

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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In re:))	Chapter 11
))	
GULF PACKAGING, INC., ¹))	Case No. 15-15249 (PSH)
))	
Debtor.))	

FINAL ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION (A) WAGES, SALARIES, COMMISSIONS AND OTHER COMPENSATION, (B) REIMBURSABLE EMPLOYEE EXPENSES, AND (C) OBLIGATIONS RELATING TO BENEFITS PROGRAMS, IN THE ALTERNATIVE (II) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION CLAIMS FOR COMPENSATION AND COMMISSIONS RELATED TO AFFILIATE EMPLOYEES AND ADP AS CRITICAL VENDORS, AND (III) GRANTING RELATED RELIEF

Upon the Motion (I) for Interim and Final Orders (A) Authorizing the Debtor to Pay Certain Prepetition (1) Wages, Salaries, and other Compensation, (2) Reimbursable Employee Expenses, and (3) Obligations Relating to Benefits Programs, in the Alternative (II) Authorizing the Debtor to Pay Certain Prepetition Claims for Compensation and Commissions related to Affiliate Employees and ADP as Critical Vendors, (C) Granting Related Relief, and (II) Scheduling a Final Hearing (the “Motion”), filed by Gulf Packaging, Inc., the above-captioned debtor and debtor in possession (the “Debtor”); and the Court having jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that due and sufficient notice of the Motion has been provided by the Debtor under the circumstances and that no other or further notice is required; and upon the hearing on the Motion conducted on May 12, 2015 and a status conference held on May 19, 2015 and a final hearing was held on May 26, 2015 and the record made thereat; and after due deliberation and

¹ The last four digits of the Debtor’s tax identification number are 5030.

sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. All prior payments made by Debtor as authorized by this Court pursuant to the terms of that certain interim wages order entered by this Court on May 15, 2015 [Dkt. No. 84] are hereby approved on a final basis.

3. The term “Pre-Petition Commissions” shall include, for purposes of this Order, all Commissions² based upon the prepetition sale of Debtor’s inventory (whether Debtor’s customer paid for such inventory pre-petition or post-petition) for eight (8) sales people that are currently assisting Debtor in selling inventory, regardless of whether such sales person is an independent contractor, ADP Employee or Affiliate Employee (individually, the “Sales Individuals” and collectively, the “Sales Team”). The total Pre-Petition Commissions shall not exceed the gross sum of \$279,000.00, absent further order of this Court. The Sales Individuals who are engaged in the sale of Debtor’s inventory at the time of entry of this Order are not and will not be employees of the Debtor or this bankruptcy estate, but shall be compensated pursuant to the terms of this Order and any agreements between them and any non-debtors, upon written acknowledgement in a form attached hereto as Exhibit “A” that such Sales Individual accepts and agrees to the terms of this Order, including:

- a. Expressly subject to the minimum commission percentage provided in paragraph 3b below, the Sales Team shall be paid commissions for aggregate sales of the Debtor’s inventory and collections made after the Petition Date, by all Sales

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

Individuals, at a price higher than the Debtor's cost of such inventory ("Post-Petition Commissions") based on a sliding scale with the following sales targets:

- i. Total weekly sales of less than \$200,000: 35% of gross margin as a Commission to the Sales Team
- ii. Total weekly sales of \$200,001 to \$300,000: 40% of gross margin as a Commission to the Sales Team
- iii. Total weekly sales of \$300,001 to \$400,000: 45% of gross margin as a Commission to the Sales Team
- iv. Total weekly sales of \$400,001 to \$500,000: 50% of gross margin as a Commission to the Sales Team
- v. Total weekly sales of \$500,001 to \$600,000: 55% of gross margin as a Commission to the Sales Team
- vi. Total weekly sales greater than \$600,000: 60% of gross margin as a Commission to the Sales Team

The above Commissions shall be allocated by the Debtor among the Sales Individuals, in the Debtor's business judgment. Weekly sales shall be calculated from Monday, 12:00 a.m. (prevailing Central Time) through Sunday, 11:59 p.m. (prevailing Central Time) each week. The first week shall extend from Wednesday, April 29, 2015 (the Petition Date) at 12:00 a.m. (prevailing Central Time) through Sunday, May 10, 2015 at 11:59 p.m. (prevailing Central Time).

- b. The Sales Individuals shall be entitled to a minimum commission for any post-petition inventory sales in an amount equal to 3% of the gross sales price, regardless of whether there is a positive gross margin on a sale.
- c. With the consent of Debtor's Chief Restructuring Officer, the Sales Individuals have the discretion to sell the Inventory at a price below cost, if necessary to make the sale, but are not authorized to sell any inventory for less than 75% of cost, absent further order of this Court.

- d. The Sales Individuals shall be paid as pre-petition critical vendors for their Pre-Petition Commissions and shall receive payment of the Pre-petition Commissions in four (4) installments *provided that* the Sales Individual is continuing to sell the Debtor's inventory at the time of such payment and the Debtor has not previously terminated its relationship with the Sales Individuals, as follows:
- i. Payment 1 due on the later of May 20, 2015 or (2) two business days after the date of entry of this Order: 25% of total Pre-Petition Commissions.
 - ii. Payment 2 due on June 20, 2015: 25% of total Pre-Petition Commissions.
 - iii. Payment 3 due on July 20, 2015: 25% of total Pre-Petition Commissions.
 - iv. Payment 4 due on the earlier of August 20, 2015 or the date the Debtor confirms a plan of reorganization: 25% of total Pre-Petition Commissions.
 - v. If the Sales Individuals successfully sell all of the Debtor's inventory prior to the confirmation of a plan of reorganization, then all of the above payments which are outstanding at the time the entire inventory is sold shall come due to the Sales Individuals at that time.
- e. The Sales Individuals must commit to use a minimum of commercially reasonable efforts in connection with the continued sale of Debtor's inventory.
- f. The Sales Individuals have no guaranteed continued relationship with the Debtor, and the Debtor may terminate any Sales Individual's employment, in the Debtor's business judgment, for any reason, including but not limited to, selling product identical to or competing with the Debtor's products for another company instead of selling the Debtor's inventory first, or not using commercially reasonable efforts in connection with the continued sale of the Debtor's inventory.
- g. If a Sales Individual is terminated, quits, or for any other reason his or her employment is terminated, the outstanding Pre-petition Commissions not

previously paid to the Sales Individual shall not be paid, pursuant to the terms of this Order and instead, such Sales Individual shall file a proof of claim for such unpaid amounts.

h. Post-Petition Commissions earned by a Sales Individual will be paid in the normal course, even after a Sales Individual ceases to sell Debtor's inventory for whatever reason.

4. The Sales Individuals shall waive all claims against Debtor's bankruptcy estate except for the claims expressly allowed by this Order and acknowledge that they were not pre-petition employees of the Debtor.

5. The Debtor will provide to counsel for the Official Committee of Unsecured Creditors weekly sales reports, including amounts sold and amounts collected, broken down by Sales Individual.

6. If Debtor determines, in its business judgment, that a particular Sales Individual is not using commercially reasonable good faith efforts to sell Debtor's inventory, Debtor shall provide written notice thereof to the particular sales person. Upon sending of such written notice to a Sales Individual by Debtor, such sales person shall not receive any additional payments from Debtor or Debtor's estate pursuant to the terms of this order for any Pre-Petition Commissions. Upon Debtor sending such written notice to a Sales Individual, such sales person shall immediately lack any further authority or ability to sell any additional inventory of Debtor. Even if a particular Sales Individual's ability to sell Debtor's inventory is terminated, such sales person shall still be entitled to receive any earned Post-Petition Commissions.

7. Each and every Sales Individual is prohibited directly, or indirectly, from selling any inventory to any third party from a source other than Debtor's inventory, if Debtor has the particular goods in stock and available to sell to such third party.

8. The Debtor is authorized, but not directed, in Debtor's business judgment and in the ordinary course of business, to pay any Reimbursable Expenses as long as the gross amount received by any individual does not exceed the sum of \$12,475.00.

9. The Debtor is authorized, but not directed, in Debtor's business judgment and in the ordinary course of business to honor the PTO of Debtor's Employees, Affiliate Employees and ADP Employees only to the extent such individuals continued to assist Debtor in operating its business and liquidating its inventory as of the date of entry of this Order.

10. Nothing in this Order shall be deemed to be a ruling that the Affiliate Employees or ADP Employees are employees of the Debtor or entitled to any priority claim under the Bankruptcy Code. The Debtor and Committee do not waive, and expressly reserve, their rights to object to any priority treatment of the Affiliate Employees or ADP Employees under §507 of the Bankruptcy Code.

11. The Debtor is authorized, but not directed, to issue post-petition checks, or to effect post-petition wire transfer requests, in replacement of any checks or wire transfer requests in respect of payments of prepetition obligations described in the Motion that are dishonored or rejected.

12. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against the Debtor; (b) a waiver of the Committee's or the Debtor's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any

prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Committee's or the Debtor's rights under the Bankruptcy Code or any other applicable law.

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition 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 and financial institutions are authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved by this Order.

14. Notwithstanding anything in this Order to the contrary, any payment to be made, or any authorization contained, hereunder shall be subject to the terms of any orders granting the use of cash collateral approved by this Court in this chapter 11 case (including with respect to any budgets governing or relating to such use) including, without limitation, the *Order Authorizing Debtor To (A) Use Cash Collateral On An Emergency Basis Pending A Final Hearing; And (B) Grant Adequate Protection And Provide Security And Other Relief To FCC, LLC, D/B/A First Capital, As Lender* (the "Cash Collateral Order") and the Final Order (as defined in the Cash Collateral Order); and to the extent there is any inconsistency between the terms of such cash collateral orders and any action taken or proposed to be taken hereunder, the terms of such cash collateral orders shall control.

15. Nothing in the Motion nor any payments made by the Debtor pursuant to this Order shall be deemed an assumption, adoption, or rejection of any employee contract or

agreement, including employee benefit plans or any other program or contract that otherwise affects the Debtor's rights under section 365 of the Bankruptcy Code.

Enter:

Dated: JUN - 2 2015


United States Bankruptcy Judge

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:)	
)	Chapter 11
GULF PACKAGING, INC., ¹)	
)	Case No. 15-15249 (PSH)
Debtor.)	
)	

ACKNOWLEDGEMENT REGARDING FINAL WAGE ORDER

The undersigned hereby acknowledges receipt of that certain Final Order (I) Authorizing the Debtor to Pay Certain Prepetition (A) Wages, Salaries, and other Compensation, (B) Reimbursable Employee Expenses, and (C) Obligations Relating to Benefits Programs, in the Alternative (II) Authorizing the Debtor to Pay Certain Prepetition Claims for Compensation and Commissions related to Affiliate Employees and ADP as Critical Vendors, and (III) Granting Related Relief (the "Wage Order"), and having read the same.

The undersigned hereby acknowledges and agrees to the terms of the Wage Order, and to abide thereby.

Signed this ___ day of _____, 2015.

[name]

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