

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re	:	Chapter 11
	:	
QUANTUM FOODS, LLC <i>et al.</i>,	:	Case No. 14-10318 (____)
	:	
Debtors.¹	:	
	:	Joint Administration Requested
	:	
	X	

**DEBTORS' MOTION FOR AN ORDER, PURSUANT TO BANKRUPTCY CODE
SECTIONS 105(A), 363(B), 503(B), 507(A)(4), AND 507(A)(8), AND BANKRUPTCY
RULES 6003 AND 6004, (A) AUTHORIZING DEBTORS TO (I) PAY CERTAIN
EMPLOYEE COMPENSATION AND BENEFITS AND (II) MAINTAIN AND
CONTINUE SUCH BENEFITS AND OTHER EMPLOYEE-RELATED PROGRAMS
AND (B) AUTHORIZING AND DIRECTING BANKS AND FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS CHECKS AND
TRANSFERS RELATED TO SUCH OBLIGATIONS**

Quantum Foods, LLC and its affiliated debtors as debtors in possession in the above-captioned cases (collectively, the “Debtors”) submit this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to sections 105(a), 363(b), 503(b), 507(a)(4), and 507(a)(8) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (a) authorizing, but not directing, the Debtors to (i) pay certain employee compensation and benefits and (ii) maintain and continue such benefits and other employee-related programs (all as set forth in greater detail below) and (b) authorizing and directing banks and financial institutions (the “Banks”) to honor and process checks and transfers

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quantum Foods, LLC (9437); Quantum Foods 213-D, LLC (1862); Quantum Culinary, LLC (1302); GDC Logistics, LLC (1997); Choice One Foods, LLC (9512). The Debtors’ mailing address is c/o Quantum Foods, LLC, 750 South Schmidt Road, Bolingbrook, Illinois 60440.

related to such obligations. The Debtors also request the entry of an order, substantially in the form attached hereto as **Exhibit B** (the “Supplemental Order”), to be considered at the “second day” hearing scheduled in these cases, authorizing, but not directing, the Debtors to remit certain cash compensation-related payments to non-insider employees to the extent such payments are in excess of the \$12,475 priority cap for wages established by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code (the “Priority Cap”). In support of this Motion, the Debtors rely on the *Declaration of Edgar Reilly in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”)², which was filed with the Court concurrently herewith, and respectfully represent as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 503(b), 507(a)(4), and 507(a)(8) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

BACKGROUND

2. On the date hereof (the “Petition Date”), the Debtors commenced voluntary cases under the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases (the “Chapter 11 Cases”) be consolidated for

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

procedural purposes only. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases and no committees have been appointed or designated.

3. The Debtors, headquartered in Bolingbrook, Illinois, are a leading further-processor of proteins, including beef, pork and poultry.

4. Founded in 1990 as a hand-cut steak butchering operation, the Debtors provide custom-menu solutions for national and regional chains, including full-service and quick-service restaurants. The Debtors are also an important co-packer to the nation's largest retailers and serves the hospitality industry and the United States military. The Debtors customer bases include household names in the foodservice, retail, industrial, and specialty (e.g., military, schools, home delivery, and distributors) channels.

5. In laymen's terms, the Debtors purchase raw protein products and further prepare them for the needs of the Debtors' Customers at the Debtors' state of the art Bolingbrook facilities. This preparation process includes specific portioning and packaging of serving sizes custom ordered by the Debtors' clients. The Debtors provide their restaurant clients with precise portion controlled meat products, a quality that customers in the Debtors' business greatly value. The Debtors' products include both fully cooked and ready-to-cook items. The Debtors' ready-to-cook offerings include portion controlled, breaded, par-cooked, unbreaded, and seasoned steaks, cutlets, tenders, and strips. The Debtors' fully cooked offerings include whole muscle, as well as sliced, pulled, unbreaded, seasoned, smoked, and sauced meats, often contained in reheatable bags.

6. Further information regarding the Debtors' business, capital structure, and the circumstances leading to these Chapter 11 Cases is set forth in the First Day Declaration, which is incorporated herein by reference and filed contemporaneously herewith.

RELIEF REQUESTED

7. The Debtors request that the Court enter the Proposed Order authorizing, but not directing, the Debtors, in their sole discretion, to (i) make all payments required under or related to (A) Wage Obligations, Staffing Obligations, and Independent Contractor Obligations; (B) Payroll Taxes and Deductions; (C) Fringe Benefits; (D) the Severance Program; (E) Expense Reimbursements; (F) Health and Welfare Benefits; and (G) the 401(k) Plan (all as defined herein and, collectively, the “Employee Obligations”), and all costs incident to the foregoing, and to continue to honor their practices, programs and policies for their Employees (as defined herein), as those practices, programs and policies were in effect as of the Petition Date and as such practices, programs and policies may be modified, amended, or supplemented from time to time in the ordinary course of the Debtors’ business; and (ii) authorize and direct all Banks to receive, honor, process, and pay any and all checks and wire transfers drawn on the Debtors’ accounts in satisfaction of the Employee Obligations to the extent that the Debtors have sufficient funds standing to its credit with such Bank, and to rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors’ instructions. The Proposed Order shall not authorize the Debtors to make payments to any Employee in excess of the Priority Cap. With respect to these payments, the Debtors request the entry of the Supplemental Order, to be considered at the “second day” hearing.

BASIS FOR RELIEF REQUESTED

The Debtors’ Prepetition Employee Obligations

8. As of the Petition Date, the Debtors employed approximately 1,100 employees (the “Employees”) all based in the Debtors’ facilities in Bolingbrook, Illinois. Of those Employees, approximately 100 are salaried and approximately 1,000 are paid hourly. As of the

Petition Date, approximately 850 of the Employees are subject to a collective bargaining agreement with the United Food and Commercial Workers International Union. The vast majority of the Employees are hourly operations and maintenance Employees. The Debtors' remaining Employees are spread across executive management, sales and marketing, finance, legal, research and development, procurement and human resources.

9. The total cost of all wages and benefits payable to the Employees amounts to approximately \$40 million per year. While the Debtors do not believe that any of the Employees are owed in excess of the \$12,475 Priority Cap, the aggregate obligations to Employees, including benefits and other Employee programs described herein, may result in some Employees having claims in excess of the Priority Cap.

10. As described more fully below, the Debtors' ability to operate their business depends on the continued loyalty and morale of their Employees, as well as their specialty training and skills. As a specialty business, any delay in the processing of regular wage or benefits payments to the Employees would cause the Debtors and their business irreparable harm.

A. Wage, Staffing, and Independent Contractor Obligations

11. The Employees are paid weekly. Prior to the Petition Date, the average payroll for Employees per week, including wages, salaries, overtime, commissions, and paid-time-off, (collectively, the "Wage Obligations") was approximately \$770,000. The Debtors pay their Wage Obligations by either direct deposit or check. The Debtors do not believe that there are prepetition Wage Obligations owed to any Employee in excess of the Priority Cap, other than possibly commissions owed to the brokers as described below. Some checks that have been issued to employees may not have been presented for payment or may not have cleared through the Debtors' cash management banks.

12. The compensation of the brokers employed by the Debtors (the “Brokers”) consists entirely of commissions, which are calculated as a percentage of the value of sales completed by each Broker. Because commissions earned by the Brokers represent compensation as a percentage of sales and the exact volume of completed sales prior to the Petition Date is not yet known, the amount owed to some Brokers may possibly exceed the Priority Cap. Nevertheless, although commission amounts vary, the commissions are the most important component of a Broker’s overall compensation. As such, the commissions are essential to the Brokers’ livelihood. Further, the commissions provide substantial value to the Debtors’ estates because they encourage the Brokers to achieve important performance targets. Accordingly, the Debtors seek the authority, in their discretion, to pay sales commissions consistent with past practices and according to the terms of any applicable agreements with Brokers who are eligible to receive sales commissions. Prior to entry of the Supplemental Order, the Debtors seek the authority to pay commissions up to the Priority Cap per eligible Broker.

13. Sales commissions are paid in arrears according to the terms of the Broker’s individual agreement. Based on the historical commissions earned over the prior year, the Debtors estimate that the accrued but unpaid commissions due to the Brokers as of the Petition Date will be approximately \$245,000.

14. In addition to the wages and salaries paid to the Employees, the Debtors pay amounts on account of the employed temporary workers (the “Temporary Workers”) and independent contractors (the “Independent Contractors”). The Debtors pay a staffing agency (the “Staffing Agency”) upon its referral of approximately 100 Temporary Workers on a nightly basis. The Temporary Workers are mainly employed as a part of the Debtors’ sanitation crew and are vital to the Debtors’ ability to reopen each morning. The average amount owed to the

Staffing Agency (the “Staffing Obligations”) prior to the Petition Date was approximately \$80,000 to \$100,000 per week. As of the Petition Date, the Debtors estimate that approximately \$630,000 is accrued and unpaid on account of the Staffing Agency. With respect to the Independent Contractors, the Debtors pay these individuals pursuant to the terms of their respective agreements with the Debtors (the amounts owed, the “Independent Contractor Obligations”). As of the Petition Date, the Debtors estimate that approximately \$220,000 in Independent Contractor Obligations are accrued but unpaid.

15. The Debtors’ operations will be negatively impacted if the Staffing Agency or Independent Contractors are not paid. The Staffing Agency provides vital third shift sanitation support to the Debtors. The Independent Contractors are also a vital part of the Debtor’s business by providing specialty services that help maintain and facilitate the Debtors’ relationships with Customers. Without these Independent Contractors, the Debtors’ relationships with Customers may fail, leading to a lower valuation of the Debtors’ assets.

16. Due to the nature of the Debtors’ business, these services are absolutely essential to the Debtors’ operations and the Debtors could not open each day without their support. Although the Debtors could replace the Temporary Workers and Independent Contractors over time, the abrupt departure of the Independent Contractors would significantly disrupt the Debtors’ businesses and significantly increase the difficulty of the transition into chapter 11. Accordingly, the Debtors seek the authority, in their discretion, to pay prepetition amounts owing to the Staffing Agency on account of the Staffing Obligations and to Independent Contractors on account of the Independent Contractor Obligations.

B. Payroll Taxes and Deductions

17. As with other employers, the Debtors are required by law to withhold from an Employee's wages amounts related to federal, state, and local income taxes, and social security and Medicare taxes (collectively, the "Withholding Taxes") and to remit the same to the appropriate taxing authorities (collectively, the "Taxing Authorities"). The Debtors utilize a service provided by Ceridian and certain of its affiliates (collectively, "Ceridian"), to remit Withholding Taxes and to administer garnishments and unemployment compensation. As of the Petition Date, the Debtors estimate that approximately \$2,000 is owed to Ceridian with respect to the services it provides to the Debtors.

18. In addition, the Debtors are required to make payments from their own funds on account of social security and Medicare 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' liability for Payroll Taxes as of the Petition Date is approximately \$270,000. The Debtors seek authority to continue to honor and process all prepetition obligations with respect to Payroll Taxes.

19. The Debtors also withhold certain amounts for garnishments (such as tax levies, child support, payments to bankruptcy trustees, and student loans) and other pre-tax and after-tax deductions payable to certain of the Employee benefit plans discussed herein (such as an Employee's share of health care benefits, insurance premiums, 401(k) contributions, legally ordered deductions, and other miscellaneous deductions) (collectively, the "Deductions"). On average, the Debtors historically have deducted between \$15.50 to \$75 in Deductions from Employees' paychecks every week, dependent upon the Employee's chosen benefits. Due to the

commencement of these Chapter 11 Cases, however, the Debtors estimate that approximately \$5,000 may have been deducted from Employees' earnings, which amount was not forwarded to the appropriate third-party recipients prior to the Petition Date. Accordingly, the Debtors seek authority to continue to forward these prepetition Deductions to the applicable third-party recipients on a post-petition basis in the ordinary course of business.

C. Fringe Benefits

20. The Debtors also provide Employees with other standard benefits, including vacation pay, holiday pay, bereavement leave pay, jury duty pay, and relocation expense reimbursement (collectively, "Fringe Benefits"). These benefits are not only usual and customary in the Debtors' industry, but also are necessary for Debtors to retain qualified Employees to operate their businesses. Accordingly, the Debtors seek authority to continue to honor outstanding prepetition obligations with respect to these items in the ordinary course of business and to continue these programs postpetition in accordance with their terms, as deemed necessary to continue to operate and preserve value in the exercise of their business judgment.

21. The Debtors provide vacation time, paid holidays, bereavement leave, and jury duty pay (collectively, "Paid Time Off") for eligible Employees. The Debtors compensate terminated Employees for unused vacation time; however, unused vacation time does not carry over from one year to the next. Employees are also generally allowed a maximum of eight paid holidays during the calendar year. Further, Employees are granted paid bereavement leave in the event of a death of a family member. Employees generally are also eligible for paid leave if an employee is summoned for jury duty. The Debtors seek authority to honor, but not pay, any amounts on account of Paid Time Off in the ordinary course of business, including any Paid Time Off accrued prepetition, subject to the applicable restrictions under the Debtors' policies.

22. The Debtors also engaged in an education reimbursement program (the “Education Reimbursement Program”). As of the Petition, there is one Employee participating in this program who will have anticipated tuition reimbursement of \$5,000. The Company policy is to pay fifty percent (\$2,500) with the remaining amount of \$2,500 payable over a two-year period. The Debtors seeks authority to pay this amount, which will be included as part of the specific Employee’s statutory wage accrual.

23. To be clear, by this Motion, the Debtors are not at this time seeking authority to pay any express or implied bonus or executive compensation plans, but reserve the right to do so at a later date.

D. Severance

24. Just prior to the Petition Date, the Debtors terminated approximately twenty Employees (the “Former Employees”) who are eligible to receive payments due to the Debtors’ reduction in force. Former Employees may receive one week of severance pay for every two years of service, subject to a two-week minimum payment and a twelve-week maximum payment and subject to continued unemployment of the Former Employee. The Debtors estimate that the total severance to Former Employees will be approximately \$88,500 in the aggregate. Pursuant to this reduction in force, the Debtors have paid \$10,000 in severance payments, \$78,500 of which is still due and owing as of the Petition Date. A portion of these severance payments will come due on the Debtors’ next regularly scheduled payroll date. These payments are all well below the Priority Cap.

25. It would be an extreme hardship on the Former Employees if the Debtors were unable to make these severance payments when they come due in the ordinary course of business. Accordingly, the Debtors seek authority, in their discretion, in the Proposed Order, to

make payments to the Former Employees in the ordinary course of business, not to exceed the Priority Cap.

26. To be clear, the Debtors are not by this Motion seeking authority to (a) pay prepetition claims or obligations such as severance to Former Employees arising under individual employment agreements or (b) make any payments inconsistent with section 503(c) of the Bankruptcy Code. Moreover, the Debtors are not seeking authority to pay any prepetition severance obligations that would be in excess of the Priority Cap.

27. On a going forward basis, the Debtors believe that it is critical that they be authorized, but not directed, to continue the severance payments in the ordinary course of business. If severance payments are not honored, current eligible Employees will become more concerned about the Debtors' employment practices and may seek out new employment immediately, to the detriment of the Debtors' businesses and their estates.

E. Expense Reimbursements

28. The Debtors' Employees incur various expenses in the discharge of their duties for items such as travel, lodging, and meal expenses (the "Expense Reimbursements"). Because these expenses are incurred as part of their official duties and in furtherance of the Debtors' businesses, the Employees are reimbursed in full after submission of appropriate documentation to the Debtors' accounting department.

29. The Debtors incur approximately \$50,000 to \$75,000 per month in Expense Reimbursements, although this number can greatly vary month-to-month. Furthermore, it is difficult to determine with precision the aggregate amount of outstanding Expense Reimbursements due as of the Petition Date. Employees incurred the Expense Reimbursement on the Debtors' behalf and with the understanding that they would be reimbursed. Due to the

commencement of these Chapter 11 Cases, however, there may be Expense Reimbursements that were not paid to the applicable Employee prior to the Petition Date. As of the Petition Date, the Debtors estimate that approximately \$75,000 in Expense Reimbursements remain outstanding.

30. To avoid harming the Employees who incurred Expense Reimbursements, the Debtors seek the authority to continue reimbursing the Employees for Expense Reimbursements in accordance with prepetition practices (including, as applicable, making payments on behalf of Employees to certain third parties, such as credit card companies), and to honor and pay all unpaid Expense Reimbursements.

F. Health and Welfare Benefits

31. The Debtors' Employees are provided with a standard range of health, dental, disability and other health and welfare benefits. Participants in the Debtors' employee-benefit plans include eligible Employees and occasionally their dependents. The Debtors' various employee benefit plans and policies can be divided into the following categories (collectively, the "Health and Welfare Benefits")³:

(1) Medical, Prescription Drug, and Dental Plan

32. The Debtors provide medical coverage and prescription drug coverage through a self-insured program (the "Medical Plan"). UMR administers the medical coverage and prescription drug coverage provided under the Medical Plan. Employees covered under the Medical Plan (collectively, the "Covered Employees") contribute approximately \$15 to \$70 annually toward this coverage through payroll deductions. In addition, Employees make payments toward deductibles pursuant to the terms and conditions of the applicable Medical Plan and also make co-insurance payments. The monthly cost to the Debtors under the Medical Plan

³ The descriptions of the Debtors' benefits programs contained herein are provided for convenience only and are qualified in all respects by the actual terms of such programs. Nothing contained herein shall have the effect of modifying the terms of the benefit programs or altering any party's rights and obligations thereunder.

is approximately \$360 to \$1,035 per employee, depending upon usage of health care services by covered Employees and their dependents. This amount does not include payments made on account of Employee claims under the Medical Plan and payments to UMR for administering such claims (including claims adjudication, payments to medical providers, medical management services, and other duties).

33. The Debtors provide dental coverage through a self-insured program (the “Dental Plan”). UMR administers the dental coverage provided under the Dental Plan. Covered Employees under the Dental Plan contribute approximately \$8 to \$27 monthly toward this coverage through payroll Deductions. In addition, Employees make payments toward deductibles pursuant to the terms and conditions of the applicable Dental Plan and also make co-insurance payments. The monthly cost to the Debtors under the Dental Plan is approximately \$34 to \$110 per Employee, depending upon usage of dental care services by covered Employees and their dependents. This amount does not include payments made on account of Employee claims under the Dental Plan and payments to UMR for administering such claims (including claims adjudication, payments to medical providers, medical management services, and other duties).

34. As of the Petition Date, the Debtors estimate that they have an outstanding liability of approximately \$35,000 on account of the Medical Plan and Dental Plan.

35. The Debtors also participate in a union employee medical benefit plan (the “Union Medical Plan”). Under this plan, the Debtors make monthly payments to the Union Health & Welfare Fund in an approximate amount of \$470,000. As of the Petition Date, the Debtors estimate that they have an outstanding liability of approximately \$1,046,513 on account of the Union Medical Plan.

(2) Flexible Spending Accounts for Medical and Dependent Care

36. The Debtors provide flexible spending accounts for out-of-pocket healthcare and dependent care expenses for eligible Employees. A flexible spending account is a tax-advantaged financial account that allows an Employee to set aside a portion of his or her earnings to pay for qualified expenses, such as medical care or dependent day care. Each eligible Employee can choose to contribute pre-tax dollars up to the limits set by the Internal Revenue Service to his or her flexible spending account. The contributions to the flexible spending accounts are entirely funded by the Employees who choose to enroll. As of the Petition Date, the Debtors have an outstanding liability of approximately \$600 on account of the Flexible spending program.

(3) Life Insurance, AD&D Insurance, and Disability Benefits.

37. The Debtors maintain basic life and accidental death and dismemberment coverage for eligible Employees (the “Life and AD&D Insurance”), as well as both a short-term disability insurance plan and a long-term disability insurance plan (together, the “Disability Plans”). These plans are administered by Provident and Guardian. The insurance coverage provided to an individual Employee depends on how the Employee is classified. As of the Petition Date, the Debtors estimate that they have an outstanding liability of \$8,000 on account of the Life and AD&D Insurance and the Disability Plans.

G. 401(k) Plan

38. The Debtors maintain a retirement and savings plan pursuant to section 401 of the Internal Revenue Code, which includes both traditional and Roth components (as applicable, the “Traditional 401(k) Plan” and the “Roth 401(k) Plan,” and, together, the “401(k) Plan”). Through automatic payroll deductions, participating Employees can contribute a portion of their

wages on a pre-tax or post-tax basis into the Traditional 401(k) Plan, or on a post-tax basis into the Roth 401(k) Plan. The Debtors currently do not match 401(k) contributions.

39. Contributions to the 401(k) Plan are held in trust and are administered by BMO, who withdraws their administration fees directly. As of the Petition Date, the Debtors do not owe any amounts to BMO on account of the 401(k) Plan.

Cause Exists To Authorize Payment of Employee Obligations

40. Pursuant to section 507(a)(4)(A) of the Bankruptcy Code, claims against the Debtors 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 \$12,475 per individual. Similarly, section 507(a)(5) of the Bankruptcy Code provides that Employees’ claims for contributions to certain employee benefit plans also are afforded priority unsecured status to the extent of \$12,475 per Employee covered by such plan, less any amount paid pursuant to section 507(a)(4).

41. The Debtors believe that substantially all, if not all, of the Employee Obligations relating to the period prior to the Petition Date constitute priority claims under sections 507(a)(4) of the Bankruptcy Code.⁴ As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied unless otherwise ordered by the Court. Accordingly, the relief requested may affect only the timing of the payment of these priority obligations and will not prejudice the rights of general unsecured creditors or other parties in interest.

⁴ Except as set forth herein, the Debtors do not believe they owe any Employee more than the Priority Cap on account of Wage Obligations. However, to the extent the Debtors owe any Employee more than \$12,475, the Debtors only seek authority to pay up to \$12,475 on account of such obligations under the Proposed Order, with any further amounts to be paid in accordance with the Supplemental Order.

42. Furthermore, section 363(b)(1) of the Bankruptcy Code provides that, after notice and a hearing, the trustee “may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”⁵ “[C]ourts have used their equitable power under section 105(a) of the [Bankruptcy] Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor.”⁶

43. Additionally, federal courts consistently have permitted postpetition payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors.⁷ This doctrine of necessity functions in a chapter 11 case as a mechanism by which a bankruptcy court can exercise its equitable power to facilitate a successful restructuring of the debtors’ businesses by allowing payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code.⁸ The court in *In re Structurite*

⁵ *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code).

⁶ *In re Just for Feet*, 242 B.R. 821, 824 (D. Del. 1999).

⁷ *See, e.g., Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim permitted to prevent “stoppage of [crucial] business relations”); *Dudley v. Mealey*, 147 F.2d 268 (2d Cir. 1945) (Hand, J.), *cert. denied*, 325 U.S. 873 (1945) (extending necessity doctrine for payment of prepetition claims beyond railroad cases); *In re Lehigh & N.E.R. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (providing that if payment of prepetition claim is essential to continued operation of business during restructuring, then payment may be authorized “even if it is made out of corpus”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors’ continued operation); *In re Payless Cashways, Inc.*, 268 B.R. 543, 546 (Bankr. W.D. Mo. 2001) (finding that various courts have permitted debtors-in possession to pay prepetition debts on grounds that payment of such claims was necessary to effectuate a successful restructuring).

⁸ *See In re Just for Feet*, 242 B.R. at 825 (“The Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11.”).

Plastics Corp. indicated its accord with “the principle that a Bankruptcy Court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’”⁹ The court stated that “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the [Bankruptcy] Code.”¹⁰ The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11—“a successful rehabilitation.”¹¹ Accordingly, pursuant to section 105(a) of the Bankruptcy Code, the Court is empowered to grant the relief requested herein.

44. The Employees are among their most valuable assets and are absolutely vital to the Debtors’ restructuring efforts. It is imperative that Employee morale be maintained and that the Debtors have the authority to ensure that Employees do not unduly suffer as a consequence of the commencement of these Chapter 11 Cases. Indeed, in the absence of granting the relief requested herein, the Employees will suffer undue economic hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain of the Employees to meet their own personal financial obligations. Without the requested relief, the stability of the Debtors will be irreparably undermined by the distinct possibility that otherwise loyal Employees will seek other employment alternatives. In addition, it would be inequitable to require the Employees to bear personally the cost of any Expense Reimbursements they incurred prepetition, for the benefit of the Debtors, with the understanding that they would be reimbursed.

⁹ 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (quoting *In re Chateaugay Corp.*, 80 B.R. 279, 287 (Bankr. S.D.N.Y. 1987)).

¹⁰ *Id.* at 932.

¹¹ *In re Just for Feet*, 242 B.R. at 825–26.

45. Accordingly, continued payment, without interruption, of the Employee Obligations is necessary and essential and will assure a smooth transition into chapter 11. Indeed, if the relief requested herein is not granted, the Debtors' business operations will suffer, to the detriment and prejudice of all parties in interest.

46. Additionally, the Debtors request that their Banks and any other third-party agents be authorized, when requested by the Debtors, to receive, process, honor and pay any and all wire transfers or checks drawn on the Debtors' accounts for any payments authorized by this Court, whether such wire transfers or checks were presented before or after the Petition Date, provided that sufficient funds are available, and to rely on all of the Debtors' representations in this Motion.

Cause Exists To Authorize Payment of Payroll Taxes

47. In addition, the payment of the Payroll Taxes will not unduly prejudice other creditors of the Debtors' estates. As an initial matter, most, if not all, of the Payroll Taxes are afforded priority status under section 507(a)(8) of the Bankruptcy Code. These include unsecured claims of governmental units for "a tax on or measured by income or gross receipts for a taxable year ending on or before [the Petition Date],"¹² or "a tax required to be collected or withheld and for which the debtor is liable in whatever capacity."¹³ Accordingly, as priority claims, many of such prepetition Payroll Taxes must be paid in full before any general unsecured obligations of the Debtors may be satisfied.

48. Moreover, the portion of the Payroll Taxes withheld from wages on behalf of the applicable Taxing Authority is held in trust by the Debtors. As such, these taxes do not

¹² 11 U.S.C. § 507(a)(8)(A).

¹³ 11 U.S.C. § 507(a)(8)(C).

constitute property of the Debtors' estates pursuant to section 541 of the Bankruptcy Code.¹⁴ As a consequence, the Debtors would not have an equitable interest in such Payroll Taxes, and assuming they could be adequately identified and traced, such amounts would not constitute property of the Debtors' estates and would not be subject to the automatic stay.¹⁵ To the extent the Payroll Taxes are not property of the Debtors' estates, these funds are not available for the satisfaction of creditors' claims. The Debtors, therefore, should be permitted to remit such funds to the Taxing Authorities as they come due.

Administering Payroll and Employment Obligations

49. In addition, the Debtors believe it is necessary to continue payment of administrative fees to the administrators of the Employee Obligations. Without the continued services of these administrators, the Debtors would be unable to continue to honor the Employee Obligations in an efficient and cost-effective manner. Given the necessity of administering the payroll and administering the Employee Obligations, the Debtors respectfully submit that this relief is necessary and warranted.¹⁶

¹⁴ See, e.g., *Begier v. IRS*, 496 U.S. 53, 59-61 (1990) (withholding taxes are property held by the debtor in trust for another and, as such, are not property of the debtors' estates); *Texas Comptroller of Pub. Accts. v. Megafoods Stores, Inc.*, 163 F.3d 1063, 1067 (9th Cir. 1998) (under applicable state law, state sales taxes collected created statutory trust fund, if traceable, and were not property of the estate); *Al Copeland Enters., Inc. v. Texas*, 991 F.2d 233, 237 (5th Cir. 1993) (debtors' prepetition collection of sales taxes and interest thereon were held subject to trust and were not property of the estate); *In re Shank*, 792 F.2d 829, 830 (9th Cir. 1986) (sales taxes required by state law to be collected by sellers from their customers are "trust fund" taxes); *DeChiaro v. New York State Tax Comm'n*, 760 F.2d 432, 433 (2d Cir. 1985) (sales taxes are "trust fund" taxes); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (excise and withholding taxes are "trust fund" taxes); *In re Tap, Inc.*, 52 B.R. 271, 267-77 (Bankr. D. Mass. 1985) (withholding taxes are "trust fund" taxes).

¹⁵ See *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-96 (3d Cir. 1994).

¹⁶ Notably, courts in this jurisdiction have granted the relief requested herein in numerous other chapter 11 cases. See, e.g., *In re Exide Technologies*, Case No. 13-11482 (KJC) (Bankr. D. Del. July 10, 2013); *In re Conexant Systems, Inc.*, Case No. 13-10367 (MFW) (Bankr. D. Del. Apr. 11, 2013); *In re Overseas Shipholding Group, Inc.*, Case No. 12-20000 (PJW) (Bankr. D. Del. Nov. 15, 2012); *In re Contract Research Solutions, Inc.*, Case No. 12-11004 (KJC) (Bankr. D. Del. Apr. 23, 2012); *In re DSI Holdings, Inc. et al.*, Case No. 11-11941 (KJC) (Bankr. D. Del. July 19, 2011); *In re Local Insight Media Holdings, Inc.*, Case No. 10-13677 (KG) (Bankr. D. Del. Dec. 10, 2010); *In re Premier Int'l Holdings Inc.*, Case No. 09-12019 (CSS) (Bankr. D. Del. June 15, 2009); *In re Accredited Home Lenders Holding Co.*, Case No. 09-11516 (MFW) (Bankr. D. Del. May 6, 2009).

Authorization for Banks

50. The Debtors request that the Court authorize and direct the Banks on which checks are drawn or electronic funds are transferred with respect to the Employee Obligations to receive, process, honor, and pay, to the extent of funds on deposit, any and all such checks or electronic transfers, whether such checks or transfers were issued before or after the Petition Date, upon the receipt by each such bank of notice of such authorization without further order of the Court.

51. Further, the Debtors also request that the Court authorize its banks to rely on the representations of the Debtors as to which checks are issued and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions. Given, the necessity of paying the Employee Obligations, the Debtors respectfully submit that this relief is necessary and warranted.

REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

52. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." The Debtors submit that the facts described herein demonstrate that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors' business operations and the value of the Debtors' estates, and that Bankruptcy Rule 6003 has been satisfied to permit such payments.

WAIVER OF BANKRUPTCY RULES 6004(a) AND (h)

53. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14 day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

54. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any invoice or claim related to the relief requested herein in accordance with applicable law.

NOTICE

55. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to Crystal Financial LLC; and (iii) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

56. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

[remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed and Supplemental Orders, substantially in the forms attached hereto, granting the relief requested herein and granting the Debtors such other and further relief as is just and proper.

Dated: February 18, 2014
Wilmington, Delaware

YOUNG CONAWAY STARGATT
& TAYLOR, LLP

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*Proposed Counsel for Debtors and
Debtors in Possession*

EXHIBIT A

PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re	:	Chapter 11
	:	
QUANTUM FOODS, LLC <i>et al.</i>,	:	Case No. 14-10318 (____)
	:	
Debtors.¹	:	Jointly Administered
	:	
	:	Ref Docket No. ____

**INITIAL ORDER, PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363(b),
503(b), 507(a)(4), 507(a)(8), AND BANKRUPTCY RULES 6003 AND 6004,
(A) AUTHORIZING DEBTORS TO (I) PAY CERTAIN EMPLOYEE COMPENSATION
AND BENEFITS AND (II) MAINTAIN AND CONTINUE SUCH BENEFITS AND
OTHER EMPLOYEE-RELATED PROGRAMS AND (B) AUTHORIZING AND
DIRECTING BANKS AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS
CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS**

Upon the motion (the “Motion”)² of Quantum Foods, LLC and its affiliated debtors as debtors in possession (collectively, the “Debtors”) for entry of an order, pursuant to sections 105(a), 363(b), 503(b), 507(a)(4), and 507(a)(8) of title 11 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to (i) pay certain employee compensation and benefits and (ii) maintain and continue such benefits and other employee-related programs (other than compensation-related cash payments to Employees in excess of the Priority Cap) and (b) authorizing and banks and financial institutions to honor and process checks and transfers related to such obligations, as more fully described in the Motion; and this Court having found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quantum Foods, LLC (9437); Quantum Foods 213-D, LLC (1862); Quantum Culinary, LLC (1302); GDC Logistics, LLC (1997); Choice One Foods, LLC (9512). The Debtors’ mailing address is c/o Quantum Foods, LLC, 750 South Schmidt Road, Bolingbrook, Illinois 60440.

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

Bankruptcy Rule 6003; and upon consideration of the First Day Declaration; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to pay prepetition claims, to honor obligations, and continue programs, in the ordinary course of business, relating to (A) Wage Obligations, Staffing Obligations, and Independent Contractor Obligations; (B) Payroll Taxes and Deductions, (C) Fringe Benefits (D) the Severance Program, (E) Expense Reimbursements, (F) Health and Welfare Benefits, and (G) the 401(k) Plan (collectively, the "Employee Obligations"); provided, however, the Debtors shall not make any payment on account of Employee Obligations to any Employee in excess of the Priority Cap in the aggregate without further order of this Court.
3. Notwithstanding the foregoing, prior to this Court's entry of the Supplemental Order, the Debtors are authorized, but not directed, to (a) pay Commissions of up to \$12,475 per eligible Employee and (b) honor their payment obligations under the Severance Program to the

Former Employees.

4. The Debtors are authorized, but not directed, to continue to honor their practices, programs, and policies with respect to their Employees as such practices, programs, and policies were in effect as of the Petition Date, including the Employee Obligations.

5. The Debtors are authorized, but not directed, to pay any and all costs in connection with maintaining administration or paying third parties to maintain, administer, and provide record-keeping relating to the Employee Obligations that may be outstanding as of the Petition Date in the ordinary course of business.

6. The Debtors are authorized, but not directed, to pay any and all costs in connection with the pre-petition obligations due under their Health and Welfare Benefits programs.

7. Nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of or basis for any claims asserted against the Debtors arising in connection with the Employee Obligations or as an admission as to the validity or priority of any claim against the Debtors.

8. Notwithstanding anything in the Motion or this Order to the contrary, any payment made by the Debtors pursuant to the authority granted herein shall be subject to any orders authorizing the Debtors' access to and use of cash collateral and postpetition debtor-in-possession financing.

9. Nothing in the Motion or this Order shall be deemed or construed as an approval of an assumption or rejection of any contract pursuant to section 365 of the Bankruptcy Code and all such rights are reserved.

10. Nothing in the Motion or this Order shall be deemed to (a) authorize the payment

of any amounts that may be subject to section 503(c) of the Bankruptcy Code or (b) violate or permit a violation of section 503(c) of the Bankruptcy Code.

11. Any party receiving payment from the Debtors is authorized to rely upon the representations of the Debtors as to which payments are authorized by this Order. The Banks on which checks were drawn or electronic payment requests made in payment of the obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice or otherwise deemed waived.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

15. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

17. The final hearing on the Supplemental Order, if required, shall be held on _____, 2014 at ____:____ a.m. / p.m. (Eastern Time); and any objection to entry of such order shall be in writing, filed with this Court, and served upon the parties noticed with the Motion, in

each case so as to be received no later than _____, 2014 at 4:00 p.m. (Eastern Time). If no such objection is filed to the Supplemental Order in accordance with this provision, this Court may enter the relief requested herein without further notice or hearing.

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

Dated: _____, 2014
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

PROPOSED SUPPLEMENTAL ORDER

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re	:	Chapter 11
	:	
QUANTUM FOODS, LLC, <i>et al.</i>,	:	Case No. 14-_____ (____)
	:	
Debtors.¹	:	Jointly Administered
	:	
	:	Ref: Docket Nos. __

**ORDER AUTHORIZING DEBTORS TO MAKE CERTAIN
COMPENSATION-RELATED PAYMENTS TO EMPLOYEES**

Upon the motion (the “Motion”)² of Quantum Foods, LLC and its affiliated debtors as debtors in possession (collectively, the “Debtors”) for entry of an order, pursuant to sections 105(a), 363(b), 503(b), 507(a)(4), and 507(a)(8) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, authorizing, among other things, certain compensation-related cash payments in excess of the Priority Cap, as more fully described in the Motion; and upon consideration of the First Day Declaration; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Quantum Foods, LLC (9437); Quantum Foods 213-D, LLC (1862); Quantum Culinary, LLC (1302); GDC Logistics, LLC (1997); Choice One Foods, LLC (9512). The Debtors’ mailing address is c/o Quantum Foods, LLC, 750 South Schmidt Road, Bolingbrook, Illinois 60440.

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

the Motion having been provided under the particular circumstances, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, to make certain compensation-related cash payments to individual non-insider Employees in excess of the Priority Cap.
3. Nothing in this Order or the Motion shall be construed as prejudicing any rights the Debtors may have to dispute or contest the amount of or basis for any claims asserted against the Debtors arising in connection with the Employee Obligations or as an admission as to the validity or priority of any claim against the Debtors.
4. Nothing in the Motion or this Order shall be deemed to (a) authorize the payment of any amounts that may be subject to section 503(c) of the Bankruptcy Code or (b) violate or permit a violation of section 503(c) of the Bankruptcy Code.
5. Notwithstanding anything in the Motion or this Order to the contrary, any payment made by the Debtors pursuant to the authority granted herein shall be subject to any orders authorizing the Debtors' access to and use of cash collateral and postpetition debtor-in-possession financing.
6. Nothing in the Motion or this Order shall be deemed or construed as an approval of an assumption or rejection of any contract pursuant to section 365 of the Bankruptcy Code and all such rights are reserved.
7. Any party receiving payment from the Debtors is authorized to rely upon the representations of the Debtors as to which payments are authorized by this Order. The Banks on which checks were drawn or electronic payment requests made in payment of the obligations

approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice, and the requirements of Bankruptcy Rule 6004(a) have been satisfied by such notice or otherwise deemed waived.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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

Dated: _____, 2014
Wilmington, Delaware

United States Bankruptcy Judge