

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

IN RE:)
)
OLD TIME POTTERY, LLC,) **Case No. 3:20-bk-03138**
) **Chapter 11**
) **Judge Charles M. Walker**
Debtor.)

IN RE:)
)
OTP HOLDINGS, LLC,) **Case No. 3:20-bk-03139**
) **Chapter 11**
) **Judge Charles M. Walker**
Debtor.)

**DECLARATION OF JONATHAN TYBURSKI, CHIEF FINANCIAL OFFICER OF
THE DEBTORS, IN SUPPORT OF CHAPTER 11 PETITIONS AND VARIOUS FIRST
DAY APPLICATIONS AND MOTIONS**

I, Jonathan Tyburski, hereby declare under penalty of perjury that the following statements are true to the best of my knowledge, information and belief:

1. I am the Chief Financial Officer of Old Time Pottery, LLC (“Old Time Pottery”). I have served in this position since late 2017.

2. Old Time Pottery and OTP Holdings, LLC (“OTP” collectively, “Old Time,” the “Company” or “Debtors”) have voluntarily filed petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”) today (“Petition Date”), commencing the above-captioned bankruptcy cases (the “Chapter 11 Cases”).

3. I submit this declaration in support of Debtors’ “First Day” motions in these Chapter 11 Cases. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review of the relevant documents, or my opinion, based upon my experience and knowledge of Debtors’ business operations and financial conditions. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

4. Part I of this declaration describes Debtors' businesses and the circumstances surrounding the filing of these Chapter 11 petitions. Part II sets forth the relevant facts in support of Debtors' First Day Motions filed concurrently herewith.

I. BACKGROUND

A. The Chapter 11 Filing

5. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, Debtors are operating their businesses and managing their properties as debtors-in-possession.

6. No trustee or examiner has been appointed and no official committee of creditors or equity interest holders have yet been formed in these Chapter 11 Cases.

B. Company Background and Events Leading to Bankruptcy

7. Old Time Pottery is a retailer headquartered in Murfreesboro, Tennessee focused on selling home décor and seasonal items. All of Debtors' business is conducted through Old Time Pottery, LLC, a Tennessee limited liability company. OTP Holdings, LLC is a Delaware entity whose sole asset is the equity in Old Time Pottery, LLC.

8. As of the Petition Date, the Company operates 43 retail locations located in 11 states. Old Time Pottery was performing well prior to the shutdown of American retailers caused by the COVID-19 pandemic; however, the COVID-19 related shutdown caused Company sales to decline precipitously beginning in mid-March. As a result, the Company furloughed most of its employees and took immediate steps to conserve cash. The Company's business has improved as stay-at-home restrictions ease and more home décor shoppers venture out, but the Company believes that reorganizing under Chapter 11 of the Bankruptcy Code will be in the best long-term interest of all constituencies and allow Old Time Pottery to emerge stronger. The Debtors' Chapter 11 voluntary petitions were filed on June 28, 2020 (the "Petition Date").

II. FIRST DAY MOTIONS AND APPLICATIONS

9. Along with Debtors' petitions, Debtors filed certain motions for expedited relief (the "First Day Motions").

10. Generally speaking, the relief requested in the First Day Motions is necessary to facilitate continuation of Debtors' operations and services with little or no disruption. I believe that an expedited resolution of the issues raised in the First Day Motions is crucial to the success of Debtors' bankruptcy cases and restoration of Debtors' normal business operations. Specific factual information in support of each of the First Day Motions is provided below as well as in the various applications and motions.

A. Administration – Joint Administration Motion

11. The Debtors filed an Expedited Motion for Entry of an Order Directing Joint Administration of Cases Pursuant to Bankruptcy Code Section 302, Bankruptcy Rule 1015(B) and Waiving Requirements of Bankruptcy Code Section 342(C)(1) and Bankruptcy Rules 1005 and 2002(N).

12. The Debtors seek entry of an order consolidating the Debtors' Chapter 11 Cases for procedural purposes only and waiving the requirement that the Debtors' caption contain tax identification numbers.

13. The Bankruptcy Code authorizes a Court to order joint administration of the estates of a debtor and its affiliates. OTP Holdings, LLC is the direct parent or owner of Old Time Pottery, LLC. As a result, Old Time Pottery, LLC is an "affiliate" as that term is defined in the Bankruptcy Code.

14. Moreover, the joint administration of the Debtors' Chapter 11 Cases will permit the Clerk of the Court to use a single general docket for each of the Debtors' Chapter 11 Cases and to combine notices to creditors and other parties in interest of the Debtors' respective estates.

15. Joint administration will save time and money and avoid duplicative and potentially confusing filings by permitting counsel for all parties in interest to (a) use a single caption on the numerous documents that will be served and filed herein and (b) file the papers in one case rather than in multiple cases.

16. The rights of the respective creditors of each of the Debtors will not be adversely affected by joint administration of these Chapter 11 Cases because the relief sought is purely procedural and is not intended to affect substantive rights. Each creditor and other party in interest will maintain whatever rights it has against the particular estate in which it allegedly has a claim or right.

17. The Debtors propose that the official caption be the caption for Old Time Pottery, LLC, as that is the primary entity operating the Debtors' businesses, and the name that most creditors and parties in interest would associate with the Debtors. The Debtors propose to use a footnote to identify the other Debtors' names and case numbers, which will help to identify the other debtors involved in these Chapter 11 Cases.

18. In addition, the Debtors request that the Court make separate docket entries on the dockets of the Affiliate Debtors' Chapter 11 Cases, substantially as follows:

An order has been entered in this case consolidating this case with the case of Old Time Pottery, LLC, Case No. [_____], for procedural purposes only and providing for its joint administration in accordance with the terms thereof.

The Debtors believe that many of the motions, hearings, and other matters involved in these Chapter 11 Cases will affect all of the Debtors. Consequently, joint administration will reduce costs and facilitate a more efficient administrative process, unencumbered by the procedural problems otherwise attendant to the administration of separate, albeit related, Chapter 11 Cases. Joint administration will also allow the Court and the Debtors to employ a single docket for all of

the Chapter 11 Cases and to confine, and thereby simplify, notice to creditors and other parties in interest. Joint administration will also enable parties in interest in each of the Chapter 11 Cases to stay apprised of all matters before the court. Finally, joint administration will ease the burden on the office of the United States Trustee in supervising these Chapter 11 Cases.

B. Administration – Additional Person Motion.

19. Debtors have filed a motion to designate me as an additional person to act on behalf of the debtors and their estates in connection with these bankruptcy cases.

20. Jason Schmitt, as the Chief Executive Officer, is the only person authorized by L.B.R. 4002-1 to perform any act required to be performed by the Debtors and to represent the Debtors at examinations, meetings and hearings in the Chapter 11 Case.

21. In my capacity as Chief Financial Officer of the Debtors, I am intimately involved in the day to day operation of the Debtors, and I am capable of representing the Debtors in the Chapter 11 Cases, and it is appropriate that I be authorized to do so given the many financial issues that arise in a bankruptcy case.

Permitting me, in addition to Mr. Schmitt, to sign the statements and schedules, testify at the meeting of creditors, attend meetings and hearings relative to these Chapter 11 Cases, and perform any other obligations required by the Bankruptcy Code and Rules or the U.S. Trustee's guidelines will be to the benefit of the Debtors, their creditors, and the U.S. Trustee.

C. Administration – Claims Agent Motion

22. The Debtors seek entry of an order retaining Bankruptcy Management Solutions, Inc. and its subsidiaries, doing business as Stretto, to be their claims and noticing agent effective as of the Petition Date.

23. The Debtors desire to engage Agent to provide various administrative services related to the administration of these Cases. The Debtors believe that such assistance will expedite service of notices, streamline the claims administration process and permit the Debtors to focus on their reorganization efforts. Agent has substantial experience in matters of this size and complexity and has acted as the official claims and notice agent in many bankruptcy cases filed in this and other districts.

D. Administration – Extension of Time

24. The Debtors have filed an emergency motion requesting additional time within which to file the required statements and schedules.

25. The Debtors have not had sufficient time to assemble all of the requisite financial data and other information required by the statements and schedules. To prepare this information, the Debtors must thoroughly examine their books, records and documents. The collection and review of this information will require substantial time and effort.

26. The Debtors' management team has been, and will continue to be, very busy performing work related to Debtors' ongoing business operation, as well as performing new duties necessitated by the filing of these Chapter 11 Cases.

27. The volume of work required to be done by these employees in the immediate future warrants in favor of the Debtors' request for an extension of time to file statements and schedules. Additionally, the granting of an extension will aid the Debtors in filing complete and accurate schedules, thereby benefiting all parties in interest in these Chapter 11 Cases.

28. The Debtors have already begun compiling the necessary information to complete the schedules as soon as possible. The Debtors and their professionals are currently in the process of reviewing information in connection with the preparation of the schedules. The Debtors expect

to be able to complete this process on or before the extended deadline proposed herein, which is thirty (30) days after the Petition Date.

E. Administration – Interim Compensation of Professionals

29. The Debtors have filed a motion asking the Court to establish procedures for monthly compensation and reimbursement of expenses for professionals paid by the Debtors' bankruptcy estates. The implementation of the Compensation Procedures is justified because multiple Professionals will be involved in this case, and, absent streamlined compensation procedures, the professional fee application and review process could be exceptionally burdensome on the Debtors, the Professionals, the Court, and other parties. By contrast, under the Compensation Procedures, the mechanism for payment of professional fees will be simplified and will avoid unnecessary Court involvement.

30. Furthermore, by encouraging the submission of monthly statements, the Compensation Procedures will enable the Debtors and other key parties to more closely monitor the levels of professional fees incurred in this case. In addition, monthly statements will allow the Debtors to more accurately predict and manage monthly cash expenditures.

F. Operational Matters – Prepetition Wages

31. The Debtors filed an Expedited Motion for an Order (A) Authorizing the Debtor to Pay Certain Prepetition (I) Wages and Salaries, (II) Reimbursable Employee Expenses, and (III) Employee Medical and Similar Benefits and (B) Authorizing and Directing Banks and Other Financial Institutions to Honor All Related Checks and Electronic Payment Requests.

32. The Debtors seek authority to continue payment of prepetition wages and salaries, reimbursable employee expenses and employee benefit programs in the ordinary course of business and to pay other costs and expenses relating to the foregoing as described more fully in

the Expedited Motion, including various practices, programs, and policies regarding the Employees, as defined in the Expedited Motion. The Debtors also seek authority for relevant banks to receive, process, and pay any and all checks drawn on the Debtors' payroll accounts and any and all automatic payroll transfers to the extent that such checks or transfers relate to any of the foregoing employees' compensation.

33. The Debtors seek this authority because the Employees are essential to the continued operation of the Debtors' businesses and, absent an order granting the relief requested by this Motion, the employees will suffer undue hardship and, often, serious financial difficulties, as the amounts in question are needed to enable the Employees to meet their own personal financial obligations. Moreover, the Debtors believe that, without the requested relief, the continued operation of the Debtors' businesses will be undermined, and value to the estates will be irreparably harmed. The commencement of these Chapter 11 Cases will likely create employee anxiety, and the requested relief is critical to stabilizing these concerns.

30. As of the Petition Date, the Debtors employ approximately 800 full-time and part-time employees ("Employees"), most of whom are paid hourly and some of whom are paid on salary. Included in the definition of "Employees" is the CFO ("Contractor"), who has a direct contractual relationship with the Debtors, and who provides critical financial leadership to enable the Debtors to meet their operational needs in a cost-effective manner. Also included in the definition of "Employees" are a few contract workers who provide important tasks for the Debtors. Payments to these contract parties are included in the "Compensation" discussed below.

34. The Employees perform a variety of critical functions, including without limitation: administration, sales, stocking, shipping, warehousing, maintenance, repair and other tasks. The

Employees' skills and their knowledge and understanding of the Debtors' operations, customer relations, and infrastructure are essential to the effective operation of the Debtors' business.

35. To minimize the personal hardship that the Employees would suffer if prepetition employee-related obligations are not paid when due or as expected and maintain morale and stability in the Debtors' workforce during this critical time, the Debtors seek authority to pay and honor certain prepetition claims for, among other amounts, wages, salaries, bonuses and other compensation, severance payments, federal and state withholding taxes and other amounts withheld (including, garnishments, employees' share of insurance premiums, taxes and 401(k) contributions), health benefits, insurance benefits, workers' compensation benefits, vacation time, sick leave, life and accidental death and dismemberment insurance, short- and long-term disability coverage, and all other benefits that the Debtors have historically provided in the ordinary course of business (collectively, and as more fully described below, the "Employee Wages and Benefits") and to pay all costs incident to the foregoing. The Debtors also seek authority to continue all Employee Wages and Benefits post-petition. In addition, the Debtors request the right to modify, change and discontinue any of the Employee Wages and Benefits, and the policy related to reimbursable expenses, and to implement new Employee Wages and Benefits in the ordinary course of business during this Chapter 11 case without the need for further Court approval, so long as such action does not materially increase any Employee Wages and Benefits.

36. In the ordinary course of business, the Debtors incur payroll obligations to the Employees. Such obligations are generally comprised of wages and salaries. Employees are paid every two weeks, with the last payroll being paid on June 26, 2020.

37. All payrolls are processed approximately 2 business days prior to the payment date by sending the required information to UltiPro ("Payroll Servicer"), which provides the payroll

outsource services for the Debtors. One day prior to payment date, Payroll Servicer initiates ACH for payroll taxes and Employee Direct Deposits.

38. On June 25, 2020, the Debtors remitted funds in the amount of \$714,752.68 for the Employee payroll that was paid on June 26, 2020 (which amount includes \$174,108.55 for taxes and other withholdings). This payroll was for work performed through June 19, 2020.

39. Because all of the Employees are paid in arrears, as of the Petition Date, Employees have not been paid all of their prepetition wages earned (the “Unpaid Compensation”). For example, the Employees will have accrued wages and benefits that were not included in the prepetition payroll but would be included in the Employee payroll to be paid on July 10, 2020. Additionally, some Employees may be entitled to compensation because (a) discrepancies may exist between the amounts paid and the amounts that should have been paid, and (b) some payroll checks issued to Employees on or prior to the Petition Date may not have been presented for payment or may not have cleared the banking system and, accordingly, have not been honored and paid as of the Petition Date. The Debtors would expect the July 11, 2020 payroll to be approximately the same as the June 26, 2020 payroll.

40. To the best of my knowledge, as of the Petition Date, no Employee or Contractor is owed more than \$13,650.00 for Unpaid Compensation or other benefits.

41. During each applicable pay period, the Debtors routinely deduct certain amounts from paychecks, including, without limitation, (a) garnishments, child support and similar deductions and (b) other pretax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein (such as an Employee’s share of health care benefits and insurance premiums, 401(k) contributions, legally ordered deductions and miscellaneous deductions) (collectively, the “Deductions”). The Debtors or Payroll Servicer send the amount of

the Deductions to the appropriate third-party recipients. On average, during each payroll period, approximately \$55,000 is deducted from payroll for the benefit of Employees. Certain Deductions that were deducted from Employees' earnings may not have been forwarded to the appropriate third-party recipients prior to the Petition Date. Accordingly, the Debtors seek authority to continue to forward all prepetition and post-petition Deductions to the applicable third-party recipients.

42. Further, the Debtors are required by law to withhold from an Employee's wages amounts related to federal, state, and local income taxes, social security, and Medicare taxes for remittance to the appropriate federal, state, or local taxing authority (collectively, the "Withheld Amounts"). The Debtors must then match from their own funds for social security and Medicare taxes and pay, based on a percentage of gross payroll, additional amounts for federal and state unemployment insurance (the "Employer Payroll Taxes," and together with the Withheld Amounts, the "Payroll Taxes"). Prior to the Petition Date, the Debtors withheld the appropriate amounts from Employees' earnings for the Payroll Taxes. The Debtors pay approximately \$175,000.00 each payroll period on account of Payroll Taxes. For the June 26, 2020 payroll, all but \$51,403.64 in withholdings were processed prepetition. Accordingly, the Debtors seek authority to continue to honor and process all prepetition and postpetition payments for Payroll Taxes, Medical, Prescription Drugs, Dental/Vision and Flexible Spending Plans

43. The Debtors also offer their Employees the ability to participate in several insurance and benefits programs, including health care and dental plans, vacation time and other paid leaves of absence, retirement savings plans, and the other insurance plans more particularly described herein (collectively, the "Employee Benefits Plan").

44. The Debtors offer group health plans through two providers: Loomis and Blue Cross Blue Shield of Tennessee (collectively, the “Medical Plan”). The Debtors and Employees share the costs of premiums for the Medical Plan, with an Employee’s share of the cost varying based on which of the plans an Employee chooses. The Debtors’ monthly share of Medical Plan premiums is approximately \$148,486.00.

45. The Debtors also provide the Employees with basic life insurance coverage and accidental death insurance coverage (the “Life and AD&D Insurance”). The Debtors’ monthly cost of the Life and AD&D Insurance is approximately \$675.00.

46. Other benefits that are available to the Employees through various providers on an employee-paid basis are dental and vision insurance, term life insurance, short-term disability insurance, accidental death insurance, and long-term disability insurance. Prior to the Petition Date, the Debtor may have incurred certain administrative obligations to the third party administrators, which have not yet been paid.

47. In order to keep Employees motivated and focused on their duties, the Debtors seek authority to (a) continue the Medical Plan and all employee paid plans in the ordinary course of business, (b) continue making the above-described contributions to such benefit programs, and (c) pay any amounts related thereto, including on account of any premiums and claim amounts, to the extent that they remain unpaid as of the Petition Date.

48. Prior to the Petition Date, the Debtors provided workers’ compensation insurance for Employees at the statutorily-required level (the “Workers’ Compensation Program”). These benefits are currently provided for Employees with coverage through PMA Companies, which provides full coverage for all workers compensation claims. PMA bills the Debtors monthly for premiums and for any amounts that the Debtors have to pay on workers’ compensation claims.

The Debtors pay approximately \$40,000 per month to PMA Companies for workers' compensation coverage and claims.

49. Certain benefits and obligations under the Workers' Compensation Program have been incurred prepetition but have yet to be fully paid, and certain other claims were filed prepetition but have yet to be resolved. By this Motion, the Debtors request authority to continue and maintain the Workers' Compensation Program in the ordinary course of business and to pay any and all prepetition and postpetition amounts related thereto including, without limitation, any payments for workers' compensation claims, premiums and fees owed for administrative costs and other amounts required in connection with the Workers' Compensation Program, as such amounts become due in the ordinary course of the Debtors' business.

50. The Debtors provide Employees with a paid time-off benefit that allows an Employee to take time off from work for vacation, illness, or personal time with pay ("PTO"). The amount of PTO available to a particular Employee and the rate at which such PTO accrues is generally determined by the Employee's position and the length of full-time employment. When an Employee elects to take PTO, the Employee is paid his or her regular hourly or salaried rate. Employees may not be paid in lieu of using their PTO. Employees who voluntarily cease their employment with the Debtors, provide two weeks' notice, and work through the two-week notice period, are eligible to be paid for PTO hours they have accumulated up to the last day worked.

51. In addition, in the ordinary course of business, the Debtors allow the Employees to take certain other leaves of absence which are required by law, such as under the Family Medical Leave Act and Americans with Disabilities Act ("Leaves of Absence").

52. In order to motivate and honor the Company's obligations to its Employees, the Debtors request authority to continue to honor the PTO and Leaves of Absence policies in the

ordinary course of business and to honor and pay any prepetition amounts related thereto. In this regard, even in the event Employees utilize accrued prepetition PTO and Leaves of Absence in the ordinary course of business, those events will not create any material cash flow requirements beyond the Debtors' normal payroll obligations.

53. The Debtor maintains a retirement savings plan meeting the requirements of Section 401(k) of the Internal Revenue Code for the benefit of certain Employees (the "401(k) Plan") that is administered by The Trust Company of Tennessee. The 401(k) Plan allows for automatic pre-tax salary deductions of eligible compensation up to the limits set by the Internal Revenue Code for eligible employees (the "Participants"). The Debtors match a Participant's contributions up to a limit of 3% of the Participant's annual compensation.

The Debtors seek authority to pay any prepetition and post-petition matching contributions due and owing under the 401(k) Plan.

G. Operations Matters – Taxes & Fees

54. In the ordinary course of business, the Debtors collect, withhold, and incur taxes and fees related to sales and use, property, income, franchise, annual reporting fees, audits, and business and regulatory fees (collectively, the "Taxes and Fees").¹ The Debtors remit the Taxes and Fees to various federal, state, and local governments and authorities (collectively, the "Authorities") on a monthly, quarterly, or annual basis.

55. The Taxes and Fees typically are remitted and paid by the Debtors through checks and electronic transfers that are processed through their banks and other financial institutions or service providers. From time to time, the Debtors also receive tax credits for overpayments or

¹ To clarify, the Debtors do not seek authority to pay prepetition amounts related to employment taxes and payroll withholding taxes pursuant to this Motion, but rather request such authority by separate motion relating to employee wages and benefits.

refunds in respect of Taxes or Fees. The Debtors use these credits in the ordinary course of business to offset against future Taxes or Fees, or have such amounts refunded to the Debtors.

56. Although the Debtors believe that they are substantially current with respect to their payment of Taxes and Fees, the Debtors seek authority to make such payments where: (a) Taxes and Fees have accrued or were incurred prepetition but were not paid prepetition, or were paid in an amount less than actually owed; (b) payments made prepetition by the Debtors were lost or otherwise not received in full by any of the Authorities, which may give rise to interest and other penalties; and (c) Taxes and Fees incurred in the ordinary course of business for prepetition periods that may become due and payable after the commencement of these Chapter 11 Cases.

57. In addition, to clarify, the Debtors seek authority to pay Taxes and Fees accrued or incurred post-petition and Taxes and Fees for so-called “straddle” periods. Claims for so-called “straddle” Taxes and Fees may be entitled to administrative claim treatment pursuant to section 503(b)(1)(B). Because the Debtors could be subject to late payment penalties and interest in the event they do not pay such “straddle” Taxes and Fees and a court ultimately concludes that such taxes are entitled to administrative treatment, the Debtors are seeking the authority to pay such “straddle” Taxes and Fees as they become due under applicable law.

58. The Debtors estimate that approximately \$5,600,000 in Taxes and Fees have either accrued as of the Petition Date or may become due and owing (or arise in connection with a collateral or bond posting obligation), either in the ordinary course, in connection with audits, or in connection with resolutions or statutory “amnesty” provisions, after the Petition Date.

59. The Taxes and Fees include, without limitation: (a) sales and use taxes collected by the Debtors in various states in connection with the sale of goods at store locations, and these taxes are typically remitted to various Authorities on a monthly basis (approximately \$1.4 million due

in July 2020 based on prepetition sales); (b) business personal property taxes on account of personal property used by the Debtors in the operation of their business at various store locations, and these taxes are paid to various Authorities typically on an annual basis; (c) income taxes incurred by the Debtors in the course of operating their businesses, and these taxes are paid to various Authorities, typically on an annual basis; (d) real estate and occupancy taxes on account of levies on real property where the Debtors operate their business in various store locations, and these taxes are paid quarterly, semi-annually, or annually sometimes directly to various Authorities or sometimes reimbursed to landlords for taxes agreed to be paid by the Debtors in real property leases; and, (e) business taxes, franchise taxes, or fees incurred by virtue of the Debtors' business operations, and these taxes are paid to various Authorities typically on an annual basis.

60. The Debtors believe that failing to pay the Taxes and Fees when due could materially disrupt the Debtors' business operations in several ways, including: (a) failing to pay certain of the Taxes and Fees, particularly franchise taxes, likely would cause the Debtors to lose their ability to conduct business in certain jurisdictions; (b) the Authorities could initiate audits, suspend operations, file liens, or seek to lift the automatic stay, which would unnecessarily divert the Debtors' attention from operating their business and maximizing value for the bankruptcy estate; (c) failing to pay Taxes and Fees potentially could subject myself and other of the Debtors' directors and officers to claims of personal liability, which likely could distract those key persons from their duties related to the Debtors' bankruptcy cases; and (d) unpaid Taxes and Fees may result in penalties, the accrual of interest, or both, which could negatively affect the Debtors' businesses or the bankruptcy cases. Moreover, the Debtors collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not even constitute property of the Debtors' estates.

H. Operational Matters – Shipper Claimants

61. In the ordinary course of their businesses, the Debtors import inventory and related materials (collectively, the “Imported Goods”) from foreign vendors, and the Debtors also purchase inventory and related materials from companies in the United States (the “Domestic Goods”) and together with the Imported Goods, the “Inventory Goods”). Timely receipt or transmittal, as applicable, of the Inventory Goods is critical to the Debtors’ business. Any disruption or delay could adversely affect the Debtors’ operations and affect the Debtors’ ability to efficiently administer these Chapter 11 Cases and restructure their business.

62. In connection with the purchase of Inventory Goods, the Debtors may be required to pay various customs duties and taxes, fees, freight and shipping charges, and other similar obligations (the “Shipping Charges”) to various parties such as shippers, freight haulers, and similar third-party contractors (the “Shipping Claimants”). If the Shipping Charges are not paid, certain non-bankruptcy laws may enable the Shipping Claimants to assert liens on the Inventory Goods in their possession or otherwise interfere with the delivery of the Inventory Goods to the Debtors.

63. A detailed listing of the Shipping Claimants and the Shipping Charges is attached as Exhibit B to the motion relating to this issue. The Debtors may have unintentionally omitted one or two Shipping Claimants from Exhibit B, but the intention is to pay all such claimants for the reasons set forth herein.

64. If the flow of Inventory Goods were to be interrupted, the Debtors may be deprived of the inventory necessary to stock their brick-and-mortar and online stores, which means the Debtors would not have inventory to sell to their customers. The ultimate value of such sales is worth far more to the Debtors (both in terms of future receipts and the maintenance of valuable

customer goodwill) than the aggregate amount of incurred, but unpaid, Import and Shipping Charges. The Debtors seek authority to pay any and all necessary and appropriate Import and Shipping Charges incurred on account of prepetition transactions.

65. The Debtors estimate that, as of the Petition Date, they owe approximately \$850,000 on account of Shipping Charges, substantially all of which will come due within the first 30 days of these Chapter 11 Cases. The Debtors also incur and remit taxes to authorities imposed on account of Inventory Goods.² I believe that payment of the Shipping Charges is necessary to preserve and enhance the value of the Debtors' business for the benefit of all parties in interest. The amount of the Shipping Charges is approximate because the amount of ocean freight is estimated. Because the amount of ocean freight could vary, the Import Charges can only be estimated at this time. For clarification, Exhibit B attached to the Motion show approximately \$550,000 owing to the Shipper Claimants. The Debtors estimate ocean freight will be an additional \$300,000, bringing the total for Shipping Charges to approximately \$850,000.

66. The Debtors require a steady stream of goods and services from the Shipping Claimants to maintain operational stability. Without the goods and services provided by the Shipping Claimants, the Debtors could be forced to halt operations immediately while they search for replacement goods and substitute vendors and may have to forego existing favorable trade terms in their haste to find new vendors. Importantly, any disruption to the Debtors' supply chain could result in a significant loss of operational efficiency, decreasing the value of the business, which could impair stakeholder value at the outset of these Chapter 11 Cases. The Debtors submit that it is appropriate for the Court to authorize the Debtors to identify and satisfy the Shipping Charges as set forth in the motion.

² To clarify, the Debtors seek authority to pay any taxes accrued and owing on account of Inventory Goods in another separate motion.

67. The Debtors have sufficient funds to pay the amounts required for Shipping Charges in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and debtor-in-possession financing. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the Shipping Claimants, as applicable. Checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. The Debtors request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

I. Operational Matters – Insurance Premiums

68. In connection with the operation of the business and management of the Debtors' properties, the Debtors maintain various insurance policies, most of which will not renew until later this year. Of the insurance policies, the largest annual premium is for commercial property insurance through Everest Indemnity Ins. Co. ("Commercial Property Policy"), and it is financed through US Premium Finance ("Premium Financer"). The Debtors financed the payment of the Commercial Property Policy premium (which includes broker's fees and other associated fees) on terms summarized below:

- a. The total premium for the commercial property policy was \$504,840.00. The Debtors paid the Premium Financer a down payment of \$100,968.00 and financed the balance of the premium (and interest) by agreeing to pay 10 monthly payments to the Premium Financer of \$41,180.08, with the first installment due on April 30, 2020. The Debtors' obligation to pay the Premium

Financer is secured by the Insurance Policy financed and all unearned premiums, return premiums and loss payments thereby.

- b. The Commercial Property Policy is required by the Debtors' real property leases (the Debtors' store locations), by the United States Trustee's Operating Instructions and Reporting Requirements for Chapter 11 Cases (the "Operating Guidelines"), the laws of the various states in which the Debtors operate and the Debtors' various financial agreements. The crucial importance of maintaining commercial property insurance cannot be overstated. Apart from the fact that it is required by the Debtors' property leases and the U.S. Trustee's Guidelines, such insurance protects the Debtors' physical assets from loss. Thus, the Debtors submit that they should be authorized to continue to pay the Premium Financer as the monthly payments come due in the ordinary course of the Debtors' business.

J. Operational Matters – Cash Management

69. The Debtors filed an Expedited Motion for an Order Pursuant to 11 U.S.C. Sections 105(A), 345, 363, and 503(B)(1) and Fed. R. Bankr. P. 6003 Authorizing Continued Maintenance of Existing Bank Accounts and Authorizing Continued Use of Existing Business Forms and Checks.

70. The U.S. Trustee Guidelines require chapter 11 debtors to, among other things, (a) close all existing bank accounts and open new debtor-in-possession bank accounts for which the signature cards shall indicate that the debtor is a "Chapter 11 Debtor-in-Possession"; (b) establish a new payroll account; and (c) maintain any funds over the amount required for current operations

in an interest-bearing account. The Debtors seeks a waiver of these requirements and authorization to continue using their existing bank accounts.

71. Prior to the commencement of these Chapter 11 Cases, in the ordinary course of their businesses, the Debtors maintained approximately fifty-four (54) bank accounts out of which they manage cash receipts and disbursements (the “Bank Accounts”). While the Debtors’ main banking relationship is with PNC Bank, N.A., the Debtors’ also maintain banking accounts at several other banks in jurisdictions where their stores are operated. A list of the Bank Accounts is attached as Exhibit A. The Debtors believe that the Bank Accounts are maintained with financially stable banking institutions with FDIC insurance (up to the applicable limit).

72. The Debtors seek a waiver of the U.S. Trustee’s requirement that the prepetition Bank Accounts be closed and that new post-petition bank accounts be opened. If enforced, such a requirement would cause disruption in collection of accounts receivable and would impair the Debtors’ efforts to maximize the value of their estates. Thus, in order to ensure a smooth transition into chapter 11 with minimal disruption, and to aid in the Debtors’ efforts to complete these cases successfully and rapidly, the Debtors must be permitted, but not required, to continue to maintain their existing Bank Accounts.

K. Operational Matters – Utilities

73. The Debtors filed an Expedited Motion, Pursuant to Section 366 of the Bankruptcy Code, for Entry of Expedited Interim and Final Order: (A) Prohibiting Utilities from Altering, Refusing or Discontinuing Services to, or Discriminating Against, the Debtor on Account of Prepetition Invoices; (B) Determining that the Utilities are Adequately Assured for Future Payment; (C) Establishing Procedures for Determining Requests for Additional Assurance; and,

(D) Permitting Utility Companies to Opt Out of the Established Adequate Assurance Procedures (“Utilities Motion”).

74. The Debtors seek an interim order: (i) determining adequacy of assurance of payment for future service from utilities; (ii) establishing procedures for determining requests for additional or other adequate assurance; (iii) permitting utility companies to opt out of the procedures for determining adequate assurance; (iv) scheduling a final hearing on the requested relief; and ultimately (v) deeming the interim order a final order, granting the requested relief permanently, absent a timely objection filed under the procedures set forth herein.

- a. The Debtors currently uses electric, natural gas, water, sewer, internet, electronic data services, cable, phone, cellular phones, trash/garbage removal, fire alarm monitoring, and other similar services (“Utility Services”) at the Debtors’ businesses and store locations. Typically, these accounts are in the name of Old Time Pottery.
- b. The Debtors use Utility Services at each location where it has a retail store, at its warehouse and at its headquarters.
- c. The providers of Utility Services to Debtor (collectively, the “Utility Companies”) and currently identifiable accounts are attached to the Expedited Utilities Motion and will be attached to the Debtors’ proposed order as Exhibit 1 (the “Utility List”).

75. The Debtors believe the Utility List is a complete list of all Utility Companies and currently open accounts. For each Utility Company, the Utility List identifies: (i) the name and address of and services provided by the Utility Company; (ii) the existing security deposit, if any; and (iii) the average monthly service costs. A copy of the Motion, the Interim and Final Order, if entered by the Court, and the Utility List will be provided to all Utility Companies. The inclusion

of any entity on, or any omission of any entity from, the Utility List should not be considered an admission by the Debtors that such entity is or is not a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve their rights with respect thereto. In addition, the Debtors are requesting that the Motion apply to all of Debtors' Utility Companies, whether or not any given Utility Company is included on the Utility List. The Debtors have proposed a procedure for supplementing the Utility List.

76. Uninterrupted utility service is essential to the Debtors' ongoing operations and, therefore, to the success of the Debtors' reorganization. Should any Utility Company refuse or discontinue service, even for a brief period, it could cause the Debtors to be in default of their own obligations and create tremendous difficulty for Debtors' ongoing business operations. The temporary or permanent discontinuation of Utility Services could irreparably harm the Debtors' businesses and jeopardize the Debtors' reorganization efforts.

77. The Debtors were generally current on the payment of pre-petition bills to the Utility Companies, and the only unpaid utility bills will be for the last billing cycle before the Petition Date. The Debtors intend to pay their post-petition obligations to the Utility Companies timely. Subject to Court approval, the Debtors will make these payments from Cash Collateral or proceeds from the DIP Facility.

78. Additionally, the Bankruptcy Code permits a utility, under certain circumstances, to alter, refuse, or discontinue a chapter 11 debtor's utility service if the utility does not receive adequate "assurance of payment" within 30 days of the commencement of the debtor's chapter 11 case. The Bankruptcy Code defines the phrase "assurance of payment" to mean, among other things, a cash deposit. Accordingly, the Debtors propose to provide a deposit to any requesting Utility Company in an amount equal to the cost of one-fourth of one month's average service from

that Utility Provider (the “Adequate Assurance Deposit”), **provided that:** (a) such request is made in writing no later than July 28, 2020, which is 30 days after the Petition Date (the “Request Deadline”); (b) such requesting Utility Company does not already hold a deposit, net of pre-petition debt, equal to or greater than the Adequate Assurance Deposit (in which case, the Debtors propose to provide the requesting Utility Company with an additional \$500 cash deposit); and (c) such requesting Utility Company is not currently paid in advance for its services.

79. The Debtors have set forth the average monthly charge for each of its identified utilities on the Utility List attached to the proposed Interim and Final Order and propose that one-fourth of that amount as the Adequate Assurance Deposits for each Utility Company that meets the requirements set forth in the previous paragraph. The Debtors respectfully submit that the availability of the Adequate Assurance Deposit (if requested), in conjunction with the Debtors’ ability to pay for future utility services in the ordinary course of business (collectively, the “Proposed Adequate Assurance”), constitutes sufficient adequate assurance of future payment to the Utility Companies to satisfy the requirements of the Bankruptcy Code.

80. The Debtors request that the Utility Companies be prohibited from requiring any deposits for Temporary Accounts, as defined in the Utilities Motion, except through an Additional Assurance Request as set forth in the Expedited Motion.

L. Operational Matters – Customer Programs

81. The Debtors provide certain incentives, discounts, promotions, accommodations, and related programs to attract customers and maintain positive customer relationships (the “Customer Programs”). The Customer Programs promote customer satisfaction and inure to the goodwill of the Debtors’ business and the value of their brand. Maintaining the goodwill of the

customers is critical to the Debtors' ongoing operations in these bankruptcy cases and is necessary to maximize value for the benefit of all of the Debtors' stakeholders.

82. As of the Petition Date, the Debtors have prepetition obligations outstanding related to Customer Programs. These obligations consist of discounts or other similar programs owing to customers. The vast majority of these obligations do not entail the expenditure of cash, and the Debtors seek authorization, but not direction, to maintain the Customer Programs in the ordinary course of business and to continue to honor all customer-related obligations, including honoring any prepetition obligations associated therewith.

83. The Debtors believe the Customer Programs have been successful business strategies. I believe that the costs of the Customer Programs are, in the aggregate, more than offset by the revenue generated therefrom and play a critical role in the purchasing decisions of the Debtors' customers (the "Customers"). As a result of the Customer Programs, the Debtor has created strong loyalty from the Customers.

84. The retail industry is facing challenging economic conditions with respect to business generally and customer loyalty specifically. Given these conditions, retailers like Old Time Pottery have had to offer customer incentives, promotions, special pricing, and other programs to maintain and hopefully increase the number of customers. Both our advisors and I anticipate that while the industry adapts to the current market conditions, competition for customer dollars will intensify.

85. As a result, the Debtors' business, and the success of the bankruptcy cases, critically depends on retaining the loyalty, confidence, and goodwill of the Customers. I believe it will be impossible to maintain positive Customer relationships unless the Court authorizes the continuation of the Customer Programs and honor customer obligations in the ordinary course of

the business. Accordingly, the Debtors seek to assure the Customers that, despite commencing the bankruptcy case, the Debtors will nevertheless continue to operate the business consistent with past practice with the same level of reliability and integrity for which the Debtors are well known.

86. The Debtors allow the Customers to return or exchange purchased merchandise subject to the Debtors' return policies (the "Refund and Exchange Program"). Under the Refund and Exchange Program, most merchandise—excluding special orders, perishable or personalized/monogrammed items, and items identified as "final sale"—can be returned within 30 days of purchase.

87. A Customer may return purchased merchandise in-store for a refund of the full purchase price, credited to the original form of payment, so long as it is returned unused, undamaged, saleable, with original tags attached, and/or in original packaging, and is made within 30 days of purchase. Customers who present items for refund within 30 days of purchase along with a valid receipt can receive either a full refund in the form of the initial tender, receive a gift card in the amount of the returned item(s), or exchange for the same item. Customers who present items for refund without a valid receipt can exchange the item for the same item or a gift card. Customers both returning merchandise originally purchased with a gift card and customers returning gifts are generally issued a gift card. In addition, the Debtors honor customer requests for a price adjustment in instances where a customer purchases merchandise at regular price and such price is reduced within 30 days of purchase. This price adjustment is customarily processed as a refund or return concurrent with a repurchase at the discounted price.

88. The Refund and Exchange Program is critical to maintaining the goodwill of the Customers. Without the Refund and Exchange Program, potential customers may be unwilling to buy merchandise from the Debtors at all, which could lead to a decline in revenues. Maintaining

the Refund and Exchange Program allows the Debtors to protect Customer confidence, ensure Customer satisfaction, and is an integral element of the Debtors' overall marketing and brand development strategy. Programs like the Refund and Exchange Program are common in the retail industry and similar programs are used by the Debtors' competitors.

89. The Debtor estimates that, as of the Petition Date, there are approximately \$1,000,000 of outstanding liabilities, including reserves and other credits, related to the Refund and Exchange Program. The Debtor seeks authorization to continue the Refund and Exchange Program and to honor all of the Debtor's obligations related thereto, including satisfying any prepetition obligations, in the ordinary course of business.

90. The Debtors maintain a gift card program (the "Gift Card Program"), administered by Vantiv, Inc. ("Gift Card Administrator"), through which the Customers can purchase pre-paid, no-fee, non-expiring gift certificates (the ("Gift Cards") in various denominations at either brick and mortar locations or e-commerce websites. Likewise, Gift Cards can be redeemed for merchandise at either brick and mortar locations or e-commerce websites. Customers can purchase traditional Gift Cards or virtual Gift Cards. The Debtors also offer corporate customers the option to bulk purchase Gift Cards for clients, employees, or other purposes. The Debtors estimate that, as of the Petition Date, approximately \$950,000.00 in issued Gift Cards is outstanding.

91. Gift Card Administrator provides a number of key services, including Gift Card production, maintenance of a Gift Card database, Gift Card transaction authorization and monitoring, web-based support, call center support, and business intelligence reporting (collectively, the "Gift Card Administrator Services"). The Debtors pay Gift Card Administrator fees depending on the volume of Gift Card Administrator Services utilized in a given payment period.

92. Management believes that the Gift Card Program and Gift Card Services are essential to maintaining the confidence and satisfaction of the Customers and generating sales. Accordingly, the Debtor seeks authorization to continue the Gift Card Program and to honor all of the obligations related to the Gift Card Program and Gift Card Services in a manner consistent with past practices.

93. In a similar fashion, Customers can pick up merchandise in store that they order and pay for on the Debtors' e-commerce platform. Once such order is made, the merchandise is removed from a select store's inventory and held for the customer at such store until retrieved by the Customer (the "BOPIS Program").

94. The BOPIS Program is an integral part of the Debtors' business and is critical to maintaining the goodwill of the Customers. Likewise, the BOPIS Program provides Customers with the opportunity to preview merchandise in store and the option to pick up certain expensive or important items at store locations. These programs also encourage online customers to take part in the Debtors' unique store experience.

95. As of the Petition Date, the Debtors hold approximately \$49,182 in payments on account of the BOPIS Program. The Debtors seek authorization to continue the BOPIS Program and to honor all of the obligations related thereto, including the collection and disbursement of the Special Order prepayments, in a manner consistent with past practices.

96. The Debtors occasionally conduct sales promotions, either on the e-commerce website or at selected brick-and-mortar locations (the "Sales Promotions"). Sales Promotions include, among various other types of promotions, clearance discounts, seasonal discounts, various gift card promotions by which customers receive merchandise credit based on qualified purchases,

and incentive purchase and/or spending promotions. The Debtors notify Customers of the Sales Promotions via mobile, email, and e-commerce platforms, among other channels.

97. In summary, the various Customer Programs are customary in the retail industry, and I believe they are integral to the Debtors' efforts to stabilize the business, restore vitality, and deliver the most value to all stakeholders in the bankruptcy case. In addition, the Debtors believe that it must promptly assure all Customers of the continued ability to satisfy prepetition and post-petition obligations under the Customer Programs to maintain the valuable Customer base after commencing the bankruptcy case.

M. Financing – DIP Financing

98. The Debtors have filed a Motion of Debtors for Interim and Final Orders (1) Authorizing Debtors to Obtain Post-petition Financing Pursuant to Bankruptcy Code Section 364, (2) Granting Senior Liens and Superpriority Administrative Expense Status, (3) Authorizing Use of Cash Collateral and Providing Adequate Protection, (4) Modifying The Automatic Stay, (5) Setting Expedited Interim Hearing, and (6) Prescribing Form and Manner of Notice and Time for Final Hearing (“DIP Motion”) and seek interim approval to use cash collateral and draw under a Debtor-In-Possession credit facility on an interim basis (“Interim DIP”).

99. The Debtors' need to use Cash Collateral and to obtain credit pursuant to the new proposed DIP Facility (defined below) is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, timely purchase inventory, maintain business relationships, pay their employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, and their

estates, employees, creditors and equity holders, and the possibility for a successful administration of this Case. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or to maintain their properties in the ordinary course of business without the DIP Facility and authorized use of Cash Collateral. In the absence of the DIP Facility, it is likely that the Debtors will not be able to continue as a going concern.

100. Fortunately, the Debtors have found a postpetition lender that is willing to support fully the Company's restructuring plan during this period of unprecedented upheaval in the retail industry. Specifically, subject to approval from this Court, the Debtors have obtained secured, superpriority postpetition financing in an amount up to \$32.3 million (the "DIP Facility"), consisting of a senior secured super-priority revolving credit facility, pursuant to the terms and conditions of that certain Debtor-In-Possession Credit Agreement (as amended, supplemented, restated, or otherwise modified from time to time, the "DIP Credit Agreement") by and among the Debtors, the Lenders party thereto (the "DIP Lenders" and each a "DIP Lender"), and Second Avenue Capital Partners, LLC, as Administrative Agent and Collateral Agent (the "DIP Agent") for the DIP Lenders, substantially in the form of Exhibit A to the DIP Motion.

101. Locating the DIP Lenders in the current environment was not easy, but with the support of the DIP Lenders, the Company will be able payoff PNC Bank, the Debtor's oversecured prepetition lender who has been looking to exit its lending relationship with the Company, to fund adequately purchases needed for the up-coming holiday season, and to secure more easily the exit financing vital to its long-term success.

102. As of the Petition Date, the Debtors' secured lender is PNC Bank, National Association. PNC Bank has been the Debtors' lender since 2014, and the debt owed to it is secured by substantially all of the assets of the Debtors. Because the primary assets securing the PNC

Bank indebtedness are inventory and receivables, the validity and enforceability of PNC Bank's liens is easily confirmed. True and correct copies of PNC Bank's original UCC filing in 2014 and a continuation filing in 2019 with the Tennessee Secretary of State and of the relevant portions of PNC Bank credit agreement establishing its security interest are attached to the financing motion as collective Exhibit B.

103. As of the Petition Date, PNC Bank is a substantially over secured creditor. The Debtors owe PNC Bank approximately \$28.2 million (including amounts required to cash collateralize outstanding contingent obligations), and the Cash Collateral and inventory (at cost) in which PNC has a secured interest exceed \$50 million. This collateral value has been reviewed and confirmed not only by the Company, but also by FTI, the Debtors' financial advisor. *See* Declaration of Adam Zalev, Exhibit C to the financing motion, ¶ 4.

104. The DIP Lenders will only make the loans provided for in the DIP Credit Agreement if they obtain a first-priority lien on substantially all of the Debtors' assets, including those securing the Debtors' obligations to PNC Bank. Thus, as a condition to entry into the DIP Credit Agreement and the authorization to use Cash Collateral, the new DIP Lenders require that, subject to a challenge period set forth in the proposed Interim Order, the balance owed to PNC Bank be paid in full in cash upon the closing of the DIP Credit Agreement,

105. With the support of the new DIP Lenders, the Company is confident that it will not only survive the retail crisis caused by the COVID-19 pandemic, but will be able to emerge from bankruptcy with a confirmed plan of reorganization in a strong financial position and with its business optimized for future success. Without this financing, the prospects for the Debtors' business are uncertain at best, and I believe that Debtors will suffer irreparable harm if the DIP Facility does not close immediately.

106. Given the crisis facing the retail industry as a result of the COVID-19 pandemic, the Debtors' current financial condition, financing arrangements, and capital structure, the Debtors are unable to obtain adequate financing from sources other than the DIP Agent and DIP Lenders on terms more favorable than the DIP Facility. Notwithstanding its efforts with the assistance of its advisors, the Debtors have been unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors also have been unable to obtain credit: (a) having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien.

107. Financing on a postpetition basis is not otherwise available without granting the DIP Agent, for the benefit of DIP Lenders, (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims, and (3) the other protections set forth in the proposed Interim Order.

108. In my opinion, the best interests of the Debtors' estates and all of their creditors are served by the Court authorizing the Debtors to borrow funds from the DIP Lenders and to provide DIP Lenders with liens and security interests, subject to the terms of the Interim Order and thereafter, a Final Order. Because the Debtors and PNC Bank were not able to come to an agreement on terms whereby PNC Bank would continue to provide postpetition financing to the Debtors, the DIP Facility is the Debtors' only choice in order to continue its business for the benefit of their estates, creditors and stakeholders.

109. The Debtors request entry of the Interim Order as soon as possible. The Debtors will be unable to operate in Chapter 11 unless the Court enters the Interim Order promptly. There is little chance that the Debtors' business would survive without access to financing and the use of loan proceeds, which business failure would be to the irreparable detriment of the Debtors' employees, vendors, customers, and creditors. Thus, expedited approval of the Interim Order is in the best interest of the Debtors and their estates. Thereafter, continuing authorization for these actions should be provided for in a Final Order, as it too is key to the on-going success of the Debtors' business and ability to reorganize successfully.

N. Financing & Other Matters– Store Closing Sales

110. Due to the COVID-19 pandemic, the Debtors have faced unprecedented challenges and have been forced to conserve cash and examine closely the profitability of each of the Company's retail locations. To address those challenges and maximize the Company's future prospects, the Debtors' management team, in the exercise of their sound business judgment and in consultation with their advisors, ultimately determined that it is appropriate to close and wind down certain store locations (the "Closing Stores") to increase liquidity, maximize cost savings, and strengthen the Company's overall financial position and position it to continue as a going concern.

111. Before the Petition Date, the Debtors entered into a consulting agreement (the "Consulting Agreement") with SB360 Capital Partners, LLC ("Consultant") to assist with store closings. A copy of the Consulting Agreement is attached as Exhibit B to the motion seeking approval of the store liquidation process.

112. The Debtors expect to begin the process of closing the Closing Stores in groups consisting of: the Initial Closing Stores and the Additional Closing Stores (defined below). There

are four (4) stores expected to begin closing on the Initial Store Closing Date (the “Initial Closing Stores”). The list of Initial Closing Stores is subject to change based on further review by the Debtors’ management team. The list of Initial Closing Stores is attached to the Consulting Agreement. Further, the Debtors’ management team and its advisors continue to evaluate whether certain of the Closing Stores could remain open under certain circumstances and whether other stores should be added to the Initial Closing Stores list. Once the closings of the Initial Closing Stores has begun, the Debtors may determine that additional stores should be closed in order to enhance the viability of the Debtors’ business, even though such stores are not listed in the Consulting Agreement (the “Additional Closing Stores”). The procedures for closing stores will be discussed below.

113. The Debtor’s decision to include any particular store as a Closing Store will depend on, among other considerations, whether the Debtors are able to negotiate more favorable lease terms and rent reductions for certain stores with their landlords (the “Lease Negotiations”). An inability of the Debtors to do so could impact the viability of the Debtors’ overall business. The Debtors reserve the right to add or remove stores from the Initial Closing Stores list or the Additional Closing Stores list in the reasonable exercise of their business judgment and depending on the outcome of the Lease Negotiations throughout this process.

114. In reaching a decision to include any particular store on a list of Closing Stores, the Debtors have considered and will consider, among other factors: historical store profitability, recent sales trends, the geographic market in which the store is located, the potential to realize negotiated rent reductions with applicable landlords, and specific circumstances related to a store’s performance, including a store’s performance in relation to other store locations in geographic proximity.

115. In conjunction with their analysis of store performance, the Debtors also reviewed and analyzed their inventory levels at the Closing Stores. Such inventory will be included in and sold as part of the Sales (collectively, the “Merchandise”). The Debtors expect to sell their furniture, fixtures, and equipment (the “FF&E” and, together with the Merchandise, the “Store Closure Assets”) located in the Closing Stores and otherwise prepare those stores for turnover to the applicable landlords on the terms set forth in the Consulting Agreement.

116. The Debtors seek to assume the Consulting Agreement so that the Consultant may continue its preparation for the Store Closings on a post-petition basis without interruption and begin the initial store closings on or before July 1, 2020. The Debtors have determined, in an exercise of their business judgment, that (a) the services of the Consultant are necessary for a seamless and efficient large-scale execution of the Store Closings and Sales, as is contemplated by this Motion, and to maximize the value of the assets being sold, and (b) the Consultant is capable of performing the required tasks on favorable financial terms, as determined by the evaluation process.

117. In my opinion, the Store Closings are a critical component of the Debtors’ go-forward business plan, and assumption of the Consulting Agreement will allow the Debtors to conduct the Store Closings in an efficient, controlled manner that will maximize value for the Debtors’ estate. The relief requested is integral to maximizing the value of the Debtors’ estate and ensuring its viability. It will permit the Debtors to commence the Store Closings in a timely manner as contemplated by the motion and will establish fair and uniform sale guidelines to assist the Debtors and their creditors through the Debtors’ transition to a smaller, more profitable enterprise.

118. After receiving proposals from other parties, determining that the Consultant was well qualified and negotiating the terms of the engagement at arms' length, in good faith, and with the assistance of our advisors, the Debtors selected and engaged the Consultant to manage the Store Closings.

119. Assumption of the Consulting Agreement will allow the Debtors to utilize the logistical capabilities, experience, and resources of the Consultant in performing large-scale liquidations in a format that allows the Debtors to retain control over the sale process.

120. The Debtors further seek approval of streamlined procedures to sell the Store Closure Assets, in each case free and clear of liens, claims and encumbrances (the "Sale Guidelines"). The Sale Guidelines are detailed in Exhibit C to the Consulting Agreement but in summary include: requirements to maintain the store premises in a clear and orderly manner consistent with present practices; restrictions on the Closing Sales so that they generally maintain the same hours as the stores had historically maintained; and limits on signage and lighting.

121. The Debtors also seek approval of the Sale Guidelines to provide newspapers and other advertising media in which the Sales may be advertised with the comfort that the Debtors are conducting the Sales in compliance with applicable law and with the Bankruptcy Court's approval. The Debtors seek immediate approval of the Sale Guidelines in light of the need to start the sales on the Initial Store Closing Date, so that the Debtors can complete the Sales prior to the Debtors' emergence from chapter 11.

122. The Debtors have determined, in the exercise of their business judgment and in consultation with their advisors, that the Sale Guidelines will provide the best and most efficient means of selling the Store Closure Assets in order to maximize their value to the estate. The

Debtors estimate that consummation of the majority of the Sales and Store Closings will take approximately 12 weeks to complete.

123. Certain states in which the Debtors operate stores have or may have licensing or other requirements governing the conduct of store closing, liquidation, or other inventory clearance sales, including, without limitation, state, provincial, and local laws, statutes, regulations, and ordinances (the “Liquidation Sale Laws”). Liquidation Sale Laws may establish licensing, permitting or bonding requirements, waiting periods, time limits, and bulk sale restrictions and augmentation limitations that would otherwise apply to the Store Closings. Such requirements hamper the Debtors’ ability to maximize value in selling their inventory, and the Debtors need to conduct the Store Closings in accordance with the Sale Guidelines, and to the extent such guidelines conflict with the Liquidation Sale Laws, the Sale Guidelines should control.

124. For the purpose of orderly resolving any disputes between the Debtors and any Governmental Units (as defined in Bankruptcy Code § 101(27)) arising due to the Sale Guidelines and the alleged applicability of any Liquidation Sale Laws, the Debtors respectfully request that the Bankruptcy Court authorize the Debtors to implement the dispute resolution procedures (the “Dispute Resolution Procedures”), as set forth in the proposed Interim Order and the Final Order.

125. Some states in which the Debtors operate have laws and regulations that require the Debtors to pay an employee substantially contemporaneously with his or her termination (the “Fast Pay Laws” and together with the Liquidation Sale Laws, the “Applicable State Laws”). These laws often require payment to occur immediately or within a period of only a few days from the date such employee is terminated.

126. The nature of the Store Closings contemplated by this Motion will result in a number of employees being terminated during the Store Closings. To be clear, the Debtors intend

to pay their terminated employees as expeditiously as possible and under normal payment procedures. However, the Debtors' payroll system will simply be unable to process the payroll information associated with these terminations in a manner that will be compliant with the Fast Pay Laws. Under ordinary circumstances, the Debtors' payroll department is able to coordinate delivery of final checks to coincide with an employee's final day of work where required by state law. This process requires the Debtors' payroll department to calculate individual termination payments, prepare each termination payment check, obtain authorization for each such check and then prepare each such check for mailing. Given the number of employees who will likely be terminated during the Store Closings, this process could easily take several days, making compliance with the Fast Pay Laws burdensome to the Debtors' estates, if not impossible. For these reasons, the Debtors need relief from these laws.

127. The Debtors also respectfully request a waiver of any contractual restrictions that could otherwise inhibit or prevent the Debtors from maximizing value for creditors through the Store Closings and Sales. In certain cases, the contemplated Store Closings and Sales may be inconsistent with certain provisions of leases, subleases, or other documents with respect to the premises in which the Debtors operate, including (without limitation) reciprocal easement agreements, agreements containing covenants, conditions, and restrictions (including, without limitation, "go dark" provisions and landlord recapture rights), or other similar documents or provisions. Such restrictions would also hamper the Debtors' ability to maximize value in selling their inventory.

128. The Debtors also request that no entity, including, without limitation, utilities, landlords, shopping center managers and personnel, creditors, and all persons acting for or on their behalf shall interfere with or otherwise impede the conduct of the Store Closings, the Sales or

institute any action against the Debtors in any court (other than in the Bankruptcy Court) or before any administrative body that in any way directly or indirectly interferes with, obstructs, or otherwise impedes the conduct of the Store Closings, the Sales or the advertising and promotion (including through the posting of signs) of the Sales. In my opinion, all of this relief is necessary in order for the Debtors to maximize the return from the store closing process.

Further Declarant sayeth not.

This 28th day of June 2020.

/s/ Jonathan Tyburski

Jonathan Tyburski