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*Proposed Counsel to the Debtors  
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

	)	
In re:	)	Chapter 11
	)	
CICI'S HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 21-30146 (SGJ)
	)	
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Consideration Requested)
	)	

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER  
(I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES,  
OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE  
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: CiCi's Holdings, Inc. (5177); Awesome Acquisition Company (0481); CiCi Acquisition Company, LLC (N/A); CiCi Enterprises, LP (5070); CiCi GP, LLC (2948); CiCi Services, LLC (3586); JMC GP, LLC (8268); JMC Restaurant Distribution, LP (5075); and Pizza Parent, LLC (9534). The Debtors' principal offices are located at 1080 W. Bethel Road, Coppell, Texas 75019, United States.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)<sup>2</sup> respectfully state the following in support of this motion (this “Motion”):<sup>3</sup>

### **Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses on account of the Workforce Programs (as defined herein) and (ii) continue to administer the Workforce Programs in the ordinary course of business, including payment of prepetition obligations related thereto; and (b) granting related relief.

2. To minimize disruption to the Debtor’s business, the Debtors request authority to make the following payments related to the Workforce Programs (the “Workforce Obligations”) and continue to honor the Workforce Programs in the ordinary course of business on a postpetition basis and in a manner consistent with the Debtors’ prepetition policies and procedures:

### **Jurisdiction and Venue**

3. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court.

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<sup>2</sup> A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion are set forth in the *Declaration of Richard Peabody, Chief Financial Officer of CiCi’s Holdings, Inc. in Support of First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference.

<sup>3</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the First Day Declaration.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The bases for the relief requested herein are sections 105(a), 362(d), 363(b), 507(a), and 541(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and Rule 9013-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

### **Background**

6. The Debtors are leading owners, operators, and franchisors of family-oriented unlimited pizza restaurants. With approximately 318 locations across 26 states, including 11 owned restaurants and 307 franchise locations owned and operated by 128 franchisees, the CiCi’s brand is known as a “go-to” destination for family and other group outings through its wide variety of pizza, pasta, and salad bar items and cost-effective price point. Much like their competitors and nearly all other customer-facing businesses, the Debtors’ recent operations have been impacted by the uncertainty, unexpected challenges, and ever-changing landscape resulting from the COVID-19 pandemic. A more detailed history of the Debtors’ business, as well as their pre-petition efforts to address issues related to safe and efficient operations, franchisee relations, and liquidity issues, are discussed in more detail in the First Day Declaration.

7. On January 25, 2021 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

### **The Debtors' Workforce**

8. The Debtors' ability to preserve their businesses and successfully reorganize is dependent on the expertise and continued enthusiasm and service of their active employees (the "Employees"). As of the Petition Date, the Debtors employ approximately 132 Employees, of which 81 are employed on a full-time basis and 51 are employed on a part-time basis. Approximately 84 Employees are paid hourly (the "Hourly Employees") and approximately 48 Employees are paid a salary (the "Salaried Employees"). The Employees are neither represented by a union nor employed pursuant to a collective bargaining agreement or similar agreement.

9. In addition to the Employees, the Debtors from time to time retain specialized individuals on a temporary or a project basis (the "Independent Contractors") to assist with certain marketing functions. As of the Petition Date, the Debtors employ two Independent Contractors. The Independent Contractors are a critical supplement to the efforts of the Employees and provide the Debtors with the flexibility to adapt their work force to fluctuating labor needs. Furthermore, certain of these individuals are highly trained and have an essential working knowledge of the Debtors' business that the Debtors cannot easily replace.

10. The Employees and Independent Contractors perform a wide variety of functions critical to the administration of these chapter 11 cases and the Debtors' restructuring. The Employees and Independent Contractors are skilled personnel intimately familiar with the Debtors' business, processes, and systems. Many Employees and Independent Contractors have developed relationships with customers and vendors that are essential to the Debtors' business. Without the continued, uninterrupted services of the Employees and Independent Contractors, the Debtors' business operations will be halted and the administration of the estates materially impaired.

11. Additionally, the Employees and Independent Contractors rely on their compensation and benefits to pay their daily living expenses and other necessities. These individuals could experience significant hardship if the Court does not permit the Debtors to continue paying their compensation and providing them with health and other benefits.

12. For these reasons, the Debtors respectfully submit that the relief requested herein is necessary and appropriate.

### **Workforce Programs**

13. In the ordinary course of business, the Debtors (a) pay standard wage compensation and paid time off to their Employees, (b) maintain Employee reimbursement programs, and (c) maintain certain employee benefits, including medical, dental, vision, and prescription drug coverage and insurance, life insurance, accidental death and dismemberment insurance, disability insurance, workers' compensation insurance, and a 401(k) savings plan for their Employees. In addition, the Debtors incur other employee-related costs such as payments to Independent Contractors and the Non-Employee Director (each of the obligations discussed in this paragraph and as further described in detail below, collectively, the "Workforce Programs").

14. As of the Petition Date, the Debtors estimate the total amount outstanding on account of the Workforce Programs is approximately \$188,000, all of which will become due and owing within the first twenty-one days of these chapter 11 cases.<sup>4</sup> The Debtors do not believe any Employee is owed any prepetition amounts in excess of the \$13,650 priority wage cap imposed by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and do not seek authority to pay any amounts in excess of such cap at this time.

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<sup>4</sup> The \$188,000 in Workforce Obligations (defined below) becoming due and owing in the first twenty-one days of these chapter 11 cases consists of (a) approximately \$150,000 in wage obligations, (b) approximately \$10,000 in amount associated with the Non-Insider Employee Incentive Program (defined below), (c) approximately \$8,000 in Deductions (defined below), and (d) approximately \$20,000 in reimbursable employee expenses.

15. Subject to the Court's approval of the relief requested herein, the Debtors intend to continue their prepetition Workforce Programs in the ordinary course of business. Out of an abundance of caution, the Debtors request confirmation of their right to modify, change, and discontinue any of their Workforce Programs and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases and without the need for further Court approval, subject to applicable law.

**I. Compensation, Withholding, and Expense Reimbursement**

**A. Wage Obligations**

16. Both Hourly Employees and Salaried Employees are paid biweekly every other Monday, one week in arrears (or on the preceding business day if a Monday falls on a holiday). As a result, Employees often have wages and other compensation that has accrued, but is unpaid, at any given point in time. The Debtors' monthly payroll obligations average approximately \$600,000. As of the Petition Date, the Debtors estimate that they owe approximately \$150,000 on account of accrued but unpaid wages.

17. The Debtors' payroll processing functions are managed by Paylocity. The Debtors estimate that there are no outstanding balances owed to Paylocity. The Debtors seek authority to pay Paylocity any outstanding amounts, including prepetition amounts, in the ordinary course of business and consistent with past practice and to continue honoring its payroll processing obligations in the ordinary course of business during the administration of these chapter 11 cases.

**B. Independent Contractor Obligations.**

18. In addition to Employees, the Debtors occasionally retain Independent Contractors to undertake specific projects and tasks on an ad hoc, as-needed basis. The Debtors directly contract with certain Independent Contractors. The Debtors' monthly obligations to Independent Contractors average approximately \$5,000. As of the Petition Date, the Debtors estimate that they

are current on account of amounts owed to Independent Contractors, but include this description out of an abundance of caution and seek authority to remit amounts to Independent Contractors as they become due.

**C. Non-Insider Employee Incentive Program.**

19. In the ordinary course of business, to encourage and reward outstanding performance, the Debtors offer an incentive program for certain Employees, including hourly and salaried personnel (the "Non-Insider Employee Incentive Program"). The Debtors believe the Non-Insider Employee Incentive Program is necessary to properly motivate Employees to outperform and drive value for all stakeholders. By this motion, the Debtors seek authority to continue honoring the Non-Insider Employee Incentive Program. The Debtors are not seeking relief to pay any Employee that is an insider, as such term is defined in section 101(31) of the Bankruptcy Code, under the Non-Insider Employee Incentive Program.

20. Under the Non-Insider Employee Incentive Program, corporate personnel are eligible to receive a potential bonus equal to a certain percentage of their salary if both the Employee and the company meets certain goals. These bonuses are paid on either an annual or quarterly basis. Hourly personnel working in the Debtors' warehouses are eligible for quarterly bonuses up to \$1,000 based on several performance targets. Warehouse leads are eligible for quarterly bonuses up to \$2,000 on the same basis. General managers of the Debtors' restaurants are eligible for a monthly bonus of up to \$1,400 based on the restaurant's performance; assistant managers are eligible for a monthly bonus of up to \$700 on the same basis.

21. As of the Petition Date, the Debtors estimate that they owe approximately \$10,000 on account of the Non-Insider Employee Incentive Program. The Debtors seek authority to pay these amounts as and when due and to continue the Non-Insider Employee Incentive Plan in the ordinary course of business.

**D. Withholding and Deduction Obligations.**

22. In the ordinary course of business, Paylocity processes deductions from Employees' compensation on the Debtors' behalf on account of federal, state, and local income taxes, FICA, court-ordered garnishments, child support, and other pretax deductions payable pursuant to certain of the health, welfare, and retirement savings programs detailed herein (collectively, the "Deductions") and forward those amounts to various third-party recipients, including federal, state, and local taxing authorities. Some Deductions are made from each paycheck, while other Deductions are made less frequently. The Deductions average approximately \$32,000 per month. As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but unpaid Deductions is approximately \$8,000, all of which will come due during the first twenty-one days of these chapter 11 cases.

**E. Employer Payroll Taxes.**

23. In addition to the Deductions, the Debtors are also required by law to pay certain amounts to the appropriate federal, state, and local taxing authorities on account of programs such as Social Security, Medicare, and unemployment insurance (collectively, the "Employer Payroll Taxes"). The Employer Payroll Taxes are aggregated by the Debtors and forwarded to Paylocity, who remits the Employer Payroll Taxes to the appropriate federal, state, or local taxing authority. As of the Petition Date, the Debtors estimate that they are current on Employer Payroll Taxes, but include this description out of an abundance of caution and seek authority to remit Employer Payroll Taxes to the appropriate taxing authority as they become due.

**F. Reimbursable Expenses.**

24. In the ordinary course of their business, the Debtors reimburse Employees for a variety of ordinary, necessary, and reasonable expenses that Employees incur within the scope of

their job duties. Such expenses include costs for travel, lodging, relocation, ground transportation, meals, and other general business-related expenses.

25. Expense reimbursements are generally incurred by Employees through the use of personal funds. In addition, approximately twenty Employees are issued a company credit card (the “Corporate Credit Cards”) solely for business related expenses. The Corporate Credit Cards are issued by American Express. If an Employee uses a Corporate Credit Card for expenses other than business related expenses, then the Employee may be held personally liable for the obligations. The average monthly amount paid on account of the Corporate Credit Cards is \$20,000.

26. Employees are expected to use sound judgment when incurring business expenses for which they seek reimbursement. To be reimbursed, an Employee must submit his or her receipts to the Debtors for approval. If approved, the Debtors reimburse the Employee for the reimbursed business expenses by check in the ordinary course of the Debtors’ businesses. As of the Petition Date, the Debtors believe that there is approximately \$20,000 in accrued but unpaid amounts owing to Employees for reimbursements on account of business expenses, including on account of the Corporate Credit Cards, all of which will come due during the first twenty-one days of these chapter 11 cases. By this motion, the Debtors seek authority to pay the Employees’ expense reimbursements and to continue the expense reimbursements, including making payments on account of the Corporate Credit Cards, in the ordinary course of the Debtors’ business.

**G. Paid Time Off.**

27. All of the Debtors’ full-time Employees are entitled to paid time off (“PTO”) on an annual basis, which accounts for both vacation time and sick leave.

28. Employees receive between fifteen and twenty days of PTO each year, consisting of five personal days and ten to fifteen vacation days depending on such Employee’s seniority.

Personal days must be used by December 31 of each year. Vacation days accrue on a pro-rated basis during the year of hiring. The Employees are allowed to carry over up to 120 hours of accrued but unused vacation time to the following calendar year.<sup>5</sup> In addition, the Debtors offer Employees a floating paid holiday to use throughout the year. Employees who are terminated are entitled to a cash payment in lieu of the accrued and unused vacation days, but not personal days or floating holidays.

29. In addition, the Debtors provide employees with additional paid sick leave or expanded family and medical leave for specified reasons related to COVID-19 in accordance with the Families First Coronavirus Response Act.

30. The Debtors estimate that, as of the Petition Date, total accrued but unpaid PTO liability is approximately \$640,000. The Debtors request authority, but not direction, to allow their employees to continue to use their accrued and/or carried over PTO in the ordinary course of the Debtors' businesses but do not seek to make any cash payments to terminated employees on account of accrued and unused vacation days and/or PTO.

#### **H. Miscellaneous Employee Programs.**

31. The Debtors also offer Employees a number of miscellaneous benefits (the "Miscellaneous Employee Programs"), including (a) access to personal healthcare advisors, (b) tuition reimbursement, (c) pet insurance, (d) meal discounts, and (e) wellness incentive gifts. As of the Petition Date, the Debtors estimate that they are current on account of the Miscellaneous Employee Programs, but include this description out of an abundance of caution and seek authority to remit amounts on account of the Miscellaneous Employee Programs as they become due.

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<sup>5</sup> Due to the COVID-19 pandemic the amount of accrued vacation time has been temporarily increased to 160 hours.

## **II. Health and Welfare Coverage and Benefits.**

32. Prior to the Petition Date, the Debtors offered Employees, their eligible spouses, and their dependents various standard employee benefits, including, without limitation, (a) medical, dental and vision insurance, (b) basic and executive term life insurance, (c) short-term and long-term disability insurance, (d) retirement savings plans, and (e) employee assistance program provided to the Employees in the ordinary course of business (collectively, the “Employee Benefits”). As of the Petition Date, the Debtors were obligated to pay certain contributions to or provide benefits under such plans, programs, and policies to their Employees.

### **A. Medical, Dental, and Vision Insurance and Health Savings Account Plans.**

33. The Debtors offer substantially all Employees basic medical insurance through UnitedHealthcare. Employees can elect to participate in one of two high deductible health plans, whereby the Employee pays a larger percentage of the cost of treatment before insurance coverage is available, or a preferred provider organization plan (collectively, the “Medical Plan”). Under the fully-funded Medical Plan, the Debtors contribute a percentage of the premiums on a biweekly basis, with the applicable Employee contributing the remaining premium payments in the form of deductions from their wages. The Debtors’ portion of the premium contribution ranges from approximately 83% to 93% depending on the plan.

34. The Debtors pay approximately \$55,000 per month on account of the Medical Plan. As of the Petition Date, the Debtors estimate that they are current on account of the Medical Plan, but include this description out of an abundance of caution and seek authority to remit amounts on account of the Medical Plan as they become due.

35. Employees may also contribute to a health savings account (the “HSA”) maintained by Optum, Inc. (“Optum”). Employees may make pretax contributions to their HSA through

payroll deductions, up to the maximum amount permitted by the Internal Revenue Service, to cover reimbursements for qualified medical expenses. The Debtors make an annual contribution to each Employee's HSA of \$630 for each single plan HSA or \$1,260 for each family HSA. The Debtors pay approximately \$30,000 on account of the HSA per year. As of the Petition Date, the Debtors estimate that they are current on account of the HSA, but include this description out of an abundance of caution and seek authority to remit amounts on account of the HSA as they become due.

36. The Debtors also offer dental and vision insurance to the Employees (the "Dental and Vision Plans"). The Debtors provide dental insurance through Sun Life and vision insurance through EyeMed. For each of the Dental and Vision Plans, the Debtors pay 100% percent of the premium. The Debtors pay approximately \$3,500 per month on account of the Dental and Vision Plans. As of the Petition Date, the Debtors estimate that they are current on account of the Dental and Vision Plans, but include this description out of an abundance of caution and seek authority to remit amounts on account of the Dental and Vision Plans as they become due.

**B. Life Insurance Coverage.**

37. The Debtors provide basic and executive life insurance coverage for full-time Employees at no cost to the Employees, as well as voluntary supplemental, spouse, and child life and AD&D products (the "Life Insurance Coverage"). The Life Insurance Coverage provided to the Employees is fully-insured by the Debtors and administered by Mutual of Omaha. This program provides maximum coverage of the Employee's annual base salary, up to a limit of \$50,000 for basic life and \$500,000 for executive life, in the event of death. The Debtors pay Mutual of Omaha approximately \$7,500 per month with respect to their Life Insurance Coverage, although this amount may fluctuate depending on the occurrence of covered incidents.

38. As of the Petition Date, the Debtors estimate that they are current on account of the Life Insurance Coverage, but include this description out of an abundance of caution and seek authority to remit amounts on account of the Life Insurance Coverage as they become due.

**C. Disability Benefits.**

39. The Debtors provide full-time Employees with short-term and long-term disability benefits (the “Disability Benefits”). Under the short-term disability benefits program, eligible Employees are entitled to, among other things, continuation of a portion of their wages in the event of a short-term medical disability due to an illness or injury (the “Short-Term Disability Benefits”). Under the long-term disability benefits program, eligible Employees are entitled to, among other things, continuation of a portion of their wages in the event of a long-term medical disability due to illness or injury (the “Long-Term Disability Benefits”). Employees become eligible for Long-Term Disability Benefits after the Employee’s Short-Term Disability Benefits terminate.

40. The Short-Term Disability Benefits begin after an Employee is absent from work for seven consecutive days and continues for the first twelve weeks of any disability. The Employee receives 60% percent of his or her wages, up to a maximum of \$1,000 per week, in Short-Term Disability Benefits. After ninety days, the Employee is entitled to the Long-Term Disability Benefits of 60% percent of their wages, subject to a maximum of \$6,000 per month. The Disability Benefits are fully-insured and are administered by Mutual of Omaha. The Debtors do not pay an additional fee to Mutual of Omaha for these administrative services, but instead such payments are incorporated in the premium cost of the Disability Benefits.

41. As of the Petition Date, the Debtors estimate that they are current on account of the Disability Benefits, but include this description out of an abundance of caution and seek authority to remit amounts on account of the Disability Benefits as they become due.

### **III. Other Employee Benefits**

#### **A. Retirement Savings Plans.**

42. The Debtors provide all full-time Employees with the ability to participate in a 401(k) program (the “401(k) Plan”). The 401(k) Plan generally provides for pretax salary deductions of compensation up to limits set by the Internal Revenue Code and an Employee’s 401(k) contributions are deducted automatically from his or her wages. The Debtors match the Employees’ 401(k) plan contributions dollar-for-dollar up to 25% of the first 6% contributed by the Employee. The 401(k) Plan is administered by Principal Financial, and the approximate annual cost to administer the 401(k) Plan is \$25,000. Each month, the Debtors withhold approximately \$4,700 from Employee wages on account of the 401(k) Plan and contribute approximately \$4,000 in matching funds.

43. As of the Petition Date, the Debtors estimate that they are current on account of the 401(k) Plan, but include this description out of an abundance of caution and seek authority to remit amounts on account of the 401(k) Plan as they become due.

#### **B. Workers’ Compensation.**

44. The Debtors maintain occupational accident insurance in Texas. In all other states in which the Debtors operate, the Debtors maintain workers’ compensation insurance for Employees at the levels statutorily required by law for claims arising from or related to their employment with the Debtors (collectively, the “Workers’ Compensation Program,” and any obligations thereto, the “Workers’ Compensation Obligations”).

45. The Debtors maintain the Workers’ Compensation Program through Liberty Mutual. The Debtors have a fully insured Workers’ Compensation Program and do not incur any costs on account of claims brought against such insurance. Although the amount paid per year on account of the Workers’ Compensation Program varies from year to year, the average annual cost

of the Workers' Compensation Program is approximately \$215,000. Premiums on the Worker's Compensation policy are paid monthly. As of the Petition Date, the Debtors owe approximately \$18,000 in accrued but unpaid amounts owing in respect of the Workers' Compensation Program.

46. By this motion, the Debtors seek authority to pay prepetition amounts owed with respect to the Workers' Compensation Obligations, and to continue honoring their obligations with respect to the Workers' Compensation Program in the ordinary course of business. It is critical that the Debtors be permitted to continue their Workers' Compensation Program and to pay outstanding prepetition claims, taxes, charges, assessments, premiums, and third-party administrator fees in the ordinary course of business because alternative arrangements for workers' compensation coverage would most certainly be more costly, and the failure to provide coverage may subject the Debtors and/or their officers to severe penalties.

**C. Payments to Non-Employee Director.**

47. In the ordinary course of business, the Debtors employ a non-Employee director who serves on the Debtors' board of directors (the "Non-Employee Director"). The Debtors pay the Non-Employee Director \$30,000 per month for his service on the Debtors' board of directors. The Debtors also reimburse the Non-Employee Director for reasonable out-of-pocket expenses incurred in connection with his service as director. The Non-Employee Director's service is necessary for the continued management of the Debtors and, accordingly, it is essential that the Debtors be authorized to pay all prepetition amounts accrued as of the Petition Date to the Non-Employee Director. As of the Petition Date, the Debtors estimate that they are current on amounts owed to the Non-Employee Director for fees and expenses, but include this description out of an abundance of caution and seek authority to remit amounts owed to the Non-Employee Director as they become due. In addition, out of an abundance of caution, the Debtors request authority to

continue to pay monthly fees and reimburse expenses to the Non-Employee Director on a postpetition basis in the ordinary course of business.

**Basis for Relief**

**I. Sufficient Cause Exists to Authorize the Debtors to Honor the Workforce Programs.**

**A. Certain Workforce Programs Are Entitled to Priority Treatment.**

48. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Workforce Programs owed to the Employees to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment in full of certain allowed unsecured claims for (a) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). Indeed, the Debtors submit that payment of the Workforce Programs at this time enhances value for the benefit of all interested parties, as finding, attracting, and training new qualified talent would be extremely difficult and would most likely require higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees. *See In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“The need to pay [employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.”).

**B. Payment of Certain Workforce Programs Is Required by Law.**

49. The Debtors seek authority to pay the Deductions to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees’ wages. Indeed, certain Deductions may not be property of the Debtors’ estates because the Debtors have withheld such

amounts from the Employees' wages on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d); *see also In re Equalnet Commc'ns*, 258 B.R. at 370 (noting that, for tax obligations where funds are held by the debtor in trust, "the legal right to payment of such claims at any time appears irrefutable.") (citing *Al Copeland Enters. Inc. v Texas (In re Al Copeland Enters., Inc.)*, 991 F.2d 233 (5th Cir. 1993)).

50. Furthermore, federal and state laws require the Debtors to withhold certain tax payments from the Employees' wages and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes); *In re Chabrand*, 301 B.R. 468, 475–81 (Bankr. S.D. Tex. 2003) (same). Because the Deductions may not be property of the Debtors' estates, the Debtors request authorization to remit the Deductions to the proper parties in the ordinary course of business.

51. Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all Workers' Compensation Obligations is therefore crucial to the Debtors' continued operations and the success of these chapter 11 cases.

**II. Payment of the Workforce Obligations Is A Sound Exercise of the Debtors' Business Judgment, Necessary to Preserve the Value of the Estates, and Is Proper Pursuant to Section 363(b) Bankruptcy Code.**

52. Courts in the Fifth Circuit have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including

an operating business's going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (authorizing payment of certain prepetition claims pursuant to “doctrine of necessity”); *In re Equalnet Commc’ns Corp.*, 258 B.R. at 369–70 (business transactions critical to the survival of the business of the debtor are exceptions to the general rule of nonpayment of prepetition claims prior to plan confirmation); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989) (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a), 363(b), 507, 1107(a) and 1108 of the Bankruptcy Code support the payment of prepetition claims as provided herein.

53. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the “implied duty . . . to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497). Moreover, under section 105(a) of the Bankruptcy Code, “the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.” 11 U.S.C. § 105(a); *In re CoServ, L.L.C.*, 273 B.R. at 497 (finding that sections 105 and 1107 of the Bankruptcy Code provide the authority for a debtor-in-

possession to pay prepetition claims); *In re CEI Roofing, Inc.*, 315 B.R. at 60 (finding that “[b]ecause Congress has specifically provided that prepetition wage claims up to a certain amount per claim be elevated to priority status under § 503(1)(3)” the court’s job is easier when it considers approval of such prepetition claims); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (noting that non-payment of prepetition claims may seriously damage a debtor’s business).

54. The above-referenced sections of the Bankruptcy Code therefore authorize the postpetition payment of prepetition claims when the payments are critical to preserving the value of the debtor’s estate, as is the case here. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. at 497. Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.*

55. The Debtors submit that payment of the Workforce Obligations represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code. Paying prepetition wages, employee benefits, and similar obligations will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption. Indeed, the Debtors believe that without the relief requested herein,

Employees and Independent Contractors may seek alternative employment opportunities while their services are needed to carry out an orderly administration of these chapter 11 cases. Such developments would deplete the Debtors' workforce, thereby hindering the Debtors' ability to operate their business and maximize value of their estates. The loss of valuable Employees and Independent Contractors and the resulting need to recruit new personnel (and the costs attendant thereto) would be distracting at this crucial time when the Debtors need to focus on administering their estates.

56. The majority of Employees and Independent Contractors rely exclusively on the Employee Compensation and Benefits to satisfy their daily living expenses. Many of the Debtors' Employees and Independent Contractors expect and require their wages to arrive on a timely basis. Consequently, Employees and Independent Contractors will be exposed to financial difficulties if the Debtors are not permitted to honor obligations for unpaid Workforce Obligations. Additionally, continuing ordinary course benefits will help maintain workforce morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors' ongoing business operations.

57. Courts in this district have granted similar relief to that requested in this Motion. *See, e.g., Studio Movie Grill Holdings, LLC*, No. 20-32622 (SGJ) (Bankr. N.D. Tex. Oct. 27, 2020) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re TriVascular Sales LLC*, No. 20-31840 (SGJ) (Bankr. N.D. Tex. Aug. 19, 2020) (same); *In re Tuesday Morning Corp.*, No. 20-31476 (HDH) (Bankr. N.D. Tex. May 28, 2020) (same); *In re The LaSalle Grp., Inc.*,

No. 19-31484 (SGJ) (Bankr. N.D. Tex. May 21, 2019) (same); *In re PHI, Inc.*, No. 19-30923 (HDH) (Bankr. N.D. Tex. April 11, 2019) (same).<sup>6</sup>

58. Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay any prepetition amounts accrued and unpaid on account of the Workforce Programs and to continue the Workforce Programs in the ordinary course of business and consistent with past practice.

**III. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is Appropriate.**

59. Section 362(a) of the Bankruptcy Code operates to stay:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .

11 U.S.C. § 362(a)(1). Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.”

*Id.* at § 362(d)(1).

60. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with their claims against the Workers' Compensation Program in the appropriate judicial or administrative forum. The Debtors believe cause exists to modify the automatic stay because staying the workers' compensation claims could have a detrimental effect on the financial well-being and morale of the workforce. In addition, as noted above, if the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

from operating in those states. Accordingly, the Debtors request a limited waiver of the automatic stay for purposes of allowing the Workers' Compensation Program to proceed.

#### **IV. Processing of Checks and Electronic Fund Transfers Should Be Authorized**

61. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the Workforce Obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

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

62. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

#### **Reservation of Rights**

63. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim

or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the requested relief, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

#### **Notice**

64. The Debtors will provide notice of this motion to the following parties or their counsel: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the lenders under the Debtors' prepetition credit facility; (d) the United States Attorney's Office for the Northern District of Texas; (e) the Internal Revenue Service; (f) the state attorneys general for states in which the Debtors conduct business; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice is needed.

#### **No Prior Request**

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

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Respectfully submitted this 25th day of January, 2021.

**GRAY REED & MCGRAW LLP**

By: /s/ Jason S. Brookner

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*Proposed Counsel to the Debtors  
and Debtors in Possession*

**Certificate of Service**

I certify that on January 25, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Jason S. Brookner

Jason S. Brookner

**EXHIBIT A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	)	
	)	Chapter 11
CICI'S HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 21-30146 (SGJ)
Debtors.	)	(Joint Administration Requested)
	)	
	)	<b>Re: Docket No. ___</b>

**ORDER (I) AUTHORIZING THE DEBTORS TO (A) PAY PREPETITION WAGES,  
SALARIES, OTHER COMPENSATION, AND REIMBURSABLE EXPENSES AND  
(B) CONTINUE EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING  
RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (a) authorizing the Debtors: (i) to pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses and

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: CiCi's Holdings, Inc. (5177); Awesome Acquisition Company (0481); CiCi Acquisition Company, LLC (N/A); CiCi Enterprises, LP (5070); CiCi GP, LLC (2948); CiCi Services, LLC (3586); JMC GP, LLC (8268); JMC Restaurant Distribution, LP (5075); and Pizza Parent, LLC (9534). The Debtors' principal offices are located at 1080 W. Bethel Road, Coppell, Texas 75019, United States.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

(ii) to continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to provide, modify, change, or discontinue the Workforce Programs and to pay any claims or obligations on account of the Workforce Programs in the ordinary course and in accordance with the Debtors' prepetition policies and prepetition practices and the terms of this Order. For the avoidance of doubt, except as otherwise expressly set forth herein, nothing in this Order should be construed as authorizing the Debtors to (a) pay any amounts to insiders (as defined in section 101(31) of the Bankruptcy

Code) on account of any bonus programs, or (b) make any payment on account of the Workforce Programs that are outside the ordinary course of business without prior Court approval.

3. Nothing herein shall be deemed to authorize the payment of any prepetition amounts above the statutory cap imposed by section 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to the prepetition amounts owed on account of the Workforce Program, except upon further order of this Court, *provided* that nothing shall prohibit the Debtors from allowing their employees to utilize PTO in the ordinary course of business to the extent required by applicable state law. For the avoidance of doubt, nothing herein shall be deemed to authorize the payment by the Debtors of cash to terminated employees on account of vacation days and/or PTO liabilities, as applicable.

4. The automatic stay of section 362(a) of the Bankruptcy Code, to the extent applicable, is hereby lifted to permit: (a) Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum; (b) the Debtors to continue the Workers' Compensation Program and pay all prepetition amounts relating to the Workers' Compensation Program in the ordinary course; (c) insurers and third-party administrators to handle, administer, defend, settle, and/or pay workers' compensation claims and direct action claims; and (d) insurers and third-party administrators providing coverage for any workers' compensation claims or direct action claims to draw on any and all collateral provided by or on behalf of the Debtors therefor without further order of the Bankruptcy Court if and when the Debtors fail to pay and/or reimburse any insurers and third-party administrators for any amounts in relation thereto. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

5. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein, shall be subject to and in compliance with the Approved Budget, the Court's *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief*, and any final order entered by the Court in connection therewith.

6. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

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

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

11. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

### END OF ORDER ###

Submitted by:

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