IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
KIKO USA, Inc.,	)	Case No. 18-10069 (___)
Debtor. [1]	)	

DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING PAYMENT OF CERTAIN PREPETITION TAXES AND ASSESSMENTS AND (II) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

By this Motion (this "**Motion**"), KIKO USA, Inc. ("**KIKO**" or the "**Debtor**"), as debtor and debtor in possession, requests the entry of interim and final orders substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the "**Proposed Interim Order**" and the "**Proposed Final Order**," and together, the "**Proposed Orders**"), (i) authorizing, but not directing, Debtor to pay various local, state, and federal taxing authorities (collectively, the "**Taxing Authorities**")[2] all Taxes[3] (as defined below) that arose before the Petition Date (as defined below), including all Taxes subsequently determined by audit or otherwise to be owed for periods before the Petition Date; and (ii) directing applicable banks and financial institutions (collectively, "**Banks**") to receive, honor, process, and pay all checks issued or to be issued and

[1] The last four digits of the Debtor's federal tax identification number are 0805. The principal place of business for the Debtor is 470 Park Avenue South, 15th Floor New York, NY, 10016.

[2] The definition of "Taxing Authorities" includes, but is not limited to, those parties set forth on the Taxing Authority List (as defined herein). The inclusion of any entity on, or the omission of any entity from, the Taxing Authority List is not an admission by the Debtor that such entity is, or is not, a Taxing Authority to which the Debtor owes any amount, and the Debtor reserves all rights with respect to any such determination.

[3] By this Motion, the Debtor is not seeking authority to pay employee withholding taxes, which are addressed separately in the *Debtor's Motion for Interim and Final Order (i) Authorizing (a) Payment of Prepetition Wages, Salaries, Employee Benefits, and Other Compensation, and (b) Maintenance of Employee Benefit Programs and Pay Related Administrative Obligations, and (ii) Directing Financial Institutions to Honor and Process Related Checks and Transfers*, filed contemporaneously herewith.

electronic funds transfers requested or to be requested relating to the above. In support of this Motion, the Debtor respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider 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 February 29, 2012. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), Debtor consents to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

3. On the date hereof (the "**Petition Date**"), the Debtor commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Case**"). The Debtor continues to operate its business and manage its properties as debtor in possession pursuant to sections 1107(a) and 1108 of title 11 of the United States Code (the "**Bankruptcy Code**"). No request for the appointment of a trustee or examiner has been made in this Chapter 11 Case and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

4. A detailed description of the Debtor and its business, and the facts and circumstances supporting this Motion and the above-captioned Chapter 11 Case, are set forth in greater detail in the *Declaration of Frank Furlan in Support of Chapter 11 Petition and First*

Day Motions (the "**Furlan Declaration**"), filed contemporaneously herewith and incorporated by reference herein.

Debtor's Prepetition Taxes

5. In connection with the normal operation of its business, the Debtor collects, withholds and/or incurs an assortment of taxes and assessments that it remits periodically to various Taxing Authorities.

6. The taxes and assessments to which the Debtor is typically subject generally fall into the following categories: sales taxes, franchise taxes, personal property taxes, income taxes, commercial rent tax (New York City) and in some instances, local city ordinary taxes (each herein defined and collectively, the "**Taxes**"). Debtor pays the Taxes monthly, quarterly or annually, in each case as required by applicable laws and regulations. During the last calendar year (January 2017 through and including December 2017), the Debtor paid a total of approximately $1,140,000 in Taxes.

7. The vast majority of the Debtor's tax liability stems from sales tax, which the Debtor is required in certain states to collect and/or pay (the "**Sales Taxes**") from purchasers of its products and on account of products used by the Debtor. The Debtor collects the Sales Taxes on a per sale basis and periodically remits the Sales Taxes to the applicable Taxing Authorities. The process by which the Debtor remits the Sales Taxes varies, depending on the Taxing Authority to be paid. Sales Taxes are remitted to the relevant Taxing Authorities either on the basis of estimated Sales Tax collections for the coming period or on the basis of Sales Taxes actually collected from customers during the prior period. With respect to those jurisdictions that require the Debtor to remit estimated Sales Taxes, the Debtor subsequently reconciles payments to determine any payment deficiency or surplus for the period and any necessary additional payment is then made or refund requested. Similarly, states differ with regard to the

frequency of payments. Sales Taxes are paid on a monthly or quarterly basis, depending on the state. If the Debtor does not pay the Sales Taxes in accordance with its obligations, then the Debtor will become liable for further amounts in the form of penalties.

8. The Debtor estimates that approximately $140,000 in Taxes relating to the prepetition period will become due and owing to the Taxing Authorities during the interim period, plus approximately $20,000 that will become due and owing to the Taxing Authorities on or before February 20, 2018. The Debtor requests authority, but not direction, to pay these Taxes as they become due in the ordinary course of business.

9. The amounts of the Taxes listed above are good faith estimates based on the Debtor's books and records and remain subject to potential and ongoing audits and other adjustments. As such, the Debtor also seeks authorization to pay any prepetition Taxes due and owing following audit and review.

Relief Requested

10. Pursuant to sections 105(a), 363(b), 507(a)(8), and 541(d) of the Bankruptcy Code and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtor requests the entry of interim and final orders, substantially in the form of the Proposed Orders, (i) authorizing, but not directing, the Debtor to pay the Taxing Authorities all Taxes that arose before the Petition Date, including all Taxes subsequently determined by audit or otherwise to be owed for periods before the Petition Date, in an amount not to exceed $140,000 prior to the entry of the Final Order; and (ii) authorizing applicable Banks to receive, honor, process, and pay all checks issued or to be issued and electronic funds transfers requested or to be requested relating to the above.

11. A non-exclusive list of the Taxing Authorities (the "**Taxing Authority List**") is annexed as **Exhibit 1** to the Proposed Orders. Although the Taxing Authorities List is

substantially complete, the Debtor requests that the relief sought herein be made applicable to all Taxing Authorities and not solely those Taxing Authorities listed on the Taxing Authority List.

Basis for Relief Requested

12. Ample reasons exist to authorize the payment of the prepetition Taxes, including, among other things, that (i) the failure to pay the pre-petition Taxes may interfere with the Debtor's continued operations and successful reorganization efforts; (ii) certain of the prepetition Taxes may not be property of Debtor's estate; (iii) the payment of prepetition Taxes affects only the timing of payments as most, if not all, of the Taxes are afforded priority status under the Bankruptcy Code; and (iv) the Court has authority to grant the requested relief under sections 363(b) and 105(a) of the Bankruptcy Code.

A. Failure to Pay the Pre-petition Taxes May Interfere with the Debtor's Continued Operations and Successful Reorganization Efforts

13. The Debtor seeks authority to pay the pre-petition Taxes to, among other things, discourage the Taxing Authorities from taking actions that may interfere with the Debtor's continued business operations. Nonpayment of these obligations may cause Taxing Authorities to take precipitous action, including, but not limited to, asserting liens or seeking to lift the automatic stay, which could disrupt the Debtor's day-to-day operations and could potentially impose significant costs on the Debtor's estate. Failure to satisfy the prepetition Taxes may jeopardize the Debtor's maintenance of good standing to operate in the jurisdictions in which it does business.

B. Certain of the Prepetition Taxes May Not Be Property of Debtor's Estate

14. Some of the prepetition Taxes, such as the Sales Taxes, may constitute "trust fund" taxes, which the Debtor is required to collect and hold in trust for payment to the Taxing Authorities. Section 541(d) of the Bankruptcy Code provides, in relevant part:

> Property 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 . . . 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).

15. To the extent that the Debtor has collected or holds Taxes in trust for payment to the Taxing Authorities, such funds do not constitute property of Debtor's estate. *See, e.g.*, *Begier v. IRS*, 496 U.S. 53, 60–62 (1990) (holding that excise and withholding taxes are property held by a debtor in trust for another and, as such, are not property of the debtor's estate); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 96 (3d Cir. 1994) (finding that withholding taxes were subject to a trust); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (holding that funds held in trust for federal excise and withholding taxes are not property of the debtor's estate); *see generally Official Comm. of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas Sys., Inc.* (*In re Columbia Gas Sys. Inc.*), 997 F.2d 1039, 1059-60 (3d Cir. 1993) (indicating that even if a statute does not establish an express trust, a constructive trust may be found). The Debtor, therefore, generally does not have an equitable interest in such funds, and it should be permitted to pay such funds to the Taxing Authorities as they become due.

C. Failure to Pay Certain Pre-petition Taxes May Distract the Debtor's Directors and Officers from Reorganization Efforts

16. Failure to pay certain pre-petition Taxes may also inhibit the Debtor's reorganization efforts. Certain of the states in which the Debtor operates have specific tax laws that hold officers and directors of collecting entities personally liable for certain taxes owed by those entities and impose criminal penalties for failure to pay certain taxes. *See, e.g.*, *In re Am. Motor Club, Inc*., 139 B.R. 578, 581–83) (Bankr. E.D.N.Y. 1992) (stating "[i]f the employer fails

to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax" (citing *United States v. Energy Res. Co.*, 495 U.S. 545, 546 (1990)).

17. The failure to remit prepetition Taxes, such as Sales Taxes, and certain other Taxes, significantly increases the Debtor's officers' and directors' exposure to possible personal liability during the pendency of this Chapter 11 Case. The threat of a lawsuit or criminal prosecution, and any ensuing liability, would distract the Debtor and its officers and directors from important tasks during a critical time. This would be detrimental to parties in interest because the dedicated and active participation of the Debtor's officers and directors is integral to the Debtor's continued operations and essential to the orderly administration of this Chapter 11 Case. The Debtor's estate is best served by eliminating the possibility of these distractions at the outset of this Chapter 11 Case. Accordingly, because the proposed relief is in the best interests of the Debtor's estate, the Debtor requests authority to pay the prepetition Taxes.

D. Paying the Prepetition Taxes Will Affect Only the Timing of Payments

18. Most, if not all, of the Taxes described herein are afforded priority status pursuant to section 507(a)(8) of the Bankruptcy Code and such prepetition Taxes must be paid in full under any chapter 11 plan before any general unsecured obligations of the Debtor may be satisfied. Accordingly, the proposed relief will affect only the timing of payment of the prepetition Taxes and will not prejudice the rights of any general unsecured creditor or other party in interest. Therefore, the Court should grant the Debtor authority to pay the prepetition Taxes in the ordinary course.

E. The Court has Authority to Grant the Requested Relief Under Sections 363(b) and 105(a) of the Bankruptcy Code

19. Under section 363(b)(1) of the Bankruptcy Code, "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." In addition, under section 105(a) of the Bankruptcy Code, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Under section 105(a) and the doctrine of necessity, the bankruptcy court may exercise its broad grant of equitable powers to permit the payment of prepetition obligations when such payment is essential to the continued operation of the debtor's business. *See, e.g.*, *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code provides a statutory basis for the payment of prepetition claims under the doctrine of necessity and noting that "[t]he 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"); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to the confirmation of a reorganization plan).

20. Bankruptcy courts regularly rely on their authority under section 105(a) and the doctrine of necessity to grant debtors the discretionary authority to pay certain prepetition claims "where the payment is necessary to permit the effectuation of the rehabilitative purposes of the Bankruptcy Code." *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Penn. 1993); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of the debtor); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989)

(authorizing the payment of prepetition claims and explaining that the "ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept"). The rationale for making payments to prepetition creditors under the doctrine of necessity is consistent with the paramount goal of chapter 11: "the continued operation and rehabilitation of the debtor . . . ." *Ionosphere Clubs*, 98 B.R. at 176. To that end, approval of such payments benefits, rather than harms, the Debtor's other creditors. *See, e.g.*, *Sharon Steel*, 159 B.R. at 737 (approving payments of certain prepetition wages under the doctrine of necessity where doing so would maximize the value of Debtors' assets and noting that payments made pursuant to the doctrine of necessity "must not only be in the best interest of the debtor but also in the best interest of its other creditors"). Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where doing so is "necessary to avoid immediate and irreparable harm."

21. Payment of the prepetition Taxes is an exercise of sound business judgment and necessary to permit a successful reorganization, as the Debtor's satisfaction of the prepetition Taxes is necessary to avoid the obstacles to a smooth transition through this Chapter 11 Case. Significant disruptions of the Debtor's operations of the types described above threaten to irreparably impair the Debtor's ability to conduct a successful reorganization process and thereby maximize the value of the Debtor's estate for the benefit of its creditors.

22. Bankruptcy courts in this District have entered orders granting relief similar to the relief requested herein. *See, e.g., In re Vitamin World, Inc.*, Case No. 17-11933 (KJC) (Bankr. D. Del. Sept. 14, 2017); *In re CMTSU Liquidation, Inc.*, Case No. 17-10772 (BLS) (Bankr. D. Del. Apr. 28, 2017) [D.I. 136]; *In re Halcón Res. Corp.*, Case No. 16-11724 (BLS)

(Bankr. D. Del. Aug. 19, 2016) [D.I. 134]; *Triangle USA Petroleum Corp.*, Case No. 16-11566 (MFW) (Bankr. D. Del. June 30, 2016) [D.I. 40]; *In re Dex Media, Inc.*, Case No. 16-11200 (KG) (Bankr. D. Del. June 8, 2016) [D.I. 159]; *In re Offshore Grp. Inv. Ltd.*, Case No. 15-12422 (BLS) (Bankr. D. Del. Dec. 4, 2015) [D.I. 42]; *In re Hercules Offshore, Inc.*, Case No. 16-11385 (KJC) (Bankr. D. Del. June 7, 2016) [D.I. 69]; *In re Paragon Offshore plc*, Case No. 16-10386 (CSS) (Bankr. D. Del. Feb. 17, 2016) [D.I. 75]; *In re Endeavour Operating Corp.*, Case No. 14-12308 (KJC) (Bankr. D. Del. Nov. 06, 2014) [D.I. 145]; *In re Energy Future Holdings Corp.*, Case No. 14-10979 (CSS) (Bankr. D. Del. June 4, 2014) [D.I. 799]. Similar relief is warranted in this Chapter 11 Case.

Applicable Banks Should be Authorized and Directed to Receive, Process, Honor, and Pay Checks Issued and Transfers Requested to Pay the Prepetition Taxes

23. The Debtor further requests that the Court authorize Banks to receive, process, honor, and pay, to the extent of funds on deposit, any and all checks issued or to be issued and electronic funds transfers requested or to be requested by the Debtor relating to the prepetition Taxes. The Debtor also seeks authority, but not direction, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of the prepetition Taxes dishonored or rejected as a result of the commencement of the Debtor's Chapter 11 Case.

Bankruptcy Rule 6003 Has Been Satisfied

24. Bankruptcy Rule 6003 provides that, to the extent that relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting "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" within 21 days after the Petition Date. Fed. R. Bankr. P. 6003. As described in the Furlan Declaration, the

Debtor would suffer immediate and irreparable harm if the relief sought herein is not promptly granted. Accordingly, the Debtor has satisfied the requirements of Bankruptcy Rule 6003.

Request for Bankruptcy Rule 6004 Waivers

25. The Debtor requests a waiver of the notice requirements under Bankruptcy Rule 6004(a) and a waiver of the 14-day stay of an order authorizing the use, sale, or lease of property pursuant to Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(a), certain interested parties must receive 21 days' notice by mail of the "proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice." Fed. R. Bankr. P. 2002(a)(2). Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As explained above and in the Furlan Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtor. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay applies.

Reservation of Rights

26. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Debtor's or any other party in interest's right to dispute any prepetition claim on any grounds, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (iv) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (v) an assumption, adoption or rejection of any agreement, contract or lease between the Debtor and any third party under section 365 of the Bankruptcy Code.

Notice

27. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the District of Delaware; (ii) each of Debtor's twenty (20) largest unsecured creditors on a consolidated basis; (iii) the Internal Revenue Service; (iv) the United States Attorney's Office for the District of Delaware; (v) the Taxing Authorities on the Taxing Authorities List. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m).

28. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtor respectfully submits that no further notice is required.

No Previous Request

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

WHEREFORE, the Debtor respectfully requests entry of the Proposed Interim Order and Proposed Final Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: January 11, 2018
Wilmington, Delaware

/s/ Mark Minuti

Mark Minuti (DE Bar No. 2659)
Monique B. DiSabatino (DE Bar No. 6027)
SAUL EWING ARNSTEIN & LEHR LLP
1201 N. Market Street, Suite 2300
P.O. Box 1266
Wilmington, Delaware 19899
Telephone: (302) 421-6840
Facsimile: (302) 421-5873
mark.minuti@saul.com
monique.disabatino@saul.com

-and-

Sharon L. Levine (*pro hac vice* pending)
SAUL EWING ARNSTEIN & LEHR LLP
1037 Raymond Boulevard, Suite 1520
Newark, New Jersey 07102
Telephone: (973) 286-6718
Facsimile: (973) 286-6821
sharon.levine@saul.com

-and-

John S. Kaplan (*pro hac vice* pending)
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: (2016) 359-8408
Facsimile: (206) 359-9408
jkaplan@perkinscoie.com

-and-

Jeffrey D. Vanacore (*pro hac vice* pending)
PERKINS COIE LLP
30 Rockefeller Plaza, 22nd Floor
New York, New York 10112-0085
Telephone: (212) 262-6912
Facsimile: (212) 977-1642
jvanacore@perkinscoie.com

Proposed Counsel for Debtor and Debtor in Possession

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
KIKO USA, Inc.,	)	Case No. 18-10069 (___)
Debtor. [1]	)	**Re: Docket No. ____**

INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND ASSESSMENTS AND (II) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

Upon the motion (the "**Motion**"),[2] of KIKO USA, Inc. ("**Kiko**" or the "**Debtor**") for entry of interim and final orders (i) authorizing, but not directing, the Debtor to pay the Taxes, and (ii) directing applicable banks and financial institutions (collectively, the "**Banks**") to receive, honor, process and pay all checks issued or to be issued and electronic funds transfers requested or to be requested relating to the Taxes, as more fully set forth in the Motion; upon consideration of the Furlan Declaration; the 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 February 29, 2012; consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; due and proper notice of the Motion having been provided to the parties listed therein and it appearing that no other or further notice need be provided; the Court having reviewed the Motion; the Court having held a hearing on the Motion; the Court having

[1] The last four digits of the Debtor's federal tax identification number are 0805. The principal place of business for the Debtor is 470 Park Avenue South, 15th Floor New York, NY, 10016.

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

determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate as contemplated by Bankruptcy Rule 6003 and is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.

2. The Debtor is authorized, but not directed, pursuant to sections 105(a), 363(b), 507(a), and 541 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, to pay to the Taxing Authorities including, without limitation, those Taxing Authorities listed on **Exhibit 1** annexed hereto, all Taxes that arose before the Petition Date, including all Taxes subsequently determined upon audit or otherwise to be owed for the periods before the Petition Date, in an interim amount not to exceed $140,000, pending entry of a final order on this Motion; provided, however, that only current Taxes for which the last day to pay without incurring a penalty has not expired may be paid, unless otherwise ordered by the Court.

3. Banks are authorized, at the Debtor's request, to receive, process, honor and pay, to the extent of funds on deposit, any and all checks issued or to be issued or electronic funds transfers requested or to be requested by the Debtor relating to the prepetition Taxes.

4. The Debtor is authorized, but not directed, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of the prepetition Taxes dishonored or rejected as a result of the commencement of this Chapter 11 Case.

5. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Debtor's or any other party in interest's right to dispute any prepetition claim on any grounds, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (iv) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (v) an assumption, adoption or rejection of any agreement, contract or lease between the Debtor and any third party under section 365 of the Bankruptcy Code. Likewise, any payment made pursuant to this Order is not intended to be and shall not be construed as an admission to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

6. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

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

8. The Debtor is authorized to take all steps necessary or appropriate to carry out this Order.

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

10. A final hearing to consider the relief requested in the Motion shall be held on _____, 2018 at _____ (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served so as to be actually received on or prior to on _____, 2018 at 4:00 p.m. (prevailing Eastern Time).

Dated: _____, 2018
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Taxing Authorities List

Type of Tax Paid	Taxing Authority/Known Address	Approx. Total of Payments from Jan. 2017 through Dec. 2017
Arizona sales & use tax	State of Arizona Department of Revenue 1600 W Monroe St Phoenix, AZ 85007-2650	$1,000
California sales & use tax	Franchise Tax Board Bankruptcy Section, MS: A-340 PO Box 2952 Sacramento, CA 95812-2952 Franchise Tax Board Chief Counsel c/o General Counsel Section PO Box 1720, MS: A-260 Rancho Cordova, CA 95741-1720 Franchise Tax Board PO Box 942840 Sacramento, CA 94240-0040	$265,000
Connecticut sales & use tax	Connecticut Department of Revenue Services 450 Columbus Blvd, Ste 1 Hartford, CT 06103	$39,000
Florida sales & use tax	Florida Department of Revenue Attn: General Counsel PO Box 6668 Tallahassee, FL 32315-7372	$184,000
Georgia sales & use tax	State of Georgia Department of Revenue 1800 Century Boulevard, NE Atlanta, GA 30345	$2,000
Illinois sales & use tax	Illinois Department of Revenue Attn: Bankruptcy Notices PO Box 19013 Springfield, IL 62794-9013	$3,000
Kansas sales & use tax	Kansas Department of Revenue Division of Taxation 915 SW Harrison St. Topeka, KS 66612-1588	$1,000

Type of Tax Paid	Taxing Authority/Known Address	Approx. Total of Payments from Jan. 2017 through Dec. 2017
Maryland sales & use tax	Comptroller of Maryland 80 Calvert Street PO Box 466 Annapolis, MD 21404-0466	$13,000
Maine sales & use tax	Maine Revenue Services PO Box 9107 Augusta, ME 04332-9107	$1,000
Michigan sales & use tax	Michigan Department of Treasury Office of Collections PO Box 30199 Lansing, MI 48909 Michigan Dept. of Treasury, Tax Policy Div. Attn: Litigation Liaison 2nd Floor, Austin Building 430 West Allegan Street Lansing, MI 48922	$2,000
Minnesota sales & use tax	Minnesota Department of Revenue 600 North Robert St. St. Paul, MN 55146	$1,000
Missouri sales & use tax	Missouri Department of Revenue Harry S Truman State Office Building 301 West High Street Jefferson City, MO 65101	$1,000
North Carolina sales & use tax	North Carolina Department of Revenue 501 North Wilmington Street Raleigh, NC 27604	$2,000
New Jersey sales & use tax	NJ Department of Taxation Bankruptcy Section PO Box 245 Trenton, NJ 08695-024 5	$118,000
Nevada sales & use tax	Nevada Department of Taxation 1550 College Parkway, Suite 115 Carson City, NV 89706	$55,000
New York sales & use tax	New York Department of Taxation and Finance Bankruptcy Section PO Box 5300 Albany, NY 12205-0300	$235,000

Type of Tax Paid	Taxing Authority/Known Address	Approx. Total of Payments from Jan. 2017 through Dec. 2017
Pennsylvania sales & use tax	Pennsylvania Department of Revenue PO Box 280901 Harrisburg, PA 17128-0901	$3,000
Puerto Rico sales & use tax	Departamento de Hacienda de Puerto Rico PO Box 9024140 San Juan, PR 00902-4140	$50,000
Rhode Island sales & use tax	Rhode Island Office of the Director of Revenue One Capitol Hill, 1st Flr Providence, RI 02908	$17,000
Texas sales & use tax	Texas Comptroller of Public Accounts PO Box 13528 Capitol Station Austin, TX 78711-3528	$35,000
Virginia sales & use tax	Virginia Department of Taxation Office of Customer Services PO Box 1115 Richmond, VA 23218-1115	$46,000
Wyoming sales & use tax	Wyoming Department of Revenue 122 West 25th Street, 2nd Floor West Cheyenne, WY 82002-0110	$1,000
California 2017 estimated taxes	See California sales and use tax	$1,000
Connecticut 2017 estimated taxes	See Connecticut sales and use tax	$2,000
New York 2017 estimated taxes	See New York sales and use tax	$7,000
New York City 2017 estimated taxes	NYC Department of Finance PO Box 3922 New York, NY 10008-3922	$1,000
Rhode Island 2017 estimated taxes	See Rhode Island sales and use tax	$1,000
Puerto Rico 2017 estimated taxes	See Puerto Rico sales and use tax	$4,000
Trumbull, CT personal property tax	Tax Assessor 5866 Main Street Trumbull, CT 06611-0326	$6,000

Type of Tax Paid	Taxing Authority/Known Address	Approx. Total of Payments from Jan. 2017 through Dec. 2017
Las Vegas, NV personal property tax	Clark County Assessor 500 S Grand Central Pkwy, 2nd Fl. Las Vegas, NV 89155	$2,000
Sunrise, FL business tax renewal	City of Sunrise Business Tax Receipt Division 1607 NW 136 Ave., Blvd B Sunrise, FL 33323	$1,000
Hollywood, CA business tax renewal	City of West Hollywood Attn: Cashier 8300 Santa Monica Blvd West Hollywood, CA 90069-6216	$2,000
Los Angeles County Tax collector personal property taxes	Los Angeles County Office of the Assessor Kenneth Hahn Hall of Administration 500 W Temple Street Room 225 Los Angeles, CA 90012-2770	$35,000
County of Ventura, CA personal property tax	Business Personal Property Division Ventura County Assessor's Office 800 South Victoria Avenue, HOA Ventura, CA 93009-1270	$4,000
Arlington County, VA Treasurer personal property tax	Commissioner of Revenue 2100 Clarendon Boulevard, Suite 200 Arlington, VA 22201	$5,000
TOTAL		**$1,146,000**

Exhibit B

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
KIKO USA, Inc.,	)	Case No. 18-10069 (___)
Debtor. [1]	)	**Re: Docket No. ____**

FINAL ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION TAXES AND ASSESSMENTS AND (II) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

Upon the motion (the "**Motion**"),[2] of KIKO USA, Inc. ("**Kiko**" or the "**Debtor**") for entry of interim and final orders (i) authorizing, but not directing, the Debtor to pay the Taxes and (ii) directing applicable banks and financial institutions (collectively, the "**Banks**") to receive, honor, process, and pay all checks issued or to be issued and electronic funds transfers requested or to be requested relating to the above, as more fully set forth in the Motion; upon consideration of the Furlan Declaration; the 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 February 29, 2012; consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); 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 to the parties listed therein and it appearing that no other or further notice need be provided; the Court having reviewed the Motion; the Court having held an interim hearing on the Motion; the Court having

[1] The last four digits of the Debtor's federal tax identification number are 0805. The principal place of business for the Debtor is 470 Park Avenue South, 15th Floor New York, NY, 10016.

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

granted interim relief on the Motion on _____ [Doc. No. ____]; the Court having held a final hearing on the Motion; all objections, if any, to the Motion having been withdrawn, resolved or overruled; the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; it appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Court 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 Debtor is authorized, but not directed, pursuant to sections 105(a), 363(b), 507(a), and 541 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, to pay to the Taxing Authorities including, without limitation, those Taxing Authorities listed on **Exhibit 1** annexed hereto, all Taxes that arose before the Petition Date, including all Taxes subsequently determined upon audit or otherwise to be owed for the periods before the Petition Date.

3. Banks are authorized, at the Debtor's request, to receive, process, honor and pay, to the extent of funds on deposit, any and all checks issued or to be issued or electronic funds transfers requested or to be requested by the Debtor relating to the prepetition Taxes.

4. The Debtor is authorized, but not directed, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of the prepetition Taxes dishonored or rejected as a result of the commencement of this Chapter 11 Case.

5. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Debtor's or any other party in

interest's right to dispute any prepetition claim on any grounds, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (iv) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law, or (v) an assumption, adoption or rejection of any agreement, contract or lease between the Debtor and any third party under section 365 of the Bankruptcy Code. Likewise, any payment made pursuant to this Order is not intended to be and shall not be construed as an admission to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

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

7. The Debtor is authorized to take all steps necessary or appropriate to carry out this Order.

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

Dated: _____, 2018
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Taxing Authorities List

Type of Tax Paid	Taxing Authority/Known Address	Approx. Total of Payments from Jan. 2017 through Dec. 2017
Arizona sales & use tax	State of Arizona Department of Revenue 1600 W Monroe St Phoenix, AZ 85007-2650	$1,000
California sales & use tax	Franchise Tax Board Bankruptcy Section, MS: A-340 PO Box 2952 Sacramento, CA 95812-2952 Franchise Tax Board Chief Counsel c/o General Counsel Section PO Box 1720, MS: A-260 Rancho Cordova, CA 95741-1720 Franchise Tax Board PO Box 942840 Sacramento, CA 94240-0040	$265,000
Connecticut sales & use tax	Connecticut Department of Revenue Services 450 Columbus Blvd, Ste 1 Hartford, CT 06103	$39,000
Florida sales & use tax	Florida Department of Revenue Attn: General Counsel PO Box 6668 Tallahassee, FL 32315-7372	$184,000
Georgia sales & use tax	State of Georgia Department of Revenue 1800 Century Boulevard, NE Atlanta, GA 30345	$2,000
Illinois sales & use tax	Illinois Department of Revenue Attn: Bankruptcy Notices PO Box 19013 Springfield, IL 62794-9013	$3,000
Kansas sales & use tax	Kansas Department of Revenue Division of Taxation 915 SW Harrison St. Topeka, KS 66612-1588	$1,000

Type of Tax Paid	Taxing Authority/Known Address	Approx. Total of Payments from Jan. 2017 through Dec. 2017
Maryland sales & use tax	Comptroller of Maryland 80 Calvert Street PO Box 466 Annapolis, MD 21404-0466	$13,000
Maine sales & use tax	Maine Revenue Services PO Box 9107 Augusta, ME 04332-9107	$1,000
Michigan sales & use tax	Michigan Department of Treasury Office of Collections PO Box 30199 Lansing, MI 48909 Michigan Dept. of Treasury, Tax Policy Div. Attn: Litigation Liaison 2nd Floor, Austin Building 430 West Allegan Street Lansing, MI 48922	$2,000
Minnesota sales & use tax	Minnesota Department of Revenue 600 North Robert St. St. Paul, MN 55146	$1,000
Missouri sales & use tax	Missouri Department of Revenue Harry S Truman State Office Building 301 West High Street Jefferson City, MO 65101	$1,000
North Carolina sales & use tax	North Carolina Department of Revenue 501 North Wilmington Street Raleigh, NC 27604	$2,000
New Jersey sales & use tax	NJ Department of Taxation Bankruptcy Section PO Box 245 Trenton, NJ 08695-024 5	$118,000
Nevada sales & use tax	Nevada Department of Taxation 1550 College Parkway, Suite 115 Carson City, NV 89706	$55,000
New York sales & use tax	New York Department of Taxation and Finance Bankruptcy Section PO Box 5300 Albany, NY 12205-0300	$235,000

Type of Tax Paid	Taxing Authority/Known Address	Approx. Total of Payments from Jan. 2017 through Dec. 2017
Pennsylvania sales & use tax	Pennsylvania Department of Revenue PO Box 280901 Harrisburg, PA 17128-0901	$3,000
Puerto Rico sales & use tax	Departamento de Hacienda de Puerto Rico PO Box 9024140 San Juan, PR 00902-4140	$50,000
Rhode Island sales & use tax	Rhode Island Office of the Director of Revenue One Capitol Hill, 1st Flr Providence, RI 02908	$17,000
Texas sales & use tax	Texas Comptroller of Public Accounts PO Box 13528 Capitol Station Austin, TX 78711-3528	$35,000
Virginia sales & use tax	Virginia Department of Taxation Office of Customer Services PO Box 1115 Richmond, VA 23218-1115	$46,000
Wyoming sales & use tax	Wyoming Department of Revenue 122 West 25th Street, 2nd Floor West Cheyenne, WY 82002-0110	$1,000
California 2017 estimated taxes	See California sales and use tax	$1,000
Connecticut 2017 estimated taxes	See Connecticut sales and use tax	$2,000
New York 2017 estimated taxes	See New York sales and use tax	$7,000
New York City 2017 estimated taxes	NYC Department of Finance PO Box 3922 New York, NY 10008-3922	$1,000
Rhode Island 2017 estimated taxes	See Rhode Island sales and use tax	$1,000
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