

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION WORKFORCE
CLAIMS, INCLUDING SALARIES AND OTHER COMPENSATION, (II) CERTAIN
EMPLOYEE BENEFITS AND CONFIRMING RIGHT TO CONTINUE EMPLOYEE
BENEFITS ON POST-PETITION BASIS, (III) WITHHOLDING AND PAYROLL-
RELATED TAXES, (IV) WORKERS' COMPENSATION OBLIGATIONS, AND
(V) PREPETITION CLAIMS OWING TO ADMINISTRATORS AND
THIRD-PARTY PROVIDERS**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move the Court (the “**Motion**”) for entry of an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”) pursuant to sections 105(a), 363(b), 507, 1107(a), and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”); Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), authorizing, but not directing, the Debtors to (i) pay accrued prepetition salaries and other compensation to their Workforce (as defined below); (ii) honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of the Debtors’ employee benefit plans and programs and paid time off policies, as described below; (iii) pay all related prepetition payroll taxes and other

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors’ mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

deductions; (iv) honor workers' compensation obligations; and (v) pay any prepetition claims of administrators and third-party providers in the ordinary course of business to the extent that any of the foregoing programs are administered, insured, or paid through a third-party administrator or provider. In support of the Motion, the Debtors rely upon the *Declaration of Adrian Kettering in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the "**First Day Declaration**").² In further support of the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Under Local Rule 9013-1(f), the Debtors consent to entry of a final order under Article III of the United States Constitution. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), 507, 1107(a), and 1108 Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1.

BACKGROUND

A. General Background

3. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition in this Court commencing a case for relief and electing treatment under subchapter V of chapter 11 of the Bankruptcy Code (the "**Cases**"). The factual background regarding the Debtors,

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

including their business operations, their capital and debt structure, and the events leading to the filing of the Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Cases and no committees have yet been appointed.

B. The Debtors' Workforce and Related Obligations

5. In connection with the operation of their business, the Debtors currently employ approximately ten (10) full-time employees and one (1) part-time employee (collectively, the "**Employees**"). Employees are employed at the Company's corporate headquarters in Tualatin, Oregon.

6. The Employees are critical to the Debtors' business, and their value cannot be overstated. To a significant extent, the Debtors' success depends on the Debtors' ability to attract and retain qualified personnel. The loss of certain Employees will impede the Debtors' operations and seriously harm the ability to successfully implement their bankruptcy strategy. Furthermore, replacing Employees can be impossible for the Debtors given the limited number of individuals in their geographical area with the breadth of skills and experience required to successfully navigate the technical and scientific issues associated with the Debtors' business.

7. If the Debtors cannot assure their Employees that they will promptly pay prepetition Compensation Obligations (as defined below) to the extent allowed under the Bankruptcy Code, and continue to honor, as applicable, the Benefits Obligations (as defined below), certain Employees will likely seek employment elsewhere. The loss of Employees at this critical juncture

would have a material adverse impact on the Debtors' business and ability to maximize value through these Cases.

8. The Debtors also utilize the services of contract workers ("**Contractors**" and, together with the Employees, the "**Workforce**") to provide a variety of services. The Contractors are either employed (i) directly by, and have contracts directly with, the Debtors (the "**Direct Contractors**"), or (ii) by third party companies and outsourced to the Debtors (the "**Third Party Contractors**"). There are 3 Direct Contractors who are highly skilled research and development clinical specialists and 3 Third Party Contractors who provide a range of functions, both operational and administrative support.

9. The Contractors fill certain critical and immediate research and development needs of the Debtors and allow the Debtors to have a flexible workforce to meet their operational needs in a cost-effective manner. The Contractors are a critical yet cost-efficient component of the Debtors' business. Thus, as with the Debtors' regular Employees, if the Debtors fail to honor their prepetition compensation obligations to the Contractors, it is likely that the Debtors will lose such individuals' valuable services to the detriment of the Debtors' ongoing business operations.

10. In the ordinary course of business, the Debtors incur payroll and other compensation obligations for their Workforce. The Debtors also provide other benefits to their Employees for the performance of services. These benefits and obligations are described in more detail below.

i. Workforce Compensation Obligations

a. Compensation Obligations

11. In the ordinary course, the Debtors incur obligations to their Employees for, among other things, wages, salaries, and other obligations described herein. All of the Debtors' Employees are paid semimonthly via direct deposit. As of the Petition Date, the Debtors estimate that their

semi-monthly gross payroll liability is approximately \$38,000 and that, as of the Petition Date, approximately \$6,000 has accrued and remains unpaid on account of compensation earned by Employees (the “**Compensation Obligations**”), all of which will come due within the first 30 days of these Cases. As described above, if the Debtors fail to pay the Compensation Obligations, it could result in extreme financial hardship for its Employees. In light of the substantial benefit the Employees will continue to provide to the Debtors, the Debtors wish to avoid imposing such a hardship. None of the Employees are owed more than \$13,650 in accrued and unpaid general prepetition salaries.³

12. As of the Petition Date, all Employees have elected to have their payroll administered via direct deposit. The Debtors use Automatic Data Processing, Inc. (“**ADP**”) to process their payroll and coordinate the payment of Withholding Obligations (as defined below).

13. The Debtors seek authorization, but not direction, to pay any unpaid Compensation Obligations. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of Compensation Obligations to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

b. Administrative Fee Obligations

14. As mentioned above, the Debtors use the services of ADP to process payroll and distribute payroll to their Employees. The Debtors submit their payroll to ADP twice per month if there are no off-cycle payments or adjustments. The Debtors pay approximately \$350.00 per month in fees to ADP (“**Administrative Fee Obligations**”). By this Motion, the Debtors seek authority,

³ To the extent that any Employee is owed more than \$13,650, the Debtors will seek authority to pay such amounts by separate motion pursuant to Bankruptcy Code section 502.

but not direction, to pay the Administrative Fee Obligations in the ordinary course and consistent with past practice during the administration of these Cases. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of the fee obligations addressed herein to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

c. Withholding Obligations

15. For each applicable pay period, the Debtors routinely deduct certain amounts from Employees' paychecks, including pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an Employee's share of health care benefits and insurance premiums, savings contributions, legally ordered deductions, and miscellaneous deductions (collectively, the "**Deductions**"), and forward such amounts to various third-party recipients. In addition to the Deductions, certain federal and state laws require that the Debtors withhold certain amounts from Employees' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the "**Employee Withholding Taxes**"), and remit the same to the applicable taxing authorities.

16. In addition, the Debtors are required to make matching payments from their own funds for, among other things, social security and Medicare taxes and to pay, based on a percentage of gross payroll, state, and federal unemployment insurance, employment training taxes, and state disability insurance contributions (the "**Employer Payroll Tax Obligations**," and together with Employee Withholding Taxes, the "**Payroll Tax Obligations**"). As of the Petition Date, the Debtors estimate that they will have unpaid Deductions and Payroll Tax Obligations outstanding of approximately \$600.00, the vast majority of which will come due during the interim period.

17. The Debtors seek authorization, but not direction, to continue to make the Deductions and satisfy the Payroll Tax Obligations (collectively, the “**Withholding Obligations**”) and to remit amounts withheld on behalf of third parties post-petition in the ordinary course of business.

ii. Paid Time Off

18. The Debtors offer their Employees paid vacation days (“**Vacation**”), holiday pay (“**Holiday Pay**”), and paid sick days (“**Sick Leave**”). These programs are typical and customary, and continuing to offer them is necessary for the Debtors to retain Employees during the Cases. An individual Employee’s paid time off does not accrue over time or roll over from year to year. When an Employee elects to take paid time off, the Employee is paid his or her regular rate.

19. The Debtors request that they be authorized, but not directed, to continue to honor their Vacation, Holiday Pay, and Sick Leave policies going forward, including during the administration of these Cases.

iii. Reimbursable Expense Obligations

20. Prior to the Petition Date, in the ordinary course of business, the Debtors reimbursed certain Employees for reasonable and legitimate expenses incurred on behalf of the Debtors in the scope of the Employee’s employment (“**Reimbursable Expense Obligations**”). Reimbursable Expense Obligations typically include expenses for, among other things, air travel, meals, parking, mileage, and certain other business and travel related expenses. All such expenses are incurred with the applicable Employee’s understanding that he or she will be reimbursed by the Debtors in accordance with the Debtors’ reimbursement policy, as described in more detail below. In all cases, reimbursement is contingent on the Debtors’ determination that the charges are for legitimate, reimbursable business expenses.

21. The Debtors process expense and reimbursement claims on a rolling basis. As such, it is difficult for the Debtors to determine the exact amount of Reimbursable Expense Obligations outstanding as of the Petition Date because, among other things, Employees may have expenses that they have yet to submit to the Debtors for reimbursement. As of the Petition Date, the Debtors estimate that the total amount of unpaid prepetition Reimbursable Expense Obligations will not exceed \$1,000.00.

22. The Reimbursable Expense Obligations are ordinary course expenses that the Debtors' Employees incur in performing their job functions, including all expenses incurred on the Corporate Cards. It is essential to the continued operation of the Debtors' business that the Debtors be permitted to continue reimbursing, or making direct payments on behalf of, Employees for such expenses.

23. Employees incur the Reimbursable Expense Obligations as business expenses on behalf of the Debtors and with the understanding that they would be reimbursed. To avoid harming Employees who have incurred the Reimbursable Expense Obligations, the Debtors request authority, but not direction, to satisfy all prepetition Reimbursable Expense Obligations to the extent Employees have paid for such expenses directly from their own funds or are otherwise personally liable for such expenses. The Debtors also seek authority to continue their reimbursement policy and Corporate Cards policy in the ordinary course of business during the administration of these Cases.

iv. Employee Benefit Programs

24. The Debtors offer their full-time Employees the opportunity to participate in a number of health benefit plans, including (a) medical benefits (the "**Medical Plan**"), dental benefits (the "**Dental Plan**"), and vision care (the "**Vision Plan**," and collectively, with the Medical Plan and the Dental Plan, the "**Health Plans**"); (b) basic life (the "**Life Insurance**"); and

(c) simplified employee pension IRA plan (“**IRA**” and together with the Health Plans, Life Insurance, the “**Employee Benefits Plans**”). In certain instances, the Debtors deduct specified amounts from the participating Employees’ paychecks in connection with the Employee Benefits Plans. All obligations with respect to the Employee Benefits Plans are hereinafter referred to as the “**Employee Benefits Obligations.**”

a. Health Plans

25. Employee contributions to the Health Plans have been and are collected through payroll deductions from participating Employees. The Debtors believe that it is necessary and appropriate to continue to honor their obligations to current and former Employees under the Health Plans. The Debtors request authority, but not direction, to pay any prepetition amounts due under the Health Plans. The Debtors also request authority, but not direction, to continue to offer the Health Plans and honor their obligations thereunder in the ordinary course of business during the administration of these Cases.

1) Medical Plan

26. The Debtors offer Employees and eligible dependents medical coverage administered through Health Net Health Plan of Oregon, Inc. As of the Petition Date, the Debtors do not owe any prepetition amounts on account of the Medical Plan.

2) Dental Plan and Life Insurance

27. The Debtors also offer their Employees voluntary dental and life insurance administered through Principal Life Insurance Company. As of the Petition Date, the Debtors do not owe any prepetition amounts on account of the Dental Plan.

3) Vision Plan

28. The Debtors offer voluntary vision coverage to Employees through VSP Vision Service. As of the Petition Date, the Debtors do not owe any prepetition amounts on account of the Vision Plan.

b. IRA

29. The Debtors maintain a discretionary simplified employee pension IRA set up for its Employees. Accordingly, the Debtors request authority, but not direction, to maintain the IRA in the ordinary course of business during the administration of these Cases.

v. **Workers' Compensation Program**

30. The Debtors maintain workers' compensation insurance for their Workforce at the statutorily required level for the state of Oregon. The Debtors maintain workers' compensation coverage for claims ("**Workers' Compensation Claims**") through SAIF Corporation. The Debtors pay approximately \$2,359.40, annually, in premiums and fees to maintain the workers' compensation insurance. The Debtors seek authority, but not direction, to pay any Workers' Compensation Claims in the ordinary course and honor payments owed with respect to the Workers' Compensation Claims regardless of when such obligations arose.

vi. **Employee Incentive Program**

31. In the ordinary course of business, the Debtors have typically maintained a year-end performance-based incentive and bonus program for all Employees (collectively, the "**Incentive Program**"). As of the Petition Date, the Debtors estimate that they do not owe any amounts on account of the Incentive Program.

32. For those Employees who are eligible to receive them, bonuses earned under the Incentive Program are an important aspect of their overall compensation. Maintaining historical prepetition practices with regard to the Incentive Program is essential to ensuring that the Debtors

can retain their Employees and continue to operate their business and maximize value through the duration of these Cases. Therefore, the Debtors seek authority, but not direction, to honor their obligations under the Incentive Program and to maintain the Incentive Program in the ordinary course of the Debtors' business.

RELIEF REQUESTED

33. By this Motion, the Debtors request entry of an Interim Order and a Final Order, substantially in the forms of Exhibit A and Exhibit B, respectively, attached hereto, authorizing, but not directing, the Debtors, to (i) pay prepetition claims and honor obligations incurred or related to the Compensation Obligations, the Withholding Obligations, the Employee Benefits Obligations, Workers' Compensation Claims, and all fees and costs incident to the foregoing, including amounts owed to third-party administrators (including the Administrative Fee Obligations) (collectively, the "**Employee Obligations**") and (ii) maintain, continue, and honor, in the ordinary course of business, paid time off policies, the Employee Benefits Plans, and the Workers' Compensation Claims (collectively, the "**Employee Plans and Programs**").

34. To enable the Debtors to carry out the relief requested, the Debtors also request that the Court authorize all applicable banks and financial institutions (collectively, the "**Banks**"), and ADP (and together with the Banks, the "**Processors**"), to receive, process, honor, and pay all checks presented for payment and all electronic payment requests made by the Debtors relating to the Employee Obligations and the Employee Plans and Programs, whether such checks were presented or electronic-payment requests were submitted prior to or after the Petition Date.⁴

⁴ Concurrently herewith, the Debtors have filed a motion for authority to, among other things, continue utilizing their cash management system.

BASIS FOR RELIEF

35. The Debtors' ability to successfully operate is contingent on a reliable and loyal Workforce. Thus, it is essential to assure the Employees that the Debtors will honor the Employee Obligations and continue and maintain the Employee Plans and Programs in the ordinary course of business throughout these Cases. A failure to promptly do so will create concern and discontent among the Employees and could lead to resignations or the decision to not complete work for the Debtors or accept future hiring proposals. The loss of even a few key personnel would immediately and irreparably harm the Debtors' ability to maintain operations to the detriment of all interested parties.

36. Therefore, pursuant to Bankruptcy Code sections 105(a), 363, 507, 1107(a), and 1108, the Debtors seek authority to pay the Employee Obligations and to maintain and continue the Employee Plans and Programs in the ordinary course of business and in the exercise of their business judgment. This relief is necessary to retain the Workforce, the loss of which would disable the Debtors' business operations.

A. All of the Employee Obligations are Entitled to Priority Treatment

37. Bankruptcy Code section 507(a)(4)(A) grants priority status to up to \$13,650 for employee claims for "wages, salaries, or commission, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date. *See* 11 U.S.C. § 507(a)(4)(A). Similarly, Bankruptcy Code section 507(a)(5) grants priority to contributions to employee benefit plans, up to an aggregate amount of \$13,650 multiplied by the number of employees covered, less any amounts paid to such employees under Bankruptcy Code section 507(a)(4).

38. Indeed, "[w]age priority has been a feature of the bankruptcy law since 1898." *In re Garden Ridge Corp.*, No. 04-10324 (KJC), 2006 WL 521914, at *2 (Bankr. D. Del. Mar. 2, 2006) (citing 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 507.05[1] (15th ed.

2005)). Its purpose is to “alleviate hardship on workers . . . who may have no other source of income and “to encourage employees to stand by an employer in financial difficulty.” *Id.* (citing Collier on Bankruptcy ¶ 507.05[1]). This priority extends to certain other “benefits that are considered akin to compensation, such as vacation, severance and sick leave pay.” *Id.*

39. The Debtors believe that a substantial portion of the Employee Obligations relating to the period prior to the Petition Date constitutes priority claims under Bankruptcy Code sections 507(a)(4) and (5). Amounts that are paid on account of priority claims for the majority of the Employee Obligations would not otherwise be available for distribution to unsecured creditors. Therefore, the Debtors’ unsecured creditors will not be prejudiced by permitting priority obligations to be satisfied in the ordinary course of business during the Cases rather than at the conclusion of the Cases. Indeed, the Debtors submit that payment of Employee Obligations at this time enhances value for the benefit of the Debtors and all interested parties by retaining the Workforce. The Debtors believe that honoring the Employee Obligations is important to sustain morale for the current Workforce and ensure their retention.

B. The Debtors Should be Authorized to Pay the Employee Obligations Under Bankruptcy Code Sections 1107(a) and 1108

40. The Debtors, operating their business as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries “holding the bankruptcy estate and operating the business for the benefit of its creditors and (if the value justifies) equity owners.” *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). “Implicit in the duties” of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*; *See also Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003); *In re Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004).

41. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497. The *CoServ* court specifically noted that preplan satisfaction of prepetition claims is a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim is a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

42. Payment of the Employee Obligations as set forth herein meets each element of the *CoServ* court’s standard. The Debtors’ operations rely on the skill and expertise of their Employees. The Employees possess unique knowledge regarding specific aspects of the Debtors’ operations, which would be difficult to replace should such Employees be lost through a failure to pay the Employee Obligations. In addition, any failure by the Debtors to pay the Employee Obligations as set forth herein would negatively impact the morale of the Workforce at a critical time for the Debtors and their business when the Workforce is most needed. The Workforce is also critical to the Debtors’ ability to maintain their operations consistent with past practices, which would be impossible without the continued efforts of the Workforce. The damage to the value of the Debtors’ business and, hence, the costs to creditors as a whole, would be immediate and irreparable if the Employee Obligations were not met. In short, the potential harm and economic disadvantage that

would stem from the failure to pay the Employee Obligations as set forth herein greatly outweighs the amount of any prepetition claims that the Debtors are seeking authorization to pay.

43. After careful consideration in consultation with their advisors, the Debtors have determined in their business judgment that to avoid significant disruption to their business operations there exists no practical or legal alternative to the payment of the Employee Obligations as set forth herein. Therefore, the Debtors can meet their fiduciary duties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108 only by payment of the Employee Obligations as set forth herein.

C. Payment of the Employee Obligations is Warranted Pursuant to Bankruptcy Code Section 363

44. Bankruptcy Code section 363(b)(1) provides that a debtor may “after notice and a hearing, use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application); *see also In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Consistent with a debtor’s fiduciary duties, where there is a sound business purpose for the payment of prepetition

obligations, and where the debtor is able to “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make such payments under Bankruptcy Code section 363(b). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (accepting debtor’s argument that payment of employee wage claims was “critical . . . in order to preserve and protect its business and ultimately reorganize, retain its currently working employees and maintain positive employee morale,” and finding that the debtor had “clearly demonstrated sound business reasons to justify such payments”).

45. In addition, the Debtors pay the Employee Obligations in the ordinary course of business, as permitted by Bankruptcy Code section 363(c). However, to the extent the Court finds that approval is necessary, and in an abundance of caution, the Debtors request that the Court grant the relief requested herein and enter an order authorizing them to pay the Employee Obligations, consistent with their compensation, PTO, and other benefit policies and plans, and to permit, but not require, the Debtors, in their discretion, to maintain and continue the Employee Plans and Programs for their Employees as those practices, programs, policies, and plans were in effect as of the Petition Date, as such may be modified, terminated, amended, or supplemented from time to time hereafter.

D. Payment of Certain Withholding Obligations is Appropriate Under Bankruptcy Code Section 541

46. The Debtors also seek authority to pay the Withholding Obligations to the appropriate entities. These amounts principally represent the Employees’ earnings that governments, the Employees, and the judicial authorities have designated for deduction from the Employees’ paychecks. Indeed, certain Withholding Obligations are not property of the Debtors’ estates because the Debtors have withheld such amounts from Employees’ paychecks on another party’s behalf. *See* 11 U.S.C. § 541; *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95

(3d Cir. 1994) (observing the “well-settled principle that debtors do ‘not own an equitable interest in property . . . [they] hold[] in trust for another,’ and that therefore funds held in trust are not ‘property of the estate’”) (quoting *Begier v. IRS*, 496 U.S. 53, 59 (1990)).

47. Further, federal and state laws require the Debtors to withhold certain tax payments from Employees’ paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672 and 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). A failure to pay over these amounts could subject the Debtors and their officers and directors to liability.

See, e.g., John F. Olson, et al., *Director & Officer Liability: Indemnification and Insurance* § 3:21 (2003). To avoid the potential of such liability, and because the Withholding Obligations are not property of the Debtors’ estates, the Debtors request that the Court authorize them to remit these amounts to the appropriate parties in the ordinary course of business.

E. Payment of the Employee Obligations is Warranted Pursuant to Bankruptcy Code Section 105(a) and Under the Doctrine of Necessity

48. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to Bankruptcy Code section 105(a). Section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under Bankruptcy Code section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a

withholding of goods or services essential to the debtor's business reorganization plan. *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

49. Numerous courts have used their section 105(a) powers under the “doctrine of necessity” to authorize payment of prepetition obligations where, as here, such payment is an essential element of the preservation of the debtor in possession's potential for rehabilitation. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (reasoning that because the debtor-in-possession has fiduciary duties it must meet, it is logical that the bankruptcy court may “use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *In re Synteen Techs., Inc.*, No. 00-02203-W, 2000 WL 33709667, at *2 (Bankr. D.S.C. Apr. 14, 2000) (courts have permission to “allow payment of a prepetition claim when essential to the continued operation of the debtor”) (citation omitted); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (“[C]ourts have used their equitable power under section 105(a) . . . to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization.”); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“Under [section 105] the court can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has

developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”).

50. The “doctrine of necessity” is frequently invoked early in reorganization cases, during the so-called “breathing spell,” when preservation of the estate is most critical and often extremely difficult. *See* 2 Collier on Bankruptcy ¶ 105.02[4][a] (16th ed.) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately). For example, in *In re Structurlite Plastics Corp.*, the court embraced “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor[.]’” *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (quoting *In re Chateaugay Corp.*, 80 B.R. 279, 287 (S.D.N.Y. 1987)). The court explained that “a per se rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. Flexibility of payment is particularly critical when the prepetition creditor provides vital goods or services to the debtor.

51. Here, many of the Employees rely on their compensation and benefits to satisfy their daily living expenses and maintain their health and well-being. Consequently, these Employees will be exposed to significant financial hardships if the Debtors are not permitted to honor the Employee Obligations. If the Debtors are unable to satisfy such obligations, Employee morale and loyalty will suffer at a time when Employee support is critical. Further, if the Court does not authorize the Debtors to honor their various obligations under the Employee Benefits Plans, the Employees’ health coverage could be threatened, potentially burdening individual Employees with the costs of health care. At a minimum, the loss of health care coverage, or

uncertainty regarding coverage, would result in considerable anxiety for the Employees at a time when the Debtors need their Employees to perform their jobs at peak efficiency. For all of the foregoing reasons, a sound business purpose exists to pay the Employee Obligations.

52. In the absence of such payments, the Debtors believe that their Employees may seek alternative employment opportunities, perhaps with the Debtors' competitors. Such a development would deplete the Workforce, hinder the Debtors' ability to maintain their business, and likely diminish vendor and counterparty confidence in the Debtors. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a substantial and costly distraction at a time when the Debtors must focus on sustaining their operations. Accordingly, the Debtors must be able to pursue all reasonable measures to retain the Employees by, among other things, continuing to honor salary, benefits, and related obligations, including those that accrued prior to the Petition Date, consistent with the terms set forth in the Interim Order and Final Order attached hereto.

53. Taken together, the nature of the Employee Obligations, the substantial harm to the Debtors' business that would be caused if those obligations were not honored, the related potential for loss of value in the Debtors' estates, and the fact that a significant portion of the obligations in question relates to priority wage claims, lead to the conclusion that the Employee Obligations fall well within the scope of obligations whose payments may be authorized pursuant to the doctrine of necessity.

54. The relief requested herein is commonly granted by bankruptcy courts in this District. Accordingly, for all of the foregoing reasons, the relief requested herein will benefit the Debtors' estates and creditors by allowing the Debtors' business operations to continue without interruption and should therefore be approved.

F. The Court Should Authorize Applicable Banks and Other Processors to Honor Checks and Electronic Fund Transfers in Accordance with the Motion

55. In connection with the foregoing, the Debtors respectfully request that the Court (a) authorize all applicable Processors to receive, process, honor, and pay all checks and transfers issued by the Debtors in accordance with this Motion, without regard to whether any checks or transfers were issued before or after the Petition Date; (b) provide that all Processors may rely on the representations of the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion (such Banks and other Processors having no liability to any party for relying on such representations by the Debtors provided for herein); and (c) authorize the Debtors to issue replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Processors.

G. Immediate Relief is Justified

56. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within 21 days after the filing of the petition regarding a motion to “use, sell, lease, or otherwise incur an obligation regarding property of the estate” only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). Immediate and irreparable harm exists where the absence of relief would impair a debtor’s ability to reorganize or threaten the debtor’s future as a going concern. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of “immediate and irreparable harm” in relation to Bankruptcy Rule 4001).

57. Moreover, Bankruptcy Rule 6003 authorizes the Court to grant the relief requested herein to avoid harm to the Debtors’ business and other third parties. Unlike Bankruptcy Rule 4001, Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of “immediate and irreparable harm” generally. *Cf.*

Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to “irreparable harm to the estate”). Indeed, the “irreparable harm” standard is analogous to the traditional standards governing the issuance of preliminary injunctions. *See* 9 Collier on Bankruptcy ¶ 4001.07[b][3] (discussing source of “irreparable harm” standard under Rule 4001(c)(2)). Courts will routinely consider third-party interests when granting such relief. *See, e.g., Capital Ventures Int’l v. Argentina*, 443 F.3d 214, 223 n.7 (2d Cir. 2006); *see also Linnemeir v. Bd. of Trs. of Purdue Univ.*, 260 F.3d 757, 761 (7th Cir. 2001).

58. As described herein and in the First Day Declaration, the Debtors will suffer immediate and irreparable harm without Court authorization to pay the Employee Obligations and other related relief requested herein. Accordingly, Bankruptcy Rule 6003 has been satisfied, and the relief requested herein should be granted.

WAIVER OF BANKRUPTCY RULES

59. To the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h), to the extent applicable. *See* Fed. R. Bankr. P. 6004(a), (h). As described above, the relief that the Debtors seeks in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve the value of their estates. The Debtors respectfully request that the Court waive the notice requirements imposed by Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

60. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors’ rights to dispute any claim,

or an approval or assumption of any agreement, contract, or lease under Bankruptcy Code section 365. The Debtors expressly reserve their rights to dispute any claim asserted by a member of the Workforce under applicable law and to assume or reject any Workforce agreements in accordance with the applicable provisions of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, 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 claim or a waiver of the Debtors' rights to dispute such claim subsequently.

CONSENT TO JURISDICTION

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

NOTICE

62. Notice of this Motion shall be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Subchapter V Trustee (to be appointed by the U.S. Trustee); (c) the parties included on the Debtors' consolidated list of twenty (20) largest unsecured creditors; (d) any party that has requested notice pursuant to Bankruptcy Rule 2002; (e) all parties entitled to notice pursuant to Local Rule 9013-1(m); (f) the Workforce; (g) all Employee Benefits Plans providers and administrators; and (h) the Processors (collectively, the "**Notice Parties**"). The Debtors submit that, under the circumstances, no other or further notice is required.

63. If the Court enters an Interim Order granting the Motion, the Debtors propose to serve notice of such entry on the Notice Parties. The Notice will provide that any objections to the relief granted in the Interim Order must be filed with the Court and served upon counsel for the Debtors no later than seven (7) days prior to the final hearing to be held on the Motion (the "**Objection Deadline**"). If an objection is timely filed and served prior to the Objection Deadline,

such objection will be heard at the final hearing on the Motion. If no objections are timely filed and served, Debtors' counsel will file a certification of counsel to that effect attaching a final form of order.

NO PRIOR REQUEST

64. No previous request for the relief sought herein has been made to this Court or any other court

WHEREFORE, the Debtors respectfully request that the Court enter an Interim Order and a Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: September 30, 2021
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Shanti M. Katona
Shanti M. Katona (Del. Bar No. 5352)
222 Delaware Avenue, Suite 1101
Wilmington, Delaware 19801
Telephone: (302) 252-0920
Facsimile: (302) 252-0921
skatona@polsinelli.com

-and-

Jeremy R. Johnson (*Pro Hac Vice* Pending)
600 3rd Avenue, 42nd Floor
New York, New York 10016
Telephone: (212) 684-0199
Facsimile: (212) 684-0197
jeremy.johnson@polsinelli.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

Re: Docket No. __

**INTERIM ORDER AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION
WORKFORCE CLAIMS, INCLUDING SALARIES AND OTHER COMPENSATION,
(II) CERTAIN EMPLOYEE BENEFITS AND CONFIRMING RIGHT TO CONTINUE
EMPLOYEE BENEFITS ON POST-PETITION BASIS, (III) WITHHOLDING AND
PAYROLL-RELATED TAXES, (IV) WORKERS' COMPENSATION OBLIGATIONS,
AND (V) PREPETITION CLAIMS OWING TO ADMINISTRATORS
AND THIRD-PARTY PROVIDERS**

Upon the motion (the "**Motion**")² of the Debtors for entry of an interim order (this "**Interim Order**") authorizing the Debtors to (i) pay accrued prepetition salaries and other compensation to their Workforce (defined below); (ii) honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of Debtors' employee benefit plans and programs and paid time off policies; (iii) pay all related prepetition payroll taxes and other deductions; (iv) honor workers' compensation obligations; and (v) pay any prepetition claims of administrators and third-party providers in the ordinary course of business to the extent that such programs are administered, insured, or paid through a third-party administrator or provider; the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. 157 and §§ 1334(b) and

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor's federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors' mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), that the Debtors consent to entry of a final order under Article III of the United States Constitution, and venue of these Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. The Debtors are authorized to (i) pay prepetition claims and honor obligations incurred or related to the Employee Obligations, in an aggregate amount not to exceed \$10,000, and (ii) maintain, continue, and honor, in the ordinary course of business, the Employee Plans and Programs; *provided, however*, that payments to or for the benefit of any individual contractor or employee on account of pre-petition obligations will not exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; *provided further*, that the Debtors' employees are authorized to use paid time off ("PTO") in accordance with the Debtors' policies and practices; *provided further*, that unless applicable state law requires such payment, the Debtors are prohibited from paying PTO upon an employee's termination.
3. Nothing herein authorizes the payment of bonus or severance obligations, including obligations that implicate section 503(c) of the Bankruptcy Code; provided that nothing herein shall prejudice the Debtors' ability to seek approval of relief with respect to such obligations at a later time.

4. The Debtors are authorized to continue the programs and policies described in the Motion on a postpetition basis, except as otherwise set forth herein, and to make non-material alternations, modifications, or to discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court, subject to limitations contained in this Order.

5. Except as otherwise set forth herein, the Debtors are authorized, pursuant to Bankruptcy Code sections 105(a) and 363(b), in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of Employee Compensation Obligations (inclusive of Withholding Obligations), subject to the limitations contained in this Order.

6. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Withholding Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

7. Except as otherwise set forth in this Order, the Debtors are authorized to honor the Employee Benefits Plans in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to make any necessary contributions to such programs and pay any unpaid premium, claim, or amount owed as of the Petition Date with respect thereto, subject to the limitations contained in this Order.

8. The Debtors are authorized to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Compensation Obligations or the Employee Benefits Obligations, including the Administrative Fee Obligations.

9. Nothing in the Motion or this Interim Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as an admission as to the validity or

priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to Bankruptcy Code section 365, or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Interim Order.

10. Each of the Processors are authorized to receive, process, honor, and pay all checks and transfers issued or requested by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Interim Order and any other order of this Court.

11. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Employee Obligations that are dishonored or rejected.

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

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

14. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon entry hereof.

15. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

16. Nothing in the Motion or this Interim Order shall be construed to authorize any severance payments to Insiders.

17. The final hearing (the “**Final Hearing**”) to consider the entry of a final order granting the relief requested in the Motion shall be held on _____, 2021, at __:__.m. Prevailing Eastern Time.

18. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on, no later than seven (7) days prior to the

commencement of the final hearing, (a) MECTA Corporation, 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062 (Attn: Adrian Kettering); (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (c) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov); and (d) the Subchapter V Trustee (to be appointed by the U.S. Trustee).

19. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: _____, 2021
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

Re: Docket Nos.

**FINAL ORDER AUTHORIZING PAYMENT OF (I) CERTAIN PREPETITION
WORKFORCE CLAIMS, INCLUDING SALARIES, AND OTHER COMPENSATION,
(II) CERTAIN EMPLOYEE BENEFITS AND CONFIRMING RIGHT TO CONTINUE
EMPLOYEE BENEFITS ON POST-PETITION BASIS, (III) WITHHOLDING AND
PAYROLL-RELATED TAXES, (IV) WORKERS' COMPENSATION OBLIGATIONS,
AND (V) PREPETITION CLAIMS OWING TO ADMINISTRATORS
AND THIRD-PARTY PROVIDERS**

Upon the motion (the “**Motion**”)² of the Debtors for entry of a final order (this “**Final Order**”) authorizing, but not directing, the Debtors to (i) pay accrued prepetition salaries and other compensation to their Workforce; (ii) honor any prepetition obligations in respect of, and continue in the ordinary course of business until further notice (but not assume), certain of Debtors’ employee benefit plans and programs and paid time off policies; (iii) pay all related prepetition payroll taxes and other deductions; (iv) honor workers’ compensation obligations; and (v) pay any prepetition claims of administrators and third-party providers in the ordinary course of business to the extent that such programs are administered, insured, or paid through a third-party administrator or provider; and the Court having reviewed the Motion, the First Day Declaration, and the *Interim Order Authorizing Payment of (I) Certain Prepetition Workforce Claims, Including Salaries and*

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors’ mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Other Compensation, (II) Certain Employee Benefits and Confirming Right to Continue Employee Benefits on Postpetition Basis, (III) Withholding and Payroll-Related Taxes, (IV) Workers' Compensation Obligations, and (V) Prepetition Claims Owing to Administrators or Third-Party Providers [Docket No. ____] (the "**Interim Order**"); and the Court having jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), that the Debtors consent to entry of a final order under Article III of the United States Constitution, and venue of these Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized to (i) pay prepetition claims and honor obligations incurred or related to the Employee Obligations, in an aggregate final amount not to exceed \$10,000.00 and (ii) maintain, continue, and honor, in the ordinary course of business, the Employee Plans and Programs; *provided, however*, that payments to or for the benefit of any individual contractor or employee on account of pre-petition obligations will not exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code; *provided further*, that the Debtors' employees are authorized to use paid time off ("**PTO**") in accordance with the Debtors' policies

and practices; *provided further*, that unless applicable state law requires such payment, the Debtors are prohibited from paying PTO upon an employee's termination.

4. Nothing herein authorizes the payment of bonus or severance obligations, including obligations that implicate section 503(c) of the Bankruptcy Code; provided that nothing herein shall prejudice the Debtors' ability to seek approval of relief with respect to such obligations at a later time.

5. The Debtors are authorized to continue the programs and policies described in the Motion on a postpetition basis, except as otherwise set forth herein, and to make non-material alterations, modifications, or to discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court, subject to the limitations contained in this Order.

6. Except as otherwise set forth herein, the Debtors are authorized, pursuant to Bankruptcy Code sections 105(a) and 363(b), in the reasonable exercise of their business judgment and in the ordinary course of business, to pay and honor amounts on account of Employee Compensation Obligations (inclusive of Withholding Obligations), subject to the limitations contained in this Order.

7. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Withholding Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

8. Except as otherwise set forth in this Order, the Debtors are authorized to honor the Employee Benefits Plans in the ordinary course of business and in accordance with the Debtors' prepetition policies and programs, and to make any necessary contributions to such programs and

pay any unpaid premium, claim, or amount owed as of the Petition Date with respect thereto, subject to the limitations contained in this Order.

9. The Debtors are authorized to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Compensation Obligations and the Employee Benefits Obligations, including the Administrative Fee Obligations.

10. Nothing in the Motion, the Interim Order, or this Final Order, nor as a result of any payment made pursuant to this Final Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors, an approval or assumption of any agreement, contract or lease pursuant to Bankruptcy Code section 365, or a waiver of the right of the Debtors, or shall impair the ability of the Debtors, or any other party in interest, to the extent applicable, to contest the validity and amount of any payment made pursuant to this Final Order.

11. Each of the Processors is authorized to receive, process, honor, and pay all checks and transfers issued or requested by the Debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this Final Order and any other order of this Court.

12. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with any Employee Obligations that are dishonored or rejected.

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

14. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

15. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

16. Nothing in the Motion or this Final Order shall be construed to authorize any severance payments to Insiders.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: _____, 2021
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE