed the priority cap amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; *provided further*, that nothing in this Order shall be construed to authorize the Debtors to pay, honor, or implement the Incentive and Retention Bonus Plans, as such programs are described in the Motion, without a further order from the Court.

2. The Debtors are authorized to continue, administer, modify, change, and/or discontinue the Compensation and Benefits and to implement new programs, policies, and

benefits, in the ordinary course of business and, consistent with past practices, using the business judgment standard of care, during these chapter 11 cases and without need for further Court approval, subject to applicable law.

3. The Debtors are authorized, in their sole discretion, to transmit any deductions previously withheld or deducted from the employee payroll on account of the Benefits to the appropriate third party recipient, subject to and in accordance with the Cash Collateral Order.

4. The Debtors are authorized to pay any and all Withholding Obligations, including, but not limited to, all local, state, and federal withholding and payroll-related taxes, social security taxes, Medicare taxes, or similar taxes related to the Employee Benefits Programs, whether withheld from employees' wages or paid directly by the Debtors to governmental entities and whether such taxes relate to the period before or after the Petition Date, subject to and in accordance with the Cash Collateral Order.

5. The Debtors are authorized to reimburse the employees for all Reimbursable Expenses and to make direct payments to third parties on account of amounts owed in connection with the Reimbursable Expenses, subject to and in accordance with the Cash Collateral Order.

6. The Debtors are authorized to "cash out" unpaid PTO upon termination of an employee to the extent required by applicable non-bankruptcy law.

7. Neither this Order, nor any payments made by the Debtors pursuant to the Motion or this Order, shall be deemed to change the classification of any claim or to in any way change the rights or create new rights of any employees or Independent Contractors or any other person, including, without limitation, the creation of any right to payment entitled to administrative expense priority pursuant to sections 503 and 507 of the Bankruptcy Code, and subject to and in accordance with the Cash Collateral Order.

8. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are, in the exercise of their reasonable business judgment, authorized, but not directed, to terminate the Deferred Compensation Plan, effective as of the Petition Date; *provided that* before terminating the Deferred Compensation Plan, the Debtors shall provide twenty-one (21) days advance notice to the U.S. Trustee and any statutory committee appointed in these Chapter 11 Cases. Upon expiration of the notice period, the Debtors shall be authorized to terminate the Deferred Compensation Plan unless any notice party has objected to such payment in writing to the Debtors. To the extent that the parties are unable to resolve any such objection within five (5) business days of receipt, the applicable notice party shall file a written objection with the Court.

9. The Debtors are authorized to pay any amounts deferred or contributed prepetition to the Deferred Compensation Plan, subject to the cap set forth in section 507(a)(4) of the Bankruptcy Code.

10. Nothing herein shall prejudice the rights of the Debtors to seek additional or further relief from the Court with respect to the Deferred Compensation Plan.

11. Amounts, if any, of Participants' postpetition base salary contributed or otherwise deferred to the Deferred Compensation Plan in connection with postpetition services provided to the Debtors by the Participants constitute administrative expenses of the Debtors and shall be paid to Participants pursuant to Section 503(b)(1)(A) of the Bankruptcy Code and Section 409A, subject to and in accordance with the Cash Collateral Order.

12. The Debtors shall maintain a matrix/schedule of any amounts paid related to the Compensation and Benefits, made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; and (d) the Debtor or Debtors that made

the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, and any statutory committee appointed in these Chapter 11 Cases every 30 days beginning upon entry of this Order.

13. The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic fund transfers drawn on the Debtors' bank accounts relating to the Employee Compensation and Benefits, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, *provided* that sufficient funds are available in the applicable accounts to make the payments.

14. The Debtors are authorized to execute and deliver such documents and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

15. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors' use of cash collateral (any such order, including, for the avoidance of doubt, the approved cash collateral budget, a "**Cash Collateral Order**"). To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Order and the terms of any Cash Collateral Order, the terms of the Cash Collateral Order will govern.

16. Nothing contained in the Motion or this Order, nor any action taken pursuant thereto, nor any payment made pursuant to the authority granted thereby, is intended to be or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of

the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

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

18. 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 Bankruptcy Local Rules are satisfied by such notice.

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

20. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

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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 due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Bankruptcy Local Rules, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “**Hearing**”); and upon consideration of the First Day Declaration and the record of the Hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and all other parties in interest, and that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized to pay, honor, and/or reimburse all prepetition and postpetition obligations on account of the Compensation and Benefits as set forth in the Motion, including, without limitation, Compensation Obligations, Reimbursement Obligations, Withholdings Obligations, Employee Benefits Obligations, 401(k) Plan Obligations, and Independent Contractor Obligations, subject to and in accordance with the Cash Collateral Order (defined below); *provided*, that the Debtors shall not make any payments to any member of their employees or Independent Contractors that exceed the priority cap amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; *provided further*, that nothing in this Order shall be construed to authorize the Debtors to pay, honor, or implement the Incentive and Retention Bonus Plans, as such programs are described in the Motion, without a further order from the Court.

2. The Debtors are authorized to continue, administer, modify, change, and/or discontinue the Compensation and Benefits and to implement new programs, policies, and benefits, in the ordinary course of business and, consistent with past practices, using the business judgment standard of care, during these chapter 11 cases and without need for further Court approval, subject to applicable law.

3. The Debtors are authorized, in their sole discretion, to transmit any deductions previously withheld or deducted from the employee payroll on account of the Benefits to the appropriate third party recipient, subject to and in accordance with the Cash Collateral Order.

4. The Debtors are authorized to pay any and all Withholding Obligations, including, but not limited to, all local, state, and federal withholding and payroll-related taxes, social security taxes, Medicare taxes, or similar taxes related to the Employee Benefits Programs, whether withheld from employees' wages or paid directly by the Debtors to governmental entities and whether such taxes relate to the period before or after the Petition Date, subject to and in accordance with the Cash Collateral Order.

5. The Debtors are authorized to reimburse the employees for all Reimbursable Expenses and to make direct payments to third parties on account of amounts owed in connection with the Reimbursable Expenses, subject to and in accordance with the Cash Collateral Order.

6. The Debtors are authorized to "cash out" unpaid PTO upon termination of an employee to the extent required by applicable non-bankruptcy law.

~~7. The Debtors shall not make any bonus, incentive, retention, or severance payments to any Insiders (as such term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.~~

7. ~~8.~~ Neither this Order, nor any payments made by the Debtors pursuant to the Motion or this Order, shall be deemed to change the classification of any claim or to in any way change the rights or create new rights of any employees or Independent Contractors or any other person, including, without limitation, the creation of any right to payment entitled to administrative expense priority pursuant to sections 503 and 507 of the Bankruptcy Code, and subject to and in accordance with the Cash Collateral Order.

8. ~~9.~~ Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are, in the exercise of their reasonable business judgment, authorized, but not directed, to terminate the Deferred Compensation Plan, effective as of the Petition Date; *provided that* before terminating the Deferred Compensation Plan, the Debtors shall provide twenty-one (21) days advance notice to the U.S. Trustee and any statutory committee appointed in these Chapter 11 Cases. Upon expiration of the notice period, the Debtors shall be authorized to terminate the Deferred Compensation Plan unless any notice party has objected to such payment in writing to the Debtors. To the extent that the parties are unable to resolve any such objection within five (5) business days of receipt, the applicable notice party shall file a written objection with the Court.

9. ~~10.~~ The Debtors are authorized to pay any amounts deferred or contributed prepetition to the Deferred Compensation Plan, subject to the cap set forth in section 507(a)(4) of the Bankruptcy Code.

10. ~~11.~~ Nothing herein shall prejudice the rights of the Debtors to seek additional or further relief from the Court with respect to the Deferred Compensation Plan.

11. ~~12.~~ Amounts, if any, of Participants' postpetition base salary contributed or otherwise deferred to the Deferred Compensation Plan in connection with postpetition services provided to the Debtors by the Participants constitute administrative expenses of the Debtors and

shall be paid to Participants pursuant to Section 503(b)(1)(A) of the Bankruptcy Code and Section 409A, subject to and in accordance with the Cash Collateral Order ~~provided that any such administrative expense status claim shall be junior and subordinate to the carve out and approved superpriority administrative expense claims provided for in any order, including a Cash Collateral Order.~~

12. ~~13.~~ The Debtors shall maintain a matrix/schedule of any amounts paid related to the Compensation and Benefits, made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; and (d) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, and any statutory committee appointed in these Chapter 11 Cases every 30 days beginning upon entry of this Order.

13. ~~14.~~ The Debtors' banks and financial institutions shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, pay, and, if necessary, reissue any and all checks, including prepetition checks that the Debtors reissue postpetition, and electronic fund transfers drawn on the Debtors' bank accounts relating to the Employee Compensation and Benefits, whether such checks were presented or funds transfer requests were submitted prior to or subsequent to the Petition Date, *provided* that sufficient funds are available in the applicable accounts to make the payments.

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by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors' use of cash collateral (any such order, including, for the avoidance of doubt, the approved cash collateral budget, a "**Cash Collateral Order**"). To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Order and the terms of any Cash Collateral Order, the terms of the Cash Collateral Order will govern.

16. ~~17.~~ Nothing contained in the Motion or this Order, nor any action taken pursuant thereto, nor any payment made pursuant to the authority granted thereby, is intended to be or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

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

20. ~~21.~~ This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Summary report:	
Litera Compare for Word 11.6.0.100 Document comparison done on 5/21/2024 8:57:33 PM	
Style name: 2 WC StandardSet	
Intelligent Table Comparison: Active	
Original DMS: iw://americasdms.whitecase.com/AMERICAS/127048702/1	
Modified DMS: iw://americasdms.whitecase.com/AMERICAS/127048702/2	
Changes:	
<u>Add</u>	14
Delete	17
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	31