

1 STEVEN T. GUBNER – NV Bar No. 4624
 SUSAN K. SEFLIN – CA Bar No. 213865 – Pro Hac Vice to Be Filed
 2 JESSICA WELLINGTON – CA Bar No. 324477 - Pro Hac Vice to Be Filed
 BG LAW LLP
 3 300 S. 4th Street, Suite 1550
 Las Vegas, NV 89101
 4 Telephone: (702) 835-0800
 Facsimile: (866) 995-0215
 5 Email: sgubner@bg.law
 sseflin@bg.law
 6 jwellington@bg.law

7 Proposed Attorneys for Chapter 11 Debtor
 and Debtor in Possession

8 **UNITED STATES BANKRUPTCY COURT**
 9 **DISTRICT OF NEVADA**

10
 11
 12 In re Front Sight Management LLC,

Case No. 22-11824-abl

Chapter 11

Date:
Time:

Place: Courtroom

13
 14
 15
 16
 17
 18
 19
 20
 21
 22 **EMERGENCY MOTION FOR ENTRY OF AN ORDER: (1) AUTHORIZING, BUT NOT**
 23 **REQUIRING, DEBTOR TO PAY OR HONOR (A) PREPETITION WAGES, SALARIES,**
 24 **AND OTHER COMPENSATION INCLUDING REIMBURSEMENT OF EXPENSES AND**
 25 **(B) PREPETITION MEDICAL, WORKERS’ COMPENSATION, PAID TIME OFF, AND**
 26 **SIMILAR BENEFITS; AND (2) AUTHORIZING AND DIRECTING APPLICABLE BANKS**
 27 **AND OTHER FINANCIAL INSTITUTIONS TO RECEIVE, PROCESS, HONOR, AND PAY**
 28 **CHECKS PRESENTED FOR PAYMENT AND TO HONOR FUND TRANSFER**
REQUESTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		Page
	MEMORANDUM OF POINTS AND AUTHORITIES	3
I.	FACTUAL BACKGROUND.....	3
	A. General Case Background.....	3
	B. Description of the Debtor’s Business	3
	C. Disputed Lending Transaction & the Reasons Behind the Debtor’s Bankruptcy Filing	4
	D. The Debtor’s Workforce	7
	E. Prepetition Wages	8
	F. Employee Benefits	9
	G. Reimbursable Expenses	10
	H. Paid Time Off	10
	I. Summary of Employee Obligations.....	10
II.	ARGUMENT	11
	A. The Court Has Authority to Authorize Payment of Employee Obligations	11
	B. The Estate Will Suffer No Prejudices As a Result of the Motion Because the Prepetition Wages, Employee Benefits, and Employee Expenses are Priority Claims Under Bankruptcy Code Section 507(a)(4)	13
	C. Honoring of Checks and Transfers Related to Employee Obligations and Maintenance of Payroll Accounts	14
III.	CONCLUSION.....	14

TABLE OF AUTHORITIES

Page

CASES

1

2

3

4 *Front Sight Management, LLC v. Las Vegas Development Fund LLC et al.*,
Case No. A-18-781084-B6

5 *In re All Seasons Industries, Inc.*,
121 B.R. 822 (Bankr. N.D. Ind. 1990).....13

6

7 *In re Chateaugay Corp.*,
116 B.R. 887 (Bankr. S.D.N.Y. 1990).....12

8 *In re Gulf Air, Inc.*,
112 B.R. 152 (Bankr. W.D. La. 1989).....12

9

10 *In re Ionosphere Clubs, Inc.*,
98 B.R. 174 (Bankr. S.D.N.Y. 1989).....11, 12

11 *In re Lehigh & New England Railway Co.*,
657 F.2d 570 (3d Cir. 1981).....11

12

13 *In re Pacific Forest Industries, Inc.*,
95 B.R. 740 (Bankr. C.D. Cal. 1989).....13

STATUTES

14

15

16 11 U.S.C. § 105(a)1, 11

17 11 U.S.C. § 363(b)1

18 11 U.S.C. § 1107(a)1, 3

19 11 U.S.C. § 1108.....1, 3

20 11 U.S.C. § 507(a)(4).....9, 11, 13

21 11 U.S.C. § 507(a)(8).....9

22 11 U.S.C. § 507(a)(8)(C)9

23 Title 11 of the United States Code.....1

24

25

26

27

28

1 Front Sight Management LLC dba Front Sight Firearms Training Institute, the chapter 11
2 debtor and debtor in possession herein (the “Debtor”) hereby files its emergency motion (the
3 “Motion”) for entry of an order pursuant to sections 105(a), 363(b), 507(a), 1107(a), and 1108 of
4 Title 11 of the United States Code (“Bankruptcy Code”), (1) authorizing, but not directing, the
5 Debtor to pay or honor in its discretion certain Employee Obligations (defined in the annexed
6 Memorandum of Points and Authorities) and (2) authorizing and directing the applicable banks and
7 other financial institutions to receive, process, honor, and pay all checks presented for payment and
8 to honor all electronic payment requests made by the Debtor relating to the foregoing.

9 The Debtor employs approximately 135 employees (the “Employees”). The Employees are
10 all paid on a bi-monthly basis – on the first and fifteenth days of the month. The spreadsheet
11 attached as **Exhibit H**¹ to the Declaration of Ignatius Piazza (the “Piazza Declaration”) filed
12 concurrently herewith reflects the pre-petition wages (including payroll taxes) owed to the
13 Employees for the period May 1, 2022 through May 15, 2022. The spreadsheet attached as **Exhibit**
14 **I** to the Piazza Declaration reflects the pre-petition wages (including payroll taxes) owed to the
15 Employees for the period May 16, 2022 through May 24, 2022.

16 The Debtor’s employees are vital to the continued operation of the Debtor’s business and its
17 successful reorganization. Payment of and otherwise honoring the Employee Obligations is
18 necessary to continue the Debtor’s business operations, and prevent the Debtor’s employees from
19 experiencing extreme personal hardship or seeking employment elsewhere. Moreover, these claims
20 are entitled to priority pursuant to sections 507(a)(4) and (a)(8) of the Bankruptcy Code and must be
21 paid ahead of general unsecured claims; thus, Debtor’s payment of the Employee Obligations in the
22 ordinary course of business will not prejudice general unsecured creditors or materially affect the
23 Debtor’s bankruptcy estate.

24 **PLEASE TAKE FURTHER NOTICE** that if you wish to object to the relief sought by the
25 Motion, you must appear at the hearing and file any responsive pleading in accordance with the
26 deadline set forth in the accompanying Notice of Emergency Motions. Your failure to timely object
27 may be deemed by the Court to constitute consent to the relief requested herein.

28 _____
¹ For the Court’s convenience, identical copies of **Exhibits H and I** to the Piazza Declaration are appended to this Motion.

1 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Motion and
2 attached Memorandum of Points and Authorities, the concurrently filed Piazza Declaration and
3 evidence appended thereto, the arguments of counsel and other admissible evidence properly
4 brought before the Court at or before the hearing on this Motion.

5 **WHEREFORE**, the Debtor respectfully requests that this Court enter an order granting the
6 Motion in its entirety and:

7 1. Authorizing, but not directing, Debtor to pay or honor in its discretion certain
8 Employee Obligations more specifically described in the Motion,

9 2. Authorizing and directing the applicable banks and other financial institutions to
10 receive, process, honor, and pay all checks presented for payment and to honor all electronic
11 payment requests made by the Debtor relating to the foregoing, and

12 3. Granting such other and further relief as the Court deems just and proper under the
13 circumstances.

14 DATED: May 24, 2022

BG LAW LLP

15
16 By: /s/ Susan K. Seflin
17 Steven T. Gubner
18 Susan K. Seflin
19 Jessica Wellington
20 Proposed Attorneys for Chapter 11
21 Debtor and Debtor in Possession
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

A. General Case Background

1. On May 24, 2022, Front Sight Management LLC dba Front Sight Firearms Training Institute, a Nevada limited liability company, filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business and manage its affairs as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or committee has been appointed in the Debtor’s chapter 11 case.

B. Description of the Debtor’s Business

2. The Debtor was founded in 1996 by Ignatius Piazza. Mr. Piazza owns, either directly or indirectly, 100% of the Debtor. The Debtor was originally formed as a California business and operated near Bakersfield, California from its formation in 1996 until 2002. In 1998, the Debtor purchased 550 acres of raw land 45 minutes from Las Vegas, acquired approximately 500 acre feet of water rights and began building what is now the finest and largest private firearms training facility in the world (the “Front Sight Property”).

3. In 2012, the Debtor became a Nevada limited liability company. The Debtor’s primary place of business is the Front Sight Property located at 1 Front Sight Road, Pahrump, Nevada 89061.

4. The Front Sight Property is accessed by a four-mile, two lane paved road, and is currently comprised of 50 outdoor firearms training ranges, live fire tactical training simulators, an 8,000 square foot classroom and pro shop, and assorted accessory buildings, bathrooms, three water wells and thousands of square yards of completed grading for future development.

5. The Debtor provides firearms training courses which promote the defensive use of various firearms. Courses are offered to the general public, members of law enforcement and military members.

6. The Front Sight Firearms Facility is the most successful of its type in the United States. The Debtor provides classes and instruction annually to upward of 40,000 gun and weapons

1
2 enthusiasts. The Debtor is considered the leader in its field, and provides additional training and
3 instruction for numerous city and state agencies seeking to improve performance of their respective
4 law enforcement departments.

5 7. Over the last 25 years, the Debtor has trained a million students and currently has
6 over 263,000 members.

7 8. As of January 19, 2022, the Front Sight Property (including the land, water rights and
8 improvements but excluding equipment and inventory) was appraised at \$25,260,000 “as is.”

9 9. Historically, the Debtor has operated its business by selling lifetime memberships at
10 an amount ranging from \$250 to \$50,000, courses and ancillary products. The Debtor’s business
11 model centered around a major expansion plan that was intended to build the Front Sight Vacation
12 Club & Resort (vacation residences, a RV park, etc.), a retail area adjacent to the vacation club and a
13 pavilion. The Debtor’s intent was that the discounted lifetime memberships and other promotional
14 benefits (like “Front Sight bucks” [money to be used on limited items at Front Sight], certificates [to
15 be used for 2 day or 4 day training courses], etc.) would lead to a “captive” customer base that would
16 be more likely to take advantage of the Vacation Club & Resort which would then bring increased
17 revenue to the Debtor.

18 **C. Disputed Lending Transaction & the Reasons Behind the Debtor’s Bankruptcy**
19 **Filing.**

20 10. With that goal in mind, the Debtor began researching its financing options. Financing
21 from traditional banks was largely unavailable to the Debtor due to its business centering around the
22 use of firearms. In 2012, the Debtor was approached by Robert W. Dziubla (“Dziubla”) John
23 Fleming (“Fleming”), doing business as Las Vegas Development Fund LLC (“LVDF”), who
24 represented themselves as like-minded, pro-gun patriots who told the Debtor that they would be able
25 to obtain a financing package for the Debtor to raise up to \$150 million (at a low interest rate) to
26 build and bring to market, among other things, the Vacation Club & Resort. Dziubla, Fleming and
27 LVDF stated that all they needed from the Debtor was \$300,000 in fees needed to secure approval
28 from the United States Customs and Immigration Service (“USCIS”) and \$100,000 in marketing

1 costs to solicit foreign investors to participate in an EB-5² immigration investment plan.

2 11. The Debtor initially declined the Dziubla, Fleming and LVDF offer twice. Dziubla
3 and Fleming persisted and promised the Debtor that due to their vast experience raising foreign
4 investments, their personal connections in China, and their desire to help the Debtor complete its
5 development, that they could raise the necessary funds within a year.

6 12. After months of solicitation and misrepresentations, Front Sight unwittingly accepted
7 Dziubla's and Fleming's proposal. Front Sight paid the requested \$300,000 in fees to secure
8 approval from the USCIS to market the EB-5 investment project. Instead of taking a year as
9 promised to secure the USCIS approval, it took over two years. Front Sight paid the aforementioned
10 \$100,000 in marketing fees, as well as another \$120,000 in marketing fees, but the promised funding
11 never materialized.

12 13. Four years later, in 2016, Dziubla and Fleming continued their misrepresentations by
13 stating they had secured the first \$2.5 million in investor funding, and had hundreds of investors in a
14 pipeline to invest in the construction project, but needed to execute a construction loan document to
15 start the flow of investment money. In October of 2016, after three months of negotiating a
16 construction loan agreement, the Debtor was induced into signing the agreement with the
17 expectation that full funding would follow shortly thereafter. Dziubla and Fleming produced only
18 \$6.3 million dollars in funding over the next two years, all of which was used by Front Sight under
19 the parameters of the construction loan agreement. During this time period, the Debtor paid the
20 interest payments on the money every month on time and in full. By 2018, the Debtor became
21 suspicious that the funds advanced to Dziubla and Fleming (the \$300,000 in fees and \$220,000 for
22 marketing) had not actually been used to secure USCIS approval and for marketing the project to
23 foreign investors, and requested that Dziubla and Fleming produce such evidence.

24 14. Dziubla and Fleming refused to show proof of where the funds the Debtor paid had
25 been spent and apparently in retaliation for its demands, Dziubla and Fleming fraudulently claimed
26 that the Debtor was in default on a number of terms of the construction loan agreement (which the
27

28 ² An "EB-5" investment allows qualified foreign investors who meet specific capital investments
and job creation requirements to potentially obtain permanent residency.

1 Debtor was not in default).

2 15. To sum up a very complex history, Dziubla, Fleming and LVDF defaulted on their
3 obligations, failed to raise the funds necessary to complete the Vacation Club & Resort, and
4 litigation was commenced by the Debtor against Dziubla, Fleming, LVDF and related affiliates
5 (collectively, the “LVDF Parties”) in August of 2018, styled *Front Sight Management, LLC v. Las*
6 *Vegas Development Fund LLC et al.*, Case No. A-18-781084-B, which is pending before the Eighth
7 Judicial District Court in Clark County, Nevada (the “LVDF Litigation”). In the LVDF Litigation,
8 the Debtor asserts claims for, among other things, fraud in the inducement, intentional
9 misrepresentation, breach of fiduciary duty and conversion against the LVDF Parties. Dziubla,
10 Fleming, and LVDF then filed a fraudulent foreclosure action against the Debtor. The judge in the
11 civil action placed a temporary restraining order on the foreclosure action. The civil action has been
12 pending for nearly four years.

13 16. While the Debtor believes it will ultimately prevail in the litigation, the Debtor’s legal
14 fees related to the LVDF Litigation and foreclosure action have exceeded one million dollars to date.
15 Furthermore, the most damaging consequences arising out of the LVDF Parties malfeasance are (a)
16 the loss of momentum the Debtor has suffered in completing the development of its project, (b) the
17 loss of member confidence the Debtor has suffered due to all the delays in the project, (c) the
18 resulting reduction in membership sales, and (d) the increased difficulty for the Debtor to obtain
19 additional financing to complete the project.

20 17. As 2021 came to an end, the Debtor solicited its members to participate in a number
21 of marketing offers in an attempt to raise sufficient funds to complete the aforementioned litigation.
22 Unfortunately, the Debtor was not able to raise sufficient funds.

23 18. Because the Vacation Club & Resort and related projects have not yet materialized
24 and the Debtor’s ability to obtain traditional financing to complete the construction is impossible
25 while the LVDF Litigation is pending, the Debtor has determined that it must reorganize its business
26 to generate sufficient cash flow on an ongoing basis to support itself. While the Debtor has not yet
27 finalized all the details of its plan of reorganization, the Debtor intends on implementing certain
28 annual fees and other costs while giving members and creditors direct profit participation in the

1 reorganized Debtor.

2 19. The Debtor hopes that the ability to participate in profits post-bankruptcy will
3 incentivize its current members to continue their membership with the Debtor.

4 20. While the Debtor is working diligently to improve its cash flow, an injunction that
5 was in place in LVDF Litigation which stayed the foreclosure of the Front Sight Property was
6 recently lifted. Without the filing of this bankruptcy, the Front Sight Property would be foreclosed
7 upon and the Debtor would have no choice but to immediately fire all of its employees and close its
8 business.

9 **D. The Debtor's Workforce**

10 21. Presently, the Debtor employs approximately 135 employees (the "Employees"). All
11 of the Debtor's Employees are located in the United States. The Employees are all paid on a bi-
12 monthly basis – on the first and fifteenth days of the month. The spreadsheets attached as **Exhibits**
13 **H and I**³ to the Declaration of Ignatius Piazza (the "Piazza Declaration") filed concurrently herewith
14 reflects the pre-petition wages (including payroll taxes) owed to the Employees.

15 22. The Debtor has one insider employee (the "Insider Employee"): Ignatius Piazza, the
16 Debtor's managing member. Mr. Piazza is not seeking to be paid for any pre-petition unpaid wages
17 (though he reserves the right to assert a claim for such unpaid wages). Mr. Piazza has not received a
18 salary since December 2021, and will not seek a salary from the company for at least the first two
19 months of the case.

20 23. As discussed further below, to minimize the hardship that the Employees will suffer if
21 prepetition obligations are not paid when due, and to avoid disruption of the Debtor's workforce and
22 business as the Debtor pursues its reorganization efforts in this bankruptcy case, the Debtor seeks
23 authority to pay certain prepetition claims for, among other items, wages, salaries, and other
24 compensation including federal and state withholding taxes, payroll taxes, contributions to employee
25 benefit plans, retirement plans, and all other employment related benefits, which the Debtor provides
26 in the ordinary course (collectively, the "Employee Obligations.")

27
28 ³ For the Court's convenience, identical copies of **Exhibits H and I** to the Piazza Declaration are
appended to this Motion.

1 24. In addition, the Debtor requests authority to pay the appropriate third parties the
2 amounts that are deducted and withheld from Employees' paychecks ("Employee Deductions"),
3 which are in most instances not property of the Debtor's estate, and to reimburse Employees for
4 reimbursable expenses incurred by such employees prepetition in the ordinary course of business
5 ("Employee Expenses"). By this Motion, the Debtor also seeks the general authority, in its
6 discretion, to pay or honor the Employee Obligations, including the Employee Deductions and
7 Employee Expenses with respect to all of its Employees, inclusive of the Insider Employee.

8 25. Additionally, the Debtor seeks authority for and direction to applicable banks and
9 other financial institutions with whom the Debtor does business, in accordance with the Debtor's
10 instructions as may be provided by the Debtor, to receive, process, honor, and pay all checks
11 presented for payment and to honor all electronic payment requests made by the Debtor which are or
12 relate to the Employee Obligations.

13 **E. Prepetition Wages**

14 26. As discussed above, the Debtor employs approximately 135 Employees. The
15 Employees are all paid on a bi-monthly basis – on the first and fifteenth days of the month – for
16 approximately two weeks work, approximately two weeks in arrears. Typically, a few days prior to
17 each payroll date, funds are transferred to ADP to cover the payroll for the applicable periods.

18 27. Also, in the ordinary course of its business, the Debtor deducts from its Employees'
19 paychecks (as applicable): (a) payroll taxes and the Employees' portion of FICA and unemployment
20 taxes, (b) employee contributions for health and disability related benefits, and (c) other
21 miscellaneous items (collectively, "Employee Deductions"). The Debtor forwards amounts equal to
22 the Employee Deductions from its operating accounts to appropriate third-party recipients.

23 28. Under ordinary conditions, the Debtor's next payroll for Employees is scheduled for
24 June 1, 2022 (because the first falls on a Sunday, the payroll date moves to the Friday before), and
25 relates to the payroll period May 1, 2022 through May 15, 2022 (*i.e.*, approximately two weeks' pay,
26 two weeks in arrears). The Debtor's second post-petition payroll, due on June 15, 2022, and relates
27 to the payroll period May 16, 2022 through May 31, 2022 (*i.e.*, approximately two weeks' pay, two
28 weeks in arrears), but only a portion of it is for the pre-petition period (*i.e.*, May 16, 2022 through

1 May 24, 2022).

2 29. The payroll amount associated with the prepetition period of May 1, 2022 through
3 May 15, 2022 is expected to be in the aggregate amount of \$176,002.91, and the payroll amount
4 associated with the prepetition period of May 16, 2022 through May 24, 2022 is expected to be in
5 the aggregate amount of \$105,394 (collectively referred to as the “Prepetition Wages”). Attached to
6 the Piazza Declaration as **Exhibit H** is a spreadsheet reflecting payroll for the period May 1, 2022
7 through May 15, 2022. Attached as **Exhibit I** to the Piazza Declaration is a spreadsheet reflecting
8 prepetition payroll for the period May 16, 2022 through and including May 24, 2022

9 30. In sum, the Debtor expects to owe Prepetition Wages in the combined amount of
10 approximately \$281,396.91. As of the Petition Date, no Employee has a claim of more than \$15,390
11 in Prepetition Wages on an individual basis.

12 31. The Debtor seeks authority to continue with its payroll schedule in the ordinary
13 course of its business and consequently to pay all Prepetition Wages as planned on the dates
14 indicated above. In all instances, due to the fact that no single Employee has a claim of more than
15 \$15,390 in Prepetition Wages, the Debtor will not make payroll distributions to any particular
16 Employee in an amount that would exceed the allowable priority portion of such Employee’s
17 Prepetition Wages under section 507(a)(4) of the Bankruptcy Code. The Debtor asserts that the
18 costs associated with paying priority Employee wage claims are relatively minimal compared with
19 the damage to the Debtor’s estate that would ensue if Employee morale were disrupted by the
20 Debtor’s failure to meet its payroll obligations.

21 32. In addition to the payment of Prepetition Wages, the Debtor is also seeking to be
22 authorized, but not required, to pay all payroll taxes related to the Prepetition Wages, which the
23 Debtor estimates to be approximately \$73,757.73. The foregoing payroll taxes are entitled to
24 priority under section 507(a)(8). *See* 11 U.S.C. §§ 507(a)(8)(C).

25 **F. Employee Benefits**

26 33. The Debtor has established a variety of benefit plans and programs (“Employee
27 Benefits”) designed to assist its Employees and the Employees’ eligible dependents in meeting
28 certain financial burdens, including those that arise from illness, disability, and death. The

1 Employees receive Employee Benefits pursuant to the terms and policies established by the Debtor.
2 The Debtor seeks authorization, but not direction, to pay or otherwise honor these Employee
3 Benefits, which are described below.

4 34. Long-Term Disability, Basic Term Life Insurance. The Debtor seeks authority to pay
5 any outstanding premiums, deductibles and/or claims with respect to any disability or life insurance
6 policies, including but not limited to prepetition checks sent to Colonial Penn Life Insurance
7 Company but not cashed as of the Petition Date.

8 35. Worker's Compensation Premiums. Additionally, the Debtor is obligated to pay
9 worker's compensation insurance premiums for its Employees. The Debtor owes approximately
10 \$7,362 in monthly worker's compensation premiums. The Debtor seeks authority to pay this
11 obligation in the ordinary course of its business as part of its Employee Obligations.

12 **G. Reimbursable Expenses**

13 36. Employees may submit certain business-related expenses to the Debtor for
14 reimbursement. These expenses include, among other things, car rental, meals, business supplies,
15 and other business-related costs, including those charged by Employees onto corporate credit cards.
16 As of the Petition Date, the Debtor believes that it has paid substantially all reimbursements to
17 employees. In the event that the Debtor owes any other *de minimis* amount of reimbursements to
18 any non-insider employee, the Debtor seeks authority, but not direction, to pay these Employee
19 expenses and to continue to pay them post-petition in the ordinary course of business.

20 **H. Paid Time Off**

21 37. By the Motion, the Debtor is also seeking authority, but not direction, to permit
22 Employees to use earned, accrued prepetition vacation time, personal time, sick, bereavement and
23 other leave in the ordinary course (the "Paid Time Off"). The Debtor anticipates that the Paid Time
24 Off will continue to accrue post-petition, and requests authority to allow it to be used without
25 restrictions other than those imposed by the Debtor's normal human resources policies.

26 **I. Summary of Employee Obligations.**

27 38. In summary, the Debtor seeks authority, in its sole discretion, to honor and pay all
28

1 “Employee Obligations,” more specifically described as follows:

- 2 a. Honor and pay, when due, all Prepetition Wages;
- 3 b. Pay the Debtor’s share of applicable employment taxes in connection with the
4 Prepetition Wages;
- 5 c. Make all appropriate Employee Deductions and to forward the Employee
6 Deductions to the appropriate agency or other third party;
- 7 d. Honor and pay, when due, all Employee expenses;
- 8 e. Honor all Paid Time Off in the ordinary course of business; and
- 9 f. Continue providing active employees with the Employee Benefits and to pay,
10 or otherwise honor, earned prepetition Employee Benefits.

11 **II. ARGUMENT**

12 39. Due to the timing of the commencement of this case, certain Employees accrued
13 prepetition salaries and wages for which payment would otherwise be made postpetition. Other
14 forms of compensation related to prepetition services, more fully described above, have not yet been
15 paid to or for the benefit of the Employees because such benefits, although accrued either in whole
16 or in part prior to the Petition Date, were not payable at such time, but rather will become payable in
17 the immediate future in the ordinary course of business.

18 40. The Debtor submits that the Court has authority to authorize the relief requested
19 herein in light of the prejudice that will result to the Debtor if it is not permitted to honor and pay the
20 Employee Obligations. Furthermore, no prejudice will result to the Debtor’s bankruptcy estate
21 because the Employee Obligations are priority claims under Bankruptcy Code section 507(a)(4),
22 which are paid prior to payments to general unsecured creditors.

23 **A. The Court Has Authority to Authorize Payment of Employee Obligations.**

24 41. Pursuant to section 105(a) of the Bankruptcy Code, the Court may “issue any order,
25 process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11
26 U.S.C. § 105(a). Where business exigencies require, courts have exercised their equitable powers
27 under section 105(a) to authorize debtors to pay prepetition claims of particular creditors essential to
28 continued operations, including those of employee claims for prepetition wages.

1
2 *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174 (Bankr. S.D.N.Y. 1989). This “necessity of payment
3 doctrine,” which empowers courts to authorize a debtor to pay prepetition claims, is critical to any
4 non-liquidating chapter 11 case, because it permits ““immediate payment of claims of creditors
5 where those creditors will not supply services or materials essential to the conduct of the business
6 until their pre-reorganization claims have been paid.”” *Id.* at 176 (quoting *In re Lehigh & New
7 England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981)). Indeed, continued operation and
8 rehabilitation of the debtor is a paramount goal in chapter 11 bankruptcies. *See In re Ionosphere
9 Clubs, Inc.*, 98 B.R. at 176. *See also In re Chateaugay Corp.*, 116 B.R. 887, 989 (Bankr. S.D.N.Y.
10 1990) (“[E]mployee good will and contentment is an asset which is vital to the continuation of a
11 debtor’s business operation and its ability to effectively reorganize during the Chapter 11 process.”);
12 *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (payment of employee prepetition
13 wages is permissible in light of the fact that “retention of skills, organization, and reputation for
14 performance must be considered valuable assets contributing to going concern value and aiding
15 rehabilitation where that is possible”).

16 42. As noted above, the Debtor’s goal in this chapter 11 case is to reorganize its affairs and
17 continue operating as a successful company. It is imperative to the accomplishment of the Debtor’s
18 goals in this case that the Debtor’s Employees make a smooth transition into the chapter 11 process.
19 Any disruption to payment of Employee Obligations will prove destructive to the Debtor’s goals
20 herein because it will hurt Employee morale at a particularly sensitive time for all Employees.
21 Indeed, each Employee is crucial to the continuation of Debtor’s business operations. Due to the
22 timing of the filing of this case, certain Employee Obligations may have accrued, but were unpaid
23 prior to the Petition Date. If the Debtor is not permitted to meet all payroll-related obligations in the
24 ordinary course of business, the Debtor could suffer unmanageable employee outrage or turnover to
25 the detriment of all parties to the Debtor’s bankruptcy estate. Any significant disruption will
26 adversely impact the Debtor’s business and result in immediate and irreparable harm to the estate.
27 Simply put, Debtor’s Employees are essential to the Debtor being able to continue its business
28 operations and thus successfully reorganize, and thus approval for payment of ongoing Employee

1 Obligations is critical to the Debtor’s success in this case.

2 43. The Debtor submits that the amounts to be paid pursuant to the Employee Obligations
3 are relatively small in light of the importance and necessity of preserving the Employees’ services
4 and morale, and the difficulties and losses the Debtor will suffer if Employees leave. Even the
5 slightest delay in providing this relief to its Employees will hamper operations and damage the
6 Debtor’s estate. These payments will not render this estate administratively insolvent.

7 44. Additionally, the Debtor proposes to make immediate payment of Employee
8 Obligations for non-insider employees only, all of whom are currently employed by the Debtor.

9 **B. The Estate Will Suffer No Prejudice As a Result of the Motion Because the**
10 **Prepetition Wages, Employee Benefits, and Employee Expenses are Priority**
11 **Claims Under Bankruptcy Code Section 507(a)(4).**

12 45. Furthermore, the bankruptcy estate—specifically the general unsecured creditors of this
13 case—will suffer no prejudice if the relief requested herein is granted because the Prepetition
14 Wages, Employee Benefits, and Employee Expenses are entitled to a priority under section 507(a)(4)
15 of the Bankruptcy Code. Indeed, each Employee is entitled to a priority claim for:

16 [A]llowed unsecured claims, but only to the extent of
17 \$15,150 . . . earned within 180 days before the date of the filing of
18 the petition or the date of the cessation of the debtor’s business,
19 whichever occurs first, for—

20 (A) wages, salaries, or commissions, including vacation,
21 severance, and sick leave pay earned by an individual; or

22 (B) sales commissions earned by an individual . . . acting as an
23 independent contractor in the sale of goods or services for the
24 debtor in the ordinary course of the debtor’s business if, and only
25 if, during the 12 months preceding that date, at least 75 percent of
26 the amount that the individual or corporation earned by acting as
27 an independent contractor in the sale of goods or services was
28 earned from the debtor.

25 11 U.S.C. § 507(a)(4). To the extent the Prepetition Wages and related payments for which the
26 Debtor seeks authority to pay were earned within 180 days of the Petition Date, Employees’ claims
27 for payment of such compensation are entitled to priority pursuant to the above. The Debtor’s
28 request for authority to pay these claims now therefore merely constitutes a request to accelerate

1 payment to avoid the devastation of Employee morale and the operation of Debtor's business.

2 Moreover, the maintenance of Employee morale and adequate staffing preserves the going concern
3 value of the business which ultimately inures to the benefit of Debtor's creditors.

4 46. The Debtor's relationship with its Employees, including the terms and conditions of
5 their employment, are matters subject to the Debtor's business judgment and may be managed by the
6 Debtor in the ordinary course of its business. *See In re All Seasons Industries, Inc.*, 121 B.R. 822,
7 825-26 (Bankr. N.D. Ind. 1990); *In re Pacific Forest Industries, Inc.*, 95 B.R. 740, 743 (Bankr. C.D.
8 Cal. 1989) ("Employees do not need court permission to be paid and are usually paid as a part of the
9 ongoing operation of the business."). The maintenance of Debtor's benefit programs is an important
10 part of the Debtor's relationship with its Employees that is within its business judgment, as is the
11 Debtor's ability to continue honoring its Paid Time Off policies for the benefit of its Employees.

12 **C. Honoring of Checks and Transfers Related to Employee Obligations and**
13 **Maintenance of Payroll Accounts.**

14 47. Finally, the Debtor requests that all applicable banks and other financial institutions be
15 authorized and directed to receive, process, honor, and pay all checks presented for payment and to
16 honor all transfer requests made by the Debtor related to Employee Obligations, whether such
17 checks were presented or fund transfer requests were submitted prior to or after the Petition Date
18 (including checks that have been presented and dishonored). The Debtor represents that these
19 checks are drawn on an identifiable payroll account managed by ADP. Accordingly, checks other
20 than those for Employee Obligations will not be honored inadvertently. Moreover, pursuant to a
21 budget that the Debtor filed with the Court as part of its motion to approve use of cash collateral, the
22 Debtor expects to have sufficient funds to pay all Employee Obligations on an ongoing basis and in
23 the ordinary course of business.

24 **III. CONCLUSION**

25 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order granting the
26 Motion in its entirety and:

27 1. Authorizing, but not directing, Debtor to pay or honor in its discretion the Employee
28 Obligations,

1 2. Authorizing and directing the applicable banks and other financial institutions to
2 receive, process, honor, and pay all checks presented for payment and to honor all electronic
3 payment requests made by the Debtor relating to the foregoing, and

4 3. Granting such other and further relief as the Court deems just and proper under the
5 circumstances.

6
7 DATED: May 24, 2022

BG LAW LLP

8

9

By: /s/ Susan K. Seflin
Steven T. Gubner
Susan K. Seflin
Jessica Wellington
Proposed Attorneys for Chapter 11
Debtor and Debtor in Possession

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT **H**

May 1, 2022 - May 15, 2022 Payroll

Name	Salary / Hourly	State Worked In	Total Wages	Expenses
Employee 1	Hourly	NV	\$1,800.00	
Employee 2	Hourly	NV	\$1,144.00	
Employee 3	Hourly	NV	\$1,144.00	
Employee 4	Salary	NV	\$1,875.00	
Employee 5	Hourly	NV	\$1,015.00	
Employee 6	Hourly	NV	\$1,240.00	
Employee 7	Hourly	NV	\$1,305.00	
Employee 8	Hourly	AK	\$520.00	
Employee 9	Hourly	NV	\$1,056.00	
Employee 10	Hourly	AK	\$260.00	
Employee 11	Hourly	NV	\$1,343.25	
Employee 12	Hourly	NV	\$1,600.00	
Employee 13	Hourly	NV	\$960.00	
Employee 14	Hourly	NV	\$1,566.00	
Employee 15	Hourly	NV	\$623.00	
Employee 16	Hourly	NV	\$1,120.00	
Employee 17	Hourly	NV	\$1,081.25	
Employee 18	Salary	NV	\$1,770.83	
Employee 19	Salary	NV	\$1,979.17	
Employee 20	Hourly	NV	\$1,080.00	
Employee 21	Hourly	NV	\$1,200.00	
Employee 22	Hourly	NV	\$1,188.00	
Employee 23	Hourly	NV	\$1,140.00	
Employee 24	Hourly	NV	\$1,426.00	
Employee 25	Hourly	NV	\$1,489.50	
Employee 26	Hourly	NV	\$1,540.00	
Employee 27	Hourly	NV	\$1,019.25	
Employee 28	Hourly	NV	\$1,220.00	
Employee 29	Hourly	NV	\$1,240.00	
Employee 30	Hourly	NV	\$2,565.00	
Employee 31	Hourly	NV	\$960.00	
Employee 32	Hourly	NV	\$826.00	
Employee 33	Hourly	NV	\$2,375.00	
Employee 34	Hourly	NV	\$1,321.13	
Employee 35	Hourly	NV	\$2,660.00	
Employee 36	Hourly	NV	\$1,092.00	
Employee 37	Hourly	NV	\$1,078.00	
Employee 38	Hourly	NV	\$990.38	
Employee 39	Hourly	NV	\$1,495.75	
Employee 40	Hourly	NV	\$300.00	
Employee 41	Hourly	NV	\$1,131.00	
Employee 42	Hourly	NV	\$1,132.50	
Employee 43	Hourly	NV	\$1,080.00	
Employee 44	Hourly	NV	\$1,225.00	
Employee 45	Hourly	NV	\$1,245.38	
Employee 46	Hourly	NV	\$991.25	
Employee 47	Hourly	NV	\$1,088.00	
Employee 48	Salary	NV	\$1,666.67	
Employee 49	Salary	NV	\$1,979.17	
Employee 50	Salary	NV	\$1,666.67	

Name	Salary / Hourly	State Worked In	Total Wages	Expenses
Employee 51	Salary	NV	\$2,500.00	
Employee 52	Salary	NV	\$1,500.00	
Employee 53	Salary	NV	\$2,333.33	
Employee 54	Salary	NV	\$2,333.33	
Employee 55	Salary	NV	\$1,875.00	
Employee 56	Salary	NV	\$2,500.00	
Employee 57	Salary	NV	\$2,250.00	
Employee 58	Salary	NV	\$2,250.00	
Employee 59	Salary	NV	\$2,500.00	
Employee 60	Salary	NV	\$2,083.33	
Employee 61	Salary	NV	\$2,250.00	
Employee 62	Salary	CA	\$2,000.00	
Employee 63	Salary	CA	\$2,500.00	
Employee 64	Hourly	NV	\$193.50	
Employee 65	Hourly	NV	\$1,010.50	
Employee 66	Hourly	NV	\$2,010.00	
Employee 67	Hourly	NV	\$1,852.50	
Employee 68	Hourly	NV	\$1,197.00	
Employee 69	Hourly	NV	\$1,248.00	
Employee 70	Hourly	NV	\$1,338.00	
Employee 71	Hourly	NV	\$541.75	
Employee 72	Hourly	NV	\$1,612.50	
Employee 73	Hourly	NV	\$1,740.00	
Employee 74	Hourly	NV	\$2,203.50	
Employee 75	Hourly	NV	\$387.00	
Employee 76	Hourly	NV	\$1,369.63	
Employee 77	Hourly	NV	\$994.38	
Employee 78	Hourly	NV	\$525.00	
Employee 79	Hourly	NV	\$1,404.00	
Employee 80	Hourly	NV	\$612.75	
Employee 81	Hourly	NV	\$777.00	
Employee 82	Hourly	NV	\$1,323.25	
Employee 83	Hourly	NV	\$666.00	
Employee 84	Hourly	NV	\$990.50	
Employee 85	Hourly	NV	\$1,612.50	
Employee 86	Hourly	NV	\$1,617.88	
Employee 87	Hourly	NV	\$1,586.00	
Employee 88	Hourly	NV	\$1,488.00	
Employee 89	Hourly	NV	\$1,249.50	
Employee 90	Hourly	NV	\$1,273.50	
Employee 91	Hourly	NV	\$2,388.49	
Employee 92	Hourly	NV	\$1,392.25	
Employee 93	Hourly	NV	\$1,632.00	
Employee 94	Hourly	NV	\$399.00	
Employee 95	Hourly	NV	\$1,644.75	
Employee 96	Hourly	NV	\$1,374.00	
Employee 97	Hourly	NV	\$234.00	
Employee 98	Hourly	NV	\$1,065.00	
Employee 99	Hourly	NV	\$1,240.00	
Employee 100	Hourly	NV	\$1,578.00	
Employee 101	Hourly	NV	\$1,311.25	
Employee 102	Hourly	NV	\$924.00	

Name	Salary / Hourly	State Worked In	Total Wages	Expenses
Employee 103	Hourly	NV	\$1,208.75	
Employee 104	Hourly	NV	\$624.00	
Employee 105	Hourly	NV	\$2,016.00	
Employee 106	Hourly	NV	\$936.00	
Employee 107	Hourly	NV	\$924.00	
Employee 108	Hourly	NV	\$1,092.00	
Employee 109	Hourly	NV	\$253.50	
Employee 110	Hourly	NV	\$160.00	
Employee 111	Hourly	NV	\$924.00	
Employee 112	Hourly	NV	\$1,208.75	
Employee 113	Hourly	NV	\$288.14	
Employee 114	Hourly	NV	\$447.00	
Employee 115	Hourly	NV	\$450.00	
Employee 116	Hourly	NV	\$450.00	
Employee 117	Hourly	NV	\$1,344.00	
Employee 118	Hourly	NV	\$1,813.50	
Employee 119	Hourly	NV	\$1,056.00	
Employee 120	Hourly	NV	\$387.00	
Employee 121	Hourly	NV	\$507.00	
Employee 122	Hourly	NV	\$710.50	
Employee 123	Hourly	NV	\$1,040.00	
Employee 124	Hourly	NV	\$228.00	
Employee 125	Hourly	NV	\$2,022.00	
Employee 126	Hourly	NV	\$411.00	
Employee 127	Hourly	NV	\$1,276.00	
Employee 128	Hourly	NV	\$924.00	
Employee 129	Hourly	NV	\$252.00	
Employee 130	Hourly	NV	\$234.00	
Employee 131	Hourly	NV	\$160.00	
Employee 132	Hourly	NV	\$1,193.25	
Employee 133	Hourly	NV	\$487.50	
Employee 134	Hourly	NV	\$1,584.00	
Ackman (Operations Manager)	Salary	NV	\$7,695.00	

Total Payroll \$176,002.91

Payroll Taxes \$42,757.73

Total \$218,760.64

EXHIBIT I

May 16, 2022 to May 24, 2022 Payroll

Name	Salary / Hourly	State Worked In	Total Wages	Expenses
Employee 201	Hourly	NV	\$900.00	
Employee 202	Hourly	NV	\$728.00	
Employee 203	Hourly	NV	\$624.00	
Employee 204	Salary	NV	\$937.50	
Employee 205	Hourly	NV	\$870.00	
Employee 206	Hourly	NV	\$620.00	
Employee 207	Hourly	NV	\$725.00	
Employee 208	Hourly	NV	\$672.00	
Employee 209	Hourly	AK	\$260.00	
Employee 210	Hourly	NV	\$756.00	
Employee 211	Hourly	NV	\$1,120.00	
Employee 212	Hourly	NV	\$576.00	
Employee 213	Hourly	NV	\$864.00	
Employee 214	Hourly	NV	\$448.00	
Employee 215	Hourly	NV	\$840.00	
Employee 216	Hourly	NV	\$600.00	
Employee 217	Salary	NV	\$989.59	
Employee 218	Hourly	NV	\$675.00	
Employee 219	Hourly	NV	\$840.00	
Employee 220	Hourly	NV	\$924.00	
Employee 221	Hourly	NV	\$684.00	
Employee 222	Hourly	NV	\$868.00	
Employee 223	Hourly	NV	\$1,080.00	
Employee 224	Hourly	NV	\$1,036.00	
Employee 225	Hourly	NV	\$675.00	
Employee 226	Hourly	NV	\$854.00	
Employee 227	Hourly	NV	\$868.00	
Employee 228	Hourly	NV	\$1,620.00	
Employee 229	Hourly	NV	\$480.00	
Employee 230	Hourly	NV	\$588.00	
Employee 231	Hourly	NV	\$1,887.50	
Employee 232	Hourly	NV	\$877.50	
Employee 233	Hourly	NV	\$1,400.00	
Employee 234	Hourly	NV	\$826.00	
Employee 235	Hourly	NV	\$532.00	
Employee 236	Hourly	NV	\$570.00	
Employee 237	Hourly	NV	\$1,008.00	
Employee 238	Hourly	NV	\$703.25	
Employee 239	Hourly	NV	\$870.00	
Employee 240	Hourly	NV	\$681.75	
Employee 241	Hourly	NV	\$826.00	
Employee 242	Hourly	NV	\$688.50	
Employee 243	Hourly	NV	\$393.20	
Employee 244	Hourly	NV	\$816.00	
Employee 245	Salary	NV	\$833.00	
Employee 246	Salary	NV	\$989.59	
Employee 247	Salary	NV	\$833.34	
Employee 248	Salary	NV	\$1,187.50	
Employee 249	Salary	NV	\$750.00	

Name	Salary / Hourly	State Worked In	Total Wages	Expenses
Employee 250	Salary	NV	\$1,166.67	
Employee 251	Salary	NV	\$1,166.67	
Employee 252	Salary	NV	\$937.50	
Employee 253	Salary	NV	\$1,250.00	
Employee 254	Salary	NV	\$1,125.00	
Employee 255	Salary	NV	\$1,125.00	
Employee 256	Salary	NV	\$1,250.00	
Employee 257	Salary	NV	\$1,040.00	
Employee 258	Salary	NV	\$1,125.00	
Employee 259	Salary	CA	\$1,000.00	
Employee 260	Salary	CA	\$1,250.00	
Employee 261	Hourly	NV	\$296.00	
Employee 262	Hourly	NV	\$505.00	
Employee 263	Hourly	NV	\$1,368.00	
Employee 264	Hourly	NV	\$1,313.00	
Employee 265	Hourly	NV	\$546.00	
Employee 266	Hourly	NV	\$600.00	
Employee 267	Hourly	NV	\$144.00	
Employee 268	Hourly	NV	\$1,320.00	
Employee 269	Hourly	NV	\$754.00	
Employee 270	Hourly	NV	\$912.00	
Employee 271	Hourly	NV	\$1,000.00	
Employee 272	Hourly	NV	\$798.00	
Employee 273	Hourly	NV	\$949.00	
Employee 274	Hourly	NV	\$194.00	
Employee 275	Hourly	NV	\$760.00	
Employee 276	Hourly	NV	\$912.00	
Employee 277	Hourly	NV	\$419.00	
Employee 278	Hourly	NV	\$1,000.00	
Employee 279	Hourly	NV	\$2,093.00	
Employee 280	Hourly	NV	\$1,368.00	
Employee 281	Hourly	NV	\$688.00	
Employee 282	Hourly	NV	\$644.00	
Employee 283	Hourly	NV	\$1,850.00	
Employee 284	Hourly	NV	\$912.00	
Employee 285	Hourly	NV	\$1,368.00	
Employee 286	Hourly	NV	\$684.00	
Employee 287	Hourly	NV	\$399.00	
Employee 288	Hourly	NV	\$215.00	
Employee 289	Hourly	NV	\$900.00	
Employee 290	Hourly	NV	\$487.00	
Employee 291	Hourly	NV	\$455.00	
Employee 292	Hourly	NV	\$912.00	
Employee 293	Hourly	NV	\$1,248.00	
Employee 294	Hourly	NV	\$896.00	
Employee 295	Hourly	NV	\$399.00	
Employee 296	Hourly	NV	\$768.00	
Employee 297	Hourly	NV	\$253.50	
Employee 298	Hourly	NV	\$117.00	
Employee 299	Hourly	NV	\$1,116.00	
Employee 300	Hourly	NV	\$900.00	

Name	Salary / Hourly	State Worked In	Total Wages	Expenses
Employee 301	Hourly	NV	\$455.00	
Employee 302	Hourly	NV	\$450.00	
Employee 303	Hourly	NV	\$240.00	
Employee 304	Hourly	NV	\$1,729.00	
Employee 305	Hourly	NV	\$456.00	
Employee 306	Hourly	NV	\$1,644.75	
Employee 307	Hourly	NV	\$1,046.50	
Employee 308	Hourly	NV	\$525.00	
Employee 309	Hourly	NV	\$525.00	
Employee 310	Hourly	NV	\$468.00	
Employee 311	Hourly	NV	\$1,212.00	
Employee 312	Hourly	NV	\$684.00	
Employee 313	Hourly	NV	\$456.00	
Employee 314	Hourly	NV	\$651.00	
Employee 315	Hourly	NV	\$1,646.90	
Employee 316	Hourly	NV	\$216.00	
Ackman (Operations Manager)	Salary	NV	\$7,695.00	

Total Payroll	\$105,393.71
Estimated Payroll Taxes	\$31,000.00
Total	\$136,393.71