

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

In re:

TOTAL HOCKEY, INC., *et al.*,

Debtors.<sup>1</sup>

Case No. 16-44815

Chapter 11

(Joint Administration Requested)

**DECLARATION OF LEE A. DIERCKS IN SUPPORT  
OF CHAPTER 11 PETITION AND FIRST DAY MOTIONS**

I, Lee A. Diercks, make this declaration (the “**Declaration**”) under 28 U.S.C. § 1746:

1. I am the Chief Restructuring Officer of Total Hockey, Inc. and its affiliated debtors and debtors in possession (the “**Debtors**”). I have served in this capacity since June 1, 2016.

2. I am a Founding Partner of Clear Thinking Group LLC. I lead the Turnaround/Crisis Management Practice of the Clear Thinking Group LLC. I hold a Bachelor of Arts degree in Business/Marketing from St. Thomas University, and a Masters of Business Administration degree from Impac University. My 39 years of experience as a business executive include companies such as JCPenney, Coast to Coast Hardware, Herman's Sporting Goods, and Venator Group – Woolworth & Champs Sports, including roles in Executive Management in Operations, Logistics & Distribution, Merchandising, Planning and Allocation, Marketing, and Strategy Development. For the last 18 years, I have worked in the corporate renewal/turnaround industry with companies in manufacturing, distribution, consumer products, and retail. In that industry, I have taken on interim management roles as CEO, COO, and CRO. I

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtors’ federal tax identification number, are: Total Hockey, Inc. (4010); Player’s Bench Corporation (8085); and Hipcheck, L.L.C. (4406). The Debtors’ mailing address is 3120 Riverport Tech Center Dr., Maryland Heights, MO 63043.

am a member in good standing with the Association for Corporate Growth, Commercial Finance Association, and the Turnaround Management Association.

3. On the date hereof (the “**Petition Date**”), the Debtors commenced cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

4. I am knowledgeable and familiar with the business and financial affairs of the Debtors. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by employees working under my supervision, or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

5. This Declaration is submitted for the purpose of apprising the Court and other parties in interest of the circumstances that compelled the commencement of these chapter 11 cases (the “**Cases**”) and in support of (a) the Debtors’ chapter 11 petitions and (b) the pleadings that the Debtors have filed with the Court requesting various kinds of “first day” relief (the “**First Day Motions**”). I am authorized to submit this Declaration on behalf of the Debtors.

#### **The Debtors’ Business**

6. Debtor Hipcheck LLC (“**Hipcheck**”) is the corporate parent of the Debtor Total Hockey, Inc. (“**THI**”) and owns 100% of THI stock. Debtor Player’s Bench Corporation (“**Player’s Bench**”) is wholly owned by the Debtor THI, which owns 100% of the stock of Players Bench. Hipcheck LLC is owned by Michael A. Benoit & Katherine Benoit. Each own 50% of the stock of Hipcheck LLC.

7. The Debtors were formed in 1999 as a spin off from a local general sporting goods company. After expanding in the St. Louis market and proving the concept that the hockey

equipment market was desperately in need of the application of modern retail techniques, the Debtors began expansion into other key metro areas, including, but not limited to, Chicago, Minneapolis, Detroit, and Philadelphia.

8. In 2012, the Debtors entered the fast growing lacrosse equipment retail market with the launch of [totallacrosse.com](http://totallacrosse.com) and the opening of several lacrosse stores.

9. In July 2015, the Debtors acquired Players Bench, an eight store operation based in Denver selling primarily hockey and lacrosse equipment. With this acquisition, the Debtors became the hockey retailer with the largest number of stores in the US.

10. The Debtors experienced significant growth over the last decade, ranking as an Inc. Magazine's fastest growing privately held company for eight consecutive years. Moreover, comparable store sales were positive every quarter until 2015.

11. The Debtors operate 32 retail stores, and three distribution centers, which are located in 12 states. In addition, the Debtors maintain their corporate headquarters in Maryland Heights, Missouri.

#### E-Commerce and Information Technology

12. The Debtors operate an e-commerce site at [www.totalhockey.com](http://www.totalhockey.com), [www.goalie.totalhockey.com](http://www.goalie.totalhockey.com), and [www.lacrosse.totalhockey.com](http://www.lacrosse.totalhockey.com). In 2015, the Debtors generated 27% of their total sales, or approximately \$17.0 million, through e-commerce.

13. The Debtors own a portfolio of IP that is held by Total Hockey, Inc. The Debtors' trademarks include the TotalHockey.com, TotalLacrosse.com, THTech.com, [hipczech.com](http://hipczech.com) marks, all of which are registered with the United States Patent and Trademark Office. The Debtors also own a number of domain names and copyrights.

## Capital Structure

### Secured Debt

14. Pursuant to that certain Agreement dated as of June 17, 2015 (as amended and restated, supplemented, or otherwise modified prior to the Petition Date, the “**Revolving Credit Agreement**”), among Total Hockey, Citizens Business Capital, a division of Citizens Asset Finance, Inc. (a subsidiary of Citizens Bank, N.A.), as Administrative Agent and Lead Arranger (the “**Revolving Credit Agent**”), the lenders party thereto from time to time (collectively with the Revolving Credit Agent, the “**Revolving Credit Lenders**”) and the borrowers and guarantors party thereto from time, the Revolving Credit Lenders provided a revolving credit facility to the Debtors and provided other financial accommodations to or for the benefit of the Debtors (collectively, the “**Revolving Credit Facility**”). Pursuant that certain Guaranty Agreement dated as of June 17, 2015 (as amended and restated, supplemented, or otherwise modified prior to the Petition Date, the “**Revolving Credit Guaranty**”), Holdings provided the Revolving Credit Agent, for the benefit of the Revolving Credit Lenders, with a guaranty of the obligations under the Revolving Credit Agreement (the “**Revolving Credit Obligations**”). The Revolving Credit Facility is subject to (a) that certain Reservation of Rights and Application of the Default Interest Letter, dated as of April 7, 2016 (the “**Revolving Credit ROR Letter**”) and (b) that certain Forbearance Agreement and First Amendment to Credit Agreement dated June 3, 2016 and the amendment thereto dated as of June 30, 2016 (the “**Revolving Credit Forbearance Agreement**”) and, together with the Revolving Credit Agreement, the Revolving Credit Guaranty, the Revolving Credit ROR Letter, and all other loan, security, and other documents executed in connection therewith, the “**Revolving Credit Documents**”).

15. The Revolving Credit Forbearance Agreement terminated on July 5, 2016, at which time certain forbearance and lender fees (collectively, the "**Revolver Forbearance Fees**") became immediately due and payable and default interest began accruing.

16. The Revolving Credit Facility provided the Debtors with up to \$30,000,000.00 in aggregate maximum principal amount of revolving commitments. As of the Petition Date, the approximate outstanding principal and interest under the Revolving Credit Facility was \$11,344,855.64 (together with any and all other amounts incurred or accrued in accordance with the Revolving Credit Documents, including without limitation, accrued and unpaid interest, fees (including, without limitation, lender and forbearance fees), expenses, and disbursements (including, without limitation, attorney's fees, consultant fees, and related expenses and disbursements), indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof, the "**Revolving Credit Obligations**"). For the avoidance of doubt, the term "Revolving Credit Obligations" includes all Obligations (as defined in the Revolving Credit Agreement).

17. Pursuant to that certain Term Loan Agreement dated as of June 17, 2015 (as may have been amended, supplemented, restated or otherwise modified prior to the Petition Date, the "**Term Loan Agreement**"), among the Total Hockey, Gordon Brothers Finance Company as Administrative Agent (the "**Term Loan Agent**" and, together with the Revolving Credit Agent, the "**Prepetition Agents**"), the lenders party thereto from time to time (collectively with the Term Loan Agent, the "**Term Loan Lenders**", and, together with the Revolving Credit Lenders, the "**Prepetition Lenders**"), and the borrowers and guarantors party thereto from time to time, the Term Loan Lenders provided a term loan to the Debtors (the "**Term Loan**"). Pursuant to that certain Guaranty Agreement dated as of June 17, 2015 (as amended and restated, supplemented

or otherwise modified prior to the Petition Date, the "**Term Loan Guaranty**"), Holdings provided the Term Loan Agent, for the benefit of the Term Loan Lenders, with a guaranty of the obligations under the Term Loan Agreement (the "**Term Loan Obligations**"). The Term Loan is subject to (a) that certain Reservation of Rights and Application of Default Interest letter dated as of April 7, 2016 (the "**Term Loan ROR Letter**"), (b) that certain Notice of Additional Defaults, Acceleration of Term Loan and Demand for Payment; Implementation of Reserves; and Reservation of Rights, dated as of May 18, 2016 (the "**Term Loan Default Letter**"), and (c) that certain Forbearance Agreement and First Amendment to Term Loan Agreement dated as of June 3, 2016 and the amendment thereto dated as of June 30, 2016 (the "**Term Loan Forbearance Agreement**" and, together with the Term Loan Agreement, the Term Loan Guaranty, the Term Loan ROR Letter, the Term Loan Forbearance Agreement, and all other loan, security or other documents executed in connection therewith, the "**Term Loan Documents**", and, together with the Revolving Credit Documents, the "**Prepetition Documents**").

18. The Term Loan Forbearance Agreement terminated on July 5, 2016, at which time certain forbearance and lender fees (collectively, the "**Term Loan Forbearance Fees**" and, together with the Revolver Forbearance Fees, the "**Forbearance Fees**") became immediately due and payable.

19. Pursuant to the Term Loan Agreement, the Term Loan Lenders provided the Debtors with a fully-funded term loan commitment of \$5,000,000 in aggregate principal amount. As of the Petition Date, the outstanding principal and interest amount owing under the Term Loan Agreement was \$5,000,000 (together with any and all other amounts incurred or accrued in accordance with the Term Loan Documents, including without limitation accrued and unpaid

interest, fees (including, without limitation, lender and forbearance fees), expenses, and disbursements (including, without limitation, attorney's fees, consultant fees, and related expenses and disbursements), indemnification obligations and other charges of whatever nature, whether or not contingent, whenever arising, due or owing in respect thereof, the "**Term Loan Obligations**" and, together with the Revolving Credit Obligations, the "**Prepetition Obligations**"). For the avoidance of doubt, the term "Term Loan Obligations" includes all Obligations (as defined in the Term Loan Agreement).

20. As more fully set forth in the Revolving Credit Documents and Term Loan Documents, prior to the Petition Date, the Debtors granted security interests in and liens on, among other things, substantially all of their assets (collectively, the "**Prepetition Collateral**") to: (a) the Revolving Credit Agent, for itself and the Revolving Credit Lenders (the "**Revolving Credit Liens**"); and (b) the Term Loan Agent, for itself and the Term Loan Lenders (the "Term Loan Liens", and together with the Revolving Credit Liens, the "**Prepetition Liens**").

21. In 2015, THI entered into a security agreement with Bauer Hockey, Inc. ("**Bauer**") pursuant to which THI granted a security interest in favor of Bauer in all goods acquired by THI from Bauer and the proceeds thereof. Bauer filed a UCC financing statement perfecting its security interest on November 18, 2015. Bauer's security interest in such goods is junior and subordinate to the Prepetition Liens in favor of the Prepetition Lenders. The Debtors understand that Bauer will consent to the proposed sale of the Debtors' assets free and clear of its lien and security interest, which will attach to the proceeds of sale, and will consent to the Debtors' proposed use of its cash collateral on the same terms set forth in the proposed interim cash collateral order.

### Unsecured Debt and Trade Creditors

22. The Debtors estimate that there is approximately \$34,000,000.00 of unsecured debt as of the petition date. The unsecured debt is made of amounts owed to various parties including trade vendors and suppliers, landlords, tax authorities, customers, employees, etc.

23. The Debtors do not have long-term contracts with any of their trade vendors at this time. Prior to the Petition Date, the Debtors typically placed and paid for orders directly with their trade vendors. Certain of the Debtors' vendors use factors to sell merchandise and/or provide credit insurance. The Debtors are not party to the factoring agreements between the vendors and the factors. In nearly all instances, the Debtors work directly with the vendors on terms in lieu of an unsecured credit line with the factors.

### **Events Leading to these Chapter 11 Cases**

24. Unfortunately, 2015 was an incredibly difficult year in sporting goods in general, and in hockey and lacrosse equipment retail specifically. Among the things that dramatically and negatively impacted the Debtors, especially during the last half of the year, were:

- a. Easton Hockey, the industry's third largest vendor at the time, completely collapsed, ultimately having been acquired as a distressed company by Performance Sports Group/Bauer Hockey in January. This collapse left a surfeit of obsoleting inventory in the market.
- b. Over the course of 2015, the Canadian dollar fell against the US dollar by 23%, with most of the decline coming in the second half of the year. Because of this, many of the Debtors' retail locations that are strong host cities for youth tournaments (e.g., Chicago, Detroit, and Philadelphia) saw many fewer Canadian teams enter events and, if they did attend, they spent far less because of adverse exchange rates.
- c. According to the NOAA, 2015 was the second warmest year on record for the continental United States. As a result of this, categories that are traditionally a meaningful segment of our business because of outdoor skating (especially in Minnesota and Michigan) were off dramatically.



- d. The Players Bench acquisition closed two months later than anticipated on July 31, 2015, causing many integration issues to extend well into the core of the hockey selling season.

25. As a result of these things, comparable store sales were off over 8% for the fourth quarter of 2015 and EBITDA for the year was a sizeable negative. To date, comparable store sales for 2016 are off approximately 5%. Margin on the Debtors' sales declined from 33% to 28%. Finally, because the Debtors' retail for predominately winter sports, May through July is typically the most difficult business period.

#### **Prepetition Turnaround Efforts**

26. Over the last five months the Debtors have taken a number of significant steps to rationalize the business in this very tough environment including:

- a. Corporate staff reductions of twenty full-time persons and a temporary reduction in management compensation;
- b. Reallocation of marketing spend away from television and print and toward digital, especially in our brick-and-mortar markets;
- c. Renegotiated shipping contracts with UPS and our primary bulk carrier;
- d. Renegotiated liabilities with several key vendors; and
- e. Implemented a comprehensive store and distribution centers labor model.

27. These changes will collectively reduce costs by approximately \$2.5 million annually.

28. Unfortunately, given the seasonality of our business, the Debtors have yet to enjoy the yield from all of these changes. The forces that lead to 2015's incredibly weak fourth quarter have begun to attenuate, but are still present.

29. Pursuant to the Forbearance Agreements, the Debtors were obligated, *inter alia*: (a) by June 3, 2016, to deliver to the Agents a list of liquidation firms to act as bidders for a proposed liquidation of the Debtors' entire chain of store locations (such sale, a "**Full Chain**

**Liquidation**”); (b) by June 10, 2016, deliver to the proposed bidders certain information packages and requests for proposals to conduct the Full Chain Liquidation, which proposals were due to be received by the Debtors by June 17, 2016; and (c) by June 23, 2016, to identify the successful bidder to conduct the Full Chain Liquidation and enter into a binding agreement to govern the Full Chain Liquidation.

30. The Forbearance Agreements also provided that the Debtors were to continue their ongoing efforts to pursue sources of a refinancing of the obligations owed to the Lenders as well as evaluate potential sales of the assets of, and/or equity interests in, the Debtors. In that regard, the Debtors, in early April 2016, started to contact alternative lenders and banks to determine if other sources of capital could be obtained. The Debtors and/or its advisors reached out to approximately fifteen (15) various alternative lenders and three (3) banks to determine if they might provide financing to replace and payoff the outstanding obligations owed to the Lenders. A number of the alternative lenders signed non-disclosure agreements, accessed data rooms, and had meetings or calls with management as part of their due diligence. In mid-June, the Debtors received general proposals or term sheets from (a) two (2) alternative lenders, offering to provide senior secured financing; (b) one (1) lender, offering to provide junior lien financing; and (c) one (1) alternative lender, offering to provide both senior and junior lien financing as part of a refinancing effort. Ultimately, however, the Debtors were unable to identify a potential refinancing lender or investor that would refinance the obligations to the Lenders and provide any significant additional liquidity for the Debtors to operate their business and address their substantial outstanding obligations to unsecured creditors.

31. The Debtors complied with the first two milestones in the Forbearance Agreements by timely providing the Agents a list of liquidation firms to act as bidders for the

Full Chain Liquidation and delivering to the proposed bidders information packages and requests for proposals to conduct the Full Chain Liquidation, including a proposed form of Agency Agreement to govern the Full Chain Liquidation (the “**Agency Agreement**”). In response, the Debtors received four (4) written proposals to conduct the Full Chain Liquidation (collectively, the “**Liquidation Proposals**”).

32. At the time the Debtors were entering into the Forbearance Agreements and complying with the above milestones relating to a Full Chain Liquidation, the Debtors received interest and an eventual letter of intent from a strategic party interested in a going concern purchase of substantially all of the Debtors’ assets which would provide substantially more value to the Debtors and their creditors than the best of the Liquidation Proposals. In consultation with the Agents, the Debtors have selected the strategic buyer to serve as their stalking horse bidder.

33. Specifically, the Debtors and TSG Enterprises, LLC and its nominee TSG-TH Acquisition Co., LLC (collectively, the “**Stalking Horse Bidder**”) have entered into an Asset Purchase Agreement, dated as of July 5, 2016 (the “**Stalking Horse APA**”). In the Stalking Horse APA, the Stalking Horse Bidder proposes to purchase substantially all of the Debtors’ assets (the “**Assets**”) for approximately \$22,500,000.00, subject to proration and post-closing adjustments pursuant to the terms and procedures relating to the Adjustment Fund (the “**Purchase Price**”), which will serve as a competitive baseline of recovery for the Debtors’ stakeholders.

34. Due to the late emergence of the Stalking Horse Bidder in the Debtors’ sale and refinancing process, the Stalking Horse Bid contains certain contingencies that are within the control of the Stalking Horse Bidder related to financing and due diligence (the “**Stalking Horse**

**Contingencies**”). The Debtors and the Stalking Horse Bidder therefore have agreed for the Stalking Horse Bidder to have a deadline, as established in the Bid Procedures Motion, to deliver to the Debtors a written notice waiving or deeming satisfied all of the Stalking Horse Contingencies. If the Stalking Horse Bidder fails to deliver such written notice to the Debtors by that deadline, then the Stalking Horse Bid shall automatically and immediately be deemed withdrawn, the Stalking Horse APA shall automatically and immediately be deemed terminated, and the Stalking Horse Bidder shall no longer serve in such capacity or be entitled to any of the Bid Protections (as defined in the Bid Procedures Motion).

35. In that instance, the Debtors shall proceed to the Auction without a Stalking Horse Bid; provided, however, that the Debtors, in consultation with the Lenders and the Committee, reserve the right to enter into an Agency Agreement governing the highest and best liquidation of the Debtors’ assets and to seek to have the applicable liquidation firm(s) act as a replacement stalking horse bidder.

36. Further, starting on June 23, 2016, the Debtors commenced a supplemental marketing effort to generate potential bidders at the Auction to purchase the Assets on a going concern basis. In particular, the Debtors identified approximately 53 private equity firms and 11 strategic competitors that might be interested in purchasing the Assets as a going concern and commenced communications with such parties regarding the opportunity. The Debtors will continue these efforts after the bankruptcy filing.

37. Time is of the essence because any undue delay in a sale will substantially damage the Debtors’ business. The Debtors have not had sufficient funds to purchase needed inventory and fully stock their stores. Dropping inventory levels have in turn negatively impacted the Debtors’ cash flows, which make a lengthy post-petition sale process untenable

given the attendant chapter 11 administrative costs. Falling inventory levels also erode the value of the Assets which the Stalking Horse Bidder seeks to purchase, which in turn may cause the Stalking Horse Bidder to be unwilling to pay the proposed Purchase Price for the Assets. Thus, the Stalking Horse Bidder has insisted upon an outside closing date of **August 5, 2016**. Finally, an early August closing date is necessary so that the Stalking Horse Bidder (or other Successful Bidder) can then immediately commence substantial new inventory purchases so that it can fully stock the stores in time for the start of the prime hockey selling season starting in late August/early September, coinciding with back-to-school. There is up to a 30-day lag in ordering and then receiving product.

### **Facts in Support of First Day Motions**

38. In order to enable the Debtors to minimize the adverse effects of the commencement of these Cases, the Debtors have requested various types of relief in the First Day Motions filed concurrently with this Declaration. A summary of the relief sought in each First Day Motion, as well as the factual basis for each First Day Motion, is set forth below.

39. I have reviewed each of these First Day Motions (including the exhibits and schedules). The facts stated in the First Day Motions are true and correct to the best of my knowledge, information, and belief, and I believe that the type of relief sought in each of the First Day Motions: (a) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption to their current business operations; and (b) is essential to maximizing the value of the Debtors' assets for the benefit of their estates and creditors.

#### **I. Expedited Hearing.**

40. The Debtors will request entry of an order (a) scheduling an expedited hearing on certain of the First Day Motions. I believe that expedited relief is essential to maintaining the

normal day-to-day operations of the Debtors' businesses and is necessary to preserve and maximize the value of Debtors' estates.

II. Joint Administration Motion.

41. The Debtors in these Cases are affiliated entities. All of the Debtors are under common management. The Debtors share many parties in interest. As a result, joint administration will prevent duplicative efforts and unnecessary expenses.

42. I understand that the joint administration of the Cases will permit the Clerk of the Court to utilize a single general docket for these Cases and combine notices to stakeholders of the Debtors' respective estates and other parties in interest, which will result in savings to the estates. Accordingly, I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates.

III. Redacted Creditor Matrix and Commencement Motion.

43. While Debtor THI is the only Debtor with creditors, it is a large enterprise with thousands creditors identified on the Creditor Matrix. Included in the Creditor Matrix are the Debtors' employees and directors, and personal information of the Debtors' customers. Accordingly, a substantial number of individuals are at risk of having their personal information unnecessarily disclosed publicly without their knowledge or consent if the Debtors are required to file an unredacted copy of the Creditor Matrix. Thus, to protect certain sensitive information of the Debtors' customers, employees and directors, the Debtors seek authority to file a copy of the Creditor Matrix redacting their customers, employees, and directors' home addresses and to submit the unredacted matrix under seal in accordance with Local Bankruptcy Rules.

44. Finally, the Debtors will also seek approval of the form and manner of the notice of commencement of these Cases and of the meeting of creditors to be held pursuant to section 341 of the Bankruptcy Code (the “**Section 341 Meeting**”).

IV. Case Management Motion.

45. The Case Procedures will facilitate service of Court Filings in a manner that will be less burdensome and cost effective than serving such pleadings on every potentially interested party. I am advised that these procedures will maximize the efficiency and orderly administration of these Cases, while at the same time ensuring that appropriate notice is provided, particularly to parties who have expressed an interest in these Cases and those directly affected by a request for relief. In particular, the Case Procedures are designed to:

- a. reduce the need for emergency hearings and requests for expedited relief;
- b. provide for omnibus hearings for the Court to consider motions, pleadings, applications, and objections (and responses thereto);
- c. promote consensual resolution of important matters;
- d. assure prompt receipt of Court Filings affecting parties' interests;
- e. allow for electronic notice in accordance with the Court's electronic filing system;
- f. provide ample opportunity for parties in interest to prepare for and respond to matters before this Court;
- g. reduce the substantial administrative and financial burden that would otherwise be placed on the Debtors and other parties in interest who file documents in these chapter 11 cases; and
- h. reduce the administrative burdens on the Court and the office of the Clerk of the Court of the United States Bankruptcy Court for the Eastern District of Missouri (the “**Clerk of the Court**”).

46. To ensure that parties in interest in these chapter 11 cases are made aware of the Case Procedures, the Debtors propose to: (a) serve the Case Procedures on the Master Service List (as defined in the Case Procedures); (b) publish the Case Procedures on the Debtors'

restructuring website at [www.omnimgt.com/totalhockey](http://www.omnimgt.com/totalhockey) (the "**Case Website**"); and (c) make the Case Procedures readily available on request from the Debtors' proposed claims and noticing agent, Rust Consulting Omni Bankruptcy (the "**Claims and Noticing Agent**").

V. Claim and Noticing Agent Retention.

47. Prior to the selection of Rust Consulting/Omni Bankruptcy ("**Rust/Omni**") as claims and noticing agent, the Debtors obtained and reviewed engagement proposals from at three (3) other claims and noticing agents to ensure selection through a competitive process. I believe, based on all engagement proposals obtained and reviewed, that Rust/Omni's rates are competitive and reasonable given Rust/Omni's quality of services and expertise.

48. In view of the number of anticipated claimants and the complexity of the Debtors' business, I believe that the appointment of Rust/Omni as claims and noticing agent is both necessary and in the best interests of the Debtors' estates and their creditors.

VI. Wage Motion.

49. The Debtors' workforce is comprised of full-time salaried employees (the "**Salaried Employees**"), full-time hourly employees (the "**Hourly Employees**," and together with the Salaried Employees, the "**Full Time Employees**"), and regular part-time hourly employees ("**Part Time Employees**"). As of the Petition Date, the Debtors employ approximately 594 Hourly Employees and approximately 131 Salaried Employees (38 at the corporate level), for a total of approximately 200 Full Time Employees, and approximately 525 regular Part Time Employees.

50. All Employees are paid on a semi-monthly basis on the 15th and the last business day of each calendar month. All employees are paid, approximately, ten (10) days in arrears. For the June 30th, 2016 payroll, including the days of June 6th, 2016 through June 20th, 2016, the



amount, including employer-paid taxes, for the Hourly Employees and Part Time Employees was approximately \$143,000.00, and approximately \$277,000.00 for the Salaried Employees, for an approximate total of \$420,000.00.

51. The Debtors' last payroll date for all their Employees prior to filing these Cases was on June 30, 2016. It covered pay period ending June 20, 2016 for all Employees. The total amount of the June 30, 2016 payroll was approximately \$420,000.00. The Debtors' next scheduled payroll date is July 15, 2016, and covers the period of June 21, 2016 through July 5, 2016. The estimated amount of payroll due for the period prior to the Petition Date is approximately \$425,000.000.

52. The Debtor's provide a sales incentive/ commission program for Employees in their customer service department. There are eight (8) Employees that are eligible to earn additional income through their sales efforts. The commission on sales is 1% of sales completed and shipped for each of these Employees. Sales vary widely by month due to the seasonality of the products being sold and thus, commissions by month can vary widely. Recent months commissions on average totaled \$1,500.00 to \$2,500.00.

53. The Debtors seek to (a) pay the outstanding pre-petition amounts owed to Employees as of the Petition Date for accrued and unpaid wages and salaries, (b) remit amounts that the Debtors are required by law to withhold from Employee payroll checks in respect of federal, state and local income taxes, garnishment contributions, social security and Medicare taxes and the payroll administration fee, and (c) pay the employer portion of payroll taxes and other benefits. The amounts being paid to any Employee on account of prepetition wages and salaries will not exceed the statutory cap of \$12,475.00.

54. Other Compensation: Paid-Time Off, Severance, and Business Expenses. Prior to the Petition Date, the Debtors offered their Employees other forms of compensation, including paid time off, overtime pay, other earned time off, severance, and reimbursement of certain business expenses. These forms of compensation are usual, customary and necessary if the Debtors are to retain qualified employees to operate their businesses.

55. Holiday Time. On the nationally observed holidays for Thanksgiving and Christmas Day, the Debtors close their operations and full-time employees are paid for those Holidays. The Debtors operations are open on other nationally observed holidays including New Year's Day, Memorial Day, Independence Day and Labor Day. The Debtors do provide payment in lieu of time off on nationally observed holidays if a full-time employee is not working. Full Time and Part Time Employees who work those holidays receive payment at 1.5 times their normal wage rate. The Debtors seek authorization to continue this policy.

56. Paid Time Off. Starting as of the first full month of employment, Full Time Employees begin to accrue paid time off (“PTO”) on a pro rata basis throughout the year. PTO can be used for vacation, personal reasons, illness, etc. PTO is accrued based upon years of service. Full Time Employees, during their first year, can earn up to 6.67 hours per each completed month of service, increasing based on years of service to 10-20 days (for the most senior of Full Time Employees) PTO per year. Historically, there was no cash payout of accrued but unused PTO, with the exception of when an Employee was terminated without cause. Unused PTO cannot be carried over to the following year. The Debtors seek to continue their PTO policies in the ordinary course, allowing employees to continue to use PTO pursuant to the Debtors’ policies, but not to make cash payments on account of accrued but unused PTO to

Employees who are terminated without cause. The Debtor's estimate that the total amount of accrued but unpaid PTO to be approximately \$260,000.00.

57. Family Medical Leave. The Debtors provide an opportunity for Full Time Employees that need assistance for family medical issues with the Family Medical Leave benefit ("FML"), to take an unpaid leave of absence. Only Full Time Employees are eligible to participate in FML. Full Time Employees can request to take time off without pay for up to 12 weeks to assist with a family medical situation. The Debtors seek authorization to continue FML postpetition.

58. Bereavement Leave. Full Time Employees are eligible to receive up to three (3) working days with pay to handle family affairs in the event of death of a member of the Full Time Employee's immediate family. Full Time Employees are not paid for unused bereavement leave upon termination of employment and the Debtors therefore do not make any cash payments on account of the Bereavement Leave policy. The Debtors seek authorization to continue the Bereavement Leave policy postpetition.

59. Other Time Off Policies. The Debtors also maintain policies for requests by Full Time Employees for time off work as the result of, among other things, jury duty, appearance in a court proceeding on behalf of the Debtors, military obligations, inclement weather, and family and medical leave. The Debtors do not make any cash payments in connection with these time off policies, and do not seek authorization to make any cash payment on account of these policies.

60. Severance. The Debtors have nine Employees, primarily executives, who have employment agreements which include a severance clause and a COBRA reimbursement clause. The severance and COBRA reimbursements, for these executives, range from three to six

months of compensation. The Debtor is not seeking to authority to approve these agreements or to pay any of these amounts at this point in time. The Debtors seek to continue the Employee Severance Plan postpetition.

61. Expense Reimbursement. The Debtors have expense reimbursement policies for certain travel, lodging, ground transportation, meals, supplies, automobile usage, and miscellaneous business expenses (the “**Expenses**”). The Expenses are ordinary course expenses that the Debtors’ Employees incur in performing their job functions. Also, each Store Manager has a Corporate Card to be used to purchase incidental supplies for stores as needed. Included in this category are all expenses incurred on the Employees’ Visa Corporate Credit Cards (the “**Corporate Cards**”), which are paid for by the Debtors. The Expenses vary by month, but are on average approximately \$5,000.00.

62. In addition, the Debtors utilize other corporate credit cards (the “**Ecommerce Cards**”) for, which are paid directly by the Debtors. These cards are utilized to pay for fees by various ecommerce sites; commonly referred as “pay for click” advertising fees. Prior to the filing, the Debtors had outstanding balances on these credit cards of approximately \$10,000.00. If unpaid by the Debtors, the employees named on the various cards, could be held responsible by the various card companies for payment.

63. Historically, approximately \$25,000.00 was reimbursed to the Debtors’ Employees with respect to Expenses each month. The Debtors estimate that in the past, approximately 45-50 Employees submitted monthly Expenses for reimbursement of charges incurred on the Corporate Cards. While not all Employees have submitted their recent Expenses for reimbursement, the Debtors estimate that the amount of the Expenses due to the Corporate Card-holding Employees as of the Petition Date is significantly below the monthly averages

because of the current financial situation of the Debtors. Furthermore, there will be only three (3) card-holding Employees as of the Petition Date, and these card holders are unlikely to incur any significant Expenses postpetition.

64. The Debtors seek authority to reimburse all remaining Expenses, and to continue the Expense reimbursement policy with respect to the remaining Corporate Card-holding Employees.

65. Employee Benefit Plans. Prior to the Petition Date, the Debtors offered their Full Time Employees (defined as those Employees working an average of 30 plus hours a week) various standard employee benefits including, without limitation, (a) medical, vision, COBRA insurance, and prescription drug coverage, (b) dental insurance, (c) Health Savings Accounts, (d) life insurance, (e) short term and long term disability insurance for select executives, (f) miscellaneous other benefits provided to the Full Time Employees in the ordinary course of business. Such benefits are administered pursuant to consolidated plans, programs and policies that cover the Full Time Employees of the Debtors. The amounts set forth below reflect the approximate cost of such programs and benefit plans, which the Debtors are seeking to continue to pay in the ordinary course of business, regardless of whether such obligations arose pre or postpetition.

66. Medical Plans. The Debtors provide a number of Full Time Employees and their dependents with medical, COBRA insurance, and prescription drug benefits pursuant to a medical plan through Anthem Blue Cross & Blue Shield. Approximately 137 of the Debtors' Employees participate in the Medical Plans. The cost of the Medical Plans is borne primarily by the Debtors, but Employees contribute to the Medical Plans through payroll deductions. Employee contributions are deducted from paychecks to pay for that month's coverage.

Payments made pursuant to the Medical Plans include employee contributions and premium payments. Prior to the Petition Date, the Medical Plans cost the Debtors approximately \$26,000.00 each month for their Employees, which represents the gross amount of the Medical Plan, including claims and administrative fees, before crediting the value of employee contributions (which was approximately \$18,000.00 each month) The Debtors seek authorization to continue to pay the cost of the Medical Plans post-petition, including any prepetition amounts that may be owed.

67. Dental Plan. The Debtors offer their Employees dental benefits (the “**Dental Plan**”) through Aetna. Approximately 129 of the Debtors’ Employees participate in the Dental Plan. The cost of the Dental Plan is borne approximately 84% by Employee contributions to the Dental Plan through payroll deductions and approximately 16% by the Debtor at a historical cost of approximately \$500.00 each month. Employee contributions are deducted from paychecks to pay for that month’s coverage. Payments made pursuant to the Dental Plan include employee contribution and premium payments. The Debtors seek authorization to continue to pay the cost of the Dental Plan post-petition.

68. Vision Plan. The Debtors offer their Employees vision benefits (the “**Vision Plan**”) through Aetna. Approximately 91 of the Debtors’ Employees participate in the Vision Plan. The cost of the Vision Plan is borne 100% by Employee contributions to the Vision Plan through payroll deductions. Employee contributions are deducted from paychecks to pay for that month’s coverage. The Debtors seek authorization to continue the Vision Plan post-petition.

69. Healthcare Savings Accounts. In addition, the Debtors offer their Employees the use of Healthcare Savings Accounts for various medical claims not otherwise covered or payable by the Medical Plans. These benefits are administered by the Debtors. The Debtors remit

Employee contributions totaling approximately \$3,000.00 per month to individual Employee accounts set up at a local bank. Each Employee controls the spending of his or her specific account. The Debtors seek authorization to continue the Healthcare Savings Benefits in conjunction with the Medical Plan, Life and Accidental Death, and Dismemberment Insurance post-petition. There is no cost to the Debtors for the continuation of this benefit.

70. Life Insurance. The Debtors automatically provide basic employee life insurance coverage, basic accidental death and dismemberment insurance (“**AD&D**”), and business travel insurance to their Employees (collectively, the “**Life Insurance Plans**”). The Life Insurance Plans are administered by Unum. Full Time Employees are eligible for a basic term life policy and AD&D after 60 days of full-time employment with the Debtors. The amount of coverage available under the Life Insurance Plans is \$50,000. The Debtor’s cost per month for this benefit is approximately \$1,000.00. There are 183 employees covered by this benefit. The Debtors seek authorization to continue, the Life Insurance & AD&D plans post-petition.

71. Disability Benefits. The Debtor’s provide, to a core group ten (10) of executives, a Short-term and Long-term Disability Policy. Through disability benefits provided by the Debtors, a portion of the Employee’s income is continued in the event the Employee is unable to work due to illness or injury. The Debtors provide a basic level of disability benefits at no cost to the select Employees, in the form of short-term disability (“**S/TDB**”). The Debtors also provides basic long-term disability benefits (“**L/TDB**”). The Debtors’ S/TDB and L/TDB insurance provider is Unum.

72. The Disability Programs cost the Debtors approximately \$1,000.00 each month. There are no amounts currently due and owing by the Debtors for insurance premiums and related costs under the Disability Programs. In an abundance of caution, the Debtors seek

authorization to pay any outstanding prepetition amounts due for premiums and related costs under the Disability Programs. The Debtors further request authorization to continue to pay the current open claims under the Disability Programs and to continue the Disability Programs post-petition.

73. Employee Assistance Program. The Debtors offer their Full Time Employees and their family members counseling services to help resolve personal issues (the “EAP”) through Anthem Blue Cross & Blue Shield. The EAP is funded by the Debtors, at no additional cost, as it is included in the cost of the Medical Insurance Plan. The Debtors request authority to continue, but not make any cash payments on account of, the EAP.

74. Miscellaneous Benefit Plans. The Debtors provide expense reimbursement for employee cell phones to approximately 63 employees who must have mobile and 24 hour access to other employees within the company. This benefit is provided through AT&T at a monthly cost of approximately \$3,300.00. To the extent necessary, the Debtor seeks to continue the reimbursement of the cell phone service post-petition.

75. Prior to the Petition Date, the Debtors provide a car allowance to six (6) of their field-or store-based managers who have to travel on a daily basis between any number of store locations at an approximate monthly cost of \$700.00. To the extent necessary for the Debtors’ wind down efforts, the Debtors seek to continue this car allowance post-petition.

76. As of the Petition Date, certain of the employee benefits described above remained unpaid or not yet provided as of the Petition Date because certain obligations of the Debtors under the applicable plan, program, or policy accrued either in whole or in part prior to the commencement of these Cases, but will not be required to be paid or provided in the ordinary course of the Debtors’ business until a later date. The Debtors seek authority to pay or provide as



they become due all prepetition Employee benefits and the related administrative fees described above that have already accrued.

77. The Debtors also request confirmation of their right to continue to perform their obligations with respect to these Employee benefit plans for the duration of the orderly wind down of the Debtors' operations. I believe these programs are an important component of the total compensation offered to the Employees, and are essential to the Debtors' efforts to maintain Employee morale and minimize attrition. I believe that the expenses associated with such programs are reasonable and necessary in light of the potential attrition, loss of morale and loss of productivity that would occur if such programs were discontinued.

78. Other Payments: Savings and Retirement Plans. The Savings Incentive Plan (the "**401(k) Plan**"), managed by Empower, provides Employees with a tax-effective way to save for retirement. All Employees who have completed one year of service, and who have worked at least 1000 hours, and who are at least 21 years old, are automatically enrolled in the 401(k) Plan at a 3.0% contribution rate. The Debtors provide an employer match to plan participants which maxes out at 3.5%. Open enrollment typically occurs on July 1st of each year. The Debtors make semi-monthly payments to the 401(k) Plan administrator on account of employee contributions. The Debtors will discontinue any employer matching contributions to the 401(k) Plan as of the Petition Date. The Debtors will not allow any additional Employees to enroll during the enrollment period. The Debtors request authority to fund the final matching contribution associated with the July 15, 2016 payroll.

79. There is no true "cost" to the Debtors on account of the 401(k) Plan once the employee match ceases on the Petition Date, as any employee contributions to the 401(k) Plan would be paid to Employees as salary if not paid into the 401(k) Plan.

80. Payments to Third Party Administrators. The Debtors plan to continue their use of Paylocity Corporation for payroll administration and for payroll tax services (the “**Payroll Administrators**”) during the pendency of these Cases. Accordingly, the Debtors submit that payment of the Payroll Administrators prepetition claims and the post-petition use of the Payroll Administrators services is in the best interests of the Debtors’ estates.

81. Withholdings. The Debtors routinely withhold from Employee paychecks amounts that the Debtors are required to transmit to third parties. Examples of such withholding include social security, FICA, federal and state income taxes, unemployment taxes, disability taxes, garnishments, charitable donations, and health care payments. I am advised that such withheld funds, to the extent that they remain in the Debtors’ possession, constitute money held in trust and therefore are not property of the Debtors’ bankruptcy estates. Thus, the Debtors believe that they have authority to direct such funds to the appropriate parties post-petition.

82. The Debtors’ ability to preserve the value of their assets and successfully conduct these Cases depends on the expertise and continued enthusiasm and service of their Employees. Due to the disruption and uncertainty that typically accompanies a chapter 11 filing, I believe that the morale and performance of their Employees may be adversely affected. If the Debtors fail to pay Employees in the ordinary course and continue the above programs, their Employees will suffer personal hardship and, in some cases, may be unable to pay their basic living expenses. This result would have a highly negative impact on workforce morale and likely would result in unmanageable performance issues, thereby resulting in immediate and irreparable harm to the Debtors and their estates.

83. I believe that the relief sought in the Wage Motion represents a sound exercise of the Debtors’ business judgment and is necessary to avoid immediate and irreparable harm to the

Debtors' estates. I believe that without the relief requested in the Wage Motion being granted, there is great risk that the Employees required going forward for the Debtors' success will seek alternative opportunities. Such a development would deplete the Debtors' workforce, hindering the Debtors' ability to successfully conduct these Cases.

VII. Cash Management Motion.

84. Prior to the Petition Date, The Debtors use a centralized cash management system to collect funds from and for, and to pay expenses incurred by, their operations (the "**Cash Management System**").

85. The Debtors have their accounts (collectively, the "**Bank Accounts**") with the banks listed on Exhibit A to the Cash Management Motion. The Debtors operate thirty-two retail locations in twelve states that are open seven days a week, most of the year. The Debtors sell merchandise in exchange for cash, gift cards, and/or through credit card transactions. The store's collect the cash proceeds each day and deposit those proceeds at a local bank. The Debtor has four (4) cash depository bank accounts in which cash is deposited. The money deposited is "swept" Monday, Wednesday, and Friday to a consolidation account at Citizens Bank. The funds in the consolidation account are then applied to the Citizen's loan balance on a daily basis. Credit card transactions occur daily, and the related funds are transferred to the consolidation account each day as the credit card transactions clear.

86. If the Debtors are in a borrowing position, the funds that are in the consolidation account are then applied to the Revolving Credit Agreement on Monday, Wednesday, and Friday. An equal amount of funds are then drawn down on the Revolving Credit Agreement and deposited into an operating account. When the Debtors' are cash positive, the funds from the consolidation account are deposited directly into an operating account. From the operating

account, the Debtors make all necessary payments. A chart summarizing the flow of funds is attached as Exhibit B to the Cash Management Motion.

87. When the Company needs funds to make payments, funds are requested and upon approval funds are drawn on the Revolving Credit Agreement, deposited into the Company's operating account and dispersed from either as a wire from or via check-clearing from the Company's one zero-balance controlled disbursement account (ZBA/CDA).

88. In the ordinary course of business, the Debtors use a number checks and other business forms, including electronic forms and paper forms, preprinted letterhead and related documents (collectively, the "**Business Forms**"). Because the Business Forms were used prepetition, they do not reference the Debtors' current status as debtors in possession. Most parties that the Debtors do business with will likely be aware of the bankruptcy filing as a result of publicity surrounding these chapter 11 cases or by the notice of commencement that will be provided to parties in interest.

89. The Debtors maintain records of transfers of cash and can trace and account for all such Intercompany Transactions. The Debtors will continue to maintain such records, including records of all current intercompany accounts receivable and payable. If the Intercompany Transaction were discontinued, the Cash Management System and related administrative controls would be disrupted to the Debtors' detriment.

90. In light of the substantial size and complexity of the Debtors' operations, I believe that it is critical that the Debtors continue to utilize their existing Cash Management System without disruption and believe that the relief requested in the Cash Management Motion is both necessary and in the best interests of the Debtors' estates and their creditors.

#### VIII. Taxes Motion.

91. Prior to the Petition Date, the Debtors, in their ordinary course of business incurred various taxes and fees, including state and local sales and use tax liabilities (the “Taxes”). Sales and use taxes accrue as the Debtors sell merchandise or consume goods and are calculated on the basis of statutorily mandated percentages of the price at which the Debtors’ merchandise is sold and/or cost of merchandise consumed.

92. As of the Petition Date, the Debtors had collected sales taxes for the prepetition periods of June 2016 and July that were not yet due to be paid. The Debtors estimate they may be liable for approximately \$283,000 in Taxes, all of which are sales and use taxes that must be remitted to the Taxing Authorities. Of the estimated \$283,000 liability, approximately \$257,000 is with respect to calendar June, 2016 and substantially due in July 2016. The estimate for the prepetition stub period for July (7/1/2016 thru 7/5/2016) is approximately \$26,000 and would be payable primarily in August 2016. The Debtors pay Taxes in 12 states, with six (6) states (IL, CO, MN, PA, MO, and MI) comprising approximately 80% of the estimated pre-petition liability.

93. The continued payment of the Taxes on their normal due dates will ultimately preserve the resources of the Debtors’ estates, creating a greater recovery for creditors and stakeholders. If these obligations are not timely paid, the Debtors will be required to expend time and incur attorneys’ fees and other costs to resolve a multitude of issues related to unpaid taxes, each turning on the particular terms of each Taxing Authority’s applicable laws, including whether the obligations are proratable or fully prepetition or postpetition, and whether penalties, interest, and attorneys’ fees and costs can continue to accrue on a postpetition basis, and, if so, whether such penalties, interest, and attorneys’ fees and costs are priority, secured or unsecured in nature. Thus, I believe that payment of the Taxes and Fees is in the best interest of the Debtors

and their estates, will not harm unsecured creditors and may reduce harm and administrative expense to the Debtors' estates.

IX. Utilities Motion.

94. In connection with the operation of their business and management of their properties, the Debtors obtain electricity, natural gas, telephone, water, waste disposal, and other similar services (the "**Utility Services**") from several utility companies or brokers (the "**Utility Companies**"). Uninterrupted Utility Services are essential to the Debtors' ongoing business operations and the overall success of these Cases. The Debtors estimate that their average aggregate monthly obligation to the Utility Companies on account of services rendered during the calendar year 2015 was approximately \$77,000.

95. The continuation of services provided by the Utility Companies is essential to the Debtors' ongoing operations. Continued service is key to preserving value for all interested stakeholders. Indeed, the Debtors would not be able to operate their business locations in the absence of uninterrupted utility service. Should any Utility Company refuse or discontinue service, even for a brief period, the affected location could be forced to close at a substantial cost. The temporary or permanent discontinuation of utility services would severely disrupt the Debtors' operations and, accordingly, potentially diminish the value of the Debtors' estates.

96. For the reasons already set forth above and in the Utilities Motion, I believe that the relief requested in the Utilities Motion is necessary to avoid immediate and irreparable harm to the Debtors, for the Debtors to operate their business without interruption, and to preserve value for the Debtors' estates.

X. Insurance Motion.

97. In connection with their business operations, the Debtors maintain multiple prepetition insurance policies thru Nationwide Insurance, and Philadelphia Insurance Company (the “**Insurance Policies**”) that vary in amounts and types of coverage in accordance with prudent business practices, state and local laws governing the jurisdictions in which the Debtors operate and various contractual obligations. The Debtors maintain various insurance programs providing coverage for, among other things, business owner property and general liability, employment benefits liability, workers’ compensation liability, automobile liability, employment practices liability, commercial property liability, inland marine (leased equipment), directors and officers liability, fiduciary liability, and commercial umbrella (the “**Insurance Programs**”). . The Debtor’s insurance policy periods run from July 1<sup>st</sup> of each year to June 30<sup>th</sup> of the following year. The Debtor’s recently renewed all of their insurance policies as of July 1, 2016, which will cover the period of July 1, 2016 thru June 30, 2017.

98. The total annual premiums under the current Insurance Policies are approximately \$238,000.00, including all related fees and charges. These premiums are paid to the relevant insurance carriers (the “**Insurance Carriers**”) either as annual prepayments or as installment payments. Since the policies have just been renewed as of July 1, 2016, the Debtor has not yet received any invoices for the renewal premiums. As such, the Debtors do not believe there are any prepetition amounts owing to the Insurance Carriers with respect to the renewal Insurance Policies or from the previous policy year. The Debtors also use an insurance brokerage company, Holmes-Murphy, to assist them obtaining appropriate insurance coverage.

99. The coverage provided under the Insurance Policies is essential for preserving the value of the Debtors’ assets and, in many instances, such coverage is required by various regulations, laws and contracts that govern the Debtors’ business operations. If the Debtors fail

to perform their obligations under the Insurance Policies, their coverage thereunder could be voided. The Debtors may also need to renew or replace certain of the Insurance Policies and Financed Programs during the course of these Cases, or enter into new policies. If the Debtors do not pay prepetition amounts owing in respect of the Insurance Policies, there is a risk that the Insurance Carriers will refuse to renew the Insurance Policies.

100. For the reasons already set forth herein and in the Insurance Motion, I believe the relief requested in the Insurance Motion is necessary to avoid immediate and irreparable harm to the Debtors, for the Debtors to operate their business without interruption, and to preserve value for the Debtors' estates.

Customer Programs Motion.

101. Prior to the Petition Date, in the ordinary course of business, the Debtors engaged in certain marketing and sales practices that are, among other things, (i) targeted to develop and sustain a positive reputation for their goods in the marketplace and (ii) designed to attract new customers and to enhance loyalty and sales among the Debtors' existing customer base. These customer-targeted practices (collectively, the "**Customer Programs**") include, but are not limited to, those practices described in the following paragraphs.

102. Sales Promotions. From time to time, the Debtors conduct sales promotions at selected stores (the "**Sales Promotions**"). The Sales Promotions include, among other things, discounts in which a customer receives a discount off a future purchase when the customer purchases a certain value in goods and weekly promotional pricing. To preserve the goodwill of their customer base, the Debtors seek authorization to honor these Sales Promotions.

103. Coupons. The Debtors maintain a coupon or promotional redemption program pursuant to which they honor their own promotional coupons or coupon codes for sales at their



stores (collectively, the “**Coupons**”). To preserve the goodwill of their customer base, the Debtors seek authorization to honor the Coupons issued prior to the Petition Date in a manner consistent with their ordinary business practices for a period of 30 days post-petition.

104. Gift Cards. Prior to the Petition Date, the Debtors sold pre-paid gift cards for use at their stores. Customers had the option of purchasing gift cards in any denomination. Certain customers also received either gift cards in exchange for merchandise they had returned to the Debtors’ stores or websites. As of the Petition Date, many customers had not yet redeemed their gift cards. When the customers in question purchased or received these gift cards, they had every expectation that they would be redeemable. The Debtors estimate that, as of the Petition Date, approximately 25,000 gift cards are outstanding with an average value of approximately \$40.00. The approximate amount of outstanding obligations with respect to gift cards is approximately \$993,000.00. Approximately 65% of the obligation relates to gift cards issued in 2015 and 2016. To preserve the goodwill of their customer base, the Debtors seek authorization to honor outstanding gift cards for a period of no more than 30 days post-petition.

105. Breakaway Rewards Program. The Debtors offer customers a rewards program that provide its members with one (1) point for every dollar spent on goods and services, free skate sharpening, free return shipping, and gift rewards. The Customers in the Breakaway Program account for over 50% of the Debtors total revenue. As of the Petition Date, the Debtors estimate they may have incurred unredeemed reward points in the approximate amount of \$1.2 million, although the Debtors believe that based on their history, significantly less than this amount will actually be redeemed by customers. To preserve the good will of its customers, the Debtors seek authorization to continue to honor the rewards programs for 30 days post-petition.

106. Prepaid Skate Sharpening Cards. The Debtors offer customers a discount on skate sharpening if they purchase a skate sharpening card. The cards are for 5, 10, or 20 skate sharpening(s) for \$24.99, \$44.99, and \$84.99 respectively. Similar to gift cards, the skate sharpening cards do not expire. As of the petition date, the Debtor estimates that there are approximately 14,800 cards that still have some level of value outstanding on them. The debtor estimates that the outstanding overall value remaining on these cards to be approximately \$480,000.00. To preserve the goodwill of their customer base, the Debtors seek authorization to honor outstanding skate sharpening cards for a period of no more than 30 days post-petition.

107. Returns, Refunds, Exchanges. Consistent with industry practice, the Debtors have traditionally maintained return, refund, and exchange policies. Certain customers also hold contingent claims against the Debtors for potential refunds, returns and exchanges (collectively, the “**Refunds**”) relating to goods sold to customers at the Debtors’ stores prior to the Petition Date. Historically, if a customer is not satisfied with the merchandise after the purchase, the customer has the option to return or exchange the goods to a retail store of the appropriate debtor, or return or exchange goods through its websites and appropriate distribution and fulfillment centers with a receipt, within 90 days after the purchase date. Ascertaining with precision an estimate of the aggregate amount of requests for Refunds for merchandise purchased prior to the Petition Date is difficult. The Debtors estimate that the outstanding customer refund liability is approximately \$700,000. The Debtors seek authority to maintain the Refund and Exchange policy for a period of 30 days post-petition.

108. Commissions. The Debtors provide an affiliate program (the “**Affiliate Program**”) whereby third parties who have a website or blog may earn commission for every qualified buyer that purchases the Debtors’ products. Third parties who participate in the

Affiliate Program will provide a link on their website that will direct viewers to the website and may purchase products from the Debtors. The Debtors pay a 15% commission based on sales attributable to the Affiliate Program. As of the Petition Date, the Debtors estimate that approximately \$15,000 is due on account of obligations incurred prepetition in connection with the Affiliate Program. The Debtors seek authority to maintain the Affiliate Program for a period of 30 days post-petition.

109. Customer Deposits. In the normal course of their business, the Debtors take deposits from customers on special orders, team sports orders, and at certain other times as necessary. The Debtors desire to continue these practices without interruption an interruption may inhibit the Company's ability to optimize revenues. Customer deposits consist of approximately \$7,000.00 with respect to team sports orders, while all other customer deposits are approximately \$12,000.00. The Debtors seek authority to maintain the Customer deposits program for a period of 30 days post-petition.

110. Credit Card Processing. The Debtors are parties to certain agreements with credit card companies and processors pursuant to which the Debtors are able to accept credit card and debit card payments, subject to certain adjustments, returns, promotional fees and refunds. The Debtors have an agreement with TSYS Merchant Services governing the processing and authorization of Visa, MasterCard, and Discover transactions. Additionally, the Debtors are parties to agreements with American Express, Amazon, Open Edge, and PayPal, which provide for the settlement of transactions through those cards at all of the Debtors' stores, team sales segment and e-commerce websites.

111. Approximately 88% of the products sold at the Debtors' stores and websites are purchased with credit cards, and the Debtors continued ability to honor and process credit card

transactions is essential to the Debtors' business operations. Without this ability, the Debtors would lose a major method for conducting sales transactions. Under the terms of their agreements, the Debtors are required to pay the credit card companies and processors fees for their services, certain amounts of which may have accrued but remain unpaid as of the Petition Date.

112. The Debtors request authority to continue to pay the Credit Card Processing fees, including, but not limited to, amounts related to promotional fees and returns and exchanges, in order to avoid interruption of vital credit card processing services and programs. During the twelve month period ending in June 30, 2016, the Debtors paid on account of credit processing and related fees, approximately \$1.4 million. As of the Petition Date, the Debtors estimate that approximately \$100,000 is owed in prepetition fees to credit card companies and processors.

113. Under the Debtors' agreements relating to the processing of credit cards, upon a customer's return of merchandise purchased using a credit card, the Debtors are obligated to refund to the card processor the purchase price of the returned merchandise plus certain adjustments (collectively, the "**Chargebacks**"). Generally, the Debtors' Chargeback obligations are satisfied by a reduction of payments currently owing to the Debtors under the processing agreements in the amount of the outstanding Chargebacks.

114. It is possible that certain Chargebacks incurred by the Debtors immediately prior to the Petition Date may not have been fully netted out against credit card payments the Debtors received prior to the Petition Date. Moreover, although the Debtors believe that any Chargebacks arising after the Petition Date would be post-petition obligations of the Debtors, it may be argued that Chargebacks arising after the Petition Date nevertheless would be prepetition obligations where the merchandise returned was purchased from the Debtors prior to the Petition Date. The

Debtors seek authority to pay all Chargeback obligations, and to continue to pay any Chargebacks along with the other fees related to Credit Card Processing.

115. The ability of the Debtors to maximize the value of their inventory for the benefit of their creditors and stakeholders are dependent upon the patronage of their customers. In this regard, the Debtors' Customer Programs and Credit Card Processing are critical, and any delay in honoring the Debtors' obligations could severely disrupt the Debtors' operations. The Debtors' failure to honor prepetition customer obligations or inability to process credit card transactions (the "**Customer Obligations**"), for even a brief time, may well drive away valuable customers, harming the Debtors' efforts to maximize the value of their inventory. Accordingly, the Debtors seek Court authority to continue the Customer Programs and Credit Card Processing.

116. An order authorizing the Debtors to (i) continue the Customer Programs and Credit Card Processing as they determine to be appropriate; (ii) honor and pay, in their discretion, the Customer Obligations and fees for Credit Card Processing arising prior to the Petition Date; and (iii) renew, modify, terminate, or replace such Customer Programs or agreements relating to Credit Card Processing that, in their discretion, are necessary and in the best interests of the Debtors' estates, creditors, stakeholders and other parties in interest.

XI. Cash Collateral Motion.

117. As noted above, the Debtors' assets are fully encumbered, including the Debtors' cash. The implementation of the Debtors' reorganization, however, requires funding. Given the significant cash costs associated with the Debtors' business, the Debtors, in consultation with their financial advisors, have determined that they require access to existing cash collateral ("**Cash Collateral**") to provide the necessary time and resources to conduct their business operations, achieve their restructuring goals, and maximize value of their estates.

118. The Debtors have an immediate and critical need to use Cash Collateral to pay, in accordance with the Budget, which is attached to the proposed interim order approving the Cash Collateral Motion, various parties in the ordinary course of business and as authorized by the Court. These parties include, among others, employees, landlords, third party vendors, utilities, insurance companies, and taxing authorities, who in the judgment of the Debtors' management, provide the essential services needed to operate, maintain and insure the Debtors' assets. In addition, the Debtors require the use of Cash Collateral to retain and pay costs of professionals, consultants, and advisors who will enable the Debtors to conduct a sale of their assets in a manner that maximizes value for the Debtors' estates and their creditors. Taken together, the services provided by all of the foregoing parties and other entities are absolutely critical to the preservation of the Debtors' business and asset value.

119. The Debtors reasonably believe that the Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the Budget. Without use of Cash Collateral, the Debtors would suffer immediate and irreparable harm and the entire bankruptcy proceedings will be jeopardized to the significant detriment of the Debtors' estates and their creditors.

120. The Prepetition Agents have indicated a willingness to authorize the Debtors to use Cash Collateral, but solely on the terms and conditions set forth in the interim order. After considering all of their alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the use of Cash Collateral as provided pursuant to the terms of the interim order represents the best financing presently available to the Debtors.

121. The Debtors and the Prepetition Agents have negotiated the terms for the use of Cash Collateral at arms-length and in good faith. The Debtors believe that the terms of the use of

Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

122. For all of these reasons, the Debtor's use of Cash Collateral is a sound exercise of their business judgment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Dated: July 6, 2016  
St. Louis, Missouri

*/s/ Lee A. Diercks*  
\_\_\_\_\_  
Lee A. Diercks  
Chief Restructuring Officer