

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

In re

John Varvatos Enterprises, Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 20-11043 (MFW)

Joint Administration Requested

DECLARATION OF JOSEPH ZORDA IN SUPPORT OF FIRST DAY RELIEF

I, Joseph Zorda, hereby declare as follows:

1. Since August of 2019, I have been the Chief Financial Officer of the above-captioned debtors and debtors in possession (the “Debtors”). In my time with the Debtors, I have become familiar with the Debtors’ businesses, day-to-day operations, financial affairs and books and records.

2. On May 5, 2020 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the United States Code (the “Bankruptcy Code”) in this Court. The Debtors continue to operate their businesses and manage their affairs in the ordinary course of business as debtors in possession. The Debtors have filed a number of motions identified herein requesting “first day” relief. I submit this declaration in support of such first day relief, as well as to provide support for, and background concerning, the Debtors’ chapter 11 cases and other pleadings filed or expected to be filed in the cases.

3. Except as otherwise indicated, the statements set forth in this declaration are based upon my personal knowledge of the Debtors’ operations and financing, information learned from my review of relevant documents, information supplied to me from other members

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number are as follows: John Varvatos Enterprises, Inc. (3554); Lion/Hendrix Corporation (8784); and John Varvatos Apparel Corp. (3394). The Debtors’ corporate headquarters and mailing address is 26 West 17th Street, 10th Floor, New York, NY 10011.

of the Debtors' management or the Debtors' advisors, or my opinion based on my knowledge, experience and information concerning the Debtors' operations and financial condition. I am authorized to submit this declaration on behalf of the Debtors. If called to testify, I could and would testify competently to the matters set forth in this declaration.

I. OVERVIEW OF THE DEBTORS' BUSINESS AND FINANCIAL AFFAIRS

A. The Debtors' Business

4. John Varvatos is a globally recognized luxury menswear brand that fuses contemporary style with a "rock n' roll" culture. Mr. Varvatos himself – the legendary designer who began his creative calling with design roles at Ralph Lauren before being appointed as head of menswear design at Calvin Klein in 1990 – founded the brand in 2000, which has since become a premier American lifestyle menswear collection, combining distinctive fabrics, heritage-inspired silhouettes, and artisanal details to embody a modern classic aesthetic with an edge. From suits, long-line jackets and waistcoats, slender jeans, jewelry, boots and leather jackets; the brand is known for its bold style and tailored fit. John Varvatos is sold through a multitude of collections including the namesake John Varvatos Collection and John Varvatos Star U.S.A. collections. The rebel spirit inherent in the brand imbues confidence in the man who wears it.

5. The John Varvatos brand includes two primary collections: the John Varvatos Collection and John Varvatos Star U.S.A. The John Varvatos Collection is an entire men's lifestyle brand that includes apparel, outerwear, footwear, eyewear, bags, belts, jewelry and men's fragrances. The brand unites old world craftsmanship and refined tailoring with modern innovations in textiles and rock 'n' roll sensibility. It is a timeless collection that is more about style than an age range. Launched in 2006, John Varvatos Star U.S.A. is a complete

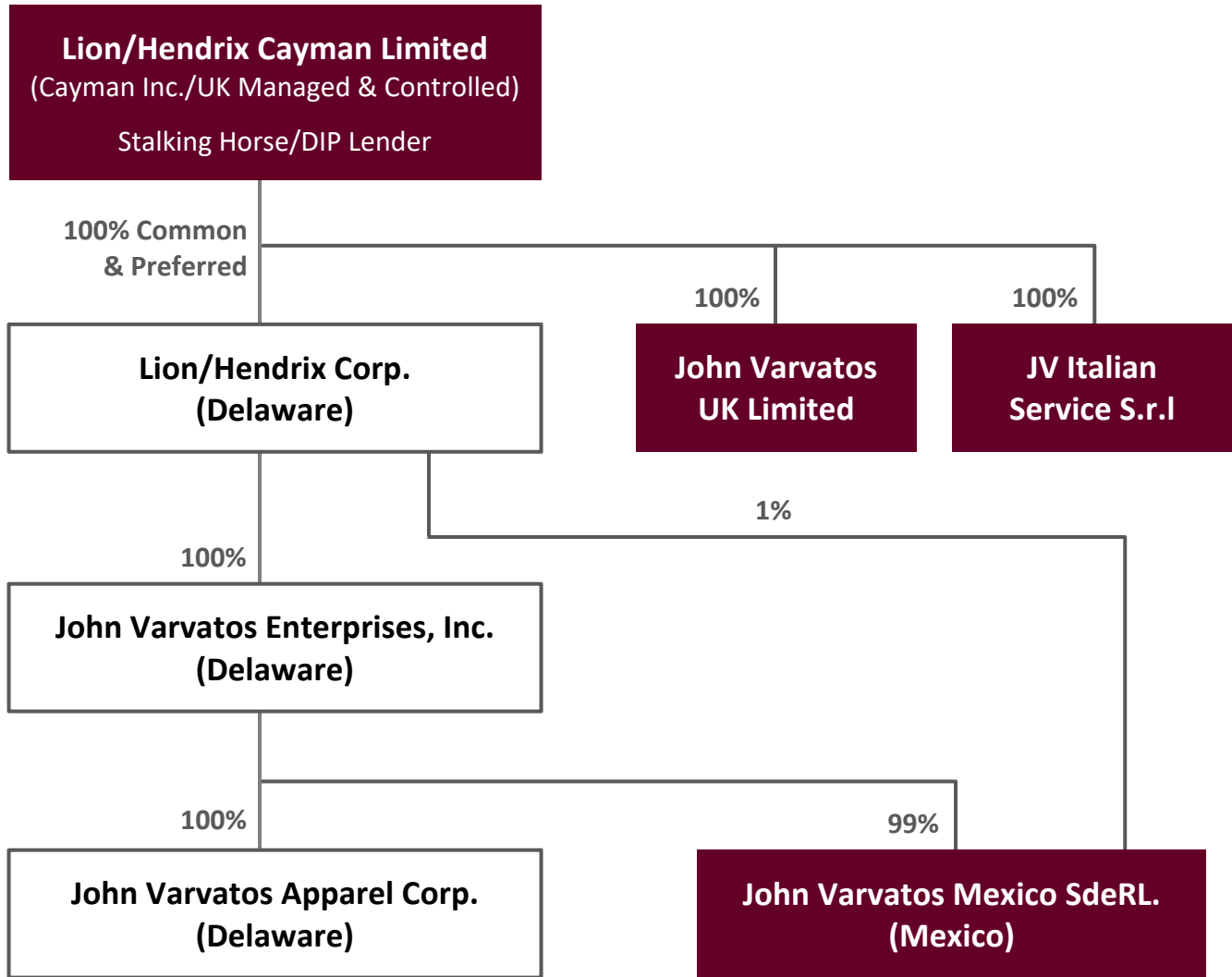
lifestyle collection that serves as a youthful extension of the John Varvatos core collection. The John Varvatos Star U.S.A. collection offers wardrobe essentials that embrace a progressive-meet-rock vibe, including vintage-inspired denim, sportswear, tailored clothing, footwear and accessories ranging from bags to small leather goods.

6. The Debtors generate revenue through the sale of their merchandise through department store and specialty wholesale distribution, a transactional globally accessible website (www.johnvarvatos.com), and their 27 brick and mortar retail locations. Additionally, the Debtors have successfully licensed five product categories – fragrance, eyewear, leather accessories, jewelry, and swimwear – for which the Debtors generate revenue through royalty payments. Further, the Debtors have a wholesale distribution license for Canada, a licensing partner to manufacture and distribute the John Varvatos Star U.S.A. Tailored Clothing, and a licensed partner that independently leases and operates a John Varvatos branded retail store in Guadalajara, Mexico (which is not considered or referenced herein as one of the Debtors’ retail locations).

B. The Debtors’ Corporate Structure

7. All of the Debtors are Delaware corporations. The Debtors have three non-debtor foreign affiliates: (1) John Varvatos UK Ltd. (“JVUK”), the Debtors’ retail and wholesale operator for the United Kingdom, Europe, the Middle East and Asia, (2) John Varvatos Mexico S. de R.L. de C.V. (“JVM”), the Debtors’ retail and wholesale operator for Mexico, and (3) John Varvatos Italian Services S.R.L. (“JVIS”), which provides sales and business development services to the Debtors for international wholesale sales management and expansion. The following chart depicts the Debtors’ corporate structure:

: Non-debtor Affiliates



C. The Debtors’ Capital Structure

8. As of the Petition Date, the substantial majority of the Debtors’ liabilities consisted of funded indebtedness. None of the Debtors’ funded indebtedness or equity is or was publicly offered for public sale or publicly traded. The Debtors’ capital structure comprises the following principal components:

(i) Prepetition Credit Agreement Obligations

9. The Debtors are party to that certain Credit Agreement, dated as of the April 22, 2019 (as amended, supplemented or modified, the “Prepetition Credit Agreement”) by and among the Debtors, Wells Fargo Bank, N.A. as the administrative agent (in such capacity, the “Prepetition Credit Agreement Agent”) and the various lenders party thereto from time to time (the “Prepetition Credit Agreement Lenders” and, together with the Prepetition Credit Agreement Agent, the “Prepetition Credit Agreement Secured Parties”), pursuant to which the Prepetition Credit Agreement Lenders provided revolving credit loans in an amount of not to exceed \$20,000,000.00 and other financial accommodations to the Debtors.

10. The Debtors secured their obligations under the Prepetition Credit Agreement by granting the Prepetition Credit Agreement Agent, for the benefit of the prepetition Credit Agreement Secured Parties, first-priority liens on substantially all of their assets.

11. As of the Petition Date, there is approximately \$19,450,000.00 outstanding under the Prepetition Credit Agreement Documents.

(ii) Prepetition Notes Obligations

12. In addition to the Prepetition Credit Agreement, the Debtors are party to that certain (a) Second Amended and Restated Tranche A Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on December 18, 2015, as amended, amended and restated, supplemented or otherwise modified, the “Tranche A Prepetition Note”), (b) Second Amended and Restated Tranche B Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on December 18, 2015, as amended, amended and restated, supplemented or modified, the “Tranche B Prepetition Note”), (c) Second Amended and Restated Tranche C Joint and Several Secured

Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on March 30, 2016, as amended, amended and restated, supplemented, or modified, the “Tranche C Prepetition Note”), (d) Third Amended and Restated Tranche C-1 Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on March 3, 2017, as amended, amended and restated, supplemented, or modified, the “Tranche C-1 Prepetition Note”) and (e) Tranche D Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (as amended, amended and restated, supplemented, or modified, the “Tranche D Prepetition Note” and, together with the notes described in clauses (a) through (d) above, collectively, the “Prepetition Notes”), each made by the Debtors as borrowers or guarantors in favor of Lion/Hendrix Cayman Limited, as payee (in such capacity and in its capacity as agent under the Amended and Restated Security Agreement, dated as of February 5, 2020 (the “Prepetition Notes Security Agreement”, the “Prepetition Noteholder”). Pursuant to the Prepetition Notes, the Prepetition Noteholder provided loans and other financial accommodations to the Prepetition Note Obligors.

13. The Debtors secured their obligations under the Prepetition Notes by granting the Prepetition Noteholder liens on substantially all of their assets, which liens were subordinated to the liens of the Prepetition Credit Agreement Secured Parties.

14. As of the Petition Date, there is approximately \$94,779,483.29 outstanding under the Prepetition Notes.

(iii) Other Secured Debt

15. In addition to the Prepetition Credit Facility and the Subordinated Note, the Debtors have entered into minimal other secured debt.

(iv) Other Liabilities

16. As of the Petition Date, the Debtors estimate that their unsecured debt aggregates approximately \$26.1 million, comprising primarily trade debt and lease obligations. In the ordinary course of operating their businesses, the Debtors purchase goods and services from hundreds of trade creditors. As of the Petition Date, the Debtors estimate that they owe approximately \$6.8 million to third-party trade creditors. The Debtors are also parties to leases for their corporate headquarters and 27 brick and mortar retail locations. While the Debtors hope that they will assume and assign the majority of the leases to the buyer for substantially all of their assets (as described in greater detail below), the Debtors anticipate that they will receive claims for rejection damages for any rejected leases from landlords. Finally, the Debtors are obligated to each other for various intercompany obligations owing either from one Debtor to another, with certain intercompany obligations owing between the Debtors and certain non-Debtor affiliates. Intercompany obligations owing from one Debtor to another are not included in the Debtors' estimation of unsecured debt.

(iv) Equity

17. Each of the Debtors is directly or indirectly wholly owned by Lion/Hendrix Cayman Limited ("L/H Cayman"). L/H Cayman is majority owned and controlled by affiliates of Lion Capital Fund III Partnerships, with other institutions and individuals owning minority stakes.

II. EVENTS LEADING TO FILING THE CHAPTER 11 CASES

18. The Debtors have experienced a number of factors that have negatively impacted their financial performance and cash flows over the last several years.

19. Beginning in 2015, the Debtors experienced consistent declines in retail and ecommerce revenues as a result of certain cost cutting measures that involved altering the brand's clothing to attract customers in the mass market, which did not resonate with the brand's existing customers. Additionally, certain of the Debtors' wholesale partners ended their business relationship with or reduced their wholesale purchases from the Debtors. In some cases, the loss of these relationships was particularly detrimental to the Debtors' financial performance. For example, in 2018, Nordstrom partially removed the John Varvatos brand from its stores, resulting in a \$4.6m sales and \$2.6m gross profit decline from 2018 to 2019. Also, the Debtors sought to expand their store footprint and incurred significant costs in opening new stores with poor rental economies.

20. In addition, the Debtors have historically pursued many business streams at the same time, including wholesale, full price retail, outlet retail, ecommerce, international distribution and licensing. Even though the company attains healthy revenue streams, the overhead required to manage these initiatives, coupled with retail stores' declining performance and increasing rental costs, caused the business to sustain continued losses.

21. To combat these and other issues, the Debtors made an initial attempt to undertake a number of steps and initiatives designed to improve their financial performance. In 2019, as a result of the Debtors' financial and business circumstances, the Debtors made changes to their management team and entered into the Prepetition Credit Agreement. The Debtors also pursued the possible sale of the John Varvatos Star USA brand and the licensing business in order to recapitalize the business and focus on the higher priced collection brand in retail and ecommerce and exclusive, limited distribution wholesale partnership. At the same time the company engaged real estate professionals to pursue a rent reduction strategy and renegotiate

leases. Unfortunately, the Debtors were unable to reach an agreement with potential purchasers for the sale of the John Varvatos Star USA brand. This led to additional losses and the Debtors' landlords were unwilling to renegotiate their leases so no cost savings were realized from that initiative.

22. At the end of 2019, the Debtors hired a new CEO who, together with John Varvatos, was tasked with bringing the company back to profitability. The Debtors' new team revitalized the product, reenergized their retail relationships, shaped a plan to reduce overhead costs for the ongoing businesses, and refocused the Debtors' efforts on growing their ecommerce business. The Debtors' strategy began to bear fruit in early 2020. The Debtors experienced near double digit sales increases in its full price retail stores and through its ecommerce business as the Debtors' new apparel collections were extremely well-received by the Debtors' customers. Additionally, the Debtors entered into the Prepetition Notes with L/H Cayman, which were restatements of existing notes and provided new value to the Debtors, and the Prepetition Credit Agreement Secured Parties increased the Debtors' borrowing capacity, which provided additional liquidity to the Company to effect the turn-around of the business. The Debtors also hired Clear Thinking Group, LLC as financial advisor to provide assistance to the Debtors' efforts.

23. The unprecedented, exponential spread of the coronavirus disease COVID-19 throughout the United States, however, along with the resulting, state-imposed limitations and prohibitions on non-essential retail operations destroyed the Debtors' blossoming success, having a debilitating effect on the Debtors' business and employees. On March 18, 2020, the Debtors were forced to temporarily close of all of their U.S. and Canadian store locations, drastically affecting the Debtors' retail business. Further, the pandemic has also caused

the Debtors' department store and independent retail partners to temporarily close their own stores and cancel nearly all of their current and future purchase orders, drastically affecting the Debtors' wholesale business.

24. As a result of the unprecedented disruption of the Debtors' business, between March 21, 2020 and April 11, 2020, the Debtors, like many other retailers needing to reduce operating expenses and manage cash flow amidst these difficult times, decided to furlough 226 full and part-time employees. These employees represented approximately 76% of the Debtors' total workforce. Similarly, the Debtors reduced wages and/or hours for 45 full and part-time employees representing approximately 16% of the Debtors' total workforce, and terminated employment of 24 temporary employees and interns. Additionally, three members of the executive management team voluntarily took salary reductions of 20%.

25. The Debtors have been forced to rely almost exclusively on their ecommerce business for cashflow to support their scaled down operations. The Debtors have experienced better-than-expected eCommerce sales, as the brand remains among the top contemporary menswear brands in the United States and the Debtors' prepetition secured lenders have provided support for the Debtors. Nonetheless, the revenue generated from the Debtors' ecommerce business is insufficient for the Debtors to pay their debts as they become due, including for rents totaling approximately \$2.1 million per month and the majority of the inventory deliveries it received for the spring 2020 selling season.

26. Recognizing that their businesses would not be able to continue in the current economic climate, the Debtors determined to commence a competitive marketing process to solicit bids for the sale of substantially all of their assets pursuant to section 363 of the Bankruptcy Code. In connection therewith, the Debtors created an independent restructuring

committee to consider the proposals submitted. The restructuring committee comprised an independent director and none of the Debtors' existing directors sat on the restructuring committee.

27. Further, in March, the Debtors engaged MMG Advisors, Inc. ("MMG"), a leading investment bank in the retail sector to run the Debtors' competitive marketing process. MMG drafted a confidential information memorandum to send to potential bidders for the Debtors' assets. I am informed that MMG contacted approximately 46 potential financial and strategic purchasers, and that, among the parties contacted, 16 have executed non-disclosure agreements with the Debtors to conduct due diligence of the Debtors' business. As a result of these efforts, three parties, including L/H Cayman – the direct or indirect owner of 100% of the equity in each of the Debtors and Prepetition Secured Noteholder under the Prepetition Secured Notes, submitted indications of interest for the purchase of substantially all of the Debtors' assets.

28. The Restructuring Committee determined, in consultation with the Debtors' professionals, that the L/H Cayman indication of interest represented the highest and best overall transaction for the Debtors' assets. Accordingly, on April 12, 2020, the Debtors selected L/H Cayman to be the stalking horse bidder (the "Stalking Horse") for the sale of the Debtors' assets under section 363 of the Bankruptcy Code. Following the selection of the Stalking Horse, the Debtors and the Stalking Horse engaged in extensive and arms' length negotiations,² resulting into entry of an asset purchase agreement for the sale of the Debtors' assets (the "Stalking Horse Agreement").

² At all times, L/H Cayman has been represented by separate counsel.

29. Pursuant to the Stalking Horse Agreement, the Stalking Horse has agreed to purchase substantially all of the Debtors' assets, as well as certain designation rights for the Debtors' unexpired leases for (i) an aggregate \$76 million credit bid pursuant to section 363(k) of the Bankruptcy Code of a portion of L/H Cayman's prepetition and post-petition loans to the Debtors (as described in greater detail below); (ii) the Payoff Amount; (iii) the Wind-Down Payment; (iv) the GUC Top-Up Amount (as such terms are defined in the Stalking Horse Agreement); and (v) the assumption of certain liabilities. The sale to the Stalking Horse Bidder will be subject to higher and better bids pursuant to bidding and auction procedures, and the Debtors will require MMG to run a comprehensive postpetition marketing process in furtherance of maximizing the value of their estates.

30. I believe, in an exercise of their business judgment, that the proposed sale and bidding procedures will foster an open and competitive process and provide the best avenue to maximize value for all of their stakeholders. Indeed, given the Debtors' limited cash and lack of any realistic financing option apart from the DIP Financing (which contains milestones for effecting the sale), the only alternative to the sale would be chapter 7 liquidation. In the Debtors' view, liquidation would destroy substantially all of the Debtors' value for their stakeholders and would result in the immediate, needless loss of hundreds of jobs.

31. In connection with its bid, L/H Cayman agreed to provide the Debtors with postpetition financing to ensure that they have sufficient funds to maintain their businesses and going concern value, and to continue their marketing efforts postpetition. The Debtors have negotiated with L/H Cayman to obtain use of cash collateral and access to up to \$20,500,000 million (the "DIP Financing") under a credit facility (the "DIP Facility") subject to the terms, conditions, and limitations set forth herein and in the documentation regarding the DIP Facility,

including (a) the refinancing of \$13,666,666.66 million of the outstanding Prepetition Notes Secured Obligations into obligations under the DIP Facility and (b) funding of those certain expenditures set forth in an approved budget. The Debtors have determined, in an exercise of their business judgment, that the DIP Financing represents the best financing available to them under the circumstances and that the DIP Financing will provide them with the liquidity and time required to administer these chapter 11 cases and pursue the sale of substantially all of their assets in a manner that maximizes value for all stakeholders.

III. FIRST DAY MOTIONS

32. Concurrently with the filing of their chapter 11 petitions, the Debtors have filed a number of motions identified herein requesting “first day” relief (the “First Day Motions”).³ The Debtors request that the Court grant the First Day Motions as critical elements in ensuring a smooth transition into, and stabilizing and facilitating the Debtors’ operations during the pendency of, these chapter 11 cases. I have reviewed each of the First Day Motions discussed below, and the facts set forth in each First Day Motion are true and correct to the best of my knowledge, information and belief with appropriate reliance on the Debtors’ personnel and advisors.

A. Debtors’ Motion for Entry of an Order Directing Joint Administration of Chapter 11 Cases

33. By the Motion, the Debtors are seeking entry of an order directing the joint administration of the Debtors’ chapter 11 cases for procedural purposes only. Entry of an order directing joint administration of the Debtors’ chapter 11 cases will avoid duplicative notices, applications and orders, thereby saving the Debtors and parties in interest considerable

³ Capitalized terms used, but not otherwise defined herein, shall have those meanings ascribed to them in the relevant Motion.

time and expense, as well as ease the administrative burden on the Court and the parties. The rights of creditors will not be adversely affected because the Motion requests only administrative consolidation of the chapter 11 cases. By aggregating all papers related to the Debtors under the same case caption and docket, creditors and parties in interest will be able to access and review relevant information concerning the Debtors in one place, and will thereby be better able to keep apprised of the matters before this Court.

34. Accordingly, I believe that joint administration of the Debtors' estates is in the best interests of the Debtors, their estates and creditors, and parties in interest.

B. Debtors' Motion for Entry of an Order Authorizing the Debtors to (I) File (A) a Consolidated List of Creditors and (B) a Consolidated List of Debtors' Top Thirty Creditors, (II) Provide Notices, Including Notices of Commencement of Cases and Section 341 Meeting, and (III) Granting Related Relief

35. By the Motion, the Debtors seek entry of an order authorizing the Debtors (or their agents, as applicable) to (i) file (a) a consolidated list of creditors and (b) a consolidated list of the Debtors' thirty (30) largest unsecured creditors and (ii) complete all mailings of notices, including notices of the commencement of these cases and of the meeting of creditors pursuant to section 341 of the Bankruptcy Code.

Consolidated List of Creditors

36. The Debtors have identified hundreds of entities and individuals to which notice of certain events or requests for relief in these chapter 11 cases may need to be provided. The Debtors anticipate that such notice of events will include, without limitation, notice of: (a) the filing of the Debtors' voluntary petitions under chapter 11 of the Bankruptcy Code; (b) the initial meeting of the Debtors' creditors in accordance with section 341 of the Bankruptcy Code; and (c) applicable bar dates for the filing of claims (collectively, the "Notices").

37. The Debtors presently maintain various computerized lists of the names and addresses of their respective creditors, contract and lease counterparties and other parties that are or may be entitled to receive the Notices and other documents in these chapter 11 cases. I believe that the information, as maintained in their computer files (or those of their agents), may be consolidated and utilized efficiently to provide interested parties with the Notices and other similar documents, as contemplated by Local Rule 1007-2. Accordingly, by the Motion, the Debtors seek authority to file the lists on a consolidated basis, identifying their creditors and other parties in the format or formats currently maintained or developed in the ordinary course of the Debtors' businesses.

38. Moreover, concurrently with the Motion, the Debtors have filed an application (the "Claims and Noticing Agent Application") seeking the retention and appointment of Omni Agent Solutions ("Agent") as claims and noticing agent in these chapter 11 cases. If the Claims and Noticing Agent Application is granted, the Agent will, among other things, (a) assist with the consolidation of the Debtors' computer records into a creditor and security holder database and (b) complete the mailing of the Notices to the parties in these databases. After consultation with the Agent and counsel, I believe that filing the lists in the format or formats currently maintained in the ordinary course of business will be sufficient to permit the Agent to notice promptly all applicable parties as required by Local Rule 1007-2.

Top 30 Unsecured Creditors

39. The Debtors submit that a single consolidated list of their combined 30 largest unsecured creditors in these cases would be more reflective of the body of unsecured creditors that have the greatest stake in these cases than separate lists for each of the Debtors. In light of the foregoing, any marginal benefit to preparing individual creditor lists for each of the

Debtors is far outweighed by its burden and expense. Therefore, the Debtors respectfully request authorization to file a single consolidated list of their thirty (30) largest unsecured creditors in these cases (the “Consolidated Top 30 List”).

Mailings

40. In lieu of effecting service through the Office of the Clerk of this Court, the Debtors also request that they (or the Agent) be approved and authorized to complete all mailings to creditors and equity holders in these cases, including notice of the commencement of these cases and notice of the meeting of creditors pursuant to section 341 of the Bankruptcy Code. Allowing the Debtors (or their Agent) to complete their own mailings will save significant time, cost and expense.

C. Debtors’ Application for Entry of an Order Appointing Omni Agent Solutions as Claims and Noticing Agent for the Debtors, Nunc Pro Tunc to the Petition Date

41. By the Motion, the Debtors seek entry of the Order appointing Omni as Claims and Noticing Agent to assume full responsibility for, among other things, the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in the Debtors’ Chapter 11 cases.

42. The Debtors anticipate that there will be in excess of 3,500 entities to be noticed in these Chapter 11 cases. In view of the number of anticipated claimants and the complexity of the Debtors’ businesses, the Debtors submit that the appointment of a Claims and Noticing Agent is both necessary and in the best interests of both the Debtors’ estates and their creditors. By appointing Omni as the Claims and Noticing Agent in these Chapter 11 cases, the distribution of notices and the processing of claims will be expedited, and the Clerk will be relieved of the administrative burden of processing claims.

43. Accordingly, I respectfully submit that the Debtors' application to retain Omni should be approved.

D. Debtors' Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Utility Services, (II) Approving Proposed Adequate Assurance of Payment to Utility Providers and Authorizing Debtors to Provide Additional Assurance, (III) Establishing Procedures to Resolve Requests for Additional Assurance and (IV) Granting Related Relief

44. By the Motion, the Debtors seek entry of an order (i) prohibiting Utility Providers from altering, refusing, or discontinuing services or discriminating against the Debtors solely on the basis of the commencement of these cases or that the Debtors did not pay a debt when due prepetition; (ii) determining that the Debtors have provided each of the Utility Providers with "adequate assurance of payment" within the meaning of section 366 of the Bankruptcy Code based on the Debtors establishing a segregated account in the amount of \$30,715.00 which is equal to the Debtors' estimate of two weeks of postpetition Utility Services based on the prior monthly; (iii) establishing procedures (the "Additional Assurance Procedures") for determining additional adequate assurance of payment, if any, and authorizing the Debtors to provide additional adequate assurance of payment to the Utility Providers; and (iv) granting related relief, including scheduling the Final Hearing on the Proposed Adequate Assurance and the Additional Assurance Procedures.

45. In the ordinary course of business, the Debtors obtain telephone, internet, gas, electric, water and other utility services (the "Utility Services") from several direct utility providers (collectively, the "Utility Providers"). The Debtors estimate that, as of the Petition Date, approximately thirty-five Utility Providers provide Utility Services to the Debtors.

46. The Debtors cannot operate their business without Utility Services. Even a temporary interruption of such services would cause significant disruption to the Debtors' day-

to-day operations that could impair the Debtors' goodwill and thereby negatively impact the Debtors' efforts to maximize the value of their estates. Accordingly, it is critical that the Debtors have uninterrupted Utility Services.

47. In general, the Debtors have established a good payment history with their Utility Providers, making regular, timely payments whenever possible. Prior to the Petition Date, the Debtors paid an average of approximately \$61,430 per month on account of the Utility Services provided by the Utility Providers on the Utility Providers List. As the Debtors' stores remain closed in accordance with various state orders addressing the coronavirus pandemic, the Debtors' utility use has drastically decreased. Nonetheless, to the best of my knowledge, there are generally no material defaults or arrearages of any significance with respect to undisputed invoices for the Utility Services provided to the Debtors as of the Petition Date.

48. The Debtors propose to deposit, within 20 days of the Petition Date, an amount equal to the estimated cost for two weeks of Utility Services (*i.e.*, approximately \$30,715.00) (the "Adequate Assurance Deposit") calculated based on the historical data for the past year into one segregated bank account (the "Utility Deposit Account") designated for the Adequate Assurance Deposit for the benefit of all Utility Providers.⁴ Thereafter, the Debtors propose to adjust the amount in the Utility Deposit Account as follows: (i) reducing the amount held in the Utility Deposit Account to account for the payment and termination of Utility Services by the Debtors for any given location or account; (ii) modifying the amount held in the Utility Deposit Account on the basis of agreements reached with Utility Providers regarding Additional Assurance Requests, including, to the extent any Utility Provider receives any other

⁴ As previously described, the Debtors' retail stores remain closed due to the current coronavirus pandemic. By the Motion, the Debtors seek to provide adequate protection sufficient to cover the estimated costs for two weeks of Utilities Services based on the utilities costs incurred prior to the closure of the Debtors' stores.

value from the Debtors as adequate assurance of payment, reducing the Adequate Assurance Deposit maintained in the Utility Deposit Account on account of such Utility Provider by the amount of such other value; and (iii) adding additional amounts in the event that the Debtors amend the Utility Providers List to add one or more additional Utility Providers. I believe these adjustments will permit the Debtors to maintain the Utility Deposit Account with an amount that consistently provides the Utility Providers with a two-week deposit on account of such services.

49. I believe that the Adequate Assurance Deposit, in conjunction with the Debtors' ability to pay for postpetition utility services in the ordinary course of business through revenue generated in operations and access to cash collateral and debtor-in-possession financing (together, the "Proposed Adequate Assurance"), constitutes adequate assurance to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code. Further, I understand that the Motion proposes to establish procedures to resolve any disputes regarding adequacy of the Proposed Adequate Assurance, and I believe those procedures are reasonable under the circumstances.

50. For the foregoing reasons, I believe granting the Utilities Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest.

E. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Continued Use of Cash Management System, (II) Authorizing Use of Prepetition Bank Accounts, Account Control Agreements, and Payment Methods, (III) Authorizing Use of Existing Business Forms, (IV) Authorizing Continuation of Ordinary Course Intercompany Transactions, (V) Granting Administrative Priority to Postpetition Intercompany Claims, (VI) Extending Time to Comply with the Requirements of 11 U.S.C. § 345(b), (VII) Scheduling a Final Hearing, and (VIII) Granting Related Relief

51. By the Motion, the Debtors are requesting entry of an order (i) authorizing, but not directing, the Debtors to (a) continue to use the Cash Management

System, (b) continue to use all Bank Accounts with existing account numbers, (c) implement any changes to the Cash Management System as the Debtors deem necessary or appropriate, including, without limitation, opening new bank accounts or closing existing Bank Accounts and (d) continue to use existing account control agreements and payment methods; (ii) authorizing the Debtors to maintain and continue to use existing Business Forms without reference to their status as debtors in possession; (iii) authorizing the Debtors to continue ordinary course Intercompany Transactions; (iv) granting administrative priority to postpetition Intercompany Claims; (v) extending the Debtors' time to comply with the requirements of section 345(b) of the Bankruptcy Code on an interim basis to the extent that the Bank Accounts do not strictly comply with such requirements; (vi) scheduling a Final Hearing to consider entry of the Proposed Final Order, to the extent necessary; and (vii) granting any related relief that is necessary to carry out the foregoing or continued operation of the Cash Management System, or is otherwise appropriate under the circumstances.

52. In connection with this relief, the Debtors are seeking a waiver of certain of the operating guidelines (the "U.S. Trustee Guidelines") established by the Office of the United States Trustee (the "U.S. Trustee"), including the requirement that the Debtors close all prepetition bank accounts and open new accounts designated as debtor in possession accounts.

53. The Debtors further request that the Court authorize the Banks to: (i) continue to maintain, service and administer the Bank Accounts as accounts of the Debtors as debtors in possession and provide related treasury, account and cash management services, all without interruption and in the ordinary course of business; (ii) receive, process, honor and pay, to the extent of available funds, any and all checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn on the Bank

Accounts; provided, however, that any check, draft or other notification that the Debtors advise the Banks to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Bank only to the extent authorized by order of the Court; (iii) accept and honor all representations from the Debtors as to which checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items are dated before or after the Petition Date; and (iv) debit or charge the Bank Accounts for all undisputed Bank Fees, whether arising before, on or after the Petition Date.

54. Additionally, the Debtors request that the Court authorize the Debtors' Credit Card Processors that the Debtors use in the ordinary course of business to deduct any undisputed Credit Card Fees before transferring certain receivables to the Debtors, and authorize the Debtors to otherwise honor and pay all undisputed Credit Card Fees in the ordinary course of business, whether arising before, on or after the Petition Date.

55. Finally, the Debtors request that any relief granted pursuant to the Motion be effective immediately without regard to any stay provided in the Bankruptcy Rules.

56. The Debtors maintain an integrated, centralized cash management system (the "Cash Management System") to collect, transfer, manage and disburse funds generated and used in their operations. The Cash Management System facilitates cash monitoring, forecasting and reporting and enables the Debtors to administer the 72 bank accounts owned by the Debtors (collectively, along with any bank accounts the Debtors may open in the ordinary course of business, the "Bank Accounts"), which are maintained at four banks (the "Banks"). The Debtors' treasury department, located at the Debtors' headquarters in New York, New York,

maintains daily oversight and control of the Cash Management System and implements controls for collecting, concentrating and disbursing funds.

57. The Cash Management System is generally similar to the systems commonly used by businesses of similar size in similar industries. As described in more detail below, the Cash Management System comprises the following primary components: (a) operating accounts to which funds are deposited daily; (b) store depository accounts which collect receivables from the sale of store merchandise; (c) ecommerce depository accounts; (d) payment accounts the Debtors use to make disbursements, and (e) royalty accounts.

The Bank Accounts

58. The Debtors' primary Banks in the Cash Management System are Bank of America ("BOA") and Wells Fargo ("WF").⁵ The Debtors also maintain accounts with the Bank of Montreal and PayPal.

59. The Debtors each maintain operating accounts (the "Operating Accounts"). Substantially all of the cash generated in the Debtors' operations is wired, swept, or otherwise transferred into the Operating Accounts on a daily basis.

60. The Debtors maintain a dedicated depository account for each store (the "Store Depository Accounts"). The BOA Store Depository Accounts collect cash payments made at each of the Debtors' retail store locations. The WF Store Depository Accounts collect credit card receivables made at each of the Debtors' retail store locations. The Store Depository Accounts are "zero balance" accounts, and cash deposited into the accounts is automatically

⁵ The Debtors previously began to transition their banking services from Bank of America to Wells Fargo, resulting in the creation of numerous Wells Fargo Bank Accounts that serve the same purpose as the Bank of America Bank Accounts. As part of the transition, the Debtors began depositing certain customer payments into the Wells Fargo Bank Accounts. Due to logistical issues, however, the Debtors were unable to complete this process and the transition stalled. As a result, both the Bank of America and Wells Fargo Bank Accounts receive certain payments and deposits, requiring the Debtors' continued use of the Bank Accounts in order to operate.

swept at the end of each business day. The BOA Store Depository Accounts are automatically swept to BOA Operating Account No. 6466. The WF Store Depository Accounts are automatically swept to the WF Retail Receivables Account, which is in turn swept to the WF Operating Account.

61. The Debtors maintain certain eCommerce accounts (the “eCommerce Accounts”) that receive ACH deposits of credit card payments. Transactions processed via PayPal are deposited to the PayPal Account, which are periodically manually transferred to the BOA eCommerce Account. The Debtors leave an available balance in the PayPal Account to cover PayPal returns and refund activity. The BOA eCommerce Account is swept daily to the BOA Operating Account. The WF eCommerce Account is swept daily to the WF Reserve Account that is in turn swept daily to the WF Operating Account.

62. JVE’s largest USA wholesale accounts, USA department store partners, and suppliers make payments via ACH or wire to dedicated wholesale accounts (the “Wholesale Accounts”). Customers paying by check send their payments to a lockbox (unless inadvertently sent to JVE’s corporate office) which are deposited into either of the Wholesale Accounts. The BOA Wholesale Account is swept daily to the BOA Operating Account. The WF Wholesale Account is swept daily to the WF Operating Account.

63. Outgoing ACH payments, wires in USD, Euros, and GBP, hard checks, Concur checks, and American Express (“AMEX”) wires, and Preauthorized incoming ACH debits, such as sales tax, US customs and certain automated phone, utility and other small expense ACH debits, are processed from payment accounts (the “Payment Accounts”) held with BOA. The Debtors do not use the WF Payment Account.

64. Canadian dollar cash and credit card receipts from JVE's Toronto retail location are deposited into BOM's depository account ending in 103. All other Canadian dollar, wire and electronic funds receipts are deposited into the BOA Incoming Checking Account. Outgoing Canadian dollar payments are processed through the BOA Outgoing Checking Account.

65. JVAC generates revenue through royalty payments made by trademark licensees, which is deposited into its BOA or WF Royalty Accounts. The JVAC BOA Royalty Account is swept daily to the JVE BOA Operating Account. The JVAC WF Royalty Account is swept daily to the JVE WF Operating Account. JVAC makes outgoing payments via wire or electronic fund transfer from its BOA Payment Account.

66. LHC's cash receipts and its outgoing payments are all processed via wire or electronic funds transfers through its BOA Operating Account.

Bank Fees and Credit Card Processing Fees

67. In the ordinary course of business, the Bank charges, and the Debtors pay, honor or allow deduction from the appropriate account, certain service charges, fees and other costs and expenses associated with maintaining the accounts in accordance with the applicable agreements or schedules of fees governing the Bank Accounts (collectively, the "Bank Fees"). On average, the Debtors incur approximately \$21,000 per month in Bank Fees.

68. Similarly, the Debtors' credit card processors (the "Credit Card Processors") deduct service fees before transferring the Debtors' credit card and debit card receivables (such fees, the "Credit Card Fees" and, together with the Bank Fees, the "Service Charges"). Such Credit Card Fees are on average approximately 3.4% per eCommerce transaction and 2.3% per retail store transaction. The Debtors derive a substantial majority of

their sales from credit and debit card transactions. If the Debtors failed to pay the Credit Card Fees, and, as a result, the Credit Card Processors held back some or all of the Debtors' credit card receipts or refused to continue to work with the Debtors, the Debtors would be immediately and likely irreparably damaged. Therefore, the ability to continue to accept credit cards and receive payment from the Credit Card Processors, net of Credit Card Fees per the applicable arrangements, on an uninterrupted basis is essential to maintaining the Debtors' cash flows and business operations generally.

69. The Debtors estimate that there are approximately \$28,000.00 of accrued but unpaid Service Charges outstanding as of the Petition Date. As the final numbers may vary, however, based on actual receipts, and out of an abundance of caution and in recognition of the critical importance of maintaining the ability to continue to use the Bank Accounts and the services of the Credit Card Processors, the Debtors request authority, but not direction, to honor and pay prepetition Services Charges in an amount not to exceed \$35,000.00, and to allow the Credit Card Processors to deduct such undisputed amounts from applicable receivables in the ordinary course of business without interruption or delay.

Funds Flow withing the Cash Management System

70. The Debtors generate revenue primarily through the sale of clothing at their store locations and eCommerce business. For U.S. purchases, cash received from sales at the retail store locations is deposited into the applicable BOA Store Depository Account while credit card receivables for in-store purchases are deposited into the applicable WF Store Depository Account. Payments received through the Debtors' online retail business are deposited into either the BOA or WF eCommerce Accounts. Further, revenue generated through purchases via PayPal are deposited to JVE's PayPal account.

71. The Debtors also generate revenue through wholesale purchases from USA department store partners. Customers making wholesale purchases may make payments via ACH or wire to the Debtors' Wholesale Accounts.⁶

72. Except for the Debtors' PayPal Account, the Debtors' Store Depository, eCommerce and Wholesale Accounts are zero-balance accounts that are swept daily to the JVE's Operating Accounts. The BOA Store Depository, eCommerce and Wholesale Accounts are swept daily to the BOA Operating Account. The WF Store Depository and eCommerce Accounts are swept daily to intermediary WF Bank Accounts that are in turn swept daily to the WF Operating Account, while the WF Wholesale Account is swept directly to the WF Operating Account. Funds deposited into the Debtors' PayPal Account are periodically manually transferred to the BOA eCommerce Account, leaving some available balance in the PayPal account to cover PayPal returns and refund activity.

73. For Canadian sales, receipts from sales at JVE's Canada retail location are deposited into the BOM Depository Account. All other Canadian dollar, wire and electronic funds receipts are deposited into the BOA Incoming Checking Account.

74. The Debtors are party to that certain Prepetition Credit Agreement by and among the Debtors, Wells Fargo Bank, N.A. as the administrative agent and the various lenders party thereto from time to time, which provided the Debtors with revolving credit loans up to \$20,000,000.00, and other financial accommodations to the Debtors. Prior to the Petition Date, funds from the Prepetition Credit Facility were funded to the JVE BOA Operating Account which JVE then used to process outgoing disbursements through its BOA Payment Accounts.

⁶ Most customers paying by check send their payments to a lockbox (or sometimes inadvertently to JVE's corporate office) which are in turn deposited into the Wholesale Accounts. Additionally, the Debtors generate rental revenue from the partial sublease of its corporate office space. Payments by its subtenants are deposited to the Wholesale Accounts.

Following the Petition Date, the Debtors intend to use the funding provided from its DIP Facility to fund the JVE BOA Operating Account for outgoing disbursements.

75. JVE has five Payment Accounts that each are used for different payment purposes:

- a. BOA Payment Account ending in 3620 is used to make outgoing BOA and American Express wire payments and ACH payments. Further, preauthorized incoming ACH debits, such as sales tax, US customs and certain automated phone, utility and other small expense ACH debits, are processed against this Payment Account.
- b. BOA Payment Account ending in 3633 is used to make outgoing payments made via physical check. Payments using physical check are mostly reserved for rents that may not be paid electronically.
- c. BOA Payment Account ending in 7577 is part of BOA's Concur system and is another Payment Account used to make outgoing payments via check. By this system, JVE presents Concur with supplier payment instructions and Concur would print and mail physical checks to the suppliers.
- d. BOA Payment Accounts ending in 0013 and 0021 are used to make outgoing Euro and British Pound wire payments, respectively.

76. Separately, outgoing Canadian dollar payments made by JVE's Canadian store are processed through the BOA Outgoing Checking Account.

77. JVAC generates revenue through royalty payments made by trademark licensees, which is deposited into its BOA or WF Royalty Accounts. JVAC makes outgoing payments via wire or electronic fund transfer from its BOA Payment Account.

78. LHC does not generate revenue but from time to time may receive intercompany payments, which are deposited into its BOA Account. LHC also uses the BOA Account to make outgoing payments.

Intercompany Transactions

79. The Debtors engage in intercompany transactions in the ordinary course of their business by and amongst themselves and their non-debtor affiliates (the "Intercompany

Transactions”), which create intercompany receivables and payables (the “Intercompany Claims”).

80. The most significant Intercompany Transactions and Intercompany Claims involve inventory invoicing by JVE to non-debtors John Varvatos UK Ltd. (“JVUK”), which is JVE’s retail and wholesale operator for the United Kingdom, Europe, the Middle East and Asia, and John Varvatos Mexico S. de R.L. de C.V. (“JVM”), which is JVE’s retail and wholesale operator for Mexico. For purposes of cost and efficiency, JVE acts as the group’s global sourcing unit and JVE’s inventory suppliers ship inventory sourced on behalf of JVUK and JVM directly to JVUK and JVM. The suppliers subsequently invoice JVE, and JVE then invoices JVUK and JVM for the merchandise at a nominal markup. These Intercompany Transactions create Intercompany Claims for JVE, JVUK and JVM.

81. Further, non-debtor John Varvatos Italian Services S.R.L. (“JVIS”) provides sales and business development services to JVE for wholesale sales management and expansion in Europe, the Middle East, Asia, Africa and Australia. Specifically, pursuant to a formal service agreement, JVIS (a) provides market data and other information regarding global markets and JVE’s clients, (b) cooperates with and assists JVE with promotional activity and displays of clothing, (c) cooperates with and assists JVE with procuring new clients, and (d) provides additional and related services. JVIS invoices JVE 75,000 Euros per month for its services, creating an Intercompany Claim.

82. Further, JVE may directly incur expenses that are partially allocable to its subsidiaries and affiliates. In addition, one of the Debtors may occasionally inadvertently record another Debtor’s bill in its own accounts payable and pay it though the group’s payable controls

typically prevent this from happening. In such circumstances, JVE records an intercompany receivable and the respective subsidiaries and affiliates record intercompany payables.

83. Additionally, JVAC holds the Debtors' trademarks and periodically receives royalty payments from its license partners to whom it has licensed the use of certain trademarks for the manufacture and sale of certain product categories. JVAC transfers those royalty receipts to JVE to fund the group's operations and records an intercompany receivable and JVE records an Intercompany Claim.

Existing Business Forms

84. The Debtors use a variety of business forms in the ordinary course of business, including, among others, checks, invoices and letterhead (the "Business Forms"). To minimize expenses and disruption, the Debtors seek authority to continue to use all Business Forms in substantially the form used immediately before the Petition Date, without reference to the Debtors' status as debtors in possession. The Debtors will communicate with the various vendors and counterparties with whom the Debtors conduct business to notify them of the commencement of these cases, which I believe will provide adequate notice of the Debtors' status as debtors in possession. In accordance with Local Rule 2015-2(a), to the extent the Debtors exhaust their existing supply of checks during these cases and require new checks, the Debtors will order checks with a notation indicating the designation "debtor in possession" and the lead case number of these cases.

85. The relief requested in the Cash Management Motion will help minimize any disruption in the Debtors' business operations during these chapter 11 cases, and preserve the value of the Debtors' estates. Indeed, any disruptions in the Cash Management System could lead to delays in satisfying the Debtors' obligations to its vendors and suppliers and meeting the

demands of customers. To avoid the potential erosion of value that could ensue from any such interruptions in the Debtors' ordinary course business operations, I believe it is imperative that the Debtors be authorized to continue the Cash Management System and use of the Bank Accounts.

86. Furthermore, I believe that strict adherence to the U.S. Trustee Guidelines would be exceptionally burdensome to the Debtors and their management, and reduce efficiencies and cause unnecessary expense. I further believe that the delays that would result from opening the new accounts and revising cash management procedures would disrupt the Debtors' business operations at this critical time, have little or no benefit to the Debtors' estates, and erode the value of the Debtors' enterprise to the detriment of all stakeholders.

87. For the foregoing reasons, I believe granting the Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest.

F. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Wages, Benefits and other Compensation Obligations, (II) Authorizing Financial Institutions to Honor All Obligations Related Thereto, and (III) Granting Related Relief

88. By the Motion, the Debtors are requesting entry of an order (i) authorizing the Debtors to pay and honor Employee Obligations; (ii) authorizing and directing banks and financial institutions to receive, process, honor and pay checks presented for payment and electronic payment requests relating to prepetition Employee Obligations; and (iii) granting related relief.

89. As noted above, the unprecedented, exponential spread of COVID-19 throughout the United States, along with the resulting, state-imposed limitations and prohibitions on non-essential retail operations has had a debilitating effect on the Debtors' business and employees. The Debtors are hopeful that the country will be able to slow the spread of COVID-

19 such that they will be permitted to reopen their retail stores and resume their normal business operations, including returning their furloughed employees to work. Accordingly, the relief sought by the Motion is with respect to all of the Debtors' Employees (as defined below). The Debtors reserve the right to seek additional and/or supplemental relief depending on changed circumstances in connection with the economic and societal climate.

Employees

90. Prior to the Debtors' reduction in workforce, the Debtors employed approximately 302 Employees, nearly all of whom were located in the United States. Of this amount, 260 Employees were employed on a full-time basis, eighteen Employees were employed on a part-time basis, and 24 Employees were employed as interns and/or temporary workers. Approximately 178 Employees were paid on an hourly basis, 124 Employees were paid a salary and 121 Employees working in retail stores receive sales commissions in addition to their base wages. None of the Employees are unionized or party to collective bargaining agreements or similar labor arrangements.

91. As of the Petition Date, the Debtors workforce constitutes 57 active Employees. The Employees include persons in the Debtors' management, accounting department, human resources department, and information technology department, as well as persons from its merchandising, retail operations, and direct to consumer and logistics teams to manage the Debtors' eCommerce operations. Of these 57 active employees, 48 are working with significant pay reductions.

92. The Debtors' Employees possess the institutional knowledge, experience and skills necessary to support the Debtors' business operations during these chapter 11 cases and to support a successful sale of the Debtors' business. In addition to the Employees'

compensation, the Debtors also incur other obligations for employee programs, such as bonuses, vacation, federal and state withholding taxes and other withheld amounts, 401(k) contributions, health and welfare benefits, expense reimbursements, clothing discounts, and programs that the Debtors historically have provided in the ordinary course of business. The programs provided by the Debtors to their Employees, as more fully described below, are referred to herein as the “Employee Programs” and the obligations to the Employees thereunder are referred to herein as the “Employee Obligations.”

Wages

93. Historically, the Debtors paid their Employees on a bi-weekly basis, with payroll being disbursed every other Friday, one week in arrears. Prior to the Petition Date, however, beginning the week of March 22, 2020, the Debtors switched to a weekly payroll disbursement due to the Debtors’ financial position and managements’ desire to mitigate anxiety of, and maintain productivity from its non-furloughed Employees. Additionally, prior to the Petition Date, the Debtors pre-funded a week of Employee wages for the week of the Petition Date. As a result, I do not believe that any prepetition amounts for Employee wages are outstanding.

94. Prior to the reduction in the Debtors’ workforce, on average each month, the Debtors paid approximately \$1,875,000.00 in US base wages as well as CAD\$51,000.00 in Canada base wages. The Debtors also pay sales commissions to Employees who work in retail stores, an amount that varies monthly based on their personal sales at a rate of 3% to 5% of sales, with top sellers eligible for increasing commission rates as the year goes on. Currently, on average each month, the Debtors pay approximately \$370,000.00 in US base wages, as well as

CAD\$11,000.00 in Canada base wages for current, non-furloughed Employees. No sales commissions are currently being paid as a result of the store closures.

95. The Debtors seek authority to continue to pay wages that become due after the Petition Date in the ordinary course of business. Particularly in light of the devastating effects of the COVID-19 pandemic, to maintain the morale and dedication of their current Employees, I believe it is important to demonstrate their ongoing commitment to their Employees by continuing to honor Employee wages without interruption.

Accrued Vacation and Sick Leave

96. In the ordinary course of business, the Debtors provide eligible Employees with paid personal and vacation time (“PTO”). The PTO benefit year runs from January 1 to December 31. Depending on tenure and other factors, most eligible Employees accrue between 15 and 25 days of PTO annually (as accrued and unused “Accrued Vacation”). For corporate associates outside of California, unused PTO does not carry over from year to year and can only be utilized on or prior to December 31 of the year it is accrued. For retail associates in all states, unused PTO does partially carryover into the following year up to a cap, unless otherwise provided by state and local laws, such as California and Massachusetts. The Debtors seek authority to continue their existing PTO policy in the ordinary course of business on a post-petition basis.

97. Additionally, in the ordinary course of business, the Debtors provide eligible Employees with paid sick leave (“PSL”). The PSL benefit year runs from January 1 to December 31. Employees who work for the Debtors for at least eighty hours in a calendar year are eligible for paid sick leave under the PSL policy. Regular full-time employees will receive up to fifty-six hours of PSL per calendar year (as accrued and unused “Accrued PSL”). Unused PSL

does not carry over from year to year and can only be utilized on or prior to December 31 of the year it is accrued. The Debtors seek authority to continue their existing PSL policy in the ordinary course of business on a post-petition basis.

98. As of the Petition Date, the Debtors estimate that, in total, the value of all accrued and unpaid prepetition Accrued Vacation and Accrued PSL for all Employees is approximately \$750,000.00. Of this amount, the Debtors may be required pursuant to applicable employment law to pay up to \$160,000.00 for Accrued PSL and Accrued Vacation as a result of the termination of Employees. The Debtors request that they be authorized to honor prepetition Accrued Vacation and Accrued PSL that may be required to be paid upon termination of certain Employees, and continue to honor all post-petition Accrued Vacation and Accrued PSL as it comes due in the ordinary course.

Payroll Taxes and Withholding Obligations

99. Each pay period, the Debtors deduct certain amounts directly from Employees' pay, including, but not limited to: (i) garnishments, child support, service charges and other similar deductions as applicable; and (ii) other pre- and after-tax deductions payable pursuant to certain of the Employees Obligations, legally-ordered deductions and other miscellaneous deductions (collectively, the "Deductions").

100. Based upon the Employees' salaries and wages, the Debtors also are required by law to withhold amounts related to federal, state and local income taxes, as well as Social Security and Medicare, and to remit such withholdings to the applicable authorities. The Debtors are additionally required to make matching payments from their own funds for Social Security and Medicare and to pay, based on a percentage of gross payroll, state and federal unemployment insurance, employment training taxes and state disability insurance contributions

(all of the foregoing, collectively, the “Payroll Tax Obligations”). Each pay cycle, the Debtors withhold applicable Payroll Tax Obligations from Employees’ wages, and remit such amounts to the applicable authorities.

101. The Debtors estimate that, as of the Petition Date, they have *de minimis* prepetition Deductions and Payroll Tax Obligations (collectively, the “Withholding Obligations”) required to be remitted to the appropriate third-party recipients. The Debtors seek authorization, but not direction, to pay and remit the Withholding Obligations to the appropriate authorities consistent with the Debtors’ prepetition practices.

Health and Wellness Benefits

102. The Debtors have a medical benefit plan for eligible Employees, administered by Aetna.⁷ Additionally, the Debtors provide eligible US Employees with access to dental and vision coverage through Empire Blue Cross Blue Shield and VSP, respectively (collectively, the “Benefit Plans”). The Debtors contribute a portion of the monthly premiums on the Employees’ behalf for the Benefit Plans. The Debtors estimate that the total amount for monthly payments for benefit premiums is approximately \$200,000.00. As of the Petition Date, I understand the Debtors owe approximately \$32,000.00 for pre-petition Benefit Plan premiums. The Debtors seek authority, but not direction, to continue the Benefit Plans with respect to all Employees, including those that have been furloughed, and to honor all Benefit Plan contributions that arose prepetition and any amounts that become due in the ordinary course.

103. The Debtors also provide basic life and short-term disability insurance (“Life Insurance”) for eligible Employees. Life Insurance is administered by Cigna. The Debtors’ current total monthly cost in connection with Life Insurance is approximately

⁷ The Debtors also offer to California-based Employees additional medical benefits plans administered by Kaiser Permanente and offer Canada-based Employees medical benefits plans administered by Great West.

\$13,000.00. As of the Petition Date, I believe that no amounts are outstanding for Life Insurance premiums attributable to the prepetition period.

401(k) Savings Plan

104. The Debtors also offer to eligible US Employees participation in a 401(k) savings plan administered by Fidelity Investments. The Debtors match 50% of the first 6% in eligible compensation deferred by an Employee to his/her 401(k) plan. Employee contributions are 100% vested after five years of service, at 20% per year. The Debtors estimate that total monthly amount of Debtor contributions to Employee 401(k) plans prior to the COVID-19 pandemic totaled approximately \$30,500.00. Currently, that amount is approximately \$5,200.00. Additionally, the Debtors incur on a quarterly basis approximately \$6,500.00 in administrative fees in order to maintain the 401(k) plans. As of the Petition Date, I understand that approximately \$4,500.00 for prepetition 401(k) administration fees has accrued that will become due in June. I do not believe that the Debtors owe any monies for prepetition contributions as of the Petition Date.⁸

105. The Debtors seek authority, but not direction, to honor all payments and contributions for the 401(k) plans that arose prepetition, and honor any amounts that become due in the ordinary course.

Miscellaneous Benefits

106. The Debtors also offer several other miscellaneous benefits to certain eligible Employees. These miscellaneous benefits include, but are not limited to (a) a long-term disability program, (b) an employee assistance program, (c) accidental death and dismemberment

⁸ The Debtors also offer to Canada-based Employees a retirement plan administered by Manulife, to which Debtor contributions are *de minimis*.

insurance,⁹ (d) tuition reimbursement, (e) pet insurance (f) flexible spending account, (g) employee discounts on clothing, and (h) commuter benefits. Most of these plans are fully paid by employees via payroll deductions, with Debtors collecting and forwarding premiums to the providers. I believe that honoring these miscellaneous benefits will help boost Employee morale and confidence in Debtors, and maintain the current workforce. The obligations owed to the Employees with respect to these miscellaneous benefits are *de minimis*, and the Debtors request authority to continue to honor these miscellaneous benefits in the ordinary course.

107. For the foregoing reason, I believe granting the Motion is in the best interest of the Debtors, their estates and creditors and parties in interest.

G. Debtors' Motion Pursuant to Sections 105(a), 363(b), 363(c) and 1107(a) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004(h) for Interim and Final Orders Authorizing Debtors to (A) Continue Insurance Policies and Agreements Relating Thereto, (B) Honor Certain Prepetition Obligations in Respect Thereof, and (C) Renew, Revise, Extend, Supplement, Change or Enter Into New Insurance Coverage as Needed in their Business Judgment

108. By the Motion, the Debtors seek authority, but not direction, to (i) maintain existing Insurance Policies (as defined below) and to pay on an uninterrupted basis all premiums, Brokerage Fees (as defined below), deductibles and administration fees (collectively, the "Insurance Obligations") arising thereunder or in connection therewith, including any Insurance Obligations for prepetition periods; and (ii) renew, revise, extend, supplement, change or enter into new insurance policies as needed in their business judgment without further order of the Court.

⁹ The Debtors fund accidental death and dismemberment obligations. Such obligations are funded at the same time as ordinary payroll, and the total monthly cost to the Debtors is *de minimis*. The Debtors request authority to honor all accidental death and dismemberment obligations in the ordinary course of business, regardless as to whether such obligations arose before, on or after the Petition Date.

109. The Debtors also request that the Court: (a) authorize and direct any and all banks with which the Debtors maintain accounts that the Debtors use to make payments related to the Insurance Policies and the Insurance Obligations to receive, process, honor and pay all checks drawn on such accounts and fund transfers for payments with respect to the Insurance Policies and the Insurance Obligations whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments; and (b) authorize the Debtors to issue new postpetition checks or effect new postpetition fund transfers on account of the Insurance Policies and the Insurance Obligations, and to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

110. Finally, the Debtors request that the Court waive the 14-day stay of effectiveness of the order granting the Motion, and direct that the relief granted be effective immediately.

Insurance Policies

111. In the ordinary course of their business operations, the Debtors maintain insurance policies providing coverage for general liability, property, workers' compensation liability, automobile, management, directors and officers, fiduciary, employment practices liability, professional liability, marine cargo, international general liability, and cyber liability (collectively, the "Insurance Policies"). The total annual premiums for the Insurance Policies are approximately \$1,003,000.00. Approximately \$522,000.00 of the insurance premium cost is payable in the 21 days following the Petition Date. The Debtors have obtained the Insurance Policies through third-party insurance carriers (collectively, the "Insurance Carriers").

112. I believe that the Insurance Policies are essential to preserving the value of the Debtors' business, property and assets. Much of the coverage provided by the Insurance

Policies is required by regulations, laws and contracts that govern the Debtors' commercial activities. Furthermore, section 1112(b)(4)(C) of the Bankruptcy Code provides that "failure to maintain appropriate insurance that poses a risk to the estate or to the public" is "cause" for mandatory conversion or dismissal.

Brokerage Fees

113. CAC Specialty serves as the Debtors' management broker (the "Management Broker") and assists the Debtors with policies related to directors and officers, management liability, employment practices, fiduciary, and crime liability, the periods of which terminate on September 30, 2020 (the "Management Policies"). Marsh USA Inc. (the "General Broker") and together with the Management Broker, the "Brokers") serves as the Debtors' general insurance broker in acquiring the remainder of the Debtors' policies (the "General Policies"), the periods of which terminate on April 30, 2021. The Brokers aid the Debtors in negotiations with the Debtors' insurers and assist the Debtors in pricing and obtaining the insurance coverage necessary to operate their business in a responsible and prudent manner and in accordance with applicable legal requirements, while optimizing pricing and savings in procuring the policies. I believe that it is in the best interests of the Debtors' creditors and estates that the Debtors continue their relationship with the Brokers.

114. The Debtors pay brokerage fees to the Brokers (the "Brokerage Fees") which are included in the insurance premium calculations and which the Brokers deduct upon receipt of Debtors' payment of insurance premiums prior to remitting Debtors' payments to the Insurance Carriers. The General Policies' periods ended April 30, 2020, and were renewed through April 30, 2021, at an annual insurance premium cost of \$690,000.00, including Brokerage Fees of approximately \$103,000.00. Approximately \$80,000.00 in Brokerage Fees is

payable to the General Broker in the 21 days following the Petition Date. Brokerage Fees have already been paid to the Management Broker as it collects its fees upon the extension and update of those particular policies pursuant to the policy terms. The Management Policies all have periods ending on September 30, 2020.

115. The Debtors request authority to pay, in their discretion, any Brokerage Fees or other amounts owed to the Brokers for periods prior to the Petition Date, as the Debtors' failure to pay such amounts could result in a loss of the Brokers' assistance in maintaining the Debtors' beneficial business relationships with their insurance carriers.

116. For the foregoing reasons, I believe granting the Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest.

H. Debtor's Motion for Entry of Interim and Final Orders Authorizing, but not Directing, the Debtor to Pay Certain Taxes

117. By the Motion, the Debtors are requesting entry of an order (a) authorizing, but not directing, the Debtors to pay outstanding Sales and Use Taxes (as defined below), and (b) scheduling a final hearing (the "Final Hearing") to consider entry of the Proposed Final Order; *provided, however*, that, in the event that no objections to entry of the Proposed Final Order are timely received, the Debtors request that the Court enter the Proposed Final Order without need for the Final Hearing.

118. In the ordinary course of business, the Debtors collect and remit to certain taxing authorities (the "Authorities") a variety of sales taxes, local gross receipts, and other similar taxes in connection with the sale of merchandise to its customers (collectively, the "Sales Taxes"). The Debtors also incur and pay a variety of use taxes (the "Use Taxes" and, together with the Sales Taxes, the "Sales and Use Taxes"). The Debtors incur liability for Use Taxes when (i) the Debtors purchase taxable fixed assets without sales tax and (ii) the Debtors purchase

taxable supplies or services without sales tax. Purchases without sales tax often occur when property or services are purchased from vendors that have no nexus to the resident state of the Debtor. Such vendors are not obligated to charge or remit sales taxes for sales to parties outside the state of the vendor's operations. Nevertheless, purchasers, such as the Debtors, are obligated to self-assess and pay Use Taxes, when applicable, to the states in which the purchasers operate. Jurisdictions differ with regard to frequency of payments of Use Taxes, with payments ranging from monthly to quarterly to annually.

119. The Debtors estimate that the aggregate amount of Sales and Use Taxes owing to the Authorities as of the Petition Date is as much as \$200,000, all of which may become due and owing within 21 days following the Petition Date. The Debtors request authority to pay any Sales and Use Tax amounts that are past due or due within the first 21 days of this chapter 11 case, and to pay postpetition Sales and Use Taxes that become due in the ordinary course of business.

120. For the foregoing reasons, I believe granting the Taxes Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest.

I. Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to Honor and Continue Certain Customer Programs, (II) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto, and (III) Granting Related Relief

121. By the Motion, the Debtors are requesting the entry of an order (i) authorizing, but not directing, the Debtors, in their business judgment and sole discretion, to honor and continue their Customer Programs consistent with past practices; (ii) authorizing banks to honor and process check and electronic transfer requests related to the foregoing; and (iii) granting related relief.

122. Prior to the Petition Date and in the ordinary course of business, the Debtors provided customers with certain Customer Programs that engender goodwill, maintain loyalty, increase the Debtors' sales opportunities, and allow the Debtors a comparative advantage over their competition. Specifically, the Customer Programs include gift cards, refunds, and other offers or accommodations the Debtors, in their business judgment, provide to their customers.

123. I believe that the Debtors' ability to continue certain of the Customer Programs and to honor their obligations thereunder in the ordinary course of business is necessary to (i) retain their reputation for reliability, (ii) meet competitive market pressures, (iii) maintain positive customer relationships, and (iv) ensure customer satisfaction, thereby retaining current customers, attracting new ones, and, ultimately, enhancing revenue and profitability for the benefit of all the Debtors' stakeholders. Failing to promptly honor these obligations would impair goodwill and would likely lead to the loss of customer patronage. In contrast, continuing the Customer Programs will enable the Debtors to protect their customer base and revenue growth opportunities. In short, the Debtors' positive relationships with their customers foster customer loyalty, support and goodwill which are critical to the success of these chapter 11 cases. Consequently, the Debtors seek the authority to maintain and administer the Customer Programs, which are described in greater detail below, in the ordinary course of business.

Gift Cards

124. The Debtors maintain a gift cards program pursuant to which their customers can purchase physical, pre-paid, non-expiring gift cards in various denominations (the

“Gift Cards”). The Gift Cards can be redeemed for merchandise. The Debtors sell the Gift Cards to their customers in their retail stores.

125. The Debtors estimate that as of the Petition Date, approximately \$928,000.00 in issued Gift Cards are outstanding, and the redemption rate of the Gift Cards fluctuates depending on a given month or season. The Debtors seek authority, but not direction, to continue to honor the Gift Cards in the ordinary course of business during the pendency of these chapter 11 cases, whether purchased before, on or after the Petition Date.

Refund Program

126. The Debtors seek to continue to honor their refund program (the “Refund Program”). The Debtors have a fourteen day merchandise return policy for either defective merchandise or original merchandise that returned in unused condition and in its original packaging, subject to certain conditions. Certain items, such as those marked “Final Sale,” are not eligible to be returned. The Debtors generally honor reasonable customer requests for refunds for purchases older than fourteen days old and for items marked “Final Sale”, based on the discretion of its sales managers and customer service associates and contingent on the merchandise being in unused condition or subject to manufacturing defects that rendered it unsatisfactory. Refunds will be credited in the same form as the original payment method.

127. The Refund Program is critical to maintaining the goodwill of the Debtors’ customer base. Without the Refund Program, current and potential customers may be unwilling to shop with the Debtors, which could lead to a potentially significant decline in revenues to the detriment of the Debtors’ estates. Accordingly, the Debtors seek authorization to continue honoring their prepetition and postpetition obligations in connection with the Refund Program in a manner consistent with their past practices.

Sales Promotions

128. In the ordinary course of business, the Debtors occasionally conduct sales promotions, both online and at selected stores (the “Sales Promotions”). The Sale Promotions include clearance discounts, seasonal discounts and other promotions. Importantly, the Sales Promotions involve no cash outlay. By the Motion, the Debtors seek authorization, but not direction, to honor the Sales Promotions in a manner consistent with their past practices and to honor all customer obligations related thereto in the ordinary course of business.

Credit Card and Other Payment Processors

129. In addition to cash, the Debtors accept several other methods of payment from customers at their point of sale, including, but not limited to, (i) credit cards, (ii) Gift Cards, and (iii) checks. For all methods of payment (other than cash), the Debtors receive the net customer sales less any chargebacks, returns and processing fees charged by the credit card companies or other third-party payment processors (collectively, the “Payment Processors”). The processing fees charged by each Payment Processor vary, but are typical of those charged in the industry.

130. Maintaining use of the credit cards and other payment mechanisms is essential to the continuing operation of the Debtors’ business because a significant amount of the Debtors’ sales are made using non-cash payment methods. Any disruption in the Debtors’ ability to process and receive payment on account of credit card sales would have a devastating impact on the Debtors’ business and could threaten the Debtors’ ability to survive in chapter 11. Thus, it is vitally important that the credit card companies and any third-party administrators have assurance that they will not face any additional potential liability to customers or other third parties as a result of these chapter 11 cases. Thus, by the Motion, the Debtors request authority,

in their sole discretion, to allow the Payment Processors to continue to process the customer payments, including deducting chargebacks, returns, and third-party or credit card processing fees in the ordinary course of business.

131. For the foregoing reasons, I believe granting the Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest.

J. Debtors' Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, And 507, (I) Authorizing the Debtors to Obtain Secured Priming Post-Petition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief

132. By the Motion, the Debtors seek entry of an order providing the following relief:

- a. Authorizing John Varvatos Enterprises, Inc., and John Varvatos Apparel Corp. (collectively, the "DIP Borrowers") and Lion/Hendrix Corp. (the "DIP Guarantor" and, together with the DIP Borrowers, the "DIP Loan Parties") to obtain debtor-in-possession credit financing in an aggregate principal amount of up to \$20,500,000 million (the "DIP Financing") to be funded by the Prepetition Noteholder (in its capacity as lender under the DIP Facility, the "DIP Lender") under a credit facility (the "DIP Facility") subject to the terms, conditions, and limitations set forth herein and in the documentation regarding the DIP Facility (the commitments thereunder, the "DIP Commitments", and the term loans thereunder the "DIP Loans"), which shall include (a) the refinancing of \$13,666,666.66 million of the outstanding Prepetition Notes Secured Obligations into obligations under the DIP Facility (the "Prepetition Refinancing") and (b) funding of those certain expenditures set forth in the Approved Budget;
- b. authorizing the DIP Loan Parties, in connection with the DIP Facility, to (A) execute and enter into the Secured Priming Delayed Draw Term Loan Debtor-in-Possession Credit Agreement, among the DIP Loan Parties, the DIP Lender in its capacity as such, and Lion/Hendrix Cayman Limited, solely in its capacity as agent under the DIP Facility (the "DIP Agent", and together with the DIP Lender, the "DIP Secured Parties"), substantially in the form attached as Exhibit A to the proposed Interim Order (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the "DIP Credit Agreement" and, together with the schedules and exhibits attached thereto and all agreements, documents, instruments and amendments executed and delivered in connection therewith, including the Approved Budget, the

“DIP Documents”) and (B) to perform all such other and further acts as may be required in connection with the DIP Documents;

- c. authorizing for the Debtors to execute and deliver the DIP Credit Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;
- d. granting to the DIP Agent, for the benefit of the DIP Secured Parties, valid, enforceable, non-avoidable and automatically and fully perfected liens and security interests, subject only to the (a) the Carve-Out, (b) Prepetition Credit Agreement Adequate Protection Liens, (c) Prepetition Credit Agreement Liens and (d) other valid, enforceable and non-avoidable liens that are (i) in existence on the Petition Date, (ii) either perfected as of the Petition Date or perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (iii) senior in priority to the Prepetition Liens granted the Prepetition Notes Secured Parties under and in connection with the Prepetition Notes in accordance with applicable law (such liens, the “Permitted Prior Liens”), to secure the DIP Obligations, which liens and security interests shall have the rankings and priorities set forth herein;
- e. granting superpriority administrative claims to the DIP Secured Parties payable from, and having recourse to, all prepetition and post-petition property of the DIP Loan Parties’ estates and all proceeds thereof (other than Avoidance Actions, but, subject to entry of the Final Order, including Avoidance Proceeds), subject to (a) the Carve-Out, (b) Prepetition Credit Agreement Adequate Protection Obligations, (c) Prepetition Credit Agreement Obligations and (d) Permitted Prior Liens;
- f. authorizing the DIP Loan Parties (A) upon entry of this Interim Order, to incur in a single draw (or as otherwise agreed by the DIP Secured Parties) on the date of execution of the DIP Credit Agreement (the “Closing Date”), DIP Loans in an aggregate principal amount of up to \$10.25 million (the “Initial DIP Loans”) (the incurrence of such loans upon entry of this Interim Order, the “Interim Financing”) and (B) upon entry of the final order (the “Final Order”), to incur in a single draw (or as otherwise agreed by the DIP Secured Parties) additional DIP Loans in an aggregate principal amount of \$10.25 million, in each case subject to the terms and conditions set forth in the DIP Documents, this Interim Order and the Final Order;
- g. authorizing the Debtors’ use of the proceeds of the DIP Facility pursuant to the DIP Credit Agreement and the other DIP Documents, including the Approved Budget (as defined in the DIP Credit Agreement);
- h. authorizing the Debtors to continue to use the Cash Collateral (subject to the Approved Budget) and all other Prepetition Collateral, and the granting of Adequate Protection to (a) the Prepetition Credit Agreement Secured Parties and (b) the Prepetition Noteholder, in each case, with respect to, inter alia, such use of their Cash Collateral to the extent of diminution in the value of the Prepetition Collateral (including Cash Collateral);
- i. approving certain stipulations by the Debtors with respect to the Prepetition Debt Documents and the Prepetition Collateral as set forth in the Interim Order and Final Order;

- j. modifying the automatic stay as set forth herein and the DIP Documents, to the extent necessary, to implement and effectuate the foregoing and the other terms and provisions of the DIP Documents, the Interim Order and Final Order;
- k. subject to entry of the Final Order, (a) waiving any right to surcharge against the DIP Collateral or Prepetition Collateral, including pursuant to section 506(c) of the Bankruptcy Code or otherwise, (b) providing that the Prepetition Secured Parties are not subject to the “equities of the case” exception contained in section 552(b) of the Bankruptcy Code and (c) providing that the Prepetition Secured Parties are not subject to the equitable doctrine of “marshaling,” or any other similar doctrine with respect to the DIP Collateral or Prepetition Collateral;
- l. scheduling the Final Hearing to be held within 30 days after the Petition Date, to consider entry of the Final Order approving the DIP Facility and use of Cash Collateral, as set forth in the Motion and the DIP Documents; and
- m. granting related relief.

133. The Debtors seek postpetition use of Cash Collateral from the Prepetition Credit Agreement Secured Parties and Prepetition Noteholder, and access to postpetition financing on a superpriority basis from the DIP Lender. In the ordinary course of business, the Debtors require cash on hand and cash flow from their operations to fund their liquidity needs and operate their businesses. In addition, the Debtors require access to sufficient liquidity to fund these chapter 11 cases while working towards a successful sale transaction. Particularly in light of the current COVID-19 pandemic, and as described in greater detail herein, postpetition financing is necessary in order for the Debtors to have access to sufficient liquidity to maintain ongoing day-to-day operations, ensure proper servicing of customers post-petition and fund working capital needs.

134. The DIP Financing also serves a larger purpose for the Debtors. The additional standby liquidity made available under the DIP Financing signals to the Debtors’ vendors, suppliers, customers and employees that the Debtors will continue to meet their commitments during these chapter 11 cases. Moreover, I believe the DIP Financing is in the best

interest of the estates because it is the Debtors' best financing option and will allow the Debtors to maximize value for their estates.

135. If the Debtors are unable to gain access to the DIP Financing, the proposed path to a successful going concern sale of the Debtors' assets would be blocked and the Debtors' value as a whole would be materially and irreparably harmed. Absent the liquidity provided by the DIP Financing and use of Cash Collateral, the Debtors would, among other things, be unable to pay vendors and suppliers resulting in a cessation of their business operations. The relief requested by the Motion is a necessary step to both preserving the Debtors' operations as well as a bridge to a sale transaction that maximizes value for the Debtors' estates and all of their stakeholders. On this record, and as the Debtors are prepared to demonstrate at the hearing on the Motion, the relief requested herein represents a sound exercise of business judgment and should be approved.

Prepetition Credit Agreement Obligations

136. The Debtors are party to that certain Credit Agreement, dated as of the April 22, 2019 (as amended, supplemented or modified, the "Prepetition Credit Agreement") by and among the Debtors, Wells Fargo Bank, N.A. as the administrative agent (in such capacity, the "Prepetition Credit Agreement Agent") and the various lenders party thereto from time to time (the "Prepetition Credit Agreement Lenders" and, together with the Prepetition Credit Agreement Agent, the "Prepetition Credit Agreement Secured Parties"), pursuant to which the Prepetition Credit Agreement Lenders provided revolving credit loans in an amount not to exceed \$20,000,000.00 and other financial accommodations to the Debtors.

137. The Debtors secured their obligations under the Prepetition Credit Agreement by granting the Prepetition Credit Agreement Agent, for the benefit of the prepetition Credit Agreement Secured Parties, first-priority liens on substantially all of their assets.

138. As of the Petition Date, there is approximately \$19,450,000 outstanding under the Prepetition Credit Agreement Documents.

Prepetition Notes Obligations

139. In addition to the Prepetition Credit Agreement, the Debtors are party to that certain (a) Second Amended and Restated Tranche A Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on December 18, 2015, as amended, amended and restated, supplemented or otherwise modified, the “Tranche A Prepetition Note”), (b) Second Amended and Restated Tranche B Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on December 18, 2015, as amended, amended and restated, supplemented or modified, the “Tranche B Prepetition Note”), (c) Second Amended and Restated Tranche C Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on March 30, 2016, as amended, amended and restated, supplemented, or modified, the “Tranche C Prepetition Note”), (d) Third Amended and Restated Tranche C-1 Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (originally entered into on March 3, 2017, as amended, amended and restated, supplemented, or modified, the “Tranche C-1 Prepetition Note”) and (e) Tranche D Joint and Several Secured Non-Negotiable Promissory Note, dated as of February 5, 2020 (as amended, amended and restated, supplemented, or modified, the “Tranche D Prepetition Note” and, together with the notes described in clauses (a) through (d) above, collectively, the “Prepetition Notes”), each made by the Debtors as borrowers

or guarantors in favor of Lion/Hendrix Cayman Limited, as payee (in such capacity and in its capacity as agent under the Amended and Restated Security Agreement, dated as of February 5, 2020 (the “Prepetition Notes Security Agreement”, the “Prepetition Noteholder”). Pursuant to the Prepetition Notes, the Prepetition Noteholder provided loans and other financial accommodations to the Prepetition Note Obligors.

140. The Debtors secured their obligations under the Prepetition Notes by granting the Prepetition Noteholder liens on substantially all of their assets, which liens were subordinated to the liens of the Prepetition Credit Agreement Secured Parties.

141. As of the Petition Date, there is approximately \$94,779,483.29 outstanding under the Prepetition Notes.

Other Secured Debt

142. In addition to the Prepetition Credit Facility and the Subordinated Note, the Debtors have entered into minimal other secured debt.

General Unsecured Obligations

143. As of the Petition Date, the Debtors estimate that their unsecured debt aggregates approximately \$26.1 million, comprising primarily trade debt and lease obligations. In the ordinary course of operating their businesses, the Debtors purchase goods and services from hundreds of trade creditors. As of the Petition Date, the Debtors estimate that they owe approximately \$6.8 million to third-party trade creditors.

144. Accordingly, I believe that granting the relief requested in the DIP Financing Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest.

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

Dated: May 6, 2020
New York, NY

/s/ Joseph Zorda
Joseph Zorda