

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	)	Chapter 11
	)	
OTB HOLDING LLC, <i>et al.</i> , ¹	)	Case No. 25-52415 (SMS)
	)	
	)	
Debtors.	)	(Jointly Administered)
_____	)	

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
APPROVING KEY EMPLOYEE RETENTION PLAN**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” or the “Company”) file this *Motion for Entry of an Order Approving Key Employee Retention Plan* (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over these cases and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

2. The bases for the relief requested herein are sections 105, 363 and 503 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 9013-1 and 9013-2 of the Local Rules of Practice for

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

the United States Bankruptcy Court for the Northern District of Georgia (the “Local Rules”) and the *Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (the “Complex Case Procedures”).

BACKGROUND

3. On March 4, 2025 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”). The Debtors have continued in possession of their properties and have continued to operate and manage their business as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in these cases.

4. The factual background relating to the Debtors’ commencement of these cases are set forth in detail in the *Declaration of Jonathan M. Tibus in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) filed on or about the Petition Date and incorporated herein by reference.²

RELIEF REQUESTED

5. By this motion, the Debtors seek entry of an order substantially in the form attached hereto as **Exhibit A** authorizing and approving the Debtors’ Key Employee Retention Plan (the “Retention Plan”, attached hereto as **Exhibit B** applicable to the Debtors non-insider key employees (each, a “KERP Participant” and, collectively, the “KERP Participants”). As described

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration.

below, the Retention Plan contemplates retention payments to twenty-two (22) KERP Participants, provided that the employees remain employed with the Company through the earlier of (i) ninety (90) days following the Petition Date and (ii) the sale proceeding to be consummated during the course of these cases (the “Sale Process”). The payments are expected to total approximately \$305,000. The Debtors submit that the relief requested herein will incentivize management and other key employees to maximize the value of the Debtors’ estates during the Sale Process.

THE KEY EMPLOYEE RETENTION PLAN

A. The KERP Participants

6. The twenty-two (22) KERP Participants perform a variety of important business functions for the Debtors—including accounting, supply chain management, field operations, information technology and marketing—that are vital to the Debtors’ ability to maintain operational stability and preserve and enhance stakeholder value. The KERP Participants’ skills, knowledge, and understanding of the Debtors’ business operations are essential to the Debtors’ business enterprise.

7. Given the importance of the KERP Participants to the Debtors’ business, and faced with the prospect of the Sale Process, the Debtors, in consultation with their advisors, determined that it was necessary and appropriate to implement a retention bonus program to ensure that the KERP Participants are retained through the Sale Process.

8. While certain of the KERP Participants have the title “vice president” or “senior director,” none of the KERP Participants are “insiders” of the Debtors. The KERP Participants do not include any employee that (a) reports directly to OTB Acquisition LLC’s manager or managing member, as applicable (in each case, the “Manager”); (b) is appointed directly by OTB Acquisition

LLC's Manager; (c) exercises managerial control over the Debtors' operations as a whole; (d) controls the Debtors' company policy; or (e) directs the Debtors' overall corporate governance.

B. The Need for the Retention Plan

9. The Debtors believe that the risk of employee attrition is acute because of, among other things, the uncertainty arising from, and the KERP Participants' unfamiliarity with, chapter 11 proceedings in general and the Sale Process. The potential loss of employees would be disruptive to the Debtors' work processes and would cause the Debtors to lose important institutional knowledge. If the Debtors lose the KERP Participants, the Debtors would need to undertake significant efforts, and incur additional financial and other costs, to identify, recruit, hire and train new employees. The Debtors also expect that any new employee may seek relatively greater compensation given the risks such employees may expect in joining a company operating in chapter 11.

C. Description of the Retention Plan

10. The KERP Participants have an opportunity to earn a one-time cash retention payment at the earlier of (i) ninety (90) days following the Petition Date and (ii) the end of the Sale Process, so long as they remain employed through such date. The individual cash payments range from between 3% to 20% of the participant's annual salary based on overall business impact and retention risk. On average, the proposed payment is being 10% of the individual's salary. Assuming all KERP Participants remain employed with the Company through the earlier of (i) ninety (90) days following the Petition Date and (ii) the end of the Sale Process (thus earning the retention payment), the aggregate cost of the Retention Plan (defined herein) would be \$305,000 (an average of \$13,863.64 per KERP Participant). Any payment required to be made

under the Retention Plan would be made by the Debtors upon the earlier of (i) ninety (90) days following the Petition Date and (ii) immediately prior to consummation of a sale of substantially all of the Debtors' assets that has been approved by the Bankruptcy Court. Any KERP Participant whose employment is terminated for cause shall forfeit the right to any payment that has not been made as of the date of such termination. A chart setting forth the job description, annual salary, and proposed Retention Plan payment for each KERP Participant is set forth on **Exhibit C** attached hereto.

11. The Debtors compared the Retention Plan to other retention plans approved by bankruptcy courts since the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Based on that comparison, which included six (6) similarly situated companies with retention plans covering between five (5) and forty-eight (48) participants, the Debtors believe that the Retention Plan is reasonable in terms of aggregate payout and design. The Debtors believe that the proposed Retention Plan is consistent with other non-insider retention programs approved in complex chapter 11 cases, provides a reasonable award opportunity to the KERP Participants, and strikes an appropriate balance between motivating the KERP Participants throughout the chapter 11 process and recognizing the financial constraints on the Debtors' business and the interests of their stakeholders.

BASIS FOR RELIEF REQUESTED

12. Pursuant to Section 363(b) and 503(c)(3) of the Bankruptcy Code, the Debtors submit that the Retention Plan is a proper exercise of the Debtors' business judgment and is in the best interests of the Debtors, their estates, and all of their stakeholders. Further, the Debtors respectfully submit that the provisions otherwise applicable to retention programs pursuant to

Section 503(c)(1) of the Bankruptcy Code are inapplicable here because no “insiders” (as that term is defined by Section 101(31) of the Bankruptcy Code) will participate in the proposed Retention Plan.

A. The Retention Plan is a Sound Exercise of the Debtors’ Business Judgment.

13. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” To approve the use of estate property under Section 363(b)(1) of the Bankruptcy Code, a debtor must show that the decision to use the property outside of the ordinary course of business was based on the debtor’s business judgment. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a 363(b) application must find a good business reason to grant such application); *see also In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring “some articulated business justification” to approve the use, sale or lease of property outside the ordinary course of business); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a Section 363(b) motion is “a good business reason”).

14. The business judgment rule shields a debtor’s management’s decisions from judicial second guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (a “presumption of reasonableness attaches to a debtor’s management decisions” and courts will generally not entertain objections to the debtor’s conduct after a reasonable basis is set forth). Once a debtor articulates a valid business justification, the law vests the debtor’s decision to use property outside of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in

the honest belief that the action was taken in the best interests of the company.” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Thus, if a debtor’s actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

15. The implementation of the Retention Plan is a proper exercise of the Debtors’ business judgment and is in the best interests of their estates and the interests of all stakeholders in these chapter 11 cases. The KERP Participants—along with their skills, knowledge, and hard work—are critical to ensuring that the Debtors continue to maximize stakeholder value in a challenging economic environment. The KERP Participants are familiar with the Debtors’ business and have the experience and knowledge necessary to ensure the Debtors’ continued operations during the Sale Process. The Debtors cannot easily replace the KERP Participants without adversely affecting the Debtors’ operating efficiency and distracting management from the Debtors’ restructuring efforts.

16. Many courts, including this one, have approved non-insider retention programs. *See, e.g., In re MBMG Holding, LLC*, Case No. 24-20576 (CLC) (Bankr. S.D. Fla. Nov. 24, 2024) [Docket No. 173]; *In re Delphi Behavioral Health Grp., LLC*, Case No. 23-10945 (PDR) (Bankr. S.D. Fla. Feb. 10, 2023) [Docket No. 76]; *In re Vital Pharmaceuticals, Inc.*, Case No. 22-17842 (PDR) (Bankr. S.D. Fla. Dec. 2, 2022) [Docket No. 464]; *In re RTI Holding Company, LLC*, Case No. 20-12456 (JTD) (Bankr. D. Del. Jan. 22, 2021) [Docket No. 916]; *In re Rubio’s Restaurants, Inc.*, Case No. 20-12688 (MFW) (Bankr. D. Del. Nov. 19, 2020) [Docket No. 173]; *In re Oconee Regional Health Systems, Inc., et al.*, Case No. 17-515005 (Bankr. M.D. Ga. July 17, 2017)

[Docket No. 310]; *In re Cosi, Inc.*, Case No. 16-12704 (MSH) (Bankr. D. Mass. Sept. 28, 2016) (approving a retention program for non-insiders); *In re Roadhouse Holding Inc.*, Case No. 16-11819 (BLS) (Bankr. D. Del. Sept. 27, 2016) (same) *In re Ultra Petroleum Corp.*, Case No. 16-32202 (MI) (Bankr. S.D. Tex. June 23, 2016) (same); *In re Anesthesia Healthcare Partners, Inc.*, Case No. 14-59631 (WLH) (Bankr. N.D. Ga. Nov. 25, 2014) [Docket No. 232] (same); *In re CF Liquidation, Inc., CGLA Liquidation, Inc.*, Case No. 11-80202 (JB) (Bankr. N.D. Ga. Jan. 12, 2012) [Docket No. 253] (same); *In re TriDimension Energy, L.P.*, Case No. 10-33565 (SGJ) (Bankr. N.D. Tex. Aug. 18, 2010) (same); *In re Value Music Concepts Inc.*, Case No. 10-65031 (PWB) (Bankr. N.D. Ga. Mar. 30, 2010) [Docket No. 76]; *In re Crusader Energy Group, Inc.*, Case No. 09-31797 (BJH) (Bankr. N.D. Tex. May 6, 2009).³

17. Accordingly, the Debtors submit that the relief requested with respect to the Retention Plan is a valid exercise of the Debtors' business judgment and the approval of the Retention Plan is appropriate under Section 363 of the Bankruptcy Code and in the best interest of the Debtors, their estates, and all parties in interest in these chapter 11 cases.

B. Section 503(c)(1) of the Bankruptcy Code is Inapplicable to the Retention Plan.

18. Section 503(c)(1) of the Bankruptcy Code restricts payments made to "an insider of the debtor for the purpose of inducing such person to remain with the debtor's business." Section 503(c)(2) restricts severance payments to insiders. Section 101(31) of the Bankruptcy Code provides that, where a debtor is a corporation, insiders include any "(i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor . . . or [(iv)] relative of a . . . director,

³ Because of the voluminous nature of the orders cited herein, they are not attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

officer or person in control of the debtor.” 11 U.S.C. § 101(31)(B). By its terms, section 503(c)(1) of the Bankruptcy Code does not apply where—as is the case here— participants in a retention-based program are not insiders. *See, e.g., In re Global Home Prods., LLC*, 369 B.R. 778, 784 (Bankr. D. Del. 2007) (noting that section 503(c)(1) of the Bankruptcy Code only applies “if a bankruptcy court is asked to authorize payments to insiders for the purpose of inducing insiders to remain in a debtor’s employ”). As a general matter, the Bankruptcy Code’s distinction between “insiders” and “non-insiders” is intended to draw a line between those individuals who exercise control over corporate activities and corporate policy, and those that do not. *See* 11 U.S.C. § 101(31)(B) (defining “insider” to include persons in control of the debtor).

19. As noted above, certain KERP Participants hold the titles, among others, of “Vice President” or “Senior Director.” The Debtors respectfully submit that such titles are not dispositive of those individuals’ substantive role in the Debtors organization and that such titles do not implicate section 503(c)(1) of the Bankruptcy Code to apply here. *See, e.g., In re Foothills Texas, Inc.*, 408 B.R. 573, 579 (Bankr. D. Del. 2009) (“[T]he mere title of a person does not end the inquiry.”). In determining whether a particular employee is an “insider,” courts consider not only an employee’s job title but also the employee’s role with the debtor. *See, e.g., In re Global Aviation Holdings, Inc.*, 478 B.R. 142, 148 (Bankr. E.D.N.Y. 2012) (“[T]itles such as ‘vice president’ are not determinative.”); *In re Borders Grp., Inc.*, 453 B.R. 459, 468-69 (Bankr. S.D.N.Y. 2011) (holding that an individual’s title, by itself, is insufficient to establish insider status under section 101(31) of the Bankruptcy Code); *In re Longview Aluminum, LLC*, 419 B.R. 351, 355 (Bankr. N.D. Ill. 2009) (nothing that “it is not simply the title ‘director’ or ‘officer’ that renders an individual an insider; rather, it is the set of legal rights that a typical corporate director or officer

holds”). Thus, while a particular job title might indicate that an individual is an insider per section 101(31) of the Bankruptcy Code, this presumption may be rebutted by a showing that the individual in question does not exercise material levels of management control over a debtor or its operations as whole. *In re Foothills Texas, Inc.*, 408 B.R. at 583.

20. An analysis of insider status versus non-insider status focuses on, among other things, whether the employee at issue has the authority to implement company policy or whether the employee reports directly to a company’s board of directors, *see In re Borders Grp.*, 453 B.R. at 469, such that there is a plausible concern that the employee could have gained an “unfair advantage” by virtue of his or her position, *see In re Foothills Texas, Inc.*, 408 B.R. at 583. In short, the determination as to whether any particular employee is an “insider” requires an analysis as to whether the individual in question is “taking part in the management of the debtor.” *Id.* at 579.

21. No KERP Participants are insiders by this measure. No KERP Participant controls or directs the operations of any of the Debtors, has executive oversight authority for the Debtors’ operations as a whole, has broad responsibilities over a large portion of the Debtors businesses, or has direct input into the governance or direction of the Debtors’ operations or a material component of their assets that would indicate such individual was an insider. While certain participants have the title “vice president” or “senior director,” these titles do not confer executive authority. *See In re Global Aviation Holdings, Inc.*, 478 B.R. at 148 (“[A] vice president was not an insider because he was conferred the title ‘for purposes of marketing’ only . . .”).

22. This distinction is also borne out by the financial incentives at issue. The maximum award payable to a KERP Participant under the Retention Plan is approximately \$45,000. No

KERP Participant, including the participants that hold the title of vice president or senior director, will be disproportionately rewarded as a result of their participation in the Retention Plan, and the Debtors believe the costs of the Retention Plan are reasonable and appropriate to mitigate the business risk and attendant costs that would result from the Debtors failing to retain the KERP Participants.

23. In sum, the KERP Participants, although critical to the Debtors' operations, do not have the type of broad responsibility or control to make strategic decisions, set company policy, and/or control employee compensation. As a result, any concerns that the Retention Plan results from an unfair advantage are not justified by the record here.

C. The Retention Plan is Justified by the Facts and Circumstances of these Chapter 11 Cases.

24. Section 503(c)(3) of the Bankruptcy Code generally prohibits certain transfers made to officers, managers, consultants, and others that are not justified by the facts and circumstances of the case. *See* 11 U.S.C. § 503(c)(3). Importantly, Section 503(c)(3)'s "facts and circumstances" justification test "created a standard no different than the business judgment under section 363(b) of the Bankruptcy Code." *In re Borders Grp., Inc.*, 453 B.R. at 473; *see also In re Global Home Prods., LLC*, 369 B.R. at 783 ("If [the key employee retention program is] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363"). As discussed above, the possible loss of the KERP Participants would disrupt the Debtors' ability to preserve and maximize value for the benefit of stakeholders. Because implementation of the Retention Plan would likely mitigate flight risk of the KERP Participants, the Retention Plan is justified by the facts and circumstances of these chapter 11 cases and is a sound exercise of the Debtors' business judgment.

25. The Debtors respectfully submit that the implementation of the Retention Plan is an appropriate exercise of the Debtors' business judgment; is necessary and in the best interest of the Debtors, their creditors, and their estates; and should be approved under sections 105(a), 363(b) and 503(c)(3) of the Bankruptcy Code.

WAIVER OF ANY APPLICABLE STAY

26. The Debtors seek a waiver of any stay of the effectiveness of the order granting this Motion. Pursuant to Bankruptcy Rule 6004(h), any "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." The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

RESERVATION OF RIGHTS

27. Nothing herein or the proposed order (when and if entered), nor as a result of any payment made pursuant to the proposed order (when and if entered), shall be deemed or construed as (a) an admission to the validity, priority or amount of any claim against the Debtors or their estates or an approval or assumption of any agreement or contract pursuant to section 365 of the Bankruptcy Code, or (b) a waiver of any of the rights of the Debtors and their estates, or shall impair the ability of the Debtors and their estates, to contest the validity, priority and amount of any claim or any payment made pursuant to the proposed order (when and if entered).

NOTICE

28. Notice of this Motion has been provided to the Limited Service List. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A** authorizing the Retention Plan, granting the relief herein and such other and further relief as the Court may deem just and proper.

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Date: March 11, 2025
Atlanta, Georgia

Respectfully submitted,

KING & SPALDING LLP

/s/ Jeffrey R. Dutson

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Proposed Counsel for the Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:	)	Chapter 11
	)	
OTB HOLDING LLC, <i>et al.</i> , ¹	)	Case No. 25-52415 (SMS)
	)	
	)	
Debtors.	)	(Jointly Administered)

ORDER APPROVING KEY EMPLOYEE RETENTION PLAN

This matter is before the Court on the *Motion for Entry of an Order Approving Key Employee Retention Plan* (the “Motion”) [Docket No.] of the above-captioned debtors and debtors in possession (collectively, the “Debtors”). All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

The Court has considered the Motion, the First Day Declaration, and the matters reflected in the record of the hearing held on the Motion on _____, 2025. It appears that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and the other parties in interest, and that good cause has been shown therefor; IT IS HEREBY ORDERED:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to implement the Retention Plan.
3. The Debtors are authorized, but not directed, to make payments in accordance with the terms of the Retention Plan.
4. Notwithstanding the relief granted in this Order, any payment made or to be made by the Debtors pursuant to the authority granted herein, and any relief or authorization granted herein, shall be subject to and in compliance with each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief*[Docket No. 17] (collectively, such interim and final orders, the "DIP Order"), including compliance with the Budget (as defined in the DIP Order) and any other terms and conditions of the DIP Order. Nothing herein is intended to modify, alter, or waive, in any

way, any terms, provisions, requirements, or restrictions of the DIP Order. To the extent there is any inconsistency between the terms of the DIP Order and the terms of this Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control. For the avoidance of doubt, the Debtors are not authorized to make payments pursuant to this Order except as permitted by the Budget.

5. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

6. The relief granted in this Order shall not constitute or be deemed to be an express or implied assumption by the Debtors or their estates of any pre-petition agreement, policy, plan, program, practice, procedure or liability, pursuant to Section 365 of the Bankruptcy Code or otherwise.

7. Notwithstanding the possible applicability of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. Notice of this Motion as provided shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), the Bankruptcy Local Rules for the Northern District of Georgia and the Complex Case Procedures are satisfied by such notice.

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

10. Proposed counsel for the Debtors, through Kurtzman Carson Consultants, LLC d/b/a Verita Global (“Verita”) shall, within three (3) days of the entry of this Order, cause a copy of this Order to be served by electronic mail or first class mail, as applicable, on all parties served

with the Motion, and Verita shall file promptly thereafter a certificate of service confirming such service.

[END OF ORDER]

Prepared and presented by:

/s/ Jeffrey R. Dutson

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Proposed Counsel for the Debtors in Possession

Exhibit B

Retention Plan

OTB ACQUISITION LLC
KEY EMPLOYEE RETENTION PLAN

KERP OBJECTIVES

The Key Employee Retention Plan (the “KERP”) of OTB Acquisition LLC (the “Company”) described herein is designed to encourage the retention of certain employees (the “KERP Participants”), who are essential to the Company’s operational and financial restructuring and will aid in maximizing the value of the Company for the benefit of its stakeholders.

THE KERP

The KERP is designed to help ensure that valuable, hard-to-replace employees who are important to the Company’s ongoing operations are retained and properly motivated to preserve and maximize the going concern value of the Company’s business, for the benefit of the Company’s stakeholders in its chapter 11 proceedings. The Company wishes to provide additional incentives to the KERP Participants so that they are committed to this goal. The KERP will incentivize these non-insider employees, who the Company has identified as important to the success of its ongoing operations, to remain with the Company through the date that it consummates the sale contemplated in these chapter 11 cases (the “Sale”).

KERP PARTICIPANTS AND RETENTION PAYMENT LEVELS

The Company has identified twenty-two (22) employees who work across multiple functional areas including Accounting, Supply Chain Management, Field Operations, Information Technology and Marketing with various organizational titles ranging from Analyst to Vice President.

KERP Participants are eligible to earn a one-time retention payment (the “Retention Payments”) equal to a defined percentage of their base salary that has been determined based on each KERP Participant’s business impact and retention risk. The Retention Payments range from 3% to 20% of the participant’s base salary.

The total potential aggregate payout under the KERP is approximately \$305,000. The average payout per KERP Participant is approximately \$13,870.

CONDITIONS AND TIMING OF RETENTION PAYMENTS

The KERP is subject to authorization and approval by the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Bankruptcy Court”).

A KERP Participant shall earn the one-time Retention Payment if he or she remains employed upon the earlier of (i) ninety (90) days following the Petition Date and (ii) the consummation of the Sale. KERP Participants who earn a Retention Payment shall be paid by the Company on the earlier of (i) ninety (90) days following the Petition Date and (ii) immediately prior to the consummation of the Sale.

TERMINATION PROVISIONS

Where a KERP Participant voluntarily terminates his or her employment with the Company prior to the earlier of (i) ninety (90) days following the Petition Date and (ii) consummation of the Sale, the KERP Participant's Retention Payment shall be forfeited and will not be made available for other KERP Participants.

In the event of involuntary termination, unless terminated for cause, the KERP Participant shall receive his or her Retention Payment at the same time as all other KERP Participants. If the KERP Participant is terminated for cause, the KERP Payment shall be forfeited.

For purposes of the KERP, the term "for cause" means, either before or after adoption of the KERP:

- Refusal to follow the lawful instructions of a direct supervisor;
- A finding by a legal or administrative court or tribunal that the KERP Participant engaged in willful misconduct, or was grossly negligent, in the performance of his or her duties;
- A material and direct conflict of interest, not specifically waived in advance by the Company;
- Unauthorized use or disclosure of confidential information that belongs to the Company or its customers, employees or vendors;
- Repeated absences from work that the Company reasonably determines to be materially adverse to the best interests of the Company;
- Repeated failure of a KERP Participant to perform his or her job duties in a satisfactory manner; *provided* that such failure continues for more than 14 days after written notice thereof which specifically identifies the manner in which the KERP Participant is believed to have materially failed to perform said duties; or
- Other material misconduct including, but not limited to: falsification of the Company's records, theft, sexual harassment, or possession of firearms, controlled substances or illegal drugs on the Company's premises or while performing the Company's business.

FURTHER ACTIONS

As a condition to each KERP Participant's eligibility to participate in the KERP, such participant shall agree to take such further actions as are reasonably requested by the Company, including such actions as the Company may reasonably request subsequent to the termination or resignation of such participant's employment with the Company to assist the Company as needed, including in the conduct of the bankruptcy cases filed under chapter 11 of the United States Bankruptcy Code and to resolve any matters in which such participant was involved during his or her tenure at the Company.

PROMISE OF CONTINUED EMPLOYMENT

The KERP, and any KERP Participant's selection as a participant in the KERP, does not, and is in no manner intended to constitute, a promise of employment for any period of time or to change a KERP Participant's status, if applicable, as an at will employee subject to termination at any time for any reason.

TAXES

All payments made pursuant to the KERP shall be subject to standard withholding and deductions on wages. Neither the Company nor its officers or agents make or has made any representation about the tax consequences of any payments or benefits offered by the Company to any KERP Participant.

SEVERABILITY

If any provision of the KERP is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of the KERP and the provision in question shall be modified as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible. Any waiver of or breach of any of the terms of the KERP shall not operate or be construed as a waiver of any other breach of such terms or conditions or of any other terms and conditions, nor shall any failure to enforce any provision hereof operate or be construed as a waiver of such provision or of any other provision.

CHOICE OF LAW AND VENUE

The KERP shall both be governed by the laws of the State of Georgia notwithstanding that State's conflict of law provisions. The Company and each KERP Participant shall: (i) irrevocably and unconditionally consent to the exclusive jurisdiction of the Bankruptcy Court; (ii) irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of or related to the KERP in the Bankruptcy Court; and (iii) irrevocably and unconditionally waive and agree not to plead or claim that any such action, suit, or proceeding brought in the Bankruptcy Court has been brought in an inconvenient forum.

ENTIRE AGREEMENT AND AMENDMENT

This document constitutes the complete, final and exclusive embodiment of the terms and conditions of the KERP and may only be modified in writing signed by an authorized officer of the Company. Any agreement between any KERP Participant and the Company with regard to the KERP, as applicable, and its subject matter is superseded in its entirety by this document.

NO ASSIGNMENT

The rights of a KERP Participant or any other person to any payment or other benefits under the KERP may not be assigned, transferred, pledged, or encumbered except by will or the laws of descent and distribution.

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Exhibit C

Proposed Retention Plan Payments

Job Description	Proposed Retention Payment	Percentage of Salary
Vice President	\$45,000	20%
Vice President	\$30,000	15%
Vice President	\$30,000	18%
Director	\$25,000	16%
Sr Director	\$25,000	14%
Sr. Director	\$15,000	9%
Manager	\$6,000	4%
Sr Director	\$15,000	10%
Director	\$15,000	11%
Director	\$12,000	7%
Controller	\$12,000	9%
Manager	\$10,000	9%
Manager	\$10,000	9%
Sr. Manager	\$10,000	10%
Specialist	\$7,000	10%
Manager	\$7,000	6%
Analyst	\$6,000	6%
Analyst	\$6,000	9%
Director	\$5,000	3%
Manager	\$5,000	5%
Manager	\$5,000	6%
Analyst	\$4,000	7%

Total Proposed Payments: \$305,000