

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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EXIDE TECHNOLOGIES, : Case No. 13-11482

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Debtor.¹ :

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DEBTOR’S MOTION FOR ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363(b), 1107(a), AND 1108 AND BANKRUPTCY RULES 6003 AND 6004 AUTHORIZING THE DEBTOR TO CONTINUE CUSTOMER PROGRAMS AND PRACTICES IN THE ORDINARY COURSE OF BUSINESS

Exide Technologies (the “Debtor” or “Exide”) hereby moves (the “Motion”) this Court for entry of interim and final orders, under sections 105(a), 363(b), 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing but not directing the Debtor to honor certain prepetition obligations to customers and to otherwise continue customer programs and practices in the ordinary course of business, and (ii) authorizing financial institutions to honor all checks and electronic payment requests authorized pursuant to the Motion provided that there are sufficient good funds standing to the Debtor’s credit in the applicable accounts to make the payments. In support of the Motion, the Debtor relies upon and incorporates by reference the Declaration of Phillip A. Damaska in Support of Chapter 11 Petition and First Day Pleadings (the “First Day Declaration”), filed with this Court concurrently herewith. In further support of the Motion, the Debtor, by and through its proposed undersigned counsel, respectfully represents:

¹ The last four digits of the Debtor's taxpayer identification number are 2730. The Debtor’s corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(b), 1107(a), and 1108. The relief is requested is also authorized by Bankruptcy Rules 6003 and 6004.

3. 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 Bankruptcy Rules”), the Debtor consents to the entry of a final judgment or order with respect to the Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

A. The Chapter 11 Case

4. On the date hereof (the “Petition Date”), the Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).²

5. The Debtor continues to operate its business and manage its property as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. To date, no creditors’ committee has been appointed by the United States Trustee. No trustee or examiner has been appointed in the Chapter 11 Case.

² The Debtor’s predecessor has a chapter 11 case currently pending in this District (Case No. 02-11125) (the “Previous Chapter 11 Case”). The Previous Chapter 11 Case was filed on April 15, 2002, and the Debtor and certain of its U.S. subsidiaries emerged from chapter 11 on May 5, 2004. There is one claim remaining open in the Previous Chapter 11 Case. In addition, there is a pending adversary proceeding in which a settlement agreement to allow a general unsecured, non-priority claim has been approved by this Court, but is awaiting final approval from the state chancery court to become effective. The Debtor will confer with this Court regarding the disposition of the Previous Chapter 11 Case at the appropriate time.

B. The Debtor's Business

7. The Debtor, Exide, which together with its direct and indirect subsidiaries (collectively, the "Company"), has operations in more than 80 countries, is a global leader in stored electrical energy solutions and one of the world's largest producers and recyclers of lead-acid batteries.

8. The Company's four global business groups—Transportation Americas, Transportation Europe and Rest of World ("ROW"), Industrial Energy Americas, and Industrial Energy Europe and ROW—provide a comprehensive range of stored electrical energy products and services for industrial and transportation applications. The Company manufactures and distributes transportation and industrial batteries in North America, Europe, Asia, the Middle East, India, Australia, and New Zealand. In the transportation segments, the Company distributes and markets transportation batteries, which include starting, lighting, and ignition batteries for cars, trucks, off-road vehicles, agricultural and construction vehicles, motorcycles, recreational vehicles, marine, and other applications to a broad range of retailers, distributors of replacement or after-market batteries, and automotive original equipment manufacturers ("OEM"). The Company's industrial batteries consist of motive power batteries and network power applications. Motive power batteries are used in the material handling industry for equipment such as electric fork-lift trucks as well as in other machinery, including floor cleaning machinery, powered wheelchairs, railroad locomotives, mining equipment, and electric road vehicles. Network power batteries provide energy storage solutions for critical systems that require uninterrupted power supply and are used to power, among other things, telecommunications systems, computer installations and data centers, hospitals, air traffic control systems, security systems, electric utilities, railways, and various military applications. The

Company has a diverse customer base that includes a number of major end-user customers, retail and OEM, and includes market winners and industry leaders.

9. The Debtor, headquartered in Milton, Georgia, operates 13 manufacturing facilities in the United States. The Debtor also operates approximately 74 branches³ throughout North America, which sell and distribute batteries and other products to customers, battery specialists, retail stores, and OEM dealers. In addition, branch locations collect spent batteries for the Debtor's recycling facilities. Exide has five smelters, three of which are currently active battery collection and recycling facilities.⁴ These facilities reclaim lead by recycling spent lead-acid batteries, which are obtained for recycling from Exide's customers and outside spent-battery collectors. In fiscal year 2013, approximately 530,575 tons of batteries, plant scrap, and range lead were recycled at Exide's smelters or by a third party at Exide's request, which efforts enabled Exide to better control the cost of the principal raw material—lead—used in making its products. In the United States, the Debtor historically has obtained the vast majority of its lead requirements from its recycling operations.⁵

10. Additional factual background information about the Debtor, including its business operations, its corporate and capital structures, its restructuring efforts, and the events leading to the filing of the Chapter 11 Case, is set forth in detail in the First Day Declaration.⁶

³ On average, branch locations are approximately 20,000 square feet in size and are generally leased for periods of 29 to 42 months.

⁴ The smelter furnaces melt lead from spent (i.e., expired) batteries to extract the lead so that it can be re-used to make new batteries.

⁵ In contrast, the Company obtains the majority of its lead requirements for its ROW operations on the open market from third-party suppliers.

⁶ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

RELIEF REQUESTED

11. By the Motion, the Debtor seeks entry of interim and final orders, pursuant to Bankruptcy Code sections 105(a), 363(b), 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004, authorizing, but not directing, the Debtor to honor certain prepetition obligations to customers and to otherwise continue customer programs and practices (the “Customer Programs”) in the ordinary course of business, thereby ensuring and maintaining customer satisfaction and loyalty without interruption during the course of the Chapter 11 Case. The relief requested in the Motion is without prejudice to the Debtor’s ability to request further relief related to the Customer Programs in the future.

12. In addition, the Debtor requests entry of an order authorizing all applicable banks and other financial institutions (collectively, the “Financial Institutions”) to rely on the Debtor’s direction to pay amounts authorized under the Motion provided that there are sufficient good funds standing to the Debtor’s credit in the applicable accounts to make the payments.

13. For the reasons set forth herein, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

DESCRIPTION OF THE CUSTOMER PROGRAMS

14. Prior to the Petition Date, the Debtor provided customers of its industrial and transportation businesses with certain benefits in the form of the Customer Programs. With respect to its industrial business, the Debtor offers rebates and warranties to customers. With respect to its transportation business, the Debtor provides customers with rebates and warranties and periodically exchanges batteries that customers have purchased but not resold within set time limits. Both the transportation and the industrial business also participate in programs pursuant

to which customers are issued credits in various circumstances, including for providing the Debtor with spent batteries; spent batteries are recycled for their lead, which is used in the Debtor's production of new product (batteries acquired with credits are less costly than batteries available on the open market).

15. In each case the Debtor seeks authority, but not direction, to honor prepetition obligations related to the Customer Program. There are several reasons why the Debtor believes that having the discretion to honor the Customer Programs, including prepetition obligations related thereto, will benefit the Debtor's estate. To begin with, the Customer Programs generally represent present practices that are common in the Debtor's industry. If the Debtor cannot continue the Customer Programs it will be at a disadvantage in a competitive marketplace. If the Debtor is not allowed to honor its products' warranties, for example, the Debtor would not stand on equal footing with its competitors. Second, if the Debtor does not have the discretion to honor rebates, warranties, and credits related to the prepetition period, the Debtor's customers would lose confidence in the Debtor and its products. This could result in the alienation of a proven customer base as customers begin purchasing from the Debtor's competitors. This is a particular risk with respect to programs such as rebates which are designed to promote customer loyalty and increase the Debtor's sales. In fact, the Debtor believes that the costs of honoring the Customer Programs and the prepetition obligations related thereto will be more than offset by the revenue from sales made because the Customer Programs are in place. Therefore, it is in the best interests of the Debtor, its estate, stakeholders, and creditors to honor prepetition obligations pursuant to the Customer Programs and to continue the Customer Programs as the Debtor sees fit in the ordinary course of business.

16. The following are general descriptions of the Debtor's principal Customer Programs.

A. Industrial Customer Rebate Program

17. The Debtor provides rebates to customers who purchase products designed for material handling applications from the Debtor's industrial business (the "Industrial Customer Rebate Program"). Rebates under the Industrial Customer Rebate Program are tied to the number of purchases made by customers as well as purchases of certain products. In this way, customers are encouraged to purchase more goods from the Debtor to obtain a greater rebate, which results in larger net revenue for the Debtor.

18. From an accounting perspective, in the ordinary course of business, the Debtor accrues liability with respect to the Industrial Customer Rebate Program as customers reach sales targets that would entitle them to rebates. As of the Petition Date, the Debtor's estimated balance for obligations related to the Industrial Customer Rebate Program was approximately \$733,870.

B. Industrial Warranty Program

19. Pursuant to the Debtor's prepetition customer practices, the Debtor's industrial business provided limited warranties, based on product and application, in respect of the Debtor's products for periods extending up to twenty (20) years (on a pro-rata basis)⁷ from the date of a customer purchase of a particular product (the "Industrial Warranty Program"). As a general matter, such warranties protect against manufacturing defects in workmanship and materials contained in the products.

⁷ Generally, a 20 year warranty provides one year full warranty and 19 years pro-rata warranty. This type of warranty acknowledges that a portion of the useful life of the battery is lost as the battery ages. Depending on the age of the battery at the time a warranty claim is made, the useful life of the battery is determined based upon predetermined schedules and the customer is given partial credit for any warranty-based claim.

20. Generally, the benefit of the warranty is limited to the original purchasing customer. If a party submits a claim the Debtor may, at its option, either repair or replace the defective product, credit the customer based upon an approved claim, or, in some circumstances, refund the purchase price. In most circumstances, honoring warranty claims involves non-cash items such as repairing or replacing the defective goods. The benefits of each Industrial Warranty Program is specific to that customer based upon its agreement with the Debtor.

21. From an accounting perspective, in the ordinary course of business, the Debtor accrues liability based on management's estimate of the amount that will eventually be required to settle or discharge such warranty obligations. As of the Petition Date, the Debtor's estimated balance for the up to twenty year obligations related to the Industrial Warranty Program was approximately \$8.54 million. Of that amount, the Debtor expects to incur only approximately \$3.38 million over the next year.

C. Transportation Customer Rebate Programs

22. The Debtor's transportation business offers rebate programs to its customers (the "Transportation Customer Rebate Programs"). These programs are related to the Debtor's customer commitments for advertising and promotional funding, marketing support, co-op advertising and volume incentives. Rebates are calculated from the sale price paid by the customer and are accrued on a monthly basis. The amounts earned by the customers are paid in the form of a check or credit memorandum on the customer's account.

23. From an accounting perspective, in the ordinary course of business, the Debtor accrues liability with respect to the Transportation Customer Rebate Program as customers reach sales targets that would entitle them to rebates. As of the Petition Date, the Debtor's estimated balance for obligations related to the Transportation Customer Rebate Programs was \$7.41 million.

D. Transportation Warranty Program

24. Pursuant to the Debtor's prepetition customer practices, the Debtor's transportation business provides limited product warranties for periods extending up to four (4) years from the date of a customer purchase of a particular product (the "Transportation Warranty Program"). Such warranties protect against manufacturing defects in workmanship and materials contained in the products.

25. Although the benefits of each warranty are specific to each customer based upon the customer's agreements with the Debtor, the Debtor's prepetition liability on account of the Transportation Warranty Program generally arises in one of three ways. *First*, the Debtor has provided warranties with respect to Exide-branded batteries. The benefit of the warranty for such products is generally limited to the original purchasing customer. If such a customer submits a warranty claim, the Debtor may exchange the product, credit the customer based on the approved claim or, in some circumstances, refund all or a portion of the purchase price.⁸ In most circumstances, honoring these warranty claims involves non-cash items such as repairing or replacing the allegedly defective goods.

26. *Second*, with respect to batteries sold to certain OEMs the Debtor provides warranties pursuant to which it agreed to compensate an OEM for a pre-specified percentage of the OEM's own battery-related warranty liability on an annual or quarterly basis. The percentage of the OEM's liability which is covered is determined with each OEM periodically based on the performance of the Debtor's products.

⁸ Although the Debtor currently issues warranties that cover up to a four-year period and provide for the replacement of a defective product or a credit/refund for the full cost of the product, the Debtor also has some residual liability for older warranties that cover a longer period of time and provide for pro rata warranties after a specified amount of time.

27. *Third*, some customers choose to receive discounts on their purchases in lieu of receiving a warranty. These discounts take the form of either purchase price reductions off of the amount invoiced (in which case the Debtor does not believe that it has any prepetition liability) or are issued as credits at the end of each month.

28. From an accounting perspective, in the ordinary course of business, the Debtor accrues liability based on management's estimate of the amount that will eventually be required to settle or discharge such warranty obligations. As of the Petition Date, the Debtor's estimated balance for obligations related to the Transportation Warranty Program was approximately \$8.87 million. Many of the Debtor's obligations will be satisfied, however, by providing customers with replacement batteries, rather than by making cash distributions to customers. Furthermore, the Debtor only expects to incur over the next year approximately \$2.22 million (including non-cash expenditures).

E. Transportation Rotation Program

29. The Debtor's transportation business has agreed to periodically exchange batteries that customers have purchased but not resold within set time limits (the "Transportation Rotation Program"). Under the Transportation Rotation Program, the Debtor will periodically replace customers' unsold batteries with newly formed batteries. Many of the batteries that the Debtor receives in exchange can then be sold by the Debtor as either a first quality battery or a second quality battery, depending upon the battery's production date. Rotated batteries that are recharged bear a sticker showing the date of recharge, and rotated batteries sold as second quality are clearly identified as such.

30. Programs such as the Transportation Rotation Program are customary within the industry and an integral part of the Debtor's business strategy and bases for customer confidences. If the Debtor is not allowed to honor its obligations under the Transportation

Rotation Program, the Debtor will not stand on equal footing with its competitors, which can offer customers the benefit or similar programs. In particular, absent the Transportation Rotation Program customers may conclude that purchasing from the Debtor is more risky than purchasing from a competitor that is willing to swap batteries that have lost their charge. In addition, as described above, the batteries that the Debtor receives in connection with the Transportation Rotation Program are valuable to the Debtor, with the vast majority being able to be resold in the ordinary course of business.

F. Prepetition Credits

31. In the ordinary course of the Debtor's business, the Debtor also issued certain credits to customers prepetition.

32. Pursuant to the Debtor's prepetition customer practices, the Debtor acquires from customers spent batteries, which the Debtor then recycles (the "Battery Recycling Program"). Customers that provide the Debtor with spent batteries pursuant to the Battery Recycling Program are issued a credit on account of the batteries, which can be applied against future purchases of the Debtor's products. A minority of customers that maintain a consistent credit balance are also paid by the Debtor, rather than simply being issued a credit. In addition to assisting customers with the disposal of their batteries, the Battery Recycling Program benefits the Debtor because the debtor can use its smelters to recycle the batteries, providing the Debtor with lead, the Debtor's principal raw material. As of the Petition Date many customers had outstanding credits on account of the batteries which they provided the Debtor with before the Petition Date.

33. Maintaining the Battery Recycling Program, including its crediting component, is particularly important to maintaining the relationship between the Debtor and its customers. If the Debtor does not honor the credits that were issued with respect to the spent

batteries that the Debtor acquired prepetition, the customers that provided those batteries may well opt to not only stop buying the Debtor's products, depriving the Debtor of revenue, but also to stop providing the Debtor with spent batteries, which would increase the cost of the Debtor's operations. This is so because it is less expensive for the Debtor to obtain lead by recycling the spent batteries that the Debtor acquires in connection with the Battery Recycling Program than it is to purchase lead on the open market. Accordingly, to the extent that customers no longer provide the Debtor with spent batteries, the Debtor will either have to purchase spent batteries on the open market (likely at a higher price than what the Debtor currently pays customers) or purchase lead on the open market. In either event, the cost of the Debtor's operations would increase, decreasing the profitability of the Debtor's business and reducing the value available for the Debtor's creditors, stakeholders and other parties in interest.

34. The Debtor also provides customers of both the transportation and the industrial business with credits in the ordinary course of business for a variety of reasons, including shipments that arrived with less than the number of batteries ordered, products returned by customers, and products which customers claimed were damaged being delivered to customers (the "Miscellaneous Customer Credit Programs").

35. As of the Petition Date, the Debtor estimates that the aggregate amount of unused prepetition credits that the Debtor had issued with respect to the Battery Recycling Program and the Miscellaneous Customer Credit Programs were approximately \$6.24 million and \$879,280, respectively. Many of the customers that have been issued prepetition credits, however, also purchased goods from the Debtor before the Petition Date for which the Debtor has not yet received payment. Accordingly, such customers may be able to offset the credits that they have been issued against their debts to the Debtor. In fact, in many cases the amount of the

credits issued before the Petition Date to a particular customer is smaller than the customer's prepetition debt to the Debtor. Of those customers whose unused credits exceeds the amount that they owed the Debtor before the Petition Date, the aggregate amount by which the credits exceed the prepetition debts to the Debtor is approximately \$1.59 million.

APPLICABLE AUTHORITY

A. Honoring the Debtor's Customer Obligations Is in Furtherance of the Debtor's Duties Under Bankruptcy Code Sections 1107(a) and 1108

36. As a debtor in possession under Bankruptcy Code sections 1107(a) and 1108, the Debtor has duties to protect and preserve its estate, including maintaining the going-concern value of its business. See, e.g., In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). At least one court has acknowledged that there are circumstances under which a debtor in possession can only fulfill such duties "by the preplan satisfaction of a prepetition claim." Id.

37. The CoServ court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," id. at 497, and also when the payment was to "sole suppliers of a given product." Id. at 498. The court provided a three-pronged test for determining whether a pre-plan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id.

38. Honoring obligations to customers and maintaining the Customer Programs undeniably meets each element of the CoServ court's standard. First, as described above, it is essential that the Debtor preserve its relationships with its customers during the Chapter 11 Case. Any disruption in service, or delay in satisfying obligations to customers, could damage the Debtor's ability to retain existing customers and attract new ones, to the detriment of all stakeholders. Second, the Debtor has carefully considered options other than the payment of obligations to customers and otherwise honoring the Customer Programs that the Debtor believes is appropriate, and the Debtor has determined that there are no practical or legal alternatives to the payment of such obligations in the ordinary course of business. In fact, the CoServ court specifically noted that "prepetition warranty or refund claims of consumer customers which, if not honored, could so harm the debtor's good will as to destroy its going concern value" are claims which much be dealt with. Id. at 497.

39. Therefore, the Debtor can only meet its fiduciary obligations as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108 by honoring certain prepetition obligations to customers and otherwise continuing customer programs and practices in the ordinary course of business.

B. The Doctrine of Necessity and Bankruptcy Code Section 105(a) Further Support Maintaining the Customer Programs

40. Maintenance of the Customer Programs should be authorized pursuant to Bankruptcy Code section 105 and under the "doctrine of necessity."

41. Bankruptcy Code section 105(a) authorizes a bankruptcy court to enter any order "necessary or appropriate" to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). For the reasons set forth herein, and in light of the critical need for the Debtor to preserve the going concern value of its businesses in order to effect a successful

reorganization, honoring and maintaining the Customer Programs is proper in accordance with Bankruptcy Code section 105.

42. Honoring and maintaining the Customer Programs is further supported by the doctrine of necessity. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. See In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment.); see also In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit the pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

43. The United States Supreme Court first articulated the doctrine of necessity over a century ago in Miltenberger v. Logansport Railway, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. See id. at 309-14. The doctrine, largely unchanged from the Court’s reasoning in Miltenberger, is a widely accepted component of modern bankruptcy jurisprudence. See Just For Feet, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); In re Payless Cashways, Inc., 268 B.R. 543, 546-47 (Bankr. W.D. Mo. 2001)

(authorizing payment of critical prepetition suppliers' claims when such suppliers agree to provide postpetition trade credit); see also In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994); In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

44. For the reasons discussed herein, maintaining and honoring obligations under the Customer Programs is necessary to the Debtor's effective reorganization. In particular, and as further set forth above, not honoring the Customer Programs could cause the Debtor's existing customers to end lucrative relationships and hamper the Debtor's efforts to compete for new business. Moreover, the Debtor cannot assume its customer contracts without first curing any defaults. See 11 U.S.C. § 365(b)(1)(A).

45. Therefore, the maintenance and honoring of the Customer Programs should be authorized pursuant to Bankruptcy Code section 105(a) and the doctrine of necessity.

C. Maintaining Customer Programs Is Appropriate Under Bankruptcy Code Section 363(b)

46. Bankruptcy Code section 363(b) permits a debtor to use estate property "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). Courts have authorized relief under section 363(b) where a debtor demonstrates a sound business justification for such relief. See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application."); Ionosphere Clubs, Inc., 98 B.R. at 175 ("[T]he debtor must articulate some business justification, other than mere appeasement of major creditors.").

47. Once a debtor has articulated a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation

acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

48. The business judgment rule applies in chapter 11 cases. See Integrated Res., 147 B.R. at 656 (noting that “Delaware business judgment rule principles have ‘vitality by analogy’ in Chapter 11”); see also Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a Debtor’s management decisions.”).

49. As discussed above, the Debtor has determined, in the sound exercise of its business judgment, that maintaining the Customer Programs in the ordinary course of business is critical to the Debtor’s reorganization efforts. The failure to honor these obligations could have a material adverse impact on the Debtor’s continued operation and, by extension, its efforts to complete an expeditious restructuring that maximizes value for stakeholders. Accordingly, the preservation and protection of the Debtor’s business through ongoing relationships with the Debtor’s customers provides a sufficient business justification for satisfying obligations to customers, even if such payment were deemed to be outside the ordinary course of business. See Ionosphere Clubs, Inc., 98 B.R. at 175.

50. The Debtor therefore seeks authorization under Bankruptcy Code section 363(b) to honor prepetition obligations to customers and continue customer programs.

51. Where retaining the loyalty of customers is critical to successful chapter 11 cases, courts in this district and elsewhere have authorized debtors to honor certain prepetition

obligations to customers and continue customer programs. See, e.g., In re A123 Sys., Inc., Case No. 12-12859 (KJC) (Bankr. D. Del. Nov. 7, 2012); In re Blitz U.S.A., Inc., Case No. 11-13603 (PJW) (Bankr. D. Del. Dec. 5, 2011); In re Muzak Holdings LLC, Case No. 09-10422 (KJC) (Bankr. D. Del. Feb. 12, 2009); In re Portola Packaging, Inc., 08-12001 (CSS) (Bankr. D. Del. Aug. 29, 2008).

**IMMEDIATE RELIEF IS NECESSARY TO AVOID IMMEDIATE AND
IRREPARABLE HARM**

52. Bankruptcy Rule 6003 provides that the relief requested in the Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; see also In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). The Third Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the court has instructed that irreparable harm is a continuing harm which 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. App’x 907, 910 (3d Cir. 2007) (citing Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977)). Furthermore, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Acierno v. New Castle County, 40 F.3d 645, 653-55 (3d Cir. 1994). The Debtor submits that for the reasons already set forth herein, the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor.

WAIVER OF ANY APPLICABLE STAY

53. The Debtor also requests that this Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[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 described above, the relief that the Debtor seeks in the Motion is necessary for the Debtor to operate without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully requests that this Court waive the fourteen day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

54. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor’s rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtor’s rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to the Motion.

NOTICE

55. Notice of the Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) counsel to the agent under the proposed debtor in possession financing; (iv) counsel to the agent for the Debtor’s prepetition secured lenders; (v) the indenture trustee for each of the Debtor’s secured and unsecured outstanding bond issuances; (vi) counsel to the unofficial committee of senior secured noteholders; (vii) the Internal Revenue Service; (viii) the Securities and Exchange Commission; (ix) the Financial Institutions; (x) the parties included on the Debtor’s list of twenty (20) largest unsecured creditors; and (xi) all parties entitled to notice

pursuant to Local Bankruptcy Rule 9013-1(m) (collectively, the “Notice Parties”). The Debtor submits that no other or further notice need be provided.

56. For the reasons set forth herein, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, its creditors, and other parties in interest, and therefore, should be granted.

NO PRIOR REQUEST

57. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter interim and final orders, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 10, 2013

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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- and -

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Proposed Counsel for Debtor and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
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 EXIDE TECHNOLOGIES, : Case No. 13-11482
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 Debtor.¹ : **Related Docket No. _____**
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INTERIM ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363(b), 1107(a), AND 1108 AND BANKRUPTCY RULES 6003 AND 6004 AUTHORIZING THE DEBTOR TO CONTINUE CUSTOMER PROGRAMS AND PRACTICES IN THE ORDINARY COURSE OF BUSINESS

Upon the motion (the “Motion”)² of the Debtor for interim and final orders, pursuant to sections 105(a), 363(b), 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing but not directing the Debtor to honor certain prepetition obligations to customers and to otherwise continue customer programs and practices in the ordinary course of business, and (ii) authorizing financial institutions to honor all checks and electronic payment requests authorized pursuant to the Motion provided that there are sufficient good funds standing to the Debtor’s credit in the applicable accounts to make the payments; and upon the First Day Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the

¹ The last four digits of the Debtor's taxpayer identification number are 2730. The Debtor’s corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

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

Debtor, its estate, its creditors, its stakeholders, and other parties in interest; and after due deliberation thereon, and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein on an interim basis.
2. The Debtor is hereby authorized, but not required or directed, to continue the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of business and in the same manner and on the same basis as if the Debtor performed and honored such obligations prior to the Petition date. Notwithstanding the foregoing, the Debtor shall not satisfy obligations in excess of \$10.47 million in the aggregate on account of prepetition obligations under the Customer Programs without further order of this Court.
3. The Debtor is authorized, but not directed, to continue, renew, replace, modify, and/or terminate such of its Customer Programs as it deems appropriate, in its discretion, and in the ordinary course of business, without further application to this Court.
4. All applicable banks and other financial institutions are authorized to rely on the Debtor's direction to pay amounts in accordance with this Order provided that there are sufficient good funds standing to the Debtor's credit in the applicable accounts to make the payments and all applicable banks shall not have any liability to any party for relying on the Debtor's direction.
5. The provisions contained herein shall not be construed to limit, or in any way affect, the Debtor's ability to contest any claims, including any claims related to any Customer Obligations, on any ground permitted by applicable law, and neither the provisions contained herein, nor any actions or payments made by the Debtor pursuant to this order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the

Debtor may have to subsequently dispute such obligation on any ground that applicable law permits.

6. The relief granted herein is without prejudice to the Debtor's ability to request further relief related to the Customer Programs.

7. Nothing in this order or the Motion shall be deemed to constitute postpetition assumption, reaffirmation, or adoption of any agreement under Bankruptcy Code section 365. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

8. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

9. To the extent that there may be any inconsistency between the terms of the interim or final order approving the proposed debtor in possession financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable shall govern.

10. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon entry hereof.

11. The Debtor shall serve notice of the Motion (to the extent not already provided) and entry of this order on the Notice Parties and all parties that have filed prior to such service date requests for notice pursuant to Bankruptcy Rule 2002 in accordance with Local Bankruptcy Rule 9013-1(m). The notice shall provide that any objections to the relief granted in this Order must be filed with this Court and served on counsel for the Debtor no later than seven

days prior to the final hearing with respect to the Motion. The final hearing with respect to the Motion shall be held on _____, 2013, at _:___ .m.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this order.

Dated: Wilmington, Delaware
_____, 2013

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
 :
 EXIDE TECHNOLOGIES, : Case No. 13-11482
 :
 Debtor.¹ : **Related Docket Nos.** _____
 :
 ----- X

FINAL ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105(a), 363(b), 1107(a), AND 1108 AND BANKRUPTCY RULES 6003 AND 6004 AUTHORIZING THE DEBTOR TO CONTINUE CUSTOMER PROGRAMS AND PRACTICES IN THE ORDINARY COURSE OF BUSINESS

Upon the motion (the “Motion”)² of the Debtor for interim and final orders, pursuant to sections 105(a), 363(b), 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing but not directing the Debtor to honor certain prepetition obligations to customers and to otherwise continue customer programs and practices in the ordinary course of business, and (ii) authorizing financial institutions to honor all checks and electronic payment requests authorized pursuant to the Motion provided that sufficient funds are available in the applicable accounts to make the payments; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, its creditors, its stakeholders, and other parties in interest; and after due deliberation thereon, and sufficient cause appearing therefor, it is hereby

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

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.
2. The Debtor is hereby authorized, but not required or directed, to continue the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of business and in the same manner and on the same basis as if the Debtor performed and honored such obligations prior to the Petition date. Notwithstanding the foregoing, the Debtor shall not satisfy obligations in excess of \$20.85 million in the aggregate on account of prepetition obligations under the Customer Programs without further order of this Court.
3. The Debtor is authorized, but not directed, to continue, renew, replace, modify, and/or terminate such of its Customer Programs as it deems appropriate, in its discretion, and in the ordinary course of business, without further application to this Court.
4. All applicable banks and other financial institutions are authorized to rely on the Debtor's direction to pay amounts in accordance with this Order provided that there are sufficient good funds standing to the Debtor's credit in the applicable accounts to make the payments.
5. The provisions contained herein shall not be construed to limit, or in any way affect, the Debtor's ability to contest any claims, including any claims related to any Customer Obligations, on any ground permitted by applicable law, and neither the provisions contained herein, nor any actions or payments made by the Debtor pursuant to this order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtor may have to subsequently dispute such obligation on any ground that applicable law permits.

6. The relief granted herein is without prejudice to the Debtor's ability to request further relief related to the Customer Programs.

7. Nothing in this order or the Motion shall be deemed to constitute postpetition assumption, reaffirmation, or adoption of any agreement under Bankruptcy Code section 365. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

8. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

9. To the extent that there may be any inconsistency between the terms of the interim or final order approving the proposed debtor in possession financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable shall govern.

10. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon entry hereof.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this order.

Dated: Wilmington, Delaware
_____, 2013

UNITED STATES BANKRUPTCY JUDGE