

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re:	:	
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SHILOH INDUSTRIES, INC.,	:	Chapter 11
<i>et al.</i> , <sup>1</sup>	:	
	:	Case No. 20-____ (____)
Debtors.	:	(Joint Administration Requested)
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**MOTION OF THE DEBTORS FOR INTERIM AND FINAL  
ORDERS (I) APPROVING THE CONTINUED USE OF THE DEBTORS'  
CASH MANAGEMENT SYSTEM AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors (collectively, the "Debtors"), pursuant to sections 345, 363 and 503(b)(1) of title 11 of the United States Code (the "Bankruptcy Code"), hereby move (the "Motion") for the entry of interim and final orders substantially in the form attached hereto as Exhibit A (the "Proposed Order") (i) approving the Debtors' continued use of (a) their current cash management system (as herein defined and as such system may be augmented as a result of proposed debtor in possession financing) and (b) the Debtors' existing bank accounts and business forms, including, authorizing the Debtors to open and close bank accounts; (ii) granting the Debtors a 30-day extension to comply with the requirements of section 345(b) of the Bankruptcy Code; (iii) authorizing all banks participating in the Cash Management

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<sup>1</sup> The Debtors are the following nineteen entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Shiloh Industries, Inc. (7683), Greenfield Die & Manufacturing Corp. (8114), Jefferson Blanking Inc. (7850), Shiloh Automotive, Inc. (1339), Shiloh Corporation (5101), Shiloh Industries, Inc. Dickson Manufacturing Division (5835), Shiloh Holdings International, Inc. (1446), C & H Design Company (9432), Liverpool Coil Processing, Incorporated (0571), Medina Blanking, Inc. (0707), The Sectional Die Company (3562), VCS Properties, LLC (1094), Shiloh Die Cast LLC (5814), Shiloh Manufacturing Holdings LLC (0853), FMS Magnum Holdings LLC (6471), Sectional Stamping, Inc. (8967), Albany-Chicago Company LLC (4687), Shiloh Die Cast Midwest LLC (4114), and Shiloh Manufacturing LLC (1628). The noticing address of each of the Debtors in these chapter 11 cases is 880 Steel Drive, Valley City, Ohio 44280.

System (as herein defined) to honor certain transfers and charge bank fees and certain other amounts; (iv) permitting continued intercompany funding and granting administrative expense priority status to postpetition intercompany claims held by a Debtor against one or more of the other Debtors; and (v) granting such other relief as may be appropriate. In support of this Motion, the Debtors incorporate the statements contained in the *Declaration of Jeffrey Ficks in Support of First-Day Pleadings* (the "First Day Declaration") filed contemporaneously herewith and further respectfully state as follows:

### **Background**

#### **I. The Debtors and the Commencement of These Cases**

1. On the date hereof (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of the Bankruptcy Code.<sup>2</sup> The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 108 of the Bankruptcy Code. By a motion filed on the Petition Date, the Debtors have requested that their chapter 11 cases be consolidated for procedural purposes only and administered jointly.

2. The Debtors are a global innovative solutions provider focusing on lightweighting technologies that provide environmental and safety benefits to the mobility market. The Debtors have a global network of manufacturing operations and technical centers in Asia, Europe and North America. The Debtors' multi-material solutions consist of a variety of alloys in aluminum, magnesium and steel grades, along with proprietary lines of noise and vibration reducing acoustic laminate products. The Debtors' deliver these solutions in body

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<sup>2</sup> This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. § 1409.

structure, chassis and propulsion systems to original equipment manufacturers ("OEMs") and "Tier 1" suppliers in the automotive and commercial vehicle markets. For the twelve months ending October 31, 2019, the Debtors generated approximately \$1.045 billion in revenue.

3. Additional detail regarding the Debtors, their businesses and the commencement of these cases is set forth in the First Day Declaration.

## **II. The Debtors' Cash Management System**

4. In the ordinary course of business, the Debtors utilize a single account with CIBC Bank USA (herein "CIBC US," ending in x1917) as their concentration account (the "Concentration Account"). The Concentration Account operates as the focal point of the Debtors' cash management system. For purposes of this Motion, the Concentration Account, the Debtor's additional Bank Accounts (as herein defined and described below) including, without limitation those at CIBC-US, any additional bank accounts opened from time to time as permitted pursuant to this Motion, and the related processes and procedures utilized by the Debtors in the day to day management of monetary receipts, collections, and disbursements, intercompany or otherwise as described in this Motion, (including, without limitation, the Payee Positive Pay service, and the ACH Positive Pay service provided to the Debtors by CIBC-US), are referred to collectively as the "Cash Management System"). The Cash Management System is used on a daily basis in the Debtors' operations and funds the Debtors' domestic operations.

5. In addition to the Concentration Account, the Debtors maintain approximately seven other bank accounts (exclusive of the accounts in the names of any non-debtor subsidiaries) in the ordinary course of their business, including, without limitation, various deposit accounts and disbursement accounts at CIBC-US (collectively, with the Concentration Account, the "Bank Accounts"). From these accounts, the Debtors manage their daily cash receipts and disbursements. The Debtors maintain each of the Bank Accounts at

financial institutions insured by the Federal Deposit Insurance Corporation (the "FDIC") and for purposes of this Motion, such financial institutions, including without limitation CIBC-US, are sometimes referred to collectively as the "Banks". The Debtors use most of these Bank Accounts to collect, transfer and disburse funds generated from operations on a daily basis and record such collections, transfers and disbursements.<sup>3</sup> The following is a more detailed description of the Bank Accounts and the Cash Management System:

- (a) **The Concentration Account.** The Concentration Account is the focal point of the Cash Management System. The Debtors utilize the Concentration Account as their central cash concentration account. The Debtors sweep funds held in the other Depository Account (as defined below) into the Concentration Account on a daily basis. The Concentration Account also receives direct payments from certain customers and holds the proceeds from draws under the Debtors' prepetition credit facility (the "Prepetition Credit Facility"). Finally, the Debtors use the Concentration Account to make direct disbursements to vendors, utility providers, healthcare providers, freight service providers and other payees and interest payments due under the prepetition credit facility.
- (b) **Depository Account.** In addition to the Concentration Account, a CIBC US account ending in x1933 also receives payments from customers (the "Depository Account"). The Depository Account each day automatically transfers any funds received to the Concentration Account, thus ending each day with a zero balance.
- (c) **Lockbox Account.** Like the Depository Account, the Debtors also maintain a lockbox account through CIBC US, ending in x1863 (the "Lockbox Account"), into which checks are deposited for remittance of payment to the Debtors by customers who still utilize physical checks. Once such checks clear, the Lockbox Account automatically transfers amounts therein to the Concentration Account, ending each day with a zero balance. Very few customers currently use physical checks for payment, so the Debtors are in the process of closing the Lockbox Account.
- (d) **Disbursement Accounts.** In addition to the Concentration Account, the Debtors also utilize several of their other Bank Accounts specifically for disbursements, including accounts with CIBC US ending in x0431 and x0423 and an account with Bank of America ending in x1200 (collectively, the "Disbursement Accounts"). The Disbursement Accounts are zero balance accounts. They are funded daily through transfers from the Concentration Account and, thus, generally do not maintain any balance or receive trade receipts. In the event one

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<sup>3</sup> A chart summarizing the Cash Management System and a schedule of the Bank Accounts are attached hereto as Exhibits B and C, respectively.

of the Disbursement Accounts ends the day with a balance, such as when a payment is returned as undeliverable, such Disbursement Account's balance is swept back into the Concentration Account. The Debtors fund payroll, purchases and other necessary expenditures to maintain operations from the Disbursement Accounts. The Debtors have segregated the Disbursement Accounts to allow visibility into particular disbursements—e.g., payroll disbursements.<sup>4</sup>

- (e) **Maquiladora Account.** An additional Bank Account with CIBC US, ending in x9826 (the "Maquiladora Account"), is manually funded by the Concentration Account in order to pay utilities and payroll at the Debtors' Celaya Plant, located in Celaya, Guanajuato, Mexico (the "Maquiladora Facility"), which is owned and operated, respectively, by Foreign Subsidiaries<sup>5</sup> Radar Stamping Technologies S. de R.L. de C.V. and Radar Servicios Celaya S. de R.L. de C.V. (together, the "Maquiladora Subsidiaries"). The Maquiladora Account, which is owned by Debtor Shiloh Manufacturing LLC, transfers funds to an account with Banorte, ending in x2644 owned by Radar Servicios Celaya S. de R.L. de C.V., which the Maquiladora Subsidiaries use to make payroll and pay for other necessary utilities and services at the Maquiladora Facility. Additional detail on the Debtors' ordinary course transactions with the Maquiladora Subsidiaries are set forth below.
- (f) **Investment Account.** The Debtors maintain a separate investment account with BMO Harris Bank, ending in x3890 (the "Investment Account"). The Investment Account invests exclusively in money market securities from cash held on hand. At this time, the Investment Account contains no funds, as the Debtors use excess cash to pay down outstanding amounts under the Prepetition Credit Facility. Accordingly, the Debtors will close this account shortly after the Petition Date.

### III. Transactions Between the Debtors and Foreign Subsidiaries

#### A. General Overview

6. Due to the structure of the Cash Management System, the Debtors are able to administer and account for collection, concentration and disbursement of funds resulting from the issuance of intercompany loans, providing of shared services and intercompany sales.

In general, these transactions (collectively, the "Intercompany Transactions") occur (i) between

<sup>4</sup> Prior to the Petition Date, the Debtors sought to close one account with Bank of America (ending in x6723) and one account with Associated Bank (ending in x4076); however, the Debtors had not formally closed these accounts prior to the commencement of these chapter 11 cases. Nevertheless, the Debtors intend to close these accounts in the near term, so they are no longer active within the Cash Management System.

<sup>5</sup> The term "Foreign Subsidiaries" relates to all foreign subsidiaries owned directly or indirectly by the Debtors in these cases, none of which are initiating insolvency proceedings with the Debtors.

the Debtors as well as (ii) to and from (A) the Debtors and (B) each of the Foreign Subsidiaries located in Mexico, including (1) the Maquiladora Subsidiaries, (2) Shiloh Internacional, S.A. de C.V. and (3) Shiloh de Mexico S.A. de C.V. (the Foreign Subsidiaries located in Mexico, collectively, the "Mexican Subsidiaries").<sup>6</sup> Such Intercompany Transactions result in the creation of intercompany payables and receivables between and among the various Debtors and Mexican Subsidiaries, which historically have not been cash settled, but which the Debtors are able to fully trace in their enterprise resource planning system to ensure such transactions are fully reconciled in the individual entity's books and records.<sup>7</sup>

7. Due to the Debtors' use of the Concentration Account, cash pooling and consolidated receipt and disbursement system, individual Debtors may sometimes "borrow" funds from other Debtors, if necessary, to meet obligations as they come due, resulting in the creation of an intercompany loan. Although the Debtors' Cash Management System allows for intercompany loans between the Debtors and the Foreign Subsidiaries, such loans are rarely made to the Foreign Subsidiaries (including the Mexican Subsidiaries), and the Debtors do not seek authority to make any such intercompany loans other than between Debtors by this Motion.

8. Additionally, the Debtors allocate, (i) amongst themselves and (ii) to the Mexican Subsidiaries, certain costs related to various centralized administrative activities, including, among others, payment of accrued interest incurred on amounts borrowed under the Credit Agreement, insurance payments, enterprise resources planning services and

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<sup>6</sup> Shiloh Internacional, S.A. de C.V. and Shiloh de Mexico S.A. de C.V. are the "Saltillo Subsidiaries." The Saltillo Subsidiaries own and operate the Saltillo Plant, located in Ramos Arizpe, Coahuil, Mexico (the "Saltillo Plant"), which is an independent manufacturing facility that does not operate pursuant to the Maquiladora Program and, therefore, is not incorporated into the Debtors' operations in the same manner as the Maquiladora Facility's operations.

<sup>7</sup> Unless otherwise specified herein, there are few instances of transactions between the Debtors and the other Foreign Subsidiaries that do not involve the Mexican Subsidiaries. To the extent any transactions occur with these other Foreign Subsidiaries, they are de minimis and can be fully traced.

information technology systems and licenses. The Debtors make these allocations pursuant to certain formula specific to the particular services being allocated. Ultimately, all such allocations are fully traceable and allocated to each relevant entities' books and records for accounting purposes, though they have historically not been cash settled by the Mexican Subsidiaries other than on an *ad hoc* basis. Furthermore, although the Foreign Subsidiaries (exclusive of the Mexican Subsidiaries) generally have their own, separate shared services hub, these other Foreign Subsidiaries provide the Debtors and the Mexican Subsidiaries with support related to the administration of accounts payable and receivable, which result in intercompany payables by the Debtors and the Mexican Subsidiaries. The intercompany payable owed by the Debtors on account of such services is not currently cash settled.

9. Finally, the intercompany sales primarily occur amongst the Debtors; however, the Debtors also engage in certain intercompany sales with the Maquiladora Subsidiaries, which is discussed further below.<sup>8</sup> Any intercompany sale between and amongst the Debtors is wholly traceable and accounted for on each individual Debtor's books and records as either an account receivable or an account payable, as the case may be.

#### **B. The Maquiladora Subsidiaries**

10. The Intercompany Transactions with the Maquiladora Subsidiaries are of vital importance to the Debtors. The Maquiladora Facility is a "stamping facility" that ships all of its products to Debtor Shiloh Manufacturing LLC's facility located in Warren, Michigan,

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<sup>8</sup> During fiscal year 2019, the Debtors also engaged in intercompany sales with certain of the Foreign Subsidiaries, including the Saltillo Subsidiaries and Foreign Subsidiaries located in the Netherlands, Poland and Sweden. Any intercompany sales between the Debtors and such Foreign Subsidiaries, however, accounted for only approximately 0.2% of the Debtors' total sales during fiscal year 2019 and are not anticipated to be material going forward. Such sales are fully traceable and accounted for on the Debtors' books and records and have historically been netted against any outstanding intercompany payables, which practice will continue in the ordinary course in the future.

as the Maquiladora Facility's only customer. Due to this structure, the Maquiladora Subsidiaries are wholly integrated into the Debtors' businesses and operations. The use of this Maquiladora structure provides a significant cost savings to the Debtors, as it allows them to utilize lower cost manufacturing facilities in Mexico without paying the taxes and governmental fees normally associated with sending goods to, and receiving goods from, Mexico. The Maquiladora structure generally allows for the duty-free importation of all machinery, equipment, raw materials, replacement parts and tools used by a non-Mexican firm in the assembly and processing operation located in Mexico.

11. In connection with the Maquiladora structure, Shiloh Industries, Inc., negotiates with—and directly pays—the Maquiladora Facility's necessary vendors, which then deliver the purchased materials directly to the Maquiladora Facility for processing. In addition to paying vendors directly, the Maquiladora Subsidiaries also invoice the Debtors on a periodic basis for amounts necessary for the Maquiladora Facility to make payroll and pay local utility and service providers. The Maquiladora Subsidiaries also include in this invoice approximately a 5% markup on these local expenses. The Debtors transfer amounts necessary to satisfy these local expenses to the Maquiladora Account, which then transfers the money to the Maquiladora Subsidiaries' local bank account. On average, the Debtors provide the Maquiladora Subsidiaries approximately \$250,000 to \$400,000 per month, of which approximately \$12,500 to \$20,000 constitutes the markup for the operations and benefits provided thereby.

12. The products that the Maquiladora Facility provides are essential to the Debtors' operations. Any replacement of the products through re-sourcing or otherwise would materially disrupt the Debtors' operations in the near term and cause significantly higher production costs than the Debtors' continued use of the Maquiladora structure. As such,



the continued funding of the Maquiladora Facility is necessary to allow the Debtors to complete a going concern transaction.

**Basis for Relief Requested**

**I. The Continued Use of the Cash Management System, Bank Accounts and Business Forms Is Essential to the Debtors' Ongoing Business and Is in the Best Interests of the Debtors' Respective Estates and Creditors**

**A. Cash Management System**

13. The Debtors have utilized their existing Cash Management System for many years. It is an essential component of their accounting and reporting systems and constitutes a customary and essential business practice in the Debtors' day to day operations. In its current form, the Cash Management System enables the Debtors to (i) control and monitor corporate funds, including the ability to facilitate transfers between the Debtors and the Mexican Subsidiaries, (ii) ensure cash availability and (iii) reduce administrative expenses by facilitating the movement of funds. These benefits are especially important here given the significant volume of cash transactions managed through the Cash Management System.

14. Absent receiving the relief requested herein, the United States Trustee guidelines (the "UST Guidelines") would require the Debtors to (i) close all existing bank accounts and open new debtor-in-possession accounts and (ii) maintain separate debtor-in-possession accounts for certain items.<sup>9</sup>

15. Notwithstanding the UST Guidelines, bankruptcy courts routinely permit chapter 11 debtors to maintain their existing cash management systems, generally treating requests for such relief as a relatively "simple matter." In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In granting such relief, courts recognize that an integrated cash

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<sup>9</sup> See UST Guidelines, pp. 1-2, available at [https://www.justice.gov/ust-regions-r03/file/ch11opguide\\_de.pdf](https://www.justice.gov/ust-regions-r03/file/ch11opguide_de.pdf).

management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." In re Columbia Gas Sys., 136 B.R. 930, 934 (Bankr. D. Del. 1992), aff'd in relevant part, 997 F.2d 1039, 1061 (3d Cir. 1993); see also In re Columbia Gas Sys., 997 F.2d 1039, 1061 (3d Cir. 1993) (recognizing that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient"); Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.), 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing the debtors to use their prepetition "routine cash management system" was entirely consistent with applicable provisions of the Bankruptcy Code).

16. The Debtors' request for authorization to continue to use their Cash Management System is consistent with section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to "use property of the estate in the ordinary course of business, without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363(c)(1) is intended to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business. See, e.g., In re Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992); see also In re Nellson Nutraceutical, Inc., 369 B.R. 787, 796 (Bankr. D. Del. 2007). Included within the purview of section 363(c) is a debtor's ability to continue the routine transactions necessitated by its cash management system. See Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10th Cir. 1996) (noting that certain postpetition transfers were "no more than a continuation of the routine transactions necessitated by the cash management systems the companies had adopted" and that a "debtor in possession under chapter 11 is generally authorized to continue operating its business") (citing 11 U.S.C. § 363(c)). Nevertheless, the Debtors have filed this Motion out of an abundance of caution, to the extent

any aspect of the Cash Management System could be considered as outside the ordinary course of business for purposes of section 363(c) of the Bankruptcy Code.

17. Further, the continued postpetition use of cash management systems also has been approved as a routine matter in other bankruptcy cases in this District.

See, e.g., In re FTD Companies, Inc., No. 19-11240 (LSS) (Bankr. D. Del. July 1, 2019) (allowing debtors to continue their existing cash management system) (the "FTD Order"); In re M & G USA Corp., Case No. 17-12307 (BLS) (Bankr. D. Del. June 22, 2018) (same) (the "M & G Order"); In re Tidewater Inc., Case No. 17-11132 (BLS) (Bankr. D. Del. June 13, 2017) (same) (the "Tidewater Order"); In re CST Industries Holdings Inc., Case No. 17-11292 (BLS) (Bankr. D. Del. July 13, 2017) (same) (the "CST Order"); In re Phoenix Brands LLC, Case No. 16-11242 (BLS) (Bankr. D. Del. June 15, 2016) (same) (the "Phoenix Brands Order").<sup>10</sup>

18. In light of the substantial size and complexity of the Debtors' operations, any disruption in the Cash Management System will hamper the Debtors' efforts to preserve and enhance the value of their estates through a going concern sale or other transaction.

For example, forcing the Debtors to close Bank Accounts or otherwise altering the Cash Management System will create risk that payments to key vendors and employees may be interrupted in the key, early stages of this case.

19. Moreover, the Debtors believe the existing Cash Management System is sufficiently flexible to allow the Debtors to fulfill reporting requirements associated with the filing of these cases. In addition, to protect against the possible inadvertent payment of

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<sup>10</sup> The unreported orders cited herein are not attached to this Motion. Copies of these orders are available upon request to proposed counsel to the Debtors.

prepetition claims, all of the Debtors will immediately advise their banks to refuse payment on checks issued prior to the Petition Date, except as otherwise expressly permitted by an order of the Court and directed by the Debtors. Importantly, the Debtors possess the capacity to draw the necessary distinctions between prepetition and postpetition obligations and payments without closing the Bank Accounts and opening new ones.

20. In sum, given the operational risk associated with making material modifications to the Cash Management System and the Debtors' confidence that the existing system is capable of generating the reporting necessary for the administration of these cases, there exists sufficient cause to allow the Debtors to continue utilizing their existing Cash Management System, including their existing Bank Accounts and related account numbers. Absent this relief, the UST Guidelines would require the Debtors to close all of their prepetition bank accounts and open new accounts. The cost and operational risk to the Debtors' operations that technical compliance with the UST Guidelines would create is unnecessary, because the Debtors' continued use of the existing Cash Management System causes little, if any, risk of loss to the Debtors' creditors and other constituents in these cases.

21. The Debtors further seek authority to implement ordinary course changes to their Cash Management System, including any changes made as a result of proposed debtor-in-possession financing, as the Debtors may determine that such changes to the Cash Management System are beneficial to their business; provided that any such changes are in accord with the terms and conditions of any underlying agreements relating to the Cash Management System that may exist from time to time between the Debtors and the affected Banks.

22. As part of any ordinary course changes, the Debtors request authority to open and close bank accounts, including accounts with the Banks in accordance with, and pursuant to the terms and conditions of, any underlying agreements relating to the Cash Management System that may exist from time to time between the Debtors and the affected Banks and subject to the terms and conditions of the proposed debtor in possession financing documents; provided that the Debtors will give notice to the U.S. Trustee, any official committees appointed in these chapter 11 cases and counsel to the Debtors' proposed postpetition secured lenders, prior to opening or closing any such bank account. The Debtors request that the Banks, or other banks as set forth herein, be authorized, but not directed, to honor the Debtors' requests to open or close any accounts, provided, however, that any new domestic account is established at a bank insured with the FDIC and that is organized under the laws of the United States or any State therein, or in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, the Debtors shall open any such new bank account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such agreement.

**B. Business Forms**

23. In the ordinary course of their businesses, the Debtors use a multitude of checks and other business forms. By virtue of the nature and scope of the Debtors' business operations and the large number of suppliers of goods and services with whom the Debtors deal on a regular basis, it is important that the Debtors be permitted to continue to use their existing checks and other business forms without alteration or change. Pursuant to Rule 2015-2(a) of the Local Rules for the Bankruptcy Court for the District of Delaware (the "Local Rules"), and to avoid disruption of the Cash Management System and unnecessary expense, the Debtors request that they not be required to include the legend "Debtor-in-Possession" and the corresponding

bankruptcy case number on any business forms or checks. Once the Debtors' existing stock of checks runs out, the Debtors will add the designation "Debtor-in-Possession" and the corresponding bankruptcy case number to newly ordered checks.

24. Absent this relief, the estates will be required to bear potentially significant and unnecessary expenses, which the Debtors respectfully submit is unwarranted. Because parties that presently conduct business with the Debtors likely will be aware of the Debtors' status as debtors in possession, the alteration of the Debtors' checks and business forms would be unnecessary and unduly burdensome.

25. Courts in this District have approved similar relief in other chapter 11 cases. See, e.g., FTD Order (authorizing debtors to continue to use their existing business forms and checks without alteration or change); M & G Order (same); Tidewater Order (same); CST Order (same); Phoenix Brands Order (same).

**C. The Court Should Allow the Debtors 30 Days to Comply With the Requirements of Section 345(b) of the Bankruptcy Code**

26. The Debtors seek an initial 30-day extension from the Petition Date to:

(a) comply with the requirements of section 345(b) of the Bankruptcy Code and complementary requirements contained in the UST Guidelines<sup>11</sup> (or make such other arrangements as agreed to with the U.S. Trustee); or (b) seek a further extension or final waiver of the requirements.

27. Pursuant to section 345(b) of the Bankruptcy Code, for any deposit or other investment made by a debtor (except those insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit

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<sup>11</sup> See UST Guidelines, p. 2 ("If the [debtor's] aggregate [account] balances with any one financial institution are expected to exceed the current FDIC insurance limits of \$250,000.00 per depositor, the debtor must immediately contact the United States Trustee to discuss how the debtor plans to comply with the Bankruptcy Code Section 345 requirement concerning the collateralization of uninsured deposits.").

of the United States), the U.S. Trustee shall require from the debtor either (a) a bond in favor of the United States that is secured by the undertaking of a corporate surety approved by the U.S. Trustee or (b) the deposit of securities of the kind specified in section 9303 of Title 31 of the United States Code.

28. Section 345(b) of the Bankruptcy Code provides further, however, that a bankruptcy court may allow the use of alternatives to these approved investment guidelines "for cause." 11 U.S.C. § 345(b)(2); see also In re Serv. Merch. Co., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999). In Service Merchandise, the court identified the following factors as a guide for determining whether "cause" exists to waive the requirements of section 345(b) of the Bankruptcy Code:

- (a) the sophistication of the debtor's business;
- (b) the size of the debtor's business operations;
- (c) the amount of investments involved;
- (d) the bank ratings of the financial institutions where the debtor's funds are held;
- (e) the safeguards in place within the debtor's own business for ensuring the safety of the funds;
- (f) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (g) the benefit to the debtor of current practices;
- (h) the harm, if any, to the estate; and
- (i) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case.

Serv. Merch., 240 B.R. at 896. Examining these factors, the Service Merchandise court concluded that "cause" existed, because the debtors were "large, sophisticated [companies] with a complex cash management [system]" that had the ability to shift money as needed to ensure the

safety of their funds. Id. Moreover, the benefits to the debtor of waiving the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to waive the requirements "would [have] needlessly handcuff[ed] the[] debtors' reorganization efforts." Id. at 896–97.

29. As in Service Merchandise and chapter 11 cases in which courts in this District have granted requests for approval of the continued use of prepetition deposit guidelines, the Debtors are large, sophisticated companies with a complex Cash Management System. The Debtors' domestic Bank Accounts are with stable banks, each insured by the FDIC, and the Debtors' foreign bank accounts are with large, highly regulated banks.

30. Local Rule 2015-2(b) provides that if a motion for a waiver under section 345(b) of the Bankruptcy Code is filed on the first day of the case and there are more than 200 creditors—as is the case here—the court may grant an interim waiver. In light of the safety of the Debtors' Bank Accounts, the Debtors respectfully request that, to the extent their practices do not comply with the requirements of section 345(b) of the Bankruptcy Code, the Court extend the Debtors' time to comply with section 345(b) to 30 days from the Petition Date, without prejudice to the Debtors' ability to seek a further or final waiver of those requirements. During the extension period, the Debtors will engage in discussions with the U.S. Trustee and any statutory committee appointed in these chapter 11 cases to determine whether modifications to their banking practices are appropriate under the circumstances.

31. Courts in this District have approved similar relief in other chapter 11 cases. See, e.g., FTD Order (final order granting extension of 30 days from the petition date); In re Diesel USA, Inc., Case No. 19-10432 (MFW) (Bankr. D. Del. Apr. 3, 2019) (final order granting extension of 45 days from entry of order, i.e., 74 days from the petition date); In re



Egalet Corp., Case No. 18-12439 (BLS) (Bankr. D. Del. Nov. 29, 2018) (final order granting extension of 60 days from the petition date); In re Gulfmark Offshore, Inc., Case No. 17-11125 (KG) (Bankr. D. Del. May 18, 2017) (interim order granting extension of 45 days from entry of the order, i.e., 46 days from the petition date, before final order granted a full waiver).

**II. The Court Should Authorize Banks Participating in the Cash Management System to Honor Certain Transfers and Charge Bank Fees and Certain Other Amounts**

32. Contemporaneously with the filing of this Motion, the Debtors have filed various motions for authorization to pay certain prepetition obligations in the ordinary course of business. With respect to certain of these obligations, prior to the Petition Date, the Debtors issued checks that have yet to clear the banking system. With respect to other obligations, the Debtors intend to issue checks postpetition on account of such prepetition debt once the Court enters an order permitting the Debtors to take such action, and to inform the Banks as to which prepetition checks they should honor pursuant to orders of the Court authorizing such payment.

33. As a result of the foregoing, the Debtors request that their Banks be authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH transfers (each, a "Disbursement") should be honored or dishonored consistent with any order of this Court and governing law, whether such Disbursements are dated prior to, on or subsequent to the Petition Date; provided, however, that, to the extent the Debtors direct the Banks to dishonor any Disbursements or the Banks inadvertently dishonor any Disbursements, the Debtors may issue a replacement Disbursement consistent with the orders of this Court. Pursuant to the relief requested in this Motion, the Banks will not be liable to any party, including, without limitation, the Debtors and their estates, on account of (i) following the Debtors' instructions or representations as to any order of this Court, (ii) the honoring of any

Disbursement in a good faith belief that the Debtors or the Court has authorized such prepetition Disbursement to be honored or (iii) an innocent mistake made despite the Bank's implementation of normal and customary item-handling and clearing procedures in respect of Disbursements. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

34. Finally, the Debtors request authority for the Banks to charge—and the Debtors to pay or honor—both prepetition and postpetition service and other fees, costs, charges and expenses to which the Banks may be entitled under the terms of, and in accordance with, their contractual arrangements with the Debtors (collectively, the "Bank Fees"), and that the Banks be authorized to effectuate payment of the Bank Fees in accordance with the terms of such agreements, including, without limitation, by setoff against the Bank Accounts to the extent provided in such agreements. The Debtors also request the Banks be authorized to charge back returned items to the Bank Accounts in the normal course of business. The Debtors require this relief to minimize the disruption of the Cash Management System and their Bank Accounts and to assist them in accomplishing a smooth transition to operating in chapter 11.

35. Authority for debtors to pay bank fees and banks to charge back returned items has been routinely granted in other chapter 11 cases. See, e.g., FTD Order (authorizing the debtor's banks to honor certain transfers, charge certain fees and charge back returned items); In re Diesel USA, Case No. 19-10432 (MFW) (Apr. 3, 2019) (same); In re The Bon-Ton Stores, Inc., Case No. 18-10248 (MFW) (Mar. 6, 2018) (same); In re Charming Charlie Holdings Inc., Case No. 17-12906 (CSS) (Jan. 10, 2018) (same).

**III. Permitting Continued Intercompany Transactions (Including with Mexican Subsidiaries) and Granting Administrative Expense Status to Intercompany Obligations is Appropriate**

36. As described above, a variety of ordinary course Intercompany Transactions are central to the Debtors' operations, including related to intercompany loans, shared services and sales. It is, therefore, imperative that the Debtors be permitted to continue to engage in the Intercompany Transactions (and, especially those with the Maquiladora Subsidiaries) during the pendency of the Debtors' chapter 11 cases.

37. Pursuant to section 363(c)(1) of the Bankruptcy Code, a debtor in possession "may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business ... and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The Debtors enter into and perform under the Intercompany Transactions "in the ordinary course of business" within the meaning of section 363(c)(1) of the Bankruptcy Code. The Debtors thus believe that they do not require the Court's approval to continue entering into and performing under the Intercompany Transactions. Nonetheless, out of an abundance of caution, the Debtors request express authority to engage in such transactions postpetition.

38. As described above, the Debtors and the Mexican Subsidiaries record all Intercompany Transactions and allocate expenses to the appropriate entities, which, although not cash settled, are completely accounted for on the various entities' books and records. Further, the Intercompany Transactions are integral to the Debtors' ability to operate their businesses and provide significant benefits to the Debtors, such as reducing certain administrative costs by authorizing the inexpensive borrowing of intercompany funds and the provision of critical services. By contrast, a discontinuation of the Intercompany Transactions would disrupt the Cash Management System and related administrative controls and would deprive the Debtors of

critical benefits—all to the detriment of the Debtors and their estates. Accordingly, the Debtors submit that the continuation of the Intercompany Transactions is in the best interests of the Debtors' respective estates and creditors.

39. In particular, the Intercompany Transactions with the Maquiladora Subsidiaries are particularly necessary in order to avoid disruption of the Debtors' business operations, due to the dedicated supply stream provided thereby. The Debtors collect all revenues from the operation of the Maquiladora Facility, and, therefore, the Maquiladora Subsidiaries are wholly reliant upon the Debtors to continue funding their operations. If the Debtors are unable to continue funding the Maquiladora Subsidiaries, the Maquiladora Facility will not be able to function in the ordinary course, and the Debtors will lose this dedicated supply of components. Stated simply, the Debtors' ability to consummate a going concern transaction in these cases is dependent upon the Maquiladora Facility's ability to operate in the ordinary course.

40. As described above, continuing the Intercompany Transactions (including those necessary to preserve their Maquiladora structure) will allow the Debtors to preserve their operations and going concern value. If the Court authorizes the continuation of the Intercompany Transactions, at any given time there may be balances due and owing among Debtors and between Debtors and non-Debtor affiliates. The Debtors will continue to maintain records of all Intercompany Transactions and current intercompany accounts receivable and payable. Moreover, the Debtors possess the capacity to draw the necessary distinctions between prepetition and postpetition obligations and payments, including those related to the Intercompany Transactions. The Debtors will continue to maintain such records during these chapter 11 cases.

41. In addition, the Debtors respectfully request that, pursuant to section 503(b)(1) of the Bankruptcy Code, all claims arising after the Petition Date as a result of Intercompany Transactions (collectively, the "Intercompany Claims") between Debtors be accorded administrative expense priority status, as such transfers represent extensions of intercompany credit. According administrative expense priority status to the Intercompany Claims will ensure that each individual Debtor using funds from the Cash Management System will continue to bear ultimate repayment responsibility for such borrowings, thereby protecting the interests of the Debtors' creditors.

42. Courts in this District have approved similar relief in other chapter 11 cases. See, e.g., FTD Order (allowing the debtors to continue intercompany transactions and granting administrative expense priority status to such intercompany transactions); M & G Order (same); Phoenix Brands Order (same).

#### **Requests for Immediate Relief and Waiver of Stay**

43. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek immediate entry of an order granting the Debtors (a) the authority to continue to pay Bank Fees and (b) a waiver of any stay of the effectiveness of such an order.

44. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition." Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." From this, courts have ruled that, where a failure to grant any such requested relief would result in

immediate and irreparable harm to a debtor's estate, a court may allow a debtor to pay all or part of a claim that arose prepetition immediately.

45. As set forth above and in the First Day Declaration, the continued use of the Bank Accounts, Cash Management System and business forms, the payment of Bank Fees and the continuation of ordinary course Intercompany Transactions are necessary to prevent the immediate and irreparable damage to the Debtors' operations. Accordingly, the Debtors submit that ample cause exists to justify: (a) the immediate entry of an order granting the relief sought herein pursuant to Bankruptcy Rule 6003(b); and (b) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) and the notice requirements of Bankruptcy Rule 6004(a), to the extent that they apply.

#### **Reservation of Rights**

46. Nothing contained herein is intended or shall be construed as:

- (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim, including the amount or priority thereof, on any grounds;
- (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim is of a type specified or defined hereunder; or (v) the assumption of any executory contract or unexpired lease.

#### **Consent to Jurisdiction**

47. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

#### **Notice**

48. Notice of this Motion shall be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Debtors' fifty largest unsecured creditors on a

consolidated basis, as identified in their chapter 11 petitions; (iii) counsel to the Debtors' proposed postpetition secured lenders; and (iv) the Banks. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request that the Court: (i) enter the Proposed Order, granting the relief requested herein on an interim basis; (ii) enter a final order, granting the relief requested herein on a final basis; and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: August 30, 2020  
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel J. DeFranceschi  
Daniel J. DeFranceschi (No. 2732)  
Paul N. Heath (No. 3704)  
Zachary I. Shapiro (No. 5103)  
David T. Queroli (No. 6318)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

-and-

Thomas M. Wearsch  
T. Daniel Reynolds  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Telephone: (216) 586-3939

Timothy W. Hoffmann  
JONES DAY  
77 West Wacker  
Chicago, Illinois 60601  
Telephone: (312) 782-3939

PROPOSED ATTORNEYS FOR DEBTORS



**Exhibit A**

**Proposed Order**



*Delaware*, dated February 29, 2012, (ii) venue is proper in this district pursuant to 28 U.S.C. § 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) notice of the Motion and the Hearing was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is necessary and essential for the Debtors' reorganization and such relief is in the best interests of the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to: (i) maintain the Cash Management System in substantially the same form as described in the Motion; (ii) implement ordinary course changes to their Cash Management System subject to the limitations and conditions described in the Motion; and (iii) open and close bank accounts subject to the limitations and conditions described in the Motion; provided, however, that notice of such opening or closing shall be provided within fifteen days to the Office of the United States Trustee, counsel to the Debtors' proposed postpetition secured lenders and any official committees appointed in these chapter 11 cases prior to opening or closing a bank account. Any new domestic bank account opened by the Debtors shall be established at an institution insured by the FDIC and that is organized under the laws of the United States or any State therein, or in the case of accounts that may carry a balance exceeding the insurance limitations set thereby, the Debtors shall open any such new bank account at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at such bank that is willing to immediately execute such agreement.
3. For all Banks at which the Debtors maintain Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within 15 days of the date of entry of

this Interim Order, the Debtors shall (i) contact each such Bank, (ii) provide each such Bank with each of the Debtor's employee identification numbers and (iii) identify each of their Bank Accounts held at such Banks as being held by a debtor in possession in a chapter 11 case.

4. For all Banks at which the Debtors maintain Bank Accounts that are not party to a Uniform Depository agreement with the U.S. Trustee (if any), the Debtors shall use good-faith efforts to cause such Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Interim Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

5. The Debtors are authorized to continue to use the Bank Accounts under existing account numbers without interruption; provided, however, that no checks issued against the Bank Accounts prior to the commencement of these chapter 11 cases shall be honored, except as otherwise authorized by an order of this Court and directed by the Debtors to the related Banks in accordance with the procedures described in the Motion.

6. The Debtors shall not be required to include the legend "Debtor in Possession" and the corresponding bankruptcy case number on existing checks or business forms; provided, however, that once a Debtor's existing checks have been used, that Debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy number on all checks; provided, further, however, that with respect to checks that a Debtor or its agents print themselves, that Debtor shall use reasonable efforts to print the "Debtor in Possession" legend and the jointly administered bankruptcy case number on such checks within ten (10) days of the date of entry of this Interim Order.

7. The Debtors are granted an initial 30-day extension from the Petition Date to: (i) comply with the requirements of section 345(b) of the Bankruptcy Code and related requirements set forth in the UST Guidelines (or make such other arrangements as agreed to with the U.S. Trustee); or (ii) seek a further extension or final waiver of the requirements.

8. The Banks are authorized to accept and honor all representations from the Debtors as to which Disbursements of the Debtors should be honored or dishonored consistent with any order of this Court and governing law, whether such Disbursements are dated prior to, on or subsequent to the Petition Date, provided that (a) sufficient funds are available in the Debtors' Bank Accounts to cover such Disbursements and, (b) to the extent the Debtors direct any Bank to dishonor any Disbursements or a Bank inadvertently dishonors any Disbursements, the Debtors may issue a replacement Disbursement consistent with the orders of this Court. The Banks shall not be liable to any party, including, without limitation, the Debtors and their estates, on account of: (i) following the Debtors' instructions or representations as to any order of this Court; (ii) the honoring of any prepetition Disbursement in a good faith belief that the Debtors or the Court has authorized such prepetition Disbursement to be honored; or (iii) an innocent mistake made despite the Bank's implementation of normal and customary item-handling and clearing procedures in respect of Disbursements.

9. The Banks are authorized to charge and the Debtors are authorized to pay or honor the Bank Fees related to the Bank Accounts. In connection with such payments the Banks are authorized to effectuate payment of the Bank Fees in accordance with the terms of their respective contractual arrangements with the Debtors, including without limitation all agreements relating to the Cash Management System agreements. Such payments may be effectuated by the Banks by setoff against the Bank Accounts to the extent provided in such

agreements. The Banks also are authorized to charge back returned items to the Bank Accounts in the normal course of business.

10. The Debtors are authorized, from and after the Petition Date, to continue to engage in Intercompany Transactions in the ordinary course of the Debtors' businesses, including Intercompany Transactions with the Mexican Subsidiaries (and, in particular, the Maquiladora Subsidiaries), provided, however, that the aggregate amount of Intercompany Transactions made by the Debtors to the Mexican Subsidiaries shall not exceed \$1.6 million on an interim basis absent further order of the Court. All Intercompany Claims held by one Debtor against another Debtor arising from postpetition Intercompany Transactions shall be entitled to administrative expense priority status pursuant to section 503(b)(1) of the Bankruptcy Code. In connection therewith, the Debtors shall continue to maintain current records with respect to all transfers of cash so that all transactions may be readily ascertained, traced and recorded properly on applicable intercompany accounts.

11. Notwithstanding anything contained herein, the Debtors shall calculate their quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor makes those disbursements.

12. Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim, including the amount or priority thereof, on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim is of a type specified or defined hereunder; or (v) the assumption of any executory contract or unexpired lease.

13. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Interim Order.

14. This Interim Order shall be immediately effective and enforceable upon its entry. To the extent that it may be applicable, the 14-day stay imposed by Bankruptcy Rule 6004(h) and any notice requirements of Bankruptcy Rule 6004(a) are hereby waived.

15. Notwithstanding anything to the contrary contained herein, (i) any payment made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order approving debtor-in-possession financing (a "DIP Order") and (ii) any claim for which payment is authorized pursuant to this Interim Order that is treated as an administrative expense of the Debtors' estates shall be and is subject and subordinate to any and all claims, liens, security interests and priorities granted to the DIP Agents (as defined in the DIP Order) in accordance with and subject to the terms of the applicable DIP Order, and payment on any such claim shall be subject to any and all restrictions on payments in the DIP Order and any other order of the Court authorizing the Debtors' use of cash collateral.

16. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

17. This court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Interim Order.

18. A final hearing to consider the relief requested in the Motion shall be held on \_\_\_\_\_, 2020, at \_\_\_\_\_ (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on or prior to \_\_\_\_\_, 2020 at \_\_\_\_\_ (prevailing Eastern Time).

**Exhibit B**

**Chart Summarizing the Cash Management System**

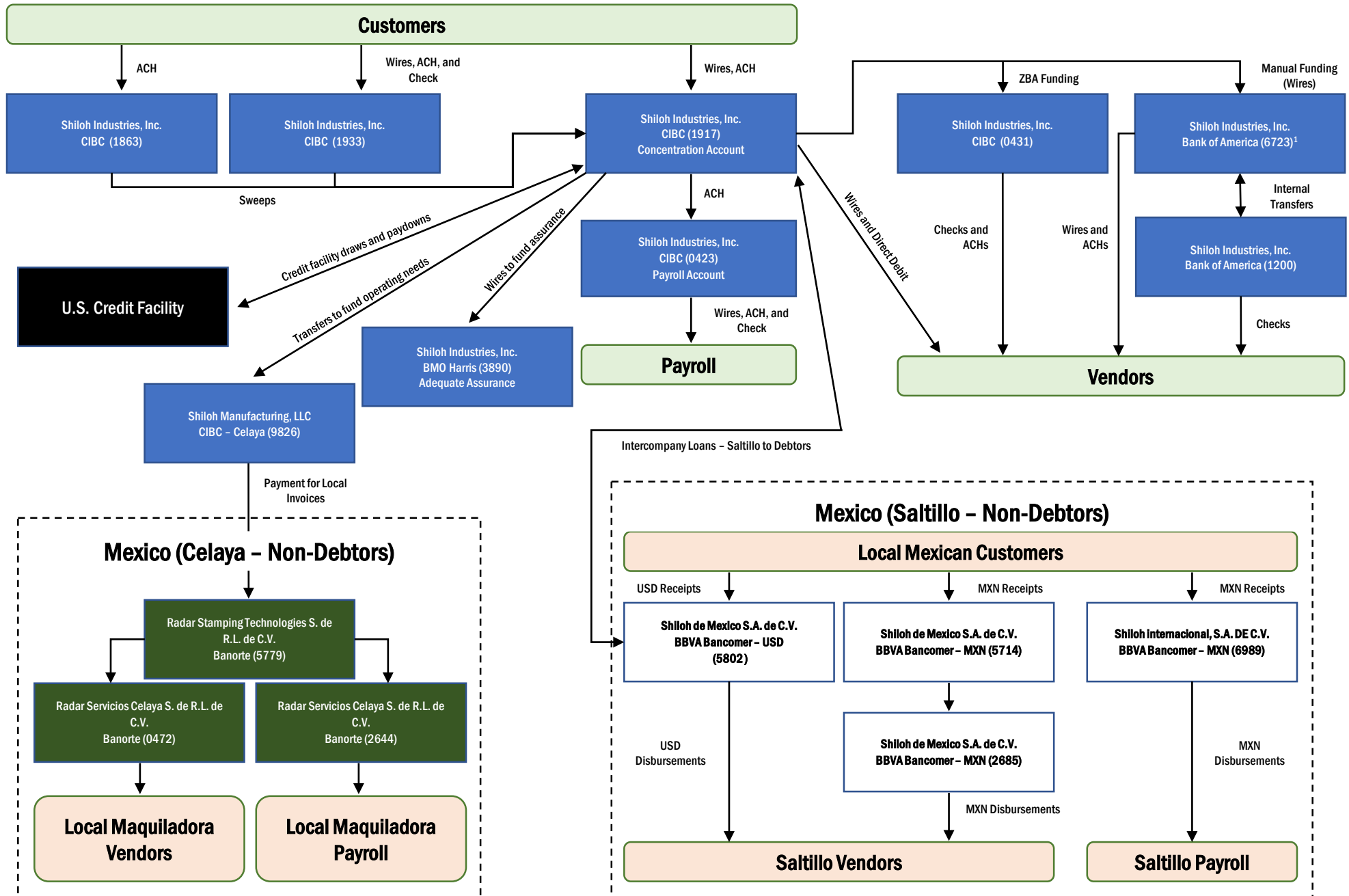


U.S. Debtor Accounts

Celaya (Non-Debtor)  
Checking Accounts

Saltillo (Non-Debtor)  
Checking Accounts

### North American Cash Management System



**Footnote:**

(1) Bank of America account ending 6723 is currently in the process of being closed.

**Exhibit C**

**Schedule of Bank Accounts**

<b>SUMMARY OF DEBTORS' BANK ACCOUNTS</b>				
	<b>ACCOUNT HOLDER</b>	<b>BANK</b>	<b>TYPE OF ACCOUNT</b>	<b>ACCOUNT #</b>
<b>1</b>	Shiloh Industries, Inc.	CIBC US	Concentration Account	****1917
<b>2</b>	Shiloh Industries, Inc.	CIBC US	Depository Account	****1933
<b>3</b>	Shiloh Industries, Inc.	CIBC US	Disbursement Account	****0431
<b>4</b>	Shiloh Industries, Inc.	CIBC US	Disbursement Account	****0423
<b>5</b>	Shiloh Industries, Inc.	Bank of America	Disbursement Account	****1200
<b>6</b>	Shiloh Manufacturing LLC	CIBC US	Maquiladora Account	****9826
<b>7</b>	Shiloh Industries, Inc.	CIBC US	Lockbox Account	****1863
<b>8</b>	Shiloh Industries, Inc.	BMO Harris Bank N.A.	Investment Account	****3890