



This is Exhibit "Y" referred to in the  
Affidavit of Waleed Malik, solemnly affirmed before me,  
this 8<sup>th</sup> day of August, 2019

  
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A Commissioner for Taking Affidavits  


**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

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In re:

JACK COOPER VENTURES, INC., *et al.*,<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 19-62393 (PWB)  
)  
) (Joint Administration Requested)  
)

**DEBTORS' MOTION FOR ENTRY OF  
INTERIM AND FINAL ORDERS AUTHORIZING THE  
DEBTORS TO (I) CONTINUE INSURANCE COVERAGE ENTERED  
INTO PREPETITION AND SATISFY PREPETITION OBLIGATIONS  
RELATED THERETO, (II) RENEW, AMEND, SUPPLEMENT, EXTEND, OR  
PURCHASE INSURANCE POLICIES, (III) HONOR THE TERMS OF THE  
PREMIUM FINANCING AGREEMENTS AND PAY PREMIUMS THEREUNDER,  
(IV) ENTER INTO NEW PREMIUM FINANCING AGREEMENTS IN THE  
ORDINARY COURSE OF BUSINESS, AND (V) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

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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, include: Jack Cooper Ventures, Inc. (0805); Jack Cooper Diversified, LLC (9414); Jack Cooper Enterprises, Inc. (3001); Jack Cooper Holdings Corp. (2446); Jack Cooper Transport Company, Inc. (3030); Auto Handling Corporation (4011); CTEMS, LLC (7725); Jack Cooper Logistics, LLC (3433); Auto & Boat Relocation Services, LLC (9095); Axis Logistic Services, Inc. (2904); Jack Cooper CT Services, Inc. (3523); Jack Cooper Rail and Shuttle, Inc. (7801); Jack Cooper Investments, Inc. (6894); North American Auto Transportation Corp. (8293); Jack Cooper Transport Canada Inc. (8666); Jack Cooper Canada GP 1 Inc. (7030); Jack Cooper Canada GP 2 Inc. (2373); Jack Cooper Canada 1 Limited Partnership (3439); and Jack Cooper Canada 2 Limited Partnership (7839). The location of the Debtors' corporate headquarters and service address is: 630 Kennesaw Due West Road NW, Kennesaw, Georgia 30152.

**Relief Requested**<sup>2</sup>

1. By this motion, the Debtors request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and “Final Order,” respectively), (a) authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto in the ordinary course of business, (ii) renew, amend, supplement, extend, or purchase insurance coverage in the ordinary course of business, (iii) honor the terms of the Premium Financing Agreements and pay premiums thereunder, (iv) enter into new premium financing agreements in the ordinary course of business; and (b) granting related relief.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Northern District of Georgia has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(b), 503, 1107(a), 1108, and 1112(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the

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<sup>2</sup> A description of the Debtors’ businesses, the reasons for commencing these chapter 11 cases, the relief sought from the Court to allow for a smooth transition into chapter 11, and the facts and circumstances supporting this motion are set forth in the *Declaration of Greg May, the Debtors’ Chief Financial Officer, in Support of First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used in this Relief Requested section of the Motion but not otherwise defined therein shall have the meanings ascribed to such terms later in the Motion, and any other capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration.

“Bankruptcy Rules”), and *General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 4, 2019 (the “Complex Case Procedures”).

**Insurance Policies and Related Payment Obligations**

5. In the ordinary course of business, the Debtors maintain forty-six (46) insurance policies (collectively, with any new or similar policies entered into by the Debtors due to expiration or otherwise, the “Insurance Policies”) that are maintained and administered by several third-party insurance carriers (collectively, the “Insurance Carriers”). These policies provide coverage for, among other things: (a) general umbrella liability, (b) property liability, (c) excess liability, (d) automobile liability, (e) cargo liability, (f) non-trucking liability, (g) crime liability, (h) kidnap and ransom liability, (i) network security and cyber liability, (j) business income liability, (k) directors and officers liability, (l) employed lawyers professional liability, (m) workers’ compensation,<sup>3</sup> (n) storage tank liability and (o) excess flood insurance . A schedule of the current Insurance Policies and their effective dates is attached hereto as **Exhibit C**.<sup>4</sup>

6. The Debtors historically have paid an aggregate amount of approximately \$11,100,00 in premiums annually on account of the Insurance Policies, which premiums are either financed, paid annually, quarterly, or monthly. As of the Petition Date, the Debtors owe

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<sup>3</sup> The Debtors separately request authority to maintain workers’ compensation coverage and to pay prepetition amounts related thereto pursuant to the *Debtors’ Motion For Entry of Interim and Final Orders Authorizing the Debtors to (I) Pay Certain Prepetition Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses, and (II) Continue Employee Benefits*, filed concurrently herewith.

<sup>4</sup> The descriptions of the Insurance Policies set forth in **Exhibit C** constitute a summary only. The actual terms of the Insurance Policies and related agreements will govern in the event of any inconsistency with the description in this motion. The Debtors request relief with respect to Insurance Policies payable to all Insurance Carriers, regardless of whether such Insurance Carrier is specifically identified on **Exhibit C**.

approximately \$1,900,000 in unpaid premiums on account of the non-financed Insurance Policies, \$800,000 of which will become due and owing within the first 21 days of these chapter 11 cases.

7. The Debtors finance premiums under certain of their Insurance Policies (collectively, the “Financed Policies”)<sup>5</sup> because it is not economically advantageous for the Debtors to pay the premiums on the Financed Policies, in full, on a lump-sum, quarterly, or monthly basis. The Financed Policies include directors and officers liability, umbrella liability, general liability, foreign liability, excess property liability, cyber liability and excess flood liability. Accordingly, in the ordinary course of business, the Debtors finance the premiums on the Financed Policies pursuant to premium financing agreements with Aon Risk Services Southwest, Inc. (“Aon”) and gotoPremiumFinance (“gotoPF”), which agreements are attached hereto as **Exhibit D** and **Exhibit E**, respectively (the “Aon Premium Financing Agreement” and the “gotoPF Premium Financing Agreement,” respectively, and together, the “Premium Financing Agreements”).

8. In consideration for Aon’s obligations to pay the Debtors’ insurance premiums on account of certain of the Financed Policies, the Aon Premium Financing Agreement requires the Debtors to pay an initial down payment of approximately \$526,000, followed by 11 monthly payments of approximately \$278,000. In consideration for gotoPF’s obligations to pay the Debtors’ insurance premiums on account of certain of the Financed Policies, the gotoPF Premium Financing Agreement requires the Debtors to pay an initial down payment of approximately \$5,096, followed by 9 monthly payments of approximately \$1,810.

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<sup>5</sup> The Financed Policies are identified on **Exhibit C** attached hereto.

9. As of the Petition Date, there is approximately \$1,110,000 in accrued but unpaid obligations under the Aon Premium Financing Agreement, approximately \$278,000 of which will become due and owing within the first 21 days of these chapter 11 cases. Additionally, as of the Petition Date, there is approximately \$3,700 in accrued but unpaid obligations under the gotoPF Premium Financing Agreement, approximately \$1,810 of which will become due and owing within the first 21 days of these chapter 11 cases.

10. The Debtors' obligations under the Premium Financing Agreements are secured by all sums payable to the applicable Debtor under the Financed Policies, including, among other things, any gross unearned premiums and any payment on account of loss that results in a reduction of unearned premiums in accordance with the terms of the Financed Policies.

11. If the Debtors were unable to continue honoring their obligations under the Premium Financing Agreements, Aon and/or gotoPF may seek relief from the automatic stay to terminate the Financed Policies to recoup its losses. The Debtors could then be required to obtain replacement insurance on an expedited basis and likely at significant cost to their estates. The Debtors likely would face great hardship if they were required to obtain replacement insurance and pay a lump-sum premium for the Financed Policies in advance. Even if the Financed Policies were not terminated, any interruption in the Debtors' payments could have a severe, adverse effect on the Debtors' ability to finance premiums for future policies.

12. Continuation and renewal of the Insurance Policies and entry into new insurance policies is essential to preserving the value of the Debtors' businesses, properties, and assets. Moreover, in many cases, coverage provided by the Insurance Policies is required by the regulations, laws, and contracts that govern the Debtors' commercial activities, as well as the

Bankruptcy Code and the requirements of the Office of the United States Trustee for Region 21 (the “U.S. Trustee”) as provided in the *Operating Guidelines and Reporting Requirements for Debtors in Possession and Chapter 11 Trustees* (the “U.S. Trustee Guidelines”).

13. Accordingly, the Debtors request authority to maintain their existing Insurance Policies, pay prepetition obligations related thereto, honor their obligations under the Premium Financing Agreements, and enter into new Insurance Policies in the ordinary course of business. In addition, to the extent that the Premium Financing Agreements expire during the course of these chapter 11 cases, the Debtors seek authority to renew the Premium Financing Agreements without further Court approval. The Debtors respectfully submit that renewal of the Premium Financing Agreements falls squarely within the Debtors’ ordinary course of business and, but for the constraints of section 364 of the Bankruptcy Code, the Debtors would not need the Court’s prior approval to renew the Premium Financing Agreements. To reduce the administrative burden, as well as to confirm their ability to satisfy one of their obligations of operating as debtors in possession, the Debtors seek the Court’s authority now to renew the Premium Financing Agreements when and as necessary in the Debtors’ business judgment.

#### **The Debtors’ Insurance Brokers**

14. The Debtors utilize various insurance brokers, including United Network Insurance Agency, Inc. (“UNIA”), Automatic Data Processing Insurance Agency, Inc. (“ADP”) and AON RISK SERVICES SOUTHWEST, INC (“AON RISK” and together with UNIA and ADP, the “Insurance Brokers”) to obtain their Insurance Policies.

15. The Insurance Brokers primarily assist the Debtors with the procurement and negotiation of the Insurance Policies, enabling the Debtors to obtain the Insurance Policies on

advantageous terms and at competitive rates. The Debtors pay fees (the “Brokerage Fees”) to AON RISK in an annual amount of approximately \$695,000 over 12 monthly installments. Brokerage Fees payable to UNIA and ADP are included in the premium amounts. As of the Petition Date, the Debtors owe approximately \$232,000 in unpaid monthly installments on account of the Brokerage Fees to AON RISK, \$58,000 of which will become due and owing within the first 21 days of these chapter 11 cases.

16. Pursuant to the Insurance Policies, the Debtors may be required to pay various deductibles or retention amounts (the “Insurance Deductibles”), depending upon the type of claim and insurance policy involved. Under certain policies, the Insurance Carriers may pay claimants and then invoice the Debtors for any Insurance Deductible. In such situations, the Insurance Carriers may have prepetition claims against the Debtors. While the Debtors are not aware of any Insurance Deductibles that are due and owing as of the Petition Date,<sup>6</sup> the Debtors seek authority to honor any amounts owed to the Insurance Carriers to ensure uninterrupted coverage under their Insurance Policies.

17. By this motion, the Debtors request authority to pay up to \$1,140,000 in the aggregate, on an interim basis, on account of prepetition amounts outstanding under the non-financed Insurance Policies, the Premium Financing Agreements, and the Brokerage Fees, and to continue honoring all obligations thereunder on a postpetition basis in the ordinary course of business.

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<sup>6</sup> To the extent any insurance deductibles or related amounts are owing in connection with the Debtors’ workers’ compensation coverage, the Debtors seek authority, but not direction, to pay such amounts pursuant to the *Debtors’ Motion For Entry of Interim and Final Orders Authorizing the Debtors to (I) Pay Certain Prepetition Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses, and (II) Continue Employee Benefits*, filed concurrently herewith.



**Basis for Relief**

**I. The Bankruptcy Code and U.S. Trustee Guidelines Require the Debtors to Maintain Insurance Coverage and Satisfy Their Insurance Obligations.**

18. As discussed above, the Insurance Policies provide a comprehensive range of protection for the Debtors' business, properties, and assets. As such, it is essential that the Debtors' insurance coverage continues in full force and effect during the course of these chapter 11 cases. Under section 1112(b)(4)(C) of the Bankruptcy Code, "failure [of a debtor] to maintain appropriate insurance [where such failure] poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Similarly, certain of the Insurance Policies are required by various state and federal regulations. In addition, the U.S. Trustee Guidelines require that a debtor "shall maintain" certain types of insurance coverage following the Petition Date. *See* U.S. Trustee Guidelines, § 5. To ensure that the Debtors comply with section 1112(b)(4)(C) of the Bankruptcy Code, applicable state and federal regulations, and the U.S. Trustee Guidelines, the Debtors respectfully request the authority to continue to honor obligations arising under the Insurance Policies and, if necessary, to renew, supplement, or purchase insurance coverage on a postpetition basis in the ordinary course of business.

**II. Maintenance of Insurance Coverage and Satisfaction of Insurance Obligations Is Appropriate Under the Bankruptcy Code.**

19. As set forth herein, in authorizing payments of certain insurance obligations, courts have relied on several legal theories, rooted in sections 105(a), 363(b), 503, 1107(a), and 1108 of the Bankruptcy Code. The Court may authorize the Debtors to maintain the Insurance Policies pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code because the relief requested is consistent with the value preservation policy of chapter 11.

20. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 496-501 (Bankr. N.D. Tex. 2002) (granting authority to pay prepetition claims to certain vendors).

21. Section 503(b)(1)(A) of the Bankruptcy Code provides that “[a]fter notice and a hearing, there shall be allowed, administrative expenses[,] including . . . the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). The Court, therefore, can authorize the Debtors to use estate funds to pay any obligations under the Insurance Policies arising during or relating to the period after the Petition Date.

22. In addition, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. at 497. Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

23. Further, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code,

courts may permit preplan payments of prepetition obligations when essential to the continued operation of a debtor's business. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity").

24. The "doctrine of necessity" or the "necessity of payment" rule has long been recognized by bankruptcy courts. *See Ionosphere*, 98 B.R. at 174–76. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *Id.*; *see also In re Just For Feet*, 242 B.R. 821, 824–26 (Bankr. D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation” is appropriate); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts

“is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); 2 COLLIER ON BANKRUPTCY, 105.02[4][a] (16th ed. rev. 2015) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

25. The Debtors submit that there is sufficient business justification to grant the relief requested herein because failure to pay premiums and related insurance expenses when due may harm the Debtors’ estates in several ways. The Insurance Carriers may refuse to renew the Insurance Policies absent the Debtors’ ongoing satisfaction of the Insurance Obligations as and when they become due, which will require the Debtors to obtain replacement policies and possibly to reconfigure their risk management program. This, in turn, would require the commitment of significant resources and could result in less favorable coverage or terms from the Debtors’ insurers. Additionally, the Insurance Carriers could attempt to terminate the Debtors’ existing policies, which could threaten the Debtors’ ability to continue operating their businesses given the Debtors’ myriad regulatory and contractual obligations to maintain specific amounts and types of insurance coverage.

26. The Debtors submit that it is also in the best interests of their estates to have the ability to revise, extend, supplement, or change insurance coverage, as necessary, on a postpetition basis pursuant to sections 105(a), 363(b)(1), 503, 1107, and 1108 of the Bankruptcy Code. Indeed, the Insurance Policies are essential to the preservation of the value of the Debtors’ businesses, properties, and assets and their ability to successfully prosecute these chapter 11 cases. Accordingly, in the event any of the Insurance Policies lapse or new coverage is required or necessary, it is imperative that the Debtors be able to renew, supplement, or purchase insurance

coverage on a postpetition basis in the ordinary course of business. The Insurance Policies protect the Debtors and other parties in interest from losses caused by casualty, natural disaster, fraud, or other unforeseen events.

27. Courts in this district have routinely granted relief similar to that requested herein. *See, e.g., In re Beaulieu Group, LLC*, Case No. 17-41677 (PWB) (Bankr. N.D. Ga. July 20, 2017) [Docket No. 44]; *In re AstroTurf, LLC*, Case No. 16-41504 (PWB) (Bankr. N.D. Ga. July 8, 2016) [Docket No. 55]; *In re S. Reg'l Health Sys., Inc.*, Case No. 15-64266 (WLH) (Bankr. N.D. Ga. Aug. 11, 2015) [Docket No. 66]; *In re Cagle's, Inc.*, Case No. 11-80202 (JB) (Bankr. N.D. Ga. Oct. 20, 2011) [Docket No. 28]; *In re AtheroGenics, Inc.*, Case No. 08-78200 (JEM) (Bankr. N.D. Ga. Oct. 16, 2008) [Docket No. 55]; *In re Pike Nursery Holding, LLC*, Case No. 07-79129 (MGD) (Bankr. N.D. Ga. Nov. 16, 2007) [Docket No. 34].

### **III. The Court Should Authorize the Debtors to Honor and Renew the Premium Financing Agreements.**

28. Payment of prepetition premiums and amounts owing under the Premium Financing Agreements is necessary and appropriate and may be authorized under sections 105(a) and 363(b) of the Bankruptcy Code. Moreover, pursuant to section 364(c) of the Bankruptcy Code, a debtor may, in the exercise of its business judgment, incur secured postpetition debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estate. *See, e.g., In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (stating that with respect to postpetition credit, courts “permit debtors in possession to exercise their basic business judgment consistent with their fiduciary duties”); *In re Simasko Prod. Co.*, 47 B.R. 444, 448–49 (D. Colo. 1985) (authorizing interim financing agreement where debtor’s business judgment indicated financing was necessary and reasonable for benefit of estate). As discussed above, the

Debtors believe that continuing to perform under the Premium Financing Agreements on a postpetition basis is in the best interests of their estates. Moreover, in light of their financial circumstances, alternative insurance premium finance companies may not be willing to provide insurance premium financing to the Debtors on attractive market terms on a postpetition basis. Simply put, it is critical for the Debtors to continue to perform under the existing Premium Financing Agreements.

29. Courts in this district and others have recognized the importance of a debtor honoring obligations under and renewing premium financing agreements and have granted relief similar to the relief requested in this motion. *See, e.g., In re Beaulieu Group, LLC*, Case No. 17-41677 (PWB) (Bankr. N.D. Ga. July 20, 2017) [Docket No. 44]; *In re S. Reg'l Health Sys., Inc.*, Case No. 15-64266 (Bankr. N.D. Ga. Aug. 11, 2015) [Docket No. 66]; *In re Cagle's, Inc.*, Case No. 11-80202 (JB) (Bankr. N.D. Ga. Oct. 20, 2011) [Docket No. 28]; *In re Rockport Company, LLC*, Case No. 18-11145 (LSS) (Bankr. D. Del. June 12, 2018) [Docket No. 211]; *In re BCBG Max Azria Global Holdings, LLC*, Case No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) [Docket No. 230]; *In re Goodman Networks Inc.*, Case No. 17-31575 (MI) (Bankr. S.D. Tex. Mar. 14, 2017) [Docket No. 44].<sup>7</sup>

**Processing of Checks and Electronic Fund Transfers Should be Authorized**

30. The Debtors 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 and anticipated access to cash collateral. Also, under the Debtors' existing cash management

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<sup>7</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment made to obligations under the Insurance Policies. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that this Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

**Emergency Consideration**

31. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” Here, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

32. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and

that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

### **Reservation of Rights**

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

### **Notice**

34. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the Northern District of Georgia; (b) the Debtors' thirty (30) largest unsecured creditors; (c) counsel to the Prepetition Secured Parties; (d) counsel to the administrative agents for the Debtors' prepetition credit facilities; (e) counsel to the administrative agents for the Debtors' debtor-in-possession financing facilities; (f) the United States Securities and Exchange Commission; (g) the Internal Revenue Service; (h) the Georgia Department of Revenue; (i) the Attorney General for the State of Georgia; (j) the United States Attorney for the Northern District of Georgia; (k) the state attorneys general for states in which the Debtors conduct business; (l) the Insurance Carriers; (m) Insurance Brokers; (n) counterparties to the Premium Financing Agreements; (o) the Pension Benefit Guaranty Corporation; and (p) any party that has requested



notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

35. No prior request for the relief sought in this motion has been made to this or any other court.

*[Remainder of page intentionally left blank.]*

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: August 6, 2019  
Atlanta, Georgia

/s/ Sarah R. Borders

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*Proposed Counsel for the Debtors in Possession*

**Exhibit A**

**Interim Order**

**Exhibit B**

**Final Order**

**Exhibit C**

**Insurance Policies**

**Insurance Policies<sup>1</sup>**

#	Carrier	Coverage Type	Policy #	Expiration	Annual Premium
1	Vanliner Insurance Co.	Workers' Compensation	JCW 8199901 04	12/31/2019	\$13,448,701
2	National Interstate Insurance Co.	Automobile Liability / General Liability (Multi-State)	JCT 8199950-02	12/31/2019	\$6,660,664
3	National Interstate Insurance Co.	Automobile Liability / General Liability (MI, NJ, HI)	JCH 8199950-02	12/31/2019	Included Above
4	*Evanston Insurance Company	General Liability - Day Care (GA Only)	3ET7282	12/31/2019	\$750
5	*National Fire & Marine	Umbrella Liability	42-XSF-100065-06	12/31/2019	\$1,787,652
6	*Scottsdale Insurance Co	Umbrella Liability	XLS0108811	12/31/2019	\$510,714
7	*Liberty Surplus Insurance Co	Umbrella Liability	1000323482-01	12/31/2019	\$284,000
8	*National Surety Corporation	Umbrella Liability	SHX 00015386139	12/31/2019	\$130,079
9	Travelers Property Casualty Co of America	Property	QT 630- 3L673604-TIL- 18	12/31/2019	\$97,025
10	Travelers Property Casualty Co of America	Cargo Liability	QT 630- 3L673604-TIL- 18	12/31/2019	Included Above

<sup>1</sup> The Insurance Policies on this **Exhibit C** that are marked with “\*” or “\*\*” are financed under the Aon Premium Financing Agreement or gotoPF Premium Financing Agreement, respectively.

#	Carrier	Coverage Type	Policy #	Expiration	Annual Premium
11	*Endurance American Specialty	Excess Property - \$15M xs \$1M Personal Property of Others	IMU1000744990 3	12/31/2019	\$21,560
12	*Homeland Insurance Company	Excess Property - \$22.375M xs \$16M Personal Property of Others	7950695165	12/31/2019	\$25,000
13	*Underwriters at Lloyd's	Excess Flood	6358000414	12/31/2019	\$926
14	Through Transport Mutual Services (TT Club)	Third-Party Liabilities/Cargo Legal	59005/2019/001	12/31/2019	\$97,865
15	Hudson Insurance Group	Non-Trucking Liability	TIS40101- 140317 / TISX4101- 140318	12/1/2019	\$10,944
16	Hudson Insurance Group	Physical Damage	CBA02500- 140319	12/1/2019	\$47,201
17	*National Union Fire Insurance Co.	Directors & Officers Liability, EPL, FID	06-384-19-57	12/31/2019	\$212,732
18	*XL Specialty Insurance Company	Excess D&O (\$5M xs \$5M)	ELU159569-18	12/31/2019	\$150,000
19	*Navigators Insurance Company	Excess D&O (\$5M xs \$10M)	CH18DOL61793 9IV	12/31/2019	\$97,503
20	*Old Republic Insurance Company	Excess D&O (\$5M xs \$15M)	ORPRO41917	12/31/2019	\$65,000
21	*National Union Fire Insurance Co.	Excess Side A D&O (\$10M xs \$20M)	06-385-10-31	12/31/2019	\$50,000
22	Federal Insurance company	Employed Lawyers Professional	8225-8728	5/31/2020	\$14,149

#	Carrier	Coverage Type	Policy #	Expiration	Annual Premium
23	Federal Insurance company	Crime	8251-8522	1/29/2020	\$18,284
24	*Zurich	Foreign Liability	ZE 0158261-02	12/31/2019	\$2,500
25	Hiscox Insurance Company	Kidnap & Ransom	UKA3007414.17	7/11/2020	\$3,660
26	*AIG	Cyber Liability	06-483-56-18	12/31/2019	\$34,964
27	Northbridge	Auto Liability / O/O Physical Damage	2025311	4/30/2020	\$769,166
28	Northbridge	Cargo Liability (part of AL policy above)	2025311	4/30/2020	Included Above
29	Northbridge	Package Policy (General Liability)	CBC 0654989	4/30/2020	\$41,350
30	Northbridge	Package Policy (Property)	CBC 0654989	4/30/2020	\$15,335
31	Northbridge	Package Policy (Business Income)	CBC 0654989	4/30/2020	Included Above
32	Northbridge	Package Policy (Crime)	CBC 0654989	4/30/2020	\$2,565
33	Northbridge	Package Policy (Garage Auto)	CBC 0654989	4/30/2020	\$7,716
34	Northbridge	Package Policy (Cyber)	CBC 0654989	4/30/2020	\$80



#	Carrier	Coverage Type	Policy #	Expiration	Annual Premium
35	Lloyds of London (Markel)	Umbrella	174181+C100	4/30/2020	\$31,020
36	Zurich Insurance Company	Environmental - Storage Tank	8605309	4/30/2020	\$25,755
37	**Travelers	General Liability	ZPP-41N06727	12/15/2019	\$21,476
38	Travelers	Business Automotive	BA-9M278150	12/15/2019	\$4,877
39	Travelers	General Liability	41N05233 ZPP	12/15/2019	\$13,828
40	Travelers	Umbrella	CUP-9M321586	12/15/2019	\$3,018
41	Amtrust Security National	Workers Compensation	SWC1217856	11/15/2019	\$14,644
42	Hudson Insurance Group	Non-Trucking Liability	TIS40101	1/1/2020	\$10,944
43	Hudson Insurance Group	XS Non-Trucking Liability	TIX40101	1/1/2020	Included Above
44	Hudson Insurance Group	Physical Damage	CBA02500-140319	1/1/2020	\$47,201
45	Ohio Bureau of Workers' Compensation	Workers Compensation	1587051-0	n.a.	\$900,000
46	Washington State Department of Labor & Industries	Workers Compensation	673,103-00; 347,860-00	n.a.	\$150,000

**Exhibit D**

**Aon Premium Financing Agreement**

**AON PREMIUM FINANCE, LLC**

200 E. RANDOLPH STREET, CHICAGO, IL 60601 (312) 381-4628

**COMMERCIAL INSURANCE PREMIUM FINANCE AND SECURITY AGREEMENT**

Contract Number

SC LIC 167019

Agent Number

Quote Number  
8268809Name and address of Insured(s) (as shown in the policy) and co-obligor if any  
Jack Cooper Transport Co  
1100 Walnut Street STE 2400Kansas City, MO 64106  
Telephone Number:(816)983-4089Name and Address of Insured's Agent ("Agent")  
AON RISK SERVICES SOUTHWEST, INC  
315 W 3RD ST  
LITTLE ROCK, AR 72201

Telephone Number:(501)918-4728

Policyholder Designation (Check One):

() Proprietorship

() Partnership () Corporation

Type of Agreement (Check One):

(X) New

() Additional Premium

Indicate contract number of  
current policy being financed**SCHEDULE OF POLICIES COVERED BY THIS AGREEMENT**

For Company Use Only	POLICY NUMBER Prefix Number	Full Name of Insurance Company and Address of Branch Reporting Office and Full Name and Address of General Agent	TYPE OF INSUR- ANCE	TERM IN MONTHS	POLICY EFF- ECTIVE DATE MM/DD/YYYY	POLICY PREMIUM
	PENDING	C:NATIONAL FIRE & MARINE INS CO	EXC OTH State Tax	12	12/31/18	1,787,652.00 89,382.60

NY: Charge under §2119 of New York Insurance Law for obtaining and servicing these policies. If none, state 'None', \$

FLORIDA DOCUMENTARY STAMP TAX

\$ 0.00

**APF****DISCLOSURE STATEMENT - PAYMENT SCHEDULE**

Payment Plan: (X) Monthly () Quarterly () Annually

# of Payments **11** First Payment Due **01/31/2019**

Subsequent payments are due on the same day of each succeeding period.

CASH PRICE

(Total Premiums) Additional Policies on Page 3

CASH PRICE	Cash Down Payment	Amount Financed (The amount of credit provided on your behalf)	Finance Charge (The dollar amount the credit will cost you)	Total of Payments (The amount you will have paid when you have made all of your payments)	Amount of Each Payment	Annual Percentage Rate (the cost of your credit as a yearly rate)
3,506,448.45	525,967.27	2,980,481.18	67,328.31	3,047,809.49	277,073.59	4.490%

**Aon Premium Finance, LLC (HEREINAFTER CALLED APF)**

200 E. Randolph Street, Chicago, IL 60601 (312) 381-4628

Prepayment: The Insured may prepay in full at any time and receive a refund of the unearned finance charge, calculated according to the Rule of 78's (actuarial method in AR, AZ, CA, MA, MO, NJ, OR, PA, VT; short rate method in SC), and subject to a nonrefundable charge stated on page two. Minimum refund is \$1.00 (except AK, where there is no minimum refund).

Security Interest: The Insured assigns to APF as security for payment of this agreement all sums payable to the Insured with reference to the policies listed above, including, among other things, any gross return premiums and any payment on account of loss which results in reduction of unearned premium in accordance with the term of said policies.

Delinquency charge: The Insured agrees that upon default in payment of any installment five days or more ( more than 5 days in IL, MS, OH ) to pay a

Delinquency Charge of 5% of the delinquent installment. In AK, CA, DE, MI, MN, ND, NJ, OR, TN, TX, the Delinquency Charge is not due until installment is in default for ten days or more, more than 10 days in MA, NM 7 days in VA. Maximum delinquency charge is \$5 in DE, MT, ND; \$100 in MD; \$500 in NM; 1 1/2% of the installment in NJ with a minimum of \$25. In AK, OR: for delinquent payments of less than \$250, the delinquency charge is the lesser of 5% of the payment or \$5, the delinquency charge is 2% of the payment. KS: Delinquency charge is \$5 plus 2% of the installment in default.

Cancellation Charge: The Insured agrees that if a default results in cancellation of the policy(ies) to pay a Cancellation Charge in the amount stated on page two. (Not applicable in AK, KY, TX, NC.)

See the provisions on page two for additional information about non-payment, default, and any repayment in full before the scheduled date and any prepayment refunds or penalties.

**NOTICE TO INSURED** 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT, INCLUDING THE WRITING ON PAGE TWO, OR IF IT CONTAINS ANY BLANKS. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT AT THE TIME YOU SIGN IT. 3. YOU UNDERSTAND AND HAVE RECEIVED A COPY OF THIS AGREEMENT. KEEP IT TO PROTECT YOUR LEGAL RIGHTS. 4. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS TO OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. 5. SEE PAGE TWO FOR IMPORTANT INFORMATION.

When used in this Agreement, "Insured" means the insured and any co-obligor named above and all insureds covered by the Policies listed in the Schedule of Policies. Each Insured jointly and severally agrees to make all payments required by this Agreement and to be bound by all of its provisions including those on page two. The person signing represents and warrants that he or she is authorized to enter into this Agreement on behalf of each Insured and to bind each Insured to this Agreement. Each Insured agrees that APF may send all notices under this Agreement to the Insured's address shown above. You are not required to enter into an insurance premium financing arrangement as a condition to the purchase of any insurance policy

By \_\_\_\_\_ Date \_\_\_\_\_  
(Signature of Insured)

(Typed Name and Title)

**AGENT'S REPRESENTATIONS AND WARRANTIES**

The undersigned Agent has read the Insurance Agent's Representations and Warranties on page two and makes all such representations and warranties recited therein and agrees to be bound by the terms of this Agreement.

By \_\_\_\_\_ Date \_\_\_\_\_  
(Signature of Agent)

(Typed Name and Title)

**The Insured (jointly and severally if more than one) agrees as follows:**

1. In consideration of the payment by APF of the Amount Financed, Insured agrees to pay the Cash Down Payment to the insurance company(ies) listed in the Schedule of Policies, and to pay APF the Total of Payments in accordance with the terms of this Agreement. Interest is computed on an annual basis of 12 months of 30 days each.
  2. Insured assigns to APF as security for the total amount payable hereunder all sums payable to the Insured under the listed Policies, including, among other things, any gross unearned premiums and any payment on account of loss which results in a reduction of unearned premium in accordance with the terms of said policies.
  3. Insured hereby irrevocably appoints APF as its Attorney-in-Fact upon the occurrence of an Event of Default (defined below) and, after proper notice has been mailed as required by law, grants to APF authority to effect cancellation of policy(ies) listed in the Schedule of Policies ("Policies"), and to receive any unearned premium or other amounts with respect to the Policies assigned as security herein, and to sign any check or draft issued therefor in Insured's name and to direct the insurance companies to make said check or draft payable to APF. Insured agrees that proof of mailing any notice hereunder constitutes proof of receipt of such notice.
  4. Insured agrees that any payments made and accepted after Policy cancellation shall not constitute reinstatement or obligate APF to request reinstatement of such insurance Policy (ies), and Insured acknowledges that APF has no authority to reinstate coverage, and that such payments may be applied to Insured's indebtedness hereunder.
  5. Insured agrees not to assign the Policy(ies) except for the interest of mortgagees or loss payees, without the written consent of APF. APF may assign this Agreement without Insured's consent, and all rights conferred upon APF shall inure to APF's successors and assigns.
  6. Except in KS, KY and VT, Insured agrees to pay a fee of \$15.00 in the event of a dishonored check. ( \$5.00 in CA; \$10 in AZ, MA, MD, OH, VI; \$7.50 in NV, not to exceed APF's cost in NJ).
  7. An Event of Default occurs when the Insured does not pay any installment according to the terms of this Agreement or (except in MD) fails to comply with any of the terms of the Agreement or (except in MD) if any of the Policies are cancelled for any reason. If an Event of Default occurs and after giving notice as required by law, all amounts due under this Agreement become immediately due and payable and the Insured is liable for all amounts described herein, including any unpaid balance remaining after application of the unearned premiums. If an Event of Default occurs, APF may at its option pursue the following remedies:
    - After proper notice has been given as required by law, APF may immediately cancel the Policy(ies) and collect any unearned premiums or other amounts payable under said Policies. Unearned premiums shall be payable to APF only.
    - APF may take all necessary actions to enforce payment of this debt. To the extent not prohibited or limited by applicable law, APF is entitled to collection costs and expenses incurred (except in KS) while enforcing its rights under this Agreement and to reasonable attorney's fees if this Agreement is referred to an attorney who is not a salaried employee of APF for collection or enforcement (not permitted in KY, NC ; total of collection costs and attorney's fees is limited to 20% of the unpaid balance in AZ, FL, MO, MS, NH, NV ,NY, VI; 15% of unpaid balance in TN; 25% of unpaid balance in VT).
    - Except in AK, KY, MI, NC, VT and the other states listed herein, after cancellation, Insured agrees to pay interest on the unpaid balance (calculated according to the Rule of 78's (actuarial method in AR, AZ, CA, NJ, OR, PA; short rate method in SC) as of the scheduled due date of the first delinquent payment leading to cancellation of the Policies) at the rate of 1% per month (in AR, NM, TX, at the Annual Percentage Rate stated on the front), or at the highest rate permitted by law, whichever is less, until the entire balance of this loan is paid in full. In MA, Insured agrees to pay interest at the rate of 1% per month on the difference between the unpaid balance on the date of cancellation (computed according to the actuarial method) and the unearned premiums received by APF on the cancelled Policies, for the period from the date of cancellation until the balance is paid in full.
    - In AL, DC, DE, IL, KS, NY and WA, after cancellation, Insured agrees that APF may recompute the total finance charge due under this Agreement on the original amount financed, at the rate and in the manner described in this paragraph from the first effective date of the Policies through the last originally scheduled installment date, and Insured agrees to pay this amount, subject to the provisions on prepayment in full. That rate, stated as a dollar amount per year for each \$100 of amount financed is as follows: \$9 in AL, DE; \$10 in DC, IL, WA; \$12 in KS; \$14 in NY.
    - APF may offset and deduct from any amounts APF owes to Insured with respect to any Policies financed hereunder, any amounts which Insured owes to APF under this or (except in KY, MD, NC and TX) any other agreement.
  8. Insured agrees to pay a non-refundable service fee of \$10 in AK, AZ, CT, DE, KS, LA, MO, NY, PA, WA, WI; \$12 in NJ; \$12.50 in MT; \$15 in AL, KY, NC, RI, SC, TN, VA; \$16 in MA; \$18 in MI; \$20 in DC, FL, GA, MD, MN, OH; \$25 in CO, HI, IA, ID, IN, ME, NE, ND, NV, OK, SD, UT, VI, WV, WY; the lesser of \$50 or 10% of the amount financed in OR. In CA, the minimum finance charge is \$25. In IL, the non-refundable service charge is \$20 if the amount financed is less than \$500, \$30 if the amount financed is \$500 or more but less than \$1,000, or \$40 if the amount financed is over \$1,000. In NJ, if this loan is prepaid in full, Insured agrees to pay an additional charge of \$20 for any loan of \$2,000 or less, 1% of the loan for loans over \$2,000 up to and including \$5,000 and \$100 on loans over \$5,000.
  9. Insured agrees to pay a cancellation charge of \$5 in TN, VI; \$10 in MN, ND, OH; \$15 in AL, AZ, GA, MO, MS, RI, WI; \$25 in CO, HI, IA, ID, IN, LA, ME, NE, OK, SD, UT, WV, WY; the greater of 2% of the unpaid balance or \$5 in MA; the difference between the delinquency charge assessed and; \$5 in DE, MI, MT, NJ, NY, OR, WA; \$10 in DC; \$15 in NH; \$100 in MD.
  10. Insured agrees to pay promptly to the insurer any additional premiums due on the Policies.
  11. The Agent is not the agent of APF and the Agent cannot bind APF. APF is not the Agent of any insurer and is not liable for any acts or omissions of any insurer. Insured acknowledges that it has chosen to do business with the Agent and the insurance companies issuing the Policies, and that the insolvency, fraud, defalcation or other action or failure to act by any of them shall not relieve or diminish Insured's obligations to APF hereunder.
  12. Except in KY and MD, and if not prohibited by applicable law, APF may insert the name of the insurer, policy numbers and first installment due date if omitted and if policy has not been issued at the time of signature.
  13. This Agreement shall have no force or effect until accepted by APF. All rights and remedies in this Agreement are cumulative and not exclusive. If any part of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be in full force and effect. Neither APF nor its assignee shall be liable for any loss or damage to the Insured by reason of failure of any insurance company to issue or maintain in force any of the Policies or by reason of the exercise by APF or its assignee of the rights conferred herein. This Agreement constitutes the entire Agreement between APF and Insured and may not be modified except as agreed upon in writing. APF's acceptance of late or partial payments shall not be deemed a waiver by APF of any provisions of this Agreement, and APF is entitled to require Insured to strictly comply with the terms hereof. Except in AR, this Agreement is governed by the law of the state of the Insured's address shown on the front of this Agreement. In AR, this Agreement is governed by the law of the state where this Agreement is accepted by APF. If any amount contracted for or received by APF is determined to violate any law or regulation APF may return such prohibited amount to Insured without any further liability therefor (waiver of liability not applicable in KY).
  14. Insured represents and warrants that the proceeds of this loan are to be used to purchase insurance for other than personal, family or household purposes and that all information provided herein or in connection with this Agreement is true, correct, complete and not misleading.
  15. **CALIFORNIA RESIDENTS ONLY: FOR INFORMATION CONTACT THE DEPARTMENT OF FINANCIAL INSTITUTIONS, STATE OF CALIFORNIA.**
- Insured agrees that, in accordance with Section 18608 of the California Financial Code, APF's liability to Insured upon the exercise of APF's authority to cancel the Policies shall be limited to the amount of the principal balance of this loan, except in the event of APF's willful failure to mail the notice of cancellation required under California law.
- In connection with the Policies scheduled on page one, the Agent represents and warrants to APF, its successors and assigns that:**
1. Deposit premiums are not less than the anticipated premiums to be earned for the full terms of the Policies.
  2. All of the scheduled Policies or bonds in this Agreement are cancellable by standard short rate or pro-rata tables.
  3. When cancellation is requested by Insured or by APF, none of the Policies require advance notice of cancellation to any party, other than any notice required to be given by APF, and there are no audit or reporting form policies, Policies subject to retrospective rating or to minimum earned premiums except as indicated in the Schedule of Policies.
  4. We are the authorized policy issuing Agent of the insurance companies or the broker placing the coverage directly with the insurance company on all Policies except as indicated in the Schedule of Policies.
  5. The Insured(s) signature(s) on both pages one and two hereof are genuine, the Insured has not paid for the scheduled Policies other than as described herein, the Insured(s) have received a copy of this Agreement, this Agreement is valid and enforceable and there are no defenses to it, The scheduled Policies are in full force and effect and the premiums indicated are correct for the term of the Policies, and all other information relating to the Policies and the Insured is complete and correct. None of the Policies have been financed on an installment payment plan provided by the insurance company(ies), or are noncancellable policy(ies), or policies written for a term of less than one year. The Agent recognizes the Insured's assignment of the unearned premiums and upon cancellation of any of the scheduled Policies agrees to pay promptly any unearned commissions to APF and to pay to APF the unearned premiums immediately upon receipt. Agent shall not deduct any amounts which Insured owes to Agent from any amounts owing to APF hereunder. The Policies are not for personal, family or household purposes.
  6. A proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the Insured or if the Insured is the subject of such a proceeding, it is noted on the Agreement in the space in which the Insured's name and address is placed.
  7. If the Agreement has been signed by the Agent on behalf of the Insured, the Agent has the authority to act in this capacity and the Agent has provided the Insured with a complete copy of this Agreement.
  8. There are no exceptions to the Policies financed other than those indicated, and the Policy(ies) comply with APF's eligibility requirements.
  9. The Cash Down Payment, and any installments due from the Insured which Agent has agreed to collect, have been collected from the Insured.
  10. Agent is not an agent of APF and is not authorized to bind APF and has not made any representation to the contrary. The Agent agrees to promptly remit all funds received from APF and the Insured for the financed Policies and due to the insurance company(ies) issuing such Policies. Agent shall be liable to APF for any losses, costs, damages or other expenses (including attorney's fees) incurred by APF or its assignee as a result of or in connection with any untrue or misleading representation or warranty made by Agent hereunder, or otherwise arising out of the breach by Agent of this Agreement. Agent shall promptly notify APF of any unpaid increased premiums for the Policies.

**AON PREMIUM FINANCE, LLC**  
**ADDENDUM TO COMMERCIAL INSURANCE PREMIUM FINANCE AGREEMENT ("PFA")**

Agent Number

Quote Number  
8268809

**SCHEDULE OF POLICIES COVERED BY THE PFA INCLUDES THE FOLLOWING:**

For Company Use Only	POLICY NUMBER Prefix Number	Full Name of Insurance Company and Address of Branch Reporting Office and Full Name and Address of General Agent	TYPE OF INSUR- ANCE	TERM IN MONTHS	POLICY EFF- ECTIVE DATE MM/DD/YYYY	POLICY PREMIUM
	PENDING	C:SCOTTSDALE INDEMNITY CO	EXC OTH State Tax	12	12/31/2018	510,714.00 25,535.70
	PENDING	C:LIBERTY SURPLUS INSURANCE CORP	EXC OTH State Tax	12	12/31/2018	284,000.00 14,200.00
	PENDING	C:NATIONAL SURETY CORPORATION	EXC OTH Policy Fee	12	12/31/2018	130,079.00 300.00
	PENDING	C:EVANSTON INSURANCE CO	GL Policy Fee State Tax	12	12/31/2018	750.00 200.00 38.00
	PENDING	C:AIG ASSURANCE COMPANY	CYBERLIAB Policy Fee	12	12/31/2018	34,964.00 300.00
	PENDING	C:HOMELAND INS CO OF NEW YORK	EXC PRP Policy Fee State Tax	12	12/31/2018	25,000.00 125.00 500.00
	PENDING	C:ENDURANCE AMERICAN INSURANCE CO	EXC PRP Policy Fee State Tax	12	12/31/2018	21,560.00 107.80 431.20
	ZE 0158261-02	C:ZURICH AMERICAN INS CO OF ILLINOIS	FRP Policy Fee	12	12/31/2018	2,500.00 300.00
	PENDING	C:LLOYD'S LONDON - CERTAIN UNDERWRITE	FLOOD Policy Fee State Tax	12	12/31/2018	926.00 97.00 51.15
	PENDING	C:NATIONAL UNION FIRE INS CO OF PITTS	D&O Policy Fee	12	12/31/2018	212,732.00 300.00
	PENDING	C:XL INSURANCE AMERICA INC	EXC D&O Policy Fee	12	12/31/2018	150,000.00 300.00
	CH18DOL617939QN	C:NAVIGATORS INSURANCE CO	EXC D&O Policy Fee	12	12/31/2018	97,503.00 300.00
	PENDING	C:OLD REPUBLIC INSURANCE CO	EXC D&O Policy Fee	12	12/31/2018	65,000.00 300.00

PENDING	C:NATIONAL UNION FIRE INS CO OF PITTS	EXC D&O Policy No	12	12/31/2018	50,000.00 300.00
Total Premiums					\$ 3,506,448.45

**Exhibit E**

**PF Premium Financing Agreement**



Street Address:  
8200 Canoga Ave, Suite 400  
Woodland Hills, CA 91367-2455  
Phone: (888) 875-4000  
Facsimile: (818) 598-2296

**www.gotopremiumfinance.com**  
**information@gotopremiumfinance.com**

**PREMIUM FINANCE AGREEMENT AND DISCLOSURE STATEMENT**  
(Important information is also included on the page entitled "Additional Provisions of Premium Finance Agreement")

**Mailing Address:** herinafter "LENDER"  
P.O. Box 4312  
Woodland Hills, CA 91365-4312

☐ Additional Premium

<b>BORROWER / INSURED</b>	<b>Quote #:</b> 1099932.1	<b>AGENT / BROKER</b>	<b>Agent #:</b> A26347
CTEMS/EFSENT Inc 576 Sycamore Dr. Milpitas, CA 95035 6502690681		United Network Insurance Agency, Inc 2221 Oakland Rd #288 San Jose, CA 95131 408-676-9055	

**SCHEDULE OF POLICIES**

Policy Number	Name of Insurance Carrier and, if applicable, General Agent(s) and Surplus Lines Broker(s)	Effective Date	Type of Coverage	Policy Term	Premium Amount
	LLOYDS OF LONDON SULLIVAN BROTHERS WHOLESALE INSURANCE SOLUTIONS INC 800 West 6th Street Suite 1800 Los Angeles, CA 90017	12/15/2018	ERRORS & OMISSIONS	12	Premium: \$19,750.00 Policy Fee: \$0.00 Broker Fee: \$0.00 Tax/Stamp: \$632.00 Inspection: \$0.00
		Min Earned Prem 25%	Days to Cancel 10		

**TOTAL PREMIUM(S)** \$20,382.00

TOTAL PREMIUM(S)	DOWN PAYMENT	AMOUNT FINANCED (amount of credit provided on your behalf)	FINANCE CHARGE (dollar amount the credit will cost you)	FLORIDA DOCUMENTARY STAMP TAX (only applicable in Florida)	TOTAL OF PAYMENTS (amount you will have paid after making all scheduled payments)	ANNUAL PERCENTAGE RATE (cost of credit as a yearly rate)
\$20,382.00	\$5,095.50	\$15,286.50	\$1,003.50	\$0.00	\$16,290.00	15.49%

In consideration of the premium payment(s) to be made by LENDER, the Borrower promises to pay to LENDER the TOTAL OF PAYMENTS in accordance with the PAYMENT SCHEDULE below and subject to the provisions set forth herein.

PAYMENT SCHEDULE	No of Installments	First Installment Due Date	Subsequent Installment Due Dates	Amount of Each Installment
	9	1/15/2019	15th	\$1,810.00

**1045** (for Lender use only) **1045**

**ACKNOWLEDGEMENT AND AGREEMENT BY BORROWER**

**INSURED'S AGREEMENT.** The undersigned Insured/Borrower has read the page entitled, "Additional Provisions of Premium Finance Agreement". In consideration of LENDER advancing the premium payments (the "Amount Financed" above) to the AGENT/BROKER or any insurance carrier or intermediary listed in this Agreement, the named insured (herein referred to as "Insured") promises to pay, to the order of LENDER, the Total of Payments subject to all of the provisions set forth on all pages of this agreement. **PREPAYMENT.** The Insured may prepay the full amount due and receive a refund of the unearned Finance Charge as provided for in this agreement. **SECURITY.** As security for the payments to be made and all obligations of the Insured under this agreement, the Insured assigns LENDER a security interest in all of the insurance policies listed in the Schedule of Policies above (the "Policies"), including all unearned premiums, dividend payments, and loss payments relating to the Policies. Under certain conditions, LENDER HAS THE RIGHT TO CANCEL THE POLICIES, as provided for in this agreement. **CONTRACT REFERENCE.** Reference should be made to the terms of this agreement, including those on page 2, for information about nonpayment, default, cancellation, the right of the LENDER to demand immediate payment in full, and prepayment. **LATE PAYMENT.** A late charge will be imposed on any payment which is not received by LENDER within five (5) days of its due date (unless a longer grace period is required under applicable law, in which case a late charge will be imposed on any payment not received by LENDER within such grace period). This late charge will be 5% of the overdue amount or the maximum late charge permitted by applicable law, whichever is less. The maximum late charge is \$5.00 in DE, MT, ND, NM and WA, and \$5.00 plus 2% of the delinquent installment in KS. **DISHONORED CHECK FEE.** If an Insured's check is dishonored for any reason and if permitted by law, the Insured will pay LENDER a dishonored check fee equal to the maximum fee permitted by law. **NOTICE TO THE INSURED:** (1) Do not sign this agreement before you read both pages of it, or if it contains blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the Finance Charge. (4) Keep your copy of this agreement to protect your legal rights.

**AGENT / BROKER REPRESENTATIONS AND WARRANTIES**

The undersigned agent or broker has read the page entitled "Additional Provisions of Premium Finance Agreement", and makes all such Representations and Warranties recited herein. Further, the undersigned agent or broker agrees to: (i) pay all reasonable attorney fees, courts costs, and other collection costs incurred by LENDER in recovering amounts due from the agent or broker in connection with any breach of the Agent/Broker Representations and Warranties, and (ii) indemnify LENDER for any and all losses LENDER incurs as a result of any error committed by the Agent/Broker in completing or failing to complete any portion of this agreement.

Signature of the Borrower\*

Name of Borrower

Signature of Agent or Broker

\*Or broker or agent as a duly authorized agent of the Borrower, to the extent permitted by law.

Title

Date

Title

Date



WARRANTY OF ACCURACY. The Insured represents and warrants that (i) the Policies are in full force and effect and that the Insured has not assigned any interest in the Policies except for the interest of mortgagees and loss payees, (ii) none of the Policies are for personal, family or household purposes, (iii) the Insured has no indebtedness to the insurers issuing the Policies, and none of those insurers have asserted any claims for payment against the Insured, and (iv) the Insured is not insolvent nor presently the subject of any bankruptcy or insolvency proceeding. COLLATERAL. To secure payment of all amounts due under this agreement (and, unless prohibited by applicable law, all amounts due under any separate agreement between the insured and LENDER), Insured grants LENDER a security interest in the Policies, including all unearned premiums, dividend payments, and loss payments, subject to any mortgagee or loss payee interest. RIGHT TO CANCEL. If Insured does not make a payment when it is due, or if Insured is otherwise in default under this agreement, LENDER may cancel the Policies and act in Insured's place with regard to the Policies, including endorsing any check issued in the Insured's name for funds assigned to LENDER as security herein. This right given by Insured to LENDER constitutes a "Power of Attorney". Before LENDER cancels the Policies, LENDER will provide notice to the Insured, if required by law. LENDER's right to cancel Policies cannot be revoked, and will terminate only after all of Insured's indebtedness to LENDER under this agreement or otherwise is paid in full. DEFAULT. Insured is in default under this agreement if: (a) a payment is not received by LENDER when it is due, (b) Insured or any of the insurance companies issuing the Policies are insolvent or involved in a bankruptcy or similar proceeding as a debtor, (c) Insured fails to comply with any of the terms of this agreement, (d) any of the insurance companies issuing the Policies cancel coverages, (e) premiums increase under any of the Policies and Insured fails to pay such increased premium within thirty (30) days of notification, or (f) Insured is in default under any other agreement with LENDER. Wherever the word "default" is used herein, it means any one of the above. If the Insured is in default, LENDER has no further obligation under this agreement to pay premiums on the Insured's behalf, and LENDER may pursue any of the remedies provided in this agreement. PAYMENTS RECEIVED AFTER NOTICE OF CANCELLATION. Once a Notice of Cancellation has been sent to any insurance company issuing the Policies, LENDER has no duty under any circumstances to rescind it or to ask that the policy be reinstated, even if LENDER later receives Insured's payment or Insured otherwise cures a default. Payments which LENDER receives after sending a Notice of Cancellation may be applied to Insured's account without changing any of LENDER's rights under this agreement. LENDER'S RIGHTS AFTER THE POLICIES ARE CANCELLED. After any Policy is cancelled (whether by Insured or LENDER or anyone else) LENDER shall receive all unearned premiums and other funds assigned to LENDER as security herein and apply them to Insured's unpaid balance under this agreement or (unless prohibited by applicable law) any other agreement between the Insured and LENDER. If the amount received is less than the amount owed by Insured, Insured will immediately pay LENDER the balance due. LENDER may act in Insured's place to do whatever is necessary to collect such refunds. The insurance companies may rely on LENDER's instructions regarding the Policies and do not have to get any proof from the Insured or anyone else. INTEREST DUE AFTER CANCELLATION. To the extent permitted by applicable law, if cancellation occurs, the Insured agrees to pay LENDER interest on the balance due under this agreement at the contract rate or at the maximum rate allowed by applicable law, whichever is less, until the balance is paid in full. RIGHT TO DEMAND IMMEDIATE PAYMENT IN FULL. At any time after default, LENDER can demand and has the right to receive immediate payment of the total unpaid amount due under this agreement even if LENDER has not received any refund of unearned premiums or other funds assigned to LENDER as security hereunder. CANCELLATION CHARGE. If a default by the Insured results in cancellation of any Policies, and if permitted by applicable state law, the Insured will pay LENDER a charge equal to the maximum charge permitted by law. ASSIGNMENTS. Insured may not assign any Policy without LENDER's written consent. However, LENDER's consent is not needed to add mortgagees or other persons as loss payees. LENDER may transfer its rights under this agreement to anyone without the consent of Insured. COLLECTIONS AND ATTORNEY FEES. LENDER may enforce its rights to collect amounts due to it without using the security interest granted in this agreement. If LENDER uses an attorney who is not a salaried employee of LENDER or incurs other collection costs to collect any money owed under this agreement or to enforce any other rights under this agreement, Insured agrees to pay reasonable attorney fees, court costs, and other collection/enforcement costs incurred by LENDER. PREPAYMENT. At any time, Insured may pay the entire balance. If Insured prepays in full, Insured will receive a refund of unearned Finance Charges computed, at the discretion of the LENDER, either by the actuarial method or the Rule of 78's, as permitted by applicable law. This refund will be subject to the maximum non-refundable Finance Charge and service fee permitted by applicable law. There shall be no refund to the Insured made if the amount to be refunded is less than \$1.00. AUDIT AND REPORTING FORM POLICIES. With regard to any auditable or reporting form type of Policy, Insured agrees to promptly pay to the insurance company the difference between the actual earned premium generated for the Policy, and the premiums financed under this agreement. FINANCE CHARGE. The Finance Charge begins on the earliest effective date of the Policies. The Finance Charge includes interest and may include a non-refundable service fee equal to the maximum fee permitted by applicable law. The Finance Charge is computed using a 365 day year. NO USURY. All agreements between the Insured and LENDER are expressly limited so that the amount paid or agreed to be paid to LENDER for the use or forbearance of money shall not exceed the highest rate permitted under applicable law. If fulfillment of any provision hereof shall involve exceeding the limit prescribed by applicable law, then the obligation shall be reduced to the maximum allowed by such law, and any amount received by LENDER in excess thereof shall be applied to principal. AGENT OR BROKER. The agent or broker handling this agreement is not the agent or broker of LENDER and cannot legally bind LENDER in any way. CORRECTIONS. Insured grants LENDER permission to insert the names of the insurance companies and Policy numbers following the execution of this agreement, if these are not known at the time Insured signs this agreement. LENDER is authorized to correct patent errors or omissions in this agreement. EFFECTIVE DATE. This agreement will not become effective until it is accepted in writing by LENDER. GOVERNING LAW. This agreement is governed by and interpreted under the laws of the state where LENDER accepts this agreement. If any court finds any part of this agreement to be invalid, such finding shall not affect the remainder of this agreement. Singular words in this agreement shall mean plural and vice versa as may be required to give the agreement meaning. SIGNATURE AND ACKNOWLEDGMENT. Insured has signed this agreement and received a copy of it. If Insured is a corporation or other legal entity, the person signing is authorized to sign this agreement for such entity. If the Insured is an individual, all Insureds listed in any Policy have signed and are jointly and severally liable hereunder. LIABILITY. Insured understands and agrees that LENDER has no liability to Insured or any person or entity upon the exercise of LENDER's right of cancellation, except in the event of willful or intentional misconduct by LENDER.

## AGENT OR BROKER REPRESENTATIONS AND WARRANTIES

SIGNATURES GENUINE. To the best of our knowledge, the Insured's signature is genuine. AUTHORIZATION/RECOGNITION. The Insured has authorized this transaction. Both the Insured and the Agent/Broker recognize the security interest in the Policies granted to LENDER herein. Upon cancellation of any of the Policies, the Agent/Broker agrees to immediately pay LENDER all unearned commissions and all unearned premiums, dividends and loss payments received. If such funds are not remitted to LENDER within 10 days of receipt by the Agent/Broker, the Agent/Broker agrees to pay LENDER interest on such funds at the maximum rate allowed by applicable law. POLICIES EFFECTIVE/PREMIUMS CORRECT. The Policies are in full force and effect, and the premiums are correct as listed. INSURED HAS THIS DOCUMENT. The Insured has been given a copy of this agreement. NO INSOLVENCY. To the best of our knowledge, neither the Insured nor the insurance companies are insolvent or involved in a bankruptcy or similar proceeding as debtor, except as clearly indicated on page 1 of this agreement. DEPOSIT/PROVISIONAL PREMIUMS. Any Audit or Reporting Form policies or policies subject to retrospective rating included in this agreement are noted below in section (a). The deposit or provisional premiums for these policies are not less than the anticipated premiums to be earned for the full term of the policies. LOSS PAYEE NAMED. Any policies which provide that the premium may be earned earlier in the event of loss are noted below in section (b) and/or (c). The Agent/Broker has notified the relevant insurance companies and the Insured that LENDER is to be named as a loss payee on any such policies. AUTHORIZED ISSUING AGENT. For the scheduled policies, the Agent/Broker is either the insurance company's authorized policy issuing agent or the broker placing the coverage directly with the insurance company, except where the name and address of Issuing Agent or General Agent is listed in the Schedule of Policies. AMOUNTS DUE FROM INSURED. The cash down payment and any installments due from the Insured have been collected from the Insured. FOR THE SCHEDULED POLICIES, AGENT OR BROKER WARRANTS THAT: Unless indicated on the Schedule of Policies (1) No policies are Auditable, Reporting Form policies or policies subject to Retrospective Rating; (2) No policies are subject to Minimum Earned Premium; (3) All policies provide that unearned premiums are computed by the standard short rate or pro rata table; (4) No policies contain provisions which prohibit cancellation either by the Insured or by the insurance company within ten (10) days.



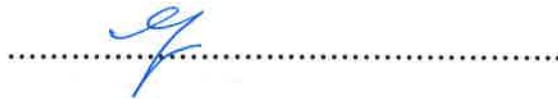
Name of Insured: CTEMS/EF SENT Inc

Quote Number: 1099932.1

## Policy Amount Financed Breakdown

Policy Prefix and Number	Name & City of Insurance Company and Name & City of General Agent or Company Office to which Premium is Paid	Type of Coverage	Down Payment Amount Per Policy	Amount Financed Per Policy
	LLOYDS OF LONDON SULLIVAN BROKERS WHOLESALE INSURANCE SOLUTIONS INC 800 West 6th Street Suite 1800 Los Angeles, CA 90017	ERRORS & OMISSIONS	\$5,095.50	\$15,286.50
TOTALS:			\$5,095.50	\$15,286.50

This is Exhibit "Z" referred to in the  
Affidavit of Waleed Malik, solemnly affirmed before me,  
this 8<sup>th</sup> day of August, 2019

A handwritten signature in blue ink is written over a horizontal dotted line. The signature is stylized and appears to be the initials 'W' and 'M'.

A Commissioner for Taking Affidavits

A handwritten signature in blue ink, which appears to read 'David R. Smith', is written below the text 'A Commissioner for Taking Affidavits'.

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re:	)	
	)	Chapter 11
JACK COOPER VENTURES, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 19-62393 (PWB)
Debtors.	)	
	)	(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING THE DEBTORS TO (I) PAY CERTAIN PREPETITION WAGES,  
SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EMPLOYEE  
EXPENSES AND (II) CONTINUE EMPLOYEE BENEFITS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

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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, include: Jack Cooper Ventures, Inc. (0805); Jack Cooper Diversified, LLC (9414); Jack Cooper Enterprises, Inc. (3001); Jack Cooper Holdings Corp. (2446); Jack Cooper Transport Company, Inc. (3030); Auto Handling Corporation (4011); CTEMS, LLC (7725); Jack Cooper Logistics, LLC (3433); Auto & Boat Relocation Services, LLC (9095); Axis Logistic Services, Inc. (2904); Jack Cooper CT Services, Inc. (3523); Jack Cooper Rail and Shuttle, Inc. (7801); Jack Cooper Investments, Inc. (6894); North American Auto Transportation Corp. (8293); Jack Cooper Transport Canada Inc. (8666); Jack Cooper Canada GP 1 Inc. (7030); Jack Cooper Canada GP 2 Inc. (2373); Jack Cooper Canada 1 Limited Partnership (3439); and Jack Cooper Canada 2 Limited Partnership (7839). The location of the Debtors’ corporate headquarters and service address is: 630 Kennesaw Due West Road NW, Kennesaw, Georgia 30152.

**Relief Requested<sup>2</sup>**

1. By this motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively), (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable employee expenses, and (ii) continue the employee benefits programs in the ordinary course; and (b) granting related relief.

2. The Debtors believe that all employee compensation and benefits are vital to the Debtors’ businesses, and therefore, pursuant to the Interim Order and Final Order, the Debtors seek authority, but not direction, to continue making payments on account of employee compensation and benefits that are necessary to prevent immediate and irreparable harm to the Debtors’ businesses during these chapter 11 cases. In addition, the Debtors seek to minimize the personal hardship Employees would suffer if prepetition Employee-related obligations were not paid or remitted to the Employees or the appropriate parties when due or as expected. As such, by this motion, the Debtors seek authority, but not direction, to pay certain prepetition claims and continue to honor obligations on a post-petition basis, as applicable, relating to, among other things, wages, salaries, variable compensation, payments to independent contractors, temporary agency fees, federal, state and foreign withholding taxes and other amounts withheld (including garnishments, Employees’ share of insurance premiums, taxes, and 401(k) contributions),

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<sup>2</sup> A description of the Debtors’ businesses, the reasons for commencing these chapter 11 cases, the relief sought from the Court to allow for a smooth transition into chapter 11, and the facts and circumstances supporting this motion are set forth in the *Declaration of Greg May, the Debtors’ Chief Financial Officer, in Support of First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used in this Relief Requested section of the Motion but not otherwise defined therein shall have the meanings ascribed to such terms later in the Motion, and any other capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration.

reimbursable expenses, health insurance benefits, health savings accounts, flexible savings accounts, life insurance, short- and long-term disability benefits, the workers' compensation premiums, employee assistance services, time-off benefits, retirement savings (including 401(k) plans), health and welfare benefits (including COBRA benefits program), and other benefits the Debtors historically have provided to Employees (collectively, the "Employee Compensation and Benefits") on an interim basis (within 21 days of the Petition Date) and to continue to pay such amounts in the ordinary course of business on a post-petition basis as summarized in the chart below.

Relief Sought	Amount
<b>Employee Compensation</b>	
Employee Compensation	\$4,950,000
Union Dues	\$105,000
Independent Contractors	\$221,000
Temporary Agency Fees	\$22,500
Deductions, Withheld Amounts, and Payroll Taxes	\$2,280,000
Reimbursable Obligations	\$5,500
Corporate Credit Cards	\$400,000
Severance Benefits	\$375,000
<b>Employee Health and Welfare Benefits</b>	
Medical, Dental, and Vision Plans	\$943,000
Medical Plan Administration Fees, ADP Fees and COBRA Fees	\$114,005
Telemedicine Plan	\$2,500
Union Health Contributions	\$2,800,000
FSA Fees, HSA Withholdings and HSA Fees	\$21,500
Life Insurance, Disability Insurance, and Voluntary Life Insurance	\$26,000
FMLA Fees and FMLA Benefits	\$8,100
Workers' Compensation	\$5,000,000
<b>Retirement Benefits</b>	
Multiemployer Pension Plans	\$360,000
401(k) Plans and Pension Benefits	\$218,550
<b>Other Benefits</b>	
Cashed Out Vacation	\$120,000
Fringe Benefits	\$15,500
<b>Total</b>	<b>\$17,988,155</b>

### **Jurisdiction and Venue**

3. The United States Bankruptcy Court for the Northern District of Georgia has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507, and 541(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy (the “Bankruptcy Rules”), and *General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 4, 2019 (the “Complex Case Procedures”).

### **The Debtors’ Workforce**<sup>3</sup>

6. As of the date of commencement of these chapter 11 cases (the “Petition Date”), the Debtors have 2,884 employees (the “Employees”) in the United States and Canada, including 1,561 drivers, 507 yard personnel, 201 mechanics, 92 vehicle inspectors, and 523 other personnel that perform a variety of functions critical to the Debtors’ operations (*e.g.*, sales, marketing, legal, accounting, administration, and management). Of the Debtors’ 2,884 employees, approximately 2,346 (80%) are employees of Debtor Auto Handling Corporation and Debtor Jack Cooper Transportation Company, Inc. The Company has 39 employees in Mexico. Most

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<sup>3</sup> This summary of the Employee Compensation and Benefits is qualified entirely by the Debtors’ official policies or other practices, programs, or agreements, whether written or unwritten, evidencing an arrangement among the Debtors and the Employees (each, an “Official Policy”). In the event of any inconsistency or ambiguity between the summary contained in this motion and an Official Policy, the terms of such Official Policy shall govern.

of the Transport Segment drivers, yard personnel, and mechanics are represented by various labor unions, primarily the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the “Teamsters”). JCT and Auto Handling Corporation<sup>4</sup> are signatories to the current collective bargaining agreement with the Teamsters, which includes any employees covered by either the Central and Southern Areas Supplemental Agreement expiring on May 31, 2021 or the Eastern Area Supplemental Agreement expiring on May 31, 2021 (collectively, the “Teamsters CBA”). Other Transport Segment U.S. employees are represented by the International Association of Machinists and Aerospace Workers (the “Machinists”). Unionized Transport Segment Canadian employees are represented by either the Teamsters of Canada (the “Canadian Teamsters”) or Unifor, formerly known as the Canadian Auto Workers.

7. As of the Petition Date, the Debtors employ approximately 2,478 full-time Employees (the “Full-Time Employees”), 256 part-time Employees (the “Part-Time Employees”) and 150 Employees on leaves of absence (*e.g.*, on workers’ compensation or maternity leave) (the “Reduced Hours Employees”). Twenty-five (25) of the Employees were hired through outside temporary employment agencies (the “Temporary Employees”), and 18 of the Employees are independent contractors (the “Independent Contractors”). Approximately 2,325 Employees are paid on an hourly basis or on an hourly plus commission basis (the “Hourly Employees”) and the remaining approximately 409 Employees are paid on a salaried basis (the “Salaried Employees”). All of the U.S. Hourly Employees are employed by Jack Cooper

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<sup>4</sup> JCT and Auto Handling Corporation are the only two entities in the Company that are signatories to the Teamster CBA. Three other entities—Jack Cooper Enterprises, Inc., Jack Cooper Holdings Corp., and Jack Cooper Logistics, Inc. are parties to a “work preservation agreement” that ensures neither they nor their subsidiaries will divert car-hauling work to non-union entities, but are not obligors under any collective bargaining agreement.



Transport, Inc. or Auto Handling Corporation (2,104 of them are represented by the Teamsters and 36 are represented by the Machinists) and all of the Canadian Hourly Employees are employed by Jack Cooper Transport Canada Inc., Jack Cooper Canada 1 Limited Partnership or Jack Cooper Canada 2 Limited Partnership (110 are represented by the Canadian Teamsters and 29 are represented by Unifor) (such Employees, the “Union Employees” and the Debtors’ other Employees, the “Non-Union Employees”).

8. The Employees perform a variety of critical functions, including operating and maintaining the Debtors’ rigs and equipment, providing yard management services for the terminals that the Debtors operate, and recruiting and training new drivers and other employees. Employees also engage in various functions to manage and support the Debtors’ operations, including various administrative, marketing, legal, accounting, finance, and management-related tasks. The skills and experience of the Employees are essential to the Debtors’ ongoing operations.

9. The vast majority of Employees rely extensively (and in many cases, exclusively) on their compensation and benefits to pay their daily living expenses. Thus, Employees likely will be exposed to significant financial difficulties if the Debtors are not permitted to continue paying wages and salaries, providing employee benefits, and maintaining certain programs benefiting Employees in the ordinary course of business. Additionally, substantially all of the compensation and benefits paid or provided to the Union Employees are mandated by the applicable collective bargaining agreement, and the Debtors are required pursuant to 11 U.S.C. § 1113(f) to maintain such compensation and benefits in the ordinary course absent relief from

the Court. Accordingly, the Debtors respectfully submit that the relief requested herein is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

### **Employee Compensation and Benefits**

#### **I. Employee Compensation.**

##### **A. Wages.**

10. In the ordinary course of business, Employees generally are paid on either a salaried or hourly basis. Approximately 38 of the Employees are paid on a monthly basis, 2,349 are paid on a weekly basis and 366 are paid on a bi-weekly basis. The Employees paid on a weekly basis are paid on Thursday or Friday of each week. Approximately 98 percent of Employees receive their wages, salaries, and other compensation by direct deposit, while the remaining Employees receive physical checks. On average, the Debtors' aggregate payroll disbursements (excluding Deductions, Withheld Amounts, Payroll Taxes and Reimbursable Expenses (each as defined herein)) for Employees paid on a weekly basis is approximately \$2,770,000.

11. Because the Debtors pay the majority of Employees in arrears, the Debtors will owe substantially all of their Employees accrued but unpaid Employee Compensation as of the Petition Date. Employee Compensation also may be due and owing as of the Petition Date because of, among other things, (a) potential discrepancies between the amounts paid and the amounts that Employees believe should have been paid, which, upon resolution, may reveal that the Debtors owe additional amounts to such Employees and (b) the delay between the date when some payroll checks are issued and the date when such checks are presented to Employees' banks for payment.

12. As of the Petition Date, the Debtors estimate that they owe approximately \$4,950,000 on account of accrued but unpaid Employee Compensation (excluding Deductions, Withheld Amounts, Payroll Taxes and Reimbursable Expenses) (the “Unpaid Employee Compensation”), all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Unpaid Employee Compensation on an interim basis, and, pending entry of the Final Order, to continue to pay Employee Compensation in the ordinary course of business on a post-petition basis.

**B. Union Dues**

13. Pursuant to the current collective bargaining agreement with the Teamsters and the International Association of Machinists and Aerospace Workers (the “Machinists”), including any employees covered by either the Teamsters CBA, the Debtors withhold union dues (the “Union Dues”) on behalf of Union Employees at a rate of between \$56 and \$92 per Union Employee per month, for an aggregate amount of \$120,000 per month. If the Debtors do not withhold and remit Union Dues, they will be in breach of the Teamsters CBA and may have significant issues both with Employee morale and in interactions and negotiations with the Teamsters and the Machinists.

14. As of the Petition Date, the Debtors estimate that they owe approximately \$105,000 on account of accrued but unpaid Union Dues, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Union Dues on an interim basis, and, pending entry of

the Final Order, to continue to pay Union Dues in the ordinary course of business on a post-petition basis.

**C. Independent Contractors**

15. As discussed, the Debtors utilize approximately 18 Independent Contractors on a full-time basis. The Independent Contractors are generally paid hourly, and some are paid on commission. Independent Contractors are not eligible for the Employee Health and Benefit programs set forth in section II of this motion. On average, the Debtors pay approximately \$330,000 per month for all Independent Contractors who provide services in a given month.

16. As of the Petition Date, the Debtors estimate that they owe approximately \$221,000 on account of accrued but unpaid services rendered by the Independent Contractors, all of which will come due and owing within the first 21 days of these chapter 11 cases. The Debtors request authority, but not direction, to pay prepetition amounts in respect of services of Independent Contractors on an interim basis, and, pending entry of the Final Order, to continue to pay the Independent Contractors in the ordinary course of business on a post-petition basis.

**D. Temporary Employees.**

17. The Debtors also hire Temporary Employees, as necessary, to support their workforce, providing additional operational and administrative support at the Debtors' terminals and corporate headquarters. The Temporary Employees are procured through one of several temporary employment agencies with which the Debtors contract. The Debtors pay fees to the agencies that employ the Temporary Employees (the "Temporary Agency Fees"), which fees are then used by the agencies to compensate the Temporary Employees. On average, the Debtors pay approximately \$100,000 in Temporary Agency Fees per month.

18. As of the Petition Date, the Debtors estimate that they owe approximately \$22,500 in accrued but unpaid Temporary Agency Fees, all of which will become due in the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Temporary Agency Fees on an interim basis, and, pending entry of the Final Order, to continue to pay the Temporary Agency Fees in the ordinary course of business on a post-petition basis.

**E. Deductions, Withheld Amounts and Payroll Taxes.**

19. For each applicable pay period, the Debtors routinely deduct certain amounts from Employee paychecks. Some of these deductions are mandated by law while others are at the election of the Employee. These deductions are all customary for similarly-sized companies and include, without limitation, (a) garnishments, child support, and service charges and similar deductions, and (b) other pre- and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein (such as an Employee's share of health care benefits and insurance premiums, contributions under flexible spending plans, health savings accounts, 401(k) contributions, charitable contributions, and other miscellaneous deductions) (collectively, the "Deductions"). On average, the Debtors deduct a total of approximately \$240,000 from Employees' paychecks per week, which the Debtors remit to the appropriate third-party recipients. As of the Petition Date, the Debtors estimate that they owe approximately \$100,000 in accrued but unpaid Deductions, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to remit to the appropriate third parties prepetition amounts in respect of Deductions on an interim basis, and,

pending entry of the Final Order, to continue to remit such Deductions in the ordinary course of business on a post-petition basis.

20. In addition to the Deductions, federal, state and foreign laws require the Debtors to withhold certain amounts related to federal, state, provincial and local income taxes, Medicare taxes and Social Security, and in Canada, Canada Pension Plan (“CPP”) or Quebec Pension Plan (“QPP”) and federal unemployment insurance, for remittance to the appropriate federal, state, provincial or local taxing authority (collectively, the “Withheld Amounts”). On average, the Debtors withhold approximately \$810,000 from Employees’ paychecks on a weekly basis on account of such Withheld Amounts, which the Debtors remit to the appropriate taxing authorities or other third parties. As of the Petition Date, the Debtors estimate that they owe approximately \$1,380,000 in accrued but unpaid Withheld Amounts, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to remit to the appropriate taxing authorities or other third parties prepetition amounts in respect of Withheld Amounts on an interim basis and, pending entry of the Final Order, to continue to remit such Withheld Amounts in the ordinary course of business on a post-petition basis.

21. In addition to the Withheld Amounts, which are effectively taxes owed by the Employee, applicable statutory authority requires the Debtors to pay from their own funds certain amounts for Social Security, Medicare taxes, CPP, QPP, and certain additional amounts for federal and state unemployment insurance (the “Payroll Taxes”). On average, the Debtors pay approximately \$470,000 in Payroll Taxes on a weekly basis, which the Debtors remit to the appropriate third-party recipients. As of the Petition Date, the Debtors estimate that they owe approximately \$800,000 in accrued but unpaid Payroll Taxes, all of which will become due and

owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to remit to the appropriate third parties prepetition amounts in respect of Payroll Taxes on an interim basis and, pending entry of the Final Order, to continue to remit such Payroll Taxes in the ordinary course of business on a post-petition basis.

**F. Reimbursable Obligations.**

**1. Reimbursable Expenses.**

22. The Debtors routinely reimburse Employees for the reasonable and customary expenses incurred on behalf of the Debtors in the scope of their employment including, but not limited to, expenses for air and ground travel, meals, parking, automobile mileage, communications (*i.e.*, use of cellular telephone for business purposes), office and medical supplies, recruiting and business development, and other qualifying expenses (collectively, “Reimbursable Expenses”). Except for those Employees who are issued a Corporate Credit Card (as defined herein), Employees pay from their own funds for Reimbursable Expenses. Employees then submit paper receipts to request reimbursement, and if approved in accordance with internal policies and procedures, the Reimbursable Expenses are processed through the Debtors’ accounts payable system and are reimbursed shortly thereafter. On average, the Debtors pay approximately \$10,500 per month in Reimbursable Expenses.

23. Although the Debtors ask that reimbursement requests be submitted promptly, sometimes submission delays occur. Accordingly, Employees may submit reimbursement requests for prepetition expenses after the Petition Date. Reimbursable Expenses are incurred with the understanding that they will be reimbursed. Without continued reimbursement of the Reimbursable Expenses, Employees relying on these benefits would be saddled with additional

costs, potentially causing personal financial hardship and discouraging Employees from incurring such costs to the potential detriment of the Debtors' operations.

24. As of the Petition Date, the Debtors estimate that they owe approximately \$5,500 in outstanding prepetition Reimbursable Expenses, all of which the Debtors anticipate will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Reimbursable Expenses on an interim basis and, pending entry of the Final Order, to continue to pay such Reimbursable Expenses in the ordinary course of business on a post-petition basis.

## **2. Corporate Credit Cards.**

25. The Debtors provide VISA and MasterCard and American Express credit cards (the "Corporate Credit Cards") to approximately 258 Employees (such Employees, the "Corporate Credit Card Holders"), who use the Corporate Credit Cards to pay for certain expenses incurred in the ordinary course of business. At the end of each billing cycle, the Corporate Credit Card issuers send statements directly to the Debtors and the Debtors pay any outstanding balances directly to the issuers of the Corporate Credit Cards. The Corporate Credit Card Holders use the Corporate Credit Cards on a regular basis to pay for valid and legitimate business expenses, including travel and customer outreach, the amounts of which can often be significant, with the understanding that the Debtors will pay the balances incurred. Many of the Corporate Credit Cards are issued in the name of the Corporate Credit Card Holders. The Debtors' failure to continue to pay the credit card issuers for any outstanding balances on the Corporate Credit Cards may cause financial hardship on the Corporate Credit Card Holders who have Corporate Credit Cards issued in their name and discourage the Corporate Credit Card



Holders from incurring such costs to the potential detriment of the Debtors' operations. Moreover, to the extent the Debtors fail to timely pay balances due on the Corporate Credit Cards, the Corporate Credit Card Holders' credit may be negatively impacted, and the issuers could seek recovery of those amounts or pursue other remedies against the Corporate Credit Card Holders. On average, the Debtors pay approximately \$400,000 per month in the aggregate to the card issuers for amounts incurred on the Corporate Credit Cards.

26. As of the Petition Date, the Debtors estimate that the Corporate Credit Cards have an outstanding, aggregate principal balance of approximately \$400,000, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay the prepetition outstanding balance on the Corporate Credit Cards on an interim basis and, pending entry of the Final Order, to continue to pay any balances incurred thereon in the ordinary course of business on a post-petition basis.

**G. Severance Benefits**

27. As set forth in greater detail in the First Day Declaration, in 2019 the Company undertook a reduction in force by eliminating the positions of non-Union 53 employees, primarily comprising corporate accounting, information technology, and operations functions (the "RIF"). In connection with the RIF, the Company agreed to pay to certain Employees whose positions were made redundant severance payments (the "Severance Benefits"). The Severance Benefits were offered both to demonstrate the Debtors' commitment to their Employees' welfare and as a release of any claims the Employees may have against the Debtors, including in connection with the RIF.

28. As of the Petition Date, the Debtors estimate that they owe approximately

\$375,000 in accrued but unpaid Severance Benefits, \$120,000 of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Severance Benefits on an interim basis and, pending entry of the Final Order, to continue to pay Severance Benefits in the ordinary course of business on a post-petition basis.

## **II. Employee Health and Welfare Benefits.**

29. The Debtors maintain various employment benefit plans and policies, including, among other things, health care, dental and vision plans, flexible spending accounts, health savings accounts, life insurance coverage, workers' compensation benefits, short- and long-term disability insurance, and other fringe benefit plans (collectively, the "Employee Health and Welfare Benefits").

### **A. Insurance and Health Benefit Plans.**

30. The Debtors offer Employees who are regularly scheduled to work 30 hours or more per week the opportunity to participate in certain health benefit plans, including the Medical Plans, the Dental Plans, the Vision Plans, and the Telemedicine Plan (each as defined herein, and collectively, the "Health Insurance Benefits"). The Health Insurance Benefits are customary for similarly-sized companies and participants and their dependents have come to rely on the Health Insurance Benefits. Without Health Insurance Benefits, participants would be forced either to forego health benefit coverage completely or obtain potentially expensive out-of-pocket insurance coverage, which would adversely affect Employee morale and potentially impose substantial hardships on impacted Employees. As such, the Debtors seek authority, but not direction, to pay or remit all prepetition amounts due in respect of the Health Insurance

Benefits and pay or remit amounts owed thereunder on a post-petition basis in the ordinary course of business.

**1. Medical, Dental, and Vision Plans.**

31. The Debtors offer medical and prescription drug coverage to current Employees (the “Medical Plans”), other than (a) the Employees of JCT, which is self-insured for medical, dental and vision benefits, and (b) U.S. Union Employees, who receive benefits through their union membership, as described below (other than Union Employees who participate in the Jack Cooper Transport Co., Inc. Retirement Plan and Trust for Maintenance Employees of Arlington, Texas (the “Arlington Machinists Plan”). The U.S. Debtors utilize Cigna to select, manage and administer the Medical Plans for approximately 500 U.S.-based Employees, other than Employees of CTEMS, LLC (“CTEMS”), Kaiser Permanente to select, manage and administer the Medical Plans for approximately 11 U.S.-based Employees of CTEMS, and Manulife to select, manage and administer the Medical Plans, including life insurance and short term and long term disability insurance, for approximately 175 Canada-based Employees. The Debtors also pay Automatic Data Processing, Inc. (“ADP”) approximately \$90,000 per month for the use of their payroll and benefits services (the “ADP Fees”).

32. Non-Union U.S. Employees and Union Employees who participate in the Arlington Machinists Plan participate in one of five Medical Plans: (1) an open access base option (the “Open Access Base Option”) for Non-Union Employees, (2) an open access buy-up health plan option (the “Buy-Up Option”) for Non-Union Employees, (3) an open access option (the “Open Access Option”) for Union Employees who participate in the Arlington Machinists Plan, (4) an HSA Open Access Plus Network (the “HSA Option”) for Non-Union Employees, or

(5) a preferred provider organization option (the “PPO Option”) for Non-Union Employees of CTEMS. The Medical Plans provide coverage of, among other medical costs, outpatient and inpatient hospital services, preventative care, primary and specialist office visits, x-ray and lab services, and prescription drugs.

33. Approximately 222 U.S.-based Non-Union Employees participate in the Open Access Base Option, approximately 160 U.S.-based Non-Union Employees participate in the Buy-Up Option, approximately 33 U.S.-based Union Employees participate in the Open Access Option, approximately 78 Non-Union Employees participate in the HSA Option, and approximately 11 U.S.-based Non-Union Employees of CTEMS participate in the PPO Option. Health insurance and related benefits (if any) for Independent Contractors and Temporary Employees are not the responsibility of the Debtors, and the Debtors do not provide any such benefits to those individuals.

34. The Debtors also offer current Employees dental plans (the “Dental Plans”) and vision plans (the “Vision Plans”) that are covered by the same premiums charged for the Medical Plans. U.S.-based Employees receive a Dental Plan and Vision Plan administered by Cigna, U.S.-based Employees of CTEMS receive a Dental Plan and Vision Plan administered by Blue Shield of California, and Canada-based Employees receive a Dental Plan and Vision Plan administered by Manulife. The Dental Plans provide certain benefits and forms of coverage for, among other things, diagnostic and preventative services (cleanings, fluoride treatments, etc.), fillings, periodontics, endodontics, and other forms of oral surgery, crowns, bridges, dentures, and orthodontia for children up to age 26. The Vision Plans, which are a sub-component of the Medical Plans and differ slightly depending on the underlying Medical Plan, provide certain

benefits and coverage for, among other things, eye exams, lenses and frames, and contacts.

35. The monthly premiums for the Medical Plans vary depending on the Medical Plan and the number of beneficiaries (*e.g.*, “employee only” or employee plus spouses, children, and/or family members). At the low end, the cost of the HSA Option costs \$598.55 per month for a single Employee, and at the high end, the Buy Up Option costs \$2,369.85 per month for a family and the Open Access Option costs \$2,654.17 for a family. The cost of the monthly premiums is split between Employees and the Debtors and, as is customary for similarly-sized companies, the Debtors pay the bulk of the premiums for the Medical Plans. The share of the monthly premiums borne by the Employees is deducted and withheld from the Employees’ paychecks, the amount ranges from \$0 (for all levels of coverage under the Open Access Base Option, the HSA Option and certain Medical Plans for Canada-based Medical Plans) to between \$46.48 and \$139.36 for the various levels of coverage under the Buy-Up Option and \$264.56 to \$387.15 for certain Canada-based Medical Plans. The Debtors pay between \$641.16 and \$1,951.76 in monthly premiums for Employees under the Open Access Plus Base Option, between \$734.11 and \$2,230.49 for Employees under the Buy-Up Option, between \$598.55 and \$1,814.84 for Employees under the HSA Option, and \$100.00 to \$1,012.19 for certain Canada-based Employees. On average, the Debtors pay \$2,400 per month per Employee to provide the Medical Plans, the Dental Plans, and the Vision Plans.

36. As of the Petition Date, the Debtors estimate that they owe approximately \$943,000 in accrued but unpaid premium payments (excluding amounts withheld from Employees’ paychecks on behalf of the Employees’ contributions, which are accounted for in Deductions above) on account of the Medical Plans, the Dental Plans, and the Vision Plans, all

of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to prepetition amounts in respect of premiums on an interim basis and, pending entry of the Final Order, to continue to pay such premiums in the ordinary course of business on a post-petition basis.

37. Additionally, as noted above, the Debtors have contracted with (a) Cigna, Kaiser Permanente, Blue Shield of California and Manulife to sponsor and administer the Medical Plans and (b) ADP for the use of their benefits enrollment software. Accordingly, the Debtors pay Cigna, Kaiser Permanente, Blue Shield of California, and Manulife approximately \$20,000, \$40, \$1,000 and \$2,000 per month respectively for administration, claims management, and related services (collectively, the “Medical Plan Administration Fees”). As of the Petition Date, the Debtors estimate that they owe approximately \$24,000 in accrued but unpaid Medical Plan Administration Fees, and approximately \$90,000 in accrued but unpaid fees ADP Fees, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Medical Plan Administration Fees and ADP Fees on an interim basis and, pending entry of the Final Order, to continue to pay such obligations in the ordinary course of business on a post-petition basis.

## **2. Telemedicine Plan**

38. The U.S. Debtors provide their Employees with the option to participate in a supplemental telephonic-based care service (the “Telemedicine Plan”) administered by First Stop Health. The Telemedicine Plan allows Employees to call a hotline that connects them with a physician or other medical services professional who can provide basic medical services (including diagnosis and prescription of medications, if necessary). All U.S. Employees are

enrolled in the Telemedicine Plan, which is fully paid for by the U.S. Debtors. The U.S. Debtors pay First Stop Health approximately \$2,500 per month on account of the Telemedicine Plan.

39. As of the Petition Date, the Debtors estimate that they owe approximately \$2,500 in accrued but unpaid Telemedicine Plan expenses, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of such Telemedicine Plan expenses on an interim basis and, pending entry of the Final Order, to continue to pay such Telemedicine Plan expenses in the ordinary course of business on a post-petition basis.

### **3. COBRA.**

40. The U.S. Debtors also continue to provide certain benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (the “COBRA Plan”) to certain former Employees after their termination or retirement. Approximately 20 former Employees currently are receiving benefits under the COBRA Plan. Additionally, the U.S. Debtors pay approximately \$5 per month (the “COBRA Fees”) to Wage Works, the COBRA Plan administrator.

41. As of the Petition Date, the Debtors owe approximately \$5 in accrued but unpaid COBRA Fees, none of which is due within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of COBRA Fees on an interim basis and, pending entry of the Final Order, to continue to pay such COBRA Fees in the ordinary course of business on a post-petition basis.

**B. Union Health and Welfare Benefits**

42. The Debtors' Union Employees receive health and welfare benefits through multiemployer health and welfare funds affiliated with their respective unions, and the Debtors make contributions to the respective benefit funds to provide for the cost of coverage in accordance with the relevant collective bargaining agreement (the "Union Health Contributions"). The Debtors pay Union Health Contributions on behalf of Union Employees based on formulas involving the number of employees and hours worked, for an aggregate amount of \$3,100,000 per month. If the Debtors do not pay Union Health Contributions, they will be in breach of the Teamsters CBA and will have significant issues with Employee morale and in interactions and negotiations with the Teamsters and the Machinists.

43. As of the Petition Date, the Debtors estimate that they owe approximately \$2,800,000 on account of accrued but unpaid Union Health Contributions, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Union Health Contributions on an interim basis, and, pending entry of the Final Order, to continue to pay Union Health Contributions in the ordinary course of business on a post-petition basis.

**C. Flexible Spending Accounts and Health Savings Accounts.**

44. The U.S. Debtors also provide certain Non-Union Employees with access to a flexible spending account (an "FSA") administered by Discovery Benefits ("Discovery"), and approximately 86 Employees elect to contribute to FSAs. FSAs allow participating Employees to make pre-tax contributions to an account to pay for certain covered medical services, and dependent care services, including amounts paid toward deductibles and other out-of-pocket



qualifying expenses not covered by the Medical Plans. Pursuant to Internal Revenue Service regulations, the money in FSAs must be used by no later than March 15 of the following year; any remaining balance is forfeited by the Employee. Federal law limits contributions to FSAs to \$2,650 for traditional FSAs and \$5,000 per year for “dependent care” FSAs. The U.S. Debtors pay Discovery a monthly administration fee of approximately \$425 relating to the FSA program (the “FSA Fees”). The Debtors do not directly contribute to any Employee FSAs but withhold approximately \$50 per month of withholdings from the paychecks of Employees who elect to contribute to an FSA are attributable to FSA benefits (the “FSA Withholdings”).

45. As of the Petition Date, the Debtors estimate that they owe approximately \$500 in accrued FSA Withholdings that have not yet been remitted to Discovery, all of which will become due and owing within the first 21 days of these chapter 11 cases.<sup>5</sup> The Debtors seek authority, but not direction, to remit to Discovery prepetition amounts in respect of FSA Withholdings on an interim basis and, pending entry of the Final Order, to continue to remit such withholdings in the ordinary course of business on a post-petition basis. Additionally, as of the Petition Date, the Debtors estimate that they owe approximately \$500 in accrued but unpaid FSA Fees to Discovery, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of FSA Fees on an interim basis and, pending entry of the Final Order, to continue to pay such fees in the ordinary course on a post-petition basis.

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<sup>5</sup> For the avoidance of doubt, the amount of FSA Withholdings is a component of, not in addition to, the Withheld Amounts for which the Debtors seek authority, but not direction, to pay.

46. Certain Non-Union Employees in the U.S. also have the option to enroll in a health savings account (an “HSA”) administered by Cigna, and approximately 80 employees use HSAs for medical expenses. HSAs allow participating Employees to make pre-tax contributions to an account to pay for certain covered medical services, including amounts paid toward deductibles and out-of-pocket expenses not otherwise covered by the Medical Plans. Unlike FSAs, the money in an HSA rolls over from year to year, and the money in an HSA belongs to an Employee, even if he or she leaves the Company. Federal law limits contributions to HSAs to \$3,500 per year for individual coverage and \$7,000 per year for family coverage. The Debtors pay Cigna a monthly administration fee of approximately \$4,000 (the “HSA Fees”) relating to the HSA program. The Debtors make non-withholding contributions of \$1,500 per year per Employee to Employee HSAs for single coverage and \$3,000 per year per Employee to Employee HSAs for any other tier of coverage (the “Debtor HSA Contributions”). Such Debtor HSA Contributions are generally made on a quarterly basis. Additionally, the Debtors withhold approximately \$10,000 per month from the paychecks of Employees who elect to contribute to an HSA (the “HSA Withholdings”).

47. As of the Petition Date, the Debtors estimate that they owe approximately \$12,500 in accrued HSA Withholdings that have not yet been remitted to Cigna, all of which will become due and owing within the first 21 days of these chapter 11 cases.<sup>6</sup> The Debtors seek authority, but not direction, to remit to Cigna up to \$12,500 in HSA Withholdings on an interim basis and, pending entry of the Final Order, to continue to remit such withholdings in the

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<sup>6</sup> For the avoidance of doubt, the amount of HSA Withholdings is a component of, not in addition to, the Withheld Amounts for which the Debtors seek authority, but not direction, to pay.

ordinary course of business on a post-petition basis. Additionally, as of the Petition Date, the Debtors estimate that they owe approximately \$8,000 in accrued but unpaid Debtor HSA Contributions and HSA Fees to Cigna, all of which will become due and owing within 21 days of the Petition Date. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Debtor HSA Contributions and HSA Fees on an interim basis and, pending entry of the Final Order, to continue to pay such contributions and fees in the ordinary course on a post-petition basis.

**D. Life Insurance Benefits.**

48. The U.S. Debtors provide full-time Employees with primary life (the “Life Insurance”) through Cigna. The maximum benefit provided under the Life Insurance policy is an amount equal to one times the Employee’s annual base salary, which coverage is capped at \$50,000. The Debtors pay approximately \$6,000 per month in premiums on account of the Life Insurance. Additionally, Canadian Employees receive life insurance benefits at no additional cost pursuant to the Medical Plan administered by Manulife described above.

49. As of the Petition Date, the Debtors estimate that they owe approximately \$6,000 in accrued but unpaid premiums on the Life Insurance, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of the Life Insurance on an interim basis and, pending entry of the Final Order, to continue to pay such premiums in the ordinary course of business on a post-petition basis.

**E. Supplemental Life Insurance and Related Programs.**

50. Employees have the option to purchase supplemental life insurance for themselves and their spouses and/or dependent child(ren) (the “Voluntary Life Insurance”) through Cigna. The Voluntary Life Insurance is fully funded by participating Employees, and the Debtors withhold approximately \$10,000 per month from participating Employees’ Compensation on account of such Voluntary Life Insurance. As of the Petition Date, the Debtors estimate that they owe approximately \$10,000 in accrued but unpaid Voluntary Life Insurance premiums that have not yet been remitted to Cigna, all of which will become due and owing within the first 21 days of these chapter 11 cases.<sup>7</sup> The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Voluntary Life Insurance premiums on an interim basis and, pending entry of the Final Order, to continue to pay such withheld premiums in the ordinary course of business on a post-petition basis.

51. Additionally, Employees receive professional support to deal with personal, work, financial, or family issues for themselves and their spouses and/or dependent child(ren) (the “Life Assistance Program”) through Cigna. The Life Assistance Program provides professional support (including, in certain instances, face-to-face visits) for a variety of issues, including marital and family conflicts, job-related difficulties, stress, anxiety, and depression, parent and child relationship issues, legal and financial counseling, identity theft counseling, and financial planning, among other things. The Life Assistance Program is fully funded by deductions for Voluntary Life Insurance by participating Employees.

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<sup>7</sup> For the avoidance of doubt, the amount of Voluntary Life Insurance premiums is a component of, not in addition to, the Withheld Amounts for which the Debtors seek authority, but not direction, to pay.

**F. Disability Insurance.**

52. The U.S. Debtors provide Employees with basic short-term and long-term disability insurance (the “Disability Insurance”) through Cigna. The Disability Insurance provides covered Employees with income replacement if they become disabled or are otherwise unable to work due a non-work-related illness or injury. The benefits provided by the Disability Insurance are customary for such insurance. For short-term disability, which kicks in after 30 days of disability, the Disability Insurance covers 60% of an Employee’s base annual earnings up to a \$1,000 weekly maximum. For long-term disability, which kicks in after 90 days of disability, the Disability Insurance covers 60% of an Employee’s base annual earnings up to a \$10,000 monthly maximum. The Debtors pay approximately \$10,000 per month in premiums on account of Disability Insurance. Additionally, Canadian Union Employees receive short term and long term disability insurance benefits at no additional cost pursuant to the Medical Plan administered by Manulife described above. Upon becoming disabled, Canadian Non-Union Employees receive their salary for up to 19 weeks, and then receive benefits at no additional cost pursuant to the Manulife policy described above.

53. As of the Petition Date, the Debtors estimate that they owe approximately \$10,000 in accrued but unpaid premium payments on account of Disability Insurance, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of premiums on account of Disability Insurance on an interim basis and, pending entry of the Final Order, to continue to pay such premiums in the ordinary course of business on a post-petition basis.

**G. Family Medical Leave Act.**

54. The U.S. Debtors pay approximately \$4,600 per month on account of benefits related to the Family Medical Leave Act (“FMLA Benefits”) and \$3,500 per month to Broadspire Services, Inc. to administer benefits related to the FMLA (the “FMLA Fees”). As of the Petition Date, the Debtors owe approximately \$4,600 in FMLA Benefits and approximately \$3,500 in FMLA Fees, all of which will come due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of FMLA Benefits and FMLA Fees on an interim basis and, pending entry of the Final Order, to continue to pay such benefits and fees in the ordinary course of business on a post-petition basis.

**H. Workers’ Compensation.**

55. In the ordinary course of business, the Debtors maintain workers’ compensation insurance at the level required by statute for each U.S. state or Canadian province in which the Debtors conduct business (the “Workers’ Compensation Program”). In the states of Ohio and Washington and in the Canadian provinces in which the Debtors do business, the Debtors pay workers’ compensation premiums to the applicable governmental entity (such premiums, the “Governmental Workers’ Compensation Premiums”), which maintain a monopolistic workers’ compensation program. The Debtors pay approximately \$1,100,000 annually in Governmental Workers’ Compensation Premiums. In the other U.S. states in which the Debtors do business, the Workers’ Compensation Program is administered by National Interstate Insurance Company (“NIIC”). The Debtors pay all amounts related to workers’ compensation claims up to a fixed per-claim deductible in the amount of \$500,000, in addition to a fixed annual premium for losses

that exceed the deductible. The Debtors pay approximately \$13,500,000 annually in premiums to NIIC (the “NIIC Workers’ Compensation Premiums” and, together with the Governmental Workers’ Compensation Premiums, the “Workers’ Compensation Premiums”) on account of the Workers’ Compensation Program. Total current assets in the workers’ compensation fund equal approximately \$27.4 million.

56. As of the Petition Date, the Debtors owe approximately \$5,000,000 in Workers’ Compensation Premiums, \$3,500,000 of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of losses incurred under the Workers’ Compensation Program and Workers’ Compensation Premiums on an interim basis and, pending entry of the Final Order and to ensure that the Debtors remain in compliance with applicable state law, to continue to maintain the Workers’ Compensation Program in the ordinary course of business, including any applicable broker fees, losses and Workers’ Compensation Premiums, in the ordinary course of business on a post-petition basis.

### **III. Retirement Benefits**

#### **A. Employee Savings and Retirement Plans.**

##### **1. Multiemployer Pension Plans.**

57. Pursuant to the Teamsters CBA, the U.S. Debtors are required to participate in several multiemployer pension funds, including the Central States, Southeast and Southwest Areas Pension Plan (the “Central States Pension Plan”), the International Brotherhood of Teamsters Union Local No. 710 Pension Fund (the “IBT 710 Pension Fund”), the Teamsters Local 560 Benefit Fund (the “Local 560 Benefit Fund”), and the Freight Drivers and Helpers

Local Union No. 557 Pension Plan (the “Local 557 Pension Plan,” and together with the IBT 710 Pension Fund, the Local 560 Benefit Fund, and the Local 557 Pension Plan, the “MEPPs”). For the avoidance of doubt, the MEPPs shall not include the Central States Pension Plan. In total, the Debtors contributed \$32.6 million and \$34.3 million to the Central States Pension Plan and the MEPPs for the years ended December 31, 2018 and 2017, respectively. On average, the U.S. Debtors contribute approximately \$2.7 million per month to the Central States Pension Plan and the MEPPs.

58. As of the Petition Date, the Debtors estimate that they owe approximately \$360,000<sup>8</sup> in accrued but unpaid contributions to the MEPPs, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of MEPP contributions on an interim basis and, pending entry of the Final Order, to continue to pay such MEPP contributions in the ordinary course of business on a post-petition basis. The Debtors are not seeking discretionary authority to make contributions to the Central States Pension Plan in this Motion.

## **2. 401(k) Plans.**

59. The U.S. Debtors provide its Union and Non-Union Employees with the ability to participate in 401(k) plans (the “401(k) Plans”) sponsored by Transamerica or Voya Financial. Approximately 370 Employees in total participate in the 401(k) Plan. On account of these participating Employees, the Debtors withhold and remit to Transamerica and Voya Financial

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<sup>8</sup> Historically, the Debtors have made larger monthly contributions to their MEPPs, but do not anticipate making contributions in such amounts at the outset of this case consistent with the terms of the RSA and the schedules and exhibits thereto.



approximately \$130,000 and \$2,200 respectively every week on account of 401(k) Plan contributions (“401(k) Withholdings”). Employees’ 401(k) Withholdings are submitted weekly, usually by Tuesday of the week after payroll is processed. As of the Petition Date, the Debtors estimate that they owe approximately \$130,000 and \$2,200 in accrued 401(k) Withholdings that have not yet been remitted to Transamerica and Voya Financial respectively, all of which will become due and owing within the first 21 days of these chapter 11 cases.<sup>9</sup> The Debtors seek authority, but not direction, to pay prepetition amounts in respect of 401(k) Withholdings on an interim basis and, pending entry of the Final Order, to continue to pay such 401(k) Withholdings in the ordinary course of business on a post-petition basis.

60. Fees to administer the 401(k) Plan are paid by plan participants. In addition, the 401(k) Plan is audited annually in compliance with applicable law. The cost of the audit is borne by plan participants in the approximate amount of \$11,000 annually to Miller Haviland Ketter as auditor to conduct such 401(k) audits (such payments, the “401(k) Fees”).

61. Historically, the U.S. Debtors offered all Non-Union Employees a 401(k) match program (the “401(k) Match”) pursuant to which the U.S. Debtors provided certain matching 401(k) contributions to each participating Employee’s 401(k) account. However, the 401(k) Match is now discontinued as to all Non-Union Employees except for such Employees working for Auto & Boat Relocation Services, LLC (“ABRS”). ABRS Employees who contribute to a 401(k) account receive from ABRS: (1) a 100% match for the Employee’s contributions up to 3% of such Employee’s annual salary and (2) a 50% match for the Employee’s contributions

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<sup>9</sup> For the avoidance of doubt, the amount of 401(k) Withholdings is a component of, not in addition to, the Withheld Amounts for which the Debtors seek authority, but not direction, to pay.

between 3% and 5% of such Employee's annual salary. By way of example, an Employee who contributes 5% of his or her annual salary to his or her 401(k) account would receive 401(k) Match contributions from ABRS in an amount equal to 4% of his or her annual salary. The Debtors' average weekly contribution for the ABRS 401(k) Match is approximately \$326. Employees' 401(k) Match contributions are submitted weekly, usually by Tuesday of the week after payroll is processed.

62. As of the Petition Date, the Debtors estimate that they owe approximately \$350 in accrued but unpaid 401(k) Match contributions, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of 401(k) Match contributions on an interim basis and, pending entry of the Final Order, to continue to pay such 401(k) Match contributions in the ordinary course of business on a post-petition basis.

### **3. Defined Benefit Pension Plan.**

63. Pursuant to the Debtors' collective bargaining agreement with Local Lodge 2121 of District Lodge 776 International Association of Machinists and Aerospace Workers, AFL-CIO (the "Machinists CBA"), the U.S. Debtors provide a defined benefit pension plan (the "Machinists DB Plan") to certain Employees. Eligible recipients of the Machinists DB Plan receive \$100 per month per year service. On average, the U.S. Debtors pay \$36,000 per quarter in pension contributions to the Machinists DB Plan to approximately 27 active Employees and 16 eligible retirees.

64. As of the Petition Date, the Debtors estimate that they owe approximately \$24,000 in accrued but unpaid contributions under the Machinists DB Plan, all of which will

become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of contributions under the Machinists DB Plan on an interim basis and, pending entry of the Final Order, to continue to pay such contributions under the Machinists DB Plan in the ordinary course of business on a post-petition basis.

#### **4. Canadian Pension Plans**

65. Pursuant to the Canadian Debtors' collective bargaining agreements with the Canadian Teamsters and Unifor, the Canadian Debtors generally withhold a fixed amount from Union Employee wages and remit such amounts on such Union Employee's behalf to various defined benefit, defined contribution or group registered-retirement plans administered by third parties (collectively, the "Canadian Withholdings"). As of the Petition Date, the Debtors estimate that they owe approximately \$11,000 in accrued but unpaid Canadian Withholdings, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Canadian Withholdings on an interim basis and, pending entry of the Final Order, to continue to pay such Canadian Withholdings in the ordinary course of business on a post-petition basis.

66. Most of the Canadian collective bargaining agreements also require the Canadian Debtors to contribute a fixed monthly amount per Union Employee into such plans (collectively, the "Canadian Pension Payments"). Approximately 115 Canadian Employees are the beneficiaries of Canadian Pension Payments in amounts ranging from approximately \$385 per month to \$600 per month. As of the Petition Date, the Debtors estimate that they owe approximately \$51,000 in accrued but unpaid Canadian Pension Payments, all of which will

become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Canadian Pension Payments on an interim basis and, pending entry of the Final Order, to continue to pay such Canadian Pension Payments in the ordinary course of business on a post-petition basis.

#### **IV. Other Benefits.**

##### **A. Paid Vacation.**

67. Non-Union Employees who work full time accrue differing numbers of weeks of paid vacation per calendar year (“Paid Vacation”) depending on the length of such Employee’s service. Paid Vacation is not offered to Non-Union Employees who are temporary, part-time, or “casual” Employees. Generally, Non-Union Employees with zero to four, five to 14, and 15 or more years of service accrue two weeks, three weeks, and four weeks of Paid Vacation per year, respectively. Non-Union Employees may not accrue Paid Vacation beyond a maximum of 160 hours (approximately four weeks). Union Employees accrue Paid Vacation in a similar manner, though the precise rate of accrual and the other terms and conditions associated with such Paid Vacation may vary depending on the applicable collective bargaining agreement.

68. The use of Paid Vacation does not generally result in any incremental cash outflows for the Debtors, as the Employee continues to receive his or her pay in the ordinary course while on Paid Vacation. However, any earned, accrued, and unused Paid Vacation is paid to Non-Union Employees if they end their employment with the Debtors (such payments, “Cashed Out Vacation”). The ability of Union Employees to receive Cashed Out Vacation is governed by the Debtors’ collective bargaining agreements and is generally limited to amounts that have accrued, but not yet been earned, for a given work year.

69. As of the Petition Date, the Debtors estimate that they owe approximately \$120,000 in accrued but unpaid Cashed Out Vacation, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Cashed Out Vacation on an interim basis and, pending entry of the Final Order, to continue to pay Cashed Out Vacation in the ordinary course of business on a post-petition basis. Additionally, out of abundance of caution, the Debtors seek authority, but not direction, to continue to honor accrued but unused Paid Vacation in the ordinary course of business and to allow such Paid Vacation to continue to accrue in the ordinary course.

**B. Paid Holidays.**

70. Non-Union Employees in the U.S. who work full time are eligible to receive paid time off for 10 holidays per year and Non-Union Employees in Canada who work full time are eligible to receive paid time off for 13 holidays per year ("Paid Holidays"). Paid Holidays are not offered to U.S. Non-Union Employees who are temporary, part-time, or "casual" Employees. Currently, the Debtors offer their U.S. Non-Union Employees Paid Holidays on Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas, New Year's Eve, and New Year's Day, and their Canadian Employees receive Paid Holidays on Family Day, Good Friday, St. Jean Baptiste Day, Victoria Day, Canada Day, Civic Holiday, Labour Day, Remembrance Day, Thanksgiving, Christmas, Boxing Day, New Year's Eve and New Year's Day. Union Employees receive Paid Holidays in a similar manner, though the precise set of holidays and the other terms and conditions associated with such Paid Holidays may vary depending on the applicable collective bargaining agreement.

71. The use of Paid Holidays does not generally result in any incremental cash outflows for the Debtors, as the Employee continues to receive his or her pay in the ordinary course during any such holidays. Nevertheless, out of abundance of caution, the Debtors seek authority, but not direction, to continue to offer eligible their Employees Paid Holidays in the ordinary course of business.

**C. Other Forms of Paid Time Off.**

72. In addition to Paid Vacation, Cashed Out Vacation, and Paid Holidays, the Debtors offer numerous other forms of paid time off work to their Employees including, among other things, absences due to illness, jury duty, parental leave, and bereavement leave (collectively, “Paid Personal Time”). As with Paid Vacation and Paid Holidays, the use of Paid Personal Time does not generally result in any incremental cash outflows, as the Employee continues to receive his or her pay in the ordinary course. Nevertheless, out of abundance of caution, the Debtors seek authority, but not direction, to continue to offer eligible Employees Paid Personal Time in the ordinary course of business.

**D. Fringe Benefits.**

73. U.S. Employees are eligible to have the cost of their participation in Weight Watchers Health Solutions subsidized by the Company (the “WW Benefits”). Approximately 10 Employees participate in the WW Benefits. Additionally, U.S. Employees that go to a gym three or more times per week are eligible for reimbursement of their gym membership costs of up to \$25 per month (the “Gym Benefits”). Approximately 10 Employees participate in the Gym Benefits. Finally, certain U.S. Employees are granted access to use company cars (the “Company Car Program” and, together with the WW Benefits and the Gym Benefits, the “Fringe

Benefits”). Approximately 36 vehicles are available for Employees to use the Company Car Program, at no anticipated incremental cost to the Company. The Company also pays approximately 25 Employees \$500 each per month to cover expenses related to car ownership. As of the Petition Date, the Debtors estimate that they owe approximately \$15,500 in accrued but unpaid Fringe Benefits, all of which will become due and owing within the first 21 days of these chapter 11 cases. The Debtors seek authority, but not direction, to pay prepetition amounts in respect of Fringe Benefits on an interim basis and, pending entry of the Final Order, to continue to pay such Fringe Benefits in the ordinary course of business on a post-petition basis.

### **Basis for Relief**

#### **I. Sufficient Cause Exists to Authorize the Debtors to Honor Their Employee Compensation and Benefits.**

##### **A. Certain of the Employee Compensation and Benefits Are Entitled to Priority Treatment.**

74. Pursuant to section 507(a)(4) and (5) of the Bankruptcy Code, certain of the unpaid Employee Compensation and Benefits are entitled to priority treatment in an amount up to \$13,650 for each individual Employee. To the extent such claims are afforded priority status, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (a) wages, salaries or commissions, including vacation, severance and sick leave pay earned by an individual and (b) contributions to an employee benefit plan).

75. In addition, and as noted above, the Debtors are not seeking authority in the Interim Order to pay prepetition Employee Compensation and Benefits in amounts that exceed \$13,650 per Employee. Accordingly, granting the relief sought with respect to Employee

Compensation and Benefits should only affect the timing of payments to Employees, and does not have any material negative impact on recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of Employee Compensation and Benefits up to \$13,650 per individual will enhance value for the benefit of all stakeholders because it will help ensure that the Employees—the lifeblood of the Debtors’ business operations—continue to provide vital services to the Debtors at this critical juncture. The Debtors believe that finding and attracting qualified talent would be extremely difficult and most likely would require higher salaries, guaranteed incentive payments, and overall higher cost compensation packages than are currently provided to the Employees should the Debtors be unable to honor or pay Employee Compensation and Benefits when due and payable.

**B. Payment of Certain of the Employee Compensation and Benefits Is Required by Law.**

76. The Debtors also seek authority to pay Deductions, Withheld Amounts, and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that Employees, governments, and judicial authorities have designated for deduction from Employees’ paychecks. Indeed, certain deductions, including contributions to the Employee Health and Welfare Benefits programs and child support and alimony payments, are not property of the Debtors’ estates because the Debtors have withheld such amounts from Employees’ paychecks on another party’s behalf. *See* 11 U.S.C. § 541(b).

77. Further, federal, state and foreign laws require the Debtors to withhold certain tax payments from Employees’ paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. § 6672 and 7501(a); *see also 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 DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the unremitted Deductions and unremitted Payroll Taxes are not property of the Debtors' estates, the Debtors request that the Court authorize the Debtors to transmit the withheld amounts of unremitted Deductions and unremitted Payroll Taxes to the proper authorities in the ordinary course of business.

78. Similarly, state and Canadian provincial laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Therefore continuation of the Workers' Compensation Program in the ordinary course of business is crucial to the continued operation of the Debtors' businesses.

## **II. Payment of Employee Compensation and Benefits Is Warranted Under Section 363(b)(1) of the Bankruptcy Code and the Doctrine of Necessity.**

79. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (granting authority to pay prepetition claims to certain vendors).

80. Further, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the

Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit preplan payments of prepetition obligations when essential to the continued operation of a debtor’s business. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”).

81. Courts have also recognized the applicability of the “doctrine of necessity” or the “necessity of payment” rule with respect to the payment of pre-petition employee compensation and benefits. *See Ionosphere*, 98 B.R. at 175–76. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *Id.*; *see also In re Just For Feet*, 242 B.R. 821, 824–25 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank*

(*In re Adams Apple, Inc.*), 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation” is appropriate); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”).

82. Courts generally recognize that, under appropriate circumstances, they may authorize a debtor to pay prepetition obligations related to their employees. *See Ionosphere*, 98 B.R. at 175 (granting the debtor the authority to pay prepetition wages); *see also In re Primary Health Sys., Inc.*, 275 B.R. 709, 710 (Bankr. D. Del. 2002) (allowing payment of prepetition wages upon a finding that such relief was “essential to the continued operation of the Debtors’ businesses”); *Just for Feet*, 242 B.R. at 824-45 (noting that debtors may pay prepetition claims that are essential to the continued operation of the debtor’s business).

83. Here, the relief requested in the motion will benefit the Debtors’ estates and creditors by allowing the Debtors’ businesses operations to continue without interruption. In the absence of such payments, the Debtors believe that Employees may seek alternative employment opportunities, perhaps with the Debtors’ competitors. Such a development would deplete the Debtors’ workforce, hinder the Debtors’ ability to meet their customer obligations, and likely diminish the confidence of creditors, vendors, and other business partners in the viability of the Debtors. The loss of valuable individuals and the recruiting efforts that would be required to replace them would be a massive and costly distraction at a time when the Debtors should be

focusing on stabilizing their operations and other reorganization efforts. Moreover, the majority of Employees rely exclusively on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, these Employees may be exposed to significant financial difficulties if the Debtors are not permitted to honor the Employee Compensation and Benefits. Furthermore, if this Court does not authorize the Debtors to honor their various obligations under the insurance programs described herein, the Employees will not receive health coverage and, thus, may become obligated to pay certain health care claims in cases where the Debtors have not paid the respective insurance providers. The loss of health care coverage likely will result in considerable anxiety for (and attrition of) Employees at a time when the Debtors need such Employees to perform their jobs at peak efficiency. Additionally, as set forth above, Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at this critical juncture.

84. The importance of a debtor's employees to its operations cannot be understated and has been regularly recognized by bankruptcy courts in this district in granting relief similar to the relief requested herein. *See, e.g., In re LakePoint Land, LLC*, Case No. 18-41337 (BEM) (Bankr. N.D. Ga. June 13, 2018) [Docket No. 27]; *In re Beaulieu Grp., LLC*, Case No. 17-41677 (PWB) (Bankr. N.D. Ga. July 20, 2017) [Docket No. 35]; *In re AstroTurf, LLC*, Case No. 16-41504 (PWB) (Bankr. N.D. Ga. June 29, 2016) [Docket No. 31]; *In re S. Reg'l Health Sys., Inc.*, Case No. 15-64266 (WLH) (Bankr. N.D. Ga. Aug. 5, 2015) [Docket No. 39]; *In re Cagle's, Inc.*, Case No. 11-80202 (JB) (Bankr. N.D. Ga. Oct. 20, 2011) [Docket No. 30]; *In re Pike Nursery Holding, LLC*, Case No. 07-79129 (MGD) (Bankr. N.D. Ga. Nov. 16, 2007) [Docket No. 39]; *In*

*re Allied Holdings, Inc.*, Case No. 05-12515 (WHD) (Bankr. N.D. Ga. Aug. 2, 2005) [Docket No. 58]; *In re Rhodes, Inc.*, Case No. 04-78434 (MGD) (Bankr. N.D. Ga. Nov. 8, 2004) [Docket No. 61]; *In re Galey & Lord, Inc.*, Case No. 04-43098 (MGD) (Bankr. N.D. Ga. Aug. 19, 2004) [Docket No. 20]; *In re Dan River Inc.*, Case No. 04-10990 (WHD) (Bankr. N.D. Ga. Apr. 1, 2004) [Docket No. 54]; *In re Sport Court, Inc.*, Case No. 04-41107 (PWB) (Bankr. N.D. Ga. Mar. 18, 2004) [Docket No. 17]; *In re Sw. Recreational Indus., Inc.*, Case No. 04-40656 (PWB) (Bankr. N.D. Ga. Feb. 17, 2004) [Docket No. 23]; *In re iPcs, Inc.*, Case No. 03-62695 (MGD) (Bankr. N.D. Ga. Feb. 25, 2003) [Docket No. 32]; *In re Centennial Health Care Corp.*, Case No. 02-74974 (JEM) (Bankr. N.D. Ga. Dec. 24, 2002) [Docket No. 40]; *In re New Power Co.*, Case No. 02-10835 (WHD) (Bankr. N.D. Ga. July 12, 2002) [Docket No. 164].<sup>10</sup>

### **III. The Debtors Seek a Waiver of the Automatic Stay for Workers' Compensation Claims.**

85. Section 362(a)(1) of the Bankruptcy Code operates to stay:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” *Id.* at § 362(d)(1).

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<sup>10</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this motion. Copies of these orders are available upon request to the Debtors' counsel.

86. Here, cause exists to modify the automatic stay to permit the Employees to proceed with workers' compensation claims in the appropriate judicial or administrative forum. Staying the workers' compensation claims could have a detrimental effect on the financial well-being and morale of the Employees. As previously discussed, Employees' departure or demoralization likely will cause severe disruption to the Debtors' businesses and likely will impair the success of their restructuring.

**Processing of Checks and Electronic Fund Transfers Should be Authorized**

87. The Debtors 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 and anticipated access to cash collateral. Also, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment made relating to the Employee Compensation and Benefits. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that this Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

**Emergency Consideration**

88. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." Here, the Debtors believe an immediate and orderly transition

into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

89. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

90. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to seek to modify or terminate any benefits provided under any collective bargaining agreement or otherwise in any manner permitted by law, including, as applicable, pursuant to sections 1113 and/or 1114 of the Bankruptcy Code or otherwise. The Debtors also expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be

construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Notice**

91. The Debtors have provided notice of this motion to (a) the Office of the United States Trustee for the Northern District of Georgia; (b) the Debtors' thirty (30) largest unsecured creditors; (c) counsel to the Prepetition Secured Parties; (d) counsel to the administrative agents for the Debtors' prepetition credit facilities; (e) counsel to the administrative agents for the Debtors' debtor-in-possession financing facilities; (f) the United States Securities and Exchange Commission; (g) the Internal Revenue Service; (h) the Georgia Department of Revenue; (i) the Attorney General for the State of Georgia; (j) the United States Attorney for the Northern District of Georgia; (k) the state attorneys general for states in which the Debtors conduct business; (l) the Pension Guaranty Benefit Corporation; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

**No Prior Request**

92. No prior request for the relief sought in the motion has been made to this or any other court.

*[Remainder of Page Intentionally Left Blank]*



WHEREFORE, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: August 6, 2019  
Atlanta, Georgia

/s/ Sarah R. Borders

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**Exhibit A**

**Proposed Interim Order**

**Exhibit B**

**Proposed Final Order**