UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
AT CANTON

In re: SCHWAB INDUSTRIES, INC.,[1] Debtor.	Chapter 11 Case No. 10-60702 Judge Russ Kendig Joint Administration Pending
In re: MEDINA CARTAGE CO., Debtor.	Chapter 11 Case No. 10-60703 Judge Russ Kendig Joint Administration Pending
In re: MEDINA SUPPLY COMPANY, Debtor.	Chapter 11 Case No. 10-60704 Judge Russ Kendig Joint Administration Pending
In re: QUALITY BLOCK & SUPPLY, INC., Debtor.	Chapter 11 Case No. 10-60705 Judge Russ Kendig Joint Administration Pending

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number are: Schwab Industries, Inc. (2467); Medina Cartage Co. (9373); Medina Supply Company (3995); Quality Block & Supply, Inc. (2186); O.I.S. Tire, Inc. (7525); Twin Cities Concrete Company (9196); Schwab Ready-Mix, Inc. (8801); Schwab Materials, Inc. (8957); and Eastern Cement Corp. (7232).

CLE - 2250844.2

In re:	Chapter 11
O.I.S. TIRE, INC.,	Case No. 10-60706
Debtor.	Judge Russ Kendig
	Joint Administration Pending

In re:	Chapter 11
TWIN CITIES CONCRETE COMPANY,	Case No. 10-60707
Debtor.	Judge Russ Kendig
	Joint Administration Pending

In re:	Chapter 11
SCHWAB READY-MIX, INC.,	Case No. 10-60708
Debtor.	Judge Russ Kendig
	Joint Administration Pending

In re:	Chapter 11
SCHWAB MATERIALS, INC.,	Case No. 10-60709
Debtor.	Judge Russ Kendig
	Joint Administration Pending

In re:	Chapter 11
EASTERN CEMENT CORP.,	Case No. 10-60710
Debtor.	Judge Russ Kendig
	Joint Administration Pending

MOTION OF DEBTORS FOR ORDER (A) AUTHORIZING DEBTORS TO PAY PREPETITION WAGES, SALARIES, FEES AND COMMISSIONS TO EMPLOYEES, (B) AUTHORIZING DEBTORS TO PAY PREPETITION BENEFITS AND CONTINUE EMPLOYEE BENEFIT PROGRAMS, AND (C) DIRECTING BANKS TO HONOR PREPETITION CHECKS FOR PAYMENT OF PREPETITION EMPLOYEE OBLIGATIONS

Schwab Industries, Inc ("SII"), Medina Cartage Co. ("MCC"), Medina Supply Company ("MSC"), Quality Block & Supply, Inc. ("QBS"), O.I.S. Tire, Inc. ("OIS"), Twin Cities Concrete Company ("TCC"), Schwab Ready-Mix, Inc. ("SRM"), Schwab Materials, Inc. ("SMI") and Eastern Cement Corp. ("ECC", and together with SII, MCC, MSC, QBS, OIS, TCC, SRM and SMI, the "Debtors"), the debtors and debtors in possession in the above-captioned Chapter 11 cases (the "Cases"), by and through their undersigned proposed counsel, hereby move (the "Motion") pursuant to 105(a), 363(b), 507(a)(4), (5) and (8), and 541(b)(7) of title 11 of the United States Code (the "Bankruptcy Code") for entry of an order authorizing, but not directing, Debtors (a) to pay prepetition wages, salaries and commissions to employees, (b) to pay prepetition benefits and continue maintenance of employee benefit programs, including workers' compensation, and (c) directing banks to honor prepetition checks for payment of employee obligations. In support of the Motion, the Debtors refer to and rely upon the Affidavit of David Exley in Support of Chapter 11 Petitions and First Day Motions (the "Exley Affidavit") filed concurrently herewith and respectfully state as follows:

BACKGROUND

1. On the date hereof (the "Petition Date"), Debtors commenced the Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Debtors have concurrently filed a motion seeking to jointly administer their estates.

2. Debtors are continuing in possession of their properties and assets and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107 and

1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Cases.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334. Venue of this case in this district is proper pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

Debtors and Debtors' Businesses

4. Debtors' businesses produce, supply and distribute ready-mix concrete, concrete block, cement and related supplies to commercial, governmental and residential contractors throughout Northeast Ohio and Southwest Florida. Debtors employ approximately 350 workers (all of whom are non-union) who are stationed across Ohio and Florida either at Debtors' Dover, Ohio headquarters or at one of twenty ready-mix plants (13 in Ohio and 7 in Florida) or three Ohio plants which produce concrete block.

5. With more than 40 years experience in the construction industry, Debtors have built a reputation of success and quality. Debtors' competitive advantages flow from their attention to timeliness and an emphasis on geographic positioning of its locations near to interstates and high traffic areas to allow for expedient delivery of materials, concrete, concrete block and cement.

6. As a result of its reputation and relationships, Debtors benefit from many longstanding and continuing relationships with all levels of government. Projects from federal, state and municipal agencies, in Ohio and Florida, provide a material portion of Debtors' work.

7. In addition to those operations in Ohio and Florida described above, through Debtor ECC, Debtors hold exclusive access to a deep-water terminal at Port Manatee on the Gulf of Mexico. The strategic positioning of Port Manatee allows Debtors to both (i) efficiently

distribute imported cement and aggregates throughout Florida; and (ii) export material throughout the Gulf of Mexico region.

8. Their geographic advantages, existing relationships, reputation and import/export capabilities, uniquely situate Debtors to take advantage of opportunities resulting from Federal stimulus money over the next few years.

Individual Debtors

9. Debtor SII is an Ohio corporation headquartered in Dover, Ohio which serves as the holding company of the other Debtors. As the parent organization, SII owns, either directly or through another Debtor, all the equity interests of the other Debtors. SII is owned entirely by four members of the Schwab family.

10. Debtor MCC is an Ohio corporation headquartered in Dover, Ohio. MCC operates certain transportation systems which support the other Ohio Debtors. MCC is a wholly owned subsidiary of SII.

11. Debtor MSC is an Ohio corporation headquartered in Dover, Ohio. MSC operates eight (8) ready-mix plants in Northeast Ohio. MSC is a wholly owned subsidiary of SII.

12. Debtor TCC is an Ohio corporation headquartered in Dover, Ohio. TCC operates three (3) ready-mix plants in Northeast Ohio. TCC is a wholly owned subsidiary of SII.

13. Debtor OIS is an Ohio corporation headquartered in Dover, Ohio. OIS' operations have been substantially wound down and OIS is administering its remaining assets and liabilities. OIS is a wholly owned subsidiary of SII.

14. Debtor QBS is an Ohio corporation headquartered in Dover, Ohio. QBS operates two (2) ready-mix plants and a block plant in Northeast Ohio. QBS is a wholly owned subsidiary of SII.

15. Debtor SRM is a Florida corporation with a mailing address in Dover, Ohio. SRM operates seven (7) ready-mix plants along the gulf coast of Florida. SRM is a wholly owned subsidiary of SII.

16. Debtor SMI is a Florida corporation with a mailing address in Dover, Ohio. SMI wholly owns both ECC and a 2,100 acre plot of land (the "Orange Grove") on the gulf coast of Florida near Fort Myers that has been identified as a primary future source of aggregates (mineral materials such as sand or stone, used in making concrete) that can be mined once proper approvals are obtained. The Orange Grove is currently profitable, producing fruit and other perishables sold to third parties. SMI is a wholly owned subsidiary of SRM.

17. Debtor ECC is a Florida corporation with a mailing address in Dover, Ohio. ECC operates a modern 40,000 metric ton terminal in Port Manatee, the largest deep water port near the Panama Canal. Located on the Gulf of Mexico, Port Manatee provides outstanding access for Debtors to export and import cement and aggregates to other non-American markets. ECC uses this port access to support the sales efforts of Debtors both directly and indirectly. Specifically, ECC sells 40% of cement imported through ECC directly to SRM, and sells all other imported cement to independent companies that do not directly compete with Debtors. ECC is a wholly owned subsidiary of SMI.

Events Leading to the Chapter 11 Filing

18. Debtors are leaders in the production, supply and distribution of ready-mix concrete, concrete block, cement and related supplies to commercial, municipal and residential contractors throughout Northeast Ohio and Southwest Florida. In fiscal year 2006, they provided more than $208 million worth of product to their customers.

19. During fiscal year 2007 and thereafter, as a result of the nationwide real estate crash and the consequential dramatic slow down in the construction industry, Debtors'

operations, particularly in Southwest Florida (where real estate and new construction has steeply declined), suffered.[2] The decrease in sales negatively impacts Debtors' working capital availability and cash flows.

20. As of December 31, 2009, Debtors report a book value of total assets of $104,915,117, with cash of $672,698 and total "working capital"[3] assets of $15,854,211.

21. Similarly, as of December 31, 2009, Debtors owe their Secured Lenders[4] pursuant to that certain Amended and Restated Credit Agreement dated October 18, 2007 (i) $8,582,950 on account of a certain revolving line of credit (the "Revolving Line of Credit"); (ii) $19,125,245 on account of that certain "Term A" Loan (the "Term A Loan"); and (iii) $31,995,586 on account of that certain "Term B" Loan (the "Term B Loan" and together with the Revolving Line of Credit and the Term A Loan, the "Secured Loans"). Upon information and belief, a first priority security interest in substantially all the personal property assets of Debtors and a first priority mortgage interest in substantially all the real property of the Debtors secures repayment of the Secured Loans.

22. Also, as of December 31, 2009, Debtors' financial statements report trade payables of $13,390,149.

23. On or about January 13, 2010, the Secured Lenders notified Debtors of their default of certain obligations pursuant to the Secured Loans.

24. Debtors present cash needs are at their seasonal peak due to the slowdown in construction activity in winter and the inability to create concrete at certain temperatures.

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[2] For fiscal year ending April 30, 2007, Debtors had approximately $197,000,000 in sales. For fiscal year ending April 30, 2008, Debtors had approximately $144,000,000 in sales. For fiscal year ending April 30, 2009, Debtors had approximately $103,000,000 in sales. Debtors' fiscal year ends each April 30. The decrease in sales was significantly sharper for Debtors' Florida operations.

[3] "Working capital" assets are understood to be comprised of cash, accounts receivable, inventory and prepaid expenses.

25. Debtors have sought financing from numerous possible lending services, including key customers, such as National Lime and Stone Company, among others. Unfortunately, these efforts have been unsuccessful.

26. Debtors' unsuccessful efforts to obtain refinancing result in their current liquidity crisis. This liquidity crisis necessitates Debtors' petition for relief under Chapter 11 of the Bankruptcy Code.

REQUEST FOR AUTHORITY TO PAY CERTAIN PREPETITION EMPLOYEE OBLIGATIONS

27. Pursuant to this Motion, Debtors seek authority under Bankruptcy Code Sections 105(a), 363(b), 507(a)(4), (5) and (8) and 541(b)(7) to pay certain prepetition obligations to and on behalf of Debtors' hourly and salaried employees, and any independent contractors hired by Debtors performing duties generally and customarily performed by hourly or salaried employees of Debtors (collectively, the "Employees"). As more fully set forth below, these prepetition obligations may include, but are not limited to: (a) amounts owed to the Employees for wages, salaries, incentives, commissions, fees and other accrued compensation, including Non-Payroll compensation (as hereafter defined) (collectively, "Prepetition Compensation"); (b) all other Employee benefits including but not limited to medical insurance, dental, prescription plan and short-term disability benefits, accidental death and dismemberment benefits, 401(k) plan contributions and life insurance, together with all costs and expenses incurred in connection with the servicing and processing of such claims (collectively, the "Prepetition Benefits"); (c) federal, state and local payroll-related taxes and insurance deductions and withholdings, such as FICA, FUI, and SUI, covering various benefits and fees due to third-party payroll and benefits administrators as well as amounts due to other third parties for garnishments, other client

[4] The "Secured Lenders" are KeyBank, National Association, Bank of America, N.A. and The Huntington

payments and the like (collectively, the "Third-Party Obligations"); (d) reimbursements for typical expenses incurred by Employees in connection with conducting business for or on behalf of Debtors for travel, lodging, meals, auto expenses and other reimbursable business expenses (collectively, the "Reimbursement Obligations"); (e) amounts owed for workers' compensation (the "Workers' Compensation Benefits") and (f) payments to or for Employees of certain miscellaneous benefits, including payments pursuant to certain non-qualified pension plans sponsored by Debtors (the "Miscellaneous Benefits," and together with the Prepetition Compensation, the Prepetition Benefits, the Third-Party Obligations, the Reimbursement Obligations, and the Workers' Compensation Benefits, the "Prepetition Employee Obligations").

28. As of the Petition Date, Debtors estimate that Prepetition Employee Obligations in the total amount of approximately $1,905,038 have accrued but remain unpaid. The Prepetition Employee Obligations consist of the following estimated amounts: $148,800 for Prepetition Compensation; $847,668 for Non-Payroll Compensation; $812,244 for Prepetition Benefits; $153,817 for Third-Party Obligations; $7,250 for Reimbursement Obligations; $89,076 for Workers' Compensation Benefits; and $-0- for Miscellaneous Benefits.

29. Debtors request authority, but not direction, to pay any and all Prepetition Employee Obligations.

a. Wages, Salaries, Fees and Commissions

30. Debtors presently have approximately 350 employees (the "Employees"), consisting of salaried workers, hourly workers and independent or incentive compensated workers. Debtors make payroll every week for the previous weeks. Payroll dates across Debtors are staggered, but most Debtors' pay payroll to workers on Thursday or Friday of each week. The gross payroll for all outstanding wages, salaries, incentives and commissions, including

National Bank.

employee and employer taxes, is approximately $202,910 (collectively, the "Payroll Obligations"). Debtors' payroll is paid on different days depending upon the Debtor. Attached hereto as Exhibit A is a payroll schedule for each Debtor identifying the procedural characteristics of each Debtor's payroll. Accordingly, a portion of the payroll which Debtors seek to pay is attributable to prepetition obligations. In addition, certain payroll and expense reimbursement checks issued on or before the Petition Date may not have cleared Debtors' bank as of the Petition Date. Debtors also request that checks for prior payroll obligations or expense reimbursements also be permitted to clear.

b. Non-Payroll Obligations

31. Debtors also provide their Employees with other forms of compensation which include, but are not limited to, vacation days, travel compensation and paid holidays (collectively, the "Non-Payroll Compensation"). Debtors seek approval to pay the Non-Payroll Compensation in the ordinary course of its business even though certain amounts may have accrued prepetition. Debtors estimate that the accrued Non-Payroll Compensation as of the Petition Date is approximately $847,668.

c. Prepetition Benefits

32. Prior to the Petition Date, Debtors offered their employees certain benefits, including, without limitation, (i) self-insured medical and prescription benefits under Debtors' medical plan administered by Wells Fargo Insurance Services, (ii) 401(k) plan benefits, (iii) life insurance, (iv) voluntary employee-funded short-term disability programs, (v) accidental death and dismemberment, (vi) use of company cars, and (vii) payment of fuel for company cars.

33. Employees are required to make co-payments with respect to some Prepetition Benefits and absent the relief requested in the applicable motion would be required to bear the full cost burden for such benefits.

34. Debtors have prepetition arrearages owed to the self-insured medical plan, including payments for amounts withheld from employees.[5]

35. The Prepetition Benefits are an integral and important part of each Employee's compensation package. Cessation of these benefits would have a negative impact on the Employees and would undermine Debtors' operations. Accordingly, Debtors respectfully request authority to pay the Prepetition Benefits, including any outstanding pre-petition amounts, for the Employees and their eligible dependents in the ordinary course of Debtors' business when such obligations become due.

36. Debtors estimate that the aggregate amount of Prepetition Benefits is approximately $812,244.

d. Third-Party Obligations

37. Debtors routinely and ordinarily make deductions from Employees' payroll for federal, state and local tax withholdings, Employee savings programs and garnishments, among other obligations. Debtors request authority to pay over to the appropriate parties all such Third-Party Obligations in accordance with applicable law and existing company policies and practices. Debtors request approval to continue making such payments, including those amounts owed prepetition, in the ordinary course of their businesses. Debtors estimate that they have $153,817 in prepetition Third Party Obligations

e. Reimbursement Obligations

38. In the ordinary course of business, Debtors routinely reimburse Employees for certain expenses incurred in the scope of their employment, including expenses for travel, meals, auto expenses and other miscellaneous business expenses constituting the Reimbursement

[5] In an abundance of caution, Debtors have also filed a motion seeking authority to pay prepetition trust fund taxes. To the extent the Prepetition Employee Obligations also qualify for relief under that motion, payment for

Obligations of Debtors. Similarly, Debtors provide certain Employees with company owned vehicles and supply fuel for such vehicles as a Debtor expense. Debtors estimate that unpaid Reimbursement Obligations as of the Petition Date are approximately $7,250. Debtors request authority to pay the Reimbursement Obligations accrued as of the Petition Date and to make ongoing payments of Reimbursement Obligations in the ordinary course of Debtors' businesses.

f. ***Workers' Compensation***

39. Debtors maintain Workers' Compensation coverage for their Employees pursuant to the existing schemes and mechanisms in place in the respective states in which Debtors operate. Debtors process these claims through established procedures under applicable state law in the ordinary course of Debtors' businesses. Debtors seek an order permitting them, in their sole discretion, to continue their current procedures with regard to processing and paying the Workers' Compensation Benefits. Debtors estimate the unpaid Workers' Compensation benefits as approximately $89,076.

BASIS FOR RELIEF

40. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code provide that employees' claims for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 90 days before the petition date, and claims against a debtor for contributions to employee benefit plans arising from services rendered within 180 days before the petition date, are afforded unsecured priority status to the extent of $10,950 per employee. 11 U.S.C. §§507(a)(4) and (a)(5). Furthermore, section 363(b)(1) of the Bankruptcy Code provides, "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. §363(b)(1). Moreover, section 105(a) of the Bankruptcy Code further provides:

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such amounts shall only be made once.

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. §105(a).

41. A substantial amount of the respective Prepetition Employee Obligations are entitled to priority status under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code because, even inclusive of any amounts due and owing for bonuses or commissions, all Employees are owed less than $10,950 as part of the individual unpaid Prepetition Employee Obligations. Accordingly, such claims would largely be entitled to payment in full under any plan of reorganization due to the priority schemes recognized under the Bankruptcy Code.

42. Debtors submit that with respect to that portion of the Prepetition Employee Obligations that constitute “trust fund” taxes, the payment of such taxes will not prejudice other creditors of Debtors or their estates, given that the relevant taxing authorities would hold a priority claim under Section 507(a)(8) of the Bankruptcy Code in respect of such obligations.

43. Payment of further amounts comprising the Prepetition Employee Obligations is necessary and appropriate and is authorized under section 105(a) of the Bankruptcy Code pursuant to the “necessity of payment” doctrine, which recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor. *See, e.g., In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

44. By allowing for the payment of Prepetition Employee Obligations, the doctrine of necessity facilitates the reorganization efforts of debtors and helps maintain trained workforces

necessary for such reorganization efforts. Relief similar to the relief requested herein has been granted by courts in this District and elsewhere in other Chapter 11 cases. *See, e.g., In re Republic Storage Sys. Co.*, No. 06-60316 (RK) (Bankr., Mar. 16, 2006); *In re Republic Engineered Prods. LLC.*, No. 03-55118 (MSS) (Bankr. N.D. Ohio Oct. 8, 2003); *In re Harry London, Inc.*, No. 03-60137 (RK) (Bankr. N.D. Ohio Jan. 15, 2003); *In re Dana Corp.*, No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); *In re Musicland Holding Corp.*, No. 06-10064 (SMB) (Bankr S.D.N.Y. Feb. 1, 2006); *In re Excello Engineered Systems, LLC,* (MSS) No. 08-51424 (Bankr. N.D. Ohio April 25, 2008); *In re CEP Holdings, LLC,* (MSS) No. 06-51484 (Bankr. N.D. Ohio September 20, 2006).[6]

45. If the Prepetition Employee Obligations are not satisfied, the Employees, as well as their families, will suffer undue hardship. The Employees rely on the payment of the Prepetition Employee Obligations and any interruption of their payment will likely cause severe disruption of the Employees' personal budgets, especially at this time of national economic crisis. Payment of the Prepetition Employee Obligations is necessary to enable the Employees to meet their financial obligations and maintain their health and well-being, allowing them to remain committed to Debtors and Debtors' restructuring efforts. It is likely that if the requested relief is not granted, many of Debtors' Employees may be forced to seek alternative employment. An exodus of Debtors' workforce will severely disrupt the continued operation of Debtors' operations. Debtors' ability to maintain its trained work and sales forces and thereby preserve their businesses and assets, as well as the ability to maximize value through the Cases, will be adversely affected if Debtors are unable to retain their experienced and dedicated Employees.

[6] Due to the voluminous nature of the unreported orders cited herein, they are not attached to this Motion. Copies of the unreported orders are available upon request from Debtors' proposed counsel.

46. The relief requested in this Motion is critical to Debtors' ability to operate their businesses and is warranted under sections 105(a) and 363(b) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code.]" 11 U.S.C. §105(a). The purpose of section 105 is to permit a bankruptcy court to take whatever action "is appropriate or necessary in aid of the exercise of its jurisdiction." 2 *Collier on Bankruptcy*, ¶105.01, at 105-2 (15th ed. rev. 2001). Under section 105(a) of the Bankruptcy Code, courts have authorized debtors to pay certain prepetition claims where such payment was necessary to ensure that the debtor's business continued uninterrupted, including claims similar to those described herein. *In re Chateaugay Corp.*, 80 B.R. 279, 281 (S.D.N.Y. 1987). Permission for Debtors to satisfy the Prepetition Employee Obligations immediately, and without delay is certainly within this Court's authority under Section 105.

47. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor-in-possession to use property of the estate other than in the ordinary course of business after notice or a hearing. 11 U.S.C. §363(b)(1). Debtors propose and respectfully request authorization, pursuant to Section 363(b)(1) of the Bankruptcy Code, to make payments on the Prepetition Employee Obligations to their Employees who have been hired as independent contractors to perform duties generally and customarily performed by hourly or salaried employees of Debtors. Such individuals are also important to the reorganization of Debtors. Debtors report that any such amounts to any individual also does not exceed the $10,950 cap identified in Section 507(a)(4) and (5).

48. The authority to pay the Prepetition Employee Obligations can also be found in section 363(b)(1). *See In re Kmart Corp.*, 359 F.3d 866, 872-73 (7th Cir. 2004); *see also In re*

Ionosphere Clubs, Inc., 98 B.R. 174, 175-176 (Bankr. S.D.N.Y. 1989). Several courts have relied on the *Kmart* decision to authorize debtors to honor prepetition obligations pursuant to section 363(b)(1), including honoring prepetition obligations to employees. *See, e.g., In re FV Steel & Wire Co.*, Case No. 04-22421, *et seq.* (Bankr. E.D. Wis. 2004) (accrued employee wages and benefits permitted to be paid pursuant to section 363(b)(1)); *In re Jay's Foods, LLC,* Case No. 04 B 8681 (Bankr. N.D. III 2004) (payment of accrued employee wages and benefits as well as accrued obligations to customers permitted pursuant to section 363(b)(1)).

49. The strength of Debtors' workforce in both numbers and morale is essential to Debtors' ability to continue to operate its business and successfully reorganize. To maintain Debtors' workforce and skilled Employee base, it is essential that the Employees be paid without interruption and that Debtors continue to honor their existing practices, policies and benefit programs that affect their Employees in the ordinary course of business.

50. However, Debtors' request for authority to pay the amounts described herein shall not be deemed an assumption or adoption of any agreements or policies that provide for such compensation or benefits under section 365 of the Bankruptcy Code. Debtors are in the process of reviewing these matters and their rights with respect to the assumption or rejection of any executory contracts and reserves the right to object to any incorrect claims that may be asserted against them.

REQUEST FOR AUTHORITY FOR BANKS TO HONOR AND PAY CHECKS ISSUED AND MAKE OTHER TRANSFERS TO PAY THE PREPETITION EMPLOYEE OBLIGATIONS

51. Debtors further request that the Court authorize and direct all banks and other financial institutions where Debtors maintain payroll or disbursement accounts to honor and pay all prepetition and postpetition checks issued or to be issued, and fund transfers requested or to be requested, by Debtors concerning the Prepetition Employee Obligations that were not honored

or paid as of the Petition Date. Debtors also seek authority to issue new postpetition checks, or effect new fund transfers, on account of the Prepetition Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

52. As a result of the commencement of the Cases, and in the absence of an order of the Court providing otherwise, Debtors' checks, wire transfers and direct deposit transfers in respect of the Prepetition Employee Obligations may be dishonored or rejected by the disbursement banks. Debtors represent that each of these checks or transfers are or will be drawn on Debtors' payroll and general disbursement accounts and can be readily identified as relating directly to payment of the Prepetition Employee Obligations. Accordingly, Debtors believe that prepetition checks and transfers other than those for Prepetition Employee Obligations will not be honored inadvertently.

53. Authorization to pay all amounts on account of the Prepetition Employee Obligations are not intended to be deemed to constitute postpetition assumption or adoption of any contract, program or policy pursuant to section 365. Debtors are in the process of reviewing these matters and reserves all of its rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts on account of the Prepetition Employee Obligations shall not affect Debtors' right to contest the amount or validity of any of the Prepetition Employee Obligations, including without limitation payroll taxes that may be due to any taxing authority.

NOTICE

54. Notice of this Motion has been provided to (i) the office of the United States Trustee for Region IX; (ii) each of Debtors' secured lenders (KeyBank, National Association, Huntington National Bank and Bank of America, NA); (iii) counsel for the Agent for Debtor's secured lenders; (iv) the additional creditors identified on the Debtors' consolidated list of thirty

(30) largest unsecured creditors; (v) counsel for EFO Financial Group, LLC; (vi) other known claimants having liens or security interests in property of the Debtors; (vii) each of the Debtors' depository banks; (viii) the Internal Revenue Service; and (ix) the United States Department of Justice. In light of the nature of the relief requested, Debtors submit that no other or further notice is necessary.

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

Dated: February 28, 2010
Cleveland, Ohio

Respectfully submitted,

/s/ Lawrence E. Oscar

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Proposed Counsel to the Debtors

<u>EXHIBIT A</u>

Debtor	**Payroll Day of Week**	**Days Remaining Unpaid on Petition Date**	**Aggregate Estimated Payroll Obligation Amount Unpaid on Petition Date**
SII	Thursday	7	$17,500
MSC	Thursday	7	$65,000
MCC	None	None	
TCC	Thursday	7	$8,000
QBS	Thursday	7	$15,000
OIS	None	None	
SRM	Friday	3	$40,000 (both SMI and SRM)
SMI	Friday	3	
ECC	Friday	1 for Salary; 8 for Hourly	$5,300

CLE - 2254347.1

<u>EXHIBIT B</u>

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
AT CANTON

In re:	:	Chapter 11
SCHWAB INDUSTRIES, INC.,[1]	:	Case No. 10-60702
Debtor.	:	Judge Russ Kendig
	:	Joint Administration Pending
In re:	:	Chapter 11
MEDINA CARTAGE CO.,	:	Case No. 10-60703
Debtor.	:	Judge Russ Kendig
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CLE - 2250844.2

In re:	:	Chapter 11
MEDINA SUPPLY COMPANY,	:	Case No. 10-60704
Debtor.	:	Judge Russ Kendig
	:	Joint Administration Pending
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In re:	:	Chapter 11
QUALITY BLOCK & SUPPLY, INC.,	:	Case No. 10-60705
Debtor.	:	Judge Russ Kendig
	:	Joint Administration Pending
---	x	
In re:	:	Chapter 11
O.I.S. TIRE, INC.,	:	Case No. 10-60706
Debtor.	:	Judge Russ Kendig
	:	Joint Administration Pending
---	x	
In re:	:	Chapter 11
TWIN CITIES CONCRETE COMPANY,	:	Case No. 10-60707
Debtor.	:	Judge Russ Kendig
	:	Joint Administration Pending
---	x	
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SCHWAB READY-MIX, INC.,	:	Case No. 10-60708
Debtor.	:	Judge Russ Kendig
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In re: SCHWAB MATERIALS, INC., Debtor.	:	Chapter 11 Case No. 10-60709 Judge Russ Kendig Joint Administration Pending
In re: EASTERN CEMENT CORP., Debtor.	:	Chapter 11 Case No. 10-60710 Judge Russ Kendig Joint Administration Pending

ORDER (A) AUTHORIZING DEBTORS TO PAY PREPETITION WAGES, SALARIES, FEES AND COMMISSIONS TO EMPLOYEES, (B) AUTHORIZING DEBTOR TO PAY PREPETITION BENEFITS AND CONTINUE EMPLOYEE BENEFIT PROGRAMS, AND (C) DIRECTING BANKS TO HONOR PREPETITION CHECKS FOR PAYMENT OF PREPETITION EMPLOYEE OBLIGATIONS

Upon consideration of the motion, dated February 28, 2010 (the "Motion"), Schwab Industries, Inc ("SII"), Medina Cartage Co. ("MCC"), Medina Supply Company ("MSC"), Quality Block & Supply, Inc. ("QBS"), O.I.S. Tire, Inc. ("OIS"), Twin Cities Concrete Company ("TCC"), Schwab Ready-Mix, Inc. ("SRM"), Schwab Materials, Inc. ("SMI") and Eastern Cement Corp. ("ECC", and together with SII, MCC, MSC, QBS, OIS, TCC, SRM and SMI, the "Debtors"), the debtors and debtors in possession in the above-captioned Chapter 11 cases (the "Cases"), for entry of an order authorizing, but not requiring, Debtors: to pay pre-petition wages, salaries, fees and employee benefits, to continue to honor its practices, programs and policies concerning its Employees, as such practices, programs and policies were in effect as of the Petition Date, and authorizing and directing applicable banks to receive, honor, process and pay any and all checks and transfers related to such payments and obligations; and based upon the Affidavit of David Exley in Support of Chapter 11 Petition and First-Day Motions, filed concurrently with the Motion; and after due deliberation and hearing, this Court finds that: (i) it has jurisdiction over the matters raised in the Motion under 28 U.S.C. §§157 and 1334; (ii) venue of this matter is proper under 28 U.S.C. §§1408 and 1409; (iii) this matter is a core proceeding under 28 U.S.C. §157(b)(2); (iv) the relief requested in the Motion is in the best interests of Debtors, their estates, creditors, and other parties in interest; (v) adequate and proper notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (vi) good and sufficient cause exists for the granting of the relief requested in the Motion as set forth herein. Accordingly,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED in its entirety.

2. Capitalized terms not defined herein shall have the meanings ascribed thereto in the Motion.

3. Debtors shall be, and hereby are, authorized, but not required, to make all payments required or related to the Prepetition Employee Obligations in accordance with Debtors' stated policies and standard practices, and Debtors are authorized, but not required, to pay costs and expenses incident to the payment of such Prepetition Employee Obligations, including, without limitation, processing costs, in accordance with Debtors' stated policies and standard practices, and Debtors are authorized, but not required, to continue to honor their practices, programs and policies with respect to its Employees, as such practices, programs and policies were in effect as of the Petition Date, pursuant to, among other things, section 105 of the Bankruptcy Code.

4. All applicable banks and other financial institutions shall be, and hereby are, authorized and directed to receive, process, honor and pay all checks drawn on Debtors' accounts, and all fund transfer requests, in order to pay any transfers, costs or expenses related to Prepetition Employee Obligations, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make such payments.

5. Nothing in the Motion shall be deemed a request by Debtors for authority to assume, and nothing in this Order shall be deemed an authorization to assume, any executory contract pursuant to section 365 of the Bankruptcy Code.

6. Nothing in the Motion or this Order shall be construed to impair Debtors' rights to contest the validity or amount of any Prepetition Employee Obligations, including without limitation, payroll taxes that may be due to any taxing authority.

7. This Order shall be immediately effective and enforceable upon entry.

IT IS SO ORDERED.

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Prepared and Submitted by:

/s/ Lawrence E. Oscar

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