



1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that that the relief requested is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and it appearing that such relief is necessary to avoid immediate and irreparable harm meaning that the requirements of Rule 6003 of the Federal Rules of Bankruptcy Procedure have been satisfied; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation and sufficient cause appearing therefor; it is hereby ORDERED that:

1. The Motion is GRANTED to the extent provided herein.
2. The Debtors are authorized, but not directed, in their sole discretion and in the reasonable exercise of their business judgment, to (a) pay certain prepetition Critical Vendors Claims, in an amount not to exceed \$1.25 million (the "Total Cap"), including an amount not to exceed \$820,000 on an interim basis (the "Interim Cap"), with the remaining amount of the Total Cap to be authorized pursuant to further order of this court, (b) honor prepetition Advanced Payments that have not cleared as of the Petition Date and (c) make postpetition Advanced Payments, subject to the conditions set forth in this interim order (the "Interim Order").
3. The Debtors shall first apply all payments to Critical Vendors to the Critical Vendor's claims, if any, for goods received by the Debtors within 20 days prior to the Petition Date.
4. The Debtors shall undertake all appropriate efforts in the exercise of their sound business judgment to cause each Critical Vendor to enter into an agreement with the Debtors (the "Trade Agreement"), including, but not limited to, the following terms:

(a) The amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical Vendor and the Debtors (but such amount shall be used only for purposes of the Interim Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);

(b) The Critical Vendor's agreement to be bound by the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), which were favorable to the Debtors and in effect between such Critical Vendor and the Debtors on a historical basis for the period within one-hundred twenty (120) days of the Petition Date, or such other trade terms as mutually agreed to by the Debtors and such Critical Vendor;

(c) The Critical Vendor's agreement to provide goods and/or services to the Debtors based upon Customary Trade Terms, and the Debtors' agreement to pay the Critical Vendor in accordance with such terms;

(d) The Critical Vendor's acknowledgment that it has reviewed the terms and provisions of this Interim Order and consents to be bound thereby;

(e) The Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and

(f) The Critical Vendor's agreement that it has received payment of a prepetition claim but if it subsequently refuses to supply goods and/or services to the Debtors on Customary Trade Terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding postpetition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtors any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding, without the right of setoff or reclamation.

5. The Debtors may, in their sole discretion, send such letters and enter into Trade Agreements with the Critical Vendors to the extent that the Debtors determine, in their discretion, that such an agreement is necessary to their postpetition operations. For those Critical Vendors who have agreed to provide goods and/or services to the Debtors on terms different from their Customary Trade Terms, the Debtors may seek written acknowledgment of such terms

on a case-by-case basis, which, for the avoidance of doubt, shall be treated as a Trade Agreement for purposes of this Interim Order.

6. The Debtors may also, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Interim Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor has breached the terms and provisions of the Trade Agreement.

7. To the extent any Critical Vendor accepts payment on account of a Critical Vendor Claim pursuant to the terms and conditions of a Trade Agreement and thereafter a Trade Agreement is terminated as set forth above, the Debtors reserve the right to seek to damages arising out of such termination, including to recover as an unauthorized transfer any post-petition transfers made to such Critical Vendor. It is the express intention of this Court to return the parties to the status quo in effect as of the date of entry of this Interim Order with respect to all prepetition claims if a Trade Agreement is terminated.

8. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including any avoidance action, that may be held by the Debtors.

9. The Debtors' banks shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay the Critical Vendor Claims and honor Advanced Payments, whenever issued or made, provided that sufficient funds are available in the applicable accounts to make the payments.

10. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed: (a) as an admission as to

the validity of any claim or lien against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim or lien; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor or on account of an Advanced Payment.

11. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief in the Motion is necessary to avoid immediate and irreparable harm.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

14. The final hearing (the "Final Hearing") on the Motion shall be held before this Court on March 6, 2017, at 11:00 a.m. (ET) before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge at the United States Bankruptcy Court, District of Delaware, located at 824 Market Street North, Wilmington, Delaware 19801. The Debtors shall, within three (3) business days of the entry of this Interim Order, serve (A) the U.S. Trustee; (B) counsel to the DIP Agent, the DIP Lenders, and the Prepetition ABL Agent; (C) holders of the 30 largest unsecured claims on a consolidated basis against the Debtors; (D) counsel for the Prepetition Term Agent and Prepetition Term Lenders; and (E) any other party that files a request for notices with the Court as of the date of such service, a copy of the Interim Order and a notice of the Final Hearing to consider entry of the Final Order.

15. If no objections to the relief sought in the Motion are filed and served in accordance with this Interim Order, no Final Hearing shall be held, and a separate Final Order may be presented by the Debtors and entered by this Court upon certification of counsel by the Debtors.

16. Any party in interest objecting to the relief sought in the Motion shall submit any such objection in writing and file same with this Court and serve such objection so as to be received no later than February 27, 2017 at 4:00 p.m. (ET) on (A) the U.S. Trustee; (B) proposed counsel for the Debtors; and (C) proposed counsel to any official committee of unsecured creditors appointed in the above-captioned cases.

Dated: Wilmington, Delaware  
February 7, 2017

  
LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE