

Samuel A. Khalil, Esq.
Lauren C. Doyle, Esq.
Brian Kinney, Esq.
Edward R. Linden, Esq.
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Michael J. Edelman, Esq.
William W. Thorsness, Esq. (admitted *pro hac vice*)
VEDDER PRICE P.C.
1633 Broadway, 31st Floor
New York, New York 10019
Telephone: (212) 407-7700
Facsimile: (212) 407-7799

Counsel to all Debtors and Debtors in Possession other than the Participation Debtors¹

Counsel to the Participation Debtors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____))
In re:) Chapter 11
))
Voyager Aviation Holdings, LLC *et al.*,) Case No. 23-11177 (JPM)
))
Debtors.²) (Jointly Administered)
_____)

**NOTICE OF FILING PROPOSED
FINAL ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM,
(B) MAINTAIN EXISTING BUSINESS FORMS AND BOOKS, (C) ENGAGE IN
INTERCOMPANY TRANSACTIONS; (II) GRANTING ADMINISTRATIVE EXPENSE
STATUS TO INTERCOMPANY CLAIMS, AND (III) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that on July 27, 2023, the Debtors filed the *Debtors’ Motion for*

¹ “Participation Debtors” means, collectively, Aetios Aviation Leasing 1 Limited, Aetios Aviation Leasing 2 Limited, Panamera Aviation Leasing XII Designated Activity Company, and Panamera Aviation Leasing XIII Designated Activity Company.

² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.



Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief [Docket No. 5] (the “Motion”).

PLEASE TAKE FURTHER NOTICE that on July 28, 2023, the Court entered the *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief* [Docket No. 27].

PLEASE TAKE FURTHER NOTICE that on August 29, 2023 the Debtors filed the *Notice of Filing Proposed Second Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief* [Docket No. 119].

PLEASE TAKE FURTHER NOTICE that on September 1, 2023, the Court entered the *Second Interim Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief* [Docket No. 150].

PLEASE TAKE FURTHER NOTICE that in accordance with Local Rule 9006-1(b), objections or responses to the Motion were due on August 17, 2023, at 4:00 p.m., prevailing Eastern Time (the “Response Deadline”).

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file a proposed *Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management*

System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief, attached hereto as **Exhibit A** (the “Proposed Final Order”), seeking entry of an order from the Court granting the Motion on a final basis to the extent set forth therein.

PLEASE TAKE FURTHER NOTICE that Local Rule 9075-2 provides that the Motion may be granted without a hearing if (a) no objections or other responsive pleadings have been filed on or before the applicable objection deadline, and (b) the attorney for the entity that filed the Motion complies with such rule. As of the filing of this notice, more than forty-eight (48) hours have elapsed since the Response Deadline and, to the best of my knowledge, no responsive pleading to the Motion has been (a) filed with the Court on the docket of the above-captioned chapter 11 cases, or (b) served on the Debtors or their counsel. Accordingly, the Debtors respectfully request entry of the Proposed Second Interim Order.

PLEASE TAKE FURTHER NOTICE that a blackline of the Proposed Final Order against the version filed with the Motion is attached hereto as **Exhibit A-1**. The modifications reflected in the Proposed Final Order incorporate certain comments received by the United States Trustee.

[Remainder of page intentionally left blank]

PLEASE TAKE FURTHER NOTICE that the Debtors intend to seek entry of the Proposed Final Order, in the form annexed as **Exhibit A**, at the hearing scheduled for October 25, 2023 at 4:00 p.m. (ET), unless otherwise entered by the Court in advance of the scheduled hearing.

Dated: September 29, 2023
New York, New York

/s/ Brian Kinney
Samuel A. Khalil, Esq.
Lauren C. Doyle, Esq.
Brian Kinney, Esq.
Edward R. Linden, Esq.
MILBANK LLP
55 Hudson Yards
New York, NY 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219
Email: skhalil@milbank.com
ldoyle@milbank.com
bkinney@milbank.com
elinden@milbank.com

*Counsel to all Debtors and Debtors in Possession
other than the Participation Debtors*

/s/ Michael J. Edelman
Michael J. Edelman, Esq.
William W. Thorsness, Esq. (admitted *pro hac vice*)
VEDDER PRICE P.C.
1633 Broadway, 31st Floor
New York, NY 10019
Telephone: (212) 407-7700
Facsimile: (212) 407-7799
Email: cgee@vedderprice.com
mjedelman@vedderprice.com
wthorsness@vedderprice.com

*Counsel to the Participation Debtors
Debtors*

Exhibit A

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | |
|--|---|-------------------------|
| In re: |) | Chapter 11 |
| |) | |
| Voyager Aviation Holdings, LLC <i>et al.</i> , |) | Case No. 23-11177 (JPM) |
| |) | |
| Debtors. ¹ |) | (Jointly Administered) |

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, (B) MAINTAIN EXISTING BUSINESS FORMS AND BOOKS, (C) ENGAGE IN INTERCOMPANY TRANSACTIONS; (II) GRANTING ADMINISTRATIVE EXPENSE STATUS TO INTERCOMPANY CLAIMS, AND (III) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of the debtors and debtors in possession in the above-captioned cases (the “Debtors”) seeking (i) authorization to (a) continue to operate their Cash Management System, subject to the modifications described herein, as well as honor any prepetition obligations related thereto in the ordinary course business, (b) maintain existing Business Forms and Books, and (c) continue to engage in Intercompany Transactions, (ii) to grant administrative expense status to Intercompany Claims, and (iii) to grant certain related relief, all as more fully set forth in the Motion; and the Court having reviewed the Motion and the First Day Declaration and having heard the statements of counsel regarding the relief requested in the Motion

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (45-3908601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (35-2509861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (83-2955087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (32-0442925); Voyager Aviation Aircraft Leasing, LLC (20-5163865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (61-1729652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

² Capitalized terms used but not defined in this Final Order shall have the meanings given to such terms in the Motion or in the First Day Declaration, as applicable.

at a hearing before the Court on July 28, 2023 (the “First Day Hearing”); and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); (c) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) due and proper notice of the Motion and the First Day Hearing was sufficient under the circumstances and no other notice need be provided; and this Court having entered the *Interim Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief* [Docket No. 27] and *Second Interim Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief*[Docket No. 150]; and the Debtors having filed the *Notice of Filing of Proposed Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief*[Docket No. •]; and additional time being needed for the Debtors to explore the undertaking of a surety bond to secure the applicable Bank Accounts or other alternatives; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363, 364(a), 503(b)(1) and 507 of the Bankruptcy Code, to (i) continue using their Cash Management System and to collect, concentrate, and disburse cash in the ordinary course of business, consistent with past practices and (ii) honor prepetition obligations related thereto.
3. Specifically, the Debtors are authorized to: (i) maintain and continue to use all of their Bank Accounts, including those listed on Exhibit C to the Motion (which Exhibit C shall be promptly amended to identify any Bank Accounts inadvertently omitted therefrom); (ii) deposit funds in and withdraw funds from the Bank Accounts by all usual means including, without limitation, checks, drafts, wire transfers, automated clearinghouse (“ACH”) payments, electronic funds transfer (“EFT”) payments, and other debits; and (iii) treat their Bank Accounts for all purposes as debtors-in-possession accounts.
4. The Debtors are authorized to open new bank accounts so long as any such new bank account is opened at a bank that is an authorized depository in the U.S. Trustee Region 2 and the Debtors provide notice to the U.S. Trustee within 5 business days of the opening of any such bank account. For the purposes of this Final Order, each such new account shall be a “Bank Account” as if it had been listed on Exhibit C attached to the Motion and each bank at which such account is opened shall be a “Bank.”
5. Except as otherwise set forth herein, the Debtors and the Banks may, without further order of the Court, agree and implement changes to the Cash Management System and procedures in the ordinary course of business without further order of the Court.

6. Nothing contained herein shall prevent the Debtors from closing any Bank Account as they may deem necessary and appropriate, to the extent not inconsistent with any orders of this Court relating thereto, and the relevant Bank is authorized to honor the Debtors' requests to close such Bank Account, *provided* that the Debtors shall give written notice of the closure of any account to the U.S. Trustee within 5 business days of such closure.

7. To the extent necessary to operate the Cash Management System and manage the day-to-day operations of their business, the Debtors are authorized to continue to engage in Intercompany Transactions, including Intercompany Transactions with their non-Debtor affiliates and with respect to prepetition servicing obligations, in each case in the ordinary course of business and consistent with their prepetition practices. All Intercompany Claims arising after the Petition Date shall be accorded administrative expense priority status in accordance with section 364(a) and 503(b) of the Bankruptcy Code; *provided* that such postpetition Intercompany Claims shall be junior in priority to the adequate protection superpriority claims granted pursuant to any orders authorizing the use of cash collateral.

8. The Debtors shall continue, in the ordinary course of business, to maintain records of all transfers of funds within the Cash Management System so that all postpetition transfers may be readily ascertained, traced, and recorded properly on applicable intercompany accounts.

9. The Debtors are authorized, but not directed, to continue to use the Corporate Credit Card Program in the ordinary course of business, to honor all obligations arising under the Corporate Credit Card Program, including payments on account of charges that were made under the Corporate Credit Card Program prior to the Petition Date. In the event that the Debtors fail to make any timely payment to Bank of America N.A. and/or Bank of America Merrill Lynch International Limited ("Bank of America") as required under the terms of the Corporate Credit

Card Program, Bank of America is authorized, in its discretion, to terminate the Corporate Credit Card Program in accordance with the terms thereof without further order of the Court; provided, that Bank of America shall provide the Debtors 5 business days' written notice to cure any such payment default prior to such termination. To the extent necessary, Bank of America is hereby granted relief from the stay imposed under section 362 of the Bankruptcy Code for purposes of this paragraph 9.

10. The Debtors' credit card processors are authorized to process payments in the ordinary course of business, including the netting out of any fees and/or chargebacks arising before, on or after the Petition Date.

11. The Banks are authorized to charge, and the Debtors are authorized to pay, honor, or allow any Bank Fees or charges associated with the Bank Accounts, and charge back returned items to the Bank Accounts in the ordinary course.

12. Except as otherwise provided in this Final Order, all Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the ordinary course, and to receive, process, honor and pay any and all checks, drafts, wire transfers, ACH payments, EFT payments, or other debits drawn on any of the Bank Accounts after the Petition Date by the holders or makers thereof, to the extent funds are available as the case may be.

13. Unless authorized by the Court, no Bank shall honor or pay any checks, drafts, wires, ACH payments, or EFT payments issued on account of a prepetition claim. The Banks may honor any checks, drafts, wires, ACH payments, or EFT payments issued on account of prepetition claims where this Court has specifically authorized such checks, drafts, wires, ACH payments, or EFT payments to be honored.

14. The Banks shall not be liable to any party on account of: (a) following the Debtors' representations, instructions, or presentations as to any order of the Court (without any duty of further inquiry); (b) the honoring of any prepetition checks, drafts, wires, ACH payments, or EFT payments in a good-faith belief or upon a representation by the Debtors that the Court has authorized such prepetition check, draft, wire, ACH payments, or EFT payments; or (c) an innocent mistake made despite implementation of reasonable handling procedures.

15. To the extent that the Cash Management System or any Bank Account is not in compliance with the requirements of section 345(b) of the Bankruptcy Code, the Debtors shall have 28 days from the date of this Final Order to bring the Cash Management System or such Bank Account into compliance, seek an order from the Court waiving compliance with section 345(b) of the Bankruptcy Code (on either a final or interim basis) or for other relief, or make such other arrangements as are agreed to by the U.S. Trustee. The immediately preceding sentence shall apply to the provision of the U.S. Trustee Guidelines requiring that all Bank Accounts be maintained in U.S. Trustee-authorized depositories. For the avoidance of doubt, the parties' rights with respect to any request by the Debtors for an order from the Court waiving compliance with section 345(b) of the Bankruptcy Code (on either a final or interim basis) are expressly preserved.

16. The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, and maintain and continue using, in their present form, the Books; *provided, however*, that if the Debtors re-order checks during the pendency of the Chapter 11 Cases, they will use reasonable efforts to include the designation "Debtor in Possession" and the case number on such checks.

17. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, approving the use of cash collateral (the “Cash Collateral Order”) and any budget in connection with any such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

18. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, shall constitute or be construed as (a) an implication or admission as to the validity of any claim against the Debtors or a waiver of the obligation of any claimant to file a proof of claim, (b) a promise to pay any claim or a waiver of the Debtors’ or any other party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action, (d) a concession by the Debtors that any lien (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved), or (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code or as affecting the Debtors’ rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to the Court’s order approving the relief sought herein is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors’ rights to subsequently dispute such claim.

19. All time periods set forth in this Final Order or in compliance with case management procedures entered by the Court shall be calculated in accordance with Bankruptcy Rule 9006(a).

20. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

21. Under the circumstances of the Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

22. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry.

23. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

New York, New York

Dated: _____, 2023

HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE

Exhibit A-1

Blackline of Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

| | | | | | |
|--|---|--|--|--|---|
| |) | | | | |
| In re: |) | | | | Chapter 11 |
| |) | | | | |
| Voyager Aviation Holdings, LLC <i>et al.</i> , |) | | | | Case No. 23-11177 (JPM) |
| |) | | | | |
| Debtors. ¹ |) | | | | (Joint Administration Pending) <u>Jointly Administered</u> |
| |) | | | | |

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO (A)
CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM,
(B) MAINTAIN EXISTING BUSINESS FORMS AND BOOKS, (C) ENGAGE IN
INTERCOMPANY TRANSACTIONS; (II) GRANTING ADMINISTRATIVE EXPENSE
STATUS TO INTERCOMPANY CLAIMS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the debtors and debtors in possession in the above-captioned cases (the “Debtors”) seeking (i) authorization to (a) continue to operate their Cash Management System, subject to the modifications described herein, as well as honor any prepetition obligations related thereto in the ordinary course business, (b) maintain existing Business Forms and Books, and (c) continue to engage in Intercompany Transactions, (ii) to grant administrative expense status to Intercompany Claims, and (iii) to grant certain related relief, all as more fully set forth in the Motion; and the Court having reviewed the Motion and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (45-3908601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (35-2509861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (83-2955087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (32-0442925); Voyager Aviation Aircraft Leasing, LLC (20-5163865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (61-1729652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

² Capitalized terms used but not defined in this Final Order shall have the meanings given to such terms in the Motion or in the First Day Declaration, as applicable.

the First Day Declaration and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court, ~~if any~~ on July 28, 2023 (the “First Day Hearing”); and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); (c) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) due and proper notice of the Motion and the First Day Hearing was sufficient under the circumstances and no other notice need be provided; and this Court having entered the Interim Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief [Docket No. 27] and Second Interim Order (I) Authorizing the Debtors to (A) Continue to Operate their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief [Docket No. 150]; and the Debtors having filed the Notice of Filing of Proposed Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain Existing Business Forms and Books, (C) Engage in Intercompany Transactions; (II) Granting Administrative Expense Status to Intercompany Claims, and (III) Granting Related Relief [Docket No. •]; and additional time being needed for the Debtors to explore the undertaking of a surety bond to secure the applicable Bank Accounts or other alternatives; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the

relief requested in the Motion is ~~necessary to avoid immediate and irreparable harm to the Debtors and their estates and is~~ in the best interests of the Debtors, their estates, creditors, and other parties-in-interest ~~after taking into account the priority scheme of the Bankruptcy Code;~~ and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363, 364(a), 503(b)(1) and 507 of the Bankruptcy Code, to (i) continue using their ~~existing~~ Cash Management System and to collect, concentrate, and disburse cash in the ordinary course of business, consistent with past practices and (ii) honor prepetition obligations related thereto.
3. Specifically, the Debtors are authorized to: (i) maintain and continue to use all of their Bank Accounts, including those listed on Exhibit C to the Motion (which Exhibit C shall be promptly amended to identify any Bank Accounts inadvertently omitted therefrom); (ii) deposit funds in and withdraw funds from the Bank Accounts by all usual means including, without limitation, checks, drafts, wire transfers, automated clearinghouse (“ACH”) payments, electronic funds transfer (“EFT”) payments, and other debits; and (iii) treat their Bank Accounts for all purposes as debtors-in-possession accounts.
4. The Debtors are authorized to open new bank accounts so long as any such new bank account is opened at a bank that is an authorized depository in the U.S. Trustee Region 2 and the Debtors provide notice to the U.S. Trustee within 5 business days of the opening of any such bank account. For the purposes of this Final Order, each such new account shall be a “Bank

Account” as if it had been listed on Exhibit C attached to the Motion and each bank at which such account is opened shall be a “Bank.”

5. Except as otherwise set forth herein, the Debtors and the Banks may, without further order of the Court, agree and implement changes to the Cash Management System and procedures in the ordinary course of business without further order of the Court.

6. Nothing contained herein shall prevent the Debtors from closing any Bank Account as they may deem necessary and appropriate, to the extent not inconsistent with any orders of this Court relating thereto, **anyand** the relevant Bank is authorized to honor the Debtors’ requests to close such Bank Account, *provided* that the Debtors shall give written notice of the closure of any account to the U.S. Trustee within 5 business days of such closure.

7. To the extent necessary to operate the Cash Management System and manage the day-to-day operations of their business, the Debtors are authorized to continue to engage in Intercompany Transactions, including Intercompany Transactions with their non-Debtor affiliates and with respect to prepetition servicing obligations, in each case in the ordinary course of business and consistent with their prepetition practices. All Intercompany Claims arising after the Petition Date shall be accorded administrative expense priority status in accordance with section 364(a) and 503(b) of the Bankruptcy Code; ***provided that such postpetition Intercompany Claims shall be junior in priority to the adequate protection superpriority claims granted pursuant to any orders authorizing the use of cash collateral.***

8. The Debtors shall continue, in the ordinary course of business, to maintain records of all transfers of funds within the Cash Management System so that all postpetition transfers may be readily ascertained, traced, and recorded properly on applicable intercompany accounts.

9. The Debtors are authorized, but not directed, to continue to use the Corporate Credit Card Program in the ordinary course of business, to honor all obligations arising under the Corporate Credit Card Program, including payments on account of charges that were made under the Corporate Credit Card Program prior to the Petition Date. In the event that the Debtors fail to make any timely payment to Bank of America N.A. and/or Bank of America Merrill Lynch International Limited (“Bank of America”) as required under the terms of the Corporate Credit Card Program, Bank of America is authorized, in its discretion, to terminate the Corporate Credit Card Program in accordance with the terms thereof without further order of the Court; provided, that Bank of America shall provide the Debtors 5 business days’ written notice to cure any such payment default prior to such termination. To the extent necessary, Bank of America is hereby granted relief from the stay imposed under section 362 of the Bankruptcy Code for purposes of this paragraph 9.

10. The Debtors’ credit card processors are authorized to process payments in the ordinary course of business, including the netting out of any fees and/or chargebacks arising before, on or after the Petition Date.

11. ~~10.~~ The Banks are authorized to charge, and the Debtors are authorized to pay, honor, or allow any Bank Fees or charges associated with the Bank Accounts, and charge back returned items to the Bank Accounts in the ordinary course.

12. ~~11.~~ Except as otherwise provided in this Final Order, all Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the ordinary course, and to receive, process, honor and pay any and all checks, drafts, wire transfers, ACH payments, EFT payments, or other

debits drawn on any of the Bank Accounts after the Petition Date by the holders or makers thereof, to the extent funds are available as the case may be.

13. ~~12.~~ Unless authorized by the Court, no Bank shall honor or pay any checks, drafts, wires, ACH payments, or EFT payments issued on account of a prepetition claim. The Banks may honor any checks, drafts, wires, ACH payments, or EFT payments issued on account of prepetition claims where this Court has specifically authorized such checks, drafts, wires, ACH payments, or EFT payments to be honored.

14. ~~13.~~ The Banks shall not be liable to any party on account of: (a) following the Debtors' representations, instructions, or presentations as to any order of the Court (without any duty of further inquiry); (b) the honoring of any prepetition checks, drafts, wires, ACH payments, or EFT payments in a good-faith belief or upon a representation by the Debtors that the Court has authorized such prepetition check, draft, wire, ACH payments, or EFT payments; or (c) an innocent mistake made despite implementation of reasonable handling procedures.

15. ~~14.~~ To the extent that the Cash Management System or any Bank ~~Accounts existing as of the date of the Final Order are~~ Account is not in compliance with the requirements of section 345(b) of the Bankruptcy Code, the Debtors shall have 4528 days ~~(or such additional time to which the U.S. Trustee may agree) from the Petition Date to either bring such Bank Accounts into compliance~~ from the date of this Final Order to bring the Cash Management System or such Bank Account into compliance, seek an order from the Court waiving compliance with section 345(b) of the Bankruptcy Code ~~or to~~ (on either a final or interim basis) or for other relief, or make such other arrangements as are agreed to by the U.S. Trustee ~~or approved by the Court; provided that nothing in the foregoing shall prevent the Debtors or the U.S. Trustee from seeking further relief from the Court to the extent such an~~

~~agreement cannot be reached within that time period (or such other period as agreed to by the Debtors and the U.S. Trustee).~~ The immediately preceding sentence shall apply to the provision of the U.S. Trustee Guidelines requiring that all Bank Accounts be maintained in U.S. Trustee-authorized depositories. For the avoidance of doubt, the parties' rights with respect to any request by the Debtors for an order from the Court waiving compliance with section 345(b) of the Bankruptcy Code (on either a final or interim basis) are expressly preserved.

16. ~~15.~~ The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, and maintain and continue using, in their present form, ~~their~~the Books; *provided, however,* that if the Debtors re-order checks during the pendency of the Chapter 11 Cases, they will use reasonable efforts to include the designation “Debtor in Possession” and the case number on such checks.

17. ~~16.~~ Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, approving the use of cash collateral (the “Cash Collateral Order”) and any budget in connection with any such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

18. ~~17.~~ Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, shall constitute or be construed as (a) an implication or admission as to the validity of any claim against the Debtors or a waiver of the obligation of any claimant to file a proof of claim, (b) a promise to pay any claim or a waiver of

the Debtors' or any other party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action, (d) a concession by the Debtors that any lien (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved), or (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code or as affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to the Court's order approving the relief sought herein is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

19. ~~18.~~ All time periods set forth in this Final Order or in compliance with ~~the Case Management Procedures~~ case management procedures entered by the Court shall be calculated in accordance with Bankruptcy Rule 9006(a).

20. ~~19.~~ The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

21. Under the circumstances of the Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

22. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry.

23. ~~20.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

24. ~~21.~~ This Court retains exclusive jurisdiction with respect to all matters arising
from or related to the implementation, interpretation, or enforcement of this Final Order.

New York, New York

Dated: _____, 2023

HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE