

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

In re:)	Chapter 11
)	
LOOT CRATE, INC., <i>et al.</i> , ¹)	Case No. 19-11791 ()
)	
Debtors.)	(Joint Administration Requested)
)	

**MOTION OF THE DEBTORS FOR INTERIM AND FINAL
ORDERS (I) AUTHORIZING (A) THE DEBTORS TO PAY CERTAIN PRE-PETITION
CLAIMS OF CRITICAL VENDORS, AND (B) PROCEDURES RELATED
THERETO, AND (II) GRANTING RELATED RELIEF**

Loot Crate, Inc., Loot Crate Holdings, Inc., LC Funding, Inc., and Loot Crate Parent, Inc. (collectively, the “*Debtors*”) file this Motion (the “*Motion*”) for an order, substantially in the form attached hereto as Exhibit A, (a) authorizing, but not directing, the Debtors to pay certain pre-petition claims in an amount not to exceed \$1,000,000 (of which only \$500,000 would be available unless and until a Final Order is entered) (for the applicable period, the “*Vendor Claims Cap*”) of (i) critical vendors (collectively, the “*Critical Vendors*” whose claims shall be identified herein collectively as the “*Critical Vendor Claims*”); and (b) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

Background

1. On August 11, 2019 for Loot Crate Inc. and Loot Crate Holdings, Inc., and on August 12, 2019 for LC Funding, Inc. and Loot Crate Parent, Inc. (for each debtor, the “*Petition Date*”), the Debtors filed voluntary petitions with this Court under Chapter 11 of Title 11 of the United States Code (the “*Bankruptcy Code*”). By a motion filed on the Petition Date, the

¹ The Debtors are the following four entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Loot Crate, Inc. (7119); Loot Crate Holdings, Inc.; LC Funding, Inc.; and Loot Crate Parent, Inc. The Debtors’ noticing address in these Chapter 11 cases is 3401 Pasadena Avenue, Los Angeles, CA 90031.

Debtors have requested that their Chapter 11 cases (collectively, the “*Cases*”) be consolidated for procedural purposes only and administered jointly. The Debtors are authorized to continue to operate and manage their businesses and assets as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors operate a subscription box service that caters to fandom and enthusiasts through “crates” curated with “geek and gamer products” each month. The Debtors partner with industry leaders in entertainment, gaming, sports, and pop culture to deliver monthly themed crates, produce interactive experiences and digital content, and film original video productions. Products include exclusive shirts, gear, and gadgets, as well as limited edition collectibles. Since 2012, more than 32 million crates have been shipped. The Debtors are the worldwide leader in pop-culture subscription boxes, and currently have over 250,000 recurring subscribers.

3. Further information about the Debtors and these Cases, a corporate chart showing the structure of the Debtors, and pertinent facts in support of this Motion can be found in the *Declaration of Stuart Kaufman in Support of First Day Motions and Related Relief* (the “*First Day Declaration*”)² [D.I. 4], which is incorporated by reference.

4. No Committee, trustee, or examiner has been appointed in these Cases.

Jurisdiction, Venue, and Statutory Predicate

5. This Court has jurisdiction to consider 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

² Capitalized terms not otherwise defined herein have the meanings ascribed to them in the First Day Declaration.

6. Venue of these Cases is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The statutory predicates for the relief requested in this Motion are Sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of the Bankruptcy Code and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

Relief Requested

8. By this Motion, the Debtors seek entry of an order pursuant to Sections 105(a) and 363(b) and of the Bankruptcy Code: (a) authorizing the Debtors to pay, in their sole discretion, up to an aggregate of \$1,000,000 of the pre-petition claims of certain Critical Vendors in the ordinary course of business, according to the terms of any arrangements the Debtors may make with such Critical Vendor and (b) authorizing and directing applicable banks and other financial institutions to receive, process, and pay any and all checks and other transfers related to such claims. Each category of claims that the Debtors seek authority to pay pursuant to this Motion and the justifications for paying such claims are described in detail below.

9. If the Critical Vendors are not paid, their resulting unwillingness to continue to provide goods or services even for a short period of time would cause an interruption of the Debtors’ operations. Such an interruption would cause the Debtors irreparable harm, which would jeopardize the Debtors’ restructuring efforts. Relatedly, paying the Critical Vendors would permit the Debtors to maintain the value of the businesses and maximize value for the benefit of their creditors and stakeholders. Therefore, the Debtors seek authorization to pay Critical Vendor Claims to ensure the Debtors’ continued receipt of goods and services and favorable credit terms from the Critical Vendors.

Critical Vendor Claims

10. The Debtors market around twenty-five genre and partner crates alongside their online store, Loot Vault. In order to operate their businesses, the Debtors depend on select Critical Vendors who can supply the necessary quality and type of goods and services in a timely fashion to enable the Debtors to provide top quality “crates” of goods, merchandise, mixed-IP toys, apparel, and collectibles to their customer base. In order to fill their crate variations, the Debtors must engender good relationships with their Critical Vendors. Any interruption in the provision of goods or services by the Critical Vendors—however brief—would further disrupt the Debtors’ operations and could cause irreparable harm to the Debtors’ business, goodwill, employees, subscription base, and customers.

11. The Debtors’ Critical Vendors are made up of the following categories of vendors: Single Source Vendors, Foreign Vendors, and Shippers and Warehousemen (each defined below and collectively referred to as Critical Vendors). There may be other types of vendors too, on a one-off basis, but any payment will be absolutely in line with the bases set forth below, and the procedures set forth herein, in order to maintain the integrity of the priority scheme of the Bankruptcy Code.

12. As to all Critical Vendors, the Debtors will be judicious, with an absolute focus on what claims may be paid that will provide the Debtors with the greatest “bang for their buck.” For instance, the debtors may have \$300,000 worth of crates to ship – but for a \$3,000 trinket that completes the collection. In a situation like that, the Debtors may pay the entire claim (with the consent of Money Chest LLC (the “*DIP Lender*”), which is permeated throughout this Motion). Other vendors may be exactly the same – but their goods are yet to be produced in a far off country, and so payment would not benefit the estate for many weeks or months. So it

will be a case by case analysis, as the law dictates. In other circumstances, a creditor may be owed much more – but only a small amount is needed to induce the vendor to support the Debtors. In short, this is intended to adhere completely to the purposes and parameters of the critical vendor caselaw. More specifics on the categories of Critical Vendors are below.

13. First, certain essential supplies, finished goods, and unique product (toys and collectibles) are available only from a single supplier (collectively, the “*Single Source Vendors*”). Because the Debtors do not have any viable alternatives to obtain substitute goods or services from other suppliers, the Debtors have determined that they must have the authority, in their discretion, to satisfy the pre-petition claims of the Single Source Vendors to ensure that these essential vendors will continue to be available without interruption.

14. In many cases, no other manufacturer or supplier can timely supply the required goods in any form. For example, certain Single Source Vendors provide goods or services that allow the Debtors to meet the criteria and specifications of the Debtors’ various crate lines. Any change in provider would result in a delay in the shipment of that particular crate.

15. In other cases, substitute goods or services from other potential suppliers technically are available, but these alternate suppliers cannot provide the goods that meet the Debtors’ requirements for quality, quantity, or reliability – or cannot ensure availability on a cost-efficient and timely basis -- particularly where such goods must be provided without delay to meet the Debtors’ crate distribution schedules. In other circumstances, a replacement might be had – but a license must also be required, as many of the Debtors’ goods are themed from popular television shows, movies, comics, or other trademarked and popular parts of our culture. (Indeed, that is what makes the Debtors’ crates so popular – they are not “knock offs” of a hot commodity – they are the real thing, the type only a true fan of the genre would ever wear or

associate with.) As a result, the Debtors cannot rely on these alternate sources to supply these goods. Since even a temporary disruption in the Debtors' operations would result in the Debtors' failure to meet their supply commitments to customers and, thus, may irreparably damage the Debtors' critical customer relationships, the Debtors believe that it is essential to pay the Single Source Vendor Claims to ensure that goods provided by them continue to be supplied without interruption on a post-petition basis.

16. Second, in the ordinary course of business, the Debtors incur various obligations to foreign vendors, suppliers, and other entities (the "*Foreign Vendors*"). These vendors provide unique goods (toys and collectibles), merchandise, mixed-IP toys, and collectibles for certain "crate" offerings, or services.

17. Many of the Foreign Vendors who supply these essential goods or services 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 take actions that would disrupt the Debtors' business operations. Moreover, there is a risk that Foreign Vendors could sue the Debtors in foreign courts and attempt to recover pre-petition amounts owed to them if the Foreign Vendor Claims remain unpaid. If the Foreign Vendors were successful in obtaining judgments against the Debtors, the Foreign Vendors could seek to exercise post-judgment remedies, including withholding vital supplies from the Debtors. The Debtors would have no practical ability to remedy this situation (absent payment of amounts sought) and their business operations would be irreparably harmed to the detriment of their estate and their creditors.

18. The Debtors are making every effort to avoid interruptions in their supply chain and the adverse effects that even a temporary disruption could have on their business in order to

maximize the value of their assets. In connection therewith, the Debtors must have the ability to continue to fund the Foreign Vendors on an uninterrupted basis.

19. That said, as noted above, the Debtors will be judicious. If a Foreign Vendor cannot help the Debtors **very promptly**, then they will not be designated as Critical Vendors, and their claims shall simply be dealt with under Title 11 as all other creditors.

20. Third, in the normal course of their business, the Debtors use and make payments to (i) delivery services, trucking, freight terminal operators, carriers, shippers, and other transportation service providers (collectively, the “*Shippers*”) that ship, transport, store, engage in customs business, and otherwise facilitates the movement of materials, customer property, and other goods used in ordinary course of the Debtors’ operations; and (ii) the warehousemen, bailees, storage facilities, and other storage providers (collectively, the “*Warehousemen*”) who store goods in transit, including customer property. For several important reasons, the Debtors seek to pay the pre-petition shipping and warehousing charges with respect goods and property in transit (collectively, the “*Shipping and Warehousing Claims*”). The services provided by the Shippers and Warehousemen are essential to the Debtors’ day-to-day operations in that they are necessary for the Debtors obtain necessary materials to finalize the various crates, storage of goods, supplies, and merchandise, and the transportation of crates to the Debtors’ customers. Therefore, certain Shippers and Warehousemen currently possess goods that are vital to the Debtors’ operations and the maintenance of their customer relationships.

21. If the Shipping and Warehouse Claims are not paid, Shippers and Warehousemen may refuse to perform additional services for the Debtors. In such event, the Debtors would incur significant additional expenses, such as premium replacement shipping and warehousing costs, that would likely exceed the amount of unpaid pre-petition shipping and warehousing

charges that the Debtors request the authority to pay hereunder. If the Debtors were unable to promptly locate suitable replacements for these and similar Shippers and Warehousemen, the Debtors' operations would face substantial hardship.

22. Accordingly, because the Debtors are dependent on these Shippers and Warehousemen, it is essential that the commencement of these cases not give any Shippers and Warehousemen reason or excuse to cease performing their obligations.

23. Another caveat – to the extent the Debtors may argue that any of these parties are under contract, and have waived their rights or liens, then the Debtors will make a determination, in conjunction with the DIP Lender, if it is better to force the issue with threats or litigation, for Section 362 does not allow parties to refuse to ship goods or take other actions simply based on pre-petition debt. The Debtors will be careful with their analysis, and their use of money that would otherwise go to creditors.

24. Finally, there are always “miscellaneous” – a creditor that simply will not repair goods, or provided a needed IT fix (as the Debtors are a technology-heavy company), or the like. Again, the Debtors will evaluate them, and with the consent of the DIP Lender, may so characterize them under this Motion.

Conditions to Payment

25. Subject to the Court's approval, the Debtors intend to pay the Critical Vendor Claims only to the extent necessary to preserve their business as a going concern. To that end, in return for paying the Critical Vendors Claims, the Debtors propose that they be authorized to require that the Critical Vendors provide favorable trade terms for the post-petition delivery of goods and services. Specifically, the Debtors propose to condition the payment of the Critical Vendor Claims upon the Critical Vendors' agreement to continue—or recommence—supplying

goods and services to the Debtors in accordance with trade terms at least as favorable as those practices and programs (including credit limits, pricing, timing of payments, availability, and other terms) in place twelve months prior to the Petition Date, or such other trade terms that are acceptable to the Debtors with approval and consent of the DIP Lender (the “*Customary Trade Terms*”). In addition, the Debtors reserve the right to seek other concessions from any Critical Vendor, such as a waiver of some or all of its claim, a waiver of any lien rights, a waiver of rights under Section 503(b)(9) of the Bankruptcy Code, or the like. In addition, all such arrangements with any Critical Vendor will be memorialized in a written, signed document, so things are clear.

26. In addition, the Debtors requests that if the Critical Vendors accept payment pursuant to the relief requested by this Motion and thereafter do not continue to provide goods or services on Customary Trade Terms, then: (a) the Debtors may then take any and all appropriate steps to cause such Critical Vendors to repay payments made to it on account of its pre-petition claim to the extent that such payments exceed the post-petition amounts then owing to such Critical Vendors; (b) upon recovery by the Debtors, any pre-petition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding post-petition balance due from the Debtors to such party, the Debtors may elect to re-characterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding post-petition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the post-petition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

Basis for Relief

A. Payment of the Critical Vendor Claims is Warranted Under Section 363(b)(1) of the Bankruptcy Code and the Doctrine of Necessity

27. Courts have authorized payment of pre-petition obligations under Section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so, and such suppliers are truly essential, based on a thorough and searching analysis by the Debtors. *In re Just For Feet*, 242 B.R. 821 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (granting authority to pay pre-petition claims to certain vendors).

28. Further, the Court may authorize payment of pre-petition claims in appropriate circumstances based on Section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the 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). Under Section 105(a) of the Bankruptcy Code, courts may permit preplan payments of pre-petition obligations when essential to the continued operation of a debtor’s business. Specifically, the Court may use its power under Section 105(a) of the Bankruptcy Code to authorize payment of pre-petition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *In re Just For Feet*, 242 B.R. 821, 824–25 (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.”).

29. The Supreme Court has noted, in dicta, its support of modern critical vendor theory – subject to the confines of careful debtor consideration and input by creditors. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (“Courts, for example, have approved first-day wage orders that allow payment of employees’ prepetition wages, **critical vendor orders that allow payment of essential suppliers’ prepetition invoices**, and roll-ups that allow lenders who continue financing the debtor to be paid first on their prepetition claims. In doing so, these courts have usually found that the distributions at issue would enable a successful reorganization and make even the disfavored creditors better off.”) (internal citations omitted) (emphasis added).

30. Additionally, pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession 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.” *CoServ*, 273 B.R. at 497. Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the pre-plan satisfaction of a prepetition claim.” *Id.* The court in *CoServ* specifically noted the pre-plan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” *Id.*

31. As explained above, the goods and services provided by the Critical Vendors are essential to ensure that there is no further disruption in the operation of the Debtors’ business. The Debtors submit that the total amount to be paid to the Critical Vendors is minimal compared to the importance and necessity of the Debtors’ uninterrupted receipt of the necessary goods,

supplies, and services provided by such vendors. Moreover, the Debtors do not believe there are cost-effective or readily accessible alternatives to the Critical Vendors.

32. Bankruptcy courts in this district and across the country frequently authorize the debtor to pay the claims of pre-petition critical vendors and otherwise grant relief similar to that requested herein. *See, e.g., In re FTD Companies, Inc.*, No. 19-11240 (LSS) (Bankr. D. Del. Jul. 1, 2019) [D.I. 275]; *In re Longview Power, LLC*, No. 13-12211 (BLS) (Bankr. D. Del. Sept. 24, 2013); *In re Ormet Corp.*, No. 13-10334 (MFW) (Bankr. D. Del. Mar. 20, 2013); *In re DDMG Estate f/k/a Digital Domain Media Grp., Inc.*, No. 12-12568 (BLS) (Bankr. D. Del. Sept. 12, 2012); *In re Blitz U.S.A., Inc.*, No. 11-13603 (PJW) (Bankr. D. Del. Dec. 5, 2011); *In re Amicus Wind Down Corp. f/k/a Friendly Ice Cream Corp.*, No. 11-13167 (KG) (Bankr. D. Del. Oct. 6, 2011).³

Requests for Immediate Relief and Waiver of Stay

33. Bankruptcy Rule 6003 provides that, “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate” Fed. R. Bankr. P. 6003(b). Here, the Debtors believe an immediate and orderly transition into Chapter 11 is critical to the viability of their operations further disrupting delivery of crates, and that any delay in granting the relief requested will hinder the Debtors’ operations and cause irreparable harm. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003

³ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders will be made available upon request to the Debtors’ proposed counsel.

and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

34. In addition, in order to implement the foregoing successfully, the Debtors respectfully request a waiver of the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the operations, value, and ability of the Debtors to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

Reservation of Rights

35. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ or any party in interest’s rights to dispute and/or contest any claim, or an approval or assumption of any agreement, contract, or lease under Section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors’ or any party in interest’s rights to subsequently dispute and/or contest such claim.

No Prior Request

36. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

Consent to Jurisdiction

37. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

Notice

38. Notice of this Motion has been given to the following parties, or to their counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' thirty largest unsecured creditors on a consolidated basis, as identified in their Chapter 11 petitions; (c) counsel to Money Chest, LLC, the Debtors' proposed post-petition lender; and (d) Wells Fargo Bank, National Association. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties entitled to notice pursuant to Local Rule 9013-1(m). In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto, granting the relief requested herein and granting the Debtors such other relief as the Court deems appropriate.

Date: August 12, 2019
Wilmington, Delaware

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Proposed counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

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

In re:)	Chapter 11
)	
LOOT CRATE, INC., <i>et al.</i> , ¹)	Case No. 19-11791 ()
)	
Debtors.)	(Joint Administration Requested)
		Related Docket No. 8

**INTERIM ORDER (I) AUTHORIZING (A) THE DEBTORS
TO PAY CERTAIN PRE-PETITION CLAIMS OF CRITICAL VENDORS,
AND (B) PROCEDURES RELATED THERETO, AND
(II) GRANTING CERTAIN RELATED RELIEF [D.I. 8]**

Upon the Motion (the “*Motion*”)² of the above-debtors and debtors in possession (collectively, the “*Debtors*”) for entry of this Interim Order pursuant to Sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors, in their discretion, to pay certain Critical Vendor Claims, Foreign Vendor Claims and Logistical Claims, or other claims that fall within the strict confines of critical vendor theory, (b) setting a final hearing related thereto, and (c) granting related relief, all as more fully set forth in the Motion, as further described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein 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 as of February 29, 2012; and

¹ The Debtors are the following four entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Loot Crate, Inc. (7119); Loot Crate Holdings, Inc.; LC Funding, Inc.; and Loot Crate Parent, Inc. The Debtors’ noticing address in these Chapter 11 cases is 3401 Pasadena Avenue, Los Angeles, CA 90031.

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

consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion being adequate and appropriate under the particular circumstances; and upon the record of any hearing held to consider the relief requested in the Motion; and upon the First Day Declaration and all 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' estates, their creditors, and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the relief as requested in the Motion is necessary and appropriate to prevent immediate and irreparable harm to the Debtors' business operations and will serve to protect and preserve the Debtors' estates for the benefit of all stakeholders and, thus, cause exists to permit such payments to be made immediately notwithstanding Bankruptcy Rule 6003; and there being good cause to waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h) to the extent applicable; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation, and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to pay the Critical Vendor Claims, subject to the Vendor Claims Cap (which shall be \$500,000 unless and until a Final Order on the Motion is granted), with each such payment only to be made with the consent of the Debtors' DIP Lender.

3. The Debtors are authorized, but not directed, in their discretion, to condition the payment of a Critical Vendor Claims on the agreement of the applicable Vendor to continue supplying goods and services to the Debtors on the Customary Trade Terms, or such other trade terms as are agreed to by the Debtors and the applicable Vendor, which may include claims waiver, lien waiver, priority claims waiver, or such other things the Debtors may seek to obtain as a concession to improve the estates.

4. During the pendency of the Debtors' Cases, each recipient of a payment of a Critical Vendor Claim shall be required, to the extent applicable, to: (a) continue, without interruption, its existing business relationship with the Debtors, including the acceptance and fulfillment of current and future purchase orders; (b) continue to extend normalized trade credit and provide other business terms on a postpetition basis (consistent with past practices), including with respect to any applicable credit limits, the pricing of goods and services, and the provision of equivalent levels of service; and (c) agree to release to the Debtors as requested goods or other assets of the Debtors in the Critical Vendor's possession, all on terms at least as favorable as those extended prepetition or on such other terms that are acceptable to the Debtors in their business judgment (collectively, the "*Trade Terms*").

5. All Trade Terms shall be in writing, signed by the Debtors and the Critical Vendor.

6. If a Critical Vendor violates the Trade Terms, then any payment it received may be deemed an unauthorized postpetition transfer under Section 549 of the Bankruptcy Code that the Debtors, at their option, may either (i) recover from them or (ii) apply against any outstanding administrative claim held by them.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the pre-petition 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' written designation of any particular check or electronic payment request as approved by this Interim Order, with such written designation to be provided to the Debtors' DIP Lender at that time as well.

8. The Debtors are authorized to issue post-petition checks, or to affect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Cases with respect to pre-petition amounts owed in connection with any Critical Vendor Claims.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' or any party in interest's rights to subsequently dispute and/or contest such claim or lien, (c) the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code, or (d) a grant of third-party beneficiary status or bestowal of any additional rights on any third party.

10. Any payments pursuant to this Interim Order shall be made only to the extent allowed by any orders authorizing the Debtors to incur post-petition financing or use cash collateral, including any budget approved by such orders.

11. With respect to the relief sought herein, the requirements set forth in Bankruptcy Rule 6003 are satisfied.

12. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry and the requirements of Bankruptcy Rule 6004(h) are hereby waived.

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

14. The Debtors are directed, within forty-eight hours of the entry of this Interim Order, to serve a copy hereof upon all the parties that were served with the Motion, along with any parties that have filed notices of appearance in these Cases since the filing of the Motion. The foregoing constituting all parties required to be served pursuant to Local Rule 9013-1(m)(iii).

15. This Court shall retain exclusive jurisdiction with respect to any and all matters, claims, rights, or disputes arising from or related to the implementation or interpretation of this Interim Order.

16. A hearing to consider entry of a final order on the Motion is scheduled for _____, 2019, at ___:___ .m. (prevailing Eastern Time) before the Honorable _____, United States Bankruptcy Judge, _____, at the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801. Objections to final relief on the Motion shall be in writing and filed with the Clerk of the Court no later than on _____, 2019, at 4:00 p.m. (prevailing Eastern Time), with copies served upon: (i) proposed counsel to the Debtors, (a) Robinson & Cole LLP, 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Jamie L. Edmonson, email: jedmonson@rc.com), and (b) Bryan Cave Leighton Paisner LLP, 1201 W. Peachtree Street, NW, 14th Floor, Atlanta, Georgia 30309-3471 (Attn: Mark Duedall, email:

mark.duedall@bclplaw.com and Andrew J. Schouder, email: andrew.schouder@bclplaw.com),
(ii) counsel for the DIP Lender, (a) Cooley LLP, 1114 Avenue of the Americas, New York, NY
10036 (Attn: Cathy Hershcopf, email: chershcopf@cooley.com), and (y) Bayard P.A., 600 North
King Street, Ste. 400, Wilmington, DE 19801 (Attn Erin R. Fay email: efay@bayardlaw.com;
(iii) counsel to any statutory committee appointed in these Cases; and (iv) the Office of the
United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street,
Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: _____, email:
_____@usdoj.gov). If no objections to entry of a final order on the Motion are timely
received, this Court may enter such final order without further notice or hearing.