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7 [Proposed] General Insolvency
8 Counsel for Lorna Jane USA, Inc.

9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **LOS ANGELES DIVISION**

12 In re:
13 LORNA JANE USA, INC., a California
14 corporation,

15 Debtor-in-Possession.

Case No. 2:21-bk-17267-NB
Chapter 11 Proceeding

**DEBTOR’S MOTION FOR ENTRY OF ORDER
PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), AND
507(a) AUTHORIZING DEBTOR (I) TO PAY OR
HONOR CERTAIN PRE- PETITION DATE
EMPLOYEE WAGES, BENEFITS, EXPENSES,
AND OTHER OBLIGATIONS; AND (II) TO
CONTINUE EMPLOYEE BENEFIT PROGRAMS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Declaration of Richard Munro Filed Separately in
Support Hereof]

Date: TBD
Time: TBD
Place: 255 East Temple Street,
Courtroom 1545
Los Angeles, CA 90012

1 **TO THE HONORABLE NEIL W. BASON, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND PARTIES-IN-**
3 **INTEREST:**

4 Lorna Jane USA, Inc., a California corporation, the debtor and debtor-in-possession herein
5 (“Debtor”), hereby files its motion (“Employee Obligations Motion” or the “Motion”) and states as
6 follows:

7 **I.**

8 **RELIEF REQUESTED**

9 By this Employee Obligations Motion, the Debtor seeks Court authority pursuant to 11 U.S.C.
10 §§ 105(a), 363(b), and 507(a) of title 11 of the United States Code (“Bankruptcy Code”), and Rules
11 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), for the entry of
12 an order:

13 (i) (a) authorizing, but not directing, the Debtor to pay certain prepetition employee
14 wages, salaries, and bonuses (“Employee Claims”);

15 (b) authorizing, but not directing, the Debtor to continue, in the ordinary course of
16 business, the maintenance of all employee benefit programs, including health insurance, paid
17 time off (vacation and sick leave), workers’ compensation, retirement savings program, and
18 other benefit programs set forth herein (“Employee Benefits”);

19 (c) authorizing, but not directing, the Debtor to reimburse employees for prepetition
20 expenses that employees incurred on behalf of the Debtor in the ordinary course of business
21 (“Employee Expenses”);

22 (d) authorizing the Debtor to pay all related prepetition payroll taxes and other
23 deductions (“Employee Withholdings”); and

24 (e) to the extent that any of the foregoing programs are administered, insured, or paid
25 through a third-party administrator or provider, to pay any prepetition claims of such
26 administrator and provider in the ordinary course of business to ensure the uninterrupted
27 delivery of payments or other benefits to the employees (collectively, the foregoing
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1 enumerated items are the “Employee Obligations”); and

2 (ii) directing banks to honor prepetition checks or to fund transfer requests for payment of
3 prepetition Employee Obligations described herein, whether such checks or other requests were
4 submitted prior to or after the Petition Date, and that US Bank National Association (“US Bank”) be
5 authorized to rely on the Debtor’s designation of any particular check or electronic transfer request as
6 approved pursuant to this Employee Obligations Motion.

7 In the absence of a Court order granting the relief requested herein, the Debtor will be
8 prohibited from paying or otherwise satisfying the Employee Obligations, and the checks, wire
9 transfers, and direct deposit transfers issued with respect to the prepetition Employee Obligations may
10 be dishonored. If the relief requested herein is not granted, the Debtor’s employees may suffer great
11 hardship and, in many instances, financial difficulties, given that these monies are needed to enable
12 them to meet their own personal obligations. Especially during this unprecedented time and the many
13 hardships that have resulted due to the COVID-19 and related Delta variant pandemic, honoring all
14 Employee Obligations is critical. To maintain Employee morale and to minimize personnel attrition
15 due to any hardship the Debtor’s employees and their dependents may experience if the Employee
16 Obligations are not paid when due, the Debtor seeks authority to honor, in its discretion, the
17 Employee Obligations.

18 The Debtor’s employees are also vital to the Debtor’s continuing operations and the ultimate
19 ability of the Debtor to reorganize in this Chapter 11 Case. The Debtor is reliant on its employees’
20 skills, knowledge and understanding of the Debtor’s business and operations to sustain the Debtor
21 during this critical time. Therefore, the Debtor believes it is in its best interest and the best interest of
22 its estate to minimize employee turnover during the course of the Debtor’s Chapter 11 Case.

23 If the Debtor suffers a substantial decline in its workforce, or shutdown of its operations,
24 which is likely if the Debtor is not authorized to provide the relief sought in the Employee
25 Obligations Motion, it will cause irreparable harm and have a deleterious impact on the Debtor’s
26 estate and its creditors. Accordingly, the Debtor requests authorization to honor, in its discretion, the
27 Employee Obligations, without interruption, to encourage the employees to remain employed while
28 the Debtor proceeds in bankruptcy.

1 II.

2 **STATEMENT OF FACTS**

3 **A. General and Brief Description of Background Facts**

4 On September 16, 2021 (“Petition Date”), the Debtor filed a voluntary petition for relief
5 (“Chapter 11 Case”) under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its
6 business and property as a debtor-in-possession in accordance with Sections 1107 and 1108 of the
7 Bankruptcy Code.

8 Additional factual background relating to the Debtor’s business, capital structure, and the
9 circumstances giving rise to the filing of this Chapter 11 Case are set forth in detail in the *Declaration*
10 *of Richard Munro in Support of First Day Motions* (“Munro Declaration”), filed contemporaneously
11 herewith and incorporated herein by reference. Capitalized terms used but not defined herein shall
12 have the meanings given to them in the Munro Declaration.

13 As detailed in the Munro Declaration, the Debtor is a women’s athletic apparel and
14 accessories retail chain that was established to sell and promote the internationally renowned Lorna
15 Jane products brand in the United States through retail boutiques in several states, and its website.
16 Like most retailers in the United States, the Debtor has been impacted by the COVID-19 and related
17 Delta variant pandemic, which has significantly limited retail operations throughout the country and
18 suppressed consumer willingness to shop in person.

19 The profound and sustained impact of the pandemic has forced the Debtor to more
20 aggressively address the rapidly widening gulf between its brick-and-mortar retail revenue and its
21 substantial lease obligations, which no longer reflect the market. To this end, the Debtor diligently
22 attempted to negotiate new lease terms with its landlords in the hope of achieving an out-of-court
23 restructuring. Landlords, however, have been reluctant to negotiate the type of long-term adjustments
24 to leases that are necessary to ensure the Debtor’s continued viability.

25 After much deliberation and consultation with its professionals and advisors, the Debtor has
26 determined in its business judgment that restructuring through chapter 11 presents the best avenue for
27 the Debtor to address its challenges and promote sustained success. In particular, through this Chapter
28 11 Case, the Debtor has filed a separate motion requesting Court authority to reject its remaining

1 leases for its retail boutiques in order to right-size its business, to restructure and strengthen its
2 financial picture for its go-forward business, including preserving its employees that operate from the
3 Distribution Center. Therefore, due to the decision to reject retail leases, the natural consequence was
4 the need to terminate all employees prior to the Petition Date except those that work at the
5 Distribution Center.

6 As of the Petition Date the Debtor employs approximately ten (10) active full-time employees
7 (“Employees”). None of the Employees are insiders of the Debtor.¹

8 The Employees serve to support the Debtor’s operations at the Distribution Center, and its
9 online shopping platform. The Employees are invaluable to the Debtor’s business. They perform
10 critical functions, consumer order fulfillment, customer service, human resources, and related tasks.
11 Their skills and experience and their relationships with customers and vendors are essential to the
12 Debtor’s ongoing operations and its ability to effectively operate its business during the Chapter 11
13 Case.

14 By this Motion, the Debtor seeks authority, in the exercise of its discretion, to pay pre-petition
15 claims of Employees, including for wages and other incentives discussed below, to honor obligations,
16 and to continue benefit programs, in the ordinary course of business and consistent with past practice,
17 relating to the Employee Obligations, subject to the applicable thresholds set forth in section 507(a)
18 of the Bankruptcy Code, and subject to the Debtor’s ability to modify or discontinue any Employee
19 Benefit Programs (defined below) in its discretion to reduce applicable costs or benefits provided
20 thereunder.

21 The Debtor presently has approximately \$1,663,000 cash on hand with which to pay the
22 Employee Obligations described herein. The Debtor has no pre-petition lender which asserts a
23 security interest in the Debtor’s cash, and no creditor has a valid lien encumbering the Debtor’s cash.
24 Therefore, there is no cash collateral issue in this case, and the Debtor may use freely its
25 unencumbered cash to pay its obligations in this case, including the obligations that the Debtor
26 requests authority to pay pursuant to this Motion.

27 _____
28 ¹ The list of and amounts to be paid to Employees is set forth on Exhibit “1” attached hereto. Names of the Employees
have been withheld due to privacy concerns, but the Debtor will provide such information, if necessary under seal.

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B. Payroll

In the ordinary course, the Debtor pays its employees on a bi-weekly basis, via a third-party service provider, iSolved (“Payroll Service Provider”), every other Thursday. The most recent payroll, totaling approximately \$115,600, was made on September 14, 2021, which includes payment in full of all wages owed to all employees terminated just prior to the Petition Date.² The Debtor’s first post-petition payroll is scheduled for September 23, 2021, which payroll will cover the pay period from September 6, 2021 through September 19, 2021. The total amount expected to be paid is \$20,910, of which approximately \$11,400 is for compensation earned prior to the Petition Date.

As of the Petition Date, the Debtor is current on all payroll taxes by way of remitting all dues on each pay cycle to the Payroll Service Provider, who in turn, remits to the various government agencies in a timely manner. Approximately \$7,500 will be due on September 23, 2021, of which approximately \$4,100 is for payroll taxes for employee compensation earned before the Petition Date (of that amount, approximately \$2,700 is for statutory deductions, and \$1,400 employer taxes).

Thus, some of the Debtor’s next payroll will encompass pre-petition wages owed to the Employees. The Debtor requests authority to pay (via the Payroll Service Provider) pre-petition employee claims and benefits to the extent that would otherwise be allowed as priority claims under section 507(a)(4) and (a)(5) of the Bankruptcy Code, and to continue to pay post-petition costs associated with the Employee Claims.

C. Employee Benefits

The Debtor also offers to its eligible employees the opportunity to enroll in a variety of employee benefit plans and policies which include, health insurance, paid days off, sick leave, and workers compensation (“Employee Benefit Programs”).

The Debtor provides various time off benefits and leave programs to Employees including, but not limited to, paid days off (“PDO”) and unpaid time off, in the form of holidays, sick time, vacation days, bereavement days and jury service (collectively, the “Time Off Policies”). The Time

² Manual checks remain outstanding to four (4) former non-insider employees, that total \$541.42. The relief requested herein includes honoring the checks tendered to these former employees for work performed pre-petition.

1 Off Policies include payment to Employees consisting of the following holidays: New Year’s Day,
2 Martin Luther King Jr.’s Birthday, Memorial Day, Independence Day, Labor Day, Thanksgiving,
3 Christmas Eve Day, Christmas Day, and the Anniversary of Employee’s Date of Hire; nine (9)
4 personal days per year; sick time that accrues at a rate of one (1) hour per thirty (30) hours worked,
5 with a maximum of nine (9) day’s accumulation; and a tiered vacation days accrual program based on
6 length of employment, that accrues at a rate of 2 weeks (0-2 years employment), 3 weeks (3-4 years
7 employment), and 4 weeks (5+ years employment) vacation days per year.

8 By this Motion, the Debtor seeks to continue its Time Off Policies uninterrupted. These forms
9 of compensation are usual, customary and necessary if the Debtor is to retain qualified Employees to
10 operate its business. Additionally, the Debtor believes that its Employees will use any paid time-off in
11 the ordinary course of business without resulting in any material impact on the Debtor’s cash flow
12 beyond its normal payroll obligations.

13 The Debtor offers eligible Employees and their eligible dependents the opportunity to
14 participate in comprehensive health and welfare programs which includes medical and prescription
15 drug coverage through Anthem Insurance Company (“Anthem”) and Kaiser Permanente Health Care
16 Company (“Medical Plans”), a dental plan through Anthem which covers a wide variety of dental
17 procedures (“Dental Plan”), and vision coverage through Anthem (“Vision Plan,” and together with
18 the Medical Plans, and Dental Plans, the “Health Care Plans”).

19 The Debtor employs a third-party benefits administrator, PlanSource, to help eligible
20 Employees with benefits questions as they navigate and enroll in the comprehensive benefits options
21 that the Debtor offers.

22 The Employees’ insurance premiums (“Health Insurance Premiums”) are paid by the
23 Employees with their benefit deductions taken out of their bi-weekly paycheck. This amounts to a
24 total of 26 pay periods within a fiscal year. The Debtor’s contributions are paid monthly.
25 Approximately \$250.00 will be withheld from the payroll of Employees for the September 23, 2021
26 payroll.

27 The Debtor is current on all costs associated with the Health Care Plans. The Debtor seeks
28 authorization, but not direction, to continue to pay post-petition costs of the Health Care Plan, and

1 any claims made against the Health Care Plans, during the pendency of this Chapter 11 Case in the
2 ordinary course of business. Moreover, the Debtor requests authority, but not direction, to continue
3 the Health Care Plans in the ordinary course of business.

4 Under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), the Debtor is
5 required to maintain group health plans to offer Employees and its dependents the opportunity to
6 continue their coverage in cases where they would otherwise lose coverage because of certain events.
7 The Debtor utilizes PlanSource, a third-party to administer the COBRA benefits, however the Debtor
8 pays COBRA premiums for those eligible COBRA recipients.

9 The Debtor provides basic life insurance (“Life Insurance”) which is administered by Allstate
10 Insurance Company. The Life Insurance is paid entirely by the Debtor, at no cost to the Employees.

11 The Debtor utilizes CalSavers to manage the retirement savings program (“Retirement
12 Program”). It is at the employee’s option whether they would like to enroll in the Retirement
13 Program. The Employees may, at any time, change contribution rates in the Retirement Program.
14 The Debtor’s September 23, 2021 payroll will include approximately \$150.00, which will need to be
15 redistributed to CalSavers on behalf of the Employee.

16 The Time Off Policies, the Health Care Plans, COBRA benefits, and life insurance plan, and
17 Retirement Program are essential parts of the Debtor’s business model.

18 **D. Employee Expenses**

19 Prior to the Petition Date, the Debtor directly or indirectly reimbursed its Employees for
20 certain expenses incurred in the ordinary course of the Debtor’s business operations and in the scope
21 of their employment on behalf of the Debtor. The Employees may qualify for reimbursement of out-
22 of-pocket business expenses.

23 The amount of outstanding Employee Expenses is dependent on when the Employees submit
24 their expense reports. The Debtor estimates that less than \$10,000 is owed in unreimbursed pre-
25 petition Employee Expenses as of the Petition Date, and seek authority, but not direction, to satisfy
26 such obligations and to continue paying reimbursable expenses as they come due.

27 Without granting the Debtor authority to pay the Employee Expenses incurred prepetition, the
28 Employees could be obligated to pay such amounts out of their personal funds, which would

1 assuredly impact Employee morale and willingness to remain employed by the Debtor, and
2 potentially cripple if not shutdown Debtor operations. Thus, the Debtor seeks the Court's authority,
3 but not direction, to pay, in its discretion, all Employee Expenses incurred in the ordinary course of
4 business and approved by the Debtor in accordance with its routine procedures. Such reimbursement
5 requests, if any, would be small in amount. Therefore, the Debtor seeks to continue the foregoing
6 policy with respect to all remaining Employees during the pendency of this Chapter 11 Case.

7 **E. Direction to Bank**

8 As set forth in greater detail in the Munro Declaration and the Debtor's Motion for Entry of
9 Order Authorizing the Continued Use of Existing Cash Management System, Main Operating Bank
10 Account, and Business Forms ("Cash Management Motion"), the Debtor's Employee payroll
11 obligations are processed through an operating account ("Main Operating Bank Account") at US
12 Bank ending in 5516. Additionally, disbursements to vendors, including for Employee Benefits such
13 as the Health Insurance Premiums, are paid through the Debtor's Main Operating Bank Account.

14 Finally, the Debtor seeks an order authorizing the Debtor's bank, US Bank, to receive,
15 process, honor and pay all of the Debtor's prepetition or post-petition checks and fund transfers on
16 account of any Employee Obligations, and prohibiting the bank from placing any holds on, or
17 attempting to reverse, any automatic transfers to any account of an Employee or other party for the
18 Employee Obligations. The Debtor also seeks an order authorizing it to issue new post-petition
19 checks or effect new post-petition fund transfers on account of the Employee Obligations to replace
20 any prepetition checks or fund transfers that may be dishonored or rejected, provided that there are
21 sufficient funds on deposit in the applicable accounts to cover such payments.

22 **III.**

23 **GOOD CAUSE EXISTS TO AUTHORIZE PAYMENT OF**
24 **PRE-PETITION PAYROLL AND HONORING BENEFITS**

25 **A. The Court Should Authorize, But Not Direct, The Debtor, In Its Discretion, To**
26 **Pay or Otherwise Honor the Employee Obligations**

27 As a result of the commencement of this Chapter 11 Case, and in the absence of an order of
28 the Court providing otherwise, the Debtor will be prohibited from paying or otherwise satisfying the

1 Employee Obligations, and the checks, wire transfers, and direct deposit transfers issued with respect
2 to the Employee Obligations may be dishonored. To preserve the Debtor’s workforce and maintain
3 Employee morale at this critical time, including minimizing any personal hardship to the Employees
4 and their dependents if the Employee Obligations are not paid or honored when due, the Debtor seeks
5 authority to honor, in its discretion, the Employee Obligations. The absence of such relief would
6 result in irreparable harm to the Debtor.

7 Section 507(a)(4) of the Bankruptcy Code affords unsecured priority status to Employees’
8 claims for “wages, salaries, or commissions, including vacation, severance, and sick leave pay”
9 earned within 180 days prior to the Petition Date to the extent of \$13,650.00 per employee for both
10 wages and contributions to employee benefit plans.

11 Similarly, section 507(a)(5) of the Bankruptcy Code affords unsecured priority status to
12 Employees’ claims related to “contributions to an employee benefit plan arising from services
13 rendered within 180 days before the date of filing of the petition” to the extent of \$13,650.00.

14 Even without the Employees’ entitlement to a priority claim, the Debtor’s payment of the
15 Employee Obligations is justified under Section 363(b)(1) of the Bankruptcy Code, which empowers
16 the Court to allow the Debtor to, “use, sell or lease, other than in the ordinary course of business,
17 property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside
18 the ordinary course of business must be based upon its sound business judgment. In re Montgomery
19 Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999).

20 Courts emphasize that the business judgment rule is not an onerous standard and may be
21 satisfied “as long as the proposed action *appears* to enhance the debtor’s estate,” and such request is
22 not manifestly unreasonable or made in bad faith. Crystalin, LLC v. Selma Props., Inc., 293 B.R. 455,
23 463-64 (B.A.P. 8th Cir. 2003) (quoting Four B. Corp. v. Food Barn Stores, Inc., 107 F.3d 558, 566
24 n.16 (8th Cir. 1997)). Under the business judgment rule, the “management of a corporation’s affairs is
25 placed in the hands of its board of directors and officers, and the Court should interfere with their
26 decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made
27 arbitrarily, are in breach of the officers’ and directors’ fiduciary duty to the corporation, are made on
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1 the basis of inadequate information or study, are made in bad faith, or are in violation of the
2 Bankruptcy Code.” In re Farmland Indus., Inc., 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003)

3 In addition to Section 363(b)(1), payment is further justified under Section 105(a) of the
4 Bankruptcy Code and the well-established “doctrine of necessity.” The Court is empowered to utilize
5 the doctrine of necessity in chapter 11 cases in furtherance of its inherent powers of equity and its
6 statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry
7 out of the provisions of this title.” 11 U.S.C. § 105(a).

8 The doctrine of necessity also permits the Court to authorize payment of certain prepetition
9 claims prior to the completion of the reorganization process where the payment of such claims is
10 necessary to the reorganization. See, In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999)
11 (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the
12 doctrine of necessity should be invoked to permit payment); see also, In re NVR, L.P., 147 B.R. 126,
13 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation
14 when essential to the continued operation of the debtor”, *citing In re Ionosphere Clubs, Inc.*, 98 B.R.
15 174, 176 (Bankr. S.D.N.Y. 1989) (Courts possess “the judicial power to authorize a debtor in a
16 reorganization case to pay pre-petition claims where such payment is essential to the continued
17 operation of the debtor.”)); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr.S.D. Ohio
18 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the
19 payment is necessary to avert a serious threat to the Chapter 11 process.”); see also, Mich. Bureau of
20 Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287
21 (S.D.N.Y. 1987) (Payment of prepetition claims are permitted where the payment of a debt creates
22 “the greatest likelihood of survival of the debtor and payment of creditors in full or at least
23 proportionately”).

24 The Debtor submits that application of the "necessity of payment" doctrine is wholly
25 warranted in this case. The maintenance of the Debtor’s Employee workforce is necessary to ensure
26 the Debtor’s successful reorganization. Employee departures or a decline in Employee morale will
27 substantially and adversely impact the Debtor. The cost of replacing and retraining the Employees
28 will far outweigh the cost of honoring the Employee Obligations. Authority to pay the Debtor’s

1 Employee Obligations, in the Debtor's discretion, is necessary to maintain morale and prevent many
2 of the Employees from suffering extreme personal hardship or from seeking other employment.
3 Especially during the COVID-19 and related Delta variant pandemic, the existing hardship on many
4 individuals would be further exacerbated by not having Employee Obligations honored.

5 The seamless continued operation of the Debtor's business is critical to maximizing the value
6 of the assets and the business, which is best accomplished through Employee retention and
7 satisfaction. The continued service and loyalty of the Debtor's Employees are critical to ensure the
8 Debtor optimizes its operations and maximizes the value of the Debtor's business through the
9 reorganization process. Thus, it is critical that the Debtor be permitted to pay any prepetition
10 Employee Obligations due and owing on the Petition Date and that the Debtor continues, in the
11 ordinary course, its personnel policies, programs and procedures that were in effect prior to the
12 Petition Date, which create the Employee Obligations, to ensure a smooth transition into the post-
13 petition period.

14 The Employees are vital to the continued operation of the Debtor's business and to its
15 successful reorganization. Therefore, the relief requested in this Motion is necessary and should be
16 authorized under section 105(a) of the Bankruptcy Code. Moreover, the Debtor's payment of its pre-
17 Petition Date obligations to its Employees in the ordinary course of business should neither unduly
18 prejudice general unsecured creditors nor materially affect the Debtor's estate, because pursuant to
19 sections 507(a)(4) and (a)(5) of the Bankruptcy Code, priority claims of the Employees are entitled to
20 payment in full under a reorganization plan. See, 11 U.S.C. § 1129(a)(9)(B).

21 **This Court Should Authorize Banks to Honor and Process Debtor's Payments on**
22 **Account of The Employee Obligations**

23 The Debtor represents that it has sufficient funds to pay the amounts described herein in the
24 ordinary course of business by virtue of expected cash flows from ongoing business operations. As a
25 result of the commencement of this Chapter 11 Case and in the absence of an order of the Court
26 providing otherwise, the Debtor's checks and electronic funds transfers, in respect of the Employee
27 Obligations, may be dishonored or rejected by financial institutions. The Debtor submits that any
28 bank should be authorized to rely on the representations of the Debtor with respect to whether any

1 check drawn or transfer request issued by the Debtor prior to the Petition Date should be honored
2 pursuant to this Employee Obligations Motion.

3 For the reasons set forth above, the Debtor submits that the relief requested herein is in the
4 best interests of the Debtor, its estate and its creditors, and, therefore, should be granted.

5 IV.

6 **WAIVER OF BANKRUPTCY RULES 6004 (a) AND 6004(h) IS WARRANTED AND**
7 **JUSTIFIED UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE**

8 The Debtor further requests a waiver of any stay of the effectiveness of the order approving
9 this Motion to the extent such order is entered. Pursuant to Bankruptcy Rule 6004(h), “[a]n order
10 authorizing the use, sale, or lease of property other than cash collateral is stayed until the irreparable
11 damage to the Debtor’s operations. Accordingly, the Debtor submits that cause exists to justify a
12 waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.
13 Further, the Debtor respectfully requests a finding that the notice requirements under Bankruptcy
14 Rule 6004(a) are met.

15 V.

16 **RELIEF IS JUSTIFIED ON AN EXPEDITED BASIS**

17 Courts consistently have recognized that emergency relief on "first day" motions relating to
18 pre-petition wage payments and other “necessary” payments is necessary after a case is filed. See, In
19 re Center Wholesale, Inc., 759 F. 2d 1440, 1444 (9th Cir. 1985) (“We realize that ‘in certain
20 circumstances the entire reorganization effort may be thwarted if emergency relief is withheld’ and
21 that reorganization under the Bankruptcy Code ‘is a perilous process, seldom more so than at the
22 outset of the proceedings....’”); In re Sullivan Ford Sales, 2 B.R. 350, 355 (Bankr.D.Me.1980).

23 Bankruptcy Rule 6003 provides the relief requested in this Employee Obligations Motion
24 may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr.
25 P. 6003. For the reasons already set forth herein, the Debtor submits that the relief requested in this
26 Employee Obligations Motion is necessary to avoid immediate and irreparable harm to the Debtor,
27 its estate and its creditors.

1 VI.

2 **PROPOSED NOTICE PARTIES AND NOTICE OF THE MOTION**

3 **IS APPROPRIATE UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE**

4 The Debtor has separately filed an application for an order shortening time requesting that
5 this Motion be heard on shortened notice. The Debtor submits that the parties affected by the relief
6 requested in this Motion, consist of: (a) the Office of the United States Trustee; (b) the twenty (20)
7 largest unsecured creditors of the Debtor (as identified in the list filed pursuant to Rule 1007(c) of the
8 Bankruptcy Rules; (c) US Bank; and (d) the Subchapter V trustee, once appointed. The Debtor
9 further respectfully submits that a copy of this Motion, the Munro Declaration, and notice of a
10 hearing thereof provided by overnight courier, e-mail or hand-delivery, at the discretion of the
11 Debtor, is fair, reasonable, and appropriate notice and comports with the requirements of the
12 Bankruptcy Rules and the Local Bankruptcy Rules (“LBR”). See, Bankruptcy Rule 2002;
13 Bankruptcy Rule 9006(c); LBR Rule 9075-1.

14 VII.

15 **CONCLUSION**

16 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order granting the
17 Motion in its entirety; and granting the Debtor such other and further relief as the Court deems just
18 and proper.

19 DATED: September 16, 2021

WINTHROP GOLUBOW HOLLANDER, LLP

20 By: /s/ Richard H. Golubow

21 Richard H. Golubow

Peter W. Lianides

22 [Proposed] General Insolvency Counsel for
23 Lorna Jane USA, Inc., a California corporation

EXHIBIT 1

Schedule

List of Employee Wages and Allowances Unpaid at September 15, 2021

Employee	Hourly Rate	Regular Hours	Overtime	Holiday	Meal Premium	Data Reimbursement	Total Amount Due
Employee 1	\$ 19.00	56.00	0.38	8.00			\$1,226.83
Employee 2	\$ 17.00	56.00	3.20	8.00	1.00		\$1,186.60
Employee 3	\$ 20.00	56.00	1.23	8.00			\$1,316.90
Employee 4	\$ 16.00	47.42					\$758.72
Employee 5	\$ 16.25	15.83					\$130.00
Employee 6	\$ 36.05	56.00		8.00		\$15.00	\$2,322.20
Employee 7	\$ 39.66	56.00		8.00		\$15.00	\$2,553.24
Employee 8	\$ 28.84	56.00		8.00			\$1,845.76
Total Due							\$11,340.25

Schedule

List of Employee Accrued Vacation and Sickpay Allowances Unpaid at September 15, 2021

Employee	Hourly Rate	Vacation Hours Accrued	Sick Hours Accrued	Total Amount Due
Employee 1	\$ 19.00	7.69	7.19	\$282.72
Employee 2	\$ 17.00	33.20	72.00	\$1,788.40
Employee 3	\$ 20.00	3.08	17.69	\$415.40
Employee 4	\$ 16.00	0.00	5.70	\$91.20
Employee 5	\$ 16.25	0.00	9.41	\$152.91
Employee 6	\$ 36.05	164.68	69.33	\$8,436.06
Employee 7	\$ 39.66	101.16	56.70	\$6,260.72
Employee 8	\$ 28.84	93.30	72.00	\$4,767.25
Employee 9	\$ 25.48	119.54	51.54	\$4,359.11
Employee 10	\$ 26.00	51.37	6.58	\$1,506.70
Total Due				\$28,060.47

Schedule

List of Employee Benefits Unpaid at September 15, 2021

Carrier/Program	Description	Invoice Date	Amount Due Estimated	Explanation
CalSavers	Retirement		\$1,314.73	Deducted from employee pay
Allstate	Life Insurance		\$73.00	Deducted from employee pay
Total Due			\$1,387.73	

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 1301 Dove Street, Suite 500, Newport Beach, CA 92660

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR’S MOTION FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), AND 507(a) AUTHORIZING DEBTOR (I) TO PAY OR HONOR CERTAIN PRE- PETITION DATE EMPLOYEE WAGES, BENEFITS, EXPENSES, AND OTHER OBLIGATIONS; AND (II) TO CONTINUE EMPLOYEE BENEFIT PROGRAMS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **September 16, 2021**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Richard H Golubow rgolubow@wghlawyers.com, jmartinez@wghlawyers.com; mweinberg@wghlawyers.com
- Dare Law dare.law@usdoj.gov
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL: On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY EMAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **September 16, 2021**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

4. SERVED BY OVERNIGHT MAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **September 17, 2021**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 16, 2021	Jeannie Martinez	/s/ Jeannie Martinez
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

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United States Trustee
915 Wilshire Blvd., Suite 1850
Los Angeles, CA 90017

Lorna Jane USA, Inc.
1475 W. 139th St
Gardena, CA 90249

LORNA JANE – Landlords - 20 LARGEST- UST – SECURED – RSN - NEF

US Small Business Administration
Attn: Ben Raju, District Director
425 Walnut Street
Cincinnati, OH 45202
lado@sba.gov

Macerich Santa Monica LP
Hayley Rable VP Leasing
395 Santa Monica Place
Santa Monica, CA 90401
[Hayley Rable VP, Leasing Macerich](mailto:Hayley.Rable@macerich.com)
Hayley.Rable@macerich.com

Carlsbad Premium Outlets, LLC
Rocky McMurtray
5620 Paseo del Norte
Suite 100
Carlsbad, CA 92008
rmcmurtray@simon.com

Bellevue Square, LLC
Attn: Corp Officer/Manager
Jana Koeberle
Post Office Box 908
Bellevue, WA 98009
jana.koeberle@kemperdc.com

Sherman Oaks Fashion Assc, LP
Virginia Bergman Loo
11601 Wilshire Boulevard, 11th Fl.
Los Angeles, CA 90025
virginia.bergmanloo@urw.com
[Virginia Bergman Loo - VP, Business Affairs](mailto:Virginia.Bergman.Loo@VP.BusinessAffairs)

Valencia Town Ctr Venture LP
Attn: Virginia Bergman Loo
2049 Century Park East, 41st Floor
Los Angeles, CA 90067
virginia.bergmanloo@urw.com
[Virginia Bergman Loo - VP, Business Affairs](mailto:Virginia.Bergman.Loo@VP.BusinessAffairs)

DSC America, Inc.
c/o Kennedy Wilson Properties, Ltd
151 S. El Camino Drive
Beverly Hills, CA 90212
Edmond A. Sachse/Ian deLaat
idlaat@kennedywilson.com

Mission Viejo Associates, LP
c/o M.S. Management Associates Inc.
225 West Washington Street
Indianapolis, IN 46204-3438
[Rocky McMurtray](mailto:RockyMcMurtray)
rmcmurtray@simon.com

Biltmore Shopping Center Ptnrs LLC
2502 E. Camelback Rd, #216
Phoenix, AZ 85016
Hayley Rable VP, Leasing
[Hayley Rable VP, Leasing Macerich](mailto:Hayley.Rable@macerich.com)
Hayley.Rable@macerich.com

20 Largest / Landlord – Manhattan Beach
213 Manhattan Bch Blvd Ptnrs, LLC
c/o Cardinal Investments, LLC
Attn: Nicole Fitzgerald
Kyle Ransford Cardinal Investments
Attn: 2301 Rosecrans Ave., Suite 4194
El Segundo, CA 90245
kyle@cardinalinvestments.com

The Retail Property Trust
c/o M.S. Management Associates Inc
225 West Washington Street
Indianapolis, IN 46204-3438
[Rocky McMurtray](mailto:RockyMcMurtray)
rmcmurtray@simon.com

The Irvine company, LLC
Attn: Kenneth M. Gillett, Sr. VP
110 Innovation
Irvine, CA 92617
kengillett@irvinecompany.com

Century City Mall, LLC
Virginia Bergman Loo, VP
2049 Century Park East, 41st Floor
Los Angeles, CA 90067
Legal Dpt
virginia.bergmanloo@urw.com
[Virginia Bergman Loo - VP, Business Affairs](mailto:Virginia.Bergman.Loo@VP.BusinessAffairs)

Premium Outlet Partners LP
c/o Simon Property Group
225 West Washington Street
Indianapolis, IN 46204-3438
[Rocky McMurtray](mailto:RockyMcMurtray)
rmcmurtray@simon.com

Irvine Spectrum Center, LLC
Attn: Kenneth M. Gillett, Sr. VP
110 Innovation
Irvine, CA 92617
Kenneth M. Gillett Senior Vice Pre
kengillett@irvinecompany.com

Avalara Inc.
Attn: Corporate Officer
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Palatine
Palatine, IL 60055
accountsreceivable@avalara.com

UTC Venture, LLC
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Los Angeles, CA 90067
virginia.bergmanloo@urw.com
[Virginia Bergman Loo - VP, Business Affairs](mailto:Virginia.Bergman.Loo@VP.BusinessAffairs)

Rakuten Marketing
PO Box 415613
Boston, MA 02241-5613
Attn: Corporate Officer/Manager
rm-remittance-advice@rakuten.com

Secured
Bellevue Square LLC
575 Bellevue Square 1085
Bellevue, WA 98004

Santa Anita Fashion Park LLC
11601 Wilshire Boulevard 11th Floor
Los Angeles, CA 90025
virginia.bergmanloo@urw.com
[Virginia Bergman Loo - VP, Business Affairs](mailto:Virginia.Bergman.Loo@VP.BusinessAffairs)

Berkshire Hathaway Homestate Co.
Attn: Michelle Briggs
P.O. Box 844501
Los Angeles, CA 90084
bhheclaim@bhhc.com
property@bhhc.com

Secured
Kemper Development Company
Attn: Jana Koeberle, Sr. VP Leasing
575 Bellevue Square, #1085
Bellevue, WA 98004
jana.koeberle@kemperdc.com

NEF Service List
United States Trustee
915 Wilshire Blvd., Suite 1850
Los Angeles, CA 90017

US Bank
John K. Wong
VP Deposit/Payment Relationship Manager
US Bank Tower, Los Angeles
633 W. Fifth St., Floor 30,
Los Angeles, CA, 90071
john.wong@usbank.com

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Paypal, Inc –
2211 N 1st St,
San Jose, CA 95131
**(Kumarika Chaudhuri Senior Director - Global
Customer Operations and Site Head
service@paypal.com; irainev@paypal.com**

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**(Australian Account Manager)
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American Express
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Palo Alto, CA United States
**Scott Stirrup – Client Manager Global Merchant
and Network Services
scott.stirrup@aexp.com**

Afterpay USA, Inc –
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San Francisco, CA 94108
**(Australian Account Manager)
ryan.montgomery@afterpav.com**

Counsel for Bellevue
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10500 NE 8th Street, Suite 930
Bellevue, WA 98004
Phone: 425-289-5555
Brian Muchinsky - bmuchinsky@noldmuchlaw.com

LANDLORD – STORE 7777-150

Bella Terra Associates, LLC
c/o DJM Capital Partners
Attention: Eric Sahn
60 South Market Street, Suite 1120
San Jose, CA 95113
Grace Huang - General Manager -
ghuang@djmcapital.com

LANDLORD – STORE 1085

Bellevue Square, LLC
Attention: Corporate Officer
Post Office Box 908
Bellevue, Washington 98009
Jana Koeberle
Senior Vice President Leasing - Kemper Development
Company
jana.koeberle@kemperdc.com

LANDLORD – STORE 181

Biltmore Shopping Center Partners LLC
c/o Macerich - Attention: Legal Department
P.O. Box 2172
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90407
Hayley.Rable@macerich.com

LANDLORD – STORE 2755

Century City Mall, LLC
Attention: Legal Department
2049 Century Park East, 41st Floor
Los Angeles, California 90067
virginia.bergmanloo@urw.com
Virginia Bergman Loo - VP, Business Affairs

LANDLORD – STORE 134

City Creek Center Associates LLC
Attention: Corporate Officer
P.O. Box 674566
Detroit, MI 48267-4566
**Francesca A. Lousia - Senior Attorney,
Lease Compliance Taubman –
flousia@taubman.com**

LANDLORD – STORE 73-655

El Paseo Premier Centre
Attention: Corporate Officer
5900 Wilshire Boulevard, Suite 400
Los Angeles, California 90036
**Amy Smith - Senior Vice President
Chartwell Properties, Inc.
asmith@chartwellproperties.net**

LANDLORD – STORE 751

Irvine Spectrum Center LLC
Attention: General Counsel, Retail Properties
The Irvine Company LLC
110 Innovation
Irvine, California 92617
**Kenneth M. Gillett - Senior Vice President, Operations
Irvine Company Retail Properties
kengillett@irvinecompany.com**

LANDLORD – STORE 150C1B

Kierland Greenway, LLC
c/o Macerich
Attention: Legal Department
P.O. Box 2172
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90407
**Hayley Rable VP, Leasing Macerich
Hayley.Rable@macerich.com**

LANDLORD – STORE 100

Macerich Santa Monica LP
c/o Macerich
Attention: Legal Department
P.O. Box 2172
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90407
**Hayley Rable VP, Leasing Macerich
Hayley.Rable@macerich.com**

LANDLORD – STORE 12D

Mission Viejo Associates, L.P.
c/o M.S. Management Associates Inc.
Attention: Legal Department
225 West Washington Street
Indianapolis, Indiana 46204-3438
**Rocky McMurtray Leasing Simon
rmcmurtray@simon.com**

LANDLORD – STORE 2R1-2248

Northpark Partners LP
Attention: Corporate Officer
8080 North Central Expressway, Suite 1100
Dallas, TX 75206
**Angela Boots Director of Leasing
NorthPark Center
aaboos@northparkentr.com**

LANDLORD – STORE 1012

Premium Outlet Partners LP
c/o Simon Property Group
Attention: Legal Department
225 West Washington Street
Indianapolis, Indiana 46204-3438
**Rocky McMurtray - Leasing Simon
rmcmurtray@simon.com**

LANDLORD – STORE 1200

Santa Anita Fashion Park LLC
Attention: Legal Department
11601 Wilshire Boulevard, 11th Floor
Los Angeles, California 90025
**Virginia Bergman Loo VP, Business Affairs
Unibail-Rodamco-Westfield
virginia.bergmanloo@urw.com**

LANDLORD – STORE 36

Sherman Oaks Fashion Associates LP
Attention: Legal Department
11601 Wilshire Boulevard, 11th Floor
Los Angeles, California 90025
**Virginia Bergman Loo VP, Business Affairs
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virginia.bergmanloo@urw.com**

LANDLORD – STORE 807

The Irvine Company LLC
Attention: General Counsel, Retail Properties
The Irvine Company LLC
110 Innovation
Irvine, California 92617
**Kenneth M. Gillett Senior Vice President, Operations
kengillett@irvinecompany.com**

LANDLORD – STORE 1106

The Retail Property Trust
c/o M.S. Management Associates Inc.
Attention: Legal Department
225 West Washington Street
Indianapolis, Indiana 46204-3438
**Rocky McMurtray – Leasing Simon
rmcmurtray@simon.com**

LANDLORD – STORE

Union Street Property Trust 1
Attention: Corporate Officer
63 Paul Avenue
San Rafael, California 94903
**Reno D Rossi -
renorossi@marincheese.com**

LANDLORD – STORE E25

UTC Venture LLC
Attention: Legal Department
2049 Century Park East
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Los Angeles, California 90067
**Virginia Bergman Loo VP, Business Affairs
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LANDLORD – STORE 2730

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virginia.bergmanloo@urw.com**

LANDLORD – STORE 316

Westcor Santan Village LLC Santan
c/o Macerich
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**Hayley Rable VP, Leasing Macerich
Hayley.Rable@macerich.com**