

553638

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

2013 NOV 26 AM 8:28
SECTION OF STATE
CORPORATIONS DIV

In re:)	
)	Chapter 11
FISKER AUTOMOTIVE HOLDINGS, INC., <u>et al.</u> , ¹)	Case No. 13-13087 (KG)
Debtors.)	(Joint Administration Requested)

NOTICE OF AGENDA FOR HEARING ON FIRST DAY MOTIONS SCHEDULED FOR NOVEMBER 26, 2013 AT 12:00 P.M. (PREVAILING EASTERN TIME), BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, LOCATED AT 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801

This agenda sets forth items in the order they appear in the first day motions binders delivered to the Court. The status of each is set forth below.

1. Voluntary Chapter 11 Petitions
 - A. Fisker Automotive, Inc.
 - B. Fisker Automotive Holdings, Inc.
2. Declaration of Marc Beilinson in Support of First Day Motions [Docket No. 3, filed 11-22-13].

Status: The Declaration will be relied upon as evidentiary support for the first day matters listed below.

First Day Administrative Motions and Applications

3. Motion of the Debtors for Entry of an Order Directing Joint Administration of Their Chapter 11 Cases [Docket No. 2, filed 11-22-13].

Status: This matter is going forward.

¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Fisker Automotive Holdings, Inc. (9678); and Fisker Automotive, Inc. (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: 5515 E. La Palma Ave., Anaheim, California 92807.

4. Application of the Debtors for Entry of an Order Pursuant to 28 U.S.C. § 156(c) Approving the Retention and Appointment of Rust Consulting/Omni Bankruptcy as the Claims and Noticing Agent to the Debtors, Effective Nunc Pro Tunc to the Petition Date [Docket No. 11, filed 11-22-13].

Status: This matter is going forward.

5. Motion of the Debtors for Entry of an Order Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor [Docket No. 4, filed 11-22-13].

Status: This matter is going forward.

6. Motion of the Debtors for Entry of Interim and Final Orders (A) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (B) Deeming Utility Providers Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment [Docket No. 7, filed 11-22-13].

Status: This matter is going forward with respect to an interim order.

First Day Motion Pertaining to Financing

7. Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing Postpetition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Priority, (III) Authorizing Use of Cash Collateral, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing Pursuant to Sections 105, 361, 362, 363 and 364 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001 and 9014 [Docket No. 17, filed 11-24-13].

Status: This matter is going forward with respect to an interim order.

First Day Motions Pertaining to Business Operations

8. Motion of the Debtors for Entry of Order (I) Authorizing, but Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief [Docket No. 6, filed 11-22-13].

Status: This matter is going forward.

9. Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Continue Current Investment Practices, (D) Continue to Perform Intercompany Transfers, and (E) Maintain Existing Business Forms; and (II) Granting Related Relief [Docket No. 5, filed 11-22-13].

Status: This matter is going forward with respect to an interim order.

10. Motion of the Debtors for Entry of an Order Authorizing, but Not Directing, the Payment of Certain Prepetition Taxes [Docket No. 8, filed 11-22-13].

Status: This matter is going forward.

11. Motion of the Debtors for Entry of an Order Authorizing, but Not Directing, Debtors to Pay Their Insurance Obligations in the Ordinary Course of Business [Docket No. 9, filed 11-22-13].

Status: This matter is going forward.

First Day Motion Pertaining to Trading Restrictions

12. Motion of the Debtors for Entry of Interim and Final Orders Approving Notification and Hearing Procedures for Certain Transfers of Equity Securities [Docket No. 10, filed 11-22-13].

Status: This matter is going forward with respect to an interim order.

First Day Motion Pertaining to Sale

13. Motion of the Debtors for the Entry of: (I) an Order (A) Approving Form and Manner of Notices and (B) Scheduling a Sale Hearing and Establishing Dates and Deadlines Related Thereto; and (II) an Order (A) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, and (C) Granting Related Relief [Docket No. 13, filed 11-22-13].

Status: This matter is going forward with respect to scheduling and approval of notices.

Dated: November 24, 2013
Wilmington, Delaware

/s/ Peter J. Keane

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Proposed Attorneys for the
Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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SECRETARY OF STATE
CORPORATIONS DIV

In re:)
) Chapter 11
)
FISKER AUTOMOTIVE HOLDINGS, INC., et al.,¹) Case No. 13-13087 (KG)
)
) Debtors.) (Joint Administration Requested)
)

NOTICE OF HEARING ON FIRST DAY MOTIONS

PLEASE TAKE NOTICE that on November 22, 2013 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), with the Clerk of the United States Bankruptcy Court for the District of Delaware. The Debtors are continuing to operate their businesses and manage their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that together with their chapter 11 petitions, on the Petition Date, the Debtors also filed the following applications and motions set forth below (collectively, the "First Day Motions"). A hearing to consider the First Day Motions (the "First Day Hearing") will be held on **November 26, 2013, at 12:00 p.m. (prevailing Eastern Time)**, before the Honorable Kevin Gross, at the United States Bankruptcy Court for the District of Delaware (the "Court"), located at 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801.

¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Fisker Automotive Holdings, Inc. (9678); and Fisker Automotive, Inc. (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: 5515 E. La Palma Ave., Anaheim, California 92807.

First Day Administrative Motions and Application

1. Motion of the Debtors for Entry of an Order Directing Joint Administration of Their Chapter 11 Cases [Docket No. 2, filed 11-22-13].
2. Application of the Debtors for Entry of an Order Pursuant to 28 U.S.C. § 156(c) Approving the Retention and Appointment of Rust Consulting/Omni Bankruptcy as the Claims and Noticing Agent to the Debtors, Effective Nunc Pro Tunc to the Petition Date [Docket No. 11, filed 11-22-13].
3. Motion of the Debtors for Entry of an Order Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor [Docket No. 4, filed 11-22-13].
4. Motion of the Debtors for Entry of Interim and Final Orders (A) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (B) Deeming Utility Providers Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment [Docket No. 7, filed 11-22-13].

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First Day Motions Pertaining to Business Operations

6. Motion of the Debtors for Entry of Order (I) Authorizing, but Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief [Docket No. 6, filed 11-22-13].
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8. Motion of the Debtors for Entry of an Order Authorizing, but Not Directing, the Payment of Certain Prepetition Taxes [Docket No. 8, filed 11-22-13].

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11. Motion of the Debtors for the Entry of: (I) an Order (A) Approving Form and Manner of Notices and (B) Scheduling a Sale Hearing and Establishing Dates and Deadlines Related Thereto; and (II) an Order (A) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, and (C) Granting Related Relief [Docket No. 13, filed 11-22-13].

PLEASE TAKE FURTHER NOTICE that copies of the First Day Motions can be obtained through the Court's website at www.deb.uscourts.gov, referencing Case No. 13-13087 (KG), by accessing the Debtors' restructuring website at www.omnimgt.com/fisker, or by calling the Debtors' restructuring hotline at (866) 989-3043.

PLEASE TAKE FURTHER NOTICE that any and all objections to the First Day Motions may be made at the First Day Hearing.

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Dated: November 24, 2013
Wilmington, Delaware

/s/ Peter J. Keane

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In re:)	
)	Chapter 11
FISKER AUTOMOTIVE HOLDINGS, INC., <u>et al.</u> , ¹)	Case No. 13-13087 ([____])
)	
Debtors.)	(Joint Administration Requested)
)	

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING,
BUT NOT DIRECTING, THE PAYMENT OF CERTAIN PREPETITION TAXES**

The above-captioned debtors (collectively, the "Debtors") file this motion (this "Motion") for entry of an order, substantially in the form attached hereto as Exhibit A (the "Order"), authorizing, but not directing, the Debtors, in their sole discretion, to pay certain accrued and outstanding prepetition taxes and fees in an amount not to exceed \$1,635,500. In support of this Motion, the Debtors respectfully state as follows:

Jurisdiction

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Fisker Automotive Holdings, Inc. (9678); and Fisker Automotive, Inc. (9075). For the purpose of these chapter 11 cases, the service address for the Debtors is: 5515 E. La Palma Ave., Anaheim, California 92807.

3. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

Relief Requested

4. The Debtors seek entry of the Order authorizing, but not directing, them, in their sole discretion, to pay to applicable taxing authorities in the ordinary course of business any taxes that accrued before the Petition Date (as defined herein) and that are or will become payable during the pendency of these chapter 11 cases in an amount not to exceed \$1,635,500.

Background²

5. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

6. The Debtors are leading designers and developers of electric vehicles with extended range technology, which are also known as Plug-in Hybrid Electric Vehicles, or “PHEVs.” The Debtors’ PHEVs combine performance, efficiency, and convenience with minimal environmental impact versus traditional internal combustion vehicles. Although the

² A description of the Debtors’ businesses and the facts and circumstances supporting the relief requested by this Motion are set forth more fully in the *Declaration of Marc Beilinson in Support of First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith.

Debtors have suspended active vehicle production, for the twelve months ended December 31, 2012, the Debtors generated approximately \$160 million in total revenues, derived primarily from sales of the award-winning Karma Sedan, the Debtors' first production vehicle. As of December 31, 2012, the Debtors reported liabilities totaling approximately \$500 million.

The Debtors' Taxes

7. The Debtors incur and collect sales, use, franchise, property, and various other taxes and pay certain regulatory fees (each a "Tax" and collectively, the "Taxes").³ The Debtors remit the Taxes, including various fees and charges required to remain in good standing in jurisdictions where the Debtors operate, to applicable taxing authorities (each an "Authority" and collectively, the "Authorities"), a list of which is attached hereto as Exhibit B,⁴ in the ordinary course of business and in accordance with all applicable laws and regulations.

8. The following table describes the Taxes, as well as the Debtors' estimate of the amounts of the Taxes accrued as of the Petition Date:

Category	Description	Approximate Amount Accrued as of Petition Date
Sales and Use Tax	The Debtors incur and remit sales, excise, and use taxes for business conducted in various states.	\$1,500
Annual Report Fees	The Debtors incur and remit annual report fees in certain states in connection with chartering or operating in such states.	\$1,000
Personal Property & Real Estate Tax	The Debtors remit property tax relating to personal and real property that the Debtors own for the operation of their businesses.	\$1,500,000

³ The Debtors do not seek the authority to collect and remit state and federal employee-related withholding taxes by this Motion. Such relief is instead requested in the *Motion of the Debtors for Entry of an Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief*, filed concurrently herewith.

⁴ Although Exhibit B is intended to be comprehensive, the Debtors may have inadvertently omitted an Authority or Authorities. By this Motion, the Debtors request relief applicable to all Authorities, regardless of whether such Authority is specifically identified on Exhibit B.

Category	Description	Approximate Amount Accrued as of Petition Date
Franchise Tax	The Debtors remit a franchise tax in certain states in connection with operating in such states.	\$49,000
Value Added Tax	The Debtors remit taxes to Authorities for the value added to goods they manufacture domestically and sell internationally.	\$82,000
Vehicle Manufacturer License Fee	The Debtors pay licensing fees to certain Authorities for the right to manufacture and sell vehicles.	\$2,000
Total		\$1,635,500

Basis for Relief

I. Certain of the Taxes Are Not Property of the Debtors' Estates

9. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d) (emphasis added). Consistent with section 541(d) of the Bankruptcy Code, where a debtor has collected a “trust fund” tax from its customers to hold in trust for payment to a taxing authority, such taxes are not part of the debtor’s estate. See, e.g., Begier v. Internal Revenue Serv., 496 U.S. 53, 57–60 (1990) (holding that prepetition payment of trust fund taxes is not subject to avoidance because such funds are not debtor’s property); In re Calabrese, 689 F.3d 312, 321 (3d Cir. 2012) (sales tax required by state law to be collected by sellers from their customers is a trust fund tax and not released by bankruptcy discharge); DeChiaro v. N.Y. State Tax Comm’n, 760 F.2d 432, 435–36 (2d Cir. 1985) (same); In re Rosenow, 715 F.2d 277, 279–82 (7th Cir. 1983) (same); In re Waite, 698 F.2d 1177, 1179 (11th Cir. 1983) (per curiam) (same). Thus, the Debtors

generally do not have an equitable interest in funds held on account of such trust fund taxes, and the Debtors should be permitted to pay those funds to the Authorities as they come due.

10. Additionally, a constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question. See Integrated Health Servs., Inc., 344 B.R. 262, 270 (Bankr. D. Del. 2006). The Debtors, therefore, may not have any legally cognizable interest in funds held on account of trust fund taxes, excluding such funds from the property of the Debtors' estates under section 541 of the Bankruptcy Code. Accordingly, the Debtors should be permitted to pay those funds to the Authorities as the applicable Taxes come due.

II. Certain of the Taxes May Be Entitled to Priority Under the Bankruptcy Code

11. Claims for some of the Taxes are or may be priority claims entitled to payment before general unsecured claims. See 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Authorities may attempt to assess interest and penalties, which the Debtors seek to avoid for the benefit of their estates and creditors. See 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to "a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss"). In other words, payment of the Taxes at this time affects only the timing of payment for the vast majority of the amounts at issue and will prevent additional priority claims from accruing. Therefore, payment of the Taxes will not prejudice the rights of junior creditors and should be permitted.

III. Payment of the Taxes Is an Exercise of Sound Business Judgment

12. Section 363 of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363(b), courts in this

jurisdiction require only that a debtor “show that a sound business purpose justifies” the proposed use of property. In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999); see also In re Phx. Steel Corp., 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363 of the Bankruptcy Code). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” In re Johns-Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); see also In re Tower Air, Inc., 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

13. The Debtors seek authority to pay the Taxes because the Debtors’ failure to remit the Taxes could materially diminish value and impede the Debtors’ restructuring process. Among other potential consequences: (a) the Authorities could initiate audits of the Debtors that would unnecessarily divert the Debtors’ attention from their duty to maximize value; (b) the Authorities could attempt to file liens, seek to lift the automatic stay, or pursue other remedies that will interrupt the Debtors’ efforts to effectuate a restructuring transaction; and (c) certain directors and officers might be subject to personal liability even if a failure to remit such Taxes was not a result of wrongdoing on their part, which would undoubtedly distract these key employees from their duties.

14. Courts in this jurisdiction have often authorized payment of prepetition taxes under section 363(b) of the Bankruptcy Code. See, e.g., In re Longview Power, LLC, No. 13-12211 (BLS) (Bankr. D. Del. Sept. 3, 2013) (authorizing debtors, in their sole discretion, to pay prepetition taxes in the ordinary course of business); In re Maxcom Telecomunicaciones, S.A.B. de C.V., No. 13-11839 (PJW) (Bankr. D. Del. July 25, 2013) (same); In re Conexant

Sys., Inc., No. 13-10367 (MFW) (Bankr. D. Del. Apr. 19, 2013) (same); In re Dex One Corp., No. 13-10533 (KG) (Bankr. D. Del. Mar. 19, 2013) (same); In re Prommis Holdings, LLC, No. 13-10551 (BLS) (Bankr. D. Del. Mar. 19, 2013) (same).⁵

IV. Payment of the Taxes is Warranted Under the Doctrine of Necessity

15. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The Court may use its power under section 105(a) to authorize payment of the Taxes under the “necessity of payment” rule (also referred to as the “doctrine of necessity”). See In re Lehigh & New Eng. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981).

16. In Lehigh, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. Id. (stating court may authorize payment of prepetition claims if there is the “possibility that the creditor will employ an immediate economic sanction, failing such payment”); see also In re Motor Coach Indus. Int’l, Inc., No. 08-12136, 2009 WL 330993, at *3 (D. Del. Feb. 10, 2009) (denying stay pending appeal on ground that there is no serious basis to challenge doctrine of necessity in Third Circuit); In re Just for Feet, Inc., 242 B.R. 821, 824–26 (D. Del. 1999) (noting that Third Circuit permits debtors to pay prepetition claims that are essential to continued operation of business).

17. Payment of the Taxes is warranted under the doctrine of necessity. As discussed above, the Debtors must continue to remit these amounts to the Authorities to preserve value and their ability to consummate a value-maximizing restructuring transaction. Indeed, the

⁵ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

Authorities may seek to interfere with the Debtors' restructuring process if the Taxes are not timely paid. Furthermore, the relief requested herein merely expedites the distribution to the Authorities that would otherwise be made at a later date under a chapter 11 plan.

Processing of Checks and Electronic Fund Transfers Should Be Authorized

18. The Debtors will have sufficient funds from their postpetition financing to pay or remit the Taxes in the ordinary course of business. Under the Debtors' existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the Taxes, as applicable. The Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Thus, the Debtors request that the Court authorize all applicable financial institutions to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Taxes.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

19. Under Bankruptcy Rule 6003, the Court may grant relief regarding a motion to pay all or part of a prepetition claim within 21 days after the Petition Date if the relief is necessary to avoid immediate and irreparable harm. Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001). Bankruptcy Rule 6003 does not condition relief on imminent or threatened harm to the estate alone. Rather, Bankruptcy Rule 6003 speaks of "immediate and irreparable harm" generally. Cf. Fed. R. Bankr. P. 4001(b)(2), (c)(2) (referring to "irreparable harm to the estate") (emphasis added). Indeed, the "irreparable harm" standard is analogous to the traditional standards governing the issuance of preliminary injunctions. See

9 Collier on Bankruptcy ¶ 4001.06[3] (discussing source of “irreparable harm” standard under Bankruptcy Rule 4001(c)(2)).

20. If the Debtors fail to meet the obligations imposed upon them to remit the Taxes, among other actions that may be taken, the Authorities may assess fines, penalties, and interest, and the Debtors’ restructuring process could be derailed. Further, if the relief is not granted, the Debtors’ directors and officers may be subject to personal tax-related lawsuits. These consequences would cause the Debtors’ estates immediate and irreparable harm by imposing material direct and indirect costs and impede the progress toward a comprehensive restructuring transaction. Accordingly, the Debtors respectfully submit the requirements of Bankruptcy Rule 6003 are satisfied.

Satisfaction of Bankruptcy Rules 6004(a) and 6004(h)

21. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

22. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 35 Largest Unsecured Claims; (c) counsel to PNC Bank, N.A., d/b/a Midland Loan Services, a division of PNC Bank, N.A., as successor by merger to Midland Loan Services, Inc., as collateral agent under that certain Amended and Restated Collateral Agency Agreement dated as of July 30, 2010; (d) the Internal Revenue Service; (e) the United States Department of Energy; (f) Silicon Valley Bank; (g) the Delaware Economic Development Authority; (h) counsel to the United States Department of Energy; (i) counsel to Hybrid Technology, LLC;

(j) counsel to Hybrid Tech Holdings, LLC; (k) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (l) the Authorities identified on Exhibit B hereto. As this Motion is seeking “first day” relief, within two (2) business days of the hearing on this Motion, the Debtors will cause this Motion and any order entered with respect to this Motion to be served in accordance with Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

No Prior Request

23. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as the Court deems appropriate.

Dated: November 22, 2013
Wilmington, Delaware

/s/ Laura Davis Jones

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EXHIBIT A

Proposed Order