

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

In re:

LANG HOLDINGS, INC.,  
a Delaware Corporation,

Debtor.

Chapter 11

Case No. 09- 12543 ( )

In re:

TURNER ACQUISITION, INC.,  
a Delaware Corporation,

Debtor.

Chapter 11

Case No. 09- 12544 ( )

In re:

AVALANCHE PUBLISHING  
ACQUISITION, INC.,  
a Delaware Corporation,

Debtor.

Chapter 11

Case No. 09- 12545 ( )

In re:

THE LANG COMPANIES, LLC,  
a Delaware Limited Liability Company,

Debtor.

Chapter 11

Case No. 09- 12546 ( )

In re:

AVALANCHE PUBLISHING, INC.,  
a California Corporation,

Debtor.

Chapter 11

Case No. 09- 12547 ( )

In re:

THE LANG STORE, LTD.,  
a Wisconsin Corporation,

Debtor.

Chapter 11

Case No. 09- 12548 ( )

**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**

Lang Holdings, Inc., and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"),<sup>1</sup> hereby move (the "Motion") for entry of an order pursuant to sections 105, 363, 507, 1107 and 1108 of title 11 of the United States Code (the "Bankruptcy Code") (i) authorizing the 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 the Debtors to fund prepetition payroll obligations pending a first day hearing. In support of this 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:

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<sup>1</sup> 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.

## **JURISDICTION**

1. The 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 in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105, 363, 507, 1107 and 1108 of the Bankruptcy Code.

## **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. No request for appointment of a chapter 11 trustee or examiner has been made and, as of the date hereof, 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.

## **EMERGENCY RELIEF REQUESTED**

5. By this Motion, the Debtors seek entry of an order: (i) authorizing the 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 the Debtors to fund prepetition payroll obligations pending a first day hearing. The Debtors submit that absent the relief requested, the Debtors will fail to timely fund and pay payroll, thereby severely impairing

Employee morale and reducing the Employees' willingness to aid in the restructuring of the Debtors. Thus, if the Debtors do not obtain the limited relief requested herein, the Debtors' estates will be immediately and irreparably harmed.

### **BASIS FOR EMERGENCY RELIEF**

6. The Debtors have substantially contemporaneously herewith filed a motion (the "Employee Motion"),<sup>2</sup> to be heard at the first day hearing to be scheduled in these cases, seeking entry of an order authorizing the Debtors (i) to pay, in their sole discretion, all prepetition obligations related to wages, salaries and commissions (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, Flex Spending Accounts, Disability Benefits, Workers' Compensation Programs and 401(k) Plan obligations; and (ii) to maintain and continue to honor the practices, programs and policies available for Employees as they were in effect as of the Petition Date or as they may be modified, amended or supplemented from time to time in the ordinary course of the Debtors' business. By the Employee Motion, the Debtors also requested 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 Employee obligations or benefits.

7. In the ordinary course of the Debtors' business, the Debtors' Employees are paid on a bi-weekly basis, with Friday, July 17, 2009 being a payday for all Employees. The Debtors employ Paychex Payroll Solutions ("Paychex") to administer the Debtors' payroll

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Employee Motion.

obligations. On the Tuesday immediately preceding a Friday payday, the Debtors provide Paychex with relevant payroll data (i.e., hours worked, salaries, terminations if any), and Paychex then calculates the amount of each paycheck and provides the Debtors with a payroll register before the close of business on that day (the "Wage Obligations").

8. For Employees who opt to be paid via paper check, on the Wednesday immediately preceding a Friday payday, the Debtors receive the paper checks prepared by Paychex. For Employees in remote locations (primarily the California-based employees), the Debtors send the paper checks via overnight delivery on Wednesday for Thursday delivery. The paper checks that are sent to the remote locations, as well as the checks for the local Wisconsin offices, are hand-distributed on each payday. When the Employees cash the paper checks, the Debtors' cash disbursement accounts (the "Cash Disbursement Accounts")<sup>3</sup> are drawn down.

9. For Employees who opt to be paid via direct deposit, on or about 1:00 p.m. (ET), on the Thursday immediately preceding a Friday payday, Paychex initiates an Automatic Clearing House payment ("ACH") that debits the Debtors' Cash Disbursement Accounts for the value of the direct deposits to be paid on the payday; this amount does not include payroll taxes or any amounts to be paid under the Debtors' 401(k) Plan. Paychex then transmits those funds to the banks of the Employees with an effective date of the payday. On each payday, Paychex initiates another ACH that debits the Cash Disbursement Accounts for the value of any payroll taxes (employee and employer portions) applicable to that pay period (the "Tax Obligations"). Finally, also on each payday, the administrator under the Debtors' 401(k) Plan, Great-West Life and Annuity Company ("Great-West"), initiates an ACH that debits the Cash Disbursement Accounts for the value of any 401(k) Plan contributions the Debtors' Employees opt to

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<sup>3</sup> Three of these accounts are held by Bank of America (account numbers ending in 0842, 8223 and 8231), while the fourth account is held by Town Bank (account number ending in 3731).

contribute (the “401(k) Obligations” and, together with the Wage Obligations and Tax Obligations, the “Payroll Obligations”).

10. Pursuant to Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, a day or more might pass before the Employee Motion can be heard. See Del. Bankr. L.R. 9013-1(m). However, the Debtors must fund certain of their Wage Obligations with Paychex on July 16, 2009 in order to continue the ordinary course payroll cycle. Because of the timing of the filing of these bankruptcy cases, the Debtors will not be able to obtain authority from this Court pursuant to the Employee Motion to fund the Payroll Obligations in sufficient time to avoid an interruption in the wage payments due to the Debtors’ Employees.

11. Pursuant to this Motion, therefore, the Debtors request entry of an order authorizing their banks to honor any outstanding checks, deposits or electronic transfers on account of Payroll Obligations. Critically, the Debtors also seek authority to fund the Payroll Obligations in the amount of \$372,636.48 (the “Payroll Amount”) to meet those Payroll Obligations that are scheduled to be paid on July 16 and 17, 2009. The Payroll Amount is the minimum amount required for the Debtors to timely meet such Payroll Obligations.

12. The Debtors recognize that this Emergency Employee Motion seeks extraordinary relief, but submit that the circumstances before the Court merit such relief. In light of the timing for a first day hearing, the Debtors are faced with the possibility that their banks will not honor payroll checks and deposits for their Employees and that the Debtors would be unable to fund the Payroll Obligations in sufficient time to ensure that their Employees receive their pay without interruption. If the Debtors’ banks do not honor the Debtors’ payroll amounts and/or if the Debtors are unable to fund the Payroll Obligations as requested herein, the morale

and confidence of the Debtors' employees will be severely impacted, possibly resulting in employees leaving their jobs and a corresponding significant decrease in the value of the Debtors' estates. Thus, the Debtors believe that the circumstances merit approval of the order submitted herewith.

13. Upon entry of such order, and pending the Court's determination of the first day motions, including the Employee Motion, the Debtors' banks will be authorized to honor, upon presentation, any prepetition checks, deposits or electronic transfers on account of the Debtors' Payroll Obligations. The Order also provides that banks are authorized to rely on the representations of the Debtors as to which checks, deposits or electronic transfers to honor and are prohibited from placing any holds on, or attempting to reverse, any automatic transfers to or from the Debtors' accounts on account of the Payroll Obligations.

#### **APPLICABLE AUTHORITY**

14. The Debtors believe that the payment of prepetition Payroll Obligations is appropriate for the reasons set forth herein. Because the payment of such prepetition Payroll Obligations is permitted by the Bankruptcy Code and applicable case law, the Debtors should be permitted to make such payments as are necessary to meet the July 17, 2009 payroll, and the Debtors' Banks should be permitted to honor checks, deposits and electronic transfers in payment of such obligations pending a first day hearing with respect to the Employee Motion.

#### **A. The Proposed Payments Should Be Authorized Under Section 507 of the Bankruptcy Code**

15. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave and employee benefit contributions be accorded priority in payment in an amount not to exceed \$10,950 for each employee. The Debtors believe that all of the Payroll Obligations, authorization for the

payment of which is requested hereby, are entitled to priority under sections 507(a)(4) and (a)(5) of the Bankruptcy Code. Accordingly, granting the relief requested herein will not adversely affect the Debtors' other unsecured creditors.

**B. Payment of the Obligations Should Be Authorized Under Section 105 of the Bankruptcy Code and the Doctrine of Necessity**

16. The relief requested herein should be authorized pursuant to section 105 of the Bankruptcy Code and under the "doctrine of necessity." Section 105 of the Bankruptcy Code authorizes this Court "to issue any order ... necessary or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105. Moreover, under the "necessity of payment" rule, first enunciated by the Supreme Court in Miltenberger v. Logansport, C. & S.W.R. Co., 106 U.S. 286 (1882), a bankruptcy court may use its section 105 equitable powers to permit a debtor in possession to pay prepetition claims when payment is necessary to effectuate a successful reorganization. See In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (necessity of payment doctrine "teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during the reorganization, payment may be authorized even if it is made out of corpus").

17. Courts in this District as well as courts in other jurisdictions have authorized similar relief to the relief requested herein. See e.g., In re Goody's Family Clothing, Inc., Case No. 08-11133 (CSS) (Bankr. D. Del. June 10, 2008); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 11, 2007); In re Radnor Holdings Corp., Case No. 06-10894 (PJW) (Bankr. D. Del. Aug. 21, 2006); see also In re Plastech Engineered Prods., Inc., Case No. 08-42417 (PJS) (Bankr. E.D. Mich. Feb. 7, 2008).

18. For the reasons set forth herein, and in light of the critical need for the Debtors to preserve the going concern value of their businesses through, among other things,

preservation of the Debtors' workforce and its morale, allowing the Debtors' banks to honor prepetition checks, deposits and electronic transfers on account of the Payroll Obligations as requested herein is proper and in accordance with section 105 of the Bankruptcy Code and the doctrine of necessity.

**NOTICE**

19. 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*

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Chapter 11

Case No. 09- 12548 ( )

**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**

Upon consideration of the Motion<sup>1</sup> of the above-captioned Debtors<sup>2</sup> for entry of an order pursuant to sections 105, 363, 507, 1107 and 1108 of the Bankruptcy Code (i) authorizing the 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 the Debtors to fund the prepetition payroll obligations pending a first day hearing; and upon consideration of the Gilner Declaration; 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

<sup>1</sup> All capitalized terms not herein defined shall have the same meaning ascribed to them in the Motion.

<sup>2</sup> 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.

ORDERED, ADJUDGED AND DECREED that:

1. The Emergency Motion is GRANTED.
2. The Debtors may fund the Payroll Obligations in an amount not to exceed \$380,000 for Payroll Obligations scheduled to be paid on July 16 and 17, 2009, pending the hearing on the Debtors' "first day" motions and applications in these bankruptcy cases; 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.
3. The Banks are hereby authorized to honor any such checks, deposits or electronic transfers on account of Payroll Obligations.
4. The Banks are authorized to rely on the representations of the Debtors as to which checks, deposits or electronic transfers are on account of Payroll Obligations, without liability whatsoever for their reliance on such instructions, and any party receiving payment from the Debtors is authorized and directed to rely upon the representations of the Debtors as to which payments are authorized by this Order.
5. The Debtors shall provide information to the Banks regarding which checks, deposits or electronic transfers to honor, including by providing check sequencing numbers or electronic confirmation numbers.
6. Any Banks from which any automatic transfers, via wire, ACH or otherwise, are made on account of Payroll Obligations are prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of Payroll Obligations.
7. Notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. This Court shall retain jurisdiction to hear and determine all matters related to or arising from implementation or interpretation of this Order.

9. 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.

Dated: Wilmington, Delaware  
July \_\_, 2009

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United States Bankruptcy Judge