IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PMGI Holdings Inc., *et al.*,[1]	Case No. 13-12404 (CSS)
Debtors.	(Joint Administration Requested)

MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (A) AUTHORIZING THE DEBTORS TO PAY PREPETITION EXCISE, INCOME AND SIMILAR TAXES AND REGULATORY FEES IN THE ORDINARY COURSE OF BUSINESS, AND (B) AUTHORIZING BANKS AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED THERETO

The above-captioned debtors and debtors-in-possession (collectively, the **"Debtors"**) hereby move the Court (the **"Motion"**) pursuant to sections 105(a), 363, 507(a), and 541(d) of title 11 of the United States Code, 11 U.S.C. §§ 101 - 1532 (the **"Bankruptcy Code"**), and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the **"Bankruptcy Rules"**) for entry of an order: (a) authorizing, but not directing, the Debtors to pay prepetition excise, income and similar taxes and regulatory fees in the ordinary course of business; (b) authorizing banks and financial institutions to honor and process checks and transfers related to such payments; and (c) providing additional relief required in order to effectuate the foregoing. In support of this Motion, the Debtors respectfully state as follows:

[1] The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor's federal tax identification number, are: Blue Hen Group Inc. (9667), Argus Payments Inc. (4661), Big Island Technology Group, Inc. (9795), Confirm ID, Inc. (7020), Danni Ashe, Inc. (5271), Fastcupid, Inc. (7869), Fierce Wombat Games Inc. (2019), FriendFinder California Inc. (2750), FriendFinder Networks Inc. (0988), FRIENDFINDER VENTURES INC. (3125), FRNK Technology Group (7102), General Media Art Holding, Inc. (2637), General Media Communications, Inc. (2237), General Media Entertainment, Inc. (2960), Global Alphabet, Inc. (7649), GMCI Internet Operations, Inc. (7655), GMI On-Line Ventures, Ltd. (7656), Interactive Network, Inc. (5941), Magnolia Blossom Inc. (8925), Medley.com Incorporated (3594), NAFT NEWS CORPORATION (4385), Penthouse Digital Media Productions Inc. (1056), Penthouse Images Acquisitions, Ltd. (9228), PerfectMatch Inc. (9020), Playtime Gaming Inc. (4371), PMGI Holdings Inc. (2663), PPM Technology Group, Inc. (9876), Pure Entertainment Telecommunications, Inc. (9626), Sharkfish, Inc. (1221), Snapshot Productions, LLC (7091), Streamray Inc. (2716), Streamray Studios Inc. (1009), Tan Door Media Inc. (1100),Traffic Cat, Inc. (1223), Transbloom, Inc. (1168), Various, Inc. (7762), Video Bliss, Inc. (6760), West Coast Facilities Inc. (4751), XVHUB Group Inc. (9401). The Debtors' business address is 6800 Broken Sound Parkway NW, Suite 200, Boca Raton, FL 33487.

Status of the Case

1. On the date hereof (the "**Petition Date**"), the Debtors commenced these cases (the "**Chapter 11 Cases**") by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner and a creditors' committee has not yet been appointed in these Chapter 11 Cases.

Jurisdiction, Venue, and Statutory Predicates

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 1408. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).

5. The statutory predicates for the relief sought herein are sections 105(a), 363, 507(a), and 541(d) of the Bankruptcy Code.

Background

6. The Debtors are a leading internet technology and entertainment company providing services in the rapidly expanding markets of adult dating, social networking and web-based video sharing and run several of the most heavily-trafficked websites in the world. The Debtors maintain a number of social networking and entertainment sites and offer a wide variety of online products and services which appeal to members of diverse cultures and internet groups. The Debtors' services allow customers to socialize and connect with each other and groups, based on various interests, including ethnic, cultural, and entertainment interests, and to enjoy

the Debtors' entertainment oriented content. The websites operated by the Debtors include social networking, online personals, live and recorded video, online chat rooms, instant messaging, photo and video sharing, blogs, message boards, email and premium content websites. The Debtors also produce and distribute original pictorial and video content, license the globally recognized Penthouse brand to a variety of consumer product companies and entertainment venues, and publish several branded men's lifestyle magazines.

7. Because of the internet-based nature of their businesses, the Debtors' operations reach around the globe and have an international presence. The Debtors operate their businesses through forty (40) subsidiaries located in the United States and have fifteen (15) related non-debtor affiliated entities. The Debtors have approximately 435 employees and, through their network, utilize a number of contracting firms and independent contractors to conduct their businesses and obtain their global reach. The Debtors and their affiliates have more than 220 million members and operate in more than 200 countries. The Debtors' total revenue for the four consecutive fiscal quarters ended June 30, 2013 was $293.70 million.

8. In addition to normal course costs of operations, market development and product enhancements, the Debtors have long term debt, including three tranches with maturities on September 30, 2013 and April 30, 2014. Those tranches include the (i) 14% Senior Secured Notes due 2013 (the "**Existing First Lien Notes**") issued pursuant to that certain Indenture (as amended, modified or supplemented prior to the date hereof, the "**First Lien Indenture**") dated as of October 27, 2010, (ii) the 11.5% Non-Cash Pay Secured Notes Due 2014 (the "**Non-Cash Pay Second Lien Notes**") issued pursuant to the Indenture dated as of October 27, 2010 (as amended, modified or supplemented prior to the date hereof, the "**Non-Cash Pay Second Lien Indenture**") and (iii) the 14% Cash Pay Secured Notes Due 2013 (the "**Cash Pay Second Lien**

Notes,") and, collectively with the Existing First Lien Notes and the Cash Pay Second Lien Notes, the "**Senior Debt**") issued pursuant to the Indenture dated as of October 27, 2010 (as amended, modified or supplemented prior to the date hereof, the "**Cash Pay Second Lien Indenture**").

9. Despite continuing member interest and high volume traffic, the Debtors did not make certain payments to the holders of Existing First Lien Notes and Cash Pay Second Lien Notes which constituted a default under their respective indentures. Working with certain holders of their Senior Debt, the Debtors have undertaken to restructure their balance sheet and, on September 16, 2013, the Debtors, certain holders of the Existing First Lien Notes and certain holders of the Non-Cash Pay Second Lien Notes (the "**Senior Debt Holders**") entered into the Transaction Support Agreement (the "**TSA**"). The TSA provides the relevant terms to effect the Recapitalization Transaction (as defined in the TSA). As a result, the Debtors filed these Chapter 11 Cases in order to implement the Recapitalization Transaction as contained in the TSA.

10. A detailed factual background of the Debtors' businesses and operations, as well as the events precipitating the commencement of these Chapter 11 Cases, is more fully set forth in the *Declaration of Ezra Shashoua in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief*, filed contemporaneously herewith and incorporated herein by reference.

The Debtors' Taxes

11. In connection with the normal operation of their businesses, the Debtors pay an assortment of excise, income and similar taxes (collectively, the **"Taxes"**) to various federal, state, local and foreign taxing authorities (collectively, the **"Taxing Authorities"**) and pay

various regulatory fees (the **"Regulatory Fees,"** and together with the Taxes, the **"Taxes and Fees"**) to certain federal, state, local and foreign regulatory authorities (collectively, the **"Regulatory Authorities,"** and together with the Taxing Authorities, the **"Taxing and Regulatory Authorities"**), including, but not limited to, those Taxing and Regulatory Authorities listed on **Exhibit "A"** attached hereto.[2] These Taxes and Fees include, without limitation, the following:

A. Excise Taxes

12. In the normal course of their businesses, the Debtors incur excise taxes (the **"Excise Taxes"**) in the state of Washington. The Excise Taxes are assessed in the state of Washington based upon the Debtors' gross proceeds and sales. The Debtors pay the Excise Taxes on a quarterly basis, and estimate that the approximate aggregate amount of $18,902 was outstanding in respect thereof as of the Petition Date.

B. Income/Franchise Taxes and Occupation Taxes

13. The Debtors pay income/franchise taxes (the "**Income/Franchise Taxes**") to applicable Taxing Authorities in many U.S. jurisdictions as well as in the United Kingdom. The Income/Franchise Taxes are established by the Debtors' income tax base, the capital employed by the Debtors' operations and/or a variety of other factors. Timely payment of the Income/Franchise Taxes allows the Debtors to continue operating their businesses in such jurisdictions. The Debtors typically pay the Income/Franchise Taxes on a quarterly or annual basis, as the case may be, and are currently obligated to pay certain Income/Franchise Taxes post-petition based upon amounts that partially accrued pre-petition. The Debtors estimate that

[2] Inclusion of a Taxing or Regulatory Authority on **Exhibit "A"** hereto does not constitute an acknowledgement by the Debtors that the Debtors owe any obligation to such authority or that such authority will be paid pursuant to any final order approving this Motion.

the aggregate approximate amount of $57,224 was accrued in respect of Income/Franchise Taxes as of the Petition Date.

14. The Debtors are also required to pay a variety of minimum business and occupation taxes ("**Occupation Taxes**") to applicable Taxing and Regulatory Authorities in several U.S. jurisdictions, including, the state of Ohio, Palm Beach County, Florida, and the City of Boca Raton, Florida. The Debtors typically pay the Occupation Taxes on an annual basis, and estimate that the aggregate approximate amount of $2,638 was accrued in respect of Occupation Taxes as of the Petition Date.

C. Property Taxes

15. The Debtors pay personal property taxes (the "**Property Taxes**") to the Counties of San Francisco and Santa Clara on account of certain computers and other personal property they own that is physically located in the state of California. The Debtors typically pay the Property Taxes on an annual basis and are currently obligated to pay certain Property Taxes post-petition based upon amounts that partially accrued pre-petition. The Debtors estimate that the aggregate approximate amount of $61,495 was accrued in respect of Property Taxes as of the Petition Date.

D. Regulatory Fees

16. The Debtors incur certain Regulatory Fees consisting of amounts owed to federal, state and local governments, which require the Debtors to obtain business licenses and to pay corresponding license and permit fees. The requirements for a company to obtain a business license and the manner that the Regulatory Fees are computed vary greatly according to the various federal, state and local government laws and regulations. The Debtors typically pay the Regulatory Fees on an annual or semi-annual basis and are currently obligated to pay certain

Regulatory Fees post-petition based upon amounts that partially accrued pre-petition. The Debtors estimate that the aggregate approximate amount of $22,790 was accrued in respect of Regulatory Fees as of the Petition Date.

E. Value Added Taxes

17. In the normal course of their businesses, the Debtors incur value added taxes ("**VAT**") in connection with the sale of their products and services in certain foreign jurisdictions, including countries in the European Union, Norway, and Switzerland. A VAT is analogous to a sales tax. VAT is collected by the Debtors from customers that reside within a VAT jurisdiction and then remitted by the Debtors on a quarterly basis to the respective Taxing Authority. The Debtors' possess two categories of VAT obligations.

18. Pursuant to the first category of VAT obligations, the Debtors pay their current VAT obligations (the "**Current VAT Payments**") twenty days after the end of each business quarter to the applicable Taxing Authority. Under the second category of VAT obligations, the Debtors pay certain previously accrued VAT (the "**Structured VAT Payments**") pursuant to separate settlement agreements entered into between the Debtors and the nations of France and Switzerland (the "**VAT Agreements**"). Currently, the Debtors pay approximately €96,000 (approximately $126,796) in Structured VAT Payments on a monthly basis to the nation of France in accordance with the terms the parties' VAT Agreement. Additionally, the Debtors pay approximately $157,750 in Structured VAT Payments on a bi-monthly basis to the nation of Switzerland in accordance with the terms of the parties' VAT Agreement.

19. The Debtors believe that they are current with respect to the Structured VAT Payments and will continue to make the required Structured VAT Payments pursuant to the VAT Agreements in the ordinary course of business during the pendency of these Chapter 11 Cases.

The Current VAT Payments have been collected from the Debtors' customers and accrued by the Debtors from the period of July 1, 2013 through the Petition Date in the approximate amount of $1,334,314. This collected and accrued amount together with any VAT collected from the Petition Date through September 30, 2013 will be due and payable on October 21, 2013. The Debtors seek authority to pay any currently accrued but unpaid Current VAT Payments and to continue to make Structured VAT Payments in accordance with the VAT Agreements provided that any such payments fall within any aggregate cap contained in any final order entered by this Court approving this Motion.

20. In the aggregate, the Debtors estimate that approximately $163,049 in Taxes and Fees have accrued, not including the Current VAT Payments collected and accrued in the approximate amount of $1,334,314 as of the Petition Date. In addition to the Taxes and Fees owed but not yet paid as of the Petition Date, the Taxes and Fees may also include amounts paid by checks sent prior to the Petition Date that have not cleared the Debtors' bank accounts on the Petition Date, though the Debtors are not aware of any such checks. Out of an abundance of caution, the Debtors request authority to pay an amount not in excess of $1,548,216 in respect of Taxes and Fees accrued, but unpaid as of the Petition Date, including the Current VAT Payments accrued and collected as of the Petition Date (excluding amounts paid prior to the Petition Date by checks that have not yet cleared as of the Petition Date).

Relief Requested

21. By this Motion, the Debtors seek authority, pursuant to sections 105(a), 363, 507(a), and 541(d) of the Bankruptcy Code, to pay, in the Debtors' sole discretion, subject to the requirements imposed on the Debtors under any order regarding the Debtors' use of cash collateral, prepetition Taxes and Fees accrued for the benefit of the Taxing and Regulatory

Authorities, including, without limitation, Taxes and Fees subsequently determined to have accrued for periods prior to the Petition Date, in an aggregate amount (excluding amounts paid prepetition by checks that have not yet cleared on the Petition Date) not to exceed $1,548,216.

22. To the extent any check issued or electronic transfer initiated prior to the Petition Date in satisfaction of any prepetition obligation on account of Taxes or Regulatory Fees has not cleared as of the Petition Date, the Debtors request authority from this Court to authorize the Debtors' bank(s), when requested by the Debtors in their sole discretion, subject to the requirements imposed on the Debtors under any order regarding the Debtors' use of cash collateral, to receive, process, honor, and pay such checks or electronic transfers, provided that there are sufficient funds available in the applicable accounts to make such payments. The Debtors also seek authority, in their sole discretion, subject to the requirements imposed on the Debtors under any order regarding the Debtors' use of cash collateral, to issue replacement checks, or to provide for other means of payment to the Taxing and Regulatory Authorities, to the extent necessary to pay such outstanding Taxes and Fees accrued for periods prior to the Petition Date, as well as those Taxes and Fees subsequently determined upon audit to be accrued and owing for periods prior to the Petition Date.[3]

23. For the reasons described below, the payment of prepetition Taxes and Fees will help the Debtors avoid serious disruption to their operations that would result from the failure to pay such Taxes and Fees, including the distraction and adverse affect on morale that could result from liability for nonpayment imposed upon the Debtors' directors and officers. Furthermore, nonpayment of these obligations may cause Taxing Authorities to take precipitous action, including, but not limited to, filing liens, preventing the Debtors from conducting business in

[3] Because each of the checks or electronic transfers is readily identified as relating directly to an authorized payment of prepetition Taxes and Fees, the Debtors believe that checks and electronic transfers for payments that are not authorized will not be honored inadvertently.

applicable jurisdictions, and seeking to lift the automatic stay, all of which could disrupt the Debtors' day-to-day operations, impose significant costs on the Debtors' estates, and destroy the going-concern value of the Debtors' businesses.

Basis for Relief Requested

A. The Court Should Authorize the Debtors' Payment of Taxes and Fees

24. There are a number of bases for granting the relief requested in this Motion, including the following: (a) certain Taxes are not property of the estates; (b) governmental entities might sue the Debtors' directors and officers for certain unpaid Taxes and Fees, distracting them unnecessarily from the Debtors' efforts in these Chapter 11 Cases; (c) portions of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code; (d) section 363 of the Bankruptcy Code gives the Debtors authority to remit payment on account of such Taxes and Fees in the ordinary course of business; and (e) section 105 of the Bankruptcy Code and the Court's general equitable powers permit the Court to grant the relief sought.

25. Section 541(d) of the Bankruptcy Code provides, in relevant part, that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (a)(2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d).

26. Certain of the Taxes and Fees may constitute so-called "trust fund" taxes to be collected from third parties and held in trust for payment to the Taxing and Regulatory Authorities. *See, e.g.*, *EBS Pension LLC v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231, 235 (Bankr. D. Del. 2000) (noting that property held in trust, whether

constructively or expressly, does not become part of the estate when the debtor files its bankruptcy petition), *reconsideration denied*, 2001 Bankr. LEXIS 1333 (Bankr. D. Del. Oct. 11, 2001); *see also Shank v. Washington State Dep't of Revenue (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (sales tax required by state law to be collected by sellers for their customers is a trust fund tax); *DeChiaro v. New York State Tax Comm'n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (sales taxes are trust fund taxes); *Rosenow v. Illinois*, 715 F.2d 277, 282 (7th Cir. 1983) (use tax is a trust fund tax); *In re Hilaire*, 135 B.R. 186, 191-92 (D. Mass. 1991) (sales tax is a trust fund tax). To the extent these "trust fund" taxes are collected, they are not property of the Debtors' estate under section 541(d) of the Bankruptcy Code.[4] *See Begier v. IRS*, 496 U.S. 53, 59 (1990); *see also In re American Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (excise and withholding taxes are trust fund taxes), *aff'd*, 1987 U.S. Dist. LEXIS 16856 (E.D. Pa. May 12, 1987); *In re Tap, Inc.*, 52 B.R. 271, 278 (Bankr. D. Mass. 1985) (withholding taxes); 5 COLLIER ON BANKRUPTCY ¶ 541.11[4], at 541-67 to 541-68 (15th ed. rev. 2001). The Debtors do not have any equitable interest in these Taxes and Fees. Thus, out of an abundance of caution, the Debtors seek authorization to transfer such non-estate funds.

27. In states that have enacted laws providing that certain of the Taxes and/or Regulatory Fees constitute trust fund taxes, officers and directors of the collecting debtor entity may be held personally liable for nonpayment of such Taxes and/or Regulatory Fees. *See, e.g.*, *Conway v. U.S.A.*, 647 F.3d 228 (5th Cir. 2010) (holding CEO personally liable for failure to ensure that company paid over to IRS pre-petition excise taxes that were withheld from airline

[4] Section 541(d) of the Bankruptcy Code provides: "Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d).

passengers); John F. Olson, *et al.*, DIRECTOR & OFFICER LIABILITY: INDEMNIFICATION AND INSURANCE § 3.04, at 3-20.27 (rel.10-1999) ("some states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation, regardless of cause"). To the extent any accrued Taxes and Fees of the Debtors were unpaid as of the Petition Date, the Debtors' officers and directors may be subject to lawsuits in such jurisdictions during these Chapter 11 Cases. Such potential lawsuits would prove extremely distracting for (a) the Debtors, (b) the named officers and directors whose attention to the Debtors' chapter 11 process is required, and (c) this Court, which might be asked to entertain various motions seeking injunctions with respect to the potential state court actions. Thus, it is in the best interests of the Debtors' estates to eliminate the possibility of the foregoing distraction.

28. It is also likely that some, if not all, of the Taxes and Fees are entitled to priority payment status pursuant to section 507(a)(8) of the Bankruptcy Code. *See* 11 U.S.C. § 507(a)(8)(A) (taxes measured on gross income); 11 U.S.C. § 507(a)(8)(C) (debtor's liability in connection with "trust fund" taxes); 11 U.S.C. § 507(a)(8)(E) (excise taxes).[5] Under any chapter 11 plan, these priority Taxes and Fees must be paid in full and in regular cash installments over a five- (5) year period from the date of the order for relief. *See* 11 U.S.C. §§ 1129(a)(9)(C)(i)-(ii). Additionally, such Taxes and Fees must be paid in the order of priority no less favorable than the treatment given to the most favored general unsecured claims. *See* 11 U.S.C. § 1129(a)(9)(C)(iii). Finally, any chapter 11 plan must provide the same treatment for those Taxes and Fees that constitute secured claims that, were they unsecured, would have been priority tax claims under section 507(a)(8) of the Bankruptcy Code. *See* 11 U.S.C.

[5] For bankruptcy purposes, a tax is characterized as "(a) an involuntary pecuniary burden, regardless of name, laid upon the individual or property; (b) imposed by, or under authority of the legislature; (c) for the public purposes, including the purposes of defraying expenses of government or undertakings authorized by it; and (d) under the police or taxing power of the state." *In re Chateaugay Corp.*, 53 F.3d 478, 498 (2d Cir. 1995) (citation omitted).

§ 1129(a)(9)(D). Thus, in most cases, the payment of the Taxes and Fees that are entitled to such priority in the ordinary course of the Debtors' businesses only affects the timing of the payment and does not prejudice the rights of other creditors of the Debtors.[6]

29. Courts have also authorized debtors to pay the Taxes and Fees under section 363(b)(1) of the Bankruptcy Code, which provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re FV Steel & Wire Co.*, Case No. 04-22421 (Bankr. E.D. Wis. Feb. 26, 2004) (authorizing the continuation of customer programs and the payment of prepetition claims under section 363 of the Bankruptcy Code); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); *In re UAL Corp*., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out-of-the-ordinary-course transaction). To use property in the ordinary course of business, "the debtor must articulate some business justification, other than the mere appeasement of major creditors." *Ionosphere Clubs*, 98 B.R. at 175. As discussed herein, the Debtors' failure to pay the Taxes and Fees could have a material adverse impact on their ability to operate in the ordinary course of business.

30. Finally, section 105(a) of the Bankruptcy Code 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." *See* 11 U.S.C. § 105(a). The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their

[6] The Debtors will soon file a joint chapter 11 plan which will comply with all applicable provisions of the Bankruptcy Code, including confirming that all necessary payments will be made to the Taxing and Regulatory Authorities. Thus, this Motion simply expedites the timing of such payments.

jurisdiction." *See* 2 COLLIER ON BANKRUPTCY ¶ 105.01, at 105-5 to 105-6 (15th ed. rev. 2001). Thus, section 105 essentially codifies the bankruptcy court's inherent equitable powers. *See Management Tech. Corp. v. Pardo*, 56 B.R. 337, 339 (Bankr. D. N.J. 1985) (noting that the court's equitable power is derived from section 105 of the Bankruptcy Code).

31. Numerous courts have used section 105's equitable powers under the "necessity of payment doctrine" to authorize payment of a debtor's prepetition obligations in order to preserve and maximize the value of the debtor's estates. *See, e.g.*, *Miltenberger v. Logansport, C.& S.W.R. Co.*, 106 U.S. 286, 311-312 (1882) (recognizing the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor); *see also In re Lehigh & New England Rv. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *Ionosphere Clubs*, 98 B.R. at 176-77 (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)); *In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding necessity of payment doctrine permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduce of the business until their pre-reorganization claims have been paid"); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-845 (D. Del. 1999) (noting that in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

32. For these reasons, authorizing the Debtors to pay, in their sole discretion, subject to the requirements imposed on the Debtors under any order regarding the Debtors' use of cash collateral, the prepetition Taxes and Fees will help the Debtors avoid serious disruption to their

operations that would result from the nonpayment of such Taxes and Fees, including the distraction and adverse effect on morale that could result from liability for nonpayment imposed upon the Debtors' directors and officers. Furthermore, nonpayment of these obligations may cause Taxing Authorities to take precipitous action, including, but not limited to, filing liens, preventing the Debtors from conducting business in applicable jurisdictions, and seeking to lift the automatic stay, all of which could disrupt the Debtors' day-to-day operations, impose significant costs on the Debtors' estates, and destroy the going-concern value of the Debtors' businesses.

B. Cause Exists to Authorize and Direct the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

33. The Debtors further request that the Debtors' banks be authorized, if requested by the Debtors in their sole discretion, subject to the requirements imposed on the Debtors under any order regarding the Debtors' use of cash collateral, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all prepetition Taxes and Fees, whether those checks or electronic fund transfers were presented prior to or after the Petition Date, and to make other transfers provided that sufficient funds are available in the applicable account to make such payments. The Debtors represent that each of these checks and transfers can be readily identified as relating directly to the authorized payment of prepetition Taxes and Fees. Accordingly, checks and transfers, other than those relating to authorized payments, will not be honored inadvertently.

34. Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any Taxes or Fees that may be accrued or deemed owing to any Taxing and Regulatory Authority, and the Debtors expressly reserve all of their rights with respect thereto.

35. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

C. Bankruptcy Rule 6003 Satisfied and Request for Waiver of Stay

36. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

37. Specifically, Bankruptcy Rule 6003 provides:

> Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001.

FED. R. BANKR. P. 6003.

38. No court within the Third Circuit has interpreted the "immediate and irreparable harm" language in the context of Bankruptcy Rule 6003 in any reported decision. However, the Third Circuit Court of Appeals has interpreted the same language in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. Appx. 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g.*, *Acierno v. New Castle Cnty.*, 40 F.2d 645, 653-55 (3d Cir. 1994).

39. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, "[an] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise." FED. R. BANKR. P. 6004(h). As set forth above, the relief requested herein is essential to prevent irreparable damage to the Debtors' operations, going-concern value, and their efforts to pursue a sale or restructuring of their assets and liabilities.

40. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rule 6003 and 6004(h).

Notice

41. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Senior Debt Holders; (c) creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors' petitions; (d) those parties requesting notice pursuant to Rule 2002; (e) the Office of the United States Attorney General for the District of Delaware; (f) the Internal Revenue Service; and (g) the Securities and Exchange Commission. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given. As the Motion is seeking "first day" relief, within two (2) business days of the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion in accordance with the Local Rules.

No Prior Request

42. No previous application for the relief sought herein has been made to this or any other court.

Conclusion

WHEREFORE, the Debtors respectfully request that this Court enter an order granting the relief requested herein and that it grant the Debtors such other and further relief as is just and proper.

Dated: September 17, 2013

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Proposed Counsel for the Debtors
and Debtors-in-Possession

Exhibit "A"

Schedule of the Prepetition Taxes and Fees Due (Estimate)

Type of Tax or Fee	Jurisdiction	Amount
Income/Franchise Tax	California	$23,000
Income/Franchise Tax	New York	$6,000
Income/Franchise Tax	New York City, NY	$7,500
Occupation Tax	Ohio	$2,500
Excise Tax	Washington	$18,902
Income/Franchise Tax	Minnesota	$300
Income/Franchise Tax	Iowa	$5,000
Income/Franchise Tax	Wisconsin	$5,000
Income/Franchise Tax	Los Angeles, CA	$2,798
Occupation Tax	Boca Raton, FL	$105
Occupation Tax	Palm Beach County, FL	$33
Business License Fee	Sunnyvale, CA	$5,387
Permit Fee	Sunnyvale, CA	$906
Business License Fee	California	$1,019
Business License Fee	Sunnyvale, CA	$70
Property Tax	Santa Clara Country, CA	$61,395
Regulatory Fee	United States	$1,500
Payroll Tax	San Francisco, CA	$13,352
License Fee	San Francisco, CA	$556
Property Tax	San Francisco County, CA	$100
Income/Franchise Tax	United Kingdom	$7,626
VAT	Austria	$46,040.49
VAT	Belgium	$61,302.38
VAT	Bulgaria	$1,382.34
VAT	Cyprus	$2,939.65
VAT	Czech Republic	$3,840.63
VAT	Denmark	$48,207.09
VAT	Estonia	$136.17
VAT	Finland	$22,617.71
VAT	France	$359,187.55
VAT	Germany	$234,267.19
VAT	Greece	$13,250.39
VAT	Hungary	$3,322.63
VAT	Ireland	$44,846.26
VAT	Italy	$151,179.65
VAT	Latvia	$933.13
VAT	Lithuania	$178.88
VAT	Luxembourg	$6,986.15
VAT	Malta	$1,198.72

VAT	Netherlands	$83,163.11
VAT	Poland	$1,123.82
VAT	Portugal	$19,708.52
VAT	Romania	$621.12
VAT	Slovakia	$1,300.75
VAT	Slovenia	$1,682.79
VAT	Spain	$98,026.90
VAT	Sweden	$120,974.55
VAT	Turkey	$5,827.62
VAT	Norway	$128,223.21
VAT	Switzerland	$60,994.00

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PMGI Holdings Inc., *et al*.,[1]	Case No. 13-12404 (CSS)
Debtors.	(Joint Administration Requested)
	Ref. Docket No. _____

ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION EXCISE, INCOME AND SIMILAR TAXES AND REGULATORY FEES IN THE ORDINARY COURSE OF BUSINESS, AND (II) AUTHORIZING BANKS AND FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED THERETO

Upon the motion (the **"Motion"**)[3] filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") seeking entry of an order: (a) authorizing, but not directing, the Debtors to pay prepetition excise, income and similar taxes and regulatory fees in the ordinary course of business; (b) authorizing banks and financial institutions to honor and process checks and transfers related to such payments; and (c) providing any additional relief required in order to effectuate the foregoing; and upon the *Declaration of Ezra Shashoua in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "**First Day**

[1] The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor's federal tax identification number, are: Blue Hen Group Inc. (9667), Argus Payments Inc. (4661), Big Island Technology Group, Inc. (9795), Confirm ID, Inc. (7020), Danni Ashe, Inc. (5271), Fastcupid, Inc. (7869), Fierce Wombat Games Inc. (2019), FriendFinder California Inc. (2750), FriendFinder Networks Inc. (0988), FRIENDFINDER VENTURES INC. (3125), FRNK Technology Group (7102), General Media Art Holding, Inc. (2637), General Media Communications, Inc. (2237), General Media Entertainment, Inc. (2960), Global Alphabet, Inc. (7649), GMCI Internet Operations, Inc. (7655), GMI On-Line Ventures, Ltd. (7656), Interactive Network, Inc. (5941), Magnolia Blossom Inc. (8925), Medley.com Incorporated (3594), NAFT NEWS CORPORATION (4385), Penthouse Digital Media Productions Inc. (1056), Penthouse Images Acquisitions, Ltd. (9228), PerfectMatch Inc. (9020), Playtime Gaming Inc. (4371), PMGI Holdings Inc. (2663), PPM Technology Group, Inc. (9876), Pure Entertainment Telecommunications, Inc. (9626), Sharkfish, Inc. (1221), Snapshot Productions, LLC (7091), Streamray Inc. (2716), Streamray Studios Inc. (1009), Tan Door Media Inc. (1100),Traffic Cat, Inc. (1223), Transbloom, Inc. (1168), Various, Inc. (7762), Video Bliss, Inc. (6760), West Coast Facilities Inc. (4751), XVHUB Group Inc. (9401). The Debtors' business address is 6800 Broken Sound Parkway NW, Suite 200, Boca Raton, FL 33487.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Declaration"); and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. For the reasons set forth on the record, the Motion is GRANTED as set forth herein.

2. The Debtors are authorized, but not directed, to, in their sole discretion, pay all prepetition Taxes and Fees to their Taxing and Regulatory Authorities, provided that the aggregate amount of such payments shall not exceed $1,548,216.

3. The Debtors are also authorized, but not directed, to pay any amounts in respect of the Taxes and Fees paid by prepetition checks that have not yet cleared as of the Petition Date, and to reissue any checks that are otherwise returned by a Taxing and Regulatory Authority, as well as all those Taxes and Fees subsequently determined upon audit to be accrued and owing for periods prior to the Petition Date.

4. All applicable banks shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks or electronic transfers drawn on the Debtors' accounts to pay the prepetition Taxes and Fees

authorized by this Order, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

5. Nothing in the Motion or this Order shall be construed as impairing the Debtors' right to contest the validity, priority, or amount of any Taxes or Fees that may be accrued prior to the Petition Date or deemed to be due and owing to any of the Taxing and Regulatory Authorities.

6. Notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any order regarding the Debtors' use of cash collateral.

7. Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

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

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

Dated: _____, 2013

_____
HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE