

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

)	
In re:)	Chapter 11
)	
Phoenix Payment Systems, Inc.,)	Case No. 14-11848 (MFW)
)	
Debtor.)	
)	

INITIAL MONTHLY OPERATING REPORT

REQUIRED DOCUMENTS	Document Attached	Explanation Attached
12-Month Cash Flow Projection	See <u>Exhibit A</u>	Yes - See Note 1
Certificates of Insurance:		
Workers Compensation	See <u>Exhibit B</u>	
Property	See <u>Exhibit B</u>	
General Liability	See <u>Exhibit B</u>	
Vehicle	See <u>Exhibit B</u>	
Other: Umbrella, D&O, Excess liability, Theft & Crime	See <u>Exhibit B</u>	
Identify areas of self-insurance with liability caps	N/A	
Evidence of Debtor in Possession Bank Accounts		
Tax Escrow Account	N/A	
General Operating Account	See <u>Exhibit C</u>	Yes - See Note 2
Other:	See <u>Exhibit C</u>	Yes - See Note 2
Retainers Paid	See <u>Exhibit D</u>	

I declare under penalty of perjury (28 U.S.C. Section 1746) that this report and the documents attached are true and correct to the best of my knowledge and belief.

/s/ Michael E. Jacoby
Signature of Authorized Individual*

Michael E. Jacoby
Printed Name of Authorized Individual

August 18, 2014
Date

Chief Restructuring Officer
Title of Authorized Individual

*Authorized individual must be an officer, director or shareholder if debtor is a corporation; a partner if debtor is a partnership; a manager or member if debtor is a limited liability company.

- NOTE 1:** In lieu of providing a 12-month cash flow projection, a copy of the 13-week cash flow forecast and budget attached as “Exhibit 2” to the *Interim Order (I) Authorizing the Debtor (A) to Obtain Postpetition Financing on a Senior Secured Basis and Granting Priming Liens and (B) to Utilize Cash Collateral; (II) Granting Adequate Protection to the DIP Lender; (III) Scheduling Final Hearing; and (IV) Granting Related Relief* [Docket No. 40], is attached hereto as Exhibit A.
- NOTE 2:** Please refer to the *Debtor’s Motion (I) to Continue Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks and Business Forms, (II) for Waiver of Certain Requirements of the United States Trustee, and (III) for Extension of Time to Comply With Section 345 of the Bankruptcy Code* [Docket No. 5] (the “Cash Management Motion”) and the interim order approving the Cash Management Motion [Docket No. 36] (the “Interim Cash Management Order”). Copies of the Cash Management Motion and the Interim Cash Management Order are attached hereto as Exhibit C.

Exhibit A

Cash Flow Projection

Week #	Proj 1	Proj 2	Proj 3	Proj 4	Proj 5	Proj 6	Proj 7	Proj 8	Proj 9	Proj 10	Proj 11	Proj 12	Proj 13	Proj 13 Week DIP
Week Ending	8/8/14	8/15/14	8/22/14	8/29/14	9/5/14	9/12/14	9/19/14	9/26/14	10/3/14	10/10/14	10/17/14	10/24/14	10/31/14	
Beginning Cash	(6,176,231)	(8,088,261)	(8,496,658)	(8,299,096)	(7,955,558)	(8,309,943)	(8,723,949)	(8,731,169)	(8,128,702)	(8,428,655)	(8,889,267)	(8,957,973)	(9,496,930)	(6,176,231)
Outstanding checks carryforward	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Receipts														
Cash receipts from TBBK Ccredit Card	-	-	-	150,000	-	-	-	350,000	-	-	-	-	(60,000)	440,000
Cash receipts from TBBK ACH	-	-	70,000	158,000	-	-	70,000	158,000	-	-	-	70,000	158,000	684,000
Cash receipts from TBBK/QVC ONLY	-	-	-	150,000	-	-	-	150,000	-	-	-	-	-	300,000
Cash receipts incremental	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Cash receipts from State of DE	140,067	-	200,000	150,000	-	-	-	200,000	150,000	-	-	-	200,000	1,040,067
Cash receipts from St. Kitts/CAL/EPS/Other	-	-	-	-	45,000	102,500	-	-	45,000	102,500	-	-	-	295,000
Other Payments / (Repayments)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Collections	140,067	-	270,000	608,000	45,000	102,500	70,000	858,000	195,000	102,500	-	70,000	298,000	2,759,067
Operational Costs														
Payroll Current	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(135,000)	(6,518)	(855,624)
401(k)	-	(5,400)	-	(5,400)	-	(5,400)	-	(5,400)	-	(5,400)	-	(5,400)	-	(32,400)
Employee Benefits	(44,819)	(1,000)	(1,000)	(1,000)	(50,625)	(1,000)	(1,000)	(1,000)	(50,625)	(1,000)	(1,000)	(1,000)	(50,625)	(205,694)
MediBank (Flex)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(550)	(7,150)
Concord/Buypass/Fiserv	-	(115,000)	-	-	-	(115,000)	-	-	-	(115,000)	-	-	-	(345,000)
COGS	(1,100)	(2,600)	(3,600)	(8,750)	(9,700)	(2,600)	(1,100)	(11,250)	(14,800)	(1,000)	(1,000)	(1,000)	(3,500)	(62,000)
Direct Debits: Capital/Ins/Tele	-	(2,535)	(200)	(60)	(1,311)	(1,479)	(1,256)	(60)	(1,311)	(1,479)	(1,056)	(200)	(60)	(11,008)
Referral Fees Current	(26,050)	(48,950)	-	-	(26,050)	(48,950)	-	-	(26,050)	(48,950)	-	-	-	(225,000)
Compliance (PCI, SSAE, Mobile App)	(5,000)	-	-	-	(24,300)	-	-	-	-	-	-	-	(14,300)	(43,600)
Capital/Support/IT	(13,137)	(12,774)	(12,702)	(31,615)	(13,137)	(4,375)	(4,399)	(8,202)	(1,912)	(6,074)	(4,644)	(8,202)	(4,112)	(125,284)
Financial Audit/Taxes	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(5,286)	(68,720)
Business Insurance	-	-	-	-	-	(120,000)	-	-	-	-	-	-	-	(120,000)
Legal Fees Current	-	(20,500)	-	(25,300)	-	(20,500)	-	(26,300)	-	(20,500)	-	(25,300)	-	(138,400)
Operating Expenses	(370)	(7,854)	(150)	(1,970)	(390)	(4,536)	(9,828)	(2,516)	(2,208)	(623)	(300)	(370)	(1,750)	(32,866)
Rent	-	-	-	-	(65,243)	-	-	-	(64,243)	-	-	-	-	(129,487)
T&E	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,500)	(3,700)	(45,700)
Taxes	-	(1,500)	-	-	-	-	(3,500)	-	-	-	(1,500)	-	-	(6,500)
Utilities & Phone	(1,250)	(9,500)	(2,073)	(9,371)	(6,461)	(11,659)	(3,194)	(9,371)	(6,461)	(6,959)	(6,096)	(2,073)	(9,526)	(83,994)
Miscellaneous	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Disbursements (Non-Backlog)	(107,580)	(371,949)	(35,578)	(227,802)	(213,071)	(479,835)	(40,131)	(208,436)	(183,464)	(351,321)	(31,450)	(187,881)	(99,927)	(2,538,425)
Net Cash Flow Operation	32,488	(371,949)	234,422	380,198	(168,071)	(377,335)	29,869	649,564	11,536	(248,821)	(31,450)	(117,881)	198,073	220,642
CumulativeNCF From Operations	32,488	(339,462)	(105,040)	275,158	107,087	(270,247)	(240,379)	409,185	420,721	171,899	140,450	22,569	220,642	
Restructuring & Non Recurring Costs														
Restructuring Professionals	-	(30,000)	(30,000)	(30,000)	(180,000)	(30,000)	(30,000)	(40,000)	(305,000)	(205,000)	(30,000)	(413,750)	(30,000)	(1,353,750)
Post-Petition Deposits	(65,000)	-	-	-	-	-	-	-	-	-	-	-	-	(65,000)
COD Payment to Vendors	(375,000)	-	-	-	-	-	-	-	-	-	-	-	-	(375,000)
DIP Interest Expense	(4,517)	(6,448)	(6,860)	(6,660)	(6,314)	(6,671)	(7,089)	(7,097)	(6,488)	(6,791)	(7,256)	(7,326)	(7,870)	(87,387)
Other	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Non-Operating Disbursements	(444,517)	(36,448)	(36,860)	(36,660)	(186,314)	(36,671)	(37,089)	(47,097)	(311,488)	(211,791)	(37,256)	(421,076)	(37,870)	(1,881,137)
Net Cash Inflow / (Outflow)	(412,030)	(408,397)	197,562	343,538	(354,385)	(414,006)	(7,221)	602,467	(299,953)	(460,613)	(68,706)	(538,957)	160,204	(1,660,495)
Checks mailed but not cleared	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Repay Prepetition Debt	(1,500,000)	-	-	-	-	-	-	-	-	-	-	-	-	(1,500,000)
Ending Cash (Before DIP Loan Funding)	(8,088,261)	(8,496,658)	(8,299,096)	(7,955,558)	(8,309,943)	(8,723,949)	(8,731,169)	(8,128,702)	(8,428,655)	(8,889,267)	(8,957,973)	(9,496,930)	(9,336,727)	(9,336,727)
Incremental Borrowing After Filing Date	1,912,030	2,320,426	2,122,865	1,779,327	2,133,711	2,547,717	2,554,938	1,952,471	2,252,424	2,713,036	2,781,742	3,320,699	3,160,495	3,160,495

Exhibit B

Insurance Certificate

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

8/6/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Laurus Strategies 55 West Monroe Suite 500 Chicago IL 60603		CONTACT NAME: Tim O'Brien PHONE (A/C, No. Ext): FAX (A/C, No): E-MAIL ADDRESS: tobrien@laurusstrategies.com	
INSURED Phoenix Payment Systems, Inc. 1201 Market Street, Suite 701 Wilmington DE 19801		INSURER(S) AFFORDING COVERAGE INSURER A: CNA INSURER B: Hartford Insurance Company INSURER C: WST Great American INSURER D: INSURER E: INSURER F:	
		NAIC # 22357 16691	

COVERAGES**CERTIFICATE NUMBER:** CL13111901162**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY						EACH OCCURRENCE \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			B4012275110	9/9/2013	9/9/2014	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
	<input type="checkbox"/> EPLI			DOL1345698 \$1,000,000	9/9/2013	9/9/2014	PERSONAL & ADV INJURY \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 4,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 4,000,000
							Employee Benefits \$ 2M/4M
A	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO			B4012275110	9/9/2013	9/9/2014	BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB						EACH OCCURRENCE \$ 4,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$ 4,000,000
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			B4012276760	9/9/2013	9/9/2014	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A	83WECZG7575	9/9/2013	9/9/2014	E.L. EACH ACCIDENT \$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 500,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000
A	Property Spec. Inc. Theft			B4012275110	9/9/2013	9/9/2014	Property 708,331
A	Crime			B4012275110	9/9/2013	9/9/2014	Employee Theft 250,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Evidence of Insurance

CERTIFICATE HOLDER**CANCELLATION**

Benjamin Hackman Office of the United States Trustee J. Caleb Boggs Federal Building 844 King Street, Suite 2207 Lockbox 35 Wilmington, DE 19801	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Andy Hulett/SM

Exhibit C

Evidence of Debtor in Possession Bank Accounts

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

In re:

Phoenix Payment Systems, Inc.

Debtor.

Chapter 11

Case No. 14-_____ (_____)

**DEBTOR'S MOTION (I) TO CONTINUE TO USE OF EXISTING CASH
MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK
ACCOUNTS, CHECKS AND BUSINESS FORMS, (II) FOR WAIVER OF CERTAIN
REQUIREMENTS OF THE UNITED STATES TRUSTEE, AND (III) FOR EXTENSION
OF TIME TO COMPLY WITH SECTION 345 OF THE BANKRUPTCY CODE**

The debtor and debtor in possession in the above-captioned case (the “**Debtor**”) hereby moves (the “**Motion**”) for entry of an order, under Sections 105, 345, and 363 of Title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (i) authorizing, but not directing, the Debtor to continue to maintain and use its existing cash management system, including maintenance of the Debtor’s existing bank accounts, checks and business forms; (ii) granting the Debtor a waiver of certain bank account and related requirements of the Office of the United States Trustee for the District of Delaware (the “**United States Trustee**”) to the extent that such requirements are inconsistent with (a) the Debtor’s existing practices under the cash management system or (b) any action taken by the Debtor in accordance with any order granting this Motion or any other order entered in the Debtor’s Chapter 11 case; and (iii) granting the Debtor additional time to comply with Section 345 of the Bankruptcy Code. In support of the Motion, the Debtor relies upon the *Declaration of Michael E. Jacoby in Support of Chapter 11 Petition and First Day Motions*, filed with the Court

concurrently herewith and fully incorporated herein (the “**Jacoby Declaration**”). In further support of the Motion, the Debtor, by and through its undersigned counsel, respectfully represents:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The predicates for the relief requested herein are Sections 105(a), 345, and 363 of the Bankruptcy Code, Bankruptcy Rule 6003 and Local Rule 2015-2.

BACKGROUND

2. On the date hereof (the “**Petition Date**”), the Debtor filed a voluntary petition in this Court commencing a case for relief under Chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”). The factual background regarding the Debtor, including its business operations, its capital and debt structures and the events leading to the filing of the Chapter 11 Case, is set forth in detail in the Jacoby Declaration and fully incorporated herein by reference.

3. The Debtor continues to manage and operate its business as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Case and no committees have yet been appointed.

RELIEF REQUESTED

4. By this Motion, the Debtor seeks entry of an order, pursuant to Sections 105(a), 345, and 363 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtor to continue to maintain and use its existing cash management system, including maintenance of the Debtor’s existing bank accounts, checks and business forms; (b) granting the Debtor a waiver of certain

bank account and related requirements of the United States Trustee to the extent that such requirements are inconsistent with (i) the Debtor's existing practices under the cash management system or (ii) any action taken by the Debtor in accordance with any order granting this Motion or any other order entered in the Chapter 11 Case; and (c) granting an extension of sixty (60) days for the Debtor to comply with the requirements of Section 345 of the Bankruptcy Code. The Debtor also requests that the Court (a) authorize and direct all banks with which the Debtor maintains accounts to continue to maintain, service, and administer such accounts; (b) waive any applicable requirement to establish separate accounts for cash collateral and/or tax payments; and (c) authorize third-party payroll and benefits administrators and providers to prepare and issue checks on behalf of the Debtor.

BASIS FOR RELIEF

A. The Debtor's Cash Management System and Bank Accounts

5. In the ordinary course of its business, the Debtor maintains a cash management system (the "**Cash Management System**") that includes an operating account, ACH settlement accounts, ACH reserve accounts, an ACH income account, an ACH return account, a payroll account, zero-balance accounts from which certain of the Debtor's vendors debit amounts due to them on a monthly basis and a money market account. The Cash Management System is integral to the operation and administration of the Debtor's business. The Cash Management System allows the Debtor to efficiently identify the Debtor's cash requirements and efficiently monitor and control all of the Debtor's cash receipts and disbursements. The Debtor believes that the Cash Management System is similar to those utilized by many other companies of comparable size and complexity to monitor, collect, transfer and disburse funds in a cost-effective and efficient manner.

6. The Debtor's Cash Management System is managed by the Debtor's office located in Delaware. The Delaware office's control over the administration of the various bank accounts to effect the collection, disbursement and movement of cash facilitates accurate cash forecasting and reporting and enables the Debtor to, among other things, monitor the collection and disbursement of funds.

7. As of the Petition Date, (a) the Debtor maintained thirteen (13) bank accounts (collectively, the "**Bank Accounts**") at two (2) financial institutions. A schedule of the Bank Accounts is attached as Attachment 2 to this Motion.¹

8. The Cash Management System is primarily organized in a way that facilitates the Debtor's ability to identify and fund its ongoing capital needs. A summary of the Cash Management System is attached hereto as Attachment 1.

9. **Debtor's Bank Accounts:** The Debtor's Bank Accounts, are described below:

- (a) The Debtor maintains its operating account at The Bancorp Bank ("**Bancorp**") (Account No. XXX-X-XX9394) (the "**Operating Account**"). All disbursements flow through the Operating Account. While the Debtor serves as "traffic cop" with respect to the credit card and debit card transactions it processes for its merchant customers, none of the funds associated with these transactions ever flow through an account owned by the Debtor. Rather, such transactions flow through Bancorp accounts. On a monthly basis, Bancorp remits the credit card processing and other fees to which the Debtor is entitled into the EPX Settlement Account (XXXXXX0041) maintained at Bancorp for the benefit of the Debtor, which are transferred to the Operating Account. The Debtor also receives fees directly from the State of Delaware which are remitted into the Operating Account. Further, a limited number of the Debtor's customers pay the Debtor directly (not through Bancorp) via wire transfer into the Operating Account. Such payments are generally made on a monthly basis. The Operating Account is directly debited by certain vendors for its monthly invoice amounts. Moneys

¹ The Debtor believes, and has undertaken reasonable efforts to ensure, that Attachment 2 lists all of the Bank Accounts. In the event that the Debtor inadvertently omitted any Bank Account from Attachment 2, the Debtor requests that the relief sought by this Motion be deemed to apply to any such inadvertently omitted Bank Account.

from the Operating Account are also used to fund the Payroll Account (defined below) and the Vendor Debit Accounts (defined below).

- (b) The Debtor maintains three (3) accounts at Bancorp and one (1) account at Meridian Bank relating to its ACH business (the “ACH Accounts”). It also serves a “traffic cop” with respect to all ACH transactions, and none of the funds associated with these transactions currently flow through an account owned by the Debtor. All income generated from the ACH transactions is ultimately swept into Account (xxx-x-xx2364) (the “ACH Income Account”) and thereafter transferred to the Operating Account.
- (c) The Debtor maintains one (1) zero-balance payroll account (the “Payroll Account”) which is debited every other week by a third party payroll processor, Pay USA, for payroll and taxes. The Payroll Account is also debited by Expert Plan for 401(k) contributions and Prime Pay for flexible spending. The Payroll Account is funded by the Operating Account.
- (d) The Debtor maintains three (3) zero-balance accounts which are directly debited by vendors on a monthly basis (the “Vendor Debit Accounts”). The Vendor Debits Accounts are funded with money from the Operating Account.
- (e) The Debtor maintains two (2) money market accounts. One serves as cash collateral for a letter of credit issued by Bancorp in favor of American Express. The other account has minimal activity.
- (f) The Debtor maintains one (1) account to run test transactions. The Debtor often runs test transactions for new customers or new/enhanced payment devices. This account permits the Debtor to perform these tests in a live, active environment.
- (g) The Debtor also maintains one (1) account that formerly held reserves for a single merchant.

B. The Debtor Should be Authorized to Continue to Use Its Existing Cash Management System and Bank Accounts.

10. The Debtor believes that the Cash Management System is an ordinary course, customary and essential business practice, and is similar to cash management systems employed by other businesses of a similar size and complexity. The Cash Management System allows the Debtor to efficiently identify the Debtor’s cash requirements and efficiently monitor and control all of the Debtor’s cash receipts and disbursements.

11. The continued use of the Cash Management System during the pendency of the Chapter 11 Case is essential to the Debtor's business operations and its goal of maximizing value for the benefit of all parties in interest. Requiring the Debtor to adopt new cash management systems at this early and critical stage would be expensive, impose needless administrative burdens and cause undue disruption. Any such disruption would adversely (and perhaps irreparably) affect the Debtor's ability to maximize estate value for the benefit of creditors and other parties in interest. Moreover, such a disruption would be wholly unnecessary insofar as the Cash Management System provides a valuable and efficient means for the Debtor to address its cash management requirements and, to the best of the Debtor's knowledge, the Bank Accounts are held in approved depositories of the United States Trustee. Maintaining the existing Cash Management System without disruption is both essential to the Debtor's ongoing operations and in the best interests of the Debtor, its estate and all interested parties. Accordingly, the Debtor requests that it be allowed to maintain and continue to use the Cash Management System and the Bank Accounts.

12. As part of the relief requested herein, and to ensure that its transition into Chapter 11 is as smooth as possible and subject to the terms of any financing order in this case, the Debtor seeks an order authorizing the Debtor to (a) maintain and continue to use the Bank Accounts, including but not limited to those accounts that are listed on Attachment 2 hereto, in the same manner and with the same account numbers, styles and document forms as are currently employed, (b) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, ACH transfers, and drafts or other items presented, issued or drawn on the Bank Accounts, (c) pay ordinary course bank fees in connection with the Bank Accounts including prepetition fees, (d) perform its obligations under the documents and

agreements governing the Bank Accounts, and (e) treat the Bank Accounts for all purposes as accounts of the Debtor in its capacity as debtor in possession.

13. If the relief requested herein is granted, the Debtor will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtor prior to the Petition Date, other than those authorized by this Court. To prevent the possible inadvertent payment of prepetition claims against the Debtor, except those otherwise authorized by the Court, the Debtor will work closely with Bancorp to ensure appropriate procedures are in place to prevent checks issued prepetition from being honored absent this Court's approval. However, the Debtor requests that if Bancorp implements such handling procedures and then honors a prepetition check or other item drawn on any account that is the subject of this Motion (a) at the direction of the Debtor to honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored or (c) as a result of a good faith error made despite implementation of reasonable item handling procedures, Bancorp will not be deemed to be liable to the Debtor or to its estate on account of such prepetition check or other item being honored post-petition. The Debtor believes that such flexibility accorded Bancorp is necessary to induce Bancorp to continue providing cash management services to the Debtor.

14. In addition, and in the interest of maintaining the continued and efficient operation of the Cash Management System during the pendency of this Chapter 11 Case and subject to the terms of any financing order in this case, the Debtor requests that Bancorp be authorized and directed to continue to administer, service and maintain the Bank Accounts as such accounts were administered, serviced and maintained prepetition, without interruption and in the ordinary course (including making deductions for bank fees), and to honor any and all

checks, drafts, wires, ACH transfers or other items presented, issued or drawn on the Bank Accounts on account of a claim arising on or after the Petition Date.

15. The Debtor further requests that it be authorized to implement such reasonable changes to the Cash Management System as the Debtor may deem necessary or appropriate, including, without limitation, closing any of the Bank Accounts or opening any additional Bank Accounts following the Petition Date (the “New Accounts”), wherever the Debtor deems that such accounts are needed or appropriate, and whether or not the banks in which the accounts are opened are designated depositories in the District of Delaware. Notwithstanding the foregoing, any New Account that the Debtor opens will be (a) at Bancorp or with a bank that is organized under the laws of the United States of America or any state therein and insured by the FDIC or the Federal Savings and Loan Insurance Corporation and (b) designated a “Debtor in Possession” account by the relevant bank. The Debtor requests that the relief sought by this Motion extend to any New Accounts and that any order approving this Motion provide that the New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations and relief granted in the order. The Debtor will provide the United States Trustee and any statutory committee appointed in this case with written notice of any New Accounts that are opened. In furtherance of the foregoing, the Debtor also requests that the relevant banks be authorized to honor the Debtor’s requests to open or close (as the case may be) such Bank Account(s) or New Account(s). Notwithstanding the foregoing, no New Account will be opened by the Debtor to the extent it would constitute an event of default under any postpetition financing agreement authorized in this case.

C. The Debtor Should be Granted Authority to Continue to Use Existing Checks and Business Forms

16. Local Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and a hearing, permit the debtor to use its existing checks without the designation “Debtor-in-Possession” and use its existing bank accounts. However, once the debtor’s existing checks have been used, the debtor shall, when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy number on all such checks.

Del. Bankr. L.R. 2015-2(a).

17. To minimize expenses to its estate, the Debtor seeks authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtor’s status as a debtor in possession; provided, however, that in the event that the Debtor generates new checks during the pendency of this case other than from its existing stock of checks, such checks will include a legend referring to the Debtor as “Debtor in Possession.” The Debtor also seeks authority to use all correspondence and other business forms (including, without limitation, letterhead, purchase orders and invoices) without reference to the Debtor’s status as debtors in possession.²

18. Most parties doing business with the Debtor undoubtedly will be aware of the Debtor’s status as a debtor in possession as a result of the publicity of this case, the press releases issued by the Debtor and additional press coverage. Moreover, the Debtor will provide notice of the commencement of the Chapter 11 Case to creditors and other parties-in-interest.

² Although the operating guidelines that have been established for debtors in possession by the United States Trustee would require the Debtor to obtain and use new checks bearing the “Debtor in Possession” designation, the Debtor does not believe that they impose any limitation on the Debtor’s other correspondence and business forms. Nevertheless, out of an abundance of caution, the Debtor seeks explicit authority to continue using its existing correspondence and business forms without reference to the Debtor’s status as a debtor in possession.

19. Changing the Debtor's existing checks, correspondence and other business forms would be expensive, unnecessary and burdensome to the Debtor's estate. Further, such changes would be disruptive to the Debtor's business operations and would not confer any benefit upon those dealing with the Debtor. For these reasons, the Debtor requests that it be authorized to use its existing check stock, all correspondence and other business forms without being required to place the label "Debtor in Possession" on any of the foregoing.

D. The Debtor Should Be Granted a Waiver of Certain Requirements of the United States Trustee

20. The Debtor further requests, pursuant to Sections 105(a) and 363 of the Bankruptcy Code, that this Court grant a waiver of certain bank account and related requirements of the United States Trustee to the extent that such requirements are inconsistent with (a) the Debtor's existing practices under the Cash Management System or (b) any action taken by the Debtor in accordance with any order granting this Motion or any other order entered in the Chapter 11 Case. The United States Trustee has established certain operating guidelines for debtors in possession in order to supervise the administration of Chapter 11 cases. These requirements (each a "**UST Requirement**" and, collectively, the "**UST Requirements**") require Chapter 11 debtors to, among other things: (i) close all existing bank accounts and open new debtor-in-possession bank accounts; (ii) establish one debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (iii) maintain a separate debtor-in-possession account for cash collateral; and (iv) obtain checks for all debtor-in-possession accounts which bear the designation "Debtor In Possession," the bankruptcy case number and the type of accounts. These requirements are designed to draw a clear line of demarcation between prepetition and postpetition transactions and operations, and prevent the inadvertent postpetition payment of prepetition claims. As set forth above, the Debtor submits

that (x) they are able to work with Bancorp to ensure that this goal of separation between the prepetition and postpetition period is observed and (y) enforcing certain of these UST Requirements would disrupt the Debtor's operations and impose a financial burden on the Debtor's estate.

21. To begin, as noted previously, in light of the complexity of the Cash Management System, it will be incredibly onerous for the Debtor to meet the requirement of closing all existing bank accounts and opening new debtor-in-possession bank accounts. Indeed, not only would the Debtor be unnecessarily inconvenienced, but so would its customers and vendors.

22. Further, requiring the Debtor to abide by the UST Requirement to establish specific debtor-in-possession accounts for tax payments (including payroll taxes) and to deposit to such specific tax accounts sufficient funds to pay any tax liability (when incurred) associated with the Debtor's payroll and other tax obligations would be unnecessarily burdensome. The Debtor believes that it can pay its tax obligations most efficiently from the Payroll Account maintained in accordance with its existing practices, that the United States Trustee can adequately monitor the flow of funds into and out of such accounts, and that the creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessary and inefficient.

23. Additionally, requiring the Debtor to abide by the UST Requirement to establish specific debtor-in-possession accounts for cash collateral will be unnecessary. As set forth in the *Debtor's Motion (A) for Interim and Final Orders (I) Authorizing Debtor to Obtain Post-Petition Secured Financing, (II) Authorizing the Debtor's Use of Cash Collateral, and (III) Granting Liens and Super-Priority Claims; and (B) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001* that was filed contemporaneously herewith, the Debtor has provided significant

safeguards (negotiated in good faith with parties in interest) to ensure that those who have interests in the Debtor's cash collateral are adequately protected and such persons have been provided with notice of the proposed use of such cash collateral.

24. Finally, for the reasons noted above, compliance with the UST Requirement that requires a debtor to obtain checks for all debtor-in-possession accounts which bear the designation "Debtor-In-Possession," the bankruptcy case number and the type of accounts is unnecessarily burdensome in this Chapter 11 Case.

E. The Court Should Grant the Debtor an Extension of Time to Either Comply With the Deposit Requirements of 11 U.S.C. § 345(b) or to File a Motion Seeking to Waive Them

25. The Debtor further requests that this Court grant the Debtor a sixty (60) day extension of time to either (i) comply with the requirements of Section 345(b) of the Bankruptcy Code or (ii) file a motion seeking to waive the requirements of Section 345(b) of the Bankruptcy Code, to the extent that either one or both actions is necessary in order for the Debtor to comply with Section 345(b) of the Bankruptcy Code, while, in the meantime, permitting the Debtor to maintain its deposits in its accounts in accordance with its existing deposit practices as of the Petition Date.

26. As this Motion is being filed on the first day of the Debtor's Chapter 11 case, the Debtor respectfully submits that cause exists to grant an interim sixty (60) day extension of the requirements of section 345(b) of the Bankruptcy Code. During that time the Debtor can consult with the United States Trustee in order to determine whether the Cash Management System is currently in compliance with the requirements of Section 345(b) of the Bankruptcy Code and/or whether the Debtor needs to take any further action to bring the Cash Management System into compliance with the requirements of Section 345(b).

APPLICABLE AUTHORITY

A. The Bankruptcy Code Permits the Debtor to Continue Using the Cash Management System and the Bank Accounts

27. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to use “property of the estate, in the ordinary course of business, without notice or a hearing.” 11 U.S.C. § 363(c)(1). The authority granted by Section 363(c)(1) of the Bankruptcy Code extends to a debtor in possession’s continued use of its customary cash management system and, thus, supports the relief requested. See, e.g., Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.), 778 F.2d 617, 621 (11th Cir. 1985) (indicating that an order authorizing the debtor to employ a cash management system that was “usual and customary in the past” was “entirely consistent” with Section 363(c)(1)) of the Bankruptcy Code).

28. Section 105(a) of the Bankruptcy Code also authorizes this Court to permit the Debtor to continue using its existing Cash Management System and the Bank Accounts. Section 105(a) vests in this Court the power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The continuation of the Cash Management System, including the continued use of the Bank Accounts, is essential to the Debtor’s efforts to maximize the value of its estate and the efficient administration of this Chapter 11 Case. Indeed, one court, in another context, has recognized that a centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1992), aff’d in part and rev’d in part, 997 F.2d 1039 (3d Cir. 1993). The relief requested is, therefore, appropriate under Section 105(a) of the Bankruptcy Code. Indeed, bankruptcy courts routinely permit Chapter 11 debtors to continue using its existing cash management system, generally treating requests for such relief as a relatively

“simple matter.” In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); see also In re Columbia Gas Sys., Inc., 136 B.R. at 934.

29. Additionally, numerous courts including this Court have authorized debtors to continue their existing cash management systems in other large Chapter 11 cases. See, e.g., In re Energy Future Holdings Corp., Case No. 14-10979 (CSS) (Bankr. D. Del. May 2, 2014); In re Coldwater Creek Inc., Case No. 14-10867 (BLS) (Bankr. D. Del. May 5, 2014); In Ablest, Inc., Case No. 14-10717 (KJC) (Bankr. D. Del. Apr. 2, 2104); In re Simplexity, LLC, Case No. 14-10569 (KG) (Bankr. D. Del. Mar. 19, 2014); In re QCE Finance LLC, Case No. 14-10543 (PJW) (Bankr. D. Del. Mar. 17, 2014); In re MACH Gen, LLC, Case No. 14-10461 (MFW) (Bankr. D. Del. Mar. 27, 2014).

B. This Court Should Waive the UST Requirements to Permit the Debtor to Continue the Cash Management System

30. The continuation of the Cash Management System, as requested in this Motion, is consistent with the Debtor’s authority to use property of the estate in the ordinary course of business pursuant to Section 363(c)(1) of the Bankruptcy Code. Accordingly, this Court should grant the Debtor a waiver of the UST Requirements to the extent that such requirements conflict with the Debtor’s existing practices under the Cash Management System or any action taken by the Debtor in accordance with any order granting this Motion or any other order entered in the Chapter 11 Case.

31. Moreover, compelling the Debtor to alter its current cash management practices and to modify the Cash Management System to comply with the UST Requirements would risk severe disruption to the Debtor’s businesses and jeopardize the Debtor’s ability to maximize value for all parties in interest. Cf. In re Gaylord Container Corp., 1993 WL 188671, at *3, 13 (E.D. La. May 24, 1993) (adopting the bankruptcy court’s findings of fact and conclusions of

law, which included a finding that the banking requirements of Office of the United States Trustee for the District of Louisiana “represent a substantial burden on any debtor and, in this case, resulted in the incurrence of extraordinary unquantifiable costs by [the debtor] associated with the confusion engendered by the implementation of new policies and procedures to comply with such rules, and due to the substantial restrictions that such ruled placed on [the debtor’s] treasury functions”). This factor alone justifies the relief that the Debtor is seeking. See 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”).

C. The Court Should Grant the Debtor an Extension of Time to Either Comply With the Deposit Requirements of 11 U.S.C. § 345(b) or to File a Motion Seeking to Waive Them

32. Section 345(a) of the Bankruptcy Code governs a debtor’s deposit of cash during a Chapter 11 case and authorizes deposits of estate money that “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit.” 11 U.S.C. § 345(a). If a deposit is not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” Section 345(b) of the Bankruptcy Code requires the debtor to obtain from the entity with which the money is deposited a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety. *Id.* § 345(b). In the alternative, the estate may require the entity to deposit governmental securities pursuant to 31 U.S.C. § 9303, which provides that when a person is required by law to give a surety bond, that person, in lieu of a surety bond, may provide a governmental obligation. See 31 U.S.C. § 9303.

33. By this Motion, the Debtor seeks a sixty (60) day extension of the time to comply with Section 345(b) of the Bankruptcy Code to the extent the Bank Accounts do not already

comply with Section 345(b) of the Bankruptcy Code, without prejudice to the Debtor's ability to seek a further extension or final waiver of those requirements. During the extension period, the Debtor proposes to engage the United States Trustee in discussions to determine if compliance with Section 345(b) is necessary in the case at hand, and if necessary, if it is appropriate. The Debtor believes that the benefits of the requested extension far outweigh any harm to the estate. See generally In re Serv. Merchandise Co., Inc., 240 B.R. 894 (Bankr. M.D. Tenn. 1999).

34. It is difficult at this time, without further analysis, to determine whether Section 345(b) is even applicable to the Bank Accounts. Considering the Debtor's extremely limited liquidity and need to conserve cash, the Debtor submits that it would be an unnecessary drain of scarce estate resources to incur administrative expense at this time to comply with such requirement.

35. Accordingly, the Debtor submits that "cause" exists pursuant to Section 345(b) of the Bankruptcy Code to extend the time to comply with the requirements of the statute because it is unclear whether compliance with Section 345(b) is necessary in the case at hand. Moreover, strict compliance with the requirements of Section 345 of the Bankruptcy Code would not be practical in this Chapter 11 case. A bond secured by the undertaking of a corporate surety would be prohibitively expensive, if such bond is available at all.

36. Similar extensions have been granted in other Chapter 11 cases in this district and elsewhere. See, e.g., In re Energy Future Holdings Corp., Case No. 14-10979 (CSS) (Bankr. D. Del. May 2, 2014) (60 days); In re Brookstone Holdings Corp., Case No. 14-10752 (BLS) (Bankr. D. Del. Apr. 4, 2014) (60 days); In Ablest, Inc., Case No. 14-10717 (KJC) (Bankr. D. Del. Apr. 2, 2014) (60 days);); In re Simplexity, LLC, Case No. 14-10569 (KG) (Bankr. D. Del. Mar. 19, 2014) (45 days); In re QCE Finance LLC, Case No. 14-10543 (PJW) (Bankr. D. Del.

Mar. 17, 2014) (80 days); In re MACH Gen, LLC, Case No. 14-10461 (MFW) (Bankr. D. Del. Mar. 27, 2014) (60 days).

37. Based on the foregoing, the Debtor submits that the relief requested herein is necessary and appropriate, is in the best interests of its estate and all other interested parties, and should be granted in all respects.

E. Bankruptcy Rule 6003 Has Been Satisfied and Bankruptcy Rule 6004 Should be Waived

38. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtor submits that facts set forth herein demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtor and, thus, Bankruptcy Rule 6003 has been satisfied.

39. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under Section 363(b) of the Bankruptcy Code, the Debtor seeks a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtor seeks in this Motion is immediately necessary in order for the Debtor to be able to continue to operate its business and preserve the value of its estate. The Debtor thus submits that the requested waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is here appropriate.

NOTICE

40. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtor's twenty (20) largest unsecured creditors, as filed with the Debtor's Chapter 11 petition; (c) counsel to The Bancorp Bank, the Debtor's post-petition lender; (d) counsel to the proposed stalking horse purchaser, a wholly-owned subsidiary of North

American Bancard; (e) counsel to Raymond Moyer, the Debtor's majority stockholder; (f) Meridian Bank; and (g) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. The Debtor will serve copies of the Motion and any order entered in respect of the Motion as required by Rule 9013-1(m) of the Local Rules. The Debtor submits that, under the circumstances, no other or further notice is required.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Date: August 4, 2014
Wilmington, Delaware

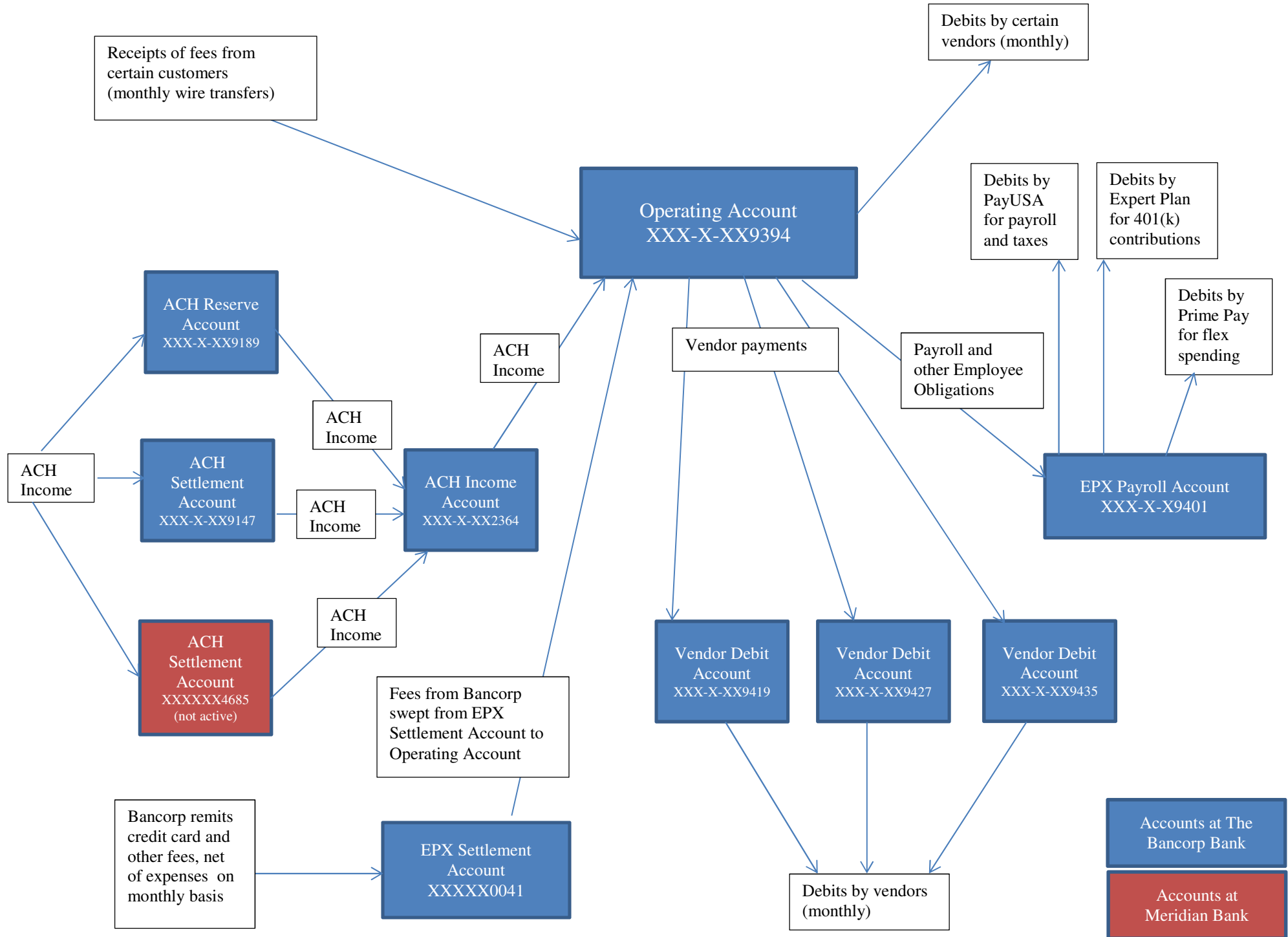
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Proposed Counsel for Debtor and Debtor in
Possession

ATTACHMENT 1



ATTACHMENT 2

Schedule of Bank Accounts

Financial Institution	Address	Last 4 Digits of Account Number(s)	Account Type
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	9394	Operating Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	9401	Payroll Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	9419	Vendor Debit Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	9427	Vendor Debit Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	9435	Vendor Debit Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	2411	Test Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	9189	ACH Reserve Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	9147	ACH Settlement Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	2364	ACH Income Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	8116	Money Market Account (AmEx)
Meridian Bank	Meridian Bank 1776 East Lancaster Avenue Paoli, PA 19301	4685	ACH Settlement Account (not active)
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	5930	Money Market Account
The Bancorp Bank	The Bancorp Bank 409 Silverside Road, Suite 105 Wilmington, DE 19809	5136	Merchant Reserve Account

EXHIBIT A

Proposed Order

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

In re:

Phoenix Payment Systems, Inc.

Debtor.

Chapter 11

Case No. 14-_____ (_____)

Re: Docket No. _____

ORDER (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS, CHECKS AND BUSINESS FORMS, (II) WAIVING CERTAIN REQUIREMENTS OF THE UNITED STATES TRUSTEE, AND (III) EXTENDING DEBTOR'S TIME TO COMPLY WITH SECTION 345 OF THE BANKRUPTCY CODE

Upon the motion (the “**Motion**”)¹ of the Debtor for an order, pursuant to Sections 105(a), 345, and 363 of the Bankruptcy Code, Bankruptcy Rule 6003 and Local Rule 2015-2, (i) authorizing, but not directing, the Debtor to continue to maintain and use its existing cash management system, including maintenance of the Debtor’s existing bank accounts, checks and business forms; (ii) granting the Debtor a waiver of certain bank account and related requirements of the United States Trustee to the extent that such requirements are inconsistent with (a) the Debtor’s existing practices under the cash management system or (b) any action taken by the Debtor in accordance with any order granting this Motion or any other order entered in the Debtor’s Chapter 11 case; and (iii) granting the Debtor additional time to comply with Section 345 of the Bankruptcy Code including the related requirements of the United States Trustee; and the Court having reviewed the Motion and the Jacoby Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and it appearing that proper and adequate notice

Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Debtor is authorized to continue to use its existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System, except as modified by this Order. In connection with the ongoing utilization of the Cash Management System, the Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly.
3. The Debtor is authorized to (a) designate, maintain and continue to use any and all of its respective operating, payroll, reserve, settlement and other accounts (collectively, the “**Bank Accounts**”) in existence as of the Petition Date, with the same account numbers, styles, and document forms as are currently employed, including but not limited to the accounts identified in Attachment 2 to the Motion, (b) if necessary, open new accounts wherever they are needed, whether or not such banks are designated depositories in the District of Delaware, (c) subject to the terms of this Order, deposit funds in, and withdraw funds from, the Bank Accounts in the usual and ordinary course, including checks, wire transfers, ACH transfers, drafts or other items presented, issued, or drawn on the Bank Accounts, (d) pay ordinary course bank fees in connection with the Bank Accounts, including any fees arising prior to the Petition Date, (e) perform its obligations under the documents and agreements governing the Bank Accounts,

and (f) treat the Bank Accounts for all purposes as accounts of the Debtor in its capacity as a debtor-in-possession; provided, however, that the Debtor may only open new Bank Accounts with banks that agree to be bound by the terms of this Order and, in particular, the Cash Management System. The Debtor is further authorized to close Bank Accounts in the ordinary course of business. To the extent the Debtor opens or closes Bank Accounts, it shall provide prompt notice to the United States Trustee, any agent under any postpetition financing agreement with the Debtor (and its counsel) and counsel to any official committee appointed in this case. Any new check stock used by the Debtor shall contain the designation “Debtor in Possession.”

4. Pursuant to Local Rule 2015-2(a), the Debtor is authorized to continue to use its existing checks and business forms without alteration or change and without the designation “Debtor in Possession” or a “debtor in possession case number” imprinted upon them.

5. The Debtor is authorized to continue to utilize all third-party providers necessary for the administration of its Cash Management System.

6. *Nunc pro tunc* to the Petition Date, and subject to the terms of this Order, Bancorp is authorized and directed, to the extent of available funds, to continue to administer, service and maintain the Bank Accounts as such accounts were administered, serviced and maintained prepetition, without interruption and in the ordinary course (including making deductions for bank fees), and to honor, and debit from Debtor’s accounts in the ordinary course of business and without further Order of this Court, any and all checks, wire transfers, ACH transfers, electronic funds transfers or other items presented, issued or drawn on the Bank Accounts, in respect of any amounts owing other than with respect to chargebacks on account of Returned Items (defined below) related to such Bank Accounts; provided, however, that unless otherwise ordered by the Court, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that

Bancorp is obligated to settle) or other items presented, issued or drawn on the Bank Accounts prior to the Petition Date shall be honored.

7. Each Bank that maintains a disbursement account shall implement reasonable handling procedures designed to effectuate the terms of this Order. No Bank that implements such handling procedures and then honors a prepetition check, wire transfer, ACH transfer or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtor, (b) in the good-faith belief that the Court has authorized such prepetition check, wire transfer, ACH transfer, electronic funds transfer, or other item to be honored, or (c) as a result of a good faith error made despite implementation of such handling procedures, shall be deemed to be liable to the Debtor or its estate or otherwise in violation of this Order.

8. Subject to the provisions of this Order, Bancorp is authorized and directed to honor all representations from the Debtor as to which checks, wire transfers, ACH transfers or other items should be honored or dishonored; provided, however, in the course of providing cash management services to the Debtor, Bancorp is authorized, without further Order of this Court, to deduct from the appropriate Bank Accounts of the Debtor its bank fees, and further, to charge back to the appropriate accounts of the Debtor any amounts resulting from returned checks or other returned items, including without limitation, returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind (collectively, “**Returned Items**”), regardless of whether such items were deposited or transferred pre-prepetition or post-petition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. For banks at which the Debtor holds accounts that are party to a Uniform Depository agreement with the United States Trustee, within fifteen (15) days of the date of entry

of this Order, the Debtor shall (a) contact each bank, (b) provide the Debtor's employer identification number and (c) identify each of its accounts held at such banks as being held by a debtor in possession in a bankruptcy case.

10. The Debtor is authorized to implement such reasonable changes to the Cash Management System as the Debtor may deem necessary or appropriate, including, without limitation, closing any of the Bank Accounts or opening any additional Bank Accounts following the Petition Date (the "New Accounts"), wherever the Debtor deems that such accounts are needed or appropriate, and whether or not the banks in which the accounts are opened are designated depositories in the District of Delaware. Notwithstanding the foregoing, any New Account that the Debtor opens will be (a) with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation (b) designated a "Debtor in Possession" account by the relevant bank and (c) in accordance with the terms and provisions of any covenants relating thereto set forth in any postpetition financing agreement with the Debtor. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Order. The Debtor shall provide the United States Trustee and counsel to any official committee appointed in this case with prompt notice of any New Accounts that are opened. Bancorp is authorized to honor the Debtor's requests to open or close (as the case may be) any Bank Account(s).

11. The bank account and related requirements of the United States Trustee are hereby waived to the extent that such requirements are inconsistent with (a) the Debtor's existing practices under the Cash Management System or (b) any action taken by the Debtor in accordance with this Order or any other order entered in this Chapter 11 Case.

12. The Debtor is authorized to deposit and invest funds in accordance with its established deposit and investment practices in effect as of the commencement of this Chapter 11 Case and, to the extent such deposit practices are not consistent with the requirements of Section 345(b) of the Bankruptcy Code or the United States Trustee Operating Guidelines for Chapter 11 Cases, such requirements are waived, on an interim basis. The Debtor shall have 60 days (or such additional time as the United States Trustee may agree to) from the Petition Date (the “**Extension Period**”) within which to either come into compliance with Section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the United States Trustee. Such extension is without prejudice to the Debtor’s right to request a further extension of the Extension Period or a final waiver of the requirements of Section 345(b) of the Bankruptcy Code.

13. Notwithstanding anything herein to the contrary, those certain existing deposit agreements between Debtor and Bancorp shall continue to govern the postpetition Cash Management System between the Debtor and Bancorp, and that all of the provisions of such agreements, including without limitation, the termination and fee provisions, shall remain in full force and effect.

14. Notwithstanding the relief granted herein, no action by any Debtor is permitted to the extent that it would be inconsistent with any financing or cash collateral order entered by this Court and no payment shall be made by the Debtor unless (a) such payment is permitted by the budget then in effect under the financing or cash collateral order entered by this Court and (b) the financing or cash collateral order is in effect and has not been terminated in accordance with its terms.

15. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

16. The Debtor is hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: August ____, 2014
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

ORIGINAL

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

In re:

Chapter 11

Phoenix Payment Systems, Inc.

Case No. 14-11848 (MFW)

Debtor.

Re: Docket No. 5

**INTERIM ORDER (I) AUTHORIZING CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK
ACCOUNTS, CHECKS AND BUSINESS FORMS, (II) WAIVING CERTAIN
REQUIREMENTS OF THE UNITED STATES TRUSTEE, AND (III) EXTENDING
DEBTOR'S TIME TO COMPLY WITH SECTION 345 OF THE BANKRUPTCY CODE**

Upon the motion (the "**Motion**")¹ of the Debtor for an order, pursuant to Sections 105(a), 345, and 363 of the Bankruptcy Code, Bankruptcy Rule 6003 and Local Rule 2015-2, (i) authorizing, but not directing, the Debtor to continue to maintain and use its existing cash management system, including maintenance of the Debtor's existing bank accounts, checks and business forms; (ii) granting the Debtor a waiver of certain bank account and related requirements of the United States Trustee to the extent that such requirements are inconsistent with (a) the Debtor's existing practices under the cash management system or (b) any action taken by the Debtor in accordance with any order granting this Motion or any other order entered in the Debtor's Chapter 11 case; and (iii) granting the Debtor additional time to comply with Section 345 of the Bankruptcy Code including the related requirements of the United States Trustee; and the Court having reviewed the Motion and the Jacoby Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and it appearing that proper and adequate notice

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Debtor is authorized to continue to use its existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System, except as modified by this Order. In connection with the ongoing utilization of the Cash Management System, the Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly.
3. The Debtor is authorized to (a) designate, maintain and continue to use any and all of its respective operating, payroll, reserve, settlement and other accounts (collectively, the **"Bank Accounts"**) in existence as of the Petition Date, with the same account numbers, styles, and document forms as are currently employed, including but not limited to the accounts identified in Attachment 2 to the Motion, (b) if necessary, open new accounts at banks that are signatories to a Uniform Depository agreement, or at banks that are willing to immediately execute such agreement, (c) subject to the terms of this Order, deposit funds in, and withdraw funds from, the Bank Accounts in the usual and ordinary course, including checks, wire transfers, ACH transfers, drafts or other items presented, issued, or drawn on the Bank Accounts, (d) pay ordinary course bank fees in connection with the Bank Accounts, including any fees arising prior to the Petition Date, (e) perform its obligations under the documents and agreements governing

the Bank Accounts, and (f) treat the Bank Accounts for all purposes as accounts of the Debtor in its capacity as a debtor-in-possession; provided, however, that the Debtor may only open new Bank Accounts with banks that agree to be bound by the terms of this Order and, in particular, the Cash Management System. The Debtor is further authorized to close Bank Accounts in the ordinary course of business. To the extent the Debtor opens or closes Bank Accounts, it shall provide prompt notice to the United States Trustee, any agent under any postpetition financing agreement with the Debtor (and its counsel) and counsel to any official committee appointed in this case. Any new check stock used by the Debtor shall contain the designation "Debtor in Possession."

4. Pursuant to Local Rule 2015-2(a), the Debtor is authorized to continue to use its existing checks and business forms without alteration or change and without the designation "Debtor in Possession" or a "debtor in possession case number" imprinted upon them. With respect to checks which are electronic or which the Debtor or its agents print themselves, the Debtor shall begin including the "Debtor in Possession" legend and the debtor-in-possession case number on such items within ten (10) days of the date of entry of this Order.

5. The Debtor is authorized to continue to utilize all third-party providers necessary for the administration of its Cash Management System.

6. *Nunc pro tunc* to the Petition Date, and subject to the terms of this Order, Bancorp is authorized and directed, to the extent of available funds, to continue to administer, service and maintain the Bank Accounts as such accounts were administered, serviced and maintained prepetition, without interruption and in the ordinary course (including making deductions for bank fees), and to honor, and debit from Debtor's accounts in the ordinary course of business and without further Order of this Court, any and all checks, wire transfers, ACH transfers, electronic

funds transfers or other items presented, issued or drawn on the Bank Accounts, in respect of any amounts owing other than with respect to chargebacks on account of Returned Items (defined below) related to such Bank Accounts; provided, however, that unless otherwise ordered by the Court, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that Bancorp is obligated to settle) or other items presented, issued or drawn on the Bank Accounts prior to the Petition Date shall be honored.

7. Each Bank that maintains a disbursement account shall implement reasonable handling procedures designed to effectuate the terms of this Order. No Bank that implements such handling procedures and then honors a prepetition check, wire transfer, ACH transfer or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtor, (b) in the good-faith belief that the Court has authorized such prepetition check, wire transfer, ACH transfer, electronic funds transfer, or other item to be honored, or (c) as a result of a good faith error made despite implementation of such handling procedures, shall be deemed to be liable to the Debtor or its estate or otherwise in violation of this Order.

8. Subject to the provisions of this Order, Bancorp is authorized and directed to honor all representations from the Debtor as to which checks, wire transfers, ACH transfers or other items should be honored or dishonored; provided, however, in the course of providing cash management services to the Debtor, Bancorp is authorized, without further Order of this Court, to deduct from the appropriate Bank Accounts of the Debtor its bank fees, and further, to charge back to the appropriate accounts of the Debtor any amounts resulting from returned checks or other returned items, including without limitation, returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind (collectively, “**Returned Items**”), regardless of whether such items were deposited or transferred pre-prepetition or post-

petition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

9. For banks at which the Debtor holds accounts that are party to a Uniform Depository agreement with the United States Trustee, within fifteen (15) days of the date of entry of this Order, the Debtor shall (a) contact each bank, (b) provide the Debtor's employer identification number and (c) identify each of its accounts held at such banks as being held by a debtor in possession in a bankruptcy case. The Debtor shall promptly advise the banks at which it holds accounts of the commencement of the Chapter 11 Case.

10. The Debtor is authorized to implement such reasonable changes to the Cash Management System as the Debtor may deem necessary or appropriate, including, without limitation, closing any of the Bank Accounts or opening any additional Bank Accounts following the Petition Date (the "New Accounts"), at banks that are signatories to a Uniform Depository agreement, or at banks that are willing to immediately execute such agreement. Notwithstanding the foregoing, any New Account that the Debtor opens will be (a) with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation (b) designated a "Debtor in Possession" account by the relevant bank and (c) in accordance with the terms and provisions of any covenants relating thereto set forth in any postpetition financing agreement with the Debtor. The New Accounts are deemed to be Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Order. The Debtor shall provide the United States Trustee and counsel to any official committee appointed in this case with prompt notice of any New Accounts that are opened. Bancorp is authorized to honor the Debtor's requests to open or close (as the case may be) any Bank Account(s).

11. The Debtor is authorized to deposit and invest funds in accordance with its established deposit and investment practices in effect as of the commencement of this Chapter 11 Case and, to the extent such deposit practices are not consistent with the requirements of Section 345(b) of the Bankruptcy Code or the United States Trustee Operating Guidelines for Chapter 11 Cases, such requirements are waived, on an interim basis. The Debtor shall have 45 days (or such additional time as the United States Trustee may agree to) from the Petition Date (the “**Extension Period**”) within which to either come into compliance with Section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed with the United States Trustee. Such extension is without prejudice to the Debtor’s right to request a further extension of the Extension Period or a final waiver of the requirements of Section 345(b) of the Bankruptcy Code.

12. Notwithstanding anything herein to the contrary, those certain existing deposit agreements between Debtor and Bancorp shall continue to govern the postpetition Cash Management System between the Debtor and Bancorp, and that all of the provisions of such agreements, including without limitation, the termination and fee provisions, shall remain in full force and effect.

13. Notwithstanding the relief granted herein, no action by any Debtor is permitted to the extent that it would be inconsistent with any financing or cash collateral order entered by this Court and no payment shall be made by the Debtor unless (a) such payment is permitted by the budget then in effect under the financing or cash collateral order entered by this Court and (b) the financing or cash collateral order is in effect and has not been terminated in accordance with its terms.

14. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

15. The Debtor is hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

16. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: August 5, 2014
Wilmington, Delaware



THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit D

Retainers Paid

Schedule of Retainers Paid to Professionals

Name of Payee	Check		Name of Payor	Amount	Amount Applied to Date	Balance
	Date	Number				
Richards, Layton & Finger	Various	Wire	Phoenix Payment Systems, Inc.	\$1,005,000.00	\$952,005.34	\$52,994.66
PMCM	Various	Various Wires / Checks	Phoenix Payment Systems, Inc.	\$921,874.21	\$717,030.91	\$204,843.30
Rust Omni	07/29/2014	Wire	Phoenix Payment Systems, Inc.	\$10,000.00	\$2,542.75	\$7,457.25

Note: All balances are held or proposed to be held as evergreen retainers.