IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

In re:	§	Chapter 11
	§	
CAPITOL LAKES, INC.,[1]	§	Case No. 16-10158
	§	
Debtor.	§	Hon. Robert D. Martin

MOTION OF DEBTOR, PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b), FOR AN ORDER AUTHORIZING PAYMENT OF PREPETITION (I) WAGES, SALARIES AND OTHER COMPENSATION OF EMPLOYEES, (II) EMPLOYEE MEDICAL AND SIMILAR BENEFITS, (III) REIMBURSABLE EMPLOYEE EXPENSES, AND (IV) OTHER MISCELLANEOUS EMPLOYEE EXPENSES AND BENEFITS

Capitol Lakes, Inc., the above-captioned debtor and debtor in possession (the "Debtor"), by and through its undersigned proposed attorneys, hereby moves (the "Motion"), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), for an order authorizing payment of prepetition (i) wages, salaries and other compensation of employees, (ii) employee medical and similar benefits, (iii) reimbursable employee expenses, and (iv) other miscellaneous employee expenses and benefits. In support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the General Order of Reference from the United States District Court for the Western District of Wisconsin, dated June 12, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

[1] The debtor in this chapter 11 case, along with the last four (4) digits of its taxpayer identification number, is: Capitol Lakes, Inc. (2320). The mailing address of the debtor, solely for purposes of notices and communications, is: 333 W. Main Street, Madison, WI 53703.

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 105(a) and 363(b).

BACKGROUND

4. On January 20, 2016 (the "Petition Date"), the Debtor commenced its case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtor remains in possession of its assets and continues to operate and manage its businesses as a debtor in possession pursuant to Bankruptcy Code sections 1107 and 1108.

6. No trustee, examiner or committee of creditors has been appointed in this case.

7. The factual background regarding the Debtor, including its current and historical business operations and the events precipitating this chapter 11 filing, is set forth in detail in the *Declaration of Tim Conroy in Support of Chapter 11 Petition and First Day Motions of Capitol Lakes, Inc.* (the "Conroy Declaration"), filed contemporaneously herewith and incorporated herein by reference.

The Debtor's Employees

8. The Debtor employs approximately 292 employees, of which 33 employees are full-time salaried, 64 employees are full-time hourly, and 195 employees are part-time hourly (collectively, the "Employees"). None of the Employees are subject to a collective bargaining agreement.

9. Of the Employees, approximately 279 employees work at the Debtor's facilities – 31 of these Employees are full-time salaried, 60 are full-time hourly, and 188 are part-time hourly.

10. As more fully set forth in the Conroy Declaration, the Debtor is a member of Senior Housing of Middleton, Inc. and Middleton Glen, Inc., two Wisconsin nonstock nonprofit

corporations (the "Middleton Glen Owners"), that own and operate Middleton Glen, a continuing care retirement community located in Middleton, Wisconsin ("Middleton Glen"). Pursuant to the Management Services Agreement, dated December 1, 2009, between the Middleton Glen Owners and Pacific Retirement Services, Inc. ("PRS"), the Debtor's sole member, the Debtor provides Middleton Glen with a staff of 13 employees. Middleton Glen, in turn, reimburses the Debtor for those employees' services. Accordingly, the remaining 13 Employees are employed at Middleton Glen. Of the Employees working at Middleton Glen, 2 are full-time salaried, 4 are full-time hourly, and 7 are part-time hourly.

11. Prior to the Petition Date and in the ordinary course of the Debtor's business, the Debtor provided compensation, reimbursement of business expenses, employee benefits, and other miscellaneous consideration to the Employees.

12. In addition to the Employees, pursuant to a Management and Support Services Agreement dated as of March 18, 2014 (as amended, the "PRS Management Agreement") between PRS and the Debtor, the Executive Director and the Health Care Administrator that work at the Debtor's facilities (together the "PRS Employees") are employed by PRS Management, Inc. ("PRSMI"), an Oregon corporation and wholly-owned subsidiary of PRS, which, for tax purposes, employs substantially all of the employees that provide services to or on behalf of PRS. Pursuant to the PRS Management Agreement, Capitol Lakes reimburses PRSMI for all compensation paid to the PRS Employees, including, but not limited to, salaries, fringe benefits, retirement plan funding, payroll taxes, and unemployment and workers, compensation insurance, except for certain reimbursable business expenses, which the Debtor pays directly to the PRS Employee. As of the Petition Date, the amount of the Debtor's bi-weekly reimbursements to PRSMI for the PRS Employees is $11,324.39 for a two week period.

13. The Employees (including the PRS Employees) are the lifeblood of the Debtor's business. The Debtor relies upon the expertise of its senior executives to provide the strategic and operational direction of the company's daily activities. The execution of the Debtor's senior executives' strategies and directives are carried out by senior managers, the executive director and various staff at its corporate offices as well as at the individual facilities. The Debtor services seniors who are resident at its facilities. These residents rely on the Debtor's employees for day to day essentials. These Employees are therefore vital to the Debtor's ability to accomplish its strategic goals and objectives and carry out its daily operations in order to meet resident expectations for the delivery of outstanding customer service. The Employees' skills and their specialized knowledge and understanding of the Debtor's business are essential to the Debtor's continuing operations, the delivery of services to residents, and ability to successfully reorganize.

RELIEF REQUESTED

14. To maintain morale and an essential workforce during this critical juncture, the Debtor, by this Motion, seeks authority pursuant to Bankruptcy Code sections 105(a) and 363(b) to pay certain prepetition obligations of the Debtor, including, but not limited to, the following (collectively, the "Prepetition Employee Obligations"):

(i) amounts owed to Employees for wages, salaries, bonuses and other compensation (including reimbursement due to PRSMI for the PRS Employees' prepetition services);

(ii) reimbursement of employee business expenses incurred in the ordinary course, such as travel, lodging and parking expenses;

(iii) maintenance of employee health benefits, 401(k) plan, and other similar benefits; and

(iv) other miscellaneous employee expenses and benefits.

15. The Debtor seeks authority to honor the Prepetition Employee Obligations because payment of these obligations is critical and essential to the morale of the Employees and the Debtor's future business needs. If the Prepetition Employee Obligations are not honored in the ordinary course, the morale of Employees would suffer, which would adversely impact the Debtor's business. Failure to honor the Prepetition Employee Obligations could also cause Employees to endure personal hardship. This result would impair Employee morale and lead to unmanageable Employee turnover. Indeed, the Debtor will be unable to sustain operations and effectuate a successful reorganization without the ongoing goodwill of its Employees.

16. Consequently, the Debtor seeks to continue paying Prepetition Employee Obligations (as set forth below) in the ordinary course and to direct the banks at which the Debtor maintains employee-related accounts to receive, process, honor and pay all payroll and employee benefit-related checks, drafts, wires, or automated clearing house transfers, provided sufficient funds are available to honor all such payments, without regard to when the applicable payroll check was issued.[2] In addition, the Debtor requests the right to modify, change and discontinue any of the Employee wages and benefits and to implement new Employee wages and benefits in the ordinary course of business during this chapter 11 case in its sole discretion without the need for further Court approval.

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[2] Contemporaneously with this Motion, the Debtor is filing a motion seeking an order authorizing, among other relief, the continued maintenance of its bank accounts (the "<u>Cash Management Motion</u>"). To implement fully the relief sought herein, the Debtor, by the Cash Management Motion, seeks to authorize the banks at which its employee-related accounts are maintained to continue to honor checks drawn on such accounts. Additionally, contemporaneously with this Motion, the Debtor is filing a series of motions seeking orders authorizing, among other relief, the use by the Debtor of cash collateral in accordance with specified budgets (the "<u>Cash Collateral Motions</u>"). The payments of the Prepetition Employee Obligations by the Debtor to its Employees will be made as specified in the budget referred to in the Cash Collateral Motions.

Prepetition Obligations

A. Employees' Unpaid Wages, Salaries, Bonuses and Other Compensation

i. The Debtor's Payroll Obligations

17. The Debtor seeks an order authorizing the Debtor to honor all of its outstanding prepetition payroll obligations. In the ordinary course of business, the Debtor pays its Employees approximately six (6) days in arrears every two weeks. The most recent payroll was paid on January 15, 2016 and covered Employee compensation for Employees for the period December 27, 2015 through January 9, 2016. The Debtor's next scheduled payroll date is January 29, 2016, and will be for the period beginning on January 10, 2016 and ending on January 23, 2016.

18. As of the Petition Date, the Debtor estimates that approximately $240,792.93[3] in unpaid salary, wages and other compensation is owing to its Employees as of the next pay date (approximately $60,198.23 in wages is owed to the salaried Employees, approximately $69,829.95 is owed to full-time hourly Employees, and approximately $110,764.75 is owed to part-time hourly Employees). Additionally, although the majority of the Employees are paid by direct deposit, approximately 39 of the Employees are paid by manually issued checks from the Debtor's payroll account. Therefore, it is likely that some Employees may not have cashed those checks (the "Uncashed Checks") prior to the commencement of the Debtor's chapter 11 case.

19. In addition to Employee wages, as of the Petition Date, the Debtor estimates that approximately $8,850.74 is due as reimbursement to PRSMI for all compensation paid or to be paid to the PRS Employees, including, but not limited to, salaries, fringe benefits, retirement

[3] This amount includes a non-material amount associated with a Sales Incentive Program, which is intended to provide benchmark payments on account of move-in incentives for the Debtor's marketing Employees. The aggregate amount of prepetition compensation associated with the Sales Incentive Program sought pursuant to this Motion is expected to be less than $1,500.

plan funding, payroll taxes, and unemployment and workers' compensation insurance, for services provided prior to the Petition Date.

20. Given the critical role of the Employees and the PRS Employees in the Debtor's business operations, the Debtor seeks authority to honor its salary, wage and bonus obligations by paying, in the ordinary course, any prepetition amounts owed to (a) the Employees, and (b) PRSMI on account of the PRS Employees for services provided within 180 days of the Petition Date. The Debtor believes there will be no Employees (including PRS Employees) that will be owed more than the $12,475 priority limit on account of prepetition salaries or wages under Bankruptcy Code section 507(a)(4) (the "Priority Limit"), and is not seeking to pay any individual prepetition salaries or wages in excess of the Priority Limit. The Debtor also seeks authority to honor those Uncashed Checks that remain outstanding as of the Petition Date.

B. Employees' Reimbursable Business Expenses

21. Prior to the Petition Date and in the ordinary course of business, the Debtor reimbursed Employees and the PRS Employees for certain business expenses incurred in the scope of their employment, including, without limitation, expenses for business travel, such as for airfare, lodging and meals (collectively, the "Reimbursable Expenses"). All of the Reimbursable Expenses were incurred on the Debtor's behalf in connection with employment by the Debtor, or, for the PRS Employees, PRSMI, and in reliance upon the understanding that such expenses would be reimbursed.

22. The Debtor estimates that its monthly Reimbursable Expenses is approximately $15,200, which may fluctuate in any given month, and that Reimbursable Expenses which accrued prior to the Petition Date remain unpaid. Accordingly, the Debtor seeks authority to honor the Debtor's Reimbursable Expense obligations by paying, in the ordinary course, any

prepetition Reimbursable Expenses owed to its Employees (including the PRS Employees), up to an aggregate cap of $20,000.

C. Employee Benefits

23. In the ordinary course of the Debtor's business, and as is customary for most companies, the Debtor provides its Employees with various benefits (collectively, the "Employee Benefits Programs"). The Debtor seeks authority to pay and/or honor its unpaid Prepetition Employee Obligations under the Employee Benefits Programs that arose from services rendered within 180 days before the Petition Date (the "Prepetition Benefits"). The Employee Benefits Programs and corresponding unpaid Prepetition Benefits are described below:

i. Health Insurance (Medical, Prescription, Dental, and Vision)

24. The Debtor provides its Employees with medical, dental and vision insurance through third-party providers.

25. The Debtor offers medical and prescription insurance to Employees that have been employed by the Debtor for at least 60 days, working 24 or more hours per week, through a plan provided by Physicians Plus Insurance Corp., with tiered and high-deductible options. A portion of the premiums are paid by the Employees. The total medical/ prescription premium payments for insurance payable by the Debtor under the medical plan is approximately $95,829.50 per month, but may fluctuate significantly in any given month, and of which approximately $20,788.96 is funded from employee payroll deductions monthly.

26. The Debtor also offers dental insurance to Employees that have been employed by the Debtor for at least 60 days, working 24 or more hours per week, through two plans provided by American Dental Plan of Wisconsin and Delta Dental Insurance Company, respectively. A portion of the premiums are paid by the Employees. The total dental insurance premium payments payable by the Debtor is approximately $11,543.26 per month, but may fluctuate

significantly in any given month, and of which approximately $3,769.05 is funded from employee payroll deductions monthly.

27. The Debtor also provides vision insurance to Employees that have been employed by the Debtor for at least 60 days, working 24 or more hours per week, through a plan provided by Vision Service Plan. A portion of the premiums are paid by the Employees. The total vision insurance premium payments payable by the Debtor is approximately $634.86 per month on average, but may fluctuate significantly in any given month, and of which approximately $183.70 is funded from employee payroll deductions monthly.

28. The Debtor seeks authority to pay, in the ordinary course of business, any unpaid premiums relating to the foregoing medical, dental, and vision insurance that arose from services rendered within 180 days prior to the Petition Date (the "Prepetition Health Benefits").

ii. Life and AD&D Insurance

29. The Debtor provides basic life and accidental death and dismemberment (AD&D) insurance through Cigna Group Insurance to all benefit-eligible Employees at no additional cost to the Employees. The total premium paid by the Debtor for this insurance is approximately $400 per month on average, but may fluctuate significantly in any given month.

30. The Debtor seeks authority to pay, in the ordinary course of business, any outstanding unpaid premiums, deductibles, and prepetition claims relating to life and AD&D insurance that arose before the Petition Date (the "Prepetition Life & Disability Benefits").

iii. 401(k) Plan

31. The Debtor offers eligible Employees[4] an opportunity to participate in a 401(k) plan (the "Retirement Plan"), which is administered by PRS. Currently, approximately 74 active

[4] Employees are eligible to participate in the 401(k) plan for purposes of salary deferrals upon the date of hire. An Employee is eligible to participate for purposes of profit-sharing contributions and matching of deferrals when the Employee reaches age twenty-one (21) and completes one (1) year of service (serving at least 1,000 hours per year).

Employees participate in the Retirement Plan.[5] In addition to salary deferrals by the Employees, the Debtor makes a safe harbor contribution of approximately $17,000 to the Retirement Plan per month on average, which may fluctuate in any given month, with additional reconciliations paid out at the end of the plan year. The Debtor also makes a monthly profit-sharing contribution of approximately $14,271 to the Retirement Plan, which may fluctuate in any given month and, according to current policy, is accrued monthly but not paid out until the end of the plan year.[6] For the plan year ending September 30, 2015, the Debtor has outstanding unpaid safe harbor contributions of approximately $529 and outstanding unpaid profit-sharing contributions of approximately $49,941. For the plan year ending December 31, 2015, the Debtor has outstanding unpaid safe harbor contributions of approximately $203 and outstanding unpaid profit-sharing contributions of approximately $50,230. The Debtor seeks authority to pay any accrued but unpaid prepetition Retirement Plan contributions.

D. Workers' Compensation

32. PRS, on behalf of the Debtor, maintains a premium-based workers' compensation insurance plan (the "Workers' Compensation Obligations"), with combined claim payments and premiums of approximately $21,500 monthly, which fluctuates from month to month. The Debtor reimburses PRS for the Workers' Compensation Obligations on a monthly basis, along with various other reimbursements due from the Debtor to PRS. The Debtor seeks authority to pay all outstanding pre-petition Workers' Compensation Obligations and to continue paying the Workers' Compensation Obligations in the ordinary course.

[5] These amounts do not include any terminated/retired employees entitled to future benefits.

[6] The Debtor recently changed the Retirement Plan end-date from September 30 to December 31. In addition, under the Debtor's former policy, which changed in July 2015, the Debtor made profit-sharing contributions on a monthly basis for the first nine (9) months of the Retirement Plan year and then made an annual reconciliation after the end of the Retirement Plan year.

E. Payroll Taxes and Other Withheld Amounts

33. The Debtor deducts flex spending amounts, 401(k) deferrals and other miscellaneous amounts from its Employees' paychecks (collectively, the "Employee Deductions"). The Employee Deductions comprise property of the Debtor's Employees and are forwarded by the Debtor to appropriate third-party recipients at varying times.

34. The Debtor is required by law to withhold from an Employee's wages amounts related to federal, state and local income taxes, social security and Medicare taxes, garnishments, child support payments, etc. (together with the Employee Deductions, the "Payroll Taxes") and remit the same to the appropriate authorities (collectively, the "Taxing Authorities"). The Debtor's Payroll Taxes, including both the Employee and the employer portion, for a typical payroll total approximately $114,675. It is possible that funds have been deducted from Employee wages but have not yet been forwarded to the appropriate third-party recipients. Accordingly, the Debtor seeks authority to pay and/or remit such funds to the applicable Taxing Authorities. Absent such authority, the Debtor exposes its officers and directors to personal liability, which could be highly disruptive to the Debtor's reorganization efforts.

F. Paid Vacation or "Personal-Time-Off" Policy

35. The Debtor offers paid vacation or "personal time off" ("PTO") to eligible Employees (which, for purposes of this section F, shall include the PRS Employees). The rate at which Employees earn vacation PTO varies by the seniority of the individual Employee. Employees may carry over vacation PTO hours each year, but may not accumulate more than twice their annual maximum accrual. In addition, the Debtor provides its Employees with paid sick leave. All of the Debtor's personal time off policies (including its vacation and sick leave policies) are referred to collectively as the "PTO Policy."

36. The Debtor estimates that the accrued, outstanding amount of unused time under the PTO Policy, if it were payable in cash, is approximately $1,322,346.66 as of the Petition Date.[7] The Debtor seeks authorization, in its sole discretion, for the Debtor to continue honoring the PTO Policy and to continue their practice of making cash payments, in certain instances, for unused PTO that has accrued prepetition where deemed to be justified by individual employee circumstances. In addition, the Debtor seeks authorization, in its sole discretion, for the Debtor to make cash payments for unused PTO that has accrued postpetition upon the termination of an Employee to the extent that the Debtor would have done under the PTO Policy before the Petition Date.

G. Administrative Service Providers

37. The Debtor utilizes certain third-party providers to administer employee benefit plans and payroll services (the "Administrative Service Providers"). The continued support of the Administrative Service Providers is crucial to the Debtor's ability to maintain accurate and meaningful books and records, including, but not limited to, books and records reflecting the Debtor's employee benefit and payroll obligations. The Debtor estimates that the average monthly cost of these services is approximately $12,646.[8] To the extent that any such amounts remain unpaid or may be characterized as Prepetition Employee Obligations, the Debtor seeks to be authorized, but not directed, to pay such amounts.

H. Miscellaneous Employee-Related Obligations

38. The Debtor may determine that there are additional de minimis Prepetition Employee Obligations, which have not been identified in the Motion. Consequently, the Debtor

[7] Approximately $632,845.81 of this amount represents sick pay, which, pursuant to the PTO Policy, cannot be cashed out.

[8] This amount includes payments made directly by the Debtor to third-party providers, payments made by the Debtor to PRS for payroll-related services and reimbursements made by the Debtor to PRSMI for certain third-party processing fees paid by PRSMI.

requests authority to pay any such additional obligations up to an aggregate amount of $10,000 upon five business days' prior written notice to counsel to any statutory creditors' committee appointed herein, counsel to its prepetition secured lenders (or such lenders representative under the applicable loan documents), and the Office of the United States Trustee setting forth the nature and amount of the additional obligation sought to be paid. If an objection is interposed within such five-day period, and such objection is not resolved consensually, the Debtor will seek authority from this Court to make such payment. The Debtor also reserves the right to seek authority from the Court to pay any obligations in excess of the above-referenced limit.

BASIS FOR RELIEF

39. Bankruptcy Code sections 105(a) and 363(b) provide the basis for the relief requested in this Motion. Section 363(b)(1) of the Bankruptcy Code provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In addition, Bankruptcy Code section 105(a) grants bankruptcy courts broad authority to enter "any order, process or judgment that is necessary or appropriate" to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). Accordingly, the Debtor submits that this Court is authorized to grant the relief requested herein.

40. Pursuant to Bankruptcy Code sections 1107(a) and 1108, "[a] debtor in possession . . . is a fiduciary holding the bankruptcy estate and operating the business for the benefit of its creditors . . ." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Consistent with the debtor's fiduciary duties, courts have also authorized payment of prepetition obligations under Bankruptcy Code section 363(b) where a sound business purpose exists for doing so. See Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 515 (7th Cir. 1991) (internal citations omitted) (noting that a debtor may sell property outside the ordinary course of

business if it can provide an "articulated business justification"); see also Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.), 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow a contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

41. Indeed, where a debtor has shown that the payment of prepetition claims is critical to the success of its chapter 11 case, courts have authorized debtors to pay prepetition employee obligations. See, e.g., In re Grede Foundries, Inc., Case No. 09-14337 (RDM) (Bankr. W.D. Wis. July 2, 2009) (authorizing debtor to pay prepetition employee obligations under, inter alia, section 363(b)); In re Neumann Homes, Inc., Case No. 07-20412 (ERW) (Bankr. N.D. Ill. Nov. 21, 2007) (same).

42. Furthermore, Bankruptcy Code section 507(a) provides that the Prepetition Employee Obligations, subject to certain conditions, are afforded priority distribution up to $12,475. See 11 U.S.C. §§ 507(a)(4)-(5). In addition, section 507(a)(4) and 507(a)(5) priority claims are entitled to payment in full under a chapter 11 plan of reorganization. See 11 U.S.C. § 1129(a)(9)(B). Thus, because the Debtor's Employees may be entitled to a priority distribution for prepetition amounts owed, the relief requested in this Motion should primarily affect the timing of payment of employee claims rather than their treatment for distribution purposes, and should neither prejudice general unsecured creditors nor materially affect the Debtor's estate.

43. Bankruptcy Rule 6003 was amended in December 2007 to set limits on the relief that may be granted by a bankruptcy court during the initial stage of a bankruptcy case. Bankruptcy Rule 6003, as currently in effect, still provides, in pertinent part, that:

> Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the

> estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

Fed. R. Bankr. P. 6003(b) (emphasis added).

44. Application of Bankruptcy Code sections 105(a) and 363(b)(1) are warranted here. Additionally, the Debtor satisfies the "immediate and irreparable harm" standard set forth in Bankruptcy Rule 6003. Absent prompt payment of amounts owed in connection with the Prepetition Employee Obligations, it is likely that Employee morale and support will be impaired, the Debtor's business will be immediately and irreparably harmed, and the reorganization of the Debtor will be impossible.

45. The Debtor's inability to pay its outstanding Prepetition Employee Obligations will cause Employees to endure significant stress, hardship and suffering. The effect of this disruption in Employee morale will likely have negative effects on all aspects of the Debtor's business operations. Many Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation to pay their daily living expenses. Furthermore, many Employees rely on their Employee benefits, such as health insurance reimbursement, without which they would be forced to pay for or go without insurance coverage for themselves and their families. As a result, these Employees will be exposed to significant financial and health-related problems if the Debtor is not permitted to honor its unpaid Prepetition Employee Obligations.

46. In addition, amounts withheld by the Debtor from Employees' paychecks represent, in many cases, employee earnings specifically designated by Employees or, in the case of garnishments, by judicial authorities, to be deducted from Employee paychecks and paid accordingly. The failure to make these payments will result in hardship to certain Employees. The Debtor expects to be inundated with a multitude of inquiries from garnishors and other designated recipients regarding the Debtor's failure to submit, among other things, taxes, child support and alimony payments which are not the Debtor's property, but rather have been

withheld from Employee paychecks. Moreover, if the Debtor is unable to remit certain of these amounts, the Employees could face legal action and/or imprisonment.

47. The Debtor's Employees, including the PRS Employees, are an essential component of a successful reorganization. Any deterioration in employee morale and welfare at this critical time undoubtedly would have a devastating impact on the Debtor, the value of its assets and businesses, and ultimately, the Debtor's ability to reorganize. Accordingly, the relief sought herein is in the best interests of the Debtor's estate and creditors, and will allow the Debtor to continue to operate its business with minimal disruption and proceed with the important task of stabilizing its operations.

48. In other chapter 11 cases, courts in this and other jurisdictions have approved payment of prepetition claims for compensation, benefits, and expense reimbursements similar to those described herein. See, e.g., In re Cardiac Science Corp., Case No. 15-13766 (RDM) (Bankr. W.D. Wis. Oct. 23, 2015); In re Reddy Ice Holdings, Inc., Case No. 12-32349 (SGJ) (Bankr. N.D. Tex. Apr. 17, 2012); In re Erickson Retirement Communities, LLC, Case No 09-37010 (SGJ) (Bankr. N.D. Tex. Oct. 22, 2009); In re Grede Foundries, Inc., Case No. 09-14337 (RDM) (Bankr. W.D. Wis. July 2, 2009); In re Steve & Barry's Manhattan, LLC, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. July 10, 2008); In re Charys Holding Co., Inc., Case No. 08-10289 (BLS) (Bankr. D. Del. Feb. 15, 2008).

49. Additionally, for the reasons set forth above, there is ample cause for waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h) of the Federal Rules of Bankruptcy Procedure. Accordingly, to the extent the stay imposed by such rule applies, the Debtor submits that it should be waived.

NOTICE

50. Notice of this Motion has been provided to (a) the Office of the United States Trustee for the Western District of Wisconsin; (b) the Office of the Attorney General of the State of Wisconsin; (c) the Wisconsin Office of the Commissioner of Insurance; (d) each of the Debtor's twenty (20) largest unsecured creditors; (e) U.S. Bank, N.A. as trustee; (f) counsel to Santander Bank, N.A.; (g) counsel to KBC Bank N.V.; and (h) the Internal Revenue Service and state taxing authorities The Debtor submits that, in light of the nature of the relief requested, no other or further notice is necessary or required.

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CONCLUSION

WHEREFORE, based upon the foregoing, the Debtor respectfully requests that the Court enter an order granting the relief requested herein and such other relief as may be deemed just and proper.

Dated: January 21, 2016

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