IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**Jointly Administered**

DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING IMPLEMENTATION OF A KEY EMPLOYEE INCENTIVE PLAN

Emergency relief has been requested. Relief is requested not later than 12:30 p.m. (prevailing Central Time) on August 30, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on August 30, 2023 at 12:30 p.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones's homepage. The meeting code is "Judge Jones". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance"

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

link on Judge Jones's homepage. Select the case name, complete the required fields, and click "Submit" to complete your appearance.

Instant Brands Acquisition Holdings Inc. and certain of its affiliates (collectively, the "**Debtors**")[2], each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), hereby file this *Debtors' Emergency Motion for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan* (the "**Motion**"). This Motion is supported by (a) the *Declaration of Adam Hollerbach as Chief Restructuring Officer of the Debtors in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* [Docket No. 39] (the "**First Day Declaration**"[3]), which was filed on the Petition Date (as defined herein) and is incorporated herein by reference, (b) the *Declaration of Adam Hollerbach as Chief Restructuring Officer of the Debtors in Support of Debtors' Emergency Motion for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan* (the "**Hollerbach Declaration**"), which is attached hereto as **Exhibit A** and incorporated by reference herein, and the *Declaration of Douglas J. Friske in Support of Debtors' Emergency Motion for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan* (the "**Friske Declaration**" and, together with the First Day Declaration and Hollerbach Declaration, the "**Declarations**"), which is attached hereto as **Exhibit B** and incorporated by reference herein, and respectfully state as follows:

Preliminary Statement

1. These Chapter 11 Cases are approaching a critical juncture. The Debtors have undertaken a marketing process that they hope will lead to a value-maximizing outcome in which

[2] The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as "**Instant Brands**" or the "**Company**."

[3] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the First Day Declaration.

all or substantially all of the Debtors' assets will be sold. Following the submission of indications of interest and initial bids, the Debtors have been working diligently with potential bidders to complete the sales process expeditiously. The senior executives of the Debtors have been asked to work virtually around the clock to usher the sales process to a successful conclusion, all while continuing to perform their "day jobs" managing the Debtors' business for the benefit of all stakeholders, including the more than 2,000[4] employees of Instant Brands. With that context, the Debtors are proposing a Key Employee Incentive Plan (as defined below) for four senior executives who will play an essential role in the outcome of these Chapter 11 Cases.

2. The Debtors do not make this request lightly. The Debtors—relying on the guidance and experience of their board of directors (excluding the chief executive officer, who is a proposed participant), their chief restructuring officer, and their well-qualified consultants who are deeply familiar with chapter 11 compensation—have undertaken a careful review of compensation practices in other cases in this jurisdiction and have applied that information to the current circumstances. The result is a proposed KEIP that is narrowly tailored to incentivize four key executives as they do the important work that is needed to maximize value for the benefit of all stakeholders. As set forth below, the KEIP includes metrics that are based on both the outcome of the sale process and on the Debtors' operating performance, so that the entire spectrum of these employees' contributions to the Debtors can be appropriately measured. The structure and potential value of the KEIP is entirely consistent with other such plans that have been approved in this jurisdiction. Given the timing of upcoming events in these cases, the Debtors have sought relief on an expedited basis in order to ensure that the incentives reflected in the proposed KEIP will have the intended effect during the crucial time period to come.

[4] As of the Petition Date. *See* First Day Declaration (defined below) ¶ 5.

Relief Requested

3. By this Motion, and pursuant to sections 363(b) and 503(c)(3) of title 11 of the United States Code (the "**Bankruptcy Code**"), the Debtors seek entry of an order, substantially in the form attached hereto (the "**Proposed Order**" and, if entered, the "**Order**"), authorizing the implementation of a key employee incentive plan (the "**KEIP**") on the terms set forth herein.

Jurisdiction, Venue, and Authority

4. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.).

5. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

6. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

A. General Background

7. On June 12, 2023 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

8. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 40] entered by the Court on June 13, 2023 in each of the Chapter 11 Cases.

9. On June 15, 2023, the Ontario Superior Court of Justice (Commercial List) issued an order recognizing the Chapter 11 Cases as foreign main proceedings. *See* In Re Instant Brands Inc. (15 June 2023), Toronto, Ont Sup Ct CV-23-00701154-000CL (Initial Recognition Order).

10. On June 27, 2023, the Office of the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**") appointed an Official Committee of Unsecured Creditors (the "**Committee**") pursuant to Bankruptcy Code section 1102. *See United States Trustee's Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 177]. No trustee or examiner has been appointed in the Chapter 11 Cases.

11. On June 30, 2023, the Debtors filed the *Debtors' Emergency Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors' Assets, (B) Authorizing Potential Selection of Stalking Horse Bidder(s), (C) Approving Bid Protections, (D) Scheduling Auction for, and Hearing To Approve, Sale of Debtors' Assets, (E) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, and (F) Approving Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. 199] (the "**Bidding Procedures Motion**"). Through the Bidding Procedures Motion, the Debtors seek entry of an order approving, among other things, bidding procedures (the "**Bidding**

Procedures") to govern the conduct of a sale of all, substantially all, or any combination of the Debtors' assets in one or more lots.

12. On July 12, 2023, the Court entered the order approving the Bidding Procedures [Docket No. 253] (the "**Bidding Procedures Order**").

13. On July 20, 2023, the Ontario Superior Court of Justice (Commercial List) issued an order recognizing the Bidding Procedures Order. *See* In Re Instant Brands Inc. (15 June 2023), Toronto, Ont Sup CV-23-00701159-00CL (Recognition Order of Supplemental Interim DIP Order, Final DIP Order, Cash Management Order and Bidding Procedures Order).

14. Additional information about the Debtors' businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the First Day Declaration.

B. The Pursuit of a Transaction

15. As explained in the First Day Declaration and the Bidding Procedures Motion, the Debtors commenced these Chapter 11 Cases to pursue the sale of all, substantially all, or any combination of the Debtors' assets in one or more lots (a "**Transaction**") pursuant to Bankruptcy Code section 363 or a plan of reorganization. Hollerbach Decl. ¶ 4. Beginning in June 2023, prior to the development of the KEIP, the Debtors, through their investment banker, Guggenheim Securities, LLC, undertook an extensive marketing effort and solicited indications of interest ("**IOIs**") from strategic and financial buyers with the financial and operational wherewithal to complete a transaction. Hollerbach Decl. ¶ 4. Through July 21, 2023, the Debtors received submissions of initial bids for certain of the Debtors' assets. Hollerbach Decl. ¶ 4. The Key Executives have been and continue to be devoting—and need to continue to devote—significant time and effort to the sale process, including conducting management presentations for select potential bidders, responding to their diligence requests in advance of the bid deadline and

coordinating with the Debtors' professionals in documenting and seeking approval of the Transaction. Hollerbach Decl. ¶ 4. The Key Executives are thus essentially performing double duty by tirelessly engaging in efforts to maximize the sale price while also continuing to perform their regular functions that are necessary to operate the Debtors' businesses under challenging circumstances during the pendency of the Chapter 11 Cases. Hollerbach Decl. ¶ 4.

16. Pending the completion of a Transaction, and in order to maximize the value thereof, it is crucial that the Debtors continue to maximize the value of their going concern businesses and that the Key Executives (as defined below) are incentivized to perform optimally in order to achieve this goal. Hollerbach Decl. ¶ 5. In that regard, the Debtors propose to implement the KEIP with respect to certain insiders who, based on their experience, institutional knowledge, expertise, and vendor and customer relations, are critical to ensure that the going concern value of the Debtors' businesses is maximized for the benefit of all stakeholders. Hollerbach Decl. ¶ 5.

C. The Key Employee Incentive Plan

KEIP Participants

17. The Debtors seek authorization to implement a KEIP for four (4) key employees (the "**Key Executives**"), whose institutional knowledge and skill are essential to maximizing the value of the Debtors' estates during the course of these Chapter 11 Cases. The Key Executives are insiders and consist of the Chief Executive Officer; the Chief Financial Officer; the Chief Operating Officer; and the Chief Legal Officer/Chief Human Resources Officer.[5] Hollerbach Decl. ¶ 6.

[5] In addition to the KEIP described herein, prior to the Petition Date, the Debtors implemented a retention plan for certain key employees who are not insiders of the Debtors to incentivize them to actively support and drive a successful conclusion of the Chapter 11 Cases (the "**Non-Insider Retention Plan**" and, the obligations thereunder, the "**Non-Insider Retention Obligations**"). On June 13, 2023, the Court approved the payment of the Non-Insider Retention Obligations by entering the *Order Authorizing (I) Debtors To (A) Pay Prepetition Employee Obligations*

18. The KEIP will provide performance incentives for the Key Executives. The Key Executives perform a variety of critical functions for the Debtors, including with regard to management, operations, finance and legal services, and each is highly involved in determining the Debtors' strategic plan and facilitating the achievement of the Debtors' goals. Hollerbach Decl. ¶ 7. In addition to these significant day-to-day responsibilities, these individuals' workloads have substantially increased as a result of these Chapter 11 Cases and the Debtors' reduced workforce. Hollerbach Decl. ¶ 7. In recent months, the Key Executives have devoted significant time to critical and exigent matters, including, among other things, (a) the necessary preparations to file these Chapter 11 Cases, (b) intense negotiations and deliberations regarding sale and related matters, such as conducting management presentations to and responding to diligence requests from the select potential bidders, and (c) various other critical tasks during the pendency of these Chapter 11 Cases, such as managing vendor relationships and maintaining employee morale, and the Debtors will continue to require extraordinary efforts from the Key Executives to oversee the post-petition auction and sale process, maintain the value of the Debtors' business during its pendency, close the Transaction and maximize the proceeds available to creditors in these Chapter 11 Cases. Hollerbach Decl. ¶ 7. Accordingly, it is imperative that the Key Executives are appropriately incentivized to ensure optimal recoveries for all stakeholders.

---

and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Current and Former Employees to Proceed with Outstanding Workers' Compensation Claims, and (III) Financial Institutions To Honor and Process Related Checks and Transfers [Docket No. 79]. For the avoidance of doubt, none of the Key Executives are covered by the Non-Insider Retention Plan.

KEIP Awards

19. The proposed amount of the award (the "**KEIP Award**") to each Key Executive under the KEIP, as determined and approved by the Board, is shown in Table A below. Friske Decl. ¶ 16. Payments with respect to each KEIP Award will be determined as described below.

Table A: Proposed KEIP Awards

Name	Title	Threshold Amount	Target Amount	Maximum Amount
Ben Gadbois	Chief Executive Officer	$1,050,000	$1,575,000	$2,100,000
Bill Hess	Chief Operating Officer	$325,000	$487,500	$650,000
Nick Hewitt	Chief Financial Officer	$325,000	$487,500	$650,000
Cathy Landman	Chief Legal Officer/Chief Human Resources Officer	$325,000	$487,500	$650,000

Performance Metrics

20. Each KEIP Award will be "dual track," with payout amounts determined based on either (i) specified operational performance metrics (the "**Operating Metrics**") and/or (ii) the amount of proceeds received in a qualifying asset sale (the "**Asset Sale Metric**"), each as described in greater detail below. Whether payments will be made based on the Operating Metrics and/or the Asset Sale Metric will depend on the timing of a Qualifying Sale (as defined below), if any. The Operating Metrics will be determined by the Debtors' performance during two performance periods (i) July 1, 2023 through September 30, 2023 ("**2023 Q3 Performance Period**") and (ii) October 1, 2023 through December 31, 2023 ("**2023 Q4 Performance Period**," and, together with the 2023 Q3 Performance Period, the "**Performance Periods**"). Friske Decl. ¶ 17. While the sale process is expected to be completed before the end of the first

Performance Period, the inclusion of second Performance Period and the dual-track nature of the KEIP Awards preserve flexibility and ensure that management is appropriately incentivized to maximize the value of the Debtors' businesses even in the event of a delay in the sale process. Friske Decl. ¶ 17. Payments under each KEIP Award will be made with respect to each Performance Period unless a Qualifying Sale occurs before or during such period. Friske Decl. ¶ 17. In the event that any payments under the Operating Metrics have been made or are due and a Qualifying Sale occurs, such payments under the Operating Metrics shall offset the payments with respect to such Qualifying Sale. Friske Decl. ¶ 17. In no event will aggregate payments under any KEIP Award exceed the "**Maximum Amount**" set forth in Table A above. Friske Decl. ¶ 17. Any earned portion of the KEIP Award will be paid within 30 days following (i) the end of the applicable quarterly Performance Period (if payout is based on the Operating Metrics) (as applicable, a "**Normal Operating Metric Payment Date**"), unless the ABL DIP Obligations (as defined in the Final DIP Order) has not been repaid yet (an "**ABL Repayment Delay**"), in which case the payment will be made on the earlier of (x) within 5 business days after the ABL DIP Obligations are repaid or (y) March 15, 2024 or (ii) closing of Qualifying Sale (if payout is based on TEV in connection with a Qualifying Sale), subject to the terms set forth otherwise herein. Friske Decl. ¶ 17.

21. Operating Metrics. The Operating Metrics consist of two components: (i) 50% based on total net sales (the "**Total Net Sales Operating Metric**") and (ii) 50% based on the adjusted EBITDA (the "**Adjusted EBITDA Operating Metric**"), as set forth in Tables B and C, respectively, below. Friske Decl. ¶ 18. The Operating Metrics are based on a budget that was created through a rigorous process in June 2023, and represent goals that are challenging, require extensive achievement and present a risk of not being met at the threshold level required for

payment. As of the date hereof, the Operating Metrics, including for the first Performance Period, remain challenging and uncertain to be achieved even at the threshold level. Hollerbach Decl. ¶ 9. In the event an asset sale that does not constitute a Qualifying Sale occurs during a Performance Period, the Operating Metrics may be adjusted equitably to reflect the effects of such sale of assets. Friske Decl. ¶ 18. Performance under the Operating Metrics will be measured for each Performance Period as well as on a cumulative basis, and a "catch-up" payment will be made to the extent the Company achieves or exceeds the cumulative threshold under the Operating Metrics and the payment due with respect to such cumulative performance would exceed the sum of the payments due with respect to each individual Performance Period. Friske Decl. ¶ 18. The maximum awards under the KEIP will not be increased due to the "catch-up" feature.

Table B: Total Net Sales Operating Metric

Performance Period	Q3 2023	Q4 2023	Cumulative
Total Net Sales (Threshold)	$173,990,317	$217,070,279	$391,060,596
Total Net Sales (Target)	$183,656,446	$229,129,739	$412,786,185
Total Net Sales (Maximum)	$193,322,575	$241,189,199	$434,511,774

Table C: Adjusted EBITDA Operating Metric

Performance Period	Q3 2023	Q4 2023	Cumulative
Adjusted EBITDA (Threshold)	$18,855,893	$30,910,388	$49,766,281
Adjusted EBITDA (Target)	$19,903,443	$32,627,632	$52,531,075

Adjusted EBITDA (Maximum)	$20,950,993	$34,344,875	$55,295,868

22. Under the Operating Metrics portion of the KEIP, maximum performance, target performance or threshold performance in each of the two Performance Periods would result in a payment of 50%, 37.5%, or 25%, respectively, of the maximum amount of each KEIP Award for each Performance Period, with linear interpolation applied between maximum performance and threshold performance. Friske Decl. ¶ 19. For example, target performance in the first Performance Period and maximum performance in the second Performance Period would result in a total payout of 37.5% plus 50.0% for a combined total of 87.5% of each maximum KEIP Award. Under the "catch-up" feature, if cumulative performance from July 1, 2023 through December 31, 2023, with maximum performance, target performance, or threshold performance resulting in payments of 100%, 75%, or 50%, respectively (with linear interpolation applied between maximum performance and threshold performance), would result in a higher payout than the combined aggregate payouts with respect to both individual Performance Periods, then such cumulative performance payout shall apply (with any amounts already paid being offset). Friske Decl. ¶ 19.

23. Asset Sale Metric. The Asset Sale Metric will only apply in the event of a "**Qualifying Sale**", which is defined as a sale (or series of sales) of all or substantially all of the assets of the Company representing at least 75% of the fair market value of the Company's total assets that is consummated at any time on or prior to December 31, 2023 or, in certain circumstances, if the company enters into a definitive sale agreement prior to December 31, 2023, as described in further detail below. Friske Decl. ¶ 20.

24. The date of occurrence of a Qualifying Sale (the "**Qualifying Sale Date**") will be determined as follows. If any sale of assets results in at least 75% of the Company's assets being sold, then the date of closing of such sale shall be the Qualifying Sale Date. If cumulative asset sales (*i.e.*, over one or more sales) reach 100% of the Company's assets at any time prior to the last day of the 2023 Q4 Performance Period, then such date shall be the Qualifying Sale Date. Friske Decl. ¶ 21. Otherwise, if as of the last day of the 2023 Q4 Performance Period, the cumulative asset sales reach 75% of the Company's assets (but still less than 100% of assets), then the Qualifying Sale Date shall be the last day of the 2023 Q4 Performance Period. Friske Decl. ¶ 21. In the event the Company enters into a definitive sale agreement prior to December 31, 2023 which, upon the closing of such sale, would constitute a Qualifying Sale, but the closing of such Qualifying Sale does not occur until after December 31, 2023, then provided that (i) the Key Executive is employed on the date of execution of such sale agreement and (ii) the Key Executive either (A) thereafter remains employed through the date of the closing of such Qualifying Sale or (B) (x) experiences a Qualifying Termination (as defined below) between the signing and closing of such Qualifying Sale and (y) the closing of such Qualifying Sale actually occurs by March 15, 2024, then the Key Executive will remain eligible to receive a payment under his or her KEIP Award based on the Asset Sale Metric (less any prior payouts based on the achievement of the Operating Metrics); provided that if any such Qualifying Termination occurs before December 31, 2023 (but after signing), then such payout will be prorated based on the number of days employed between July 1, 2023 and December 31, 2023 (for the avoidance of doubt, if such Qualifying Termination occurs on or following December 31, 2023, the proration factor will be deemed to be 100%). Friske Decl. ¶ 21.

25. If a Qualifying Sale occurs, the total enterprise value ("**TEV**") will be calculated as follows: (i) the cash purchase price of the assets on a cash-free, debt-free basis *plus* (ii) the assumption of any liabilities. If the Qualifying Sale occurs by virtue of a credit bid, then the TEV will be determined by including in subsection (i) above the amount of the DIP Obligations and the Prepetition Obligations[6] applied in such credit acquisition. Payments with respect to the Asset Sale Metric will be in the amount of the percentage of the maximum KEIP Award specified in Table D below, with linear interpolation applied if the TEV falls between the threshold and target or target and maximum levels. Friske Decl. ¶ 22. Achieving a Qualifying Sale that results in at least a threshold payment level will require diligent effort from the Key Executives and is therefore subject to risk of not being met, while maximum performance is approximately aligned with a result that would allow for a par recovery to prepetition term loan lenders, which would represent a truly extraordinary outcome. Hollerbach Decl. ¶ 9. Any payments made under the Operating Metrics shall offset such amount. Friske Decl. ¶ 22.

Table D: Total Enterprise Value

Total Enterprise Value	Performance Level	KEIP Award (% of maximum)*
<$275,000,000	Below Threshold	0%
$275,000,000	Threshold	50%
$375,000,000	Target	75%
$675,000,000	Maximum	100%
>$675,000,000	Above Maximum	100%

Friske Decl. ¶ 22.

[6] As used in this Motion, "**DIP Obligations**" and "**Prepetition Obligations**" have the meanings ascribed in the *Final Order (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Post-Petition Financing and (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Providing Adequate Protection to Prepetition Secured Parties, and (IV) Granting Related Relief* [Docket No. 257] (the "**Final DIP Order**").

Limitations on the KEIP

26. If a Key Executive's employment is terminated by the Debtors for cause or voluntarily by the Key Executive without good reason, in each case prior to the applicable payment date, such Key Executive will forfeit any right to a payment and any future payments under the KEIP on the date of such employment termination. Friske Decl. ¶ 23. A Key Executive whose employment is terminated by the Debtors without cause, by the Key Executive for good reason or due to the Key Executive's death or disability (together, a "**Qualifying Termination**") will be entitled to any KEIP Award for the current Performance Period (as determined at the end of such period) based on, (a) for the Operating Metrics, the number of days employed during the Performance Period (or, the number of days employed between July 1, 2023 and December 31, 2023 if the "catch-up" feature applies), and (b) for the Asset Sale Metric, the number of days between July 1, 2023 and the date of the Qualifying Sale (offset by any payments under the Operating Metrics). Friske Decl. ¶ 23. Any payment that is delayed past the applicable Normal Operating Metric Payment Date due to an ABL Repayment Delay will be paid regardless of the Key Executive's continued employment, provided that the Key Executive was employed through the applicable Normal Operating Metric Payment Date, subject to the above Qualifying Termination provisions. Friske Decl. ¶ 23.

Benchmarking Analysis

27. The Debtors retained Willis Towers Watson PLC ("**WTW**") in connection with the current matter in June 2023 to advise on compensation strategies in light of the Debtors' voluntary petition for relief under chapter 11 of the Bankruptcy Code. Friske Decl. ¶ 24. At the start of the engagement, WTW discussed with the Debtors and their advisors the Debtors' operational history, financial performance, restructuring process, and various issues regarding

the Debtors' workforce and employee programs. Friske Decl. ¶ 24. WTW reviewed the structure of the Debtors' existing base salary and primary incentive programs, paying specific attention to the various incentive plans' performance metrics, participating employees, payout frequency, and target payout levels and values. Friske Decl. ¶ 24.

28. In assessing the design of the KEIP, WTW's primary goal in the course of these interactions with the Debtors was to ensure that the resulting compensation levels for Key Executives would be appropriate based on market comparisons as well as ensure that the KEIP design would be in-line with typical chapter 11 practice. Friske Decl. ¶ 25. As such, WTW evaluated the Debtors' KEIP with an eye toward two primary areas: (a) competitive compensation levels outside of chapter 11 for the participating Key Executives; and (b) market practices relative to management incentives similar to the proposed KEIP, based on incentive plans approved in comparable chapter 11 cases. Friske Decl. ¶ 25.

29. *Plan Design*. To guide the design of the KEIP and assess the design relative to market practice, WTW conducted a comprehensive review of incentive-based programs implemented in other chapter 11 cases. Friske Decl. ¶ 26. The KEIP provides different awards based on different levels of performance (e.g., threshold, target and maximum performance under the Operational Metrics and Asset Sale Metric), which is an accepted market practice because it is widely regarded as rewarding executives based on their respective levels of achievement. Friske Decl. ¶ 26. WTW examined a population of 32 companies that recently filed for bankruptcy protection and implemented key employee incentive plans while in bankruptcy with operational and/or asset sale incentives. The aggregate cost associated with the Debtors' proposed KEIP at target was compared to the market aggregate cost at target levels. Friske Decl. ¶ 26.

30. The proposed KEIP design is in-line with compensation plans that have been approved by bankruptcy courts in this jurisdiction and others. The proposed Operational Metrics incorporate a range of performance and incorporates the use of a total net sales and adjusted EBITDA as the performance measures. According to WTW, it is common for such plans to include a net sales or EBITDA-based performance metric. Friske Decl. ¶ 27. According to WTW, the use of performance metrics tested outside of an annual performance period is a majority practice from a post-petition incentive perspective, with quarterly performance periods being common. Friske Decl. ¶ 27. Similarly, the Asset Sale Metric is performance-based, incorporates a range of performance outcomes, and utilizes sale proceeds as a performance measure which is in-line with bankruptcy asset sale incentive programs. Friske Decl. ¶ 27.

31. *TDC Benchmarking*. In assessing the reasonableness of the KEIP, WTW analyzed competitive target total direct compensation ("**TDC**")—an industry-standard benchmark that includes the sum of base salary, target annual bonus opportunity and long-term incentive grant values—for all participants in the KEIP. Friske Decl. ¶ 28. WTW discussed the position responsibilities of each of the Key Executives with the Chief Legal and Human Resources Officer to ensure they properly matched each KEIP participant to comparable positions across the relevant market for talent. Friske Decl. ¶ 28.

32. A critical initial step in this analysis was to define the relevant market for talent. WTW analyzed the compensation data using a custom sample of WTW's 2022 General Industry Executive Survey Report focused on companies across a range of industries. Friske Decl. ¶ 29. Tabular data were used, representing companies customized by size to yield median revenues of approximately $700 million. Friske Decl. ¶ 29.

33. In evaluating the Debtors' executives' target total direct compensation opportunity, WTW compared the Key Executives' annualized target total direct compensation, with and without the proposed KEIP, to the competitive benchmark annual target total direct compensation levels (base salary plus annual target incentives plus annual long-term incentive grant values) for each position. Friske Decl. ¶ 30. WTW calculated the Debtors' executives' target total direct compensation aggregate variance from the 25th percentile, 50th percentile and 75th percentile of the market. Friske Decl. ¶ 30. The results were as follows, as set forth in Table E (excluding proposed KEIP) and Table F (including proposed KEIP):

Table E: KEIP Participant Annualized Target Total Direct Compensation (Excluding Proposed KEIP) vs. Market

		% Difference Between Current and Competitive Market		
Position	**Benchmark**	**P25**	**P50**	**P75**
Ben Gadbois	Chief Executive Officer	(41)%	(69)%	(74)%
Bill Hess	Chief Operating Officer	(32)%	(49)%	(70)%
Nick Hewitt	Chief Financial Officer	(43)%	(57)%	(70)%
Cathy Landman	Chief Legal Officer / Chief Human Resources Officer	(47)%	(61)%	(74)%
	Overall competitive positioning:	**(41)%**	**(63)%**	**(73)%**

Table F: KEIP Participant Annualized Target Total Direct Compensation (Including Proposed KEIP) vs. Market

		% Difference Between Current and Competitive Market		
Position	**Benchmark**	**P25**	**P50**	**P75**
Ben Gadbois	Chief Executive Officer	38%	(28)%	(40)%
Bill Hess	Chief Operating Officer	25%	(6)%	(45)%

Nick Hewitt	Chief Financial Officer	12%	(16)%	(42)%
Cathy Landman	Chief Legal Officer / Chief Human Resources Officer	14%	(16)%	(43)%
	Overall competitive positioning:	**26%**	**(21)%**	**(42)%**

34. Compared to the market, the Debtors' Key Executives' aggregate annualized target total direct compensation without the proposed KEIP (i.e., only the Debtors' base salaries since no new annual incentive awards will be granted in 2023 and no long-term incentives have been made in FY2023 as a result of the Debtors filing these Chapter 11 Cases[7]) is 41% below the market 25th percentile, 63% below the market 50th percentile and 73% below the market 75th percentile levels. Friske Decl. ¶ 31. Without the proposed KEIP, the Debtors' ability to motivate their senior management through appropriate compensation will be undermined.

35. The Debtors' Key Executives' proposed annualized aggregate target total direct compensation, including any potential KEIP payment at the target level, falls 26% above the 25th percentile, 21% below the 50th percentile, and 42% below the 75th percentile of market target, total direct compensation levels. Friske Decl. ¶ 32.

36. Given the above observations and positioning against the market industry comparables, the Debtors' KEIP potential payouts are reasonable and in-line with target compensation at talent market competitors.

37. *Aggregate Cost Benchmarking*. WTW calculated the aggregate cost at target performance of the Key Executives' KEIP program in isolation and compared it to the aggregate annualized target costs of bankruptcy KEIPs at the 25th, 50th, 75th and 90th percentiles of the market, as set forth in Table G below. The Debtors' proposed KEIP, with an aggregate cost of

[7] Moreover, the Key Executives are currently not anticipated to be able to benefit from any severance obligations of the Debtors.

$3,037,500 at target funding, falls below the 50th percentile ($3,240,000) of the market KEIP target aggregate annualized program costs. Friske Decl. ¶ 34. In addition, the number of participants in the KEIP is below the 50th percentile of its comparable peers. Based on the foregoing, the Debtors' KEIP aggregate costs are reasonable in comparison to other chapter 11 KEIP program aggregate costs. Friske Decl. ¶ 34.

Table G: Peer Comparison of the Annualized KEIP Cost

Aggregate Annualized Cost vs. Comparable Debtors	Instant Brands KEIP (Annualized Strawmodel)		Comparator Set: KEIP Program Costs (n = 32 companies)			
	Value	**%ile Rank**	**P25**	**P50**	**P75**	**P90**
Annualized Target Cost ($)	$3,037,500	44%	$1,176,726	$3,240,000	$5,651,235	$9,674,751
Target Cost as % of Revenue	0.43%	44%	0.23%	0.48%	1.12%	2.54%
Target Cost per Participant	$759,375	61%	$241,332	$648,000	$1,014,284	$1,896,300
Number of Participants	4	29%	3	6	8	10

Reasonableness of the KEIP

38. Based on the Debtors' understanding of key employee incentive plans approved in comparable chapter 11 cases, the proposed KEIP is reasonable and justified under the facts and circumstances of these Chapter 11 Cases. Hollerbach Decl. ¶ 8. The Key Executives must be sufficiently incentivized given that they are tasked with not only navigating and weighing a Transaction, but also with continuing to steward the Debtors' businesses in the ordinary course. Hollerbach Decl. ¶ 8. The Key Executives are indispensable to the achievement of the Debtors'

goals and, the Debtors are confident that, if properly incentivized, the Key Executives will provide significant value to the Debtors' estates and all of its stakeholders. Hollerbach Decl. ¶ 8.

39. The KEIP is structured to encourage the Key Executives to maximize the total consideration for the Transaction, which by its nature requires Key Executives to manage expenses, preserve vendor and customer relationships, solicit bids, negotiate with bidders and increase sales. Hollerbach Decl. ¶ 9. Moreover, the Debtors limited the participation in the KEIP—as done in key employee incentive plans approved in comparable cases—to those in senior-level positions who can provide the greatest impact on debtor performance and the value of the Debtors' assets and estates. Hollerbach Decl. ¶ 9.

40. The KEIP is designed appropriately to incentivize the Key Executives to continue their substantial efforts in operating the Debtors' businesses, assisting with these Chapter 11 Cases, maximizing the value of a Transaction and ensuring that creditors and stakeholders all are paid promptly. Hollerbach Decl. ¶ 10. Moreover, the KEIP appropriately compensates the Key Executives for the additional (and time consuming) responsibilities that they will have to continue to perform to reach the incentive benchmarks. Hollerbach Decl. ¶ 10.

Basis For Relief

41. The Debtors respectfully request that the Court grant this Motion and enter the Proposed Order because (i) implementation of the KEIP is a reasonable exercise of the Debtors' business judgment and is therefore permissible under Bankruptcy Code section 363(b) and (ii) the KEIP satisfies Bankruptcy Code section 503(c) because the KEIP (a) is not a retention bonus due to its incentive-based structure and (b) is justified by the facts and circumstances of the Chapter 11 Cases.

A. The KEIP Should be Approved Pursuant to Bankruptcy Code Section 363(b) as a Valid Exercise of the Debtors' Business Judgment

42. The KEIP should be approved pursuant to Bankruptcy Code section 363(b)(1). Section 363(b)(1) provides that "[t]he [debtor], 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 re Viking Offshore (USA), Inc.*, 08-31219-H3-11, 2008 WL 1930056, at *2 (Bankr. S.D. Tex. Apr. 30, 2008) (applying the business judgment rule to determine whether the debtors' proposed bonuses were justified outside the ordinary course of business); *In re Mesa Air Grp., Inc.*, No. 10-10018 (MG), 2010 WL 3810899, at *3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving employee incentive programs as "valid exercise of their business judgment" under section 363(b)). A debtor's decision to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business"). Courts emphasize that the business judgment standard is not an onerous standard; rather it "is flexible and encourages discretion." *In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011); *In re Perez*, 339 B.R. 385, 399, n. 14 (Bankr. S.D. Tex. 2006), *aff'd sub nom. Perez v. Peake*, 373 B.R. 468 (S.D. Tex. 2007) ("Section 363(b) should be interpreted liberally to provide a bankruptcy judge with substantial freedom to tailor his orders to meet differing circumstances and to avoid shackling the judge with unnecessary rigid rules.") (cleaned up). As such, courts exhibit "[g]reat judicial deference . . . to [a debtor's] exercise of business judgment." *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 254 (N.D. Tex. 2005). Indeed, as long as a transaction "appears to enhance a debtor's estate, court approval of a debtor-in-

possession's decision to [enter into the transaction] should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the Bankruptcy Code." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (cleaned up).

43. The implementation of the KEIP is a proper exercise of the Debtors' business judgment and is in the best interests of the Debtors' estates. The KEIP is consistent with the Debtors' fiduciary duties to maximize value and has been specifically designed by the Debtors, with the assistance of outside professionals, including the developers thereof, WTW, to provide an incentive for the Key Executives to preserve and enhance the value of the Debtors' businesses and estates. The KEIP was further subject to review and approval by the Board. Providing a proper incentive for the Key Executives—all of whom have special areas of expertise related to the Debtors' businesses and extensive knowledge of the Debtors' operations—is critical to maximizing the value of the Debtors' assets for all stakeholders.

44. The KEIP, therefore, ensures that the Key Executives have an incentive to maximize the Debtors' performance and sale prospects, which is consistent with myriad other similar incentive programs approved by courts in this jurisdiction. *See, e.g.*, *In re Athenex, Inc.*, No. 23-90295 (DRJ) (Bankr. S.D. Tex. June 15, 2023) [Docket No. 272] (approving a key employee incentive plan in which bonuses are earned upon satisfactions of asset sale milestones that yield cash proceeds for the sale of the business unit of four debtors); *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. August 15, 2022) [Docket No. 1071] (approving a key employee incentive program in which payments are tied to five performance metrics); *In re Basic Energy Services, Inc.*, No. 21-90002 (DRJ) (Bankr. S.D. Tex. September 22, 2021) [Docket No. 418] (approving a key employee incentive program tied to aggregate consideration received by the debtors in connection with the 363 sale process); *In re Speedcast*

Int'l Ltd., No. 20-32243 (MI) (Bankr. S.D. Tex. December 3, 2020) [Docket No. 1021] (approving a dual-path key employee incentive plan contemplating operational performance targets with a toggle feature in the event of a 363 sale/sponsor transaction, subject to certain exceptions); *In re Neiman Marcus Group LTD LLC,* No. 20-32519 (DRJ) (Bankr. S.D. Tex. July 30, 2020) [Docket No. 1402] (approving a key employee incentive plan in which payouts are based on either two or three performance metrics depending on the relevant participant).

45. Accordingly, the Debtors respectfully submit that the KEIP is an exercise of the Debtors' business judgment and, thus, should be approved pursuant to Bankruptcy Code section 363(b).

B. The KEIP Should be Approved Pursuant to Bankruptcy Code Section 503(c)(3) Because it is Primarily Incentivizing

46. Bankruptcy Code section 503(c)(1) imposes substantial limitations on retention-based insider compensation programs, but section 503(c)(1) does not apply to performance-based incentive plans. *See, e.g., In re Velo Holdings, Inc.*, 472 B.R. 201, 209–10 (Bankr. S.D.N.Y. 2012) (finding that an incentive-based plan alleviated the need for a section 503(c)(1) analysis); *In re Borders Grp. Inc.*, 453 B.R 459, 471 (Bankr. S.D.N.Y. 2011) (finding that the debtors met the burden to establish that the incentive plan was incentivizing, "thereby alleviating the need for a section 503(c)(1) analysis"). In determining whether an employee bonus plan is incentivizing, courts consider whether the plan is "designed to motivate insiders to rise to a challenge or merely report to work." *In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012). This analysis further recognizes that all compensation, to some degree, has a retentive element. *See In re Glob. Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) ("The fact . . . that all compensation has a retention element does not reduce the Court's conviction that [the] Debtors' primary goal [is] to create value by motivating performance."). Rather, the focus is on

whether the plan is, on the whole, truly incentivizing in nature by demanding a "stretch" before an award opportunity is achieved. *In re Dana Corp.*, 358 B.R. 567, 581 (Bankr. S.D.N.Y. 2006); *accord Glob. Home Prods.*, 369 B.R. at 785 ("The entire analysis changes if a bonus plan is not primarily motivated to retain personnel or is not in the nature of severance."). When evaluating whether performance goals are sufficiently challenging, courts do not analyze whether the "targets now appear achievable in hindsight" but rather "review[] a [compensation plan] that was designed to incentivize work," even if "already partially performed." *In re Aralez Pharm. US Inc.*, No. 18-12425 (MG), 2018 WL 6060356, at *5 (Bankr. S.D.N.Y. Nov. 19, 2018); *see In re Mesa Air Grp., Inc.*, No. 10-10018, 2010 WL 3810899, at *3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving incentive plan that awarded payments for services already rendered).

47. The KEIP is not a retention-based compensation plan and is thus not subject to the restrictions of Bankruptcy Code section 503(c)(1). The KEIP is an incentive-based plan that rewards its beneficiaries for achieving operational and financial results and/or achieving sale value targets that will preserve and maximize the value of the Debtors' businesses for the benefit of all the stakeholders. As testified to in the Hollerbach Declaration, both the Operating Metrics and Asset Sale Metric are challenging, rigorous metrics that present a risk of not being met. *See* Hollerbach Decl. ¶ 9. While this Motion was filed during the first Performance Period with respect to the Operating Metrics, achievement with respect to the first Performance Period remains challenging and uncertain even as of the date of this Motion. Hollerbach Decl. ¶ 9. In any event, the incentivizing nature of the Operating Metrics should be measured when the goals were set, not when this Motion was filed. *See Aralez Pharm.*, 2018 WL 6060356, at *5; *Mesa Air Grp.*, 2010 WL 3810899 at *3. Therefore the KEIP does not compensate the Key Executives

simply to remain in the Debtors' employ through these Chapter 11 Cases. Accordingly, section 503(c)(1) does not apply.

48. To the extent the KEIP may also encourage Key Executives to remain employed with the Debtors throughout the Chapter 11 Cases, that should not bar implementation of the KEIP. Indeed, all successful incentive plans have the indirect benefit of incentivizing an employee to remain with the company. *See In re Alpha Natural Resources, Inc.*, 546 B.R. 348, 357 (Bankr. E.D. Va. 2016) ("[A] KEIP that merely has some retentive effect should not be analyzed under § 503(c)(1)."). As discussed herein, payouts under the KEIP require more than merely remaining employed; they require completion of certain operational and financial performance targets that are challenging. Accordingly, there is no guarantee that the Key Executives will receive any payouts.

49. Significantly, targeted incentive programs such as the KEIP have been recognized and approved in this district. *See, e.g.*, *In re Athenex, Inc.*, No. 23-90295 (DRJ) (Bankr. S.D. Tex. June 15, 2023) [Docket No. 272]; *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. August 15, 2022) [Docket No. 1071]; *In re Basic Energy Services, Inc.*, No. 21-90002 (DRJ) (Bankr. S.D. Tex. September 22, 2021) [Docket No. 418]; *In re Speedcast International Limited,* No. 20-32243 (MI) (Bankr. S.D. Tex. December 3, 2020) [Docket No. 1021]; *In re Neiman Marcus Group LTD LLC,* No. 20-32519 (DRJ) (Bankr. S.D. Tex. July 30, 2020) [Docket No. 1402].

C. The KEIP Is Justified by the Facts and Circumstances of the Chapter 11 Cases

50. Bankruptcy Code section 503(c)(3) permits payments to a debtor's employees outside the ordinary course of business if such payments are justified by "the facts and circumstances of the case." 11 U.S.C. § 503(c)(3). In determining whether a particular program is justified under the facts and circumstances of a particular case, courts consider whether "the

KEIP's implementation will serve the interests of creditors and the debtor's estate." *In re Country Fresh Holding Co.*, No. 21-30574, 2021 WL 2932680, at *13 (Bankr. S.D. Tex. July 12, 2021) (internal quotations omitted). Courts also consider several factors in determining whether a particular program is justified under the facts and circumstances of a particular case, including: (i) whether the plan is calculated to achieve the desired performance; (ii) whether the cost of the plan is reasonable in the context of a debtor's assets, liabilities, and earning potential; (iii) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (iv) whether the plan is consistent with industry standards; (v) whether the debtor performed due diligence in investigating the need for the plan; and (vi) whether the debtor received independent advice in performing due diligence with respect to creating and authorizing the plan. *See Glob. Home Prods.*, 369 B.R. at 786; *Dana Corp.*, 358 B.R. at 576–77. No single factor is dispositive, and the Court has discretion to weigh each of these factors based on the specific facts and circumstances before it. *See Dana Corp.*, 358 B.R. at 576 ("[S]ection 503(c)(3) gives the court discretion as to bonus and incentive plans, which are not primarily motivated by retention or in the nature of severance."). As set forth below, the KEIP satisfies all of these factors.

51. *The KEIP Is Structured to Achieve the Desired Performance*. The KEIP is directly related to the Debtors' goal of effectuating a Transaction during these Chapter 11 Cases and utilizing the proceeds thereof to pay its valid outstanding obligations because it incentivizes the Key Executives to maximize going concern value, oversee a competitive auction process and identify and execute a sale that maximizes value for stakeholders. The Key Executives' interest in receiving compensation is directly aligned with the other stakeholders' interest in maintaining the operations of the business and getting a value-maximizing sale closed. These Key

Executives will have to work diligently and meet challenging goals to receive awards under the KEIP and will forfeit any right to further payouts if they voluntarily terminate their employment without good reason before applicable benchmarks have been met. Moreover, while the Key Executives have rendered faithful service in the past, providing market-based compensation levels by means of the KEIP is particularly necessary because the Key Executives have taken on a number of additional responsibilities and time commitments in connection with these Chapter 11 Cases for which they would not otherwise be compensated. Without the KEIP, the Key Executives would effectively be asked to do double-duty for compensation that is significantly below both market and the Debtors' historical practice.

52. *The Cost of the KEIP Is Reasonable.* The cost of the KEIP is reasonable and can be properly supported by the Debtors in light of their assets, liabilities and earning potential. WTW analyzed competitive target total direct compensation for all participants in the KEIP and concluded that the Debtors' Key Executives' proposed annualized aggregate target total direct compensation, including any potential KEIP payment at the target level, falls 26% above the 25th percentile, 21% below the 50th percentile, and 42% below the 75th percentile of market target, total direct compensation levels. Friske Decl. ¶ 32. The KEIP will also cost only a small fraction of the anticipated value of a sale.

53. *The Scope of the KEIP Is Fair and Reasonable.* The KEIP Participants are limited to a set of four (4) members of senior management at the Company who drive performance and are critical to ensuring the success of the Debtors' businesses generally. The KEIP is reasonably limited to the Key Executives and its cost is reasonable when compared to KEIPs in comparable chapter 11 cases. WTW calculated the aggregate cost at target performance of the Key Executives' KEIP program in isolation and compared it to market

practice and concluded that the Debtors' proposed KEIP at target funding, falls below the 50th percentile of the market KEIP target aggregate annualized program costs. Friske Decl. ¶ 34. In addition, the number of participants in the KEIP is below the 50th percentile of its comparable peers. Friske Decl. ¶ 34.

54. *The KEIP Is Consistent with Industry Practices.* The KEIP also is consistent with the standards and practices for chapter 11 debtors. As explained in greater detail in the Friske Declaration, WTW developed the KEIP with the Debtors taking into consideration recently approved key employee incentive plans from similar cases and the Debtors' chapter 11 goals. The proposed Operational Metrics incorporate a range of performance and incorporates the use of a net sales and EBITDA-based performance metrics which is common practice according to WTW. Friske Decl. ¶ 27. In addition, the use of performance metrics tested outside of an annual performance period is a majority practice from a post-petition incentive perspective, with quarterly performance periods being common. Friske Decl. ¶ 27. Similarly, the Asset Sale Metric is performance-based, incorporates a range of performance outcomes, and utilizes sale proceeds as a performance measure which is in-line with bankruptcy asset sale incentive programs. Friske Decl. ¶ 27.

55. *The Debtors Were Diligent and Developed the KEIP with Independent Advice and Oversight.* The Debtors conducted thorough due diligence with respect to the KEIP by: (i) closely involving WTW in the development of the KEIP, (ii) reviewing materials with respect to recently approved key employee incentive plans and benchmarking analyses with respect to non-debtor peer companies, and (iii) appropriately involving the Board in the design process, culminating in holding a meeting of the Board to discuss any questions with respect to the KEIP

and to approve the form thereof with Key Executives on the Board recused and abstaining from voting.

56. Accordingly, the KEIP satisfies the standard applicable under Bankruptcy Code section 503(c)(3) and is justified under the facts and circumstances of these Chapter 11 Cases.

Emergency Consideration

57. Pursuant to Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Motion. As set forth in this Motion and the Declarations, implementing the KEIP with respect to the Key Executives is critical to ensure that the going concern value of the Debtors' businesses is maximized for the benefit of all stakeholders. Specifically, the Debtors are conducting the sale process in an extremely tight timeframe: per the Bidding Procedures Order, the bid deadline is set on September 7, 2023 at 3:00 p.m. (prevailing Central Time) and the auction (if any) is scheduled on September 11, 2023, at 10:00 a.m. (prevailing Eastern Time), with both being less than one month from the date hereof. Accordingly, in light of the tight timeframe of the sale process, emergency consideration of this Motion is warranted. The Debtors are currently engaging in discussions with the Committee, the DIP Secured Parties, and the Prepetition Secured Parties with respect to the relief requested herein.

Compliance with Bankruptcy Rule 6004(a) and Waiver of Bankruptcy Rule 6004(h)

58. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of this Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is

necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates and economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Debtors' Reservation of Rights

59. Nothing contained herein or any actions taken pursuant to such relief requested is intended or should be construed as, or deemed to constitute, (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a commitment or requirement to pay any claim, (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order, (f) a waiver or impairment of the Debtors' or any other party in interest's rights to dispute any claim on any grounds, or (g) an admission as to the amount, priority, enforceability, perfection, or validity of any lien on, security interest in, or other encumbrance on property of the Debtors' estates.

Notice

60. Notice of this Motion will be provided to the following parties: (a) the U.S. Trustee; (b) DLA Piper LLP (US), as proposed counsel to the Committee; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) Ropes & Gray LLP, as counsel to the agent under, and an ad hoc group of

lenders of, the Debtors' prepetition term loan; (h) Skadden, Arps, Slate, Meagher & Flom LLP, as counsel to the ABL DIP Agent (as defined in the Final DIP Order); (i) Kramer Levin Naftalis & Frankel LLP, as counsel to Cornell (as defined in the First Day Declaration); and (j) any party identified in section E of the *Procedures for Complex Cases In the Southern District of Texas* (the "**Complex Procedures**") (collectively, the "**Notice Parties**"). A copy of this Motion and the Order approving it will also be made available on the Debtors' case information website located at https://dm.epiq11.com/InstantBrands. Based on the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: August 17, 2023
Houston, Texas

HAYNES AND BOONE, LLP

/s/ Charles A. Beckham, Jr.
Charles A. Beckham, Jr. (TX Bar No. 02016600)
Arsalan Muhammad (TX Bar No. 24074771)
David A. Trausch (TX Bar No. 24113513)
1221 McKinney Street, Suite 4000
Houston, Texas 77010
Tel.: (713) 547-2000
Email: charles.beckham@haynesboone.com
arsalan.muhammad@haynesboone.com
david.trausch@haynesboone.com

-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (admitted *pro hac vice*)
Steven Z. Szanzer (admitted *pro hac vice*)
Joanna McDonald (admitted *pro hac vice*)
450 Lexington Avenue
New York, New York 10017
Tel.: (212) 450-4000
Email: brian.resnick@davispolk.com
steven.szanzer@davispolk.com
joanna.mcdonald@davispolk.com

Counsel to the Debtors and Debtors in Possession

Certificate of Accuracy

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief.

/s/ Charles A. Beckham, Jr.
Charles A. Beckham, Jr.

Certificate of Service

I certify that, on August 17, 2023, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles A. Beckham, Jr.
Charles A. Beckham, Jr.

Exhibit A

Hollerbach Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**Jointly Administered**

DECLARATION OF ADAM HOLLERBACH AS CHIEF RESTRUCTURING OFFICER OF THE DEBTORS IN SUPPORT OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING IMPLEMENTATION OF A KEY EMPLOYEE INCENTIVE PLAN

ADAM HOLLERBACH declares and says:

1. I am the Chief Restructuring Officer ("**CRO**") of each of the above-captioned debtors (collectively, the "**Debtors**" and, together with their non-Debtor affiliates, "**Instant Brands**" or the "**Company**"). I have served as the Debtors' CRO since June 11, 2023.

2. I am Partner and Managing Director of AlixPartners, LLP ("**Alix**") and have more than 20 years of experience working on many large restructurings and bankruptcies. I have served in interim management roles (out-of-court) and as a financial and restructuring advisor to clients in a variety of industries, such as automotive, industrial, retail, business services, and consumer products. I also have extensive experience in treasury operations, liquidity management, financial accounting and reporting, operational and debt reorganization, key

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2625); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (2872); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

stakeholder management, and business plan development, as well as cost-reduction initiatives. I have worked on numerous chapter 11 restructurings, including *In re LSC Commc'ns, Inc.*, No. 20-10950 (SHL) (Bankr. S.D.N.Y. May 12, 2020); *In re Mattress Firm, Inc.*, No. 18-12241 (CSS) (Bankr. D. Del. Nov. 7, 2018); *In re Aspect Software Parent, Inc.*, No. 16-10597 (MFW) (Bankr. D. Del. Apr. 22, 2016); *In re Eastman Kodak Co.*, No. 12-10202 (MEW) (Bankr. S.D.N.Y. Feb. 28, 2012); *In re Borders Group, Inc.*, No. 11-10614 (MG) (Bankr. S.D.N.Y. Feb. 16, 2011); *In re Dura Automotive Systems, Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Oct. 30, 2006); *In re Calpine Corp.*, No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 20, 2005); *In re Intermet Corp.*, 04-67597 (MBM) (Bankr. E.D. Mich. Sep. 29, 2004). I am familiar with Instant Brands' day-to-day operations, businesses, and financial affairs.

3. I am over the age of 18 and authorized to submit this declaration (the "**Hollerbach Declaration**") on behalf of each of the Debtors in support of the relief requested in the *Debtors' Emergency Motion for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan* (the "**KEIP Motion**"), filed contemporaneously herewith.[2] Except as otherwise indicated, the facts set forth in this Hollerbach Declaration are based upon my personal knowledge, my review of the relevant documents, information prepared or provided to me by employees of and professional advisors to the Debtors, information prepared or provided to me by employees of Alix (the Debtors' financial advisor), or my opinion based upon experience, knowledge, and information concerning the operations of the Debtors. I have reviewed the KEIP Motion or have otherwise had its contents explained to me, and it is my belief that the relief sought therein is essential to the uninterrupted operation of the Debtors' businesses and to the success of these Chapter 11 Cases. If called upon to testify, I would testify competently to the

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the KEIP Motion.

facts set forth in this Hollerbach Declaration. Unless otherwise indicated, the financial information contained herein is unaudited and provided on a consolidated basis.

The Pursuit of a Transaction

4. The Debtors commenced these Chapter 11 Cases to pursue the sale of all, substantially all, or any combination of the Debtors' assets in one or more lots (a "**Transaction**") pursuant to Bankruptcy Code section 363 or a plan of reorganization. Beginning in June 2023, prior to the development of the KEIP, the Debtors, through their investment banker, Guggenheim Securities, LLC, undertook an extensive marketing effort and solicited IOIs from strategic and financial buyers with the financial and operational wherewithal to complete a transaction. Through July 21, 2023, the Debtors received submissions of initial bids for certain of the Debtors' assets. The Key Executives have been and continue to be devoting—and need to continue to devote—significant time and effort to the sale process, including conducting management presentations for select potential bidders, responding to their diligence requests in advance of the bid deadline and coordinating with the Debtors' professionals in documenting and seeking approval of the Transaction. The Key Executives are thus essentially performing double duty by tirelessly engaging in efforts to maximize the sale price while also continuing to perform their regular functions that are necessary to operate the Debtors' businesses under challenging circumstances during the pendency of the Chapter 11 Cases.

5. Pending the completion of a Transaction, and in order to maximize the value thereof, it is crucial that the Debtors continue to maximize the value of their going concern businesses and that the Key Executives are incentivized to perform optimally in order to achieve this goal. In that regard, the Debtors propose to implement the KEIP with respect to certain insiders who, based on their experience, institutional knowledge, expertise, and vendor and

customer relations, are critical to ensure that the going concern value of the Debtors' businesses is maximized for the benefit of all stakeholders.

The Key Employee Incentive Plan

6. The Debtors seek authorization to implement a KEIP for the Key Executives, whose institutional knowledge and skill are essential to maximizing the value of the Debtors' estates during the course of these Chapter 11 Cases. The Key Executives are insiders and consist of the Chief Executive Officer; the Chief Financial Officer; the Chief Operating Officer; and the Chief Legal Officer/Chief Human Resources Officer.[3]

7. The KEIP will provide performance incentives for the Key Executives. The Key Executives perform a variety of critical functions for the Debtors, including with regard to management, operations, finance and legal services, and each is highly involved in determining the Debtors' strategic plan and facilitating the achievement of the Debtors' goals. In addition to these significant day-to-day responsibilities, these individuals' workloads have substantially increased as a result of these Chapter 11 Cases and the Debtors' reduced workforce. In recent months, the Key Executives have devoted significant time to critical and exigent matters, including, among other things, (a) the necessary preparations to file these Chapter 11 Cases, (b) intense negotiations and deliberations regarding sale and related matters, such as conducting management presentations to and responding to diligence requests from the select potential bidders, and (c) various other critical tasks during the pendency of these Chapter 11 Cases, such as managing vendor relationships and maintaining employee morale, and the Debtors will

[3] In addition to the KEIP described herein, prior to the Petition Date, the Debtors implemented the Non-Insider Retention Plan. On June 13, 2023, the Court approved the payment of the Non-Insider Retention Obligations by entering the *Order Authorizing (I) Debtors To (A) Pay Prepetition Employee Obligations and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Current and Former Employees to Proceed with Outstanding Workers' Compensation Claims, and (III) Financial Institutions To Honor and Process Related Checks and Transfers* [Docket No. 79]. For the avoidance of doubt, none of the Key Executives are covered by the Non-Insider Retention Plan.

continue to require extraordinary efforts from the Key Executives to oversee the post-petition auction and sale process, maintain the value of the Debtors' business during its pendency, close the Transaction and maximize the proceeds available to creditors in these Chapter 11 Cases. Accordingly, I believe that it is imperative that the Key Executives are appropriately incentivized to ensure optimal recoveries for all stakeholders.

Reasonableness of the KEIP

8. Based on my understanding of key employee incentive plans approved in comparable chapter 11 cases, I believe that the proposed KEIP is reasonable and justified under the facts and circumstances of these Chapter 11 Cases. I believe that the Key Executives must be sufficiently incentivized given that they are tasked with not only navigating and weighing a Transaction, but also with continuing to steward the Debtors' businesses in the ordinary course. I believe that the Key Executives are indispensable to the achievement of the Debtors' goals and, the Debtors are confident that, if properly incentivized, the Key Executives will provide significant value to the Debtors' estates and all of its stakeholders.

9. The KEIP is structured to encourage the Key Executives to maximize the total consideration for the Transaction, which by its nature requires Key Executives to manage expenses, preserve vendor and customer relationships, solicit bids, negotiate with bidders and increase sales. The Operating Metrics are based on a budget that was created through a rigorous process in June 2023, and represent goals that are challenging, require extensive achievement and present a risk of not being met at the threshold level required for payment. As of the date hereof, the Operating Metrics, including for the first Performance Period, remain challenging and uncertain to be achieved even at the threshold level. With respect to the Asset Sale Metric, achieving a Qualifying Sale that results in at least a threshold payment level will require diligent

effort from the Key Executives and is therefore subject to risk of not being met, while maximum performance is approximately aligned with a result that would allow for a par recovery to prepetition term loan lenders, which would represent a truly extraordinary outcome. Moreover, the Debtors limited the participation in the KEIP—as done in key employee incentive plans approved in comparable cases—to those in senior-level positions who can provide the greatest impact on debtor performance and the value of the Debtors' assets and estates.

10. The KEIP is designed appropriately to incentivize the Key Executives to continue their substantial efforts in operating the Debtors' businesses, assisting with these Chapter 11 Cases, maximizing the value of a Transaction and ensuring that creditors and stakeholders all are paid promptly. Moreover, the KEIP appropriately compensates the Key Executives for the additional (and time consuming) responsibilities that they will have to continue to perform to reach the incentive benchmarks.

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

Dated: August 17, 2023
Downers Grove, Illinois

/s/ Adam Hollerbach
Adam Hollerbach
Chief Restructuring Officer

Exhibit B

Friske Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**Jointly Administered**

DECLARATION OF DOUGLAS J. FRISKE IN SUPPORT OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING IMPLEMENTATION OF A KEY EMPLOYEE INCENTIVE PLAN

DOUGLAS J. FRISKE declares and says:

1. I am a Managing Director at Willis Towers Watson PLC ("**WTW**"). I am authorized to make this declaration (this "**Declaration**") on behalf of WTW. I submit this Declaration in support of the *Debtors' Emergency Motion for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan* (the "**Motion**")[2] filed by Instant Brands Acquisition Holdings Inc. and certain of its affiliates (collectively, the "**Debtors**")[3], each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**").

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

[2] Capitalized terms that are used but not otherwise defined in this Declaration shall have the meanings ascribed to them in the Motion.

[3] The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as "**Instant Brands**" or the "**Company**."

2. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors' operations and finances, information learned from my review of relevant documents and information supplied to me by members of the Debtors' management and other advisors. I submit this Declaration to establish that the design of the Debtors' Key Employee Incentive Plan ("**KEIP**") is consistent with typical market practice for companies in comparable circumstances, provides market-based compensation opportunities to the Key Executives and is a reasonable means of incentivizing executive performance in light of industry standards. If called upon to testify, I could and would testify competently to the facts set forth herein.

3. For the reasons described below, it is my opinion that the Debtors' KEIP is reasonable given the facts and circumstances of the Chapter 11 Cases and consistent with market practice for companies in chapter 11.

Qualifications

4. I received my Bachelor's degree in Finance from the University of Illinois in 1986. After working at Allstate and Chubb Insurance Companies, I returned to school at Northwestern University. I received a Master's degree in Management from Northwestern University's J.L. Kellogg Graduate School of Management in 1990. Since that time, I have been employed by WTW.

5. WTW is an international professional services firm that offers a wide variety of services to public and private clients, including expert analysis of executive and management compensation. WTW designs and delivers solutions that manage risk, optimize benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. WTW focuses on two key business segments: risk and broking and health, wealth and career.

6. My responsibilities at WTW have primarily involved consulting for large companies, specifically with regard to executive compensation. I have worked with numerous Fortune 1000 companies and have participated in the development and design of hundreds of management and employee incentive plans for companies inside and outside of bankruptcy.

7. I am frequently retained by large companies to advise them on their employee compensation strategies, programs, and pay levels. I am also retained by companies performing specific searches for management personnel, for which I provide guidelines on general market practice and the level and form of current market compensation for those positions.

8. I am highly experienced in executive, management, and employee compensation matters with 33 years of experience in the field. During this time, I have been the lead or supporting employee compensation expert in over 100 bankruptcy cases and have frequently testified as to the reasonableness of a variety of post-petition compensation arrangements. Specifically, I have been involved in the review and design of key employee incentive plans, management incentive plans, and other similar-type plans in various chapter 11 cases.

WTW's Engagement by the Debtors

9. WTW was retained by Instant Brands in connection with the current matter in June 2023. My team at WTW and I have familiarized ourselves with the Debtors' operations and compensation practices, the Chapter 11 Cases and the relevant recent filings. In this process, WTW reviewed relevant market compensation data and analyzed whether the KEIP design is consistent with typical market practice, including with respect to the overall compensation levels contemplated by the KEIP.

Overview

10. The KEIP provides Instant Brands' four Key Executives with (i) an operational performance incentive based on the Operating Metrics and/or (ii) an asset sale incentive based on

the satisfaction of the DIP Obligations and the Prepetition Obligations. The KEIP design was reviewed by the Debtors' management and advisors, and, ultimately, approved by the Debtors' Board of Directors.

11. The estimated level of potential compensation provided under the KEIP, when considered within the context of total compensation, is reasonable in comparison to market-based compensation of other similarly sized businesses. Absent the additional compensation provided by the KEIP, the Key Executives' total compensation would be significantly below market.

The Debtors' KEIP

12. The Debtors have recognized a need to address the concerns of its employees and its creditors and to align the interests of these respective constituencies. In order to achieve targeted business objectives and/or effectively and efficiently accomplish an orderly sale process that maximizes value for all stakeholders, the Debtors have determined that formulating the KEIP was in the best interests of their estates and all parties in interest. The KEIP will help ensure that Key Executives who are essential to the Chapter 11 Cases and sale processes are properly motivated to achieve targeted business objectives, maximize value for the Debtors, their estates, their creditors and other parties in interest. With these objectives in mind, the Debtors, after extensive consultation with, and benchmarking analysis by, WTW, developed the KEIP to properly incentivize certain key insider employees identified by the Debtors.

13. The KEIP is designed to provide incentives to four (4) eligible employees (the "**Key Executives**") to achieve targeted business objectives and/or achieve a successful sale process for the benefit of all of the Debtors' stakeholders. The Key Executives are insiders and consist of the Chief Executive Officer; the Chief Financial Officer; the Chief Operating Officer; and the Chief Legal Officer/Chief Human Resources Officer. The KEIP, which will cover the

period up to the earlier of the end of the Debtors' 2023 fiscal year or sale of the Debtors' assets, will replace the Debtors' normal course annual and long-term incentive programs for the Key Executives.

14. It is my understanding that each of the Key Executives is playing a central role in the Chapter 11 Cases and, in particular, the Debtors' ongoing marketing and sale efforts. Incentivizing the Key Executives is critical in order to ensure that these employees remain focused on their efforts to successfully guide the Debtors through the bankruptcy process and maximize value for the benefit of all of the Debtors' stakeholders.

15. As the Debtors continue their marketing efforts to solicit the highest and best offer from interested market participants, it is imperative that the Debtors' Key Executives are appropriately incentivized to complete the restructuring process and/or to maximize the sale price to ensure optimum recovery for all stakeholders. Not only have the Key Executives continued to perform critical management, finance, and legal functions for the Debtors in the normal course of their employment, but I understand they have been, and will continue to be, required to expend substantial additional time and resources on tasks relating to the implementation of the proposed restructuring, the day-to-day reporting and operational requirements of this Chapter 11 Case, and the ongoing marketing and sale process. Given their knowledge of the Debtors' businesses and their intimate involvement in day-to-day operations, as well as asset disposition planning and negotiations with key creditor constituencies, I understand that the Key Executives are critical to maximizing the value of the Debtors' assets and estates for the benefit of all of the Debtors' stakeholders.

16. The proposed amount of the KEIP Award to each Key Executive under the KEIP, as determined and approved by the Board, is shown in Table A below. Payments with respect to each KEIP Award will be determined as described below.

Table A: Proposed KEIP Awards

Name	Title	Threshold Amount	Target Amount	Maximum Amount
Ben Gadbois	Chief Executive Officer	$1,050,000	$1,575,000	$2,100,000
Bill Hess	Chief Operating Officer	$325,000	$487,500	$650,000
Nick Hewitt	Chief Financial Officer	$325,000	$487,500	$650,000
Cathy Landman	Chief Legal Officer/Chief Human Resources Officer	$325,000	$487,500	$650,000

17. Each KEIP Award will be "dual track," with payout amounts determined based on either (i) the Operating Metrics and/or (ii) the Asset Sale Metric, each as described in greater detail below. Whether payments will be made based on the Operating Metrics and/or the Asset Sale Metric will depend on the timing of a Qualifying Sale, if any. The Operating Metrics will be determined by the Debtors' performance during the Performance Periods. While the sale process is expected to be completed before the end of the first Performance Period, the inclusion of second Performance Period and the dual-track nature of the KEIP Awards preserve flexibility and ensure that management is appropriately incentivized to maximize the value of the Debtors' businesses even in the event of a delay in the sale process. Payments under each KEIP Award will be made with respect to each Performance Period unless a Qualifying Sale occurs before or during such period. In the event that any payments under the Operating Metrics have been made or are due and a Qualifying Sale occurs, such payments under the Operating Metrics shall offset

the payments with respect to such Qualifying Sale. In no event will aggregate payments under any KEIP Award exceed the "**Maximum Amount**" set forth in Table A above. Any earned portion of the KEIP Award will be paid within 30 days following (i) a Normal Operating Metric Payment Date, unless there has been an ABL Repayment Delay, in which case the payment will be made on the earlier of (x) within 5 business days after the ABL DIP Obligations are repaid or (y) March 15, 2024 or (ii) the closing of Qualifying Sale (if payout is based on TEV in connection with a Qualifying Sale), subject to the terms set forth otherwise herein.

18. The Operating Metrics consist of two components: (i) 50% based on the Total Net Sales Operating Metric and (ii) 50% based on the Adjusted EBITDA Operating Metric, as set forth in Tables B and C, respectively, below. In the event an asset sale that does not constitute a Qualifying Sale occurs during a Performance Period, the Operating Metrics may be adjusted equitably to reflect the effects of such sale of assets. Performance under the Operating Metrics will be measured for each Performance Period as well as on a cumulative basis, and a "catch-up" payment will be made to the extent the Company achieves or exceeds the cumulative threshold under the Operating Metrics and the payment due with respect to such cumulative performance would exceed the sum of the payments due with respect to each individual Performance Period. The maximum awards under the KEIP will not be increased due to the "catch-up" feature.

Table B: Total Net Sales Operating Metric

Performance Period	Q3 2023	Q4 2023	Cumulative
Total Net Sales (Threshold)	$173,990,317	$217,070,279	$391,060,596
Total Net Sales (Target)	$183,656,446	$229,129,739	$412,786,185
Total Net Sales (Maximum)	$193,322,575	$241,189,199	$434,511,774

Table C: Adjusted EBITDA Operating Metric

Performance Period	Q3 2023	Q4 2023	Cumulative
Adjusted EBITDA (Threshold)	$18,855,893	$30,910,388	$49,766,281
Adjusted EBITDA (Target)	$19,903,443	$32,627,632	$52,531,075
Adjusted EBITDA (Maximum)	$20,950,993	$34,344,875	$55,295,868

19. Under the Operating Metrics portion of the KEIP, maximum performance, target performance or threshold performance in each of the two Performance Periods would result in a payment of 50%, 37.5%, or 25%, respectively, of the maximum amount of each KEIP Award for each Performance Period, with linear interpolation applied between maximum performance and threshold performance. For example, target performance in the first Performance Period and maximum performance in the second Performance Period would result in a total payout of 37.5% plus 50.0% for a combined total of 87.5% of each maximum KEIP Award. Under the "catch-up" feature, if cumulative performance from July 1, 2023 through December 31, 2023, with maximum performance, target performance, or threshold performance resulting in payments of 100%, 75%, or 50%, respectively (with linear interpolation applied between maximum performance and threshold performance), would result in a higher payout than the combined aggregate payouts with respect to both individual Performance Periods, then such cumulative performance payout shall apply (with any amounts already paid being offset).

20. The Asset Sale Metric will only apply in the event of a "**Qualifying Sale**", which is defined as a sale (or series of sales) of all or substantially all of the assets of the Company representing at least 75% of the fair market value of the Company's total assets that is

consummated at any time on or prior to December 31, 2023, or, in certain circumstances, if the company enters into a definitive sale agreement prior to December 31, 2023, as described in further detail below.

21. The Qualifying Sale Date will be determined as follows. If any sale of assets results in at least 75% of the Company's assets being sold, then the date of closing of such sale shall be the Qualifying Sale Date. If cumulative asset sales (*i.e.*, over one or more sales) reach 100% of the Company's assets at any time prior to the last day of the 2023 Q4 Performance Period, then such date shall be the Qualifying Sale Date. Otherwise, if as of the last day of the 2023 Q4 Performance Period, the cumulative asset sales reach 75% of the Company's assets (but still less than 100% of assets), then the Qualifying Sale Date shall be the last day of the 2023 Q4 Performance Period. In the event the Company enters into a definitive sale agreement prior to December 31, 2023 which, upon the closing of such sale, would constitute a Qualifying Sale, but the closing of such Qualifying Sale does not occur until after December 31, 2023, then provided that (i) the Key Executive is employed on the date of execution of such sale agreement and (ii) the Key Executive either (A) thereafter remains employed through the date of the closing of such Qualifying Sale or (B) (x) experiences a Qualifying Termination between the signing and closing of such Qualifying Sale and (y) the closing of such Qualifying Sale actually occurs by March 15, 2024, then the Key Executive will remain eligible to receive a payment under his or her KEIP Award based on the Asset Sale Metric (less any prior payouts based on the achievement of the Operating Metrics); provided that if any such Qualifying Termination occurs before December 31, 2023 (but after signing), then such payout will be prorated based on the number of days employed between July 1, 2023 and December 31, 2023 (for the avoidance of doubt, if such

Qualifying Termination occurs on or following December 31, 2023, the proration factor will be deemed to be 100%).

22. If a Qualifying Sale occurs, the TEV will be calculated as follows: (i) the cash purchase price of the assets on a cash-free, debt-free basis *plus* (ii) the assumption of any liabilities. If the Qualifying Sale occurs by virtue of a credit bid, then the TEV will be determined by including in subsection (i) above the amount of the DIP Obligations and the Prepetition Obligations applied in such credit acquisition. Payments with respect to the Asset Sale Metric will be in the amount of the percentage of the maximum KEIP Award specified in Table D below, with linear interpolation applied if the TEV falls between the threshold and target or target and maximum levels. Any payments made under the Operating Metrics shall offset such amount.

Table D: Total Enterprise Value

Total Enterprise Value	Performance Level	KEIP Award (% of maximum)*
<$275,000,000	Below Threshold	0%
$275,000,000	Threshold	50%
$375,000,000	Target	75%
$675,000,000	Maximum	100%
>$675,000,000	Above Maximum	100%

23. If a Key Executive's employment is terminated by the Debtors for cause or voluntarily by the Key Executive without good reason, in each case prior to the applicable payment date, such Key Executive will forfeit any right to a payment and any future payments under the KEIP on the date of such employment termination. A Key Executive who experiences a Qualifying Termination will be entitled to any KEIP Award for the current Performance Period

(as determined at the end of such period) based on, (a) for the Operating Metrics, the number of days employed during the Performance Period (or, the number of days employed between July 1, 2023 and December 31, 2023 if the "catch-up" feature applies), and (b) for the Asset Sale Metric, the number of days between July 1, 2023 and the date of the Qualifying Sale (offset by any payments under the Operating Metrics). Any payment that is delayed past the applicable Normal Operating Metric Payment Date due to an ABL Repayment Delay will be paid regardless of the Key Executive's continued employment, provided that the Key Executive was employed through the applicable Normal Operating Metric Payment Date, subject to the above Qualifying Termination provisions.

WTW'S Independent Review of the Reasonableness of the KEIP

24. Since WTW was retained by the Debtors in connection with the current matter in June 2023, I have been advising on compensation strategies in light of the Debtors' voluntary petition for relief under chapter 11 of the Bankruptcy Code. At the start of our engagement, WTW discussed with the Debtors and their advisors the Debtors' operational history, financial performance, restructuring process, and various issues regarding the Debtors' workforce and employee programs. WTW reviewed the structure of the Debtors' existing base salary and primary incentive programs, paying specific attention to the various incentive plans' performance metrics, participating employees, payout frequency, and target payout levels and values.

25. In assessing the design of the KEIP, my primary goal in the course of these interactions with the Debtors was to ensure that the resulting compensation levels for Key Executives would be appropriate based on market comparisons as well as ensure that the KEIP design would be in-line with typical chapter 11 practice. As such, WTW evaluated the Debtors' KEIP with an eye toward two primary areas: (a) competitive compensation levels outside of

chapter 11 for the participating Key Executives; and (b) market practices relative to management incentives similar to the proposed KEIP, based on incentive plans approved in comparable chapter 11 cases.

Analysis of Key Executives' Target Total Direct Compensation

26. To guide the design of the KEIP and assess the design relative to market practice, my team and I conducted a comprehensive review of incentive-based programs implemented in other chapter 11 cases. The KEIP provides different awards based on different levels of performance (e.g., threshold, target and maximum performance under the Operational Metrics and Asset Sale Metric), which is an accepted market practice because it is widely regarded as rewarding executives based on their respective levels of achievement. We examined a population of 32 companies that recently filed for bankruptcy protection and implemented key employee incentive plans while in bankruptcy with operational and/or asset sale incentives. The aggregate cost associated with the Debtors' proposed KEIP at target was compared to the market aggregate cost at target levels.

27. The proposed KEIP design is in-line with compensation plans that have been approved by bankruptcy courts in this jurisdiction and others. The proposed Operational Metrics incorporate a range of performance and incorporates the use of a total net sales and adjusted EBITDA as the performance measures. Based on my experience, it is common for such plans to include a net sales or EBITDA-based performance metric. The use of performance metrics tested outside of an annual performance period is a majority practice from a post-petition incentive perspective, with quarterly performance periods being common. Similarly, the Asset Sale Metric is performance-based, incorporates a range of performance outcomes, and utilizes sale proceeds as a performance measure which is in-line with bankruptcy asset sale incentive programs.

28. In assessing the reasonableness of the KEIP, I worked with my team to analyze competitive target total direct compensation—an industry-standard benchmark that includes the sum of base salary, target annual bonus opportunity and long-term incentive grant values—for all participants in the KEIP. WTW discussed the position responsibilities of each of the Key Executives with the Chief Legal and Human Resources Officer to ensure we properly matched each KEIP participant to comparable positions across the relevant market for talent.

29. A critical initial step in this analysis was to define the relevant market for talent. WTW analyzed the compensation data using a custom sample of WTW's 2022 General Industry Executive Survey Report focused on companies across a range of industries. Tabular data were used, representing companies customized by size to yield median revenues of approximately $700 million.

30. In evaluating the Debtors' executives' target total direct compensation opportunity, WTW compared the Key Executives' annualized target total direct compensation, with and without the proposed KEIP, to the competitive benchmark annual target total direct compensation levels (base salary plus annual target incentives plus annual long-term incentive grant values) for each position. We then calculated the Debtors' executives' target total direct compensation aggregate variance from the 25th percentile, 50th percentile and 75th percentile of the market. The results were as follows, as set forth in Table E (excluding proposed KEIP) and Table F (including proposed KEIP):

Table E: KEIP Participant Annualized Target Total Direct Compensation (Excluding Proposed KEIP) vs. Market

		% Difference Between Current and Competitive Market		
Position	**Benchmark**	**P25**	**P50**	**P75**

Ben Gadbois	Chief Executive Officer	(41)%	(69)%	(74)%
Bill Hess	Chief Operating Officer	(32)%	(49)%	(70)%
Nick Hewitt	Chief Financial Officer	(43)%	(57)%	(70)%
Cathy Landman	Chief Legal Officer / Chief Human Resources Officer	(47)%	(61)%	(74)%
	Overall competitive positioning:	**(41)%**	**(63)%**	**(73)%**

Table F: KEIP Participant Annualized Target Total Direct Compensation (Including Proposed KEIP) vs. Market

		% Difference Between Current and Competitive Market		
Position	**Benchmark**	**P25**	**P50**	**P75**
Ben Gadbois	Chief Executive Officer	38%	(28)%	(40)%
Bill Hess	Chief Operating Officer	25%	(6)%	(45)%
Nick Hewitt	Chief Financial Officer	12%	(16)%	(42)%
Cathy Landman	Chief Legal Officer / Chief Human Resources Officer	14%	(16)%	(43)%
	Overall competitive positioning:	**26%**	**(21)%**	**(42)%**

31. Compared to the market, the Debtors' Key Executives' aggregate annualized target total direct compensation without the proposed KEIP (i.e., only the Debtors' base salaries since no new annual incentive awards will be granted in 2023 and no long-term incentives have been made in FY2023 as a result of the Debtors filing these Chapter 11 Cases[4]) is 41% below the market 25th percentile, 63% below the market 50th percentile and 73% below the market 75th percentile levels. Without the proposed KEIP, the Debtors' ability to motivate their senior management through appropriate compensation will be undermined.

[4] Moreover, the Key Executives are currently not anticipated to be able to benefit from any severance obligations of the Debtors.

32. The Debtors' Key Executives' proposed annualized aggregate target total direct compensation, including any potential KEIP payment at the target level, falls 26% above the 25th percentile, 21% below the 50th percentile, and 42% below the 75th percentile of market target, total direct compensation levels.

33. Given the above observations and positioning against the market industry comparables, I believe that the Debtors' KEIP potential payouts are reasonable and in-line with target compensation at talent market competitors.

34. WTW calculated the aggregate cost at target performance of the Key Executives' KEIP program in isolation and compared it to the aggregate annualized target costs of bankruptcy KEIPs at the 25th, 50th, 75th and 90th percentiles of the market, as set forth in Table G below. The Debtors' proposed KEIP, with an aggregate cost of $3,037,500 at target funding, falls below the 50th percentile ($3,240,000) of the market KEIP target aggregate annualized program costs. In addition, the number of participants in the KEIP is below the 50th percentile of its comparable peers. Based on the foregoing, the Debtors' KEIP aggregate costs are reasonable in comparison to other chapter 11 KEIP program aggregate costs.

Table G: Peer Comparison of the Annualized KEIP Cost

Aggregate Annualized Cost vs. Comparable Debtors	Instant Brands KEIP (Annualized Strawmodel)		Comparator Set: KEIP Program Costs (n = 32 companies)			
	Value	**%ile Rank**	**P25**	**P50**	**P75**	**P90**
Annualized Target Cost ($)	$3,037,500	44%	$1,176,726	$3,240,000	$5,651,235	$9,674,751
Target Cost as % of Revenue	0.43%	44%	0.23%	0.48%	1.12%	2.54%
Target Cost per Participant	$759,375	61%	$241,332	$648,000	$1,014,284	$1,896,300

Number of Participants	4	29%	3	6	8	10

Conclusion

35. Based upon the foregoing and my education, experience and the work I have done in this case, I believe that the proposed KEIP is designed to be consistent with market practice, is reasonable given the facts and circumstances and provides anticipated value that is appropriate to competitively motivate talented Key Executives.

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

Dated: August 17, 2023
Chicago, Illinois

/s/ Douglas J. Friske
Douglas J. Friske
Managing Director

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**
	§	**Re: Docket No. __**

ORDER APPROVING IMPLEMENTATION
OF A KEY EMPLOYEE INCENTIVE PLAN

Upon the emergency motion (the "**Motion**")[2] of Instant Brands Acquisition Holdings Inc. and certain of its affiliates (collectively, the "**Debtors**"), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of an order, pursuant to Bankruptcy Code sections 363(b) and 503(c)(3), authorizing implementation of a Key Employee Incentive Plan, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.); and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

[2] Each capitalized term used herein but not otherwise defined herein shall have the meaning ascribed to it in the Motion.

Court having found that venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Declarations; and the Court having held a hearing to consider the relief requested in the Motion (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and the Declarations and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized pursuant to Bankruptcy Code sections 363 and 503(c)(3) to implement the KEIP as set forth in the Motion.

2. The Debtors are authorized, but not directed, to take any and all action necessary or appropriate to implement the KEIP and to perform any and all obligations contemplated thereby, including making the payments contemplated thereunder.

3. Once earned, the Debtors' obligations to pay amounts that become due and owing under the KEIP shall constitute administrative expenses pursuant to Bankruptcy Code section 503(b), thereby entitled to priority payment pursuant to Bankruptcy Code section 507(a)(2).

4. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365, and all of the Debtors' rights with respect to such matters are expressly reserved.

5. Nothing in this Order nor the Debtors' payment of any claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a commitment or requirement to pay any claim, (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order, (f) a waiver or impairment of the Debtors' or any other party in interest's rights to dispute any claim on any grounds, or (g) an admission as to the amount, priority, enforceability, perfection, or validity of any lien on, security interest in, or other encumbrance on property of the Debtors' estates.

6. Any Bankruptcy Rule (including Bankruptcy Rules 4001(a)(3), 6004(h), and 6006(d)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

7. The Debtors are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

8. The Court shall retain exclusive jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE