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

21           This Pleading applies to:  
22                                All Debtors  
                                  Specified Debtors  
23                               SKYMALL, LLC

**EMERGENCY MOTION FOR ENTRY  
OF INTERIM AND FINAL ORDERS  
UNDER 11 U.S.C §§ 105, 363, AND 507  
AUTHORIZING THE DEBTORS TO  
CONTINUE TO PAY PRE-PETITION  
WAGES, COMPENSATION, AND  
HONOR EMPLOYEE BENEFIT  
PLANS AND PROGRAMS**

**Hearing Date** \_\_\_\_\_  
**Hearing Time** \_\_\_\_\_

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 asking the Court to authorize the Debtors to (1) pay accrued, unpaid, pre-petition payroll  
4 obligations, and (2) continue to pay or honor certain amounts coming due (including accrued  
5 prepetition amounts) under the Debtors’ employee benefit plans and programs in effect  
6 immediately prior to filing these Bankruptcy Cases, as more specifically set forth herein. This  
7 Motion seeks immediate entry of an interim order granting the Motion and is brought on an  
8 emergency basis on expedited notice under Local Bankruptcy Rule 9013-1(h) to avoid immediate  
9 and irreparable harm to the Debtors and their estates.

10 The relief requested in this Motion would (a) authorize SkyMall to pay  
11 accrued, unpaid, pre-petition payroll obligations and (b) continue  
12 postpetition to pay or honor certain amounts coming due under the  
13 Debtors’ employee benefit plans and programs. The basis for the relief  
14 requested in this Motion is set forth in paragraphs 31 through 45 below.

15 This Motion is supported by the following Memorandum of Points and Authorities, the  
16 *Declaration Of Scott Wiley In Support Of First Day Motions* (the “**First Day Declaration**”), and  
17 the entire record before the Court in these Bankruptcy Cases.

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

19 QUARLES & BRADY LLP  
20 Renaissance One  
21 Two North Central Avenue  
22 Phoenix, AZ 85004-2391

23 By /s/ John A. Harris

24 John A. Harris  
25 Robert P. Harris  
26 Lori L. Winkelman  
Jason D. Curry

Proposed Attorneys for Debtors and Debtors-in-  
Possession

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

3 1. On January 22, 2015 (the “**Petition Date**”), the Debtors filed voluntary  
4 petitions for relief under Chapter 11 of the Bankruptcy Code, thereby commencing the  
5 Bankruptcy Cases.<sup>1</sup>

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

8 3. The Court has jurisdiction over the Bankruptcy Cases under 28 U.S.C.  
9 §§ 157 and 1334. This Motion presents a core proceeding under 28 U.S.C. § 157(b)(2).

10 4. The Debtors’ principal place of business is located in Maricopa County,  
11 Arizona. Accordingly, venue of the Bankruptcy Cases is proper in the District of Arizona under  
12 28 U.S.C. §§ 1408 and 1409.

13 5. The statutory predicates for the relief requested in this Motion are  
14 Bankruptcy Code §§ 105, 363, and 507, and Bankruptcy Rule 6003.

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

17 7. The background relevant to the Debtors and this Motion is stated in the  
18 First Day Declaration, which is incorporated herein by this reference. Unless otherwise defined  
19 herein, all capitalized terms used in this Motion will have the same meaning given to them in the  
20 First Day Declaration.

21  
22  
23  
24  
25 <sup>1</sup> 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     **II.     SKYMALL’S EMPLOYEE BASE.**

2                     8.     All employees are employees of SkyMall. The other Debtors do not have  
3 employees. Unless otherwise specified, all references to employees in this Motion will be to  
4 employees of SkyMall.

5                     9.     As discussed in the First Day Declaration, on January 16, 2015, SkyMall  
6 suspended its retail catalog operations and terminated 47 employees, the bulk of whom were  
7 employed in SkyMall’s call center (the “**Terminated Employees**”). The Terminated Employees  
8 each received pay for earned wages, including accrued paid time off (“**PTO**”) in accordance with  
9 SkyMall’s ordinary operating procedures and applicable law. The final wages and PTO were  
10 paid in the form a physical check to be drawn on the SkyMall Payroll Accounts (the “**Final**  
11 **Paychecks**”). None of the Final Paychecks exceeds the amount of \$12,475 for any Terminated  
12 Employee. Most of the Final Paychecks were drawn on the SkyMall Payroll Accounts  
13 prepetition; however, some of the Final Paychecks may not have cleared the SkyMall Payroll  
14 Accounts prior to commencement of these Bankruptcy Cases.

15                     10.    The Debtors are continuing SkyMall’s other business operations, which  
16 include its online retail business and the TSA Support Operations. SkyMall is continuing these  
17 remaining business operations while it explores its strategic options, including an orderly  
18 transition of the TSA Support Operations and a potential going concern sale of its operating and  
19 other assets. SkyMall’s ability to maintain these business operations is dependent on its ability to  
20 retain its existing employee base.

21                     11.    In conjunction with these efforts, and to maintain stability in the TSA  
22 Support Operations while permanent transition of such operations is pursued, Xhbit/SkyMall and  
23 Connexions agreed, among other things, that: (i) an aggregate of \$280,000 of the funds held in  
24 escrow pursuant to the MIPA (*see* note 3 of the First Day Declaration) would be released to  
25 SkyMall; (ii) SkyMall would not lay-off or terminate employment of certain of the employees  
26 supporting the TSA Support Operations before February 13, 2015; and (iii) with regard to six IT

1 employees (the “**Specified IT Employees**”) who support both the TSA Support Operations and  
2 SkyMall’s other operations, Connexions would have the opportunity to offer employment to these  
3 persons and, to the extent the employment offers were accepted, to hire such persons, after which  
4 Connexions would make them available to perform certain continuing services for SkyMall at an  
5 agreed hourly rate. All six the Specified IT Employees accepted Connexions’ offer of  
6 employment prepetition.

7 12. Upon leaving their employment with SkyMall, each of the Specified IT  
8 Employees received pay for earned wages, including PTO, in accordance with SkyMall’s  
9 ordinary operating procedures. A list of the Specified IT Employees and the amount paid to each  
10 of the Specified IT Employees upon leaving employment with SkyMall (the “**Final IT Employee**  
11 **Payments**”) is attached to this Motion as Exhibit A. Some of the Final IT Employee Payments  
12 may not have cleared the SkyMall Payroll Accounts prior to the Petition Date.

13 13. On January 20, 2015, and in accordance with its normal policies and  
14 procedures, SkyMall issued commission checks to certain sales employees, some of which were  
15 Terminated Employees (the “**Commission Checks**”). None of the Commission Checks exceeds  
16 the amount of \$12,475 for any individual employee. Some of the Commission Checks may not  
17 have cleared the SkyMall Payroll Accounts prior to the Petition Date.

18 14. As of the Petition Date, SkyMall has approximately eighty-seven (87)  
19 employees. Fifty-three (53)—or 61%—of SkyMall’s employees are primarily involved in the  
20 TSA Support Operations. Twenty (20)—or 23%—of SkyMall’s employees spend approximately  
21 half of their time in the TSA Support Operations; the other half of their time is spent in SkyMall’s  
22 online retail business operations. Fourteen (14)—or 16%—of SkyMall’s employees are primarily  
23 involved in SkyMall’s online retail business. *See* First Day Declaration, ¶¶ 76-76.

1     **III.     SKYMALL’S PAYROLL OBLIGATIONS.**

2             15.     There are no employment agreements with any employees.

3             16.     SkyMall’s payroll periods end every other Friday (each a “**Payroll**  
4 **Period**”). Wages and benefits are paid in arrears. The last Payroll Period ended on January 16,  
5 2015. The next Payroll Period will end on January 30, 2015.

6             17.     As of the Petition Date, there are accrued payroll obligations for the partial  
7 prepetition Payroll Period between January 17, 2015, and January 21, 2015 (the “**Prepetition**  
8 **Stub Payroll Period**”). The total aggregate amount of wages and benefits due to employees  
9 during the Prepetition Stub Payroll Period totals \$80,216.68 (the “**Stub Wages**”). A categorized  
10 summary of the Stub Wages which the Debtors are seeking approval to pay or fund by this  
11 Motion is set forth in **Exhibit B**.<sup>2</sup> As confirmed in Exhibit B, the amount to be paid to each  
12 employee does not exceed \$12,475 as to any one employee, so each wage claim of each employee  
13 is a priority claim provided in 11 U.S.C. § 507(a)(4). Two employees listed and highlighted on  
14 Exhibit B—Scott Wiley and Theresa McMullan—may qualify as insiders of one or more of the  
15 Debtors.

16             18.     The payroll obligations include the employees’ gross hourly wages or  
17 salaries, payroll withholding taxes, and other withholding obligations (the “**Withholding**  
18 **Obligations**”). To pay the Withholding Obligations, SkyMall transmits the amounts owed for  
19 payroll to SkyMall’s payroll company, Paychex (“**Paychex**”). Paychex is responsible for  
20 remittance of the Withholding Obligations and: (i) remittance of appropriate amounts to various  
21 federal and state taxing agencies for federal and state payroll taxes, Social Security, and  
22 Medicare; (ii) remittance of withheld amounts to the 403(b) plan administrator or to others for

23             <sup>2</sup>     For some hourly employees the amount of Stub Wages in Exhibit B has been estimated  
24 based on regular work schedules. The actual amount of Stub Wages for these employees may be  
25 impacted by overtime or unscheduled absences. Therefore, the actual amount could not be  
26 ascertained at the time this Motion was filed. To the extent the actual amount of Stub Wages is  
different than the the estimated amounts set forth in Exhibit B, the Debtors will file an updated  
Exhibit B prior to the hearing on this Motion.

1 whose benefit the Withholding Obligation is withheld;<sup>3</sup> and (iii) issuance of paychecks or ACH  
2 transactions containing each employee's net payroll funds to each employee. Once the funds are  
3 transferred from SkyMall to Paychex (which is accomplished by a draw upon the SkyMall  
4 Payroll Accounts by Paychex), such funds are no longer property of SkyMall's estate. Therefore,  
5 any pre-petition paychecks that have not cleared SkyMall's bank accounts as of the Petition Date  
6 are not implicated by the Bankruptcy Cases because the funds necessary to pay those payroll  
7 checks are not property of SkyMall or the other Debtors. *See* First Day Declaration, ¶¶ 77-80.

8 **IV. EMPLOYEE BENEFIT PROGRAMS.**

9 19. SkyMall provides certain benefits to the employees. The Debtors desire to  
10 keep these benefits in place after the Petition Date, in the ordinary course of SkyMall's business  
11 and to honor payment for any such benefits which accrued pre-petition and which are paid by  
12 SkyMall. Collectively, all such benefits are referred to herein as the "**Employee Benefits**".

13 **A. Regularly-Recurring Benefits.**

14 20. The first category of benefits recurs regularly. These are on-going benefit  
15 programs that include medical insurance, dental insurance, vision insurance, term life and  
16 accidental death and dismemberment insurance, long-term disability insurance, workers'  
17 compensation insurance, 401(k) plan (with no employer contributions), and flexible spending  
18 accounts. *See* First Day Declaration, ¶¶ 81-82. The Debtors request the Court allow SkyMall to  
19 continue such employee benefit programs as they are currently in effect and authorize SkyMall to  
20 pay any pre-petition amounts funded by SkyMall to keep the benefit programs in effect.

21 **B. Other Benefits.**

22 *Paid Time Off*

23 21. All full-time regular and part-time regular employees are eligible for PTO  
24 accrual. Full-time regular employees accrue PTO on a bi-weekly basis, based on years of service,

25 \_\_\_\_\_  
26 <sup>3</sup> For example, if there are child support obligations that are withheld from an employee's wages,  
those amounts are withheld and remitted by Paychex to the appropriate person or agency.

1 in accordance with the following schedule: (A) Year 1, 2, and 3—full time regular employees  
2 accrue up to 120 hours per year to a maximum of 120 hours; (B) Year 4, 5, and 6—full-time  
3 regular employees accrue up to 160 hours per year to a maximum of 160 hours; and (C) Year 7  
4 and above—full-time regular employees accrue 200 hours per year to a maximum of 200 hours.  
5 Part-time regular employees accrue PTO at one-half the rate of full-time regular employees.  
6 Maximum accruals for part-time regular employees also are at one-half the full-time rate. Upon  
7 termination, employees are entitled to a cash-out payment of their accrued PTO. *See* First Day  
8 Declaration, ¶ 83. Accrued paid time off is an earned wage under Arizona law. *See* A.R.S. § 23-  
9 350(6).

#### 10 *Severance*

11 22. Under certain circumstances, full-time regular employees who have signed  
12 an acceptable release will be paid a severance if they are terminated solely because of a reduction  
13 in workforce, elimination of their job or position, or department restructuring. For employees  
14 hired prior to September 1, 2013, severance pay is calculated as two weeks of pay for each  
15 completed year of service with a maximum amount of severance of 52 weeks. An employee with  
16 less than one year of service will be paid a severance amount equal to two weeks of pay.

17 23. For employees hired after September 1, 2013, severance pay is calculated  
18 as two weeks of pay for each completed year of service with a maximum amount of severance of  
19 12 weeks. An employee with less than one year of service will be paid a severance amount equal  
20 to two weeks of pay.

21 24. Severance pay may be paid in a lump-sum or installments in accordance  
22 with the terms of a severance and release agreement. No severance allowance will be paid when  
23 termination results from the sale SkyMall, or all or part of SkyMall's assets, and the employee is  
24 offered continued employment with the purchaser or successor company.

25 25. Employees who resign from their positions or are discharged for reasons  
26 other than those stated above are not entitled to severance pay. No employees or beneficiaries



1 have any vested right to severance. SkyMall retains the right to modify, suspend or terminate a  
2 severance allowance to any employee at any time and for any reason with or without prior notice  
3 to the employee. *See* First Day Declaration, ¶¶ 84-87.

4 ***Non-Insider Bonuses***

5 26. On November 17, 2014, a bonus plan was established for two non-insider  
6 employees—Sandra Machado and Julie Banks (collectively, the “**Non-Insider Bonuses**”).

7 27. In accordance with her bonus package, Ms. Machado receives a \$3,000  
8 bonus if she does all of the following: (i) continues to process all employee payroll changes,  
9 additions and terminations; (ii) continues to process the bi-weekly payroll; and (iii) completes the  
10 2015 benefits open enrollment process. The bonus is only available to Ms. Machado if she is still  
11 employed on January 31, 2015. The bonus is scheduled to be paid on February 2, 2015, pending  
12 completion of the benchmarks and Court approval.

13 28. In accordance with her bonus package, Ms. Banks is eligible to receive a  
14 \$5,000 bonus if she does all of the following: (i) completes the November 2014 accounting close;  
15 (ii) completes the December 2014 accounting close; and (iii) launches NetSuite<sup>4</sup> as planned in  
16 January 2015. The bonus is only available to Ms. Banks if she is still employed on January 31,  
17 2015. The bonus is scheduled to be paid on February 2, 2015, pending completion of the  
18 benchmarks and Court approval.

19 29. The services to be performed by Ms. Machado and Ms. Banks are essential  
20 to SkyMall’s operations, as is their continued employment. Without the services of Ms. Machado  
21 and Ms. Banks, SkyMall’s operations would suffer.

22 30. Ms. Machado and Ms. Banks are not insiders nor do they have any control  
23 over the decision of SkyMall or the Debtors to offer or pay their bonuses. The bonuses are  
24

25 \_\_\_\_\_  
26 <sup>4</sup> NetSuite is a business management software platform that integrates customer relationship  
management and accounting software.

1 appropriate and necessary performance incentives for these two key employees to continue to  
2 provide critical services in a distressed environment. See First Day Declaration, ¶¶ 88-92.

3 **V. RELIEF REQUESTED.**

4 **A. Emergency Relief Requested.**

5 31. By this Motion, pursuant to 11 U.S.C. §§ 105(a) and 363(b), and 507(a),  
6 the Debtors seek entry of an Order on an emergency basis:

7 a. Authorizing any Final Paychecks, Final IT  
8 Employee Payments, and any Commission Checks that did not  
9 clear the SkyMall Payroll Accounts prior to the Petition Date to be  
10 honored;

11 b. Authorizing the payment on the next regularly  
12 occurring Payroll Period of the full amount of the Stub Wages due  
13 to each employee for the Prepetition Stub Payroll Period;

14 c. Authorizing the transmission to Paychex of the  
15 Withholding Obligations related to such Prepetition Stub Payroll  
16 Period if not previously remitted to Paychex;

17 d. Authorizing, but not directing, SkyMall to honor the  
18 pre-Petition Date Employee Benefits program obligations, pay any  
19 unpaid costs related thereto and continue to offer the pre-Petition  
20 Date Employee Benefits program post-petition;

21 e. Authorizing, but not directing, SkyMall to honor the  
22 pre-Petition Date accrued PTO, severance package, and Non-  
23 Insider Bonuses to employees in the ordinary course of business;

24 f. Authorizing, but not directing or requiring, SkyMall  
25 to effectuate the payments and other obligations set forth herein,  
26 and allowing SkyMall to retain all discretion pursuant to

1 management's business judgment to make or not make such  
2 payments, and in all instances subject to the condition that funds are  
3 available to make such payments; and

4 g. Granting related relief.

5 32. Such relief is sought on an emergency basis because, among other things,  
6 the employees are essential to SkyMall's ability to continue as a going concern in these  
7 Bankruptcy Cases. If employees are not paid for pre-Petition Date wages they have accumulated,  
8 the employees' ability to pay their day-to-day living expenses and other bills would be disrupted,  
9 and the employees would likely quit or be forced to seek other employment. The employees are  
10 essential to the Debtors' ability to continue SkyMall's operations, and the employees are being  
11 asked to continue their services in a highly distressed and unpredictable environment. Therefore,  
12 the Debtors request the emergency relief herein so as not to interrupt the employees' ability to be  
13 paid the pre-petition wages and paid the post-petition benefits they have earned.

14 33. The Court should also authorize the Debtors to honor any of the Final  
15 Paychecks, the Final IT Employee Payments, and Commission Checks that have not clear the  
16 SkyMall Payroll Accounts prior to the Petition Date.

17 **VI. LEGAL ARGUMENT.**

18 34. The Debtors seek authority to pay the Stub Wages and to continue to  
19 provide the Employee Benefits in existence prior to the Petition Date and to pay all amounts due  
20 as such amounts come due in the ordinary course, including amounts accrued on account of  
21 prepetition employee service. The relief sought is authorized by 11 U.S.C. §§ 105(a), 363(b), and  
22 507(a).

23 **A. Payment of the Stub Wages and Continuation of the Employee Benefits is**  
24 **Justified to Preserve the Estates.**

25 35. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor-in-  
26 possession to "use, sell or lease, other than in the ordinary course of business, property of the

1 estate . . . .” Moreover, Section 105(a) of the Bankruptcy Code provides that “the court may issue  
2 any order, process, or judgment that is necessary or appropriate to carry out the provisions of this  
3 title.”

4           36. Sections 507(a)(4) and (a)(5) of the Bankruptcy Code gives priority up to  
5 \$12,475 per individual for pre-petition claims for wages, salaries, vacation and sick leave and  
6 claims for contributions to employee benefit plans. The Stub Wages are generally entitled to  
7 priority under Bankruptcy Code §§ 507(a)(4) and (a)(5) and all employees are owed Stub Wages  
8 of less than \$12,475. Thus, granting the relief sought herein would only affect the timing, and not  
9 the amount, of the payment of the Stub Wages, to the extent that they constitute priority claims.

10           37. Additionally, with respect to the Withholding Obligations described above,  
11 failure to remit certain Withholding Obligations to the proper third parties may cause serious  
12 disruption to SkyMall’s operations. The Withholding Obligations represent employee earnings  
13 that governments (in the case of taxes), and employees (in the case of voluntarily withheld  
14 amounts) have designated for deduction from employees’ paychecks. Failure to remit these  
15 amounts could result in hardship to the employees, and, in the case of withholding taxes, such  
16 amounts may not constitute estate property. *See Beigier v. IRS*, 496 U.S. 53, 60-62 (1990) (FICA  
17 taxes withheld from employee wages under federal tax law created trust, at time taxes collected,  
18 on behalf of IRS for payment of withheld taxes); *see also City of Farrell v. Sharon Steel Corp.*,  
19 41 F.3d 92, 91 (3d Cir. 1994) (state law requiring debtor to withhold city income tax from its  
20 employees’ wages created trust relationship between debtor and city for payment of withheld  
21 taxes); *Megafoods Stores, Inc. v. Texas Comptroller of Public Accounts (In re Megafoods Stores,*  
22 *Inc.)*, 210 B.R. 351, 355-56 (B.A.P. 9th Cir. 1997), *aff’d in relevant part* 163 F.3d 1063 (9th Cir.  
23 1998) (holding that state and local sales taxes were held in statutory trust by the debtor and  
24 therefore did not constitute property of the estate).

25           38. Moreover, the vast majority of the employees rely exclusively on their full  
26 compensation to meet their daily living expenses, and such employees will be exposed to

1 significant financial difficulties if authorization is not given to pay the Stub Wages or continue  
2 the Employee Benefits. Indeed, if these obligations cannot be honored, employee morale and  
3 loyalty will undoubtedly be jeopardized at a time when their support is critical.

4           39. Under the “necessity of payment” rule, first enunciated by the Supreme  
5 Court in *Miltenberger v. Logansport, C. & S. W.R. Co.*, 106 U.S. 286 (1882), a bankruptcy court  
6 may use its Section 105 equitable powers to permit a debtor-in-possession to pay pre-petition  
7 claims when payment is necessary to effectuate a successful reorganization. *See In re Lehigh &*  
8 *New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (necessity-of-payment doctrine “teaches  
9 no more than, if payment of a claim which arose prior to reorganization is essential to the  
10 continued operation of the [business] during reorganization, payment may be authorized even if it  
11 is made out of corpus”).

12           40. Courts generally recognize the importance of a debtor’s ability to pay pre-  
13 petition wages and benefits. *See Burchinal v. Central Wash. Bank (In re Adams Apple, Inc.)*, 829  
14 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that payment of wages to employees has been  
15 approved under the necessity of payment doctrine); *In re Quality Interiors*, 127 B.R. 391, 396  
16 (Bankr. N.D. Ohio 1991) (stating that, “[t]his Court often permits the payment of pre-petition  
17 wages so that the debtor-in-possession may maintain an effective work force, especially where  
18 the amount of the payment is relatively small and where it appears that the wages being paid  
19 would ultimately qualify as priority claims”). Likewise, in *In re Ionosphere Clubs, Inc.*, 98 B.R.  
20 174 (Bankr. S.D.N.Y. 1989), the court permitted Eastern Air Lines, Inc. to pay its current  
21 employees’ pre-bankruptcy wages, salaries, medical benefits and business expense claims, relying  
22 on Section 105(a) to effectuate a restructuring of its finances to provide jobs for its employees.  
23 *Id.* at 177 (citing H.R. Rep. No. 95-595 at 16 (1977)).

24           41. Other courts also have permitted debtors-in-possession to pay pre-petition  
25 wage, salary, expense, and benefit claims. *See, e.g., In re TUSA-EXPO Holdings, Inc.*, 2008 WL  
26 48457954, Case No. 08-45057-DML-11, (Bankr. N.D. Tex. Nov. 7, 2008) (stating that “A central

1 purpose of chapter 11 is to realize on a debtor's going concern value. That going-concern value is  
2 dependent in part upon the continuity and performance of the debtor's work force . . . . The  
3 continuity and performance of a debtor's work force is, in turn, typically dependent on timely  
4 payment of wages and benefits."); *In re Gulf Air, Inc.*, 112 B.R. 152, 153-54 (Bankr. W.D. La.  
5 1989) (authorizing debtor-in-possession to pay pre-petition employee wages and benefits, and  
6 health, life, and workers' compensation insurance premiums); *In re Chateaugay Corp.*, 80 B.R.  
7 279, 287-88 (S.D.N.Y. 1987) (affirming order authorizing debtor to pay certain pre-petition  
8 wages, salaries, employee reimbursement expenses and benefits, including payments on workers'  
9 compensation claims).

10 42. Relief similar to that requested by this Motion has been granted in  
11 Chapter 11 cases within this District. *See, e.g., Surgical Specialty Hospital of Arizona, LLC*, No.  
12 13-20029 (Bankr. D. Ariz., Dec. 23, 2013) [Doc. 77]; *Elec. Transportation Engineering Corp.*,  
13 No. 13-16126 (Bankr. D. Ariz., Oct. 3, 2013) [Doc. 132]; *Moon Valley Country Club*, No. 12-  
14 16548 (Bankr. D. Ariz., Aug. 1, 2012) [Doc. 40]; *In re PFP Hldgs, Inc.*, No. 08-00899 (Bankr. D.  
15 Ariz., Feb. 21, 2008) [Doc. 94]; *In re Three-Five Sys., Inc.*, No. 05-17104 (Bankr. D. Ariz., Oct.  
16 7, 2005) [Doc. 60]; *In re Intl Fibercom, Inc.*, No. 02-02143 (Bankr. D. Ariz., Feb. 15, 2002)  
17 [Doc. 20].

18 43. The relief requested in this Motion is necessary and should be authorized  
19 under Bankruptcy Code § 105. The current employee workforce is vital to the continued  
20 operation of SkyMall's business during these Bankruptcy Cases. Authorization to pay the  
21 amounts requested herein in the ordinary course of business is necessary to maintain morale and  
22 to prevent employees from suffering extreme personal hardship from quitting their employment  
23 or from seeking other employment. Accordingly, the relief sought herein is consistent with  
24 §§ 105(a) and 507(a).

25 44. Authorization should also be given to honor any Final Paychecks,  
26 Commission Checks, or Final IT Employee Payments that had not cleared prior to the Petition

1 Date. The amounts of the Final Paychecks and the Commission Checks do not exceed \$12,475,  
2 and therefore are generally entitled to priority under Bankruptcy Code § 507(a)(4) and (a)(5).  
3 Honoring Final IT Employee Payments is critical because the Specified IT Employees will  
4 continue to provide essential IT services to SkyMall post-petition on an hourly rate basis.

5 **B. Fed. R. Bankr. P. 6003 Does Not Apply.**

6 45. “Except to the extent that relief is necessary to avoid immediate and  
7 irreparable harm,” Fed. R. Bankr. P. 6003 ordinarily precludes the Court from entering an order  
8 granting “a motion to use . . . property of the estate, including a motion to pay all or part of a  
9 claim that arose before the filing of the petition” before the day that is 21 days after the  
10 bankruptcy petition was filed. Fed. R. Bankr. P. 6003(b). The instant Motion is filed on an  
11 emergency basis because immediate relief is necessary to avoid immediate and irreparable harm.  
12 As stated above, SkyMall cannot operate without the employees. In the event employees are not  
13 timely paid, they will likely quit and/or seek other employment. The employees, who have living  
14 expenses to pay, would suffer immediate and irreparable harm if they are not paid. Finally, the  
15 pre-petition expenses sought to be paid are priority claims. Such claims must, as a matter of law,  
16 be paid prior to general unsecured claims pursuant to 11 U.S.C. § 507. Therefore, the payment  
17 priority mandated by the Bankruptcy Code will not be upset if the Stub Wages and the other pre-  
18 petition payments discussed herein are paid immediately. Under such circumstances, the Court  
19 may enter immediate relief to avoid immediate and irreparable harm, without running afoul of  
20 Fed. R. Bankr. P. 6003. *See* First Day Declaration, ¶¶ 93-98.

21 **VII. CONCLUSION.**

22 For the reasons set forth above, the Debtors respectfully asks the Court to enter an Order,  
23 substantially in the same form attached hereto as **Exhibit C:**

24 a. Authorizing any Final Paychecks, Final IT  
25 Employee Payments, and any Commission Checks that did not  
26 clear the SkyMall Payroll Accounts prior to the Petition Date to be

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honored;

b. Authorizing the payment on the next regularly occurring Payroll Period of the full amount of the Stub Wages due to each employee for the Prepetition Stub Payroll Period;

c. Authorizing the transmission to Paychex of the Withholding Obligations related to such Prepetition Stub Payroll Period if not previously remitted to Paychex;

d. Authorizing, but not directing, SkyMall to honor the pre-Petition Date Employee Benefits program obligations, pay any unpaid costs related thereto and continue to offer the pre-Petition Date Employee Benefits program post-petition;

e. Authorizing, but not directing, SkyMall to honor the pre-Petition Date accrued PTO, severance package, and Non-Insider Bonuses to employees in the ordinary course of business;

f. Authorizing, but not directing or requiring, SkyMall to effectuate the payments and other obligations set forth herein, and allowing SkyMall to retain all discretion pursuant to management's business judgment to make or not make such payments, and in all instances subject to the condition that funds are available to make such payments;

g. Preventing any person from having personal liability or becoming personally liable for any amounts authorized for payment herein;

h. Retaining jurisdiction with respect to all matters arising from or related to the implementation and interpretation of such Order;



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- i. Setting a final hearing on this Motion; and
- j. Granting such other and further relief as the Court deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED this 23rd day of January, 2015.

QUARLES & BRADY LLP  
Renaissance One  
Two North Central Avenue  
Phoenix, AZ 85004-2391

By /s/ John A. Harris  
John A. Harris  
Robert P. Harris  
Lori L. Winkelman  
Jason D. Curry

Proposed Attorneys for Debtors and Debtors-in-Possession

# **EXHIBIT "A"**

**EXHIBIT A**  
To Wage Motion

First Name Only (for privacy purposes)	Payroll for 1/17/15 to 1/20/15 (Paid on 1/21/15)	PTO Payout (Paid on 1/22/15)	Total
Chris	\$ 1,115.38	\$ 13,942.30	\$ 15,057.68
Coleman	\$ 1,153.85	\$ 14,423.08	\$ 15,576.93
Craig	\$ 769.23	\$ 9,615.38	\$ 10,384.61
Jim	\$ 850.10	\$ 6,522.40	\$ 7,372.50
Matt	\$ 923.08	\$ 11,391.92	\$ 12,315.00
Nicole	\$ 485.22	\$ 6,065.30	\$ 6,550.52

# **EXHIBIT "B"**

SkyMall, LLC

First Name Only (for privacy purposes)	Job Title (Employee)	Status	Estimated Accrued Payroll (1/17/15 to 1/21/15)
Adriana	DATA CONVEY SPECIALIST	F	908.16
Alexis	SALES & SERVICE SUPPORT REPRES	F	659.20
Alyssa	VEN/LOY CUSTOMER SUPPORT REP	F	659.20
Bian	VEN/LOY CUSTOMER SUPPORT REP	F	659.20
Brandon	SKYMALL CUSTOMER SUPPORT REP	F	659.20
Brendan	FULFILLMENT ASSISTANT	F	802.56
Brynne	EMAIL MARKETING MANAGER	F	1,096.15
Carlos	FULFILLMENT ASSISTANT	F	768.00
Cassidy	DATA CONVEY SPECIALIST	F	787.20
Catherine	ACCOUNTING CONSULTANT	P	1,680.96
Christopher	FULFILLMENT ASSISTANT	F	829.44
Cynthia	DATA CONTROL SUPERVISOR	F	1,076.48
Darin	DIRECTOR OF MERCHANDISING	F	1,269.23
Darrell	RESOLUTIONS ADMIN SUPERVISOR	F	1,029.50
Dee	SENIOR ACCOUNTANT	F	840.00
Deyvi	FULFILLMENT ASSISTANT	F	691.20
Diana	ACCOUNTS PAYABLE SUPERVISOR	F	750.00
Diana	ADMIN VENTURES SUPERVISOR	F	1,012.76
Diethrich	CC QUALITY TECHNICIAN	F	768.00
Dolores	VEN/LOY CUSTOMER SUPPORT REP	F	659.20
Donato	FACILITIES MAINTENANCE TECH	F	1,064.22
Elizabeth	SALES COORDINATOR	F	1,390.27
Felicia	VEN/LOY CUSTOMER SUPPORT REP	F	659.20
Gabriella	SKYMALL CUSTOMER SUPPORT REP	F	691.20
Gloria	FULFILLMENT ASSISTANT	F	903.93
Guadalupe	VEN/LOY CUSTOMER SUPPORT REP	F	700.16
Heather	MERCHANDISING ANALYST	F	413.98
Hugo	SKYMALL CUSTOMER SUPPORT REP	F	691.20
Ivan	SKYMALL CUSTOMER SUPPORT REP	F	691.20
James	MANAGER - VENDOR RELATIONS	F	470.25
Jeanette	DIRECTOR OF CALL CENTER	F	1,097.47
Jeffrey	OPERATIONS MONITOR	F	950.75
Jennifer	SKYMALL CUSTOMER SUPPORT REP	F	691.20
Jennifer	QA ANALYST	F	1,076.92
Jinine	SR. DIRECTOR- MARKETING	F	1,384.62
John	DIRECTOR VENDOR RELATIONS	F	733.62
Jolene	SALES & SERVICE SUPPORT REPRES	F	659.20
Joseph	RESOLUTIONS SUPPORT REP	F	764.80
Julie	SENIOR DIRECTOR ACCOUNTING	F	1,211.54
Jutta	TRAINING SPECIALIST	F	630.71
Kathy	MANAGER - VENDOR RELATIONS	F	482.54

SkyMall, LLC

First Name Only (for privacy purposes)	Job Title (Employee)	Status	Estimated Accrued Payroll (1/17/15 to 1/21/15)
Leonard	MANAGER ONLINE MERCHANDISING	F	695.54
Liza	MANAGER - VENDOR RELATIONS	F	553.85
Lydia	VEN/LOY CUSTOMER SUPPORT REP	F	659.20
Lynn	COLLECTIONS SPECIALIST	F	1,361.92
Maria	ACCOUNTS PAYABLE SPECIALIST	F	928.00
Maria	RESOLUTIONS SUPPORT REP	F	691.20
Maria	RESOLUTIONS SUPPORT REP	F	901.48
Maria	SKYMALL ADMIN SUPPORT REP	F	757.00
Marie	CUSTOMER CARE MANAGER	F	657.11
Marion	RESOLUTIONS SUPPORT REP	F	756.34
Martin	LEAD UI DESIGNER	F	1,096.15
Mary	RESOLUTIONS SUPPORT REP	F	896.15
Micah	FULFILLMENT ASSISTANT	F	768.00
Michael	HELP DESK COORDINATOR	F	590.29
Michelle	VEN/LOY CUSTOMER SUPPORT REP	F	727.71
Molly	ACCOUNTS PAYABLE SPECIALIST	F	1,153.28
Nicholas	RECEIVING SPECIALIST	F	870.84
Nittara	RESOLUTIONS SUPPORT REP	F	264.00
Nyla	SKYMALL CUSTOMER SUPPORT REP	F	659.20
Pamela	SKYMALL CUSTOMER SUPPORT REP	F	704.00
Peter	RESOLUTIONS SUPPORT REP	F	730.24
Ramiz	ORACLE DATABASE ADMINISTRATOR	F	1,433.27
Ramona	NAV SUPERVISOR	F	1,283.84
Rayden	FULFILLMENT ASSISTANT	F	704.00
Robert	FULFILLMENT ASSISTANT	F	704.00
Samantha	SKYMALL CUSTOMER SUPPORT REP	F	659.20
Sandra	HR SPECIALIST	F	1,384.96
Santiago	FULFILLMENT ASSISTANT	F	808.32
Scott	MANAGER - FULFILLMENT OPERATIONS	F	608.88
Scott	CFO AND ACTING CEO	F	3,461.54
Shayla	OPERATIONS MONITOR	F	865.53
Sherri	CALL CENTER OPERATIONS MANAGER	F	572.80
Sherrie	DATA SPECIALIST	F	905.74
Stephanie	SKYMALL CUSTOMER SUPPORT REP	F	659.20
Stephen	VP - TREASURY OPERATIONS	F	1,449.83
Stephen	SKYMALL CUSTOMER SUPPORT REP	F	659.20
Tawny	ACCOUNTS RECEIVABLE SPECIALIST	F	1,261.44
Ted	SR SYSTEMS ENGINEER	F	1,272.90
Terrence	ASSISTANT SUPERVISOR	F	864.00
Theresa	VP - MARKETING	F	2,711.54
Trina	VEN/LOY CUSTOMER SUPPORT REP	F	659.20

SkvMall, LLC

First Name Only (for privacy purposes)	Job Title (Employee)	Status	Estimated Accrued Payroll (1/17/15 to 1/21/15)
Valerie	SKYMALL CUSTOMER SUPPORT REP	F	659.20
William	WORKFORCE MGMT SUPERVISOR	F	544.27
William	SENIOR BUYER	F	2,769.28
Xin	SOFTWARE DEVELOPER	F	1,269.23
Yolanda	SKYMALL CUSTOMER SUPPORT REP	F	659.20

80,216.68

# EXHIBIT "C"



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

In re:  
SKYMALL, LLC,  
  
Debtor.

In Proceedings Under Chapter 11  
Case No. 2:15-bk-00679-BKM

Joint Administration pending with:  
  
XHIBIT CORP.,  
XHIBIT INTERACTIVE, LLC,  
FLYREPLY CORP.,  
SHC PARENT CORP.,  
SPYFIRE INTERACTIVE, LLC,  
STACKED DIGITAL, LLC, and  
SKYMALL INTERESTS, LLC.

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

This Pleading applies to:  
  
 All Debtors  
 Specified Debtors  
  
SKYMALL, LLC

**INTERIM ORDER GRANTING  
EMERGENCY MOTION FOR ENTRY  
OF INTERIM AND FINAL ORDERS  
UNDER 11 U.S.C §§ 105, 363, AND 507  
AUTHORIZING THE DEBTORS TO  
CONTINUE TO PAY PRE-PETITION  
WAGES, COMPENSATION, AND  
HONOR EMPLOYEE BENEFIT  
PLANS AND PROGRAMS**

This matter came before the Court on the *Emergency Motion for Entry of Interim and Final Orders Under 11 U.S.C. §§ 105, 363, and 507 Authorizing the Debtors to Continue to Pay Pre-petition Wages, Compensation, and Honor Employee Benefit Plans and Programs* [Docket

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

11 1. The Motion is GRANTED in its entirety on an interim basis.

12 2. SkyMall is authorized to honor any Final Paychecks, Final IT Employee  
13 Payments, and any Commission Checks that did not clear the SkyMall Payroll Accounts prior to  
14 the Petition Date.

15 3. SkyMall is authorized to pay the payment due on the next regularly occurring  
16 Payroll Period in the full amount of the Stub Wages due to each employee for the Prepetition Stub  
17 Payroll Period.

18 4. SkyMall is authorized to transmit to Paychex the Withholding Obligations related  
19 to such Prepetition Stub Payroll Period if not previously remitted to Paychex.

20 5. SkyMall is authorized, but not directed, to honor the pre-Petition Date Employee  
21 Benefits program obligations, pay any unpaid costs related thereto and continue to offer the pre-  
22 Petition Date Employee Benefits program post-petition.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in  
the Motion.

1           6. SkyMall is authorized, but not directed, to honor the pre-Petition Date accrued  
2 PTO, severance package, and Non-Insider Bonuses to employees in the ordinary course of  
3 business.

4           7. SkyMall is authorized, but not directed or required, to effectuate the payments and  
5 other obligations set forth in the Motion, and SkyMall is permitted to retain all discretion  
6 pursuant to management’s business judgment to make or not make such payments, and in all  
7 instances subject to the condition that funds are available to make such payments.

8           8. Other than the Debtors, no person shall have personal liability or become  
9 personally liable for any amounts authorized for payment under this Interim Order.

10          9. This Court retains jurisdiction with respect to all matters arising from or related to  
11 the implementation and interpretation of this Interim Order.

12          10. A final hearing on the Motion and this Interim Order shall be held on  
13 \_\_\_\_\_, 2015 at \_\_\_\_\_ prevailing Arizona Time before this Court. Any party in  
14 interest may file an objection (an “**Objection**”) to the relief sought in the Motion on or before  
15 \_\_\_\_\_, 2015 (the “**Objection Deadline**”); provided, however, that such party shall  
16 file and serve written objections upon (i) SkyMall, LLC, 1520 E. Pima Street, Phoenix, AZ  
17 85034, (Attn: Scott Wiley); (ii) Quarles & Brady LLP, One Renaissance Square, 2 N. Central  
18 Avenue, Phoenix, AZ 85004, (Attn: John A. Harris, Esq.); (iii) the Office of the United  
19 States Trustee for the District of Arizona, 230 N. First Avenue, Suite 204, Phoenix, AZ  
20 85003; (iv) the entities listed on each of the Debtors’ respective List of Creditors Holding the  
21 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d) or counsel for any  
22 statutory committee appointed under § 1102; and (v) the employees and Paychex. Such  
23 Objection shall be filed with the Clerk of the United States Bankruptcy Court, District of Arizona  
24 to allow actual receipt by the foregoing no later than at noon prevailing Arizona Time on the  
25 Objection Deadline.

26                                                           **DATED AND SIGNED AS INDICATED ABOVE**