

Preliminary Statement

1. The Debtors, known for their iconic Hollywood, California, Guitar Center music store and their family of brands, Guitar Center, Music & Arts, Musician’s Friend, and Woodwind and Brasswind, are the leading United States retailers of musical instruments and related products and services.

2. The Debtors have commenced these chapter 11 cases to implement a comprehensive restructuring pursuant to a restructuring support agreement and “prepackaged” chapter 11 plan *overwhelmingly supported by stakeholders spanning the Debtors’ capital structure, including:*

- holders of **100%** in aggregate principal amount of the Debtors’ senior secured superpriority notes;
- holders of over **71%** in aggregate principal amount of the Debtors’ senior secured notes;
- holders of **84%** in aggregate principal amount of the Debtors’ senior unsecured cash/PIK notes; and
- the holder of substantially all of the Debtors’ existing common equity.

3. The restructuring transactions contemplated by the Restructuring Support Agreement² and the Plan will allow the Debtors to achieve certain objectives that are critical to their survival: (a) to continue operations without interruption, including minimizing any potential adverse effects to the Debtors’ businesses, customers, employees, and trade partners; (b) to consummate an expedient emergence from these cases; and (c) to ensure ample liquidity and

² Capitalized terms used but not otherwise defined in this Motion have the meanings given to such terms in the *Declaration of Tim Martin of Guitar Center, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”).

emerge with a de-leveraged capital structure well-positioned for future success. The Debtors believe, and all of their major stakeholders resoundingly concur, that a smooth and fast path to Plan confirmation and emergence from chapter 11 is imperative as the Debtors strive to maximize the value of their operations and maintain their critical relationships with all of their key constituents. Delay and distraction will jeopardize those objectives.

4. The restructuring transactions are essential to the Debtors' survival during these difficult times. The Debtors are the largest national omni-channel musical instrument retailer, serving their customers in over 500 brick and mortar locations nationwide and through their direct sales websites. The Debtors employ approximately 13,000 people³ and generated over \$2.3 billion in revenue in fiscal year 2019. Prior to the outbreak of the COVID-19 pandemic, the Debtors had been enjoying sustained comparable sales growth over 10 straight quarters. However, like many retailers, COVID-19 wiped out much of the Debtors' progress.

5. Despite the implementation of numerous cost saving measures, the liquidity constraints caused by the Debtors' significant debt burden and upcoming maturities, coupled with the economic upheaval created by the persistence of the COVID-19 pandemic, could not be resolved through short-term measures. By mid-summer 2020, the Debtors were working in earnest on a dual-track process to: gauge potential investors' interest in making a new equity investment in Guitar Center and engage with the holders of the Debtors' outstanding funded indebtedness to explore potential long-term solutions to the Debtors' capital structure, hopefully with the benefit of some infusion of new capital.

6. On November 13, 2020, the Debtors and their key stakeholders executed the Restructuring Support Agreement outlining the key terms of the *Joint Pre-Packaged Chapter 11*

³ Of the more than 8,750 employees that were furloughed at the peak of the COVID-19 pandemic, as of the Petition Date, only approximately 900 remain furloughed due to ongoing store closures and reduced hours.

Plan of Guitar Center, Inc. et al. and comprehensive debtor in possession financing arrangements. The Restructuring Support Agreement provides for, among other things: (a) an equity infusion of up to \$165 million, from a consortium of parties including the Debtors' existing equity sponsor and two co-investors; (b) \$375 million in Debtor-In-Possession financing provided by certain of its existing noteholders and ABL lenders; and (c) a capital raise of \$335 million in new senior secured notes. The restructuring transactions will reduce the Debtors' overall funded debt burden by over \$800 million, while maintaining ordinary course operations and unimpairing all non-funded debt creditors.

7. In accordance with the Restructuring Support Agreement, on November 20, 2020, the Debtors commenced solicitation of votes on the Plan from holders of claims in the two classes of claims entitled to vote—the senior secured noteholder and the senior unsecured cash/PIK noteholders.

8. Contemporaneously with the commencement of these cases, and in addition to the Plan and the disclosure statement for the Plan, the Debtors filed a number of motions seeking different types of “first day” relief. The First Day Motions are designed: (a) to protect and preserve the Debtors' key relationships with its employees, vendors, other supply chain participants, and customers; (b) to provide the Debtors with adequate and readily available liquidity to meet their needs during these cases, which were commenced during the critical holiday selling season; and (c) to establish a prompt and efficient schedule for Plan confirmation that will provide all parties with visibility into and certainty around the Debtors' quick emergence from chapter 11. With the support of the vast majority of its capital structure already in hand, the Debtors believe they are in a prime position to achieve all of these objectives.

Background

9. On the date of this Motion (the "Petition Date"), each Debtor commenced a chapter 11 case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code").

10. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. The Debtors have requested that their cases be consolidated for procedural purposes only and administered jointly. No request for the appointment of a trustee or examiner has been made and no official committee of unsecured creditors has been appointed.

12. A comprehensive description of the Debtors' business and operations, capital structure, and the events leading to the commencement of these cases can be found in the First Day Declaration filed contemporaneously with this Motion and which is incorporated in this Motion by reference.

Jurisdiction and Venue

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The bases for the relief requested in this Motion are sections 105(a), 363(b) and (c), and 503(b) of the Bankruptcy Code, rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Bankruptcy Rules").

15. The Debtors consent to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties,

cannot enter final orders or judgments in connection with this Motion consistent with Article III of the United States Constitution.

Relief Requested

16. By this Motion, the Debtors seek entry of interim (the “Interim Order”) and final (the “Final Order”) orders, substantially in the forms annexed to this Motion as **Exhibit A** and **Exhibit B**, respectively: (a) authorizing, but not directing, the Debtors to pay, in the ordinary course, prepetition claims of unsecured creditors that provide goods or services to the Debtors, as well as of certain other entities that are essential to maintaining the going concern value of the Debtors’ enterprise (collectively with the Trade Vendors, the Lien Claimants, and the 503(b)(9) Claimants (each term as defined below), the “Trade Claimants”, and their prepetition claims, the “Trade Claims”), subject to the procedures and conditions described in this Motion, provided that, the aggregate amount of payments on account of such Trade Claims shall not exceed \$97.4 million before entry of the Final Order; (b) confirming administrative expense priority status of all undisputed claims arising from the postpetition delivery of goods and provision of services that were, in each case, ordered prior to the Petition Date (the “Outstanding Orders”); and (c) granting certain related relief described in the Motion. In addition, the Debtors request that the Court schedule a final hearing twenty-one (21) days after the commencement of these cases to consider approval of the relief sought in this Motion on a final basis.

Maintaining the Debtors’ Supply Chain

17. The success of the Debtors’ business, as retailers of specialized goods and services, hinges on their ability to timely provide to their customers, or otherwise have stocked and available, quality brand-name music products. For the Debtors’ customers, musical instruments and related products are simply not fungible. A customer choosing a particular *Gibson* or *Fender* guitar or *Pirastro* violin strings will not settle for a generic alternative, and many customers believe

that a *Vox* amplifier cannot be substituted with a *Boss Katana* for the desired sound or level of customization. These customers choose to purchase these specialty products from the Debtors because the Debtors are one of the few nationwide retailers that reliably carry or can promptly deliver such products.

18. To satisfy this demand, the Debtors need to maintain their global supply chain intact. A broken link in this chain would disrupt the Debtors' business, and any interruption during the holiday season—however brief—could potentially cause irreparable harm to their goodwill, customer base, and market share.

19. To assure uninterrupted flow of inventory and other goods and materials (collectively, the "Merchandise"), the Debtors rely on a number of key vendors. The Debtors' strong relationships with these vendors, as well as the vendors that provide supporting services, is what makes the Debtors the leading destination for musical instruments and related products and services. If the Debtors are unable to stock Merchandise due to strained business relationships, they will not have customers in their physical or virtual stores. This disruption would impact the Debtors' other business lines as well: decreased Merchandise sales would adversely impact the Debtors' maintenance and service business (including the sale of replacement parts) and music lessons program as fewer customers interacted with the Debtors.

20. The Debtors are able to provide their customers with some of the best prices because many Trade Claimants give favorable trade terms to the Debtors, including favorable payment terms, a high allocation of the most sought-after products, and exclusive deals. Maintaining these favorable trade terms is especially important now as the Debtors are in the process of building and maintaining inventory for the holiday shopping season, their busiest period of the year.

21. The Debtors believe that many of the Trade Claimants would be unwilling to do business with them postpetition on customary trade terms without being paid for goods and services already provided. This unwillingness could result in either the Debtors needing to pay Trade Claimants on terms that would render the Debtors' businesses unprofitable and strain the Debtors' liquidity or would result in the loss of key business relationships. The potential for disruption is heightened as the Debtors, like most retailers, do not have contracts with most of their Trade Claimants and as such there is no obligation to continue providing goods and services to the Debtors postpetition. Accordingly, the Debtors need the ability to pay outstanding prepetition Trade Claims as of the Petition Date.

22. The following chart summarizes the Trade Claims. Each category is described in greater detail below.

Category:	Estimated Claim:
Trade Vendor Claims	\$57.9 million
Lien Claims	\$3.6 million
503(b)(9) Claims	\$68.1 million
Aggregate:	\$129.6 million

A. Trade Vendor Claims

23. As explained above, the Debtors obtain specialty products from a limited number of highly specialized vendors, service providers, and other businesses. Among these Trade Claimants are certain general unsecured creditors who provide goods and services that would be likely very difficult, or in some cases impossible, to replace (collectively, the "Trade Vendors", and their prepetition claims, the "Trade Vendor Claims").

24. The vast majority of the Trade Vendor Claims arise from the Debtors' purchase of specialty Merchandise, about twenty (20) percent of which relates to Trade Vendors in foreign

jurisdictions. This Merchandise cannot be substituted. It serves as the bedrock of the Debtors' business and customer awareness: sourcing and providing musical instruments and equipment with unique characteristics and strong, entrenched brand identities. Because the Debtors' business is centered on the sale of such specialty Merchandise, failure to stock premier, specialty products would relegate the Debtors' stores to the status of generic retailers and potentially render the Debtors' sales channels and other services irrelevant to their customer-base. Without the Trade Vendors' agreement to continue to provide their goods to the Debtors in the ordinary course, the Debtors' business will no longer be profitable.

25. In addition to the Trade Vendors providing Merchandise, other Trade Vendors provide marketing support products and services that are vital to the Debtors day-to-day operations. Essential goods and services provided by such Trade Vendors include online operations, website development and maintenance, management, general supplies and packaging materials, employee onboarding and management programs, regulated direct mail and digital marketing campaigns, customer relationship management capabilities, brand creative services, and the Debtors' omni-channel initiatives. In many instances, these are the only vendors able to produce or deliver the volume or quality of certain materials or products sufficient to meet the Debtors' operational needs.

26. Furthermore, the Debtors rely on such Trade Vendors to attract customers and drive sales and allow customers to seamlessly transition their engagement with the Debtors' products between physical stores, online websites, mobile apps, catalogs, and social media. This marketing infrastructure is essential to developing brand awareness, promoting upcoming events and programs, building customer loyalty, and ultimately driving revenue for the benefit of the Debtors' estates and all stakeholders. Without such vendors, the Debtors cannot sustain the highest quality

retail and website operations that they have worked for years to build. The Debtors would be unable to continue serving their customers and would likely lose significant revenue. Indeed, the Debtors have come to rely on these vendors more than ever in light of pandemic-related store closures and restrictions, making it even more critical for the Debtors to maintain a high level of customer engagement, continue to promote products, and provide multi-channel delivery of goods to their customers. None of this would be possible without a reliable marketing effort and partnership with Trade Vendors. Moreover, if certain of these Trade Vendors refuse to provide goods and services (including implementing the holiday seasonal marketing plans that they have already developed) on account of unpaid prepetition claims, the Debtors would be left scrambling. Procuring new vendors could take several months with the resulting detrimental impact on the Debtors' customer interface and brand messaging efforts. Certainly, the Debtors would be unable to sustain effective holiday marketing campaigns.

27. In short, the Trade Vendors are vital to the Debtors' operations.

B. Lien Claims

28. The Debtors pay common or contract carriers, freight forwarders, and customs brokers (collectively, the "Shippers") to transport the Merchandise. Shippers predominantly deliver Merchandise first to one of the Debtors' four (4) distribution centers in: (a) Rialto, California; (b) Frederick, Maryland; (c) Kansas City, Missouri; or (d) Indianapolis, Indiana. Generally, the Shippers then deliver Merchandise: (a) first, to warehouses or one of twenty-three "pool points" (collectively, the "Warehouses") operated by various third parties (the "Warehousemen"); and (b) then either to the Debtors' stores or directly to their e-commerce customers.

29. The Debtors' supply chain depends on the uninterrupted services provided by the Shippers and Warehousemen (collectively, the "UCC Lien Claimants"). If the UCC Lien

Claimants are not paid, they may refuse to release the Merchandise in their possession and may assert liens on such Merchandise to secure payment.⁴ The UCC Lien Claimants do not provide their services under formal, written contracts, but rather perform work on an order-by-order basis, and so cannot be compelled to perform.

30. Additionally, the Debtors employ various service providers to assist with on-site building repairs at their corporate headquarters and stores. Such service providers typically do not provide their services under formal, written contracts, but rather perform work on an order-by-order basis. Like the UCC Lien Claimants, these service providers may assert liens under nonbankruptcy law to secure payment (in such circumstances, the “Mechanics’ Lien Claimants”).⁵ In addition to asserting such liens, the Mechanics’ Lien Claimants currently performing services at any of the Debtors’ locations may walk off the sites, leaving their services unfinished, which may severely disrupt the Debtors’ operations at these locations and may result in safety hazards.

31. In addition, to receive imported Merchandise, the Debtors must pay various import-related charges, including customs duties, detention and demurrage fees, tariffs and excise taxes, freight forwarding, and similar obligations (the “Import Charges”, and the persons to whom Import Charges are due, collectively with the UCC Lien Claimants and the Mechanics’ Lien Claimants, the “Lien Claimants”). If the Debtors fail to pay the Import Charges timely, the parties to whom the Debtors owe these obligations may disrupt the transportation of the imported Merchandise. For instance, the United States Customs and Border Protection Service has the statutory right to

⁴ See, e.g., U.C.C. § 7-307(a) (“A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier’s receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.”).

⁵ See, e.g., Cal. Civ. Code § 8400 (“[A] person who provides work authorized for a work of improvement . . . has a lien right under this chapter.”); see also Cal. Civ. Code § 8404 (defining “work of improvement” as including work provided by contractors or subcontractors).

refuse to release imported goods from its warehouses, charge significant fines for every day that the Debtors' goods are detained, and assert a lien on such goods. *See, e.g.*, 19 C.F.R. 141.1.

32. The cost of the potential disruption that may be caused by the Lien Claimants would likely be greater than the aggregate amount owing to them on the Petition Date (collectively, the "Lien Claims").

C. 503(b)(9) Claims

33. The Debtors may have received certain Merchandise from various foreign and domestic vendors (collectively, the "503(b)(9) Claimants") within the twenty (20) day period immediately preceding the Petition Date. The unpaid amounts of such Merchandise give rise to claims that are accorded administrative expense priority under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims"). As most Merchandise is obtained on an order-by-order basis rather than under long-term contracts, a 503(b)(9) Claimant may refuse to supply new Merchandise to the Debtors without prior payment of its 503(b)(9) Claim.

34. In sum, the Debtors' relationship with the Trade Claimants is critical to a successful reorganization. As such, and because the Debtors believe, in their reasonable business judgment, that the payment of the Trade Claims is necessary and in the best interest of the Debtors, their estates, and their creditors, the Debtors request authority to pay the Trade Claims in the ordinary course of business during these cases.

Proposed Conditions to Receiving Payment in Ordinary Course

35. The Debtors may require that, as a condition for making payment on a Trade Claim, the applicable Trade Claimant agree to continue supplying goods or services to the Debtors for the duration of these cases in accordance with trade terms that are: (a) at least as favorable to the Debtors as those in place prior to the Petition Date; or (b) on terms satisfactory to the Debtors in their business judgment (collectively, the "Customary Trade Terms"). The Debtors also propose

that if a Trade Claimant, after receiving a payment on account of its prepetition Trade Claim, does not maintain or reinstate Customary Trade Terms during the pendency of these cases, then any payments made to such Trade Claimant after the Petition Date may, in the Debtors' sole discretion, either be deemed applied to postpetition amounts payable to such Trade Claimant or treated as an unauthorized postpetition transfer recoverable by the Debtors.

36. If the Debtors choose to treat any payment made to a Trade Claimant that fails to comply with the applicable Customary Trade Terms as an unauthorized postpetition transfer, the Debtors may, in their discretion and without further order of the Court, declare that such Trade Claimant must immediately return the Debtors' payment without giving effect to any alleged setoff right, recoupment right, adjustment, or offset of any type whatsoever. Upon the return of such payment, the applicable Trade Claim will be reinstated as if the payment had not been made.

37. Notwithstanding the foregoing, the Debtors propose that their inability to obtain Customary Trade Terms from a particular Trade Claimant should not preclude them from paying such Trade Claimant's undisputed Trade Claim when, in the exercise of their reasonable business judgment, the Debtors determine that such payment is necessary to their successful reorganization.

Payment of Outstanding Orders

38. Prior to the Petition Date and in the ordinary course of business, the Debtors may have ordered Merchandise that will not be received until after the Petition Date. To avoid becoming general unsecured creditors of the Debtors' estates with respect to such Merchandise, suppliers may refuse to ship such Merchandise (or may recall shipments) unless the Debtors issue substitute purchase orders postpetition to replace the Outstanding Orders.

39. To prevent any disruption to the Debtors' business operations, and given that claims on account of Merchandise delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors are asking that this Court: (a)

grant administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the receipt of goods subject to Outstanding Orders; and (b) authorize the Debtors to satisfy such obligations in the ordinary course of business.

Treatment of Trade Claims Under the Plan

40. The goal of these prepackaged cases is to deleverage the Debtors' balance sheet without interruption to their business operations. As explained above, disruption to the Debtors' timely receipt of critical goods and services would negatively impact the Debtors' business, damage their market reputation, and possibly lead to loss of customers. Accordingly, it is imperative that the Debtors maintain positive relationships with the suppliers of the goods and services essential to their business operations throughout the course of these cases and honor their publicly expressed commitment to pay Trade Claimants in the ordinary course.

41. The Support Parties share the Debtors' view and have agreed to support the Plan, which leaves allowed Trade Claims unimpaired. Thus, assuming the Plan is ultimately confirmed, if this Court grants the relief requested in this Motion, it will affect only the timing of the payment to the Trade Claimants, not the amount or priority, and will not prejudice other parties in interest. In exchange, the Debtors' continued payment of Trade Claims in the ordinary course will permit the Debtors to maintain favorable Customary Trade Terms and to continue their reputation for supplying premier goods to their customers. The relief requested in this Motion furthers the Debtors' restructuring goals to maximize the value of their estates in accordance with the Plan.

Basis for Relief

42. Paying the Trade Claims is critical to the Debtors' continued, uninterrupted operations and, as such, may be authorized under section 363 of the Bankruptcy Code, as well as pursuant to sections 105(a) and 503 and the "doctrine of necessity."

A. Section 363 of the Bankruptcy Code Authorizes the Debtors to Pay Prepetition Trade Claims.

43. Pursuant to section 363(c)(1) of the Bankruptcy Code, the Debtors may “enter into transactions . . . in the ordinary course of business” and “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1).

44. Furthermore, pursuant to section 363(b) of the Bankruptcy Code, the Court may also authorize the Debtors to “use property of the estate . . . other than in the ordinary course of business.” 11 U.S.C. § 363(b)(1). Courts “apply the deferential business judgment test when analyzing transactions under § 363(b)(1).” *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016); *see also In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) (“This Court follows the ‘sound business purpose’ test when examining § 363(b) sales.”).⁶ Under this deferential standard, “courts should defer to – should not interfere with – decisions of corporate directors upon matters entrusted to their business judgment except upon a finding of bad faith or gross abuse of their ‘business discretion.’” *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code. Under section 363(b), courts have authorized debtors in possession, among other things, to pay certain prepetition obligations when such payment was

⁶ *See also In re Cont’l Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999).

shown to be justified by the debtor's sound business judgment. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition obligations under section 363(b)).

45. As paying the Trade Claims is in the ordinary course of the Debtors' business, the Debtors respectfully submit that the Bankruptcy Code authorizes them to pay Trade Claims consistent with their prepetition practices without further order from the Court.

46. Furthermore, payment of the Trade Claims as they become due in the ordinary course of business is a sound exercise of the Debtors' business judgment because doing so will avoid a value-destructive business interruption. Preserving the Debtors' supply chain on an uninterrupted basis is essential to the Debtors' ongoing operations, particularly during the holiday season. As described above, the Debtors require a steady stream of goods and services to maintain operational stability as they transition into chapter 11. Importantly, any disruption to the Debtors' business operations could result in a significant loss of operational efficiency, decrease the value of the Debtors' businesses, and impair stakeholder value at this critical juncture in these cases. Paying the Trade Claims is essential to avoid any such disruption. Moreover, binding Trade Claimants to the Customary Trade Terms ensures that the Debtors' expenses will not materially increase going forward, allowing the Debtors to manage their operational costs properly.

47. In addition, the Debtors' other unsecured creditors would not be prejudiced if this Court grants the relief sought in the Motion because payment of Trade Claims will give the applicable Trade Claimant no more than what they otherwise would be entitled to receive under the Plan. The relief requested in this Motion, therefore, merely alters the timing of payment to Trade Claimants and does not alter the amount or priority of such payment and does not prejudice

other parties in interest. Moreover, preserving the value of the Debtors' estates will inure to the benefit of the Debtors' estates and all their creditors.

48. Further, many of the Trade Claims enjoy priority status under the Bankruptcy Code. For instance, section 503(b) of the Bankruptcy Code provides administrative expense priority for the "value of any goods received by the Debtor within 20 days before the commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). These claims must be paid in full for the Debtors to confirm a plan. *See* 11 U.S.C. § 1129(a)(9)(A). The Bankruptcy Code does not prohibit a debtor from paying such claims before confirmation, and the timing of such payments also lies squarely within the Court's discretion. *See In re Global Home Prods. LLC*, 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with the parties that "the timing of the payment of that administrative expense claim is left to the discretion of the Court"). Accordingly, payment of the 503(b)(9) Claims would still be required by bankruptcy law even if the consensual prepackaged Plan providing for the satisfaction in full of all allowed Trade Claims were not confirmed. Again, authority to pay the 503(b)(9) Claims now will only change the timing of the payment of such Trade Claims, not the amounts.

49. Based on the foregoing, the Debtors respectfully submit that payment of their obligations relating to the Trade Claims, including those arising or relating to the period before the Petition Date, is amply justified by their sound business judgment and, as such, this Court may authorize the Debtors pay such obligations under section 363 of the Bankruptcy Code.

B. Failure to Make Timely Payment of the Lien Claims Would Threaten the Debtors' Ability to Operate and May Subject the Debtors' Assets to Possessory Liens.

50. As noted above, certain Lien Claimants, including the United States Customs and Border Protection Service, may be entitled to assert possessory liens on the Merchandise in their

possession to secure payment of their prepetition claims. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. As a result, the Debtors anticipate that certain of the Lien Claimants may assert and/or perfect liens, refuse to turn over goods in their possession, and/or stop performing their ongoing obligations. In instances where the amount owed to a Lien Claimant is less than the value of the goods that could be held to secure a Lien Claim, such claimant may be a fully-secured creditor. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' inventory, equipment, or products, mere possession or retention would disrupt the Debtors' operations.

51. Furthermore, certain of the Lien Claims are entitled to priority status under the Bankruptcy Code. For instance, section 507(a)(8) of the Bankruptcy Code provides priority of payment to claims of a governmental unit based on a customs duty arising out of the importation of certain goods. Thus, paying Lien Claims does not impair unsecured creditor recoveries in these cases, while avoiding any interest costs and fines.

52. Accordingly, the Court should authorize the Debtors to pay the Lien Claims, including those arising or relating to the period before the Petition Date. Similar relief has been granted by courts in this and other districts. *See, e.g., In re Ascena Retail Grp., Inc.*, No. 20-33113 (KRH), [Docket No. 449] (Bankr. E.D. Va. Aug. 27, 2020); *In re Le Tote, Inc.*, No. 20-33332 (KLP), [Docket No. 260] (Bankr. E.D. Va. Aug. 27, 2020); *In re Intelsat S.A.*, No. 20-32299 (KLP), [Docket No. 263] (Bankr. E.D. Va. June 9, 2020); *In re Pier 1 Imports, Inc.*, No. 20-30805 (KRH), [Docket No. 377] (Bankr. E.D. Va. Mar. 17, 2020).

C. This Court May Also Rely on Its Equitable Powers to Grant the Requested Relief.

53. In addition, courts have the authority to grant the relief requested in this Motion under section 105(a) of the Bankruptcy Code. Section 105(a) codifies bankruptcy courts' inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Among other things, under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business. *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); *In re Synteen Tech., Inc.*, 2000 WL 33709667, at *2 (Bankr. D. S.C. Apr. 14, 2000); *see also Ionosphere Clubs Inc.*, 98 B.R. at 175-76 (noting that the bankruptcy court's ability to authorize payment of pre-petition debt under 105(a) is "not a novel concept"); *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.").

54. Payments of critical prepetition claims not explicitly authorized by the Bankruptcy Code have also been authorized under the equitable "doctrine of necessity" or the "necessity of payment" doctrine. *See In re United Am., Inc.*, 327 B.R. 776, 781 (Bankr. E.D. Va. 2005) (acknowledging the doctrine of necessity "is a necessary deviation because otherwise there will be no reorganization and no creditor will have an opportunity to recoup any part of its pre-petition claim"); *NVR L.P.*, 147 B.R. at 127 ("Under [section 105(a)] the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor."); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy

Code “provides a statutory basis for payment of pre-petition claims” under the doctrine of necessity).

55. The doctrine of necessity is designed to foster debtors’ rehabilitation, which courts have recognized to be “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-86 (S.D.N.Y. 1987) (approving bankruptcy court order authorizing payment of prepetition obligations).

56. Courts in the Fourth Circuit have applied the doctrine of necessity where payment of a prepetition claim (1) is “necessary for the successful reorganization of the debtor,” (2) falls within “the sound business judgment of the debtor,” and (3) will not “prejudice other unsecured creditors.” *In re United Am., Inc.*, 327 B.R. at 782; *see also In re Universal Fin., Inc.*, 493 B.R. 735, 738-40 (Bankr. M.D. N.C. 2013) (applying the *United Am.* three-part test); *In re Movie Gallery, Inc.*, 2010 Bankr. LEXIS 5819, at *4 (E.D. Va. Mar. 23, 2010). Each of these three prongs is met here.

57. As explained above, paying prepetition Trade Claims is both necessary to the Debtors’ successful reorganization and justified by the Debtors’ sound business judgment. In addition, holders of allowed general unsecured claims against the Debtors would not be harmed if this Court grants this Motion because: (a) the Plan provides for payment in full of all allowed general unsecured claims (and many of the Trade Claims have priority status); and (b) the value of preserving the Debtors’ estates will inure to the benefit of the Debtors’ estates and all creditors. As such, the Debtors believe the relief sought in this Motion is amply justified.

58. Based on all of the foregoing, the Court should grant the relief requested in this Motion. Courts in other districts have routinely provided such relief where, as here, the debtors proposed a broadly supported, prepackaged plan that rendered allowed general unsecured claims unimpaired. *See, e.g., In re Internap Tech. Sol. Inc.*, No. 20-22393 (RDD), [Docket No. 104] (Bankr. S.D.N.Y. Apr. 14, 2020) (“The Debtors are authorized . . . in the reasonable exercise of their business judgment, to pay, in the ordinary course of business, some or all of the prepetition Trade Claims upon such terms and in the manner provided for in this Final Order and the Motion.”); *Am. Commercial Lines Inc.*, No. 20-30982 (MI), [Docket No. 194] (Bankr. S.D. Tex. Mar. 3, 2020) (same); *In re Deluxe Entm’t Grp. Inc.*, No. 19-23774 (RDD), [Docket No. 89] (Bankr. S.D.N.Y. Oct. 25, 2019) (“The Debtors are authorized, but not directed, in their sole discretion, to pay the Accounts Payable Claims in an aggregate amount not to exceed \$26 million on a final basis.”); *In re Monitronics Int’l, Inc.*, No. 19-33650 (DRJ), [Docket No. 83] (Bankr. S.D. Tex. July 1, 2019) (“The Debtors are authorized, but not directed, to pay, in the ordinary course of business, the Prepetition Trade Claims of Prepetition Trade Creditors in the aggregate amounts reflected by category on Exhibit A to this Order.”); *In re David’s Bridal, Inc.*, No. 18-12635 (LSS), [Docket No. 208] (Bankr. D. Del. Dec. 17, 2018) (“The Debtors are authorized, but not directed . . . in the reasonable exercise of their business judgment, to pay, in the ordinary course of business, prepetition Ordinary Course Claims in full”); *In re Answers Holdings, Inc.*, No. 17-10496 (SMB), [Docket No. 109] (Bankr. S.D.N.Y. Apr. 4, 2017) (“The Debtors are authorized, but not directed, to pay, in the ordinary course of business, some or all of the Trade Claims in full, subject to the Trade Claims Cap.”).

D. The Court Should Confirm that Outstanding Orders Are Administrative Expense Priority Claims and that Payment of Such Claims Is Authorized.

59. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with postpetition receipt of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estate postpetition. *See* 11 U.S.C. § 503(b)(1)(A) (providing that the “actual [and] necessary costs and expenses of preserving the estate” are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809–10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, the granting of the relief sought in this Motion with respect to the Outstanding Orders will not afford the applicable vendors any greater priority than they otherwise would have received if the requested relief were not granted, and will not prejudice any other party in interest.

60. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide suppliers with assurance of the administrative expense priority status to which their claim are entitled. The attendant disruption to the continuous and timely flow of Merchandise will damage the Debtors’ business reputation, erode the Debtors’ customer base, and ultimately lead to a loss of revenue, all to the detriment of the Debtors’ estates and creditors.

61. Accordingly, the relief requested should be granted. Similar relief has been granted by courts in this and other districts. *See, e.g., In re Ascena Retail Grp., Inc., et al.*, No. 20-33113 (KRH) [Docket No. 449] (Bankr. E.D. Va. Aug. 27, 2020); *In re Chinos Holdings, Inc., et al.*, No. 20-32181 (KLP) [Docket No. 384] (Bankr. E.D. Va. May 28, 2020); *In re Pier 1 Imports, Inc., et al.*, No. 20-30805 (KRH) [Docket No. 377] (Bankr. E.D. Va. Mar. 17, 2020); *In re Toys “R” Us, Inc.*, No. 17-34665 (KLP), [Docket No. 723] (Bankr. E.D. Va. Oct. 25, 2017).

E. Cause Exists to Authorize the Financial Institutions to Honor Checks and Electronic Fund Transfers.

62. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, consensual use of cash collateral, and funds from debtor in possession financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect to the Trade Claims and Outstanding Orders. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that this Court authorize, but not direct, 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 in this Motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

63. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003.

64. For the reasons discussed above, authorizing the Debtors to pay prepetition Trade Claims and Outstanding Orders, as well as granting all other relief requested in this Motion, is integral to the Debtors' ability to transition their operations into these cases. The relief requested is necessary in order for the Debtors to preserve their operations and assets and to ultimately maximize the value of their estates for the benefit of all stakeholders. Failure to receive the relief requested in this Motion during the first twenty-one (21) days of these 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 that the relief requested in this Motion should be granted immediately.

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

65. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As set forth above, the relief requested in this Motion is essential to prevent immediate and irreparable damage to the Debtors’ operations, going concern value and their efforts to pursue a resolution to these cases.

Waiver of Memorandum of Points and Authorities

66. The Debtors respectfully request that this Court treat this Motion as a written memorandum of points and authorities or waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as described in Local Bankruptcy Rule 9013-1(G).

Reservation of Rights

67. Nothing contained in this Motion is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an admission that any particular claim is of a type described in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors’ estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If this Court grants the relief sought in this Motion,

any payment made pursuant to this Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

68. The Debtors will provide notice of this Motion to: (A) the Office of the United States Trustee, Attn: Kathryn R. Montgomery, Esq.; (B) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (C) counsel to (i) the ABL DIP Agent and (ii) the Term DIP Agent; (D) counsel to the Ad Hoc Group of Noteholders and the Term DIP Lenders; (E) counsel to the Prepetition ABL Agent; (F) counsel to the Sponsor Support Party; (G) counsel to (i) the Brigade Co-Investor and (ii) the Carlyle Co-Investor; (H) counsel to the Trustee under each of (i) the Superpriority Secured Notes Indenture, (ii) the Secured Notes Indenture, (iii) the 2018 Cash/PIK Notes Indenture, and (iv) the 2020 Cash/PIK Notes Indenture; (I) the Securities and Exchange Commission; (J) the Internal Revenue Service; (K) the United States Attorney's Office for the Eastern District of Virginia; (L) the office of the attorneys general for the states in which the Debtors operate; (M) the National Association of Attorneys General; and (N) all other parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that this Court enter interim and final orders, substantially in the forms annexed to this Motion as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested in this Motion and such other relief as this Court deems appropriate under the circumstances.

Dated: November 21, 2020
Richmond, Virginia

/s/ Jennifer E. Wuebker

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Proposed Co-Counsel for the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

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Proposed Co-Counsel for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

)	
In re:)	Chapter 11
)	
GUITAR CENTER, INC. <i>et al.</i> , ¹)	Case No. 20-34656 (KRH)
)	
Debtor.)	(Joint Administration Requested)
)	

**INTERIM ORDER: (I) AUTHORIZING
PAYMENT OF PREPETITION OBLIGATIONS
OWED TO TRADE CREDITORS IN THE ORDINARY
COURSE OF BUSINESS; (II) GRANTING ADMINISTRATIVE
EXPENSE PRIORITY TO ALL UNDISPUTED OBLIGATIONS ON
ACCOUNT OF OUTSTANDING ORDERS; AND (III) GRANTING RELATED RELIEF**

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Guitar Center Holdings, Inc. (3262); Guitar Center, Inc. (0862); Guitar Center Stores, Inc. (4340); GTRC Services, Inc. (9503); GC Business Solutions, Inc. (3928); Guitar Center Gift Card Company, LLC (3370); Music & Arts Instructor Services, LLC (7811); and AVDG, LLC (4440). The Debtors' service address is 5795 Lindero Canyon Rd., Westlake Village, CA 91362.

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order: (a) authorizing, but not directing, the Debtors to pay Trade Claims, in the ordinary course, subject to the procedures and conditions described in the Motion; (b) confirming administrative expense priority status of claims under the Outstanding Orders; and (c) granting certain related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other or further notice need be provided; and upon the record of the hearing held before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted in this interim order (the “Interim Order”); and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis as set forth in this Interim Order.
2. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2020, at ___: __.m., prevailing Eastern Time. Any objections or responses to entry of a final

² Capitalized terms used but not otherwise defined in this Interim Order shall have the meanings given to them in the Motion.

order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time on _____, 2020 (the “Objection Deadline”), and served on the Core Group, as defined in the *Order: (I) Establishing Certain Notice, Case Management, and Administrative Procedures; and (II) Granting Related Relief* [Docket No. ___].

3. If no objections or responses are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to this Court a final order, substantially in the form annexed to the Motion as **Exhibit B**, which may be entered with no further notice or need for the Final Hearing.

4. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay, in the ordinary course of business in the ordinary course of business and consistent with prepetition practice, some or all of the prepetition Trade Claims upon such terms and in the manner provided for in this Interim Order and the Motion. Notwithstanding the foregoing, prior to the Final Hearing the amount paid on account of the Trade Claims shall not exceed, in the aggregate, \$97.4 million. In the event the Debtors will exceed such aggregate amount before a final order is entered, the Debtors shall file a notice with the Court describing the category and overage amount of any such Trade Claim(s).

5. The Debtors are authorized to seek Customary Trade Terms as a condition to payment of a Trade Claim. Notwithstanding the foregoing, the Debtors’ inability to obtain Customary Trade Terms from a particular Trade Claimant shall not preclude them from paying such Trade Claimant’s undisputed Trade Claim when, in the exercise of their reasonable business judgment, the Debtors determine that such payment is necessary to their successful reorganization.

6. If a Trade Claimant that has received payment on account of its prepetition Trade Claim pursuant to this Interim Order fails to comply with the applicable Customary Trade Terms,

the Debtors may, in their discretion and without further order of the Court, declare that: (a) any payments made on account of the Trade Claim to such Trade Claimant after the Petition Date may, in the Debtors' sole discretion, either be deemed applied to postpetition amounts payable to such Trade Claimant or treated as a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover in cash or in goods from such Trade Claimant (including by setoff against postpetition obligations); or (b) the Trade Claimant shall immediately return the payment without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and the Trade Claimant shall be reinstated in such an amount so as to restore the Debtors and the Trade Claimant to their original positions as if the payment to the Trade Claimant had not been made.

7. Nothing in this Interim Order shall impair or prejudice the Debtors' ability to contest, in their discretion, the extent, validity, priority, or amount of any Trade Claim or the validity, perfection, or priority of any lien purportedly securing any such claim. The Debtors expressly reserve all rights to contest the extent, validity, priority, or amount of any Trade Claim or the validity, perfection, or priority of any lien purportedly securing any such claim.

8. All undisputed obligations under the Outstanding Orders are granted administrative expense priority consistent with section 503(b)(1)(A) of the Bankruptcy Code. The Debtors are authorized, but not directed, to pay all undisputed amounts under the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved in this Interim Order are authorized and directed to receive, process, honor, and pay all such checks and electronic

payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

10. The Debtors are authorized, but not directed, to issue postpetition checks, and to issue postpetition fund transfer requests in replacement of any checks or fund transfer requests that are dishonored as a consequence of the filing of these cases with respect to prepetition amounts owed in connection with the relief granted in this Interim Order.

11. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against any Debtor; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim, on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type described in the Motion; (e) a request or authorization to assume, any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

12. Nothing in this Interim Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Trade Claims.

13. For the avoidance of doubt, between entry of the Interim Order, but pending entry of the final order, the Debtors will not pay any amounts before they come due in accordance with past practice and will not accelerate any postpetition payments, without further order of the Court.

14. For the avoidance of doubt, this Interim Order does not authorize the Debtors to pay prepetition Trade Claims that the Court has otherwise authorized to be paid by a separate order entered during these cases, including, but not limited to, prepetition employees' claims and any prepetition claims of attorneys or other professionals required to be retained pursuant to applications under section 327 of the Bankruptcy Code.

15. Notwithstanding anything to the contrary in this Interim Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this Interim Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "DIP Order"); and (ii) the documentation (including the budget) in respect of any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this Interim Order, the terms of the DIP Order shall control.

16. The Motion satisfies the requirements of Bankruptcy Rule 6003(b).

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

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

19. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of points and authorities in connection with this Motion is waived.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order.

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

Dated: _____, 2020
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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Jennifer E. Wuebker (VSB No. 91184)
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Proposed Co-Counsel for Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

Exhibit B

Proposed Final Order

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order: (a) authorizing, but not directing, the Debtors to pay Trade Claims, in the ordinary course, subject to the procedures and conditions described in the Motion; (b) confirming administrative expense priority status of claims under the Outstanding Orders; and (c) granting certain related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other or further notice need be provided; and upon the record of the hearing held before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted in this final order (the “Final Order”); and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on an final basis as set forth in this Final Order.
2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay, in the ordinary course of business and consistent with prepetition

² Capitalized terms used but not otherwise defined in this Final Order shall have the meanings given to them in the Motion.

practice, some or all of the prepetition Trade Claims in full upon such terms and in the manner provided in this Final Order and the Motion.

3. The Debtors are authorized to seek Customary Trade Terms as a condition to payment of a Trade Claim. Notwithstanding the foregoing, the Debtors' inability to obtain Customary Trade Terms from a particular Trade Claimant shall not preclude them from paying such Trade Claimant's undisputed Trade Claim when, in the exercise of their reasonable business judgment, the Debtors determine that such payment is necessary to their successful reorganization.

4. If a Trade Claimant that has received payment on account of its prepetition Trade Claim pursuant to this Final Order fails to comply with the applicable Customary Trade Terms, the Debtors may, in their discretion and without further order of the Court, declare that: (a) any payments made on account of the Trade Claim to such Trade Claimant after the Petition Date may, in the Debtors' sole discretion, either be deemed applied to postpetition amounts payable to such Trade Claimant or treated as a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover in cash or in goods from such Trade Claimant (including by setoff against postpetition obligations); or (b) the Trade Claimant shall immediately return the payment without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and the Trade Claimant shall be reinstated in such an amount so as to restore the Debtors and the Trade Claimant to their original positions as if the payment to the Trade Claimant had not been made.

5. Nothing in this Final Order shall impair or prejudice the Debtors' ability to contest, in their discretion, the extent, validity, priority, or amount of any Trade Claim or the validity, perfection, or priority of any lien purportedly securing any such claim. The Debtors expressly

reserve all rights to contest the extent, validity, priority, or amount of any Trade Claim or the validity, perfection, or priority of any lien purportedly securing any such claim.

6. All undisputed obligations under the Outstanding Orders are granted administrative expense priority consistent with section 503(b)(1)(A) of the Bankruptcy Code. The Debtors are authorized, but not directed, to pay all undisputed amounts under the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved in this Final Order are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions

8. The Debtors are authorized, but not directed, to issue postpetition checks, and to issue postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the filing of these cases with respect to prepetition amounts owed in connection with the relief granted in this Final Order.

9. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against any Debtor; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim, on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type

described in the Motion; (e) a request or authorization to assume, any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

10. Nothing in this Final Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Trade Claims.

11. For the avoidance of doubt, this Final Order does not authorize the Debtors to pay prepetition Trade Claims that the Court has otherwise authorized to be paid by a separate order entered during these cases, including, but not limited to, prepetition employees' claims and any prepetition claims of attorneys or other professionals required to be retained pursuant to applications under section 327 of the Bankruptcy Code.

12. Notwithstanding anything to the contrary in this Final Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this Final Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "DIP Order"); and (ii) the documentation (including the budget) in respect of any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control.

13. The Motion satisfies the requirements of Bankruptcy Rule 6003(b).

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

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

16. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of points and authorities in connection with the Motion is waived.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: _____, 2020
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.