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10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:

13 SKYMALL, LLC,

14 Debtor.

15 Joint Administration pending with:

16 XHIBIT CORP.,
XHIBIT INTERACTIVE, LLC,
17 FLYREPLY CORP.,
SHC PARENT CORP.,
18 SPYFIRE INTERACTIVE, LLC,
STACKED DIGITAL, LLC, and
19 SKYMALL INTERESTS, LLC.

In Proceedings Under Chapter 11

Case No. 2:15-bk-00679-BKM

Joint Administration pending with
Case Nos.:

2:15-bk-00680-MCW
2:15-bk-00682-MCW
2:15-bk-00684-DPC
2:15-bk-00685-MCW
2:15-bk-00686-MCW
2:15-bk-00687-GBN
2:15-bk-00688-EPB

20 This Pleading applies to:

- 21 All Debtors
22 Specified Debtors

**EMERGENCY MOTION FOR
INTERIM AND FINAL ORDERS
UNDER 11 U.S.C. §§ 105(a), 345 AND
363: (A) AUTHORIZING
MAINTENANCE AND USE OF
DEBTORS' EXISTING BANK
ACCOUNTS, CASH MANAGEMENT
SYSTEM, CREDIT CARD
PROCESSING SYSTEM, AND
BUSINESS FORMS; AND (B)
WAIVING INVESTMENT AND
DEPOSIT REQUIREMENTS**

1 SKYMALL, LLC, *et al.*, the debtors and debtors-in possession (the “**Debtors**”) in the
2 above-captioned Chapter 11 cases (the “**Bankruptcy Cases**”), file this motion (the “**Motion**”)
3 for interim and final orders under 11 U.S.C. §§ 105(a), 345 and 363 authorizing the continued
4 maintenance and use of the Debtors’ existing bank accounts, cash management system, credit
5 card processing system, and business forms, and waiving certain investment and deposit
6 requirements. The Debtors seek the immediate entry of an order granting the Motion which is
7 brought on an emergency basis on expedited notice under Local Bankruptcy Rule 9013-1(h)
8 in order to avoid immediate and irreparable harm to the Debtors’ estates.

9

The relief requested in this Motion would (a) authorize the Debtors to 10 maintain and use its existing bank accounts, cash management system, 11 credit card processing system, and business forms; and (b) waive the 12 investment and deposit requirements imposed by Bankruptcy Code § 345. The basis for the relief requested in this Motion is set forth in paragraphs 20 through 40 below.
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13 This Motion is further supported by following Memorandum of Points and Authorities, the
14 *Declaration Of Scott Wiley In Support Of First Day Motions* (the “**First Day Declaration**”), and
15 the entire record before the Court in these Bankruptcy Cases.

16 RESPECTFULLY SUBMITTED this 23rd day of January, 2015.

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20
21 By /s/ John A. Harris

22 John A. Harris
23 Robert P. Harris
Lori L. Winkelman
Jason D. Curry

24 Proposed Attorneys for Debtors and Debtors-in-
25 Possession
26

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

3 1. On January 22, 2015 (the “**Petition Date**”), the Debtors filed a voluntary petitions
4 in this Court for relief under chapter 11.¹

5 2. The Debtors continue to operate their business and manage their assets and affairs
6 as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

7 3. The Court has jurisdiction over these Bankruptcy Cases under 28 U.S.C. §§ 157
8 and 1334, and these matters constitute core proceedings under 28 U.S.C. § 157(b)(2).

9 4. The Debtors’ principal place of business is located in Maricopa County, Arizona.
10 Accordingly, venue of the Bankruptcy Cases is proper in the District of Arizona under 28 U.S.C.
11 §§ 1408 and 1409.

12 5. The statutory predicates for the relief requested in this Motion are §§ 105(a), 345
13 and 363.

14 6. No trustee or examiner has been appointed in these Bankruptcy Cases, nor has an
15 official committee of unsecured creditors been established.

16 7. The general background relevant to the Debtors and this Motion is stated in the
17 First Day Declaration, which is incorporated herein by this reference.

18 **A. The Cash Management System and Existing Bank Accounts.**

19 8. In the ordinary course of business, the Debtors utilize a centralized cash
20 management system designed to efficiently collect, transfer and disburse funds generated through
21 the Debtors’ business operations and to accurately record such collections, transfers and
22 disbursements as they are made (together with the Credit Card Processing System (defined
23

24
25 ¹ Unless otherwise indicated, all chapter and section references in this Motion are to
26 Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* All “Rule” references are to the Federal Rules of
Bankruptcy Procedure.

1 below), the “**Cash Management System**”). A diagram summary of the Debtors’ Cash
2 Management System is attached hereto as **Exhibit A**.

3 9. The Cash Management System consists of eleven (11) FDIC-insured bank
4 accounts (collectively, the “**Accounts**”). As set forth on Exhibit A, check deposits generated
5 from the Debtors’ business are deposited in to Account # xxx-xx3-297 (the “**SkyMall Sweep**
6 **Account**”). Credit card receivables generated from the Debtors’ business are deposited into
7 Account # xxx-xx7-959 (the “**SkyMall Credit Card Depository Account**”). Nearly all of the
8 Debtors’ revenue flows through the SkyMall Sweep Account and the SkyMall Credit Card
9 Depository Account.

10 10. At the end of every day, all funds held in the SkyMall Sweep Account and the
11 SkyMall Credit Card Depository Account are automatically swept into Account # xxx-xx6-910
12 (the “**SkyMall Concentration Account**”).

13 11. Account # xxx-xx6-979 and Account # xxx-xx6-968 (together, the “**SkyMall**
14 **Payroll Accounts**”) are payroll accounts that automatically or manually draw from the SkyMall
15 Concentration Account as funds are needed to meet payroll obligations. Account # xxx-xx2-968
16 (the “**SkyMall Flex Account**”) holds funds generated for employee benefits related to the flexible
17 spending account.

18 12. The Debtors maintain several Accounts, labeled the “**Xhibit Depository**
19 **Accounts**” on Exhibit A, are largely inactive. The Xhibit Depository Accounts are automatically
20 swept nightly into the SkyMall Concentration Account.

21 13. The Debtors also maintain a merchant account at U.S. Bank, N.A. under Account
22 # x-xxx-xxxx-0904 (the “**U.S. Bank Account**”) related to the former business of Xhibit
23 Interactive, LLC. The U.S. Bank Account collects refunds of deposits from credit card
24 companies in accordance with a set schedule.

25 14. With the exception of the U.S. Bank Account, all Accounts are maintained at JP
26 Morgan Chase Bank, N.A. (“**Chase Bank**,” together with U.S. Bank, N.A., the “**Depository**

1 **Banks**”). See First Day Declaration, ¶ 51. A schedule of the Accounts and their approximate
2 balances on or about the Petition Date is attached hereto as **Exhibit B**.

3 **B. The Debtors’ Credit Card Processing System.**

4 15. In the ordinary course of business, the Debtors maintain a credit card processing
5 system in accordance with SkyMall’s *Select Merchant Payment Instrument Processing*
6 *Agreement* (“**Credit Card Processing Agreement**”) by and among SkyMall, Chase Bank, and
7 Paymentech, LLC (“**Paymentech**”). In accordance with the Credit Card Processing Agreement,
8 the general procedure for SkyMall’s credit card processing system (the “**Credit Card Processing**
9 **System**”) is as follows: SkyMall’s customers place orders through Skymall.com or, prior to the
10 Petition Date, SkyMall’s call center;² the customers’ cards are approved or declined by
11 Paymentech (not SkyMall); once Paymentech approves a customer’s credit card, the order is sent
12 to the applicable vendor to be fulfilled; the vendor notifies SkyMall once the order is fulfilled;
13 SkyMall then places the order in “fulfilled” status and the credit card information is sent to
14 Paymentech for processing; Paymentech processes the payment and then deposits payment into
15 the SkyMall Credit Card Depository Account (less processing and interchange fees, declined
16 charges, and charge-backs).

17 16. Paymentech deducts certain processing and interchange fees, among other typical
18 charges, from each transaction in accordance with the Credit Card Processing Agreement (such
19 fees and charges may be referred to herein as the “**Credit Card Processing Fees**”), and then
20 remits the balance to the SkyMall Credit Card Depository Account.³

21 _____
22 ² As discussed in the First Day Declaration, on January 16, 2015, the Debtors terminated
23 operations of the call center. Orders can now only be made through SkyMall’s website,
24 Skymall.com. See First Day Declaration, ¶¶ 24 and 72.

25 ³ Upon information and belief, Paymentech is holding funds in the approximate amount of
26 \$400,000 in accordance with the Credit Card Processing Agreement. Nothing in this Motion is
intended to waive any rights of the Debtors’ in and to the \$400,000, including any protections
under 11 U.S.C. § 362(a). The Debtors expressly assert that Paymentech may not take any action
with respect to the \$400,000 deposit without Court authorization brought through separate
motion, and after proper notice and hearing.

1 17. The Credit Card Processing System is integral to the Debtors' business. The vast
2 majority of SkyMall orders are paid through the Credit Card Processing System. Maintaining the
3 integrity of the Credit Card Processing System post-petition and without interruption is essential
4 to avoid irreparable harm to the Debtors. *See* First Day Declaration, ¶ 54.

5 **C. The Debtors' Accounting Systems.**

6 18. In the ordinary course of business, the Debtors maintain detailed records of all
7 such items and tracks and can account for the movement of funds into and out of the Accounts.
8 Specifically, the Debtors use a general ledger system, Excel spreadsheets, and Epicor accounting
9 software to account for its Cash Management System. *See* First Day Declaration, ¶ 56.

10 **D. Existing Business Forms.**

11 19. In the ordinary course of business, the Debtors use numerous business forms (the
12 “**Business Forms**”) including, among other things, checks, letterhead, invoices, business cards
13 and the like. *See* First Day Declaration, ¶ 57.

14 **II. RELIEF REQUESTED.**

15 20. By this Motion, the Debtors seek entry of interim and final orders: (a) authorizing,
16 but not directing, the Debtors to maintain and use their existing bank Accounts, Cash
17 Management System, Credit Card Processing System, and Business Forms, and (b) waiving the
18 investment and deposit requirements imposed by § 345.

19 **III. BASIS FOR RELIEF.**

20 21. The Executive Office of the United States Trustee has established certain operating
21 guidelines for debtors-in-possession in order to supervise the administration of Chapter 11 cases.
22 These guidelines require a Chapter 11 debtor, among other things, to: (a) close all existing bank
23 accounts and open new debtor-in-possession bank accounts; (b) establish one debtor-in-
24 possession account for all estate monies required for the payment of taxes, including payroll
25 taxes; (c) maintain a separate debtor-in-possession account for cash collateral; and (d) obtain
26 checks for all debtor-in-possession accounts bearing the designation “**Debtor-in-Possession,**” the

1 bankruptcy case number, and the type of account. By this Motion, the Debtors seek authority to
2 deviate from these guidelines to the extent and for the reasons set forth below.

3 **A. The Debtors' Continued Use of their Existing Bank Accounts, the Cash**
4 **Management System, and the Credit Card Processing System is Essential to**
5 **the Debtors' Operations.**

6 22. The Debtors seek a waiver of the United States Trustee's requirement that the pre-
7 petition bank Accounts described above be closed and that new post-petition bank accounts be
8 opened. If enforced, such requirements would cause unnecessary disruption to the Debtors'
9 business operations, would cause the estates unnecessary expense, and would impair the Debtors'
10 ability to maximize the value of their estates.

11 23. Indeed, as described above, the bank Accounts comprise a part of an established
12 Cash Management System and Credit Card Processing System that the Debtors need in order to
13 ensure smooth collections and disbursements in the ordinary course of their business. This is
14 *especially important* in these Bankruptcy Cases because the Debtors' survival is largely
15 dependant upon receiving all payments due to it post-petition and reducing unnecessary expenses.
16 Any missed payments that result in a business disruption has the ability to harm the viability the
17 Debtors in these Bankruptcy Cases. The Debtors are also concerned that the disruption that
18 would result from closing the current accounts and opening new accounts could cause vendors to
19 stop payment, especially given the fact that requests to maintain existing bank accounts are
20 routinely granted in chapter 11 cases (see paragraph 30, *infra*, referencing cases in which relief
21 similar to that requested by this Motion has been granted).

22 24. The Debtors further seek authorization to continue operating, in the ordinary
23 course of business, under depository or similar contracts between themselves and the Depository
24 Banks.

25 25. To avoid delay in payments to administrative creditors, to ensure as smooth a
26 transition into Chapter 11 as possible, and to aid in the Debtors' efforts to successfully and

1 rapidly complete these Bankruptcy Cases, it is important that the Debtors be permitted to continue
2 to maintain their bank Accounts and, if necessary, open new accounts in the ordinary course of
3 business.

4 26. In sum, the Debtors request that its bank Accounts be deemed debtor-in-possession
5 accounts and that their maintenance and continued use, in the same manner and with the same
6 account numbers, styles, and document forms as those employed before the Petition Date, be
7 authorized.

8 27. Likewise, the Debtors seek authority to maintain their existing Cash Management
9 System and Credit Card Processing System. The cash management and credit card processing
10 procedures employed by the Debtors constitute ordinary, usual and essential business practices,
11 and are similar to those used by other corporate enterprises in the same industry.

12 28. The Cash Management System and Credit Card Processing System provides
13 significant benefits to the Debtors, including the ability to: (a) receive credit card payments,
14 which constitutes the majority of the Debtors' revenue; (b) control and centrally manage funds;
15 (c) ensure the availability of funds when necessary; and (d) reduce administrative costs by
16 facilitating the movement of funds and the development of more timely and accurate balance and
17 presentment information.

18 29. The operation of the Debtors' business requires that the Cash Management System
19 and Credit Card Processing Systems continue. Requiring the Debtors to adopt a new cash
20 management system or to discontinue the Credit Card Processing System at this critical stage of
21 the Bankruptcy Cases would be unduly expensive, create unnecessary administrative problems,
22 negatively impact the usual and ordinary operations of the Debtors, and be much more disruptive
23 than productive. It would simply be impractical and cumbersome to disrupt or modify the
24 existing Cash Management System in any material way under the circumstances. Consequently,
25 maintenance of the existing Cash Management System and the Credit Card Processing System
26 during these Bankruptcy Cases is in the best interests of all creditors and other parties in interest.

1 30. The Debtors will continue to maintain detailed records reflecting all transfers of
2 funds, and in furtherance of this goal, the Debtors request that all Depository Banks at which the
3 bank Accounts are maintained be authorized to continue to administer those accounts, as they
4 were maintained before the Petition Date, without interruption and in the usual and ordinary
5 course of business, and to pay all checks, drafts, or wires issued on the bank Accounts on account
6 of any claims arising on or after the Petition Date so long as sufficient funds remain in the bank
7 Accounts. *See* First Day Declaration, ¶ 56.

8 31. To effectuate the foregoing, the Debtors respectfully request that: (a) the
9 Depository Banks be authorized to honor all representations from the Debtors as to which checks
10 should be honored or dishonored; and (b) any final payment made by a Depository Bank at which
11 the Debtors maintained an account before the Petition Date against any of the bank Accounts, or
12 any instrument issued by a Depository Bank on behalf of the Debtors under a “midnight deadline”
13 or otherwise, shall be deemed to be paid before the Petition Date, whether or not actually debited
14 from the Debtors’ bank Accounts pre-petition. To the extent that the Debtors have directed that
15 any pre-petition checks be dishonored, the Debtors reserve the right to issue replacement checks
16 to pay the amounts related to such dishonored checks, consistent with the orders of this Court.
17 The Debtors shall provide written direction to the Depository Banks and their counsel, if known,
18 regarding which checks should be honored and which checks should not. The Depository Banks
19 shall be permitted to reasonably rely, in good faith, upon the direction and representations from
20 the Debtors regarding the honoring of checks. Absent gross negligence or bad faith, the
21 Depository Banks shall not be liable for the failure to honor any checks or the inadvertent
22 honoring of any checks which should not have been honored, as directed by the Debtors.

23 32. The Debtors submit that the relief requested herein is appropriate and well within
24 the authority of this Court. The Debtors’ request for authorization to continue to use the existing
25 bank Accounts, Cash Management System, and Credit Card Processing System has been held to
26 be entirely consistent with Section 363(c)(1) of the Bankruptcy Code, which allows a debtor-in-

1 possession in the ordinary course of business to use property of the estate. *See In re Dant &*
2 *Russell, Inc.*, 853 F.2d 700, 704 (9th Cir. 1988).

3 33. In chapter 11 cases, courts have routinely waived the United States Trustee's
4 guidelines, recognizing that such requirements are often impractical and potentially detrimental to
5 a debtor's post-petition business operations and restructuring efforts. *See, e.g., In re Surgical*
6 *Specialty Hospital of Arizona, LLC*, No. 13-20029, Docket No. 66 (Bankr. D. Ariz. 2013); *In re*
7 *Florence Hospital At Anthem, LLC*, No. 13-03201, Docket No. 41 (Bankr. D. Ariz. 2013); *In re*
8 *PFP Holdings, Inc., et al.*, No. 08-00899, Docket No. 69 (Bankr. D. Ariz. Feb. 11, 2009); *In re*
9 *Taro Properties Arizona I, LLC, et al.*, No. 08-10427, Docket No. 33 (Bankr. D. Ariz. Aug. 20,
10 2008); *In re Global Aircraft Solutions, Inc.*, No. 09-01655, Docket No. 20 (Bankr. D. Ariz. Feb.
11 2, 2009); *In re TOUSA, Inc., et al.*, No. 08-10928 Docket No. 106 (Bankr. S.D. Fla. Jan. 31,
12 2008).

13 34. Moreover, Section 105(a) permits the Court to "issue any order . . . necessary or
14 appropriate to carry out the provisions" of the Bankruptcy Code. Granting the relief requested in
15 this Motion is an appropriate use of the authority granted to this Court under Bankruptcy Code
16 § 105(a) in order to enhance the Debtors' ability to achieve a successful result in these
17 Bankruptcy Cases. Furthermore, Section 363(c)(1) permits a debtor-in-possession to enter into
18 transactions and use property of the estate in the ordinary course of its business. Maintaining the
19 Debtors' existing Cash Management System and Credit Card Processing System falls well within
20 the scope of the ordinary course of business transactions that are allowed under § 363(c).

21 **B. The Debtor Should Be Granted Authority to Use Existing Business Forms**
22 **and Checks.**

23 35. In order to minimize expense to the estates, and to minimize disruption of their
24 business, the Debtors request that it be authorized to continue to use all checks, correspondence
25 and business forms (including, but not limited to, letterhead, stationary, purchase orders,
26

1 employment applications, invoices, etc.) in the form that they existed immediately prior to the
2 Petition Date, without reference to the Debtors' status as debtors-in-possession.

3 36. Because of the nature and scope of the Debtors' business operations, it is
4 necessary that the Debtors be permitted to continue to use its existing Business Forms without
5 alteration or change. Each of the parties with whom the Debtors do business will receive direct
6 notice of the commencement of these Bankruptcy Cases.

7 37. Changing the Business Forms would be unduly expensive and burdensome to the
8 Debtors' estates, disruptive to the Debtors' business operations and would not confer any benefit
9 on those dealing with the Debtors. *See* First Day Declaration, ¶ 57. For these reasons, the
10 Debtors request that they be authorized to use existing Business Forms without being required to
11 place the label "debtor-in-possession" on each Business Form. *See In re Gold Standard Baking,*
12 *Inc.*, 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995) (holding United States Trustee's requirement
13 that the debtor issue checks with "debtor-in-possession" designation to be unenforceable); *In re*
14 *Young*, 205 B.R. 894, 897 (Bankr. W.D. Tenn. 1997) (same).

15 C. **Cause Exists for Waiving the Investment and Deposit Guidelines of Section**
16 **345.**

17 38. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of
18 money of a bankruptcy estate, such as cash, in a manner that will "yield the maximum reasonable
19 net return on such money, taking into account the safety of such deposit or investment." 11
20 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United
21 States or by a department, agent or instrumentality of the United States or backed by the full faith
22 and credit of the United States," Bankruptcy Code § 345(b) provides that the estates must require
23 from the entity with which the money is deposited or invested a bond in favor of the United States
24 secured by the undertaking of an adequate corporate surety. In the alternative, the estates may
25 require the entity to deposit securities of the kind specified in section 9303 of title 31.⁴

26 ⁴ 31 U.S.C. § 9303 provides that where a person is required by law to give a surety bond,
that person, in lieu of such surety, may obtain a government obligation.

1 39. A court may, however, relieve a debtor-in-possession of the restrictions that
2 § 345(b) imposes for “cause.” The Debtors believe that “cause” exists to waive the investment
3 and deposit restrictions of Bankruptcy Code § 345(b) to the extent that the Debtors’ cash
4 management deposits do not comply. The Debtors believe that the Depository Banks at which
5 the bank Accounts are maintained are FDIC-insured. And while the Bank Accounts may be non-
6 interest bearing accounts, the Debtors submit that such accounts are necessary and appropriate for
7 the size of their business and the amount of monies on deposit in the bank Accounts.

8 40. Based upon all of the foregoing, the Debtors believe that cause exists under
9 Bankruptcy Code § 345(b) to allow the Debtors to deviate from the approved investment
10 practices established by the Bankruptcy Code. Accordingly, the Debtors respectfully request
11 authority to invest and deposit funds in a safe and prudent manner in accordance with the
12 Debtors’ existing Cash Management System.

13 **IV. CONCLUSION.**

14 WHEREFORE, the Debtors respectfully request that the Court enter interim and final
15 orders: (a) authorizing, but not directing, the Debtors to maintain and use their existing bank
16 Accounts, Cash Management System, Credit Card Processing System, and Business Forms;
17 (b) waiving the investment and deposit requirements imposed by Bankruptcy Code § 345; and
18 (c) granting such other and further relief that the Court deems just and proper.

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RESPECTFULLY SUBMITTED this 23rd day of January, 2015.

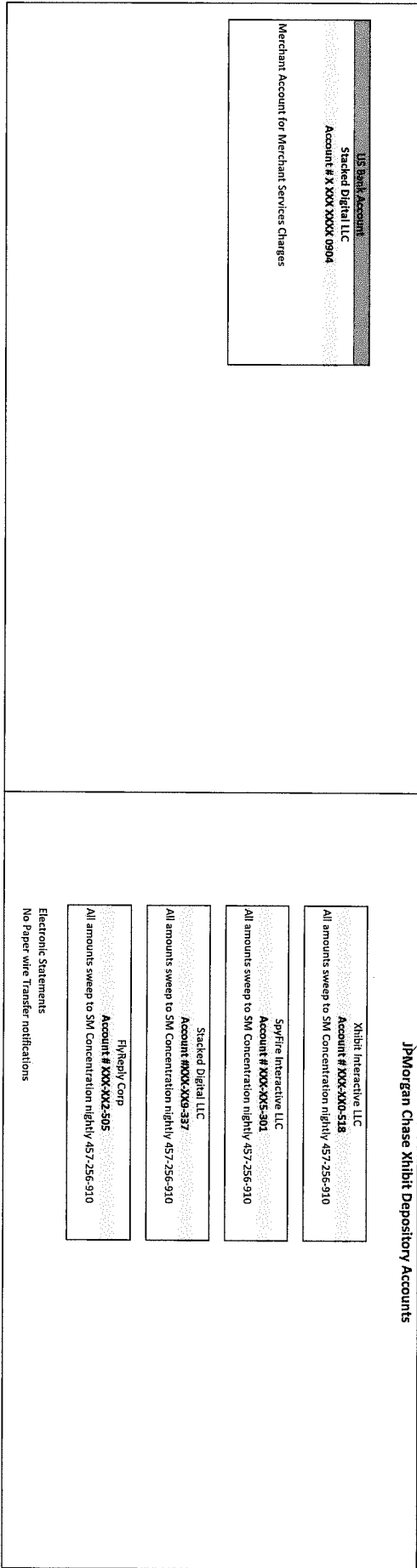
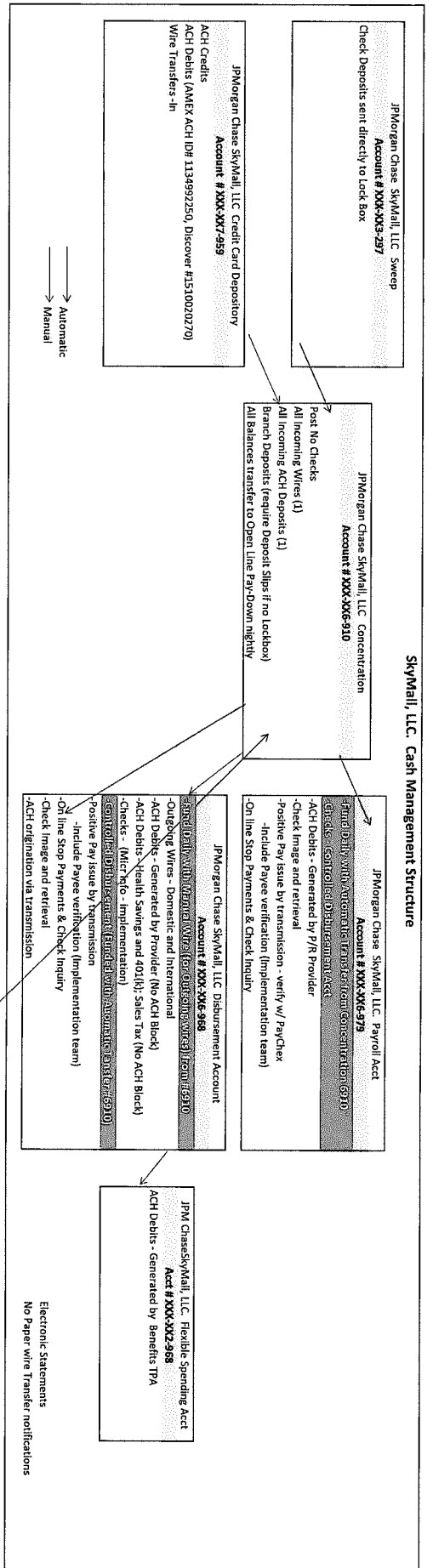
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Jason D. Curry

Proposed Attorneys for Debtors and Debtors-in-Possession

EXHIBIT "A"

SkyMail, LLC. Cash Management Structure



Automatic
Manual

EXHIBIT "B"

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EXHIBIT B

Account Balances
(est. as of the Petition Date)

Account	Approximate Balance as of Petition Date
SkyMall Sweep Account Account # xxx-xx3-297	\$(61.20)
SkyMall Credit Card Depository Account Account # xxx-xx7-959	\$75,685.88
SkyMall Concentration Account Account # xxx-xx6-910	\$2,402,492.19
SkyMall Payroll Accounts (Controlled Accounts)	
Account # xxx-xx6-979	\$(39,303.33)
Account # xxx-xx6-968	\$(34,025.14)
SkyMall Flex Account Account # xxx-xx2-968	\$13,924.55
Xhibit Depository Accounts	
Account # xxx-xx0-518	\$0
Account # xxx-xx5-301	\$0
Account # xxx-xx9-337	\$0
Account # xxx-xx2-505	\$0
U.S. Bank Account Account # x-xxx-xxxx-0904	\$250.92

EXHIBIT "C"

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7 **IN THE UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 10 In re: 11 SKYMALL, LLC, 12 13 Debtor. 14 15 Joint Administration pending with: 16 17 XHIBIT CORP., 18 XHIBIT INTERACTIVE, LLC, 19 FLYREPLY CORP., 20 SHC PARENT CORP., 21 SPYFIRE INTERACTIVE, LLC, 22 STACKED DIGITAL, LLC, and 23 SKYMALL INTERESTS, LLC.	In Proceedings Under Chapter 11 Case No. 2:15-bk-00679-BKM Joint Administration pending with Case Nos.: 2:15-bk-00680-MCW 2:15-bk-00682-MCW 2:15-bk-00684-DPC 2:15-bk-00685-MCW 2:15-bk-00686-MCW 2:15-bk-00687-GBN 2:15-bk-00688-EPB
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19 This Pleading applies to: 20 <input checked="" type="checkbox"/> All Debtors 21 <input type="checkbox"/> Specified Debtors	INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 345 AND 363: (A) AUTHORIZING MAINTENANCE AND USE OF DEBTORS' EXISTING BANK ACCOUNTS, CASH MANAGEMENT SYSTEM, CREDIT CARD PROCESSING SYSTEM, AND BUSINESS FORMS; AND (B) WAIVING INVESTMENT AND DEPOSIT REQUIREMENTS
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24
25 This matter came before the Court on the *Motion for Interim and Final Orders Under 11*
26 *U.S.C. §§ 105(a), 345 and 363: (A) Authorizing Maintenance and Use of Debtor's Existing Bank*

1 *Accounts, Cash Management System, Credit Card Processing System, and Business Forms; and*
2 *(B) Waiving Investment and Deposit Requirements* [Docket No.] (the “**Motion**”)¹ filed by the
3 above-captioned debtors and debtors-in-possession (the “**Debtors**”), and on the *Declaration Of*
4 *Scott Wiley In Support Of First Day Motions* [Docket No. 8] (the “**Wiley Declaration**”); and it
5 appearing that the relief requested is in the best interest of the Debtors’ estates, their creditors and
6 all other parties in interest; and it appearing that due and sufficient notice of the Motion having
7 been given; and it appearing that no other or further notice need be provided; and the Court
8 having jurisdiction to consider the Motion and the relief requested in the Motion under 28 U.S.C.
9 §§ 157 and 1334; and consideration of the Motion and the relief requested in the Motion being a
10 core proceeding under to 28 U.S.C. § 157(b); and venue being proper in this District under to 28
11 U.S.C. §§ 1408 and 1409; and after due deliberation and sufficient cause appearing therefor, it is

12 **ORDERED** that:

- 13 1. The Motion is GRANTED on an interim basis.
- 14 2. The Debtors are authorized to maintain their existing Accounts without change or
15 disruption as requested in the Motion and to operate in the ordinary course of business under
16 depository or similar contracts and agreements between Depository Banks and the Debtors.
- 17 3. The Accounts shall be deemed debtor-in-possession accounts and their
18 maintenance and continued use, in the same manner and with the same account numbers, styles,
19 and document forms as those employed before the Petition Date is hereby authorized.
- 20 4. The Debtors may maintain their existing Cash Management System without
21 change or disruption in the ordinary course of business as requested in the Motion.
- 22 5. The Debtors may maintain their existing Credit Card Processing System, including
23 the Credit Card Processing Fee structure, without change or disruption in the ordinary course of
24

25 _____
26 ¹ Capitalized terms used but not defined herein shall have the meaning ascribed in the Motion.

1 business, as requested in the Motion; provided, however, that the Debtors' right to assume or
2 reject any contract with credit card processing entities is fully reserved.

3 6. The Depository Banks are hereby authorized to honor all representations from the
4 Debtors as to which checks should be honored or dishonored.

5 7. Any final payment made by a Depository Bank at which the Debtors maintained
6 an account before the Petition Date, or any instrument issued by a Depository Bank on behalf of
7 the Debtors under a "midnight deadline" or otherwise, shall be deemed to be paid before the
8 Petition Date, whether or not actually debited from the Debtors' bank Accounts pre-petition. To
9 the extent that the Debtors have directed that any pre-petition checks be dishonored, the Debtors
10 are authorized to reserve the right to issue replacement checks to pay the amounts related to such
11 dishonored checks, consistent with the orders of this Court. The Depository Banks shall be
12 permitted to reasonably rely, in good faith, upon the direction and representations from the
13 Debtors regarding the honoring of checks. Absent gross negligence or bad faith, the Depository
14 Banks shall not be liable for the failure to honor any checks or the inadvertent honoring of any
15 checks which should not have been honored, as directed by the Debtors.

16 8. The Debtors may continue to use their existing Business Forms as requested in the
17 Motion.

18 9. The investment and deposit requirements of Bankruptcy Code § 345(b) are waived
19 as to the Debtors.

20 10. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062 or
21 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon
22 its entry.

23 11. The Court retains jurisdiction with respect to all matters arising from or related to
24 the implementation of this Order.

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

1 13. A final hearing on the Motion shall be held on _____, 2015 at
2 _____ prevailing Arizona Time before this Court. Any party in interest may file an
3 objection (an “**Objection**”) to the relief sought in the Motion on or before _____,
4 2015 (the “**Objection Deadline**”); provided, however, that such party shall file and serve written
5 objections upon (i) SkyMall, LLC, 1520 E. Pima Street, Phoenix, AZ 85034, (Attn: Scott
6 Wiley); (ii) Quarles & Brady LLP, One Renaissance Square, Two N. Central Avenue,
7 Phoenix, AZ 85004, (Attn: John A. Harris, Esq.); (iii) the Office of the United States Trustee
8 for the District of Arizona, 230 N. First Avenue, Suite 204, Phoenix, AZ 85003; (iv) the
9 entities listed on each of the Debtors’ respective List of Creditors Holding the 20 Largest
10 Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d) or counsel for any statutory
11 committee appointed under § 1102; and (v) Paymentech and the Depository Banks. Such
12 Objection shall be filed with the Clerk of the United States Bankruptcy Court, District of Arizona
13 to allow actual receipt by the foregoing no later than at noon prevailing Arizona Time on the
14 Objection Deadline.

15 **DATED AND SIGNED AS INDICATED ABOVE**