

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

In re:)
) Chapter 11
)
LANG HOLDINGS, INC.,) Case No. 09- 12543 (____)
a Delaware corporation, et al.,¹)
) (Joint Administration Pending)
Debtors.)
)
_____)

**DEBTORS' MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 105(a),
363(b) AND 507(a) AUTHORIZING (I) PAYMENT OF EMPLOYEE WAGE
OBLIGATIONS AND EMPLOYEE BENEFITS AND (II) FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED THERETO**

Lang Holdings, Inc., and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby move (the “Motion”) for entry of an order pursuant to sections 105(a), 363(b) and 507(a) of title 11 of the United States Code (the “Bankruptcy Code”) authorizing the Debtors, in their sole discretion, to (i) continue certain employee compensation and benefits programs, and (ii) pay certain prepetition employee compensation, benefit and reimbursement claims in full. In support of the Motion, the Debtors rely upon the Declaration of Laurie Gilner in Support of Chapter 11 Petitions and First Day Relief (the “Gilner Declaration”), filed concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. This Court has jurisdiction over these chapter 11 cases and this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and this Motion is proper before this Court

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Lang Holdings, Inc. (9551); Turner Acquisition, Inc. (2115); Avalanche Publishing Acquisition, Inc. (3038); The Lang Companies, LLC (9182); Avalanche Publishing, Inc. (9793); and The

pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b) and 507(a) of the Bankruptcy Code.

GENERAL BACKGROUND

2. On the date hereof (the "Petition Date"), the Debtors each commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. As of the date hereof, no request for appointment of a chapter 11 trustee or examiner has been made, and no official committee has been appointed.

4. Information regarding the Debtors' history and business operations, their capital structure and primary secured indebtedness, and the events leading up to the commencement of these chapter 11 cases can be found in the Gilner Declaration, which is incorporated herein by reference.

RELIEF REQUESTED

5. Pursuant to sections 105(a), 363(b) and 507(a) of the Bankruptcy Code, the Debtors seek authority (i) to pay, in their sole discretion, all prepetition obligations, if any, incurred under or related to Wage Obligations, Payroll Taxes, Credit Card Expenses, Reimbursement Expenses, Payroll Service Fees, PTO Plans, Medical Plans, Stoploss Insurance Plan, Prescription Plan, Retiree Health Plan, Flex Spending Accounts, Disability Benefits, Workers' Compensation Programs and 401(k) Plan obligations (each as defined below) and (ii) maintain and continue to honor the practices, programs and policies available for employees described herein as they were in effect as of the Petition Date or as they may be modified,

Lang Store, Ltd. (2398). The mailing address of each of the Debtors is 514 Wells Street, Delafield, Wisconsin 53018.

amended or supplemented from time to time in the ordinary course of the Debtors' business. The Debtors also request that the Court authorize the Debtors' banks and other financial institutions (collectively, the "Banks") to receive, honor, process and pay any and all checks drawn on the Debtors' payroll and general disbursement accounts (collectively, the "Disbursement Accounts") and automatic payroll transfers, to the extent that the checks or transfers relate to the employee obligations or employee benefits described herein.

The Debtors' Prepetition Employee Obligations

6. In the ordinary course of their business, the Debtors incur payroll obligations to their employees as compensation for the performance of services. As of the Petition Date, the Debtors employ approximately 148 full-time employees and approximately 77 part-time employees and one independent contractor (collectively, the "Employees" and each an "Employee") who are paid on either an hourly or salary basis. Approximately 225 Employees are on active payroll. The Debtors' sole independent contractor is the Debtors' Licensing Director.

7. The Debtors have prepetition costs and obligations with respect to the Employees, as set forth more specifically below. Certain of these costs and obligations are outstanding and due and payable, while others will become due and payable postpetition in the ordinary course of the Debtors' business.

Wages, Salaries and Compensation

8. Prior to the Petition Date and in the ordinary course of business, the Debtors typically paid obligations relating to wages, salaries and commissions for the Employees on a bi-weekly basis (the "Wage Obligations"). The Debtors pay the Wage Obligations through either direct deposits into individual Employee bank accounts or by check. In connection with the Wage Obligations, the Debtors employ Paychex Payroll Solutions ("Paychex") for remittance

of payroll and tax-related obligations for the Employees. As of the Petition Date, the Debtors estimate that they owe their Employees, in the aggregate, approximately \$525,000 in outstanding Wage Obligations.

9. Accordingly, by this Motion, the Debtors seek authority to pay all of their accrued and outstanding prepetition Wage Obligations, not to exceed \$550,000, less any amounts authorized to be paid to Employees pursuant to the Emergency Motion of Debtors for Order Pursuant to 11 U.S.C. §§ 105, 363, 507, 1107 and 1108 (i) Authorizing Debtors' Banks to Honor Prepetition Checks, Deposits and Electronic Transfers on Account of Prepetition Payroll Obligations, (ii) Prohibiting Banks From Placing Holds on the Debtors' Accounts on Account of Payroll Obligations and (iii) Authorizing Debtors to Fund the Prepetition Payroll Obligations Pending a First Day Hearing (the "Employee Wage Motion"). As of the Petition Date, the Debtors believe that only one of their Employees has a claim related to Wage Obligations (excluding obligations under the PTO Plan (as defined below)) in excess of \$10,950. The Debtors are not seeking authority to pay Employee Wage Obligations in excess of \$10,950 at the first day hearing in these cases, but are seeking such relief only at the final hearing on the Motion.

Payroll Taxes

10. The Debtors are required by federal and state laws to withhold from their Employees' wages amounts related to federal, state and local income taxes, wage garnishments as well as social security and Medicare (collectively, the "Withholding Taxes"), and to remit such withholdings to the appropriate taxing authorities (collectively, the "Taxing Authorities"). In addition, the Debtors are required to make matching payments from their own funds on account of federal and state taxes and to pay, based on a percentage of gross payroll and subject to state-imposed limits, additional amounts to the Taxing Authorities for, among other things,

state and federal unemployment insurance (collectively, the “Employer Payroll Taxes” and, together with the Withholding Taxes, the “Payroll Taxes”). The Debtors, by this Motion, seek authority to pay prepetition Payroll Taxes not to exceed \$15,000.

Credit Card Expenses

11. In the discharge of their ordinary duties, certain Employees incur various expenses related to travel, lodging, meals and other incidental expenses. In many cases, these expenses are charged to a corporate credit card which is held in the name of the Employee but paid directly by the Debtors. Because these expenses are incurred as part of the Employees’ official duties and in furtherance of the Debtors’ businesses, the Debtors pay the credit card issuer directly in full for these expenses (the “Credit Card Expenses”). The Debtors make these payments on a rolling basis, with payments being made between twenty (20) to twenty-five (25) days after receipt of the monthly statement.

12. It is difficult to determine the amount of outstanding Credit Card Expenses that has accrued prior to the Petition Date because of the lag time in receipt of statements from the credit card issuers. However, the Debtors estimate that they owe no less than \$30,000 to American Express and no less than \$30,000 to Visa in prepetition Credit Card Expenses. It is important that the Debtors continue to make payments on account of Credit Card Expenses in order to allow business to continue in its ordinary course. Furthermore, because the credit cards are held in the name of the Employee and are opened using the Employee’s social security number, the Debtors do not want the credit card issuers to seek payment directly from the Employees. Accordingly, the Debtors, by this Motion, seek authority to pay prepetition obligations related to the Credit Card Expenses not to exceed \$75,000.

Reimbursement Expenses

13. In the discharge of their ordinary duties, certain Employees incur various expenses related to travel, lodging, meals and other incidental expenses that are not charged to an corporate credit card. In furtherance of the Debtors' businesses, the Debtors reimburse the Employees in full for these expenses (the "Reimbursement Expenses"), subject to the submission of the proper documentation to the appropriate department. The Debtors reimburse expenses on a rolling basis, no more than two (2) weeks after an Employee submits an expense for reimbursement.

14. It is difficult to determine the amount of outstanding Reimbursement Expenses that has accrued prior to the Petition Date because of the lag time in the submission of such requests. However, the Debtors believe that they owe at least \$20,000 in prepetition Reimbursement Expenses. Accordingly, the Debtors, by this Motion, seek authority to pay prepetition obligations related to the Reimbursement Expenses not to exceed \$20,000.

Obligations in Respect of Payroll Processing Service

15. As mentioned above, Paychex provides payroll-related and tax-related services to the Debtors. Paychex draws amounts due the Employees directly from the Debtors' disbursement account and Paychex then issues paychecks to the appropriate Employees. The Debtors pay approximately \$1,100 to \$1,200 per payroll to Paychex in administrative fees for these services (the "Payroll Service Fees"). The Debtors estimate that they owe Paychex approximately \$10,000 for unpaid Payroll Service Fees through the July 3, 2009 payroll. The Debtors require Paychex's continued services in administering the payroll for the Employees and seek authority to continue to pay the Payroll Service Fees in the period after the Petition Date. Accordingly, the Debtors seek authority to pay prepetition Payroll Service Fees not to exceed \$10,000.

Employee Benefit Plans

16. In the ordinary course of business, the Debtors have established various benefit plans, practices and policies for their Employees that generally fall into the following categories: (i) paid time off plans and practices, including vacation days, sick days, paid holidays, bereavement leave and jury duty pay (collectively, the “PTO Plans”); (ii) medical insurance, dental insurance, stoploss insurance, prescription drug insurance, pre-tax flexible spending accounts and disability benefits (collectively, the “Health and Welfare Plans”); (iii) workers’ compensation plans; and (iv) a 401(k) plan.

(i) Paid Time Off (PTO) Benefits

17. Under the PTO Plans, Employees are eligible, in certain circumstances, to receive full wages for, among other things, vacation days and holidays. However, the Debtors do not typically, and will not in connection with the relief sought in the Motion, “cash out” any of the PTO benefits (as described below), except where the Debtors are obligated to do so as required by law or upon termination of employment. The Debtors’ policy is to “cash-out” vacation days upon termination of employment, so long as the Employee leaves voluntarily or not for cause. Eligible full-time Employees begin to accrue vacation days and use holidays (“Paid Time Off Days” or “PTO”) as described below.

A. Vacation and Sick Days

18. The Debtors’ Employees are eligible to accrue vacation. Once an Employee has been employed for six (6) months and has been employed through the end of a calendar year (i.e., December 31), the Employee receives two (2) weeks of paid vacation time. Then, once an Employee has been employed through the end of five (5) calendar years, the amount of paid vacation time increases to three (3) weeks. Employees may “carry over” one year’s worth of vacation days based on the amount of vacation days earned during the previous

year. For instance, if an Employee earned two (2) weeks of vacation in a given year, the maximum amount of vacation he can carry over to the following year is two (2) weeks. The Debtors estimate that the total amount of accrued, but unpaid, obligations on account of vacation days is approximately \$475,000. Accordingly, the Debtors seek authority to pay accrued vacation time, not to exceed \$525,000.

19. The Debtors' Employees receive five (5) sick days after they successfully complete their ninety (90) day orientation period. Sick days cannot be carried forward from year to year. Every January 1st, each Employee's number of sick days resets to five (5).

B. Holiday Pay

20. The Debtors also provide their eligible Employees with certain paid holidays during the calendar year. Hourly Employees receive paid holidays based on an eight (8) hour workday. The Debtors recognize the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Day After Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve.

C. Bereavement Leave and Jury Duty

21. The Debtors provide their Employees with paid bereavement and jury duty leave. The Debtors' Employees are entitled to receive up to two (2) consecutive paid days off in the event of the death of an "immediate family member" (which includes spouse, children, step-children, parents, parents-in-law, step-parents, siblings and grandparents).

22. In addition, Employees called to serve as jurors are given the requisite time off to perform this service. Salaried Employees received their full salary for jury duty. Hourly Employees are paid based on an eight (8) hour workday.

(ii) Health and Welfare Plans

23. The Debtors sponsor various Health and Welfare Plans for their Employees, including, without limitation, (i) medical, dental or other health plans; and (ii) disability benefits. As more fully set forth below, the Debtors pay certain fees and costs of the Health and Welfare Plans directly for the benefit of all Employees.

A. Medical and Dental Plans

24. The Debtors maintain two separate and independent medical and dental plans: one for California-based Employees (the "California Medical Plan") and one for non-California-based Employees (the "Non-California Medical Plan" and, together with the California Medical Plan, the "Medical Plans").

25. California-Based Employees Medical and Dental Plan. Under the California Medical Plan, the Debtors offer a PPO health insurance plan and an HMO health insurance plan, both of which are administered through PacifiCare Health Systems ("PacifiCare"). Hays Company of Wisconsin ("Hays") is the broker for the California Medical Plan. The Debtors pay PacifiCare approximately \$14,000 per month to administer the California Medical Plan. The Debtors require the continued services of PacifiCare in administering the health insurance plans. Pursuant to the health insurance plans, the Debtors pay approximately 80% of the cost of premiums for the health insurance plans.

26. Also under the California Medical Plan, the Debtors offer two separate dental insurance plans. The first plan is a PPO dental insurance plan administered by Delta Dental, and the second plan is an HMO dental insurance plan administered through DeltaCare; Hays is the broker for both dental plans. The Debtors pay Delta Dental ("Delta") approximately \$1,000 per month and DeltaCare approximately \$65 per month. The Debtors require the

continued services of these providers in administering the dental plans. Pursuant to the dental plans, Debtors pay approximately 80% of the cost of premiums for the dental plans.

27. As of the Petition Date, the Debtors estimate that there are no accrued and unpaid obligations with respect to the administrators and/or brokers' fees for the California Medical Plan.

28. Non-California-Based Employee Medical and Dental Plans. Under the Non-California Medical Plan, the Debtors offer two (2) self-funded health insurance plans (the "Self-Funded Plans"). The first, Plan I, is intended for Wisconsin-based Employees and is administered by HealthEOS by MultiPlan ("HealthEOS"). The second, Plan II, is intended for non-Wisconsin-based Employees and is administered by FirstHealth Group Corporation ("FirstHealth"). Hays is the broker for both of the Self-Funded Plans. The Debtors pay UMR, the third-party administrator of the Self-Funded Plans, approximately \$20,000 in administration fees per month (which includes the premium on the Debtors' Stoploss Insurance Plan, as defined below), which equates to about 80% of the premiums for the Self-Funded Plans. In addition to managing the Self-Funded Plans, UMR settles claims for the Debtors. Every week, the Debtors receive a register of claims from UMR, listing the claims that UMR has settled on the Debtors' behalf, and the Debtors pay UMR the amount listed on the claims register. Typically, the amount due on a per-week basis on account of the register of claims ranges from \$1,000 to \$40,000 depending on the claims settled during the previous week. The Debtors have paid the register of claims up to July 10, 2009 and have paid the July administrative fee. Because the Debtors cannot know the claims currently being settled by UMR prior to receipt of the register of claims, the Debtors seek authority to pay any and all prepetition costs currently due to UMR under the Self-Funded Plans, up to \$45,000.

29. Also under the Non-California Medical Plan, the Debtors offer a dental insurance administered through Delta, and brokered by Hays. This dental insurance plan works as a self-insured plan in that the Debtors pay Delta for all claims settled by Delta on a weekly basis. Pursuant to the dental plan, Debtors pay approximately 80% of the cost of premiums for the dental plan. On average, the amounts due to Delta on account of settled claims range from \$1,000 to \$2,500 per week. Accordingly, the Debtors seek authority to pay any and all prepetition costs currently due to Delta under the dental plan, up to \$3,500.

30. Due to the unknown nature of the amounts that may be owing to UMR and Delta under the Non-California Medical Plan, the Debtors seek authority to pay any and all prepetition costs currently due under the Non-California Medical Plan, up to \$48,500.

B. Stoploss Insurance

31. In connection with the Non-California Medical Plan, specifically the Self-Funded Plans, the Debtors carry stoploss insurance (the "Stoploss Insurance Plan") through Sun Life Insurance. The Stoploss Insurance Plan covers any claim above \$250,000, on a per-person, per-event, basis. The premium for the Stoploss Insurance Plan is included in the \$20,000 administrative fee the Debtors pay to UMR on account of the Self-Funded Plans (approximately \$16,500 of the \$20,000 administrative fee represents the premium on the Stoploss Insurance Plan). Because the Debtors have paid the July administrative fee to UMR, the Debtors do not believe any amounts are outstanding as of the Petition Date.

C. Prescription Drug Plan

32. Under both the California Medical Plan and the Non-California Medical Plan, the Debtors offer their Employees a prescription drug plan (the "Prescription Plan"). The Prescription Plan is administered by WHP Health Initiative ("WHP"). The Prescription Plan

works like a self-insured plan in that the Debtors pay WHP to settle claims on their behalf. Historically, the Debtors have paid WHP as much as \$15,000 per week. Thus as of the Petition Date, Debtors estimate that there could be as much as \$20,000 in prepetition amounts due to WHP. Accordingly, the Debtors seek authority to pay all prepetition amounts on account of the Prescription Plan not to exceed \$20,000.

D. Retiree Health Plan

33. The Debtors offer a post-retirement health benefit plan (the “Retiree Health Plan”) to former Employees who, at the date of retirement, (i) are age sixty-two (62) or older, and (ii) had been full-time Employees for a period of at least fifteen (15) years. Under the Retiree Health Plan, the former Employee may elect to continue his or her medical insurance provided by the company until the former Employee is eligible for Medicare benefits. If this option is chosen, the Debtors contribute 20% of the cost of the plan, with the former Employee paying the remaining 80%. Alternatively, if the former Employee obtains supplemental health insurance while on Medicare, the Debtors reimburse the former Employee \$60 per month to help offset the cost of the supplemental health insurance. Currently, only one (1) former Employee is actively taking part in the Retiree Health Plan.

34. As of the Petition Date, the Debtors estimate that the accrued and unpaid obligations with respect to any fees for the Retiree Health Plan, is rather small. Therefore, the Debtors seek authority to pay up to \$500 in prepetition obligations on account of the Retiree Health Plan.

E. Flex Spending Accounts

35. The Debtors offer two flexible benefits accounts (the “Flex Spending Accounts”) pursuant to which Employees may opt to make pre-tax contributions, via payroll

deductions, and subsequently be reimbursed for certain healthcare and dependant care expenses. The Flex Spending Plan is administered by eflexgroup.com ("Eflexgroup"). As of June 30, 2009, fifty-six (56) Employees have opted into the Flex Spending Account program. Those Employees have an available balance of \$18,140.37 held by Eflexgroup.

F. Disability Benefits

36. The Debtors maintain an long-term disability plan (the "LTD Plan") and a short-term disability plan (the "STD Plan" and, together with the LTD Plan, the "Disability Benefits") through Lincoln Financial Group ("Lincoln") for their Employees. The Debtors currently spend approximately \$5,700 per month for the LTD and STD Plans. The Debtors estimate that there are no accrued and unpaid prepetition obligations with respect to the LTD and STD plans.

37. Accordingly, by this Motion, the Debtors seek authority to pay all prepetition Health and Welfare Plan as set forth above.

(iii) Workers' Compensation Programs

38. The laws of the various states in which the Debtors operate require the Debtors to maintain workers' compensation policies and programs to provide the Employees with coverage for claims arising from or related to their employment with the Debtors (the "Workers' Compensation Programs"). The Debtors maintain Workers' Compensation Programs in all states where their Employees are located through United Heartland. The Debtors' insurance broker is Hays. The premiums are paid directly to Hays on or about the first of each month. The Debtors are current on the workers' compensation insurance premiums (the "Workers' Compensation Premiums") and, therefore, believe that no amounts are due and owing on account of workers' compensation premiums. Accordingly, the Debtors seek authority, in

their sole discretion, to continue to pay any and all Workers' Compensation Premiums and fees related to the Workers' Compensation Programs in the period after the Petition Date.

(iv) 401(k) Plan

39. The Debtors also sponsor a retirement investment plan (the "401(k) Plan") for their Employees. In order to enroll in the 401(k) Plan, Employees must complete 90 days of employment. After completion of 90 days of employment, Employees may enroll at the next enrollment date, which will be either July 1st or January 1st. Pursuant to the 401(k) Plan, the Employees may contribute up to 50% of their salary up to a yearly maximum of \$15,500. After enrolled Employees pass their anniversary date and at the next enrollment date (and on that date each year thereafter), the Debtors make a matching contribution of 100% for the first 3% of an Employee's contributions. The Debtors do not withhold any amounts on account of the 401(k) Plan contributions; all Employee contributions to the 401(k) Plan are paid directly to Great-West Life & Annuity Company ("Great-West"), the administrator of the 401(k) Plan. The Debtors do not pay Great-West an administration fee.

40. While the Debtors do not withhold any contributions, under the 401(k) Plan, the Debtors are obligated to pay out approximately \$160,000 in matching funds for 2008 in September 2009. Thus, the Debtors estimate that they owe approximately \$160,000 on account of prepetition obligations related to the 401(k) Plan and hereby seek authority to make such payment.

**Cause Exists to Authorize the
Payment of the Debtors' Employee Obligations**

41. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims of employees for "wages, salaries, or commissions, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date are afforded priority unsecured status to the

extent of \$10,950 per employee. Similarly, section 507(a)(5) of the Bankruptcy Code provides that employees' claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$10,950 per employee covered by such plan, less any amount paid pursuant to section 507(a)(4).

42. Further, 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." 11 U.S.C. § 363(b)(1). Moreover section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this Title. No provision of this Title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

43. The Debtors believe that most of the obligations with respect to the Employees described above (the "Employee Obligations") owed by the Debtors and relating to the period prior to the Petition Date constitute priority claims under sections 507(a)(4) and (a)(5) of the Bankruptcy Code. As priority claims, the Debtors' estates must pay the Employee Obligations in full before satisfying any of the Debtors' general unsecured obligations. Accordingly, the relief requested may affect only the timing of the payment of these priority obligations, and it will not prejudice the rights of general unsecured creditors or other parties in interest.

44. As of the Petition Date, the Debtors believe that only one of their Employees has a claim for Wage Obligations (excluding obligations under the PTO Plan, which are not current cash pay obligations of the Debtors as of the Petition Date) in excess of \$10,950.

The Debtors will not pay any individual Employee an amount in excess of \$10,950 on account of Employee Wage Obligations unless authorized by the Court at the final hearing on this Motion.

45. The requested relief is well within the scope of section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Courts frequently apply section 105(a) to authorize substantially similar relief to that requested here. See In re Chateaugay Corp., 80 B.R. 279, 287 (S.D.N.Y. 1987) (affirming a bankruptcy court order authorizing the debtor to pay pre-bankruptcy wages, salaries, employee benefits and reimbursements, and workers’ compensation claims and premiums); In re Ionosphere Clubs, Inc., 98 B.R. 174, 177 (Bankr. S.D.N.Y. 1989) (authorizing the debtor to pay current employees’ pre-bankruptcy wages, salaries, medical benefits and business expense claims). In so ruling, courts typically rely on the “necessity of payment” rule, first enunciated by the Supreme Court in Miltenberger v. Logansport Ry. Co., 106 U.S. 286 (1882), by which courts may authorize a debtor to make postpetition payments with respect to prepetition claims where such payments are necessary for the preservation of the estate. See, e.g., In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (noting that, under the necessity of payment doctrine, “if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus [of the estate]”); Moore v. Donahoo, 217 F. 177, 182 (9th Cir. 1914) (remarking that the necessity of payment doctrine may authorize receivers to pay past debts, where “failure to make such payment would result in injury to, or would make it difficult to carry on the business of, the estate”).

46. As indicated above, this Court may also grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363 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.” 11 U.S.C. § 363(b)(1). Under section 363, a court may authorize a debtor to pay certain prepetition claims. See, e.g., In re Conseco, Inc., Case No. 02-49672 (Bankr. N.D. Ill. Jan. 14, 2003) (CAD); In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002) (ERW) (authorizing payment of pre-petition claims under section 363 of the Bankruptcy Code as an out-of-the-ordinary-course transaction). To obtain such relief, “the debtor must articulate some business justification, other than mere appeasement of major creditors.” In re Ionosphere Clubs, 98 B.R. at 175. The Debtors’ request for authorization to pay prepetition amounts related to Employee Wages and Employee Benefits easily meets that standard because the failure to do so could have a material adverse impact on the Debtors’ day-to-day operations, which would, in turn, hinder the Debtors’ restructuring.

47. Any delay or failure to pay wages, salaries, benefits and other similar items would irreparably impair the Employees’ morale, dedication, confidence and cooperation and would adversely impact the Debtors’ relationship with their Employees at a time when the Employees’ support is critical to the success of the Debtors’ chapter 11 cases. At this early stage in these cases, the Debtors simply cannot risk the substantial damage to their business that would inevitably result from any decline in their Employees’ morale.

48. Absent an order granting the relief requested in this Motion, the Employees will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable many of the Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors’ business will be

undermined, perhaps irreparably, by the distinct possibility that otherwise loyal Employees will seek employment alternatives.

49. As discussed above, the Employees have incurred certain prepetition Credit Card Expenses and/or Reimbursement Expenses in the course of their employment for the benefit of the Debtors with the understanding that the Debtors would pay such Credit Card Expenses and/or Reimbursement Expenses in the ordinary course of business. It would therefore be inequitable to require them to bear those expenses personally. Accordingly, the Debtors request authority to honor any and all obligations related to the Credit Card Expenses and Reimbursement Expenses.

50. With respect to Payroll Taxes in particular, the payment of such taxes will not prejudice other creditors of the Debtors' estates, as the relevant Taxing Authorities generally would hold priority claims under section 507(a)(8) of the Bankruptcy Code in respect of such obligations. Moreover, the portion of the Payroll Taxes withheld from an Employee's wages on behalf of the applicable Taxing Authority is held in trust by the Debtors. As such, these Payroll Taxes are not property of the Debtors' estate under section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53, 67 (1990) (withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor's estates).

51. In addition, the Debtors believe it is necessary to continue payment of the administrative fees, if any, to the administrators of the Employee Obligations and the administrators of programs related to Employee Benefits. Without the continued services of these administrators including those identified herein, the Debtors would be unable to continue to honor their Wage Obligations and Employee Benefits Obligations in an efficient and cost-effective manner.

52. The Debtors do not seek to alter their compensation, vacation or other benefit policies at this time. This Motion is intended only to permit the Debtors, in their discretion, to make payments consistent with the Debtors' existing policies and practices to the extent that, without the benefit of an order approving this Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code, and to permit the Debtors, in their sole discretion, to continue to honor their policies, practices and programs with respect to their Employees, as such practices, programs and policies were in effect as of the Petition Date. Payment of all Employee Obligations in accordance with the Debtors' prepetition business policies and practices is in the best interests of the Debtors' estates, their creditors and all parties in interest and will enable the Debtors to continue to operate their business in an economic and efficient manner without disruption. The Employees are central to the Debtors' operations and vital to these chapter 11 cases. A significant deterioration in Employee morale at this critical time undoubtedly would have a devastating impact on the Debtors, their customers and vendors, the value of the Debtors' assets and business, and the Debtors' ability to continue operations. The total amount sought to be paid in this Motion is relatively modest compared with the value of the Debtors' business and the importance of the Employees to the Debtors' chapter 11 cases.

53. Courts in this District have approved the payment of prepetition claims of employees for wages, salaries, expenses and benefits on the grounds that the payment of such claims was necessary to effectuate the chapter 11 process. See, e.g., In re AbitibiBowater, Inc., Case No. 09-11296 (KJC) (Bankr. D. Del. Apr. 17, 2009); In re Blue Tulip Corp., Case No. 09-10015 (KG) (Bankr. D. Del. Jan. 6, 2009); In re Eclipse Aviation Corporation, Case No. 08-13031 (MFW) (Bankr. D. Del. Nov. 26, 2008); In re Diamond Glass, Inc., Case No. 08-10601

(CSS) (Bankr. D. Del. Apr. 2, 2008); and In re Buffets Holdings, Inc., Case No. 08-10141 (MFW) (Bankr. D. Del. Feb. 27, 2008).

54. Accordingly, by this Motion, the Debtors seek authority pursuant to sections 105(a), 363(b) and 507(a) of the Bankruptcy Code to pay, subject to the Debtors' sole discretion, the Employee Obligations as they become due and owing during the pendency of these cases and to continue, uninterrupted, their practices, programs and policies with respect to their Employees, as such practices, programs and policies were in effect as of the Petition Date as described in this Motion.

55. Any delay in paying the obligations relating to the Employee Obligations or related administrative fees would be detrimental to the Debtors, their creditors and their estates. Accordingly, and to successfully implement the foregoing, the Debtors seek a waiver of the notice requirements under Rule 6004(a) of the Federal Rules of Bankruptcy Procedure and the stay of the order authorizing the use, sale or lease of property.

**Applicable Banks Should be Authorized
to Honor and Pay Checks Issued and Make
Other Transfers to Pay the Employee Obligations**

56. The Debtors further request that the Court authorize the applicable banks and other financial institutions (the "Banks") to receive, process, honor and pay all prepetition and postpetition checks issued or to be issued, and electronic fund transfers requested or to be requested, by the Debtors in respect of the Employee Obligations. The Debtors also seek authority to issue new postpetition checks or effect new electronic fund transfers on account of the Employee Obligations to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected.

57. As a result of the commencement of the Debtors' chapter 11 cases, and in the absence of an order of the Court providing otherwise, the Banks may dishonor or reject the

Debtors' checks, wire transfers and direct deposit transfers in respect of the Employee Obligations.

58. The Debtors represent that each of these checks or transfers is or will be drawn on the Debtors' payroll and general disbursement accounts and can be readily identified as relating directly to payment of the Employee Obligations. Accordingly, the Debtors believe that the Banks will not inadvertently honor prepetition checks and transfers other than those for Employee Obligations.

59. Authorization to pay all amounts on account of Employee Obligations shall not be deemed to constitute postpetition assumption or adoption of any contract, program or policy pursuant to section 365 of the Bankruptcy Code. The Debtors are in the process of reviewing these matters and reserve all of their rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts on account of Employee Obligations shall not affect the Debtors' right to contest the amount or validity of any Employee Obligations, including, without limitation, the Payroll Taxes that may be due to any Taxing Authority. For the reasons stated herein, the Debtors believe that the relief requested herein is necessary to avoid immediate and irreparable harm. See Fed. R. Bankr. P. 6003(b).

NOTICE

60. The Debtors will provide notice of this Motion to: (i) the Office of the United States Trustee; (ii) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (iii) the Debtors' prepetition secured lenders; and (iv) the Debtors' banks. Notice of this Motion and any order entered with respect thereto will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto, granting the Motion and such other and further relief as is just and proper.

Dated: Wilmington, Delaware
July 16, 2009

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ David R. Hurst

Michael R. Nestor (No. 3526)
David R. Hurst (No. 3743)
Patrick A. Jackson (No. 4976)
Kevin A. Garland (No. 5171)
Pilar G. Kraman (No. 5199)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

*Proposed Counsel for the Debtors and
Debtors in Possession*

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

In re:)
) Chapter 11
)
LANG HOLDINGS, INC.,) Case No. 09- 12543 ()
a Delaware corporation, et al.,¹)
) (Joint Administration Pending)
Debtors.)
)
_____)

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b) AND 507(a)
AUTHORIZING (I) PAYMENT OF EMPLOYEE WAGE OBLIGATIONS
AND EMPLOYEE BENEFITS AND (II) FINANCIAL INSTITUTIONS TO
HONOR AND PROCESS CHECKS AND TRANSFERS RELATED THERETO**

Upon consideration of the Motion² of the above-captioned Debtors for entry of an order pursuant to sections 105(a), 363(b) and 507(a) of the Bankruptcy Code authorizing the Debtors, in their discretion, to (a) continue certain employee compensation and benefits programs, and (b) pay certain prepetition employee compensation, benefit and reimbursement claims in full; and upon consideration of the Gilner Declaration and the entire record of these chapter 11 cases; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided under the circumstances; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED, to the extent provided herein.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Lang Holdings, Inc. (9551); Turner Acquisition, Inc. (2115); Avalanche Publishing Acquisition, Inc. (3038); The Lang Companies, LLC (9182); Avalanche Publishing, Inc. (9793); and The Lang Store, Ltd. (2398). The mailing address of each of the Debtors is 514 Wells Street, Delafield, Wisconsin 53018.

2. Pursuant to sections 105(a), 363(b) and 507(a) of the Bankruptcy Code, the Debtors are authorized, but not required, to satisfy all prepetition obligations without further Order of the Court, and in the Debtors' sole discretion, with respect to Employee Obligations (as defined below) in accordance with the Debtors' policies described in the Motion, including, without limitation, all prepetition obligations with respect to (i) Wage Obligations not to exceed \$550,000 in the aggregate, less any amounts authorized to be paid pursuant to the Emergency Wage Motion, provided, however, that, pursuant to 11 U.S.C. § 507(a)(4), the Debtors may not pay any Employee more than \$10,950 on account of Wage Obligations earned but unpaid prior to the Petition Date prior to entry of a final order on the Motion; (ii) Payroll Taxes not to exceed \$15,000; (iii) Credit Card Expenses not to exceed \$75,000; (iv) Reimbursement Expenses not to exceed \$20,000 (v) Payroll Service Fees not to exceed \$10,000 (vi) PTO Plan related expenses not to exceed \$525,000; (vii) Medical Plan related expenses not to exceed \$48,500; (viii) Prescription Plan related expenses not to exceed \$20,000; (ix) Retiree Health Plan obligations up to \$500; and (x) 401(k) Plan related expenses in an amount not to exceed \$160,000, representing the 2008 matching contribution due in September.

3. The Debtors are authorized, but not required, to continue to honor, in their sole discretion, their practices, programs and policies with respect to the Employees as such practices, programs and policies were in effect as of the date of the commencement of the Debtors' chapter 11 cases as described in the Motion, including, but not limited to the Wage Obligations, Payroll Taxes, Credit Card Expenses, Reimbursement Expenses, Payroll Service Fees, PTO Plans, Medical Plans, Stoploss Insurance Plan, Prescription Plan, Retiree Health Plan,

² All capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Motion.

Flex Spending Accounts, Disability Benefits, Workers' Compensation Programs and 401(k) Plan obligations.

4. The Debtors are authorized, but not required, to pay, in their sole discretion, costs and expenses incidental to the payment of the Employee Obligations, including the administrative fees and all other administration and processing costs and payments to outside professionals, in the ordinary course of business, in order to facilitate the administration and maintenance of the Debtors' programs and policies related to the Employee Obligations.

5. Upon entry of a final order on the Motion, the Debtors are authorized to pay Employee Wage Obligations in excess of \$10,950; provided, however, that all other relief sought in the Motion is hereby approved on a final basis.

6. All applicable banks and other financial institutions (the "Banks") are authorized, when requested by the Debtors, in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' payroll or disbursement accounts and any other transfers that are related to Employee Obligations and the costs and expenses incident thereof, whether those checks were presented prior to or after the date of the commencement of the Debtors' chapter 11 cases, provided that sufficient funds are available in the accounts to make such payments.

7. Any Bank may rely on the representations of the Debtors with respect to whether the Bank should honor any check or other transfer drawn or issued by the Debtors prior to the Petition Date pursuant to this Order, and such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Order.

8. The Debtors are authorized (consistent with this Order) to issue postpetition checks or to effect postpetition fund transfer requests in replacement of any checks

or fund transfer requests related to Employee Obligations dishonored or rejected as a consequence of the commencement of the Debtors' chapter 11 cases.

9. Nothing in the Motion or this Order shall be construed as impairing the Debtors' right to contest the validity or amount of any Employee Obligations, including, without limitation, Payroll Taxes that may be due to any taxing authority.

10. Nothing in the Motion shall be deemed a request by the Debtors for authority to assume, and nothing in this Order shall be deemed authorization to assume, any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code.

11. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

12. Notwithstanding anything to the contrary herein, payments made pursuant to this Order shall be subject to (i) any requirements imposed on the Debtors under any order entered by the Court approving postpetition financing and/or the use of cash collateral and (ii) any budget approved in connection therewith.

13. The deadline by which objections to the relief sought in paragraph 5 of this Order is _____, 2009 at 4:00 p.m. (ET). A final hearing, if required, on such relief will be held on _____, 2009 at _____ (ET). If no objections to such relief are filed, the Court may enter an order granting the relief sought in paragraph 5 of this Order without further notice or hearing.

Dated: Wilmington, Delaware
July __, 2009

United States Bankruptcy Judge