

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

In re:

iPic-Gold Class Entertainment, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-11739 (\_\_\_)

(Joint Administration Requested)

**DECLARATION OF DAVID M. BAKER IN SUPPORT OF FIRST DAY MOTIONS**

I, David M. Baker, hereby declare that the following is true and correct to the best of my knowledge, information, and belief. I am the Managing Partner and co-founder of Aurora Management Partners (“Aurora”) the proposed financial advisor of the above-captioned debtors (the “Debtors”).

1. I graduated from the University of North Carolina at Chapel Hill in 1977 with a B.S. in Accounting. I am also a Certified Turnaround Professional. Since co-founding Aurora Management Partners in 2000, I have managed a wide variety of both turnaround and bankruptcy consulting engagements. I have managed workouts and divestitures across several industries, including product manufacturing businesses. I commenced my engagement with the Debtors in July 2019. I have also served as the Chief Restructuring Officer in *Malibu Lighting Corporation* (D. Del.), *Prime Measurement* (C.D. Cal.), *Laich Industries Corp.* (N.D. Ohio), and *Brooks Food* (W.D. Va.).

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: iPic Entertainment Inc. (9582); iPic-Gold Class Entertainment, LLC (4684); iPic Gold Class Holdings LLC (6315); iPic Media, LLC (0150); iPic Texas, LLC (N/A); and Delray Beach Holdings, LLC (1035). The Debtors’ principal place of business is 433 Plaza Real, Suite 335, Boca Raton, FL 33432.

2. Aurora is a national turnaround consulting firm that provides turnaround, business and advisory and restructuring services over a multitude of industries and markets. Sample representations of Aurora include financial advisory services to a number of debtors, including Taylor Gourmet, LLC (D. Del.), CCI of West Palm (S.D. Fla.), Advanced Vending Systems (E.D. Tenn.), Summitville Tiles (N.D. Ohio), SKI Chalet (E.D. Va.), Shelby-Skipwith (W.D. Tenn.), Blue Thunder Auto Transport (N.D. Ga.), and Schirmers LLC (E.D. Va.); and financial advisory services to creditors' committees, including Foss Manufacturing (D.N.H.), Protected Vehicles (D.S.C.), Airnet Communications (M.D. Fla.), Red Shield Environmental (D. Me.), and Pike Nursery (N.D. Ga.).

3. Except as otherwise indicated, I have personal knowledge of the information contained herein, either directly or through employees of the Debtors, or the Debtors' other advisors, and am competent to testify as to the matters set forth herein. Specifically, I have been directly involved in the matters leading up to these chapter 11 filings, including financial planning, forecasting, and the restructuring process. I also have been directly involved in negotiations with key creditor constituencies and the sale processes described herein. I am authorized to submit this declaration on behalf of the Debtors.

4. The Debtors have filed voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") commencing the above-captioned chapter 11 cases. These cases were filed in order to preserve the value of the Debtors' business and maintain continued operations pending the Debtors' implementation of a restructuring of its business and assets either through a competitive restructuring or a sale of the Debtors' assets. To

minimize the adverse effects of commencing these chapter 11 cases, the Debtors have filed a number of pleadings requesting various kinds of “first day” relief (collectively, the “First Day Motions”).

5. I further believe that absent (i) immediate access to cash collateral and postpetition financing, and (ii) authority to make certain essential payments and otherwise continue conducting ordinary course business operations as described herein and in the First Day Motions, the Debtors would suffer immediate and irreparable harm to the detriment of their estates, creditors, and other stakeholders.

6. **Part I** of this Declaration describes the different businesses of the Debtors and the developments that led to their filing for chapter 11 relief. **Part II** of this Declaration sets forth the relevant facts supporting the First Day Motions filed concurrently herewith and incorporates by reference the facts of the other First Day Motions.

## **PART I**

### **BACKGROUND**

#### **A. The Company’s Business**

7. The Debtors are a leading provider of polished-casual dining in a luxury theater auditorium environment. The Debtors are one of the largest combined movie theater and restaurant entertainment destinations with locations that provide a luxurious movie-going experience at an affordable price. The Debtors provide customers with high-quality, chef-driven culinary and mixology in unique destinations that include premium movie theaters, restaurants and lounges.

8. The Debtors' predecessor, Gold Class Cinemas, was founded in 2006 and was owned by Village Roadshow Gold Class Cinemas LLC ("VRS") in partnership with the Norman Lear Group. From 2007 to 2010, Gold Class Cinemas opened and operated 6 theaters nationwide. Separately, Hamid Hashemi founded iPic Holdings LLC and certain affiliates ("IH") in 2006 and had opened one location by 2010.<sup>2</sup> iPic-Gold Class Entertainment, LLC was formed in 2010 as a result of the consolidation of Gold Class Cinemas and IH. iPic Entertainment Inc., which is now the ultimate parent company of the Debtors, was formed in 2017 for the purpose of completing an initial public offering, which occurred in 2018, and pursuant to which iPic Entertainment Inc. became a publicly traded company. iPic Entertainment Inc. is currently traded on the NASDAQ under the symbol "IPIC."

9. The Debtors currently operate 123 screens at 16 locations in 9 states, with an additional 2 locations under construction, and have executed leases for an additional 9 sites in California, Georgia, Virginia, Washington, Connecticut, New York, Texas and Florida. In addition, the Debtors applied for licenses to operate theaters in Saudi Arabia.

10. The Debtors continue to pursue a disciplined new store growth strategy in both new and existing markets where they may achieve consistent high store revenues and attractive store-level cash-on-cash returns. As of the Petition Date, the Company employed approximately 240 full time and 1,770 part-time employees.

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<sup>2</sup> Mr. Hashemi is the current Chief Executive Officer of the Debtors.

### **Restaurant Branding and Services**

11. The Debtors offer several different and distinct restaurant brands at their theater locations through their Tuck Hospitality Group, which is the restaurant division of iPic Entertainment. The Debtors' restaurant concepts include: (1) The Tuck Room, a spirited drinking and dining den with locations in North Miami Beach, FL, Fulton Market, NY, and Houston, TX; (2) The Tuck Room Tavern serving Craveable American Cuisine in Westwood, CA; (3) Tanzy Restaurant, a modern Italian dining destination with locations in Boca Raton, FL, and Scottsdale, AZ; and (4) City Perch Kitchen + Bar, a seasonal American Dining destination featuring locally sourced ingredients with locations in Bethesda, MD, Fort Lee, NJ, and Dobbs Ferry, NY.

12. In addition to their restaurant service, the Debtors provide customers with their iPic Express menu, which is a chef-driven menu from the Debtors' in-house and guest chefs prepared to order and which customers may either carry directly into the cinema, or have delivered to them in their theater seats.

### **The Debtors' Theaters**

13. The Debtors offer their customers two tiers of luxury leather seating in their theaters: Premium Chaise lounge or "Premium" can be purchased for a base ticket price, and provides reserved luxury seating with a small table, and "Premium Plus" seating, which are leather recliners with pillows and blankets, but also provide waiter service to the theater seats. In addition to the two types of seating options, the Debtors introduced their Access Membership Rewards Program in January 2019, which provides members with discounted tickets, invitations

to early screenings, priority access to new releases, as well as discounts on food and beverage purchases and food and wine tastings.

14. The Debtors' theater locations consist of three different formats:

a. Generation III locations. The Debtors' Generation III locations are their latest four locations and represent the go-forward design for future theaters. These locations include perfected auditorium layout consisting of six to eight screens, 500 seats, and predominately if not all Premium Plus POD seating where every 2 seats is encapsulated in a pod. In 2018, the Company's Generation III locations averaged approximately \$13.6 million of revenues, or about \$1.7 million per screen. All Generation III locations also feature the Debtors' Tuck Hospitality Group signature restaurants.

b. Generation II locations. These locations also feature the Debtors' Tuck Hospitality Group signature restaurants, (i.e., City Perch, Tanzy, or Tuck Room Tavern). Among other things, these locations further expand the quality and quantity of Premium Plus auditorium sections, which generally sell out first, indicating growing consumer preference for added luxury and service. The Generation II locations also have upgraded in-theater dining experience with redesigned iPic Express offerings and the iPic Life program, which is a 20-minute on screen lifestyle program. In 2018, Generation II locations averaged approximately \$12.6 million of revenues, or about \$1.7 million per screen.

c. Generation I locations. These locations were built between 2007 and 2010, do not have a separate restaurant attached, and offer dining options within the

auditoriums and a bar in the lobby. Generation I locations averaged approximately \$4.5 million of revenues, or about \$0.6 million per screen.

15. Remodeled Locations. The Debtors also have five theaters that were remodeled in 2018. Four of these locations previously considered as Generation I locations (Redmond, WA; Pasadena, CA; Austin, TX; and Fairview, TX) were remodeled to offer exclusively Premium Plus seating. One unit previously considered as a Generation II location (Scottsdale, AZ) was remodeled to offer predominately Premium Plus POD seating. In 2018, these locations averaged approximately \$6.7 million of revenues, or about \$0.9 million per screen. These figures include significant screen closure periods during remodeling projects, ranging from 10 to 12 weeks with at least 2 auditoriums closing at a time.

**B. Corporate and Capital Structure of the Company**

16. Debtor iPic Entertainment Inc. ("iPic Entertainment") is a Delaware corporation and owns 100% of the membership interests in Debtor iPic Gold Class Holdings LLC ("Holdings"), a Delaware limited liability company. Holdings holds all of the membership interests in Debtor iPic-Gold Class Entertainment, LLC ("Opco"), which is a Delaware limited liability company and the primary operating entity within the Debtors' organizational structure. Opco also owns 100% of the membership interests in Debtors iPic Texas, LLC, a Texas limited liability company; iPic Media, LLC, a Florida limited liability company; and Delray Beach Holdings, LLC, a Florida limited liability company. Attached hereto as Exhibit A is an organizational chart of the Company.<sup>3</sup>

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<sup>3</sup> In addition, Opco owns two foreign subsidiaries in Saudi Arabia, iPic Saudi Limited LLC and iPic-KSA, which were recently established in order to obtain the Debtors' operating license in Saudi Arabia and which are not

17. The Debtors are parties to a non-revolving credit facility, pursuant to that certain *Second Amended and Restated Master Loan and Security Agreement* dated February 1, 2018, as amended (the “Prepetition Loan Agreement”) with the Teachers’ Retirement System of Alabama (the “TRSA”) and The Employees’ Retirement System of Alabama (the “ERSA” and, together with TRSA, the “RSA”). The Debtors’ obligations under the Prepetition Loan Agreement are secured by substantially all of the Debtors’ assets. The terms of the Prepetition Loan Agreement were funded in three separate tranches and matures on September 29, 2023. The effective interest rate on the first and second tranche borrowings under the Prepetition Loan Agreement is approximately 6.95% per annum. The interest rate on the third tranche borrowings under the Prepetition Loan Agreement is fixed at 10.50% per annum. The default rate of interest for all loans is 12.5%. As of the Petition Date, the Debtors owed approximately \$205 million in unpaid principal under the Prepetition Loan Agreement, plus interest and fees. The Company did not make the July interest payment due under the Prepetition Loan Agreement.

18. As of the Petition Date, the Company owes various vendors, suppliers, and other unsecured trade creditors between approximately \$13 million to \$15 million.

19. iPic Entertainment Inc. has two classes of common stock. As explained earlier, Class A common stock is traded on the NASDAQ Capital Market under the symbol “IPIC.” Class B common stock is not publicly traded. As of March 1, 2019, there were approximately 421 holders of Class A common stock (including publicly traded stock held by CEDE) and 19 holders of Class B common stock. Village Roadshow Attractions USA, Inc.

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Debtors in these proceedings. Opco also owns Bay Colony Realty, LLC, which has since been dissolved, and is also not included as a Debtor.

(24.1634%), TRSA (16.189%) and ERSA (7.974%) are the largest holders of Class A common stock. Approximately 9.465% of Class A common stock is held through CEDE. As noted above, TRSA and ERSA are Debtors' secured lenders under the Prepetition Loan Agreement.

20. The largest holders of Class B common stock include Hashemi Holdings LLC (15.78%); Regal/ATOM Holdings LLC (6.88%); and the Messina Living Trust (4.11%). Hashemi Holdings LLC is affiliated with the Debtors' Chief Executive Officer, Mr. Hamid Hashemi and the Messina Living Trust is affiliated with Mr. Dana Messina, one of the directors of Debtor iPic Entertainment Inc. Msrs. Hashemi and Messina, along with certain employees and former employees of the Debtors, also own shares of Class A and Class B common stock in iPic Entertainment Inc., either individually or through affiliates.

21. For the year ended December 31, 2018, the Company reported net losses before income tax expense of \$56,765,000, a net cash balance of \$6,026,000, and reported store-level EBITDA of \$15,059,000. For the year ended December 31, 2018, the Debtors reported total assets of \$158,724,000 and total liabilities of \$277,945,000.

**C. Events Leading to the Commencement of the Chapter 11 Cases**

22. The Debtors were formerly the only company nationwide that built luxury cinemas with recliner seats that offered restaurant quality food and drinks. As noted above, the Company's earlier Generation I locations offered two types of seating and services – Premium seats that were large, comfortable lectern covered seats with a large table, and Premium Plus seats that reclined with pillows, blankets, and tableside food and beverage service. Several of the Debtors' operational issues related to the proportion of Premium Plus to Premium Seats.

Initially, 60-65% of the seats were Premium seats, and the remaining seats were Premium Plus. After the successful opening and proven desirability of Premium Plus seats, along with the willingness of the attendees to pay a higher price for a premium service, the Debtors' subsequent Generation II locations incorporated 60-65% Premium Plus seats and 35-45% Premium seats. As the Debtors were the only theaters in the market that operated both Premium and Premium Plus seats in the markets in which they operated, the Debtors enjoyed double digit same store sale growth before other theaters took notice and began converting their existing theaters or building new locations with reclining seats. Even though the Company's competitors' overall experience did not compare to that of the Debtors, the availability of reclining seats used by competitors at a lower consumer price point proved to be a challenge, especially compared to the Premium seats in the Debtors' theaters, which did not recline or include tableside service. This decline slowed the Company's anticipated same store sale growth.

23. Rising construction costs also negatively impacted the buildout of new locations. The Debtors' construction costs increased significantly from 2010 to 2019 due to rising construction costs nationally. Additionally, the Debtors were negatively impacted by tightened liquidity due to the delays in the funding of their construction projects. For example, the Debtors often incurred additional costs for expedited shipping or accelerating construction time to meet lease deadlines due to the construction funding delays. Over time, the proportion of funding from the Prepetition Loan Agreement allocated towards construction decreased. The Debtors used working capital and contributed additional equity to fund construction projects on time and continue development. These constraints on working capital put additional pressure on

the Debtors' ability to timely pay their vendors. In many cases, the Debtors lost discounts and incurred penalties for late payments to creditors. This pattern of late payments resulted in increased operating costs and reduced profitability of the operating locations.

24. As noted above, in 2018, the Debtors became a publicly traded company under Regulation A, which is a type of public filing that allows for certain exemptions depending on the value of the offering (the "IPO"). While demand for the shares was strong, the institutional investors were not able to fund their commitment to the offering, and the total capital raised of \$17 million from the IPO was not sufficient to fund continuing development. The public equity has also resulted in significantly increased operating costs relating to the Securities and Exchange Commission's reporting and compliance requirements.

25. In addition to the Debtors' operational issues, the Debtors operate in both the motion picture industry and restaurant industry, each of which are highly competitive and fragmented with no significant barriers to entry. The U.S. motion picture industry has been subject to periodic short-term increases and decreases in attendance and box office revenues and is cyclical. The Debtors' theaters are subject to varying degrees of competition in the geographic areas in which they operate. Competitors include national and regional circuits and smaller independent exhibitors. Moviegoers are not as brand conscious as other types of consumers and often choose a theater based on its location, the films showing there, showtimes and theater amenities.

26. The Debtors rely on their food and beverage service for a majority of their revenues. Yet like the motion picture industry, the Debtors have substantial competition in the

restaurant industry. The Debtors compete with multi-unit national, regional and locally-owned and/or operated restaurants. Many of the Debtors' competitors offer multiple meal options as well as dine-in and carry-out delivery services. Several of the Debtors' competitors have operated over a longer period of time and have a more established market presence, better locations, and greater national name recognition or in the local markets in which the Debtors operate.

27. Currently, the Debtors have built 16 of their planned 20-25 locations. In addition to approximately \$205 million of principal secured indebtedness as of the Petition Date, the high interest rate associated with this indebtedness has left the Debtors unable to make the interest payments as they come due. Prepetition, the Debtors engaged in negotiations with their secured lenders to restructure the Company's debt and to continue to fund operations. Ultimately, the Debtors determined that the commencement of these chapter 11 cases and the potential sale or recapitalization of their business under chapter 11 of the Bankruptcy Code represented the best mechanism to maximize value to their economic constituents.

28. Despite these obstacles, the Debtors believe that their underlying business model remains strong, as it is bolstered by positive guest experience and loyalty. To that end, the Debtors and their secured lenders have agreed on a budget to provide for a 90-day sale to market and either sell or recapitalize the Company pursuant to a restructuring transaction led by the Debtors' proposed investment bankers, PJ Solomon ("Solomon"), as explained below.

**D. Goals of the Chapter 11 Cases**

29. The Debtors engaged Solomon in July 2019. Shortly after its engagement, Solomon began to market the Debtors in order to effectuate a either a recapitalization or sale of the Company. As part of its prepetition marketing efforts, Solomon helped organize marketing materials for the Debtors and ran a process to identify prospective investors, including financial and strategic potential purchasers. Solomon is familiar with the Debtors' industry, and it contacted parties who had previously participated in auctions in the dine-in motion picture exhibition space, as well as theatres more generally, and non-traditional restaurants. In addition, Solomon contacted parties with a track record of successfully investing opportunistically in transactions with turnaround potential.

30. As of the Petition Date, Solomon had contacted 64 parties in total, of which 31 have signed non-disclosure agreements, and 6 are continuing to negotiate non-disclosure agreement terms. Upon signing a non-disclosure agreement, parties received a confidential investment memorandum, investor deck, and operating model. As of the Petition Date, approximately 8 parties have been granted access to the Debtors' electronic data room.

31. With the assistance of their proposed advisors, the Debtors intend to continue their postpetition marketing efforts with prospective purchasers and hopefully structure a recapitalization through a plan or sale. The Debtors intend to seek approval of bidding procedures that will facilitate Solomon's efforts to identify a purchaser or plan proponent to complete the restructuring. Concurrent with the sale process, the Debtors intend to operate their

business in the ordinary course and maximize the value of their assets in accordance with terms of the agreed budget with the RSA.

## **PART II**

### **FIRST DAY MOTIONS<sup>4</sup>**

32. In order to enable the Debtors to minimize the adverse effects of the commencement of the chapter 11 cases, the Debtors have requested various types of relief in the First Day Motions filed simultaneously with this Declaration. A summary of the relief sought in each First Day Motion is set forth below.

33. I have reviewed each of these First Day Motions (including the exhibits and schedules thereto). The facts stated therein are true and correct to the best of my knowledge, information, and belief. I believe that the type of relief sought in each of the First Day Motions: (a) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption; and (b) is essential to maximizing the value of the Debtors' assets for the benefit of their estates and creditors.

**A. Motion of Debtors for Entry of an Order  
(I) Directing Joint Administration of Chapter 11 Cases and  
(II) Granting Related Relief (the “Joint Administration Motion”)**

34. Through the Joint Administration Motion, the Debtors seek the entry of an order authorizing and directing the joint administration of the Debtors' related chapter 11 cases for procedural purposes only. Joint administration is warranted in these chapter 11 cases because

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<sup>4</sup> Unless otherwise noted, defined terms used in Part II of the Declaration have the meanings ascribed in the applicable First Day Motion.

(a) the Debtors' financial affairs and business operations are closely related and (b) such administration will ease the administrative burden on the Court and other parties.

35. With respect to the proximity of relations, as discussed above, the Debtors are under common ownership and management. They also share certain creditors and parties in interest. As a result, joint administration will prevent duplicative efforts and unnecessary expenses, without any risk of prejudice.

36. The Debtors anticipate that numerous notices, applications, motions, other pleadings, hearings, and orders in these cases will affect all of the Debtors. With six affiliated debtors, each with its own case docket, the failure to administer these cases jointly would result in numerous duplicative pleadings filed for each issue and served upon separate service lists.

**B. Motion of Debtors for Entry of Order Authorizing Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor (the "Consolidated Matrix Motion")**

37. Through the Consolidated Matrix Motion, the Debtors seek the entry of an order authorizing the Debtors to file a consolidated list of creditors in lieu of submitting a separate mailing matrix for each Debtor.

38. The Debtors presently maintain various computerized lists of the names and addresses of their respective creditors that are entitled to receive the obligatory notices and other documents in these chapter 11 cases. The Debtors believe that the information, as maintained in computer files (or those of their agents), may be consolidated and utilized efficiently to provide interested parties with the Notices and other similar documents, as contemplated by Local Rule 1007-2. Requiring the Debtors to segregate and convert their

computerized records to an entity-specific creditor matrix format would be an unnecessarily burdensome task and would result in duplicate mailings. Accordingly, by the Consolidated Matrix Motion, the Debtors seek authority to file the lists on a consolidated basis, identifying their creditors in the format or formats currently maintained in the ordinary course of the Debtors' business.

39. I believe that such relief is not only appropriate under the circumstances, but necessary for the efficient and orderly administration of these chapter 11 cases.

**C. Debtors' Application for an Order (I) Authorizing and Approving Appointment of Stretto as Claims and Noticing Agent *Nunc Pro Tunc* to the Petition Date, and (II) Granting Related Relief (the "Claims Agent Motion")**

40. The Debtors request authority to retain Bankruptcy Management Solutions, Inc. d/b/a Stretto ("Stretto" or the "Claims and Noticing Agent") as claims and noticing agent for the Debtors on the terms set forth in the Engagement Agreement attached as Exhibit A to Claims Agent Motion.

41. As set forth in the Claims Agent Motion, the Debtors have obtained and reviewed engagement proposals from at least two (2) other court-approved claims and noticing agents in addition to Stretto to ensure selection through a competitive process. Moreover, I believe that, based on the engagement proposals obtained and reviewed, that the proposed Claims and Noticing Agent's rates are competitive and reasonable given its quality of services and expertise.

42. Although the Debtors have not filed their schedules of assets and liabilities, it is anticipated that there will be in excess of 200 entities to be noticed. In view of the

number of anticipated claimants and the complexity of the Debtors' business, I believe that the appointment of the Claims and Noticing Agent is both necessary and in the best interests of both the Debtors' estates and their creditors.

**D. Debtors' Motion for Interim and Final Orders:**

**(A) Authorizing Debtors in Possession to (I) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364, (II) Grant Liens and Superpriority Claims to Postpetition Lenders Pursuant to 11 U.S.C. §§ 364; (III) Use Cash Collateral, and (IV) Provide Adequate Protection to Prepetition Credit Parties, (B) Modifying Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (C) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and Local Bankruptcy Rule 4001-2 (the "DIP Motion")**

43. Through the DIP Motion, the Debtors seek interim and final orders

(a) authorizing the Debtors to incur postpetition debt and to use cash collateral, (b) granting liens and superpriority claims in favor of the DIP Lenders, (c) providing adequate protection to the Pre-Petition Credit Parties, (d) modifying the automatic stay, (e) scheduling a final hearing, and (f) granting related relief.

44. Prior to the Petition Date, the Debtors recognized a need for further

outside financing and began the process of considering potential funding sources. The Debtors, through their advisors, discussed with various third parties the opportunity to provide financing to the Debtors, but no alternative funding proposals were provided to the Debtors.

45. Separately, the Debtors performed due diligence regarding the

reasonableness of the terms proposed for the DIP Facility by the DIP Lenders, including by comparing such terms to other debtor-in-possession credit facilities provided in the marketplace. Based on such analysis, the Debtors believe that the DIP Facility is provided on reasonable

market terms. The DIP Lenders are unwilling to provide financing to the Debtors on an unsecured or subordinated basis.

46. After careful review of their financing options, the Debtors concluded that the DIP Lenders' proposed terms would allow the Debtors to meet their goals and provide the Debtors with sufficient liquidity on the best available economic terms. Through the DIP Loan Documents, the Debtors will continue to have access to sufficient liquidity for their ongoing operations as well as to provide confidence to vendors and employees that the Debtors will be able to consummate a going concern sale or other restructuring. All negotiations with the DIP Lenders were conducted at arms' length and in good faith. The outcome of such negotiations is the DIP Loan Agreement pending before this Court. The Debtors submit that the proposed terms of the DIP Facility are fair, reasonable, and appropriate under the circumstances.

47. The Debtors now seek to move forward with the proposed DIP Facility on the terms set forth in the DIP Loan Documents. Subject to this Court's approval, the Debtors intend to draw on the DIP Facility in order to satisfy the Debtors' ongoing working capital needs through their restructuring process. The Debtors' sound business judgment clearly supports approval of the DIP Facility in order to allow the Debtors to gain access to needed financing and thereby maximize value for all constituents through a going concern sale or other restructuring process.

48. The Debtors have an urgent and immediate need for access to funds available under the DIP Facility and the use of the Cash Collateral. Such funding is necessary in order for the Debtors to have sufficient liquidity to operate their business, satisfy their vendor

and customer obligations, and pay their employees. Without immediate access to the DIP Facility and Cash Collateral, the Debtors would be forced to terminate operations and liquidate their assets, which would put numerous employees out of work and irreparably damage the Debtors' efforts to maintain going concern value. Accordingly, the Debtors strongly urge the Court to authorize the DIP Facility and continued use of Cash Collateral on the terms contemplated in the DIP Motion, initially on an interim basis and, following a final hearing, on a final basis.

**E. Motion of Debtors for Order Authorizing (A) Continuance of Existing Cash Management System, (B) Intercompany Transactions, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief (the "Cash Management Motion")**

49. The Debtors' cash management system facilitates the timely and efficient collection, management, and disbursement of funds used in the Debtors' business. Pursuant to the Cash Management Motion, the Debtors seek the entry of an order authorizing: (a) the Debtors to continue using their existing cash management system and related bank accounts in the ordinary course of business; (b) the Debtors to make intercompany transactions described in the Cash Management Motion; and (c) a limited waiver of certain deposit and investment requirements.

50. The Cash Management System currently consists of eight (8) bank accounts with JPMorgan Chase Bank, N.A., which has been approved as a depository for funds of debtors in possession by the United States Trustee for Region 3. All of the Debtors' accounts are FDIC-insured up to applicable limits.

51. The Cash Management System is expressly designed to effectuate the collection of revenue, pay operating expenses, and maintain payroll obligations. I believe that any disruption caused by requiring the Debtors to close their existing bank accounts, open new bank accounts, and establish a new cash management system would jeopardize the Debtors' ability to satisfy their obligations and maintain their relationships with advertisers, vendors, and other parties.

52. The Cash Management System constitutes an essential business practice and was created and implemented by the management of the Debtors in the exercise of their business judgment. For the reasons set forth in the Cash Management Motion, I believe that the existing cash management system provides numerous benefits including the ability to (a) receive customer payments; (b) allow a mechanism for deposits; (c) pay employee wages and benefits; and (d) pay vendors. In addition, the relief requested in the Motion would preserve a "business as usual" atmosphere and avoid the unnecessary distractions that would inevitably be associated with a substantial disruption of the Cash Management System. I believe that the maintenance of the Cash Management System and the relief requested in the Motion is in the best interests of the Debtors and their estates.

**F. Motion for Interim and Final Orders (A) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (B) Prohibiting Utility Companies From Altering, Refusing, Or Discontinuing Services, (C) Approving the Debtors' Proposed Procedures For Resolving Adequate Assurance Requests, and (D) Granting Related Relief (the "Utility Motion")**

53. The Debtors utilize various utility services provided by numerous utility companies (collectively, the "Utility Companies"). Because the Utility Companies provide

essential services to the Debtors and their operations, any significant interruption in utility services would be highly problematic. In fact, the temporary or permanent discontinuation of utilities services at any of the Debtors' locations could irreparably disrupt business operations, and, as a result, fundamentally undermine the Debtors' restructuring efforts. On average, the Debtors pay approximately \$450,000 each month for third party Utility Services.

54. The Debtors will propose procedures to protect the rights of Utility Companies by providing such Utility Companies with a deposit in an amount equal to approximately two weeks of the Debtors' aggregate utility expenses. The Debtors submit that the deposit (which will be in the amount of \$225,000), in conjunction with the Debtors' ability to pay for future utility services in the ordinary course of business and their existing security deposits constitutes sufficient adequate assurance of future payment to the Utility Companies. I believe that such relief is necessary to prevent immediate and irreparable harm to the Company.

**G. Debtors' Motion for Entry of an Order (A) Authorizing Debtors to Pay Prepetition Claims of Critical Vendors and (B) Granting Related Relief (the "Critical Vendor Motion")**

55. Through the Critical Vendor Motion, the Debtors seek the entry of an order: (i) authorizing the Debtors to pay any prepetition amounts owing to the Critical Vendors in the ordinary course of business up to the Critical Vendor Cap; (ii) approving of the form of agreement which may be utilized by the Debtors; and (iii) granting related relief.

56. The Debtors' business relies on continuing access to and relationships with various movie distributors and a network of other vendors and service providers. Any disruption in the Debtors' access to newly released movie titles and the provision of critical

goods and services to the Debtors would have a far-reaching and adverse economic and operational impact on their business.

57. Even though movie distributors that are Critical Vendors generally operate under formal master agreements, such distributors retain substantial discretion with respect to the distribution of individual titles and there is a significant risk that the flow of new movie titles to the Debtors could be interrupted in the event of non-payment of distributors' prepetition payables. That result would have a devastating effect on the Debtors' business and their ability to continue to draw patrons to their theatres and restaurants.

58. Further, the bulk of the remaining goods and services that the Debtors depend on are provided by a critical network of vendors and service providers that, for the most part, conduct business with the Debtors on an invoice by invoice or purchase order by purchase order basis, and not pursuant to long-term contracts. These vendors typically supply their customers with services and products on trade terms based on their experience with and perceived risk of conducting business with such customers. The Debtors believe that it would be extremely difficult, if not impossible, to replace the Critical Vendors within a reasonable time without severe disruption to the Debtors' business. Such harm would likely far outweigh the cost of payment of the Critical Vendor Claims.

59. Hence, it is essential to the success of the Debtors' restructuring effort that they be able to maintain the flow of movie titles, goods, and services to their business.

60. The Debtors undertook a process to identify the Critical Vendors using the following criteria: (i) whether a vendor is a movie distributor or a sole-source or primary

provider of services or products; (ii) whether certain specifications or volume requirements prevent the Debtors from obtaining a vendor's goods or services from alternative sources within a reasonable timeframe; and (iii) if a vendor is not a sole-source or primary provider of services or products, whether the Debtors can continue to operate in the ordinary course while a replacement vendor is secured. As a result of their critical review and evaluation, the Debtors have identified a narrow subset of vendors as Critical Vendors.

61. As of the Petition Date, the Debtors will owe amounts to certain Critical Vendors (a) that have been billed and invoiced and/or (b) that have accrued immediately prior to the Petition Date for which they have not yet been invoiced or payment is not yet due. The Debtors anticipate the total amount of Critical Vendor Claims will not exceed \$3,150,000.

62. Given the importance of the movie titles, goods, and services provided by the Critical Vendors, it is imperative that the Debtors be granted, on an emergency basis, the flexibility and authority to satisfy the prepetition claims of the Critical Vendors up to the Critical Vendor Cap.

**H. Motion for Entry of Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims Arising Under (A) the Perishable Agricultural Commodities Act and (B) the Packers and Stockyards Act, and (II) Granting Certain Related Relief (the "PACA/PASA Motion")**

63. Through the PACA/PASA Motion, the Debtors seek entry of an order authorizing, but not directing, the Debtors to pay the PACA Claims and PASA Claims in the ordinary course of the Debtors' business and in their sole discretion, up to a cap of \$1,350,000.

64. The Debtors believe that a certain portion of their fresh fruits and vegetables purchased from vendors may qualify as "perishable agricultural commodit[ies]"

under PACA. As a result, insofar as those vendors abide by the notice requirements of PACA and have submitted valid PACA Notices to the Debtors, such vendors will be eligible to assert PACA Claims granting them priority ahead of all other secured and unsecured creditors in the Debtors' chapter 11 cases. Accordingly, payment of allowed PACA Claims at this time will not prejudice or affect the amount available for distributions to other creditors of the Debtors. To ensure that the supply of fresh fruits and vegetables continues unimpeded, it is imperative that the Debtors be authorized to pay all prepetition and postpetition PACA Claims in the ordinary of business and consistent with their historical practices.

65. Further, the Debtors believe that a certain portion of the goods purchased from PASA Vendors may qualify for treatment under PASA. As a result, insofar as those PASA Vendors abide by the notice requirements of PASA (which are the same as those of PACA), such vendors will be eligible to assert PASA Claims granting them priority ahead of all other secured and unsecured creditors in these chapter 11 cases. Accordingly, the Debtors submit that payment of PASA Claims at this time will not prejudice or affect the amount available for distributions to other creditors of the Debtors. To ensure that the supply of meat, poultry, and other similar products continues unimpeded, it is imperative that the Debtors be authorized to pay all prepetition and postpetition PASA Claims in the ordinary of business and consistent with their historical practices.

66. Any delays in satisfying amounts owed to PACA Vendors and PASA Vendors could adversely affect the Debtors' ability to obtain the necessary fruits and vegetables

required to produce the Debtors' food products. Failing to pay allowed PACA Claims and PASA Claims in the ordinary course of business could subject the Debtors to numerous claims and contested proceedings by PACA Vendors and PASA Vendors for relief from the automatic stay and/or injunctive relief, which would result in the unnecessary expenditure of time, effort, and money by the Debtors.

**I. Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay and Honor Prepetition Compensation, Reimbursable Expenses and Employee Benefit Obligations and (B) Maintain and Continue Certain Compensation and Benefit Programs Postpetition and (II) Granting Related Relief (the "Wage Motion")**

67. The Company employs over 2,000 employees (the "Employees"). The Debtors employ approximately 240 full-time Employees and approximately 1,770 part-time Employees. Substantially all of the Employees are employed by iPic-Gold Class Entertainment, LLC while iPic Media, LLC has approximately 11 Employees. The Company also utilizes the services of 25 independent contractors (the "Independent Contractors"). Except as otherwise noted in the Wage Motion, the Debtors provide the Benefit Programs to full-time Employees.

68. The Independent Contractors provide a variety of specialized and industry-specific services that relate to sales, new theater openings, musical performances, and entertainers.

69. The majority of the Employees and Independent Contractors rely exclusively on their compensation and benefits to pay their daily living expenses and to support their families. If the Debtors are not permitted to continue to pay wages and salaries, provide employee benefits, and maintain benefit programs in the ordinary course of business, certain of the Employees and Independent Contractors will be exposed to significant financial constraints.

Consequently, the Debtors respectfully submit that the relief requested in the Wage Motion is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

70. The Debtors seek authority to pay, in their discretion, any prepetition amounts owed for the programs and benefits described in the Wage Motion up to the cap amounts set forth in the Wage Motion. The Debtors submit that any delay in paying the prepetition amount owed in respect of the Benefit Programs will adversely impact the Debtors' relationships with their workforce and could irreparably harm employee morale and cooperation.

71. Moreover, the Debtors believe that if they are unable to honor accrued Employee Compensation and benefits under the Benefit Programs described above, including honoring PTO, employee morale and loyalty will be jeopardized at a time when employee support is critical. The Debtors believe that any uncertainty with regard to continuation of Employee Compensation and the Benefit Programs will cause significant anxiety at precisely the time the Debtors need their Employees to perform their jobs at peak efficiency.

72. The Employees have an intimate knowledge of the operation of the Debtors' business and are critical components to the success of these chapter 11 cases. Deterioration in the morale and welfare of the Employees at this critical time undoubtedly would adversely impact the Debtors and their ability to maximize the value of their assets. I believe payment of the Employee Compensation and continuation of the Benefit Programs, as described in the Wage Motion, is necessary to maintain the Employees' morale during the cases and to insure continued, efficient operation in order to maximize value for the estates.

**J. Motion Pursuant to Sections 105(a), 507(a)(8), and 541(d) of the Bankruptcy Code for an Order Authorizing Payment of Prepetition Sales, Use and Franchise Taxes and Similar Taxes and Fees (the “Tax Motion”)**

73. The Debtors incur or collect and remit certain taxes including sales, franchise, business and occupation, and various other taxes, fees, charges, and assessments (the “Taxes and Fees”). The Debtors remit such Taxes and Fees to various federal, state, and local taxing and other governmental authorities and/or certain municipal or governmental subdivisions or agencies of those states (the “Taxing Authorities”) in connection with the operation of their business. The Taxes and Fees are generally paid either monthly or quarterly to the respective Taxing Authorities, depending on the given Tax or Fee and the relevant Taxing Authority to which it is paid.

74. I am informed that (i) portions of the Prepetition Tax Obligations do not belong to the Debtors’ bankruptcy estates because they may constitute “trust fund” taxes held for the benefit of relevant taxing authority; (ii) portions of the Prepetition Tax Obligations may be entitled to priority payment under applicable bankruptcy law; and (iii) the Taxing Authorities or the parties who ordinarily collect the Prepetition Tax Obligations may file liens, initiate audits, or otherwise proceed against the Debtors for unpaid Prepetition Tax Obligations and such actions will result in unnecessary expense and distraction from the Debtors’ efforts to maximize the value of their estates. I believe that the relief requested in the Tax Motion is in the best interests of the Debtors and their estates.

**K. Motion of Debtors for Entry of an Order (i) Authorizing Debtors to Honor Certain Prepetition Customer Programs in the Ordinary Course of Business; and (ii) Granting Certain Related Relief (the “Customer Programs Motion”)**

75. Prior to the Petition Date, and in the ordinary course of their business, the Debtors engaged in a variety of marketing and sales practices designed to develop and sustain positive reputations for the Debtors’ products and services provided in their theaters and to ensure customer satisfaction and loyalty (collectively, the “Customer Programs”). The goals of the Customer Programs are to meet competitive pressures, ensure customer satisfaction, and generate goodwill for the Debtors, thereby retaining current customers, attracting new customers, and ultimately enhancing revenue and profitability.

76. The Debtors employ a gift card program through which customers may purchase a pre-paid card up to a maximum amount of \$500 to use as an alternative to cash for purchases within the Debtors’ theaters (the “Gift Cards”). A substantial portion of the Debtors’ revenue is derived from the sale of Gift Cards, which may be purchased online or directly at the Debtors’ theaters.

77. The Debtors recognize revenue when the Gift Cards are redeemed, rather than at the time the Gift Cards are purchased. As of the Petition Date, approximately \$1,970,000 worth of Gift Cards was outstanding. The Debtors seek authority, but not direction, to continue to honor the Gift Cards in the ordinary course of business during the pendency of these chapter 11 cases, whether purchased before or after the Petition Date. The Debtors also offer a Rewards Program and Employee Discount Program as part of their Customer Programs.

78. The success and viability of the Debtors’ business is dependent upon the loyalty and confidence of their customers. The continued support of this constituency is

absolutely essential to the survival of the Debtors' businesses and the preservation of the value of their estates. Customer relations, loyalty and support are extremely critical and value maximizing. By contrast, the Debtors' determination to honor these prepetition obligations, in their sole discretion, would require minimal expenditure of estate funds, assist the Debtors in preserving key customer relationships, and enhance the Debtors' overall value. Accordingly, to preserve the value of the estates, the Debtors request authorization, in the Debtors' sole discretion, to continue honoring and/or paying all Customer Program obligations without interruption or modification. In addition, to provide necessary assurances to the Debtors' customers on a going-forward basis, the Debtors request authority, in their discretion, to continue honoring or paying all obligations to customers that arise from and after the Petition Date in the ordinary course of the Debtors' business, as appropriate under the circumstances. I believe that honoring the Customer Programs, as requested in the Customer Programs Motion represents a sound and reasonable exercise of the Debtors' business judgment, and is in the best interests of the Debtors' estates and creditors.

**L. Motion of the Debtors for Order (A) Authorizing the Debtors to (I) Maintain And Renew Existing Insurance Policies; (II) Continue Insurance Premium Financing Programs; (III) Pay Insurance Premium Financing Obligations Arising Thereunder; and (B) Authorizing Financial Institutions to Honor All Obligations Related Thereto (the "Insurance Motion")**

79. In the ordinary course of the Debtors' business, the Debtors maintain numerous insurance policies providing coverage for, *inter alia*, property, earthquake, crime, flood, international, property, umbrella, directors and officers liability, workers compensation, and employment practices (collectively, the "Policies"). A summary of the Debtors' policies by

type, carrier, and term is set forth on the Schedule of Policies attached to the Insurance Motion. These Policies are essential to the preservation of the Debtors' assets. Specifically, the Policies are necessary to protect the Debtors business and assets during its going concern sale. Moreover, in many instances, insurance coverage is required by regulation, law, or contract that governs the Debtors' business.

80. The Debtors maintain their Policies through multiple insurers. The Policies are essential to the continuation of the Debtors' business. The Debtors also finance certain of the Policies under several PFAs. Accordingly, the Debtors believe it is in the best interests of their estates to permit the Debtors to honor their obligations under their current insurance contracts (including brokers' fees) and related premium financing agreement. Any other alternative would likely require considerable additional cash expenditures and would be detrimental to the Debtors' efforts to preserve and maximize the value of their estates.

81. As explained in the Insurance Motion, the Policies are essential to preserving the value of the Debtors. Accordingly, the Debtors believe that it is in the best interests of the estates to continue to pay the amounts due under the Policies and the PFAs regardless of whether a given payment became due prior to or after the Petition Date. Furthermore, the Debtors submit that the payment of amounts due under the existing PFAs is within the ordinary course of business. Unless the Debtors are authorized to continue to pay their premiums pursuant to the Policies and PFAs on a monthly basis, the financing companies may attempt to cancel the Policies and will be entitled to recover the unearned premiums from its collateral.

82. The ordinary course maintenance of their Policies and insurance financing programs, including payment of all monthly obligations under the PFAs, without further order of the Court, is necessary and essential to the Debtors' business operations during these chapter 11 cases, especially where, as here, the Debtors' failure to pay their monthly obligations could have severe negative consequences for their estates and creditors. I believe that the granting the Insurance Motion is in the best interests of the Debtors and their estates.

*[remainder of page intentionally left blank]*

I declare under penalty of perjury under the United States of America that the foregoing is true and correct.

Executed this 5<sup>th</sup> day of August 2019.

A handwritten signature in black ink, appearing to read 'D. Baker', written over a horizontal line.

David M. Baker  
Managing Partner of Aurora Management Partners

**Exhibit A**

**Organizational Chart**

