IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11, Subchapter V
QLESS, INC.,	Case No. 24-11395 (___)
Debtor.[1]	

DECLARATION OF JAMES HARVEY IN SUPPORT OF CHAPTER 11 PETITION AND FIRST DAY RELIEF

I, James Harvey, under 28 U.S.C. § 1726, declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Executive Officer of QLess, Inc. ("**Debtor**"). I have served in that capacity since April 2022. Accordingly, I am the Debtor's executive officer most knowledgeable about the Debtor's business, legal, and financial affairs, the Debtor's restructuring efforts, and the subjects described below. Except as otherwise indicated below, the facts set forth in this declaration are based on my personal knowledge, my review of relevant documents, information provided to me by employees of or advisors to the Debtor, or my opinion based on my experience, knowledge, and information concerning the Debtor. If called to testify regarding the contents of this declaration, I am competent, willing, and able to do so.

2. To minimize any adverse effects of filing the bankruptcy petition and to preserve value for the benefit of all stakeholders, the Debtor has filed a number of motions requesting various forms of "first day" relief customary for operating Chapter 11 debtors-in-possession (collectively, the "**First Day Motions**"). I submit, as the Debtor has authorized me to do, this declaration in support of the Company's voluntary Chapter 11 petition filed on June 19, 2024 (the

[1] The Debtor's principal place of business and service address is 21 Miller Alley, Suite 210, Pasadena CA 91105.

"**Petition Date**") and the First Day Motions. The relief requested in the First Day Motions is necessary to preserve and maximize the value of the Debtor's estate and allow it to sustain its current operations in chapter 11.

PRELIMINARY STATEMENT

3. The Debtor has filed this case principally to restructure its existing long-term debt and reorganize its financial affairs and capital structure to ensure a more profitable future and maximize recoveries to unsecured creditors. The Debtor hopes to file a plan within the first month of this case, well before the deadline set in Bankruptcy Code § 1189(b).

4. This declaration provides a summary overview of the Debtor's business, the circumstances leading to the commencement of this case, and facts justifying and supporting the relief the Debtor seeks in the First Day Motions. Part I of this declaration provides a general overview of the Debtor's corporate history and business operations. Part II describes the Debtor's prepetition capital structure. Part III describes the circumstances leading to the commencement of this case. Part IV sets forth the evidentiary basis for the relief requested in the First Day Motions.

I. COMPANY HISTORY AND BUSINESS OPERATIONS

5. QLess was founded in 2009, in Pasadena, California by Alejandro (Alex) Bäcker as a software startup operating from the cloud (*i.e.,* customers accessed the QLess software platform over the internet). Bäcker originally created QLess to eliminate customer time spent waiting in line for service. QLess's unique approach relieved customers from having to drive to a location to obtain a paper ticket with a number—like taking a number in a bakery—and sit in a lobby or waiting room. Instead, using QLess, customers were able to join the line from the comfort of their own home while QLess technology would text customers a time to arrive for service.

6. QLess's early success was found in higher education institutions, local governments, and theme parks, a market that constituted more than 80% of QLess's customer base. Nearly all QLess's customers suffered from the same problems and had the same needs: physical lines; taking a number; sitting in the lobby. QLess eventually expanded its product offering to include appointment scheduling, customer satisfaction ratings, and operational reports. QLess made it simpler for employees to easily serve hundreds of customers at a single location in a single day. Through about 2022, this constituted QLess's business approach.

7. In 2022, QLess began to realize that it was effectively bringing QLess's customers together with their customers (visitors) in entirely new and modern ways. Irrespective of how a QLess user was serving appointments or walk-in customers, customer relationship management was the touchstone. QLess's clients' customers (visitors) came to value the accuracy of QLess's estimates of when they were to be served, as well as frequent updates and preparatory instructions via text or email telling customers when to expect to be served.

8. Recognizing this opportunity, QLess expanded its reach to other industries, first among them being a subsegment of the healthcare industry—specifically, clinical and independent labs performing a high daily volume of blood draws, glucose tests for pregnant women, ECGs, drug screens, etc. Radiology labs performing routine radiological tests also proved a good source of QLess's market growth. QLess continues to explore other markets where a user's customer transactions typically last for more than five minutes and where the user sees more than 50 customers per day per location. Currently, the QLess platform is being used to manage more than 30 million visits per year. The Debtor's goal is to reach one billion visits per year across the QLess platform. The Debtor believes that is achievable by 2028–2030, if funded properly.

9. QLess currently maintains a corporate office located at 21 Miller Alley, Suite 210, Pasadena, CA 91105. From this location and through services rendered by the Debtor's remote employees, the Debtor offers top-of-market software-as-a-service (SaaS) for queue management, managing physical and digital customer interactions in a single, unified software application. An end-user's customers can join a queue for customer service interaction from anywhere while staying informed of their place in the queue and expected wait times on their mobile device. The Debtor's platform includes powerful appointment scheduling features, eliminating the hassle of back-and-forth scheduling calls through an intuitive online booking system. Telephone customers are liberated from long wait times listening to hold music and instead receive a callback when the customer reaches the front of the queue, while QLess's clients' employees enjoy a less stressful workday because customers do not begin calls annoyed and irritated for having endured a long wait on hold. The Debtor's platform also includes virtual meeting capability via Zoom, Microsoft Teams, or Webex so that customers can avoid the expense and time of traveling to a central location to transact business with the QLess client.

10. For customers offering services across multiple locations, the QLess platform uses proprietary technology to direct the client's customers to more available locations, balancing wait and drive times with mapped recommendations. The Debtor's clients use the Debtor's software to reduce costly no-shows by sending out configurable appointment reminders, allowing customers to reschedule appointments themselves, manage booking with a smart cancelation feature—which automatically cancels an appointment and prompts a customer to reschedule after the customer fails to respond to repeated reminders—and automates the filling of canceled appointment slots from a waiting list when a cancelation opens new slots. QLess clients can also perform advanced analysis and obtain real-time service metrics measuring customers served, wait times, and service

bottlenecks. Available analytics include customer satisfaction across teams, locations, and services, as well as employee productivity, efficiency, idle time, and skill development areas.

11. **Corporate Governance.** The Debtor's board of directors comprises five members: (a) Anders Richardson; (b) Nathaniel Hochman; (c) Mark Tapling; (d) James Harvey; and (e) M. Freddie Reiss, who joined the board on June 14, 2024. Mr. Reiss has no prior relationship with the Debtor or any of its shareholders and has joined the board as an independent director to assist the Debtor in preparing for and proceeding with this case. Because the remainder of the board comprises either shareholders or representatives of shareholders (for example, Mr. Richardson is associated with Palisades Growth Capital II, the Debtor's largest shareholder), Mr. Reiss's independence helped the Debtor objectively negotiate the Debtor's proposed debtor-in-possession financing with the Debtor's largest shareholder. The Debtor has also recently engaged Andrew De Camara of Sherwood Partners, a highly-experienced restructuring advisor, to serve as the Debtor's chief restructuring officer for purposes of prosecuting this case.

II. CAPITAL STRUCTURE

A. Prepetition Secured Facility

12. **Celtic.** The Debtor is borrower under the *Business Loan Agreement* dated as of February 21, 2023 (together with all documents, instruments, and agreements executed in connection with that loan agreement, the "**Celtic Loan Documents**"), under which Celtic Bank Corporation advanced loans, secured by a first-priority security interest in substantially all the Debtor's assets, on a term basis. As of the Petition Date, the Debtor was indebted to Celtic Bank in the non-contingent, liquidated amount of no less than $6,250,000 plus fees, costs, expenses, and other amounts arising under the Celtic Loan Documents.

B. Prepetition Unsecured Debt

13. **Trade Debt.** The remainder of the unsecured claims against the Debtor's estate mostly comprises payables owed to the Debtor's trade creditors. Although the Debtor continues to examine its books and records for purposes of preparing its Schedules of Assets and Liabilities, the Debtor estimates that, as of the Petition Date, trade payables and other miscellaneous unsecured claims against the Debtor total approximately $400,000.[2]

14. **Shareholder Lawsuit.** In December 2023, several former shareholders including QLess founder Alex Bäcker and members of his family, filed a five-count civil complaint against the Debtor and eight other defendants (including current majority shareholder Palisades Growth Capital II, L.P. ("**Palisades**"), members of QLess's board, and two former CEOs) in the Delaware Chancery Court alleging, among other things, breaches of fiduciary duties and a violation of the Debtor's articles of incorporation (the "**Shareholder Lawsuit**"). At its essence, the Shareholder Lawsuit alleges various forms of wrongdoing associated with a merger transaction in October 2021 in which, among other things, QLess was recapitalized with considerable new equity investment by Palisades and pre-merger common and preferred QLess shareholders saw their shares redeemed for cash or warrants or both. QLess and its co-defendants have maintained that the Shareholder Lawsuit is without merit and have been defending the Shareholder Lawsuit since its commencement.

15. **Arbitration.** A separate dispute arose between QLess and Alex Bäcker regarding Bäcker's allegation that QLess owes him approximately $500,000 plus interest for unpaid pre-2016 compensation under his employment agreement as well as additional amounts for severance, a "change of control bonus" of approximately $400,000, additional bonuses, and approximately

[2] This amount excludes contingent alleged debts and unliquidated, disputed alleged debts.

$660,000 for alleged compensation for work as a consultant. Bäcker submitted his claims to arbitration in accordance with his employment agreement in June 2022. QLess answered the allegations in the arbitration and has maintained its position that all Bäcker's claims are frivolous, without legal or factual basis, and subject to several affirmative defenses.

C. Equity

16. Currently, QLess has approximately 23 shareholders owning common shares and two series of preferred shares. Palisades is the largest equity owner, holding approximately 35% of all outstanding shares. Additionally, there are approximately 40 holders of various warrants. All the plaintiffs in the Shareholder Lawsuit hold warrants but do not hold common or preferred shares.

III. EVENTS LEADING TO CHAPTER 11 FILING

17. QLess has operated with negative EBITDA for several years. The Debtor projects that it will finish the current fiscal year (calendar year 2024) with an approximate net operating loss of $5 million. The Debtor currently carries approximately $35-40 million in cumulative net operating losses (NOLs). Given the growth in revenue alone, the Debtor projects that it will finish EBITDA neutral (zero net operating loss or gain) by 2025 fiscal year-end.

18. A significant challenge facing the Debtor in its efforts to reach net profitability is that its legacy core product—called Linebuster—suffers from severe technical limitations. The Debtor has wanted to rebuild its core software platform into a far more modern architecture since 2021. The Debtor determined that a new, more product-oriented CEO was required to prioritize developing and bringing to market a new, more versatile and powerful version of the QLess software platform. I believe the Debtor's board chose me to assume that role owing to my 25 years of experience creating, commercializing, and selling business software. (I started my career in

1998 at PeopleSoft, a global leader in business software. I later worked at global leaders in business software such as SAP and Oracle. I joined QLess in April 2022 as both CEO and board member.)

19. Despite that the Debtor's EBITDA has been negative for the last several years, other of the Debtor's operating metrics have significantly improved since I joined the Debtor in 2022. Annualized Recurring Revenue—that is, annualized monthly repeating subscription revenue of QLess's customers—reached its historic peak at $7.8 million in August 2021. But within two financial quarters, Annualized Recurring Revenue had contracted 2.5%, down to $7.5 million. Today, QLess has approximately $9.1 million in Annualized Recurring Revenue.

20. Additionally, customer retention—the rate at which existing customers renew their contracts with QLess—hovered around 80% in 2022. Today, the Debtor forecasts customer retention to reach 90%. Customers are coming back and contributing to the Debtor's revenues better than ever before.

21. Yet these positive above-the-line trends have not yet translated into profitability for several reasons. The Debtor has only recently brought to market its new product, called Tempo, that will eventually replace Linebuster. QLess continues to bear the "bubble cost" of bringing Tempo online, including a surge in R&D spending to develop Tempo and substantially increased operating costs (such as monitoring and support using the Amazon Web Services platform) associated with migrating customers away from Linebuster toward Tempo but also supporting two products at once for the time being. Bringing Tempo online was accompanied by renewed efforts to reduce operating expenses, including approximately $2 million in savings associated with a significant expense reduction event implemented on April 1, 2024 (composed mostly of a headcount reduction and other related measures). By continuing to grow revenue and keeping

operating expenses level—the principal approach QLess is now taking with the help of this case—QLess believes it can move toward profitability in the near term.

22. QLess is fighting for market share and believes that it is still looking up at three to five competitors with superior market penetration. Developing and deploying Tempo as a newer, more sophisticated software offering has required considerable capital such that any increase in revenue and market share earned by leveraging Tempo will translate into profitability on when QLess is able to earn its way past the initial "bubble cost" associated with Tempo noted above.

23. Additionally, the Shareholder Lawsuit plaintiffs, led by Alex Bäcker, have been unusually aggressive, and the Shareholder Lawsuit has been both a severe distraction to the Debtor's operating leadership team and an unmanageable expense that continues to frustrate the Debtor's efforts to achieve profitability. To date—over the course of only six months of early-stage litigation in the Shareholder Lawsuit—QLess has spent some $1 million in legal fees. QLess's defense counsel estimates that litigating the Shareholder Lawsuit to completion will cost upward of $8 million, a figure that does not include potentially large liabilities to QLess's co-defendants, who have indemnification claims against the Debtor in a context in which QLess's directors-and-officers insurer has inexplicably denied coverage.

24. To address its long-term profitability and value creation, the Debtor has also been exploring one or more business combinations with strategic partners. Despite the attractiveness of certain possibilities in this regard, the extraordinary expenses and uncertainty associated with the Shareholder Lawsuit has interfered with the Debtor's ability to pursue such business combinations. Discharge of any claims which theoretically could arise as a result of the Shareholder Litigation will facilitate the potential for value accretive transactions in the future.

IV. FIRST DAY MOTIONS[3]

25. I am familiar with the contents of each First Day Motion (including their exhibits and other attachments) and, to the best of my knowledge, after reasonable inquiry, believe the relief sought in each First Day Motion: (a) will enable the Debtor to sustain operations while in chapter 11; (b) is critical to the Debtor's ability to maximize the value of its estate; and (c) serves the best interests of the Debtor's estate and creditors. Further, I believe the relief sought in the First Day Motions is in each case narrowly-tailored and necessary to achieve the goals identified above.

ADMINISTRATIVE MOTIONS AND APPLICATIONS

A. *Debtor's Application for Authorization to Employ and Retain Kurtzman Carson Consultants, LLC dba Verita Global as Claims and Noticing Agent Effective as of the Petition Date* (the "Claims Agent Retention Application)"

26. The Claims Agent Retention Application seeks an order authorizing the Debtor to employ and retain Kurtzman Carson Consultants LLC dba Verita Global ("**Verita**") as claims and noticing agent in the Debtor's chapter 11 case effective as of the Petition Date. Based on my discussions with the Debtor's advisors, I believe that the Debtor's selection of Verita to act as the Claims and Noticing Agent is appropriate under the circumstances and in the best interest of the Debtor's estate. I understand that, based on all engagement proposals obtained and reviewed, Verita's rates are competitive and reasonable given Verita's quality of services and expertise.

27. In light of the likely number of parties in interest and certain complexities of the Debtor's business, the Debtor submits that the appointment of Verita as Claims and Noticing Agent will provide the most effective and efficient means of, and relieve the Debtor and the Clerk's office of the administrative burden of, noticing motions, processing proofs of claim, and soliciting votes on a plan and is in the best interests of the Debtor's estate and creditors. Accordingly, on the

[3] Capitalized terms used in this section have the meanings given to them in the applicable First Day Motion.

Debtor's behalf, I respectfully submit that the Court should approve the Claims Agent Retention Application.

OPERATIONAL MOTIONS

B. *Debtor's Motion for Interim and Final Orders Authorizing: (I) Maintenance of Existing Bank Accounts; and (II) Continuance of Existing Cash Management System* (the "Cash Management Motion")

28. The Cash Management Motion seeks an order authorizing the Debtor to continue operating the Cash Management System, honor and pay Bank Fees in the ordinary course, including any prepetition Bank Fees, and maintain existing business forms, and granting a limited waiver of the deposit requirements imposed by Bankruptcy Code § 345(b).

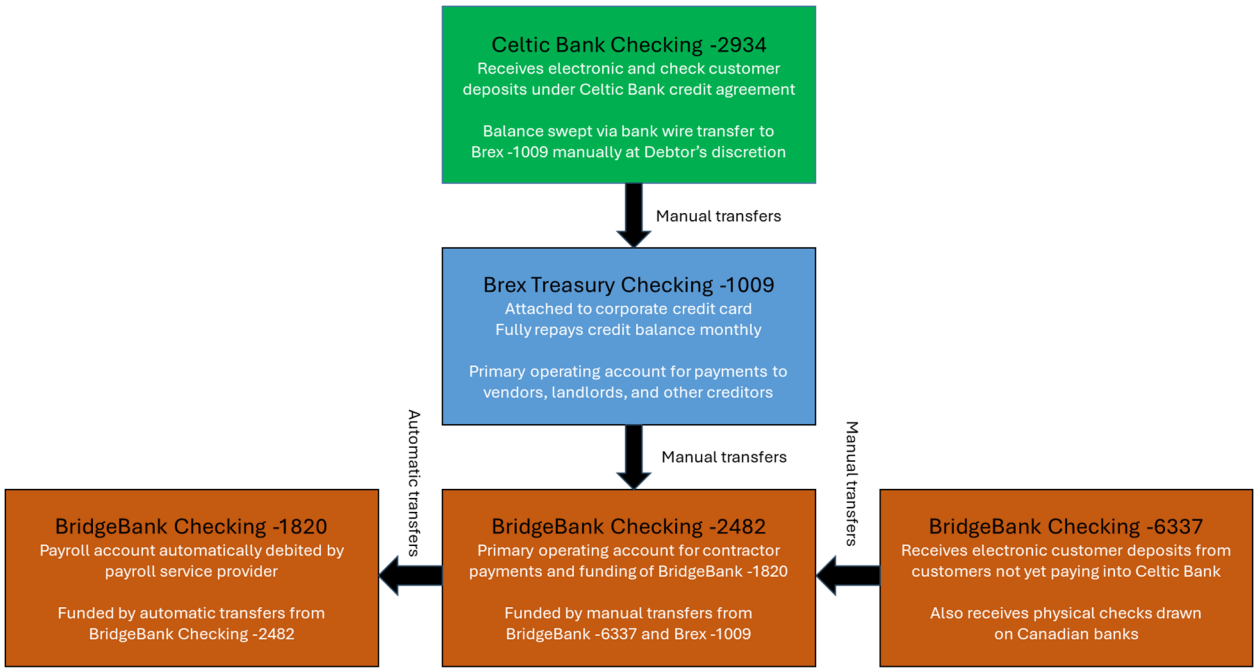
29. To facilitate the efficient ordinary course operation of its business, the Debtor maintains a relatively simple cash management system (the "**Cash Management System**") to collect, manage, and disburse funds used in their business. The Cash Management System is essential to the stability of the Debtor's assets and business objectives and to maximizing the value of the Debtor's estate.

30. The Cash Management System resembles the centralized cash management systems used by similarly-situated companies to manage their cash efficiently and cost-effectively. The Debtor's personnel maintain daily oversight over the Cash Management System and control the entering, processing, and releasing of funds. Because the Debtor requires prompt access to cash for its daily operations, any disruption of the Cash Management System would immediately and adversely affect the Debtor's operations to the detriment of its estate and stakeholders.

31. As of the Petition Date, the Debtor maintained five bank accounts (the "**Bank Accounts**") at three different banks. The Debtor's customers generally pay the Debtor's invoices into a controlled account at Celtic Bank (the "**Celtic Account**"—Celtic Bank maintains a senior security interest in the Debtor's accounts receivable and their proceeds). The remainder of the

Debtor's Bank Accounts are held at: (a) Brex Treasury (the "Brex Account," an operating account from which the Debtor regularly pulls funds via wire transfer from the Celtic Account primarily for cash disbursements, payments to vendors, landlords, and other trade creditors, and which is tied to the Debtor's corporate credit card and used to fully repay the credit balance each month); and (b) BridgeBank, which is a retail banking brand of Western Alliance Bank, one of Region 3's authorized depositories, where the Debtor maintains three checking accounts: (i) a payroll account automatically debited by Insperity, the Debtor's payroll service provider; (ii) an operating account that is connected with the Brex Account and is used to fund the payroll account; and (iii) a legacy account into which some electronic customer deposits are made and where the Debtor can deposit physical checks denominated in Canadian dollars. All funds on deposit in the Bank Accounts are insured by the Federal Deposit Insurance Corporation to the extent provided by law.

32. The Bank Accounts, and the relationship between them constituting the Cash Management System, is shown in the following schematic:



33. The Debtor incurs certain fees and charges in connection with the ordinary course operation of the Cash Management System under prepetition agreements with Celtic Bank and Bridge Bank (collectively, the "**Bank Fees**"), which are typically withdrawn directly from the applicable Bank Account. The Bank Fees include account maintenance charges, charges relating to ACH and wire transfers, service charges, and other customary miscellaneous charges. On average, the Debtor incurs approximately $750 in Bank Fees per month. The Debtor does not believe there are any material prepetition Bank Fees outstanding on the Petition Date but, nonetheless, seeks approval to pay or allow deduction of, any such Bank Fees in the ordinary course when due.

34. Because of the senior lien relationship between Celtic Bank and the Debtor, the Debtor believes it would be needlessly complicated, time-consuming, and prejudicial to Celtic Bank for the Debtor to relocate the Debtor's account to an authorized depository. All the Debtor's customers would have to be informed of the new bank account into which they would be expected immediately to pay invoices, the link relationships between the Celtic Bank account and the Debtor's other operating accounts would have to be severed and re-established with a new bank account, and, importantly, Celtic Bank would have to obtain a new account control agreement to maintain its lien on the Debtor's customer's remittances (which constitute proceeds of the Debtor's accounts receivable on which Celtic Bank has a senior lien).

35. Similarly, the Brex Account is specifically designed to function as a collateralization of the Debtor's credit card obligations to Brex. Terminating that one account in favor of a new account at an authorized depository would be needlessly disruptive and would inflict unwarranted harm on Brex, since the Debtor intends to continue using the corporate credit card Brex has issued. The disruption and uncertainty of restructuring the Cash Management

System to better comply with the technical requirements of the U.S. Trustee Guidelines would significantly outweigh whatever benefit could be gained.

36. The efficient and economical operation of the Debtor's business requires that the Cash Management System continue during the pendency of case. Requiring the Debtor to adopt a new cash management system at this early and critical stage of this case would be expensive, create unnecessary administrative burdens, and be extraordinarily disruptive to the Debtor's business operations. Any such disruption would have a severe and adverse impact on the success of this case. Accordingly, the Debtor seeks authority to continue using the Cash Management System in the same manner as before the Petition Date and to implement ordinary course changes to the Cash Management System consistent with past practices.

37. Requiring the Debtor to adopt a new cash management system during this case would be expensive, burdensome, and unnecessarily disruptive to the Debtor's operations. The Cash Management System provides the Debtor with the ability to quickly assess the location and amount of funds, which, in turn, allows management to track and control funds, ensure cash availability, and reduce administrative costs through a centralized method of coordinating the collection and movement of funds. Any disruption of the Cash Management System would severely and adversely affect the Debtor's restructuring efforts, the cost of which would ultimately be borne by the Debtor's creditors. But maintaining the current Cash Management System will facilitate the Debtor's smooth transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies and will allow the Debtor's accounting employees to focus on their daily responsibilities rather than reconstructing the Cash Management System and being forced to adjust to an unfamiliar new system.

38. Strict enforcement of the U.S. Trustee Guidelines with respect to the Cash Management System will severely disrupt the Debtor's ordinary financial operations by reducing efficiencies, increasing administrative burdens, and creating unnecessary expenses.

39. If the Debtor does not pay its Bank Fees, then their relationships with their banks, which are crucial to their ongoing business operations, may be materially damaged. Further, the Debtor's management and advisors may be forced to spend time and resources on unnecessary disputes with banks at this critical juncture. Any such interference or delay is unnecessary and unduly burdensome.

C. *Debtor's Motion for Interim and Final Orders (I) Authorizing, But Not Directing, the Debtor to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief* (the "Employee Motion")

40. The Employee Motion seeks entry of an order: (i) authorizing the Debtor to pay prepetition employee compensation and benefits; (ii) authorizing the Debtor to honor and continue benefits programs; (iii) authorizing the Debtor's banks to receive, process, honor, and pay all checks issued and electronic payment requests made related to such compensation and benefits obligations; and (iv) granting related relief.

41. As of the Petition Date, the Debtor employs approximately 19 full time employees, all of whom are salaried and paid bi-weekly and 1 part time employee who is paid hourly also bi-weekly (the "**Employees**"). The Employees perform a variety of functions critical to the preservation of value and the administration of the Debtor's estate. In some instances, the Employees include personnel who have specialized and unique technical expertise, are intimately familiar with the Debtor's businesses, processes, and systems, and who cannot be easily replaced. Without the continued, uninterrupted services of the Employees, the Debtor simply could not run its business and preserve value for the benefit of all stakeholders.

42. Many of the Employees rely on their compensation and benefits to pay their daily living expenses. Thus, the Employees will be exposed to significant financial constraints if the Debtor is not permitted to continue paying the Employees' compensation and providing the Employees with health and other benefits. Without the continued, uninterrupted services of its Employees, the Debtor's reorganization efforts will be threatened. Consequently, the Debtor respectfully submits that the relief requested herein is necessary and appropriate under the facts and circumstances of this Chapter 11 Case.

43. In the ordinary course, the Debtor incurs obligations to its Employees for, among other things, wages, salaries, overtime, commission and other obligations described herein (collectively, the "**Employee Compensation**"). As of the Petition Date, the Debtor estimates that they owe approximately $90,000.00 on account of accrued and unpaid Employee Compensation earned by Employees prior to the Petition Date (the "**Unpaid Compensation**"), $47,000.00 of which will come due within the first 21 days of this Chapter 11 Case. If the Employees lose the Unpaid Compensation that they are owed, it could cause Employees to experience financial hardship. In light of the substantial benefit the Employees will continue to provide to the Debtor's estate, the Debtor wishes to avoid imposing such a hardship.

44. During each applicable payroll period, the Debtor routinely deducts certain amounts from Employees' paychecks, including garnishments, child support, and similar deductions, legally ordered deductions, and miscellaneous deductions (collectively, the "**Deductions**"), and forward such amounts to various third-party recipients.

45. In addition to the Deductions, certain federal and state laws require that the Debtor withhold certain amounts from Employees' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the "**Employee Payroll Taxes**")

for remittance to the appropriate federal, state, or local taxing authorities. The Debtor must then match the Employee Payroll Taxes from its own funds and pay, based upon a percentage of gross payroll, additional amounts for federal and state unemployment insurance and Social Security and Medicare taxes (together with the Employee Payroll Taxes, the "**Payroll Taxes**"). The Payroll Taxes are generally processed and forwarded to the appropriate federal, state, and local taxing authorities at the same time the Employees' payroll checks are disbursed.

46. As of the Petition Date, the Debtor estimates that they will have approximately $5,000.00 in unpaid Deductions and Payroll Taxes (together, the "**Withholding Obligations**") outstanding, all of which will come due within the first twenty-one days of this Chapter 11 Case.

47. The Debtor offers a bonus incentive program for certain employees. Eight (8) employees receive quarterly bonuses and twelve (12) employees receive annual bonuses. Bonuses are awarded to certain employees at the Debtor's discretion based on individual and company performance. The Debtor estimates that approximately $13,000.00 could be due in bonuses for the second quarter of 2024. The Debtor does not seek approval of the bonus amounts on an interim basis but will seek approval on a final basis.

48. Payment of Employee payroll and certain Withholding Obligations for the Debtor's Employees are processed by Insperity ("**Insperity**"). Insperity is a professional employment organization which manages many of the employment related services and employee benefit programs for the Debtor. As of the Petition Date, the Debtor estimates that it owes Insperity $2,000 on account of prepetition payroll services and administering the employee benefit program (the "**Insperity Fees**").

49. Prior to the Petition Date and in the ordinary course, the Debtor reimbursed Employees or paid credit card invoices of certain Employees for approved expenses incurred on

behalf of the Debtor in the scope of their employment (the "**Reimbursable Expenses**"). The Reimbursable Expenses are largely on account of costs related to airfare, lodging, ground transportation and business meals as well as for certain professional license certifications and for the sales and marketing teams cell phone charges for reasonable business-related purposes. Employees who pay up front for Reimbursable Expenses apply for reimbursement by submitting an expense report to the Debtor. Once they have determined that the charges are for legitimate reimbursable business expenses, the Debtor reimburses Employees for these expenses. The Debtor's inability to reimburse such expenses could impose hardship on such individuals, where such individuals otherwise incurred obligations for the Debtor's benefit.

50. Historically, the Debtor pays Reimbursable Expenses of approximately $15,000 per month in the aggregate. As of the Petition Date, the Debtor estimates that they owe approximately $10,000 in aggregate Reimbursable Expenses.

51. Although the Debtor asks that reimbursement requests be submitted promptly, sometimes submission delays occur and Employees may submit reimbursement requests for prepetition expenses after the Petition Date. Employees incurred the Reimbursable Expenses as business expenses on the Debtor's behalf and with the understanding that such expenses would be reimbursed fully.

52. The Debtor is invoiced for the services of approximately ten (10) Independent Contractors. The Debtor paid approximately $500,001 through May 2024, representing services provided by individuals since January 1, 2024 (approx. $91,000 / month). Because the amount owing depends on hours actually spent, the precise amount of prepetition amounts owing to the Independent Contractors is unknown. Accordingly, the Debtor hereby seeks authorization in its

discretion to pay up to the amount of $5,000.00 on account of prepetition amounts that may be owing to Independent Contractors.

53. Through Insperity, the Debtor offers its Employees the ability to participate in a number of insurance and benefits programs, including, among other programs, medical, vision and dental plans, HSAs, life insurance, accidental death and dismemberment insurance, disability benefits, workers' compensation, retirement plans, incentive programs, paid time off, and other employee benefit plans (collectively, the "**Employee Benefits Programs**").

54. As described above, failure to continue the Employee Benefits Programs could cause Employees to experience severe hardship. In light of the substantial benefit the Employees have provided and will continue to provide to the Debtor's estate, the Debtor wishes to avoid imposing such a hardship.

55. The Debtor offers eligible Employees and their families the opportunity to participate in a number of fully insured health benefit plans, including medical, vision, and dental plans (collectively, the "**Health Benefit Plans**"). The Debtor pays the premiums on the Health Benefits Plans through a combination of regular deductions from Employee wages and Debtor contributions. Specifically, the Debtor provides the following effective on the first of the month following date of hire:

- **Medical Plan**: The Debtor provides employees with a choice of healthcare plans from among UnitedHealthcare (PPO or California HMO), Kaiser Permanente and Blue Shield of California. For Standard Level Plans, the Debtor pays 80% of the premium for individuals. For family coverage, the Debtor pays 60% of the premium. Any uncovered balance on these plans is paid through payroll deduction. For Director Level Plans, available for the Debtor's executive leadership team, the Debtor pays 100% of the premium for individual and family coverage.

- **Dental Plan**: Additionally, the Debtor offer its Employees the option of participating in the United Healthcare dental plan

(the "**Dental Plan**") For Standard Level Plans, the Debtor pays 80% of the premium for individuals. For family coverage, the Debtor pays 60% of the premium. Any uncovered balance on these plans is paid through payroll deduction. For Director Level Plans, the Debtor pays 100% of the premium for individual and family coverage.

- **Vision Plan**: The Debtor offers its Employees the option of participating in a VSP Vision Service Plan vision plan (the "**Vision Plan**"). For Standard Level Plans, the Debtor pays 80% of the premium for individuals. For family coverage, the Debtor pays 60% of the premium. Any uncovered balance on these plans is paid through payroll deduction. For Director Level Plans, the Debtor pays 100% of the premium for individual and family coverage.

56. As required by law, the Debtor also offers coverage under certain of the Health Benefit Plans to its former employees who have elected COBRA coverage. In the case of the former employees terminated immediately prior to the Petition Date who have elected COBRA coverage, the Debtor paid up to one month of COBRA premiums on behalf of Employees.

57. Through Insperity, the Debtor provides life and accidental death and dismemberment insurance (the "**Basic Life and AD&D Insurance**") to certain Employees through choices offered by Insperity. The Basic Life and AD&D Insurance provides full-time eligible Employees a death benefit of up to 100% percent of annual salary capped at $50,000.00 with a matching AD&D benefit. Benefit reduces by 35 percent at age 65 and 50 percent at age 70.

58. Employees may choose to purchase voluntary supplemental life insurance and accidental death and dismemberment insurance (the "**Supplemental Life and AD&D Insurance**") through options provide by Insperity. The Debtor's Supplemental Life and AD&D Insurance is an optional benefit for Employees that wish to supplement the Basic Life and AD&D Insurance. The Supplemental Life and AD&D Insurance is completely funded by participating Employees but administered by the Debtor. Because Employees pay for all costs of Supplemental Life and AD&D, the Debtor does not believe that they owe any amounts with respect to the

Supplemental Life and AD&D Insurance as of the Petition Date. Nevertheless, out of an abundance of caution, they seek authority to continue to offer this benefit in the ordinary course.

59. The Debtor provides Employees with short-term and long-term disability benefits (the "**Disability Benefits**") through Insperity. For full-time Employees, the short-term disability benefit replaces a portion of the Employee's income (60.00 percent of weekly earnings up to a maximum weekly amount of $2,308) on the fifteenth consecutive day after the Employee is unable to work due to injury or sickness. The short-term disability benefit lasts for 24 weeks at which time an Employee may begin receiving a long-term disability benefit. Once an Employee has exhausted their short-term disability coverage and are still unable to return to work, Employees are eligible for long-term disability coverage. The long-term disability benefit replaces a portion of the Employee's income (60% of base salary with a maximum cap of $10,000 per month).

60. The Debtor provides eligible Employees with health flexible spending accounts (the "**FSAs**") and health savings accounts (the "**HSAs**"), administered by Navia. The FSAs and HSAs pay (or reimburse) eligible healthcare expenses for Employees and their eligible dependents to help defray medical expenses, including deductible payments, coinsurance, prescription drugs, urgent and emergency care, lab tests, and hospital visits.

61. Through Insperity, the Debtor maintains workers' compensation insurance for its Employees (or are otherwise self-insured) at the statutorily required level for each state in which the Debtor has Employees (collectively, the "**Workers' Compensation Program**"). The Workers' Compensation Program is provided on a guaranteed cost basis with no deductible nor self-insured retention. Fees associated with the Workers' Compensation Program are included in the Debtor's payment to Insperity. The Debtor must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers' Compensation Program without

regard to whether such liabilities are outstanding before the Petition Date to ensure that the Debtor complies with applicable workers' compensation laws and requirements.

62. The Debtor offers eligible Employees in the U.S., the opportunity to participate in a 401(k) plan (the "**401(k) Plan**"). The 401(k) Plan generally provides for pre-tax salary deductions of compensation up to limits set by the Internal Revenue Code. The Debtor does not match an Employee's 401(k) Plan contributions. The 401(k) Plan is administered by John Hancock ("**Hancock**") and allows for automatic pre-tax wage deductions of eligible compensation up to the limits set forth by the Internal Revenue Code.

63. Each pay period, Insperity deducts the Employees' 401(k) Plan contributions from the Employees' paychecks (the "**401(k) Deductions**") and holds such amounts in trust until they are forwarded to Hancock. The Debtor deducts approximately $6,000.00 in the aggregate each month from Employees' paychecks on account of the 401(k) Contributions.

64. The Debtor retains to act Hancock as a 401(k) administrator and record keeper, PT Business Solutions as broker/advisor, and FuturePlan ("**FuturePlan**") to act as auditor of the 401(k) Plan. The Debtor pays FuturePlan directly for its services, rather than deduct the costs out of the 401(k) assets. As of the Petition Date, the Debtor estimates that they owe FuturePlan approximately $2,500 for auditing costs.

65. Many Employees' retirement savings solely consist of the 401(k) Plan. Thus, the Debtor believes that continuing the 401(k) Plan is essential to maintaining Employee morale and protecting Employee expectations. In addition, the Debtor believes that the 401(k) Deductions are generally held in trust by the Debtor and are not property of its estate.

66. In the ordinary course of business, the Debtor provides paid time off to certain of its Employees (the "**Paid Time Off**"). The Debtor offers an open Paid Time Off program for its

Employees. Pursuant to the Debtor's policy, eligible Employees are afforded the flexibility to take planned vacations as needed. Exempt Employees do not accrue Paid Time Off under this policy. Instead, Employees will plan the vacation time they would like to take off with management and team members.

67. Because Employees do not accrue open vacation, exempt Employees will not receive compensation for "unused" vacation time when they leave the Debtor. This is the case even if time off is approved in advance, and an Employee terminates employment before taking the approved time off. The Debtor's policy states that open vacation is not a form of additional wages for worked performed. If an Employee does not take time off under this policy, then they are losing out on the benefits of this flexible policy.

68. In addition, the Debtor provides certain other forms of paid and unpaid leave, including, for example, (a) paid holidays, (b) leave under the Family and Medical Leave Act, and (c) other paid and unpaid leaves of absence for personal reasons, including those required by law. Importantly, these other forms of paid and unpaid leave do not involve incremental cash outlays beyond standard payroll obligations.

69. Continuation of Paid Time Off is essential to maintaining Employee morale during this Chapter 11 Case. Further, the policies are broad-based programs upon which all Employees have come to depend. The Debtor anticipates that its Employees will utilize any accrued paid leave in the ordinary course of business under its current policies, which will not create any material cash flow requirements beyond the Debtor's regular payroll obligations.

70. In the ordinary course of business, the Debtor maintains a stock option plan to encourage its Employees to maximize the value of the Debtor's enterprise (the "**Stock Option Plan**"). The Stock Option Plan is an important component of employee compensation and provide

substantial value to the Debtor's estate because they encourage Employees to achieve important financial performance and quality goals.

71. As of the Petition Date, the Debtor offered eligible Employees with JOON, a benefits platform through which employers can provide employees with individualized and automated allowances for health, wellness, work from home essentials, learning and development, childcare and more. The plan provides reimbursement of up to $150.00 per month per employee for eligible receipts submitted by employees. The Debtor anticipates that any prepetition amounts owing in connection with JOON are de minimis.

D. *Debtor's Motion for Entry of Interim and Final Orders: (I) Authorizing the Payment of Certain Taxes and Fees; and (II) Granting Related Relief* (the "Taxes Motion")

72. The Taxes Motion seeks an order (a) authorizing the Debtor to remit and pay prepetition and postpetition Taxes and Fees as they become due in the ordinary course of business.

73. In the ordinary course of business, the Debtor collects, withholds, and incurs sales and use taxes, as well as other governmental taxes, fees, and assessments (collectively, the "**Taxes and Fees**"). Taxes and Fees include Sales and Use Tax, Personal Property Taxes, Franchise Taxes, Licenses, Permits and Other Fees. The Debtor pays or remits, as applicable, Taxes and Fees to various governmental authorities (each, an "**Authority**," and collectively, the "**Authorities**") on a periodic basis (monthly, quarterly, semi-annually, annually, and on an ad hoc basis depending on the Debtor's reporting calendar), based on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. The Debtor generally pays and remits Taxes and Fees through checks and electronic transfers that are processed through its banks and other financial institutions or service providers. From time to time, the Debtor may also receive tax credits for overpayments or refunds in respect of Taxes or Fees. The Debtor

generally uses these credits in the ordinary course of business to offset against future Taxes or Fees, or have the amount of such credits refunded to the Debtor.

74. Additionally, the Debtor may become subject to routine audit investigations on account of tax returns or tax obligations in respect of prior years ("**Audits**") during the Chapter 11 Case. Audits may result in additional prepetition Taxes and Fees being assessed against the Debtor (such additional Taxes and Fees, "**Assessments**").

75. Any failure by the Debtor to pay the Taxes and Fees could materially disrupt the Debtor's business operations in several ways, including (but not limited to): (a) the Authorities may initiate audits of the Debtor, which would unnecessarily divert the Debtor's attention from the Chapter 11 Case; (b) the Authorities may attempt to suspend the Debtor's operations, file liens, seek to lift the automatic stay, or pursue other remedies that will harm the estates; and (c) in certain instances, the Debtor's directors and officers could be subject to claims of personal liability, which would likely distract those key individuals from their duties related to the Debtor's restructuring. Taxes and Fees not paid on the due date as required by law may result in fines and penalties, the accrual of interest, or both.

76. The Debtor incurs, collects, and remits sales and use taxes to the Authorities in connection with the sale, purchase, and use of goods and services (collectively, the "**Sales and Use Taxes**"). The Debtor generally pays Sales and Use Taxes on a monthly, quarterly, semi-annual, or annual basis. The Debtor pays approximately $7,000.00 per month on average in Sales and Use Taxes. The Debtor is current on Sales and Use Taxes.

77. The Debtor incurs personal property taxes (the "**Property Taxes**") owed to certain state and local Authorities. The Debtor typically pays Property Taxes annually, quarterly, or semi-annually depending on how the relevant tax is assessed. As of the Petition Date, the Debtor

estimate that the aggregate amount of accrued and unremitted Property Taxes is approximately $5,000.00.

78. The Debtor is required to pay franchise taxes (the "**Franchise Taxes**") to certain Authorities to operate its businesses in the applicable taxing jurisdictions. Certain states may refuse to qualify a company to do business in a state or recognize a name change, merger, or other activity if franchise taxes have not been paid. Most jurisdictions assess franchise taxes on an annual basis, in arrears.

79. The Debtor is also required to pay various taxes and fees for business licenses, annual reports, various permits, and other similar types of taxes and fees (the "**Business Fees**") in order to continue conducting its business pursuant to state and local laws. The Debtor remits the required amounts for the Business Fees on a monthly, quarterly, or annual basis, depending on the requirements of the particular Authority. As of the Petition Date, the Debtor does not believe that there are any Business Fees due and owing.

80. Any regulatory dispute or delinquency that impacts the Debtor's ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtor's business operations and restructuring efforts. Specifically, the Debtor's failure to remit the Taxes and Fees could adversely affect the Debtor's business operations because, among other things: (a) the Authorities could initiate audits of the Debtor or prevent the Debtor from continuing its business and administering its estate, which, even if unsuccessful, would unnecessarily divert the Debtor's attention from the process of maximizing the value of its estate; (b) the Authorities could attempt to suspend the Debtor's operations, file liens, seek to lift the automatic stay, and pursue other remedies that will harm the Debtor's estates; and (c) certain directors, officers, and persons might be subject to personal liability—even if such a failure to remit such Taxes and Fees was

not a result of malfeasance on its part—which would undoubtedly distract these key employees from its duties related to the Debtor's restructuring.

FINANCING MOTIONS

E. *Emergency Motion of the Debtor For Interim and Final Orders (I) Authorizing and Approving Debtor to (A) Obtain Debtor in Possession Financing on a Junior Secured Basis and (B) Use Cash Collateral of Pre-Petition Secured Lender; (II) Scheduling a Final Hearing; and (III) Granting Related Relief* (the "DIP Financing Motion")

81. The Debtor has limited liquidity to continue business in the ordinary course and satisfy accruing administrative expenses. The Debtor cannot operate on access to cash collateral alone; it requires debtor-in-possession financing to ensure the administrative solvency of this estate. Such financing is also required to allow the Debtor to continue its ongoing process to confirm a chapter 11 plan that will maximize value for the benefit of all constituents. Absent immediate access to cash collateral and the funding available under the DIP Facility, the Debtor would be unable to sustain operations, pay its employees or vendors, or achieve a successful restructuring through the chapter 11 process. Accordingly, the Debtor has an urgent and immediate need for entry of the Interim DIP Order.

82. The Debtor negotiated the DIP Loan Term Sheet with the DIP Lenders, which includes the Debtor's largest shareholders holding approximately 35% of the Debtor's shares. To avoid any appearance of a possible conflict of interest, the Debtor retained an independent director, M. Freddie Reiss, to among other tasks, take the lead in negotiating and directing the Debtor's professionals with respect to the proposed DIP Facility. It is ultimately the parties' intention to convert the DIP Facility into equity in the Debtor under a contemplated chapter 11 plan. Until then, the DIP Lenders have agreed to provide postpetition financing to the Debtor in an amount up to $3.5 million (subject to approval of a budget by the DIP Lenders as to any amount in excess of

$3.0 million), which will be junior and subordinate to the Prepetition Loan Agreement Obligations of the Prepetition Lender. No other financing is presently available to the Debtor.

83. The Debtor has an immediate and critical need to obtain the DIP Facility and to use cash collateral to, among other things: (a) permit the orderly operation of their business; (b) maintain business relationships; (c) make capital expenditures; (d) satisfy other working capital, operational, and general corporate needs; (e) fund costs and expenses related to the Chapter 11 case, and (g) fund the payment of other fees and expenses set forth in the Initial Budget, for the benefit of the Debtor's stakeholders. The ability of the Debtor to maintain business relationships with its vendors, suppliers, and customers requires the availability of working capital from the DIP Facility and access to cash collateral, the absence of which would immediately and irreparably harm the Debtor, its estate, and parties-in-interest. The Debtor does not have sufficient available sources of working capital and financing to operate its business in the ordinary course throughout the case without access to the DIP Facility and authorized use of Cash Collateral. In the absence of the DIP Facility and the use of Cash Collateral, the Debtor's business and estate would suffer immediate and irreparable harm. Access to the DIP Facility will provide the Debtor with sufficient working capital and liquidity to operate during this Chapter 11 case and is vital to the continuation of the Debtor's ongoing chapter 11 plan process. Without access to the DIP Facility and cash collateral, the Debtor would run out of money and its ability to maintain going concern operations and value will be significantly impaired.

Executed June 19, 2024.

/s/ James Harvey
James Harvey