

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	
	)	Chapter 11
	)	
PERFECT BROW ART, INC., <i>et al.</i>	)	Case No. 19-01811
	)	(Joint Administration Requested)
	)	
Debtors. <sup>1</sup>	)	Honorable Donald R. Cassling
	)	

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**DEBTORS' EMERGENCY  
MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE  
DEBTORS TO PAY AND HONOR CERTAIN PREPETITION WAGES, BENEFITS  
AND OTHER OBLIGATIONS, (B) AUTHORIZING FINANCIAL INSTITUTIONS TO  
HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH  
OBLIGATIONS, AND (C) GRANTING RELATED RELIEF**

Perfect Brow Art, Inc. and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “*Debtors*”), hereby file this emergency motion (the “*Motion*”), pursuant to section 105, 363, 503, 507 and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “*Bankruptcy Code*”) and Bankruptcy Rules 6003 and 6004, and Rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Illinois (the “*Local Rules*”), for entry of an order (a) authorizing the Debtors to pay and honor certain prepetition wages, benefits and other obligations, (b) authorizing financial institutions to honor and process checks and transfers related to such obligations, and (c) granting related relief. In support of this Motion, the Debtors the Debtors respectively state as follows:

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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 taxpayer-identification number, are: (i) Perfect Brow Art, Inc. (5731), (ii) Perfect Brow Florida, Inc. (5602), (iii) Perfect Brow Puerto Rico, Inc. (3497), (iv) Perfect Brow New York, Inc. (2041), (v) Locks Rock, Inc. (5046), (vi) P.B. Art Franchise, Inc. (0026), (vii) Perfect Brow Oakland, Inc. (5727), and (viii) Ooh La La Franchise Beauty Bar, Inc. (0714).

### **Jurisdiction and Venue**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

### **Background**

3. On the date hereof (the “*Petition Date*”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “*Chapter 11 Cases*”) in the United States Bankruptcy Court for the Northern District of Illinois (the “Court”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

4. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion and the Debtors’ Chapter 11 Cases, are set forth in greater detail in the Declaration of Elizabeth Porikos-Gorgees in Support of First Day Motions and Applications.

#### **A. Overview of the Debtors’ Work Force**

5. As of the Petition Date, the Debtors employ approximately 600 employees (collectively, the “*Employees*”), of which approximately 450 are full-time Employees and approximately 150 are part-time Employees. None of the Employees are party to a collective bargaining agreement or similar labor agreement. The Debtors also use approximately 4 independent contractors (the “*Independent Contractors*”).

6. The Independent Contractors provide critical support to the Debtors, including travel, marketing and other office support services.

7. As more fully discussed below, to ensure that the Debtors can continue to provide their customers with the highest levels of service, maintain high Employee morale and low attrition rates, and minimize the personal hardship to Employees, the Debtors seek authority to continue to pay and honor, in their discretion, prepetition obligations owing to the Employees. In addition, to ensure the Debtors can continue to provide the highest level of service to their customers during these chapter 11 cases, the Debtors seek authority to continue to pay and honor, in their discretion, prepetition obligations owing to the Independent Contractors.

**B. Employee Obligations**

8. As a beauty industry enterprise, the Debtors depend almost exclusively on the Employees to meet their customers' needs. The Employees likewise depend on the Debtors. In the ordinary course of business, the Debtors incur and pay obligations (the "*Compensation Obligations*") relating to the Employees' wages, salaries, and incentive-based compensation. Indeed, the vast majority of the Employees rely on their compensation from the Debtors to pay their daily living expenses. In addition, the Debtors incur a number of obligations related to the Employees, such as federal and state withholding taxes and other withheld amounts, health benefits, expense reimbursements and other benefits that the Debtors have historically provided in the ordinary course of business. The Debtors' compensation and benefit obligations to the Employees and the Independent Contractors (together with all fees, costs, and expenses incident thereto, including amounts owed to third-party administrators) are referred to herein as the "*Employee Obligations*."

9. As of the Petition Date, the Debtors believe that certain prepetition amounts owed on account of the Employee Obligations remain outstanding due to, among other things, the timing of the Debtors' payroll and method of payment for Employees, and the processing of Employee-related payments and expense reimbursements. The outstanding Employee Obligations as follows:

**(1) Wage Obligations**

10. In the ordinary course of business, the Debtors pay Employee wages and salaries, including stipends for certain Employees, (collectively, the "*Wage Obligations*") on a bi-weekly basis. The Debtors pay the Employees through direct deposit or paper check. On average, the Debtors' estimated biweekly gross payroll for mainland United States Employees is approximately \$287,000. The Debtors next scheduled payroll date is January 25, 2019. The Debtors' bi-weekly gross payroll for Employees in Puerto Rico is approximately \$12,500. As of the Petition Date, the Debtors believe approximately \$287,000 in Wage Obligations have accrued and remain unpaid. With the exception of the Debtors' founder and sole shareholder, an Insider, as such term is defined in the Bankruptcy Code, the Debtors do not believe that the amount of Wage Obligations owed to any single Employee exceeds \$12,850.

11. To facilitate payment of the Wage Obligations, the Debtors calculate payroll and other obligations for the Employees with the help of Paycom Software, Inc. for mainland United States based Employees and Automatic Data Processing, Inc. for Puerto Rico based Employees (collectively, the "*Payroll Processors*"). Among other things, the Payroll Processors calculate gross-to-net wages, tips, and tax obligations and also provide payroll tax filing and human capital management services for the Debtors.

12. On average, the Debtors pay \$3,800 per pay period to the Payroll Processors for payroll-related services (the "*Payroll Processor Fees*") that they provide to the Debtors, and the

Debtors estimate that approximately \$3,800 in prepetition Payroll Processor Fees were outstanding as of the Petition Date. By this motion, the Debtors request the authority, but not direction, to pay all prepetition Wage Obligations and to pay all outstanding prepetition Payroll Processor Fees, in both cases in the ordinary course of business.

13. In addition to the Wage Obligations, the Debtors provide vacation time and sick leave to certain full time Puerto Rico based Employees. Puerto Rico based Employees accrue vacation time and sick leave throughout the year. Unused vacation time and sick leave is typically forfeited at the end of each fiscal year unless otherwise required by local law. The Debtors do not believe vacation and sick leave due to any one Puerto Rico based Employee exceeds the \$12,850 priority cap as set forth in 11 U.S.C. § 507. By this motion, the Debtors are also seeking authority to honor all paid time-off that was accrued prepetition and continue accrue post-petition basis in the ordinary course of business.

**(2) Payroll Taxes and Other Deductions**

14. The Debtors are required by law to withhold from the Employees' paychecks amounts related to federal, state and local income taxes, as well as social security and Medicare taxes (collectively, the "*Withholding Taxes*") and to remit the same to the appropriate taxing authorities (collectively, the "*Taxing Authorities*"). In addition, the Debtors are required to make matching payments from their own funds on account of social security and Medicare taxes and to pay, based on a percentage of gross payroll and subject to state-imposed limits, additional amounts to the Taxing Authorities for, among other things, state and federal unemployment insurance (together with the Withholding Taxes, the "*Payroll Taxes*"). On average, the Debtors, through a trust set up by the Payroll Processors, remit to the Taxing Authorities approximately \$97,000 on account of the Payroll Taxes per pay period. As of the Petition Date, the Debtors estimate that

approximately \$97,000 in Payroll Taxes have accrued and remain unpaid on account of Payroll Taxes relating to the prepetition period

15. In addition to deductions relating to the Debtors' health and welfare plans, the Debtors routinely deduct certain amounts from the Employees' paychecks on account of miscellaneous items, including garnishments, child support and other similar deductions (collectively, the "*Deductions*"). On average, the Deductions for all Employees total approximately \$265 per pay period. As of the Petition Date, the Debtors estimate they have collected approximately \$265 in Deductions from Employees' paychecks that have not yet been transferred to the appropriate third parties.

**(3) Employee Incentive Programs**

16. In addition to the Wage Obligations, in order to offer appropriate incentives to motivate the Employees and thereby maximize the value of their business, the Debtors offer Employees a number of incentive programs (collectively, as more fully described herein, the "*Employee Incentive Programs*"). The Employee Incentive Programs are a critical component of the Employee compensation structure and are designed to encourage Employees to achieve performance goals and maintain the Debtors' status as an industry leader.

17. The Debtors maintain a commission program (the "*Commission Incentive Program*") whereby certain Employees who work in Debtors' beauty centers are eligible to receive commission or performance-based compensation if specific sales or productivity benchmarks are met. The Employees who are eligible for the Commission Incentive Program are rank-and-file Employees who are not in upper management positions and are not active in setting overall corporate policy or performing other important executive duties. The Debtors have historically

used the Commission Incentive Program to drive sales and motivate those Employees who have made significant contributions to the Debtors' sales efforts.

18. Approximately 443 of the Employees are eligible to participate in the Commission Incentive Program. The Commission Incentive Program obligations are generally paid bi-weekly and are included in the above stated Wage Obligations amounts, consistent with the Debtors' ordinary course of business. The Debtors are therefore seeking authority, but not direction, to pay any outstanding prepetition amounts with respect to the Commission Incentive Program as they become due and payable in the ordinary course of the Debtors' business.

19. The Debtors also maintain a bonus program for sales staff (the "*Sales Bonus Program*"). Under the Sales Bonus Program, eligible Employees receive payments in an amount ranging from \$500 to \$1000, in accordance with the Debtors' award policy which takes into account the Employee's performance and the performance of the Debtors' business as a whole, as compared with target performance goals. Payouts under the Sales Bonus Program are generally paid quarterly. The Debtors are therefore seeking authority, but not direction, to pay any outstanding prepetition amounts with respect to the Sales Bonus Program, in their discretion, in the ordinary course of the Debtors' business.

**C. Independent Contractor Obligations**

20. The Debtors estimate that the average amount of obligations with respect to the Independent Contractors is approximately \$3,000 per month, the ("*Independent Contractor Obligations*"). The Independent Contractor Obligations are paid through the Debtors' accounts payable system following submission of a documented and supported invoice. Based on historical monthly averages, as of the Petition Date, the Debtors estimate that approximately \$300 in prepetition Independent Contractor Obligations, not otherwise identified as general unsecured

claims, remain outstanding. The Debtors do not believe that amounts owed to any of the individuals engaged as Independent Contractors on account of the prepetition Independent Contractor Obligations exceeds \$12,850. Given the significant role that the Independent Contractors play in supporting the Debtors' business, the Debtors are seeking authority, but not direction, to pay all prepetition amounts owed on account of Independent Contractor Obligations.

**D. Expense Reimbursements**

21. The Debtors reimburse certain Employees or pay credit card invoices on behalf of certain Employees for approved, legitimate expenses incurred in the scope of their employment on behalf of the Debtors. These expenses include travel, meals, certain internet and cellular phone expenses, car mileage reimbursements and other miscellaneous business expenses. To the extent these expenses are incurred in furtherance of the Debtors' business, they are reimbursed in full (the "*Expense Reimbursement Obligations*") after submission of appropriate documentation. The Debtors reimburse Employees for legitimate expenses through direct deposit or by issuing checks. In this direct-reimbursement context, the Employees are personally liable to their banks for such costs, or front an outlay of cash, in the first instance. The Debtors estimate that they pay approximately \$2,000 per pay period on account of all Expense Reimbursement Obligations. As of the Petition Date, the Debtors estimate that approximately \$2000 of Expense Reimbursement Obligations were outstanding. To the best of the Debtors' knowledge, no such Expense Obligation is due to an insider, as such term is defined in the Bankruptcy Code.

22. Alternatively, the Debtors also pay reimbursable expenses directly, without Employee cash outlay, through the use of corporate credit cards.



**E. Healthcare Plans**

23. In the ordinary course of business, the Debtors have established health benefit plans and policies for the Employees and certain of the Employees' dependents and beneficiaries, which medical insurance (including prescription drugs) and dental insurance (collectively, the "*Healthcare Plans*"). Premiums for the Healthcare Plans are withheld from the Employees' gross pay and included within the Deductions discussed above.

24. The Debtors offer full-time Employees different medical plans through Costco Health Solutions (collectively, the "*Medical Plans*"). Each of the plans offers comprehensive medical and preventative care coverage, but the Employees' premiums, deductibles, co-pays, and out-of-pocket costs vary depending on which plan is selected and whether the Employee has dependents covered by the applicable Medical Plan. Prescription drug coverage is also available under each of the Medical Plans.

25. The Debtors offer full-time Employees dental plans through Unum (collectively, the "*Dental Plans*" and together with the Medical Plans, the "*Healthcare Plans*"). Each of the Dental Plans generally covers preventative dental services and basic and major restorative services, but the Employees' premiums, deductibles, co-pays, and out-of-pocket costs vary depending on which Dental Plan the Employee selects and whether the Employee has dependents covered by the applicable Dental Plan.

24. The Debtors pay an aggregate of approximately \$5,600 per month to Costco Health Solutions and Unum on account of the Medical Plans and Dental Plans including funds the Debtors receive from Employee contributions through payroll deductions and later remit, to provide the Healthcare Plans to eligible Employees. The Debtors are currently renegotiating its Healthcare

Plans and anticipate slightly increased charges and possible new providers beginning in February 2019.

25. As of the Petition Date, the Debtors estimate that approximately \$5,600 in the aggregate is due in connection with the Healthcare Plans. By this Motion, the Debtors seek authority to continue to provide Healthcare Plans to the Employees in the ordinary course of business, continue making contributions to such programs, continue to pay amounts related thereto, including premiums, claim amounts, and administrative costs (including without limitation those of third party administrators), and pay such amounts to the extent they remain unpaid as of the Petition Date. The Debtors also request authority to remit premiums, if any, that may have been withheld from Employees' paychecks but not yet forwarded to the insurance provider and to continue honoring their obligations under the Healthcare Plans post-petition in the ordinary course of business and consistent with their pre-petition practices.

26. In addition to the Healthcare Plans for Employees, the Debtors provide qualifying terminated Employees with the opportunity to receive other benefits, such as outplacement assistance and the ability to continue medical insurance in accordance with the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("*COBRA*") and subsidies in connection with the continuation of such benefits (together with Healthcare Plans, the "*Healthcare Obligations*").

27. As of the Petition Date, the Debtors do not believe that they owe any amount to former, non-insider Employees in connection with ongoing COBRA benefits. However, and in an abundance of caution to the extent such obligations are outstanding, the Debtors are seeking the authority, but not direction, to pay those amounts owed in respect of prepetition COBRA obligations in an aggregate amount not to exceed \$12,850 per individual.

**Relief Requested**

28. By this Motion, the Debtors request that this Court enter an order, pursuant to sections 105(a), 363(b)(1), 507(a), and 541 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors to (i) pay or honor, in their sole discretion, all of the prepetition obligations incurred under or related to the following Employee Obligations: the Wage Obligations; the Payroll Processor Fees; the Independent Contractor Obligations; the Commission Incentive Programs; the Expense Reimbursement Obligations; the Payroll Taxes; the Deductions; the Healthcare Obligations. The Debtors do not believe payments of Employee Obligations to any individual employee, or former employee as applicable, will exceed the \$12,850 statutory cap.

**Basis for Relief Requested**

**A. The Court Should Authorize Payment and Honoring of the Employee Obligations**

**(1) Certain of the Employee Obligations are Entitled to Priority Treatment**

29. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims of Employees of the Debtors for “wages, salaries, or commissions, including vacation, severance, and sick leave pay” earned within 180 days before the Petition Date are afforded priority unsecured status up to \$12,850 per Employee. 11 U.S.C. § 507(a)(4)(A); *see also Belson v. Olson Rug Co.*, 482 B.R. 660, 664 (Bankr. N. D. Ill. 2012). Similarly, section 507(a)(5) of the Bankruptcy Code provides that Employees’ claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$12,850 per Employee covered by such plan, less any amount paid pursuant to section 507(a)(4). 11 U.S.C. § 507(a)(5); *see also In re Louis Jones Enters.*, 442 B.R. 126, 130 (Bankr. N.D. Ill. 2010).

30. The Debtors believe that certain of the Employee Obligations relating to the period prior to the Petition Date constitute priority claims under sections 507(a)(4) and 507(a)(5) of the

Bankruptcy Code. As priority claims, the Employee Obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied.

31. The Debtors believe that payment of these obligations will enhance value for the benefit of all interested parties because it will help ensure that the Employees, which are central to the Debtors' business operations, continue to provide vital services to the Debtors at this critical time. The Debtors firmly believe that maintaining the Employee Obligations is critical to maintaining positive Employee morale and loyalty during these chapter 11 cases. Indeed, Debtors' failure to honor the Employee Obligations would cause severe personal hardship to the Employees and likely would result in attrition at a time when the Debtors need the Employees to perform at peak efficiency.

**(2) Payment of Certain Employee Obligations is Required by Law**

32. The Debtors also seek authority to honor and pay any unremitted Payroll Taxes, Deductions or other Employee contributions to the Healthcare Plans to the appropriate third-party entities when such obligations are owed. These amounts principally represent Employee earnings that governments, Employees and judicial authorities have designated for deduction withholding from Employees' wages. Indeed, certain of the Deductions, including contributions to the Healthcare Plans and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' wages on another party's behalf. *See* 11 U.S.C. § 541(b); *see also Marrs-Winn Co. v. Giberson Elec. (In re Marrs-Winn Co.)*, 103 F.3d 584, 589 (7th Cir. 1996) ("It is a well-settled principle that debtors do not own an equitable interest in property that they hold in trust for another, and thus, those trust funds are not 'property of the estate'"). Accordingly, continued payment of these unremitted amounts will not harm or prejudice the Debtors' creditors, including unsecured creditors.

33. Additionally, certain federal, state and local laws require the Debtors and their officers to make certain tax payments that have been withheld from the Employees' paychecks. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also In re Marrs-Winn Co.*, 103 F.3d at 590; *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re Avildsen Tools & Machine, Inc.*, 794 F.2d 1248, 1251 (7th Cir. 1986) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes).

**(3) Payment of the Employee Obligations is a Proper Exercise of the Debtor's Business Judgment and Supported by the Court's Equitable Powers**

34. Pursuant to section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the court, after notice and a hearing, shall allow as administrative expenses, among other things, "the actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1). In addition, pursuant to section 363(b) of the Bankruptcy Code, a debtor may, in the exercise of its sound business judgment and after notice and a hearing, use property of the estate outside of the ordinary course of business. *Id.* § 363(b). The Debtors submit that the use of estate funds for payment of the Employee Obligations is permitted by sections 503(b)(1) and 363(b) as necessary costs of preserving the estates.

35. Under section 363(b), a court may authorize a debtor to pay certain prepetition claims. *See In re MPC Computs., LLC*, No. 08-12667 (Bankr. D. Del. Nov. 10, 2008) (authorizing, pursuant to section 363, the payment of prepetition claims of suppliers); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (referring to the court's earlier order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); *Armstrong*

*World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 of the Bankruptcy Code to allow a contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractor to release funds owed to debtors). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” *Id.*; *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *In re Kmart*, 359 F.3d 866 (7<sup>th</sup> Cir. 2004).

36. In *Kmart*, which involved the payment of prepetition claims of certain “critical” vendors, the Seventh Circuit suggested that if authority to pay critical vendors could be found in section 363(b)(1), the debtor would have to show that: (1) the critical vendor would have ceased doing business with the debtor absent the payment of the creditor’s pre-petition claim; (2) there was no alternative to the payment of the pre-petition claim; and (3) disfavored creditors were at least as well off as they would have been had the critical-vendors order not been entered. 359 F.3d at 873-74. These same factors were considered by the court in *In re CEI Roofing, Inc.*, 315 B.R. 50 (Bankr. N.D. Tex. 2004) in granting the debtor’s motion to pay outstanding employee wages prior to the petition date and continue employee benefits.

37. To supplement these explicit powers, section 105(a) of the Bankruptcy Code empowers the 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). However, “the power conferred by § 105(a) is one to implement rather than override [other provisions of the Bankruptcy Code].” *In re Kmart*, 359 F.3d at 871. The purpose of section 105(a) is to “assure the Bankruptcy Court’s power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction.” *Collier on Bankruptcy* ¶105.01 (15<sup>th</sup> rev. ed. 2004). Thus, section 105(a) essentially codifies the

bankruptcy court's inherent equitable powers. *See In re Mold Makers*, 109 B.R. 845, 848 (Bankr. N. D. Ill. 1989) (recognizing bankruptcy court's equitable power is derived from section 105 of the Bankruptcy Code).

38. As stated in *Kmart*, section 105(a) can only be used to implement other sections of the Code. 359 F.3d at 871. The bankruptcy court's exercise of its equitable powers in allowing the satisfaction of the Employee Obligations, is appropriate to carry out specific statutory provisions of chapter 11, specifically sections 1107(a), 1108 and 363(b)(1) of the Bankruptcy Code, which collectively authorize a debtor-in-possession to maintain and operate the debtor's business and use estate property outside of the ordinary course of business. Indeed, a debtor-in-possession operating a business under section 1108 of the Bankruptcy Code has a duty to protect and preserve the value of its business, and prepetition claims may be paid if necessary to perform the debtor's duty. *See In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this duty can only be fulfilled by the preplan satisfaction of a prepetition claim"); *see also Commodity Futures Trading Commission v. Weintraud*, 471 U.S. 343, 351 (1985) (recognizing that the duties of a trustee under section 704(a), and by extension a debtor-in-possession under section 1107, is to "maximize the value of the estate.").

39. As discussed herein, the Debtors have substantial business justification for continuing to pay Employee Obligations in the ordinary course of business, including (a) maintaining Employee morale, (b) discouraging Employee attrition, and (c) reassuring Employees that the Debtors intend to honor their obligations to Employees—both during and after their tenure with the Debtors.

40. Absent the requested relief, the Employees will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are necessary for the Employees to be able to meet their own personal financial obligations. The loss of benefits will result in considerable hardship and anxiety for Employees (and likely attrition) at a time when the Debtors need the Employees to focus on the Debtors' customers and continuing to provide the highest level of service possible.

41. For each of the foregoing reasons, the relief requested herein will benefit the Debtors' creditors and their estates by allowing the Debtors' business operations to continue without interruption. In the absence of such payments, the Debtors believe the Employees may seek alternative employment opportunities. Such a development would severely disrupt the Debtors' operations at a critical juncture. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a substantial and costly distraction at a time when the Debtors should be focusing on their restructuring. Similarly, the Independent Contractors may choose to end their relationships with the Debtors, resulting in disruptions to the services provided to the Debtors' clients at a critical time. Accordingly, the Debtors must be able to pursue all reasonable measures to retain the Employees and the Independent Contractors by, among other things, continuing to honor all wages, benefits and related obligations, including those that accrued before the Petition Date, and to pay outstanding prepetition Independent Contractors and Employee Obligations.

42. Finally, no party in interest will be prejudiced by the relief requested herein. To the extent any of the claims on account of the Employee Obligations are general unsecured claims, the claims would be entitled to priority under the Bankruptcy Code. Thus, the relief requested herein seeks to alter only the timing, not the amount or priority, of such payments.



43. Similar relief has been granted numerous times in this District after the Seventh Circuit's decision in *Kmart*. See, e.g., *In re World Marketing Chicago, LLC*, Case No. 15-32968 (Bankr. N.D. Ill. Oct. 14, 2015); *In re Sparrer Sausage Co., Inc.*, Case No. 12-04289 (Bankr. N.D. Ill. Feb. 22, 2012); *In re Michael's Market, Inc.*, Case No. 11-52013 (Bankr. N.D. Ill. Jan. 5, 2012).

**B. The Court Should Authorize Financial Institutions to Honor Checks and Transfer Requests Relating to the Employee Obligations**

44. The Debtors represent that they have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations. As a result of the commencement of these chapter 11 cases, and in the absence of an order of the Court providing otherwise, the Debtors' checks, wire transfers, direct deposit transfers and electronic fund transfers in respect of the Employee Obligations may be dishonored or rejected by financial institutions.

45. Under the Debtors' accounting and cash management systems, the Debtors can readily identify checks or transfers as relating to payment of the Employee Obligations. Accordingly, the Debtors believe that prepetition checks and transfers other than those for the Employee Obligations will not be honored inadvertently.

**Satisfaction of Rule 6003 of the Federal Rules of Bankruptcy Procedure**

46. Pursuant to Rule 6003(b) of the Bankruptcy Rules, any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. Fed. R. Bankr. P. 6003(b); see also *In re Ames Dep't Stores*,

*Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001).

47. As described above, the commitment and enthusiasm of the Employees is integral to the Debtors’ continued operations at this critical juncture. Indeed, the Debtors believe that without the relief requested herein, Employees may seek alternative employment opportunities, perhaps with the Debtors’ competitors. Such a development would deplete the Debtors’ workforce, thereby hindering the Debtors’ ability to operate their business and potentially diminishing stakeholder confidence in the Debtors’ ability to successfully reorganize. The loss of valuable Employees and the resulting need to recruit new personnel (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on stabilizing their business operations. Accordingly, the Debtors must do their utmost to retain their workforce by, among other things, continuing to honor all wage, benefits, and related obligations, including the prepetition obligations pursuant to the Employee Obligations. In addition, the Debtors’ ability to pay the Independent Contractors is critical to their ability to continue operating their business during the important time.

48. For this reason and those set forth above, the Debtors respectfully submit that Rule 6003(b) of the Bankruptcy Rules has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**Waiver of Stay Under Rule 6004(h)**

49. 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 throughout this Motion, any delay in the Debtors’ ability to continue, and pay, honor, or otherwise satisfy their

obligations related to Employees would be detrimental to the Debtors, their creditors and estates, and would impair the Debtors' ability to optimize their business performance at this critical time as they begin the chapter 11 process.

50. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h).

**Notice**

51. Notice of this Motion will be provided to (i) the Office of the United States Trustee; (ii) entities that have filed UCC-1 financing statements against the Debtors; (iii) the holders of the twenty (20) largest unsecured claims against each respective Debtor; and (iv) all other parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

**No Prior Request**

52. The Debtors have not previously sought the relief requested herein from this or any other Court.

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WHEREFORE, the Debtors respectfully request this Court enter an order granting: (i) (a) authorizing the Debtors to pay and honor certain prepetition wages, benefits and other obligations; and (b) authorizing financial institutions to honor and process checks and transfers related to such obligations, and (ii) such other relief as the court deems just and proper.

Respectfully submitted,

Dated: January 23, 2019

**PERFECT BROW ART, INC. ET AL.**

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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

In Re:	)	BK No.: 19-01811
	)	
Perfect Brow Art, Inc. et al.	)	Chapter: 11
	)	Honorable Donald R. Cassling
	)	
Debtor(s)	)	

**ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF AN ORDER (A)  
AUTHORIZING THE DEBTORS TO PAY AN HONOR CERTAIN PREPETITION  
WAGES, BENEFITS, AND OTHER OBLIGATIONS, (B) AUTHORIZING FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED  
TO SUCH OBLIGATIONS, AND (C) RELATED RELIEF**

Upon the motion (the "Motion") of debtors and debtors-in-possession (collectively the "Debtors") for entry of an order (a) authorizing the Debtors to pay and honor certain prepetition wages, benefits, and other obligations, (b) authorizing financial institutions to honor and process checks and transfers related to such obligations, and (c) granting related relief; and the Court having found that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the 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 the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estate, its creditors, and other parties in interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on set forth herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtors are authorized, but not directed, to continue to pay, honor, or otherwise satisfy the Employee Obligations in the ordinary course of business and consistent with pre-petition practices, including without limitation, amounts and obligations related to the period prior to the Petition Date.

3. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall not be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable law.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized, and to the extent funds

are available, directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

5. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored in respect of payments of prepetition obligations described in the Motion that are dishonored or rejected.

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

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

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

Enter:

Honorable Donald R. Cassling

United States Bankruptcy Judge

Dated:

**Prepared by:**

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