

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TSAWD HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Objection Deadline: August 24, 2016 at 4:00 p.m. (ET)
Hearing Date: August 31, 2016 at 11:30 a.m. (ET)

**DEBTORS' MOTION FOR ORDER (A) APPROVING MODIFIED EXECUTIVE
INCENTIVE PROGRAM AND AUTHORIZING PAYMENTS THEREUNDER AND
(B) AUTHORIZING THE DEBTORS TO FILE THE UNREDACTED MODIFIED KEY
EMPLOYEE INCENTIVE PROGRAM UNDER SEAL**

TSAWD Holdings, Inc. and its affiliated debtors and debtors in possession in the above captioned chapter 11 cases (collectively, the “**Debtors**”) hereby file this motion (this “**Motion**”) for entry of an order, pursuant to sections 363(b) and 503(c) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), approving a modified executive incentive program (the “**Modified KEIP**”) for certain remaining members of the Debtors’ management team (the “**KEIP Participants**”), and authorizing incentive payments thereunder. In addition, the Debtors also are seeking authority, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, to file the identities of the KEIP Participants under seal. In support of this Motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT²

1. Prior to the commencement of the Chapter 11 Cases and until the final unavoidable decision was made to pursue a liquidation of their assets, the Debtors’ management

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: TSAWDHoldings, Inc. (9008); Slap Shot Holdings, Corp. (8209); TSAWD, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

² All terms not otherwise defined in this Preliminary Statement shall be given the meanings ascribed to them in the remainder of the Motion.

team, including the KEIP Participants, made every possible effort and pursued every possible alternative to preserve a going concern sale of the Debtors' operations, and most importantly, save thousands of jobs. The inability to preserve a going-concern business, unfortunately, was the inevitable result after every potential non-liquidation transaction had been pursued and exhausted by the Debtors and their primary stakeholders.

2. At present, the Debtors have largely concluded the liquidation of their retail inventory and sales of other important assets. However, in order to manage the completion of the liquidation process and maximize remaining value for the Debtors' estates, there is much left to accomplish for the Debtors' management team. In particular, now that the GOB Sales have been completed and the reconciliation process has begun, the Debtors face negotiations with the Agent over various tranches of value to be realized under the Agency Agreement, realization of value for certain remaining non-inventory assets, and management of the wind-down budget and costs through to the end of the chapter 11 process. Accordingly, the Debtors believe that it is critically important to properly incentivize the three remaining members of their management team – the KEIP Participants – to achieve the goals that will maximize and preserve value for the benefit of the Debtors' stakeholders. Therefore, the Debtors hereby seek approval of the Modified KEIP on the terms and conditions set forth on Exhibit A hereto.

3. On August 2nd, this Court considered the *Debtors' Motion for Order Approving Executive Incentive Program* [Docket No. 2478] (the “**Original Incentive Plan Motion**”), which requested approval of payments by the Term Loan Agent (defined below) to certain of the Debtors' employees in order to ensure that these employees were appropriately incentivized to make every effort to maximize value for the Debtors' estates. The Debtors expressly did not seek approval pursuant to section 503(c) of the Bankruptcy Code because, they

asserted, section 503(c) did not apply to the proposed payments. In denying the Original Incentive Plan Motion the Court disagreed, and ruled that the original proposed key employee incentive payments (the “**Original Incentive Plan**”) were inappropriate, notwithstanding that the costs of the Original Incentive Plan were to be borne by the Term Loan Agent.

4. The Debtors are mindful of the statements made by the Court at the hearing on August 2nd. However, when faced with the remaining tasks to be accomplished in terms of both value to be maximized and costs to be managed, the Debtors were compelled to bring the current motion pursuant to section 503(c) of the Bankruptcy Code because of the critical nature of the relief sought herein. Moreover, the Debtors heeded the Court’s admonition, and as described in greater detail below, the Original Incentive Plan has been significantly altered to address the concerns raised by the Court. The metrics included in the Original Incentive Plan have been replaced and, in accordance with the Modified KEIP, KEIP Participants will only be entitled to incentive bonus payments if the Debtors are able to (a) trigger the sharing provisions provided for in the Agency Agreement, and (b) achieve a considerable cost-savings relative to the Controllable Costs included in the Wind-Down Budget.³ These metrics are not easy to achieve and, in fact, may not occur. Rather, in order for the KEIP Participants to be entitled to any incentive compensation under the Modified KEIP, the Debtors will be required to satisfy challenging financial-based targets that are appropriate proxies when considering the success of a liquidating chapter 11. Moreover, the maximum aggregate amount payable under the Modified KEIP is approximately half of the maximum aggregate amount payable under the Original Incentive Plan and, the Modified KEIP has no guaranteed payment

³ The Wind-Down Budget was approved by the Court’s *Order Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 Approving the Settlement Agreement By and Among the Debtors, the Official Committee of Unsecured Creditors and Wilmington Savings Fund Society, FSB, as the Term Loan Agent*. See Docket No. 2702.

component. Instead, payments are expressly conditioned on the estate receiving considerable value over and above that currently anticipated by the Debtors.

5. The Debtors will present evidence at the hearing to consider this Motion and demonstrate that the incentive-based metrics of the Modified KEIP satisfy the requirements of the Bankruptcy Code and precedent in this District, as the metrics are only triggered upon the achievement of considerable value for the Debtors' estates. The Debtors worked closely with their outside advisors to ensure that the Modified KEIP is market-based and in line with competitive practice both for companies in the retail industry and those in chapter 11 – including debtors that have gone through a liquidating chapter 11 process. It is imperative to put in place appropriate business and operational incentive metrics for the KEIP Participants as soon as possible, and any further delay risks significantly undermining the Debtors' ability to successfully wind-down their liquidation process and business in a manner that maximizes value to the greatest extent possible for their estates and stakeholders.

6. Accordingly, the Debtors respectfully request that the Court approve the Modified KEIP in order to ensure that (a) an appropriate incentive plan is in place for the KEIP Participants as soon as practicable and (b) as a result, the Debtors will best position themselves to maximize recoveries for their estates.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors consent 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 in connection herewith consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105, 363(b), and 503(c) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

GENERAL BACKGROUND

8. On March 2, 2016 (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession. No trustee or examiner has been appointed in the Chapter 11 Cases. On March 10, 2016, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Committee**”).

9. Information regarding the Debtors’ history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of these Chapter 11 Cases is set forth in the *Declaration of Jeremy Aguilar in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* [Docket No. 22] (the “**First Day Declaration**”), which was filed on the Petition Date.

FACTS SPECIFIC TO THE RELIEF REQUESTED

A. The Liquidation Process

10. On the Petition Date, the Debtors filed the *Debtors' Motion, Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, Fed. R. Bankr. P. 2002, 6003, 6004, 6006, 9007, 9008 and 9014 and Del. Bankr. L.R. 2002-1, 6004-1 and 9006-1, for Entry of (A) an Order (I) Approving Bid Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Scheduling an Auction for and Hearing to Approve Sale of Assets, (III) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of Sale, (IV) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving Form and Manner of Notice Thereof, and (VI) Granting Related Relief; and (B) an Order Authorizing and Approving (I) the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Rights, Encumbrances, and Other Interests, (II) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Related Relief* [Docket No. 106] (the "**Sale Motion**").

11. Following the Petition Date, the Debtors solicited interest in substantially all of their assets, including their leasehold interests in nonresidential real property and their inventory and FF&E (such inventory and FF&E, the "**Retail Inventory**"). Unfortunately, the Debtors did not receive any going concern bids for their assets on an enterprise level, and were forced to accept the bid submitted by a contractual joint venture composed of (i) Gordon Brothers Retail Partners, LLC, (ii) Hilco Merchant Resources, LLC, and (iii) Tiger Capital Group LLC (collectively, the "**Agent**") for their Retail Inventory.

12. On May 24, 2016, the Court entered that certain *Order Pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, Approving Sale of Debtors' Assets and*

Granting Related Relief [Docket No. 2081] (the “**Sale Order**”) approving the agency agreement entered into by and between the Agent and the Debtors (the “**Agency Agreement**”). Consistent with the relief granted thereby, the Agent conducted “going out of business” sales (the “**GOB Sales**”) at the Debtors’ remaining store locations through July 28, 2016 and liquidated substantially all of the Debtors’ remaining Retail Inventory.

13. At this time, the Debtors have liquidated all of their significant saleable assets.⁴ However, a number of critical tasks remain in connection with the liquidation process and the wind-down of the Debtors’ operations. For example:

- The Debtors must manage the remaining tasks related to the GOB Sales process, which include the considerable challenge of working with the Agent regarding the final reconciliation and recoveries for the Debtors under the Agency Agreement;
- The Debtors have a potentially sizeable amount of non-inventory assets that must be monetized before the chapter 11 process is complete, including credit card holdbacks, letters of credit, utility deposits, vendor debit balances, and miscellaneous personal property and equipment located at the Debtors’ corporate headquarters and data center; and
- The Debtors have a number of substantial tasks that must be completed in connection with the orderly wind-down of their affairs, such as filing tax returns, implementing a health care plan for remaining employees, archiving critical data, rationalizing the IT systems to a platform appropriate for the wind-down process, erasing personally identifiable customer and employee information from the Debtors’ computer systems, and terminating the Debtors’ 401(k) plan.

If the Debtors are successful in these efforts, there is potentially a significant amount of additional proceeds that will come into the Debtors’ estates. Finally, it is important to note the Debtors must accomplish these tasks while remaining in compliance with an extremely

⁴ In addition to the relief granted pursuant to the Sale Order, the Debtors have generated substantial value through the sale of certain other assets, including their intellectual property and leasehold interests.

constricted wind-down budget [Docket No. 2595] (the “**Wind-Down Budget**”), which incidentally is even more aggressive than the initial wind-down budget that the Debtors and FTI negotiated with the Term Loan Agent.

B. The Modified KEIP

14. Due to the challenges posed by the liquidation and wind-down processes, the Debtors, Stephen Coulombe (the Debtors’ Chief Restructuring Officer), FTI Consulting, Inc. (the Debtors’ financial advisor) (“**FTI**”), and the Debtors’ counsel, designed the Modified KEIP with the goal of maximizing the value of the Debtors’ assets for the benefit of the estates and incentivizing the KEIP Participants to achieve that goal.

15. The Debtors have identified three members of the management team⁵ whose institutional knowledge and skills are essential to maximizing the value of the Debtors’ estates during the remainder of the Chapter 11 Cases. The KEIP Participants are identified in the schedule attached hereto as Exhibit A.⁶ Throughout the Chapter 11 Cases, the KEIP Participants have maintained most of their normal responsibilities related to the Debtors’ operations and retail activity and have assumed the significantly greater responsibilities that correspond with managing the affairs of a chapter 11 debtor in possession. Although as noted above the cases are in wind-down mode, the Debtors require a substantial commitment from each of the KEIP Participants if the Debtors are to maximize estate value during the remainder of the liquidation and wind-down processes. The Debtors submit that payments proposed to be made under the Modified KEIP are narrowly tailored to incentivize the key members of the management team,

⁵ One of the participants under the Original Incentive Plan resigned following the Court’s ruling regarding the Original Incentive Plan Motion.

⁶ To protect the privacy of the KEIP Participants and minimize detrimental impacts on employee morale, the names of the KEIP Participants and their positions will only be provided to the Court, the U.S. Trustee, the Debtors’ prepetition and post-petition secured lenders, and the Committee.

focus their efforts on the task at hand and not on their next career moves, and are the means to ensure that value is maximized in these cases.

16. The Debtors did not pick as a basis for the Modified KEIP random metrics that are easy to achieve. Instead the Debtors retained FTI to, among other things, review the Debtors' needs during the remainder of the Chapter 11 Cases and design a Modified KEIP that satisfied those needs and meets the requirements for executive incentive plans under the Bankruptcy Code (including a comparison of the Modified KEIP with other incentive based programs that have been approved for other comparable companies in chapter 11 after the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). The Debtors will present evidence that the Modified KEIP is reasonable, cost-effective, and will only be triggered if the Debtors and their estates receive considerable corresponding value during the remainder of the Chapter 11 Cases.

17. The KEIP Participants will receive incentive compensation associated with the Modified KEIP based upon two value-driven metrics (the "**KEIP Metrics**"):

- a. GOB Sale Process: The contribution (the "**GOB Contribution**"), if any, based upon the success of the GOB Sales process shall be calculated based upon the extent to which the Debtors trigger the sharing provision in the Agency Agreement. Under section 3.2 of the Agency Agreement, a sharing of profits is paid to the Debtors after the guarantee amount (101.0% of inventory cost) plus the amount of the agency fee (6.0%) is achieved. If sharing is triggered, the GOB Contribution will be 7.5% of the excess proceeds paid to the Debtors, up to a maximum of \$1,100,000.
- b. Management of Costs: The contribution (the "**Costs Contribution**"), if any, associated with the management of costs during the remainder of the Chapter 11 Cases shall be calculated based upon the extent to which controllable costs (the "**Controllable Costs**") are minimized. The Controllable Costs, which total \$24.7 million in the Wind-Down Budget, equal operating cash disbursements, plus professional fees, plus costs under the Court-approved employee retention plan, but excluding

sales taxes. The Costs Contribution will be 7.5% of Controllable Cost savings, up to a maximum amount of \$325,000.

18. The maximum cost of the Modified KEIP is \$1,425,000. Under the Modified KEIP, the maximum individual incentive bonus payments will range from \$165,000 to \$673,750. Incentive bonus payments will be forfeited if a KEIP Participant resigns voluntarily without “good reason” or is terminated “for cause” (each as defined in the Form Release attached hereto as Exhibit B). Finally, the KEIP Participants will only be eligible for payments under the Modified KEIP if they continue to provide the services required by the Debtors, fully support the liquidation process and Chapter 11 Cases, and execute the Form Release.

RELIEF REQUESTED

19. By this Motion, the Debtors request entry of: (i) an order pursuant to sections 363(b) and 503(c) of the Bankruptcy Code that approves the Modified KEIP and authorizes the Debtors to make the payments as provided for thereunder, and (ii) an order pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 authorizing the Debtors to file the unredacted Modified KEIP under seal.

BASIS FOR RELIEF REQUESTED

A. The Modified KEIP is an Incentive Program Permitted Under Section 503(c)(3)

20. The Modified KEIP is not a retention or severance plan of the type referenced in sections 503(c)(1) and (2). Rather, the Modified KEIP is an incentive plan which is narrowly tailored to those remaining members of the management team that can make the greatest impact on the outcome of the Chapter 11 Cases. Further, the payments under the Modified KEIP vary depending upon whether the efforts of the KEIP Participants produce actual, quantifiable results. The Modified KEIP is not designed to provide the KEIP Participants with financial security in the event that they are no longer employed by the Debtors, nor is it

intended primarily as a way to retain the KEIP Participants as employees of the Debtors. Rather, the Modified KEIP is a narrowly tailored program for three key members of the management team, and it is designed to maximize the value to be received and maintained by the estates throughout the remainder of the Chapter 11 Cases.

21. Here, it is clear that the payments incentivize and reward achievement of performance based on specific goals and targets and do not provide payment for retention or severance and therefore the KEIP is not governed by sections 503(c)(1) or (c)(2) of the Bankruptcy Code. Under the KEIP, the Debtors will not make any payments to any KEIP Participant solely because such KEIP Participant remains employed by the Debtors. The KEIP Participants are entitled to receive incentive bonuses only if the challenging KEIP Metrics are achieved. Courts in this jurisdiction frequently approve similar incentive plans that are tied to performance targets. *See, e.g., In re RadioShack Corporation*, Case No. 15-10197 (BLS) (Bankr. D. Del. March 4, 2015) (approving incentive payments tied to sale proceeds); *In re Coldwater Creek Inc.*, Case No. 14-10867 (BLS) (Bankr. D. Del. June 6, 2014) (approving incentive payments to executives based on net cash flow from a liquidation sale); *In re Longview Power, LLC*, Case No. 13-12211 (BLS) (Bankr. D. Del. Dec. 19, 2013) (approving incentive payments to senior executives based upon the achievement of certain goals driven by the debtors' chapter 11 timeline and the desire to limit the costs of the cases); *In re Trident Microsystems, Inc.*, Case No. 12-10069 (CSS) (Bankr. D. Del. July 10, 2012) (approving incentive payments to senior managers based on distributions to creditors). Furthermore, in this context, to achieve the goals of the Modified KEIP, the KEIP Participants are required to go above and beyond their normal duties if they are to successfully deliver additional value during the remainder of the Chapter 11 Cases.

22. While the KEIP Participants may be insiders within the meaning of the Bankruptcy Code, the KEIP has been crafted with great care to ensure the metrics directly incentivize and motivate participants to maximize estate value. Although a byproduct of the KEIP may be that the KEIP Participants are encouraged to continue their employment with the Debtors, that effect does not convert the KEIP into a retention-driven program. *See In re Global Home Prods., LLC*, 369 B.R. at 786 (Bankr. D. Del. 2007) (finding that proposed incentive programs were “primarily incentivizing and only coincidentally retentive” and noting, “The fact that ... all compensation has a retention element” did “not reduce the Court’s conviction” that the debtors’ primary goal in approving the incentive plans was “to create value by motivating performance”). As a consequence, the Modified KEIP is not a retention or severance plan of the type referenced in sections 503(c)(1) and (2) of the Bankruptcy Code. *See* 11 U.S.C. § 503(c)(1)-(2). Rather, the Modified KEIP is governed by section 503(c)(3) of the Bankruptcy Code, and should be allowed by this Court so long as it is “justified by the facts and circumstances of the case.”

B. The Modified KEIP Should Be Approved as a Reasonable Exercise of the Debtors’ Business Judgment

23. Section 503(c)(3) of the Bankruptcy Code requires that contemplated payments to a debtor’s employees outside of the ordinary course of business be “justified by the facts and circumstances of the case.” 11 U.S.C § 503(c)(3). The majority of courts have found that this standard is no different from the business judgment standard under section 363(b). *See In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) (collecting cases); 4 *Collier on Bankruptcy* ¶ 503.17[4]; *see also In re Nobex Corp.*, No. 05-20050 (MFW), 2006 Bankr.

LEXIS 417, at *8 (Bankr. D. Del. Jan. 19, 2006) (finding that “sale-related” incentive pay satisfied the requirements of section 363 of the Bankruptcy Code).⁷

24. Section 363(b)(1) of the Bankruptcy Code allows a debtor in possession to use property of the estate “other than in the ordinary course of business” after notice and a hearing, in the exercise of the debtor’s business judgment. 11 U.S.C. § 363(b)(1); *see also, e.g., In re Martin*, 91 F.3d 389, 395 (3d. Cir. 1996) (stating that under normal circumstances, courts will defer to debtor’s judgment in using property under section 363(b) if there is legitimate business justification). Therefore, the estate’s property may be used other than in the ordinary course of business if the debtor can show a “sound business purpose” for such use. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“[t]he rule we adopt requires that a judge determining a §363(b) application expressly find from the evidence presented before him [supports a] good business reason to grant the application.”); *In re Del. Hudson Ry. Co.*, 124 B.R. 169, 179 (Bankr. D. Del. 1991). If a debtor shows a valid business purpose, the court applies the “business judgment rule,” 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 interest of the company.” *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985).

25. Further, courts frequently consult a six factor test in considering whether to approve an incentive plan. For instance, the court in *In re Global Home Products, LLC* examined the following factors:

⁷ Although the Debtors believe that the business judgment rule applies to the “facts and circumstances” test of section 503(c)(3), some courts have applied a slightly higher bar. *See In re Pilgrim’s Pride Corp.*, 401 B.R. 229, 236-37 (Bankr. N.D. Tex. 2009) (finding that a proposed transfer was in the best interests of creditors and the debtor’s estate in addition to the business judgment standard). Even if this Court were to consider these additional factors, however, the Debtors believe that they are satisfied because the Modified KEIP is designed to maximize estate value for the benefit of all creditors and the Debtors’ estates.

- (a) Whether the plan was calculated to achieve the desired performance;
- (b) Whether the costs of the plan were reasonable in the context of the debtor's assets;
- (c) Whether the plan was consistent with industry standards;
- (d) Whether the debtor engaged in due diligence related to the need for the plan, investigated which key employees needed to be incentivized and what types of plans were generally available in the debtor's particular industry; and
- (e) Whether the debtor received independent counsel in performing due diligence and in creating and authorizing the incentive compensation.

See In re Global Home Prods., 369 B.R. 778, 786 (Bankr. D. Del. 2007).

26. In this case, the Debtors have a clear and legitimate business purpose for requesting the Court's authorization of the Modified KEIP. As discussed above, the Modified KEIP was created with the goal of maximizing estate value through the remainder of the liquidation process and wind-down of operations. In conjunction with their advisors, the Debtors have carefully crafted an incentive program that provides payments to the KEIP Participants only upon hitting meaningful and challenging targets, which are far from "lay-ups" given the circumstances of the Chapter 11 Cases, and are directly tied to maximizing estate value.

27. Further, the factors examined by the court in *In re Global Home Products* weigh strongly in favor of the Modified KEIP. As discussed above, the Modified KEIP has been designed to maximize estate value, and has been tailored to those members of the management team who are most vital to accomplishing this goal. Although the Debtors cannot forecast exactly how much would be paid to the KEIP Participants, the benefits received by the Debtors as a result of the Modified KEIP far exceed the costs. The Debtors and their advisors have performed an extensive review of insider incentive plans, including plans utilized in other retail chapter 11 cases and other liquidating chapter 11 cases, and have determined that the Modified

KEIP is within the range of industry practice and reasonable under the facts and circumstances of these cases.

28. The Debtors believe that adoption of the Modified KEIP is a proper exercise of their business judgment. The Modified KEIP will incentivize the KEIP Participants to maximize the value of the Debtors' estates and to undertake the additional responsibilities necessary to add value throughout the remainder of the Chapter 11 Cases. In light of the circumstances of the Chapter 11 Cases, the KEIP Participants have greater responsibilities and are the individuals best-positioned to drive value to the Debtors' estates. It is therefore crucial that the KEIP Participants are properly incentivized. The skills, knowledge and experience that the KEIP Participants possess are essential to the success of the Chapter 11 Cases.

29. In light of the foregoing, the Debtors submit that implementing the Modified KEIP is a valid exercise of their business judgment and is in the best interests of their estates, creditors and stakeholders.

C. The Court Should Authorize the Debtors to File the Unredacted Modified KEIP Under Seal

30. In connection with the Original Incentive Plan Motion, the Debtors filed a motion seeking authority to file certain commercially sensitive and proprietary information under seal [Docket No. 2480] (the "**Original Seal Motion**"), which motion was granted by the Court [Docket No. 2727]. The information contained in the Modified KEIP that the Debtors seek to protect is the same type of information that was redacted in connection with the filing of the Original Incentive Plan Motion. Therefore, by this motion, for the same reasons set forth in the Original Seal Motion, the Debtors respectfully request authority to file the unredacted Modified KEIP under seal.

D. The Court Should Grant a Waiver of the 14-Day Stay

31. Finally, the Debtors request a waiver of the 14-day stay that would otherwise apply to the Court's approval of the Modified KEIP pursuant to Bankruptcy Rule 6004(h). In order to implement the foregoing successfully, the Debtors must be able to provide certainty to the KEIP Participants that they will be compensated for their efforts to maximize value of the Debtors' estates during the Chapter 11 Cases. Therefore, the Court should approve the waiver of the 14-day stay under Bankruptcy Rule 6004(h).

NOTICE

32. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) Riemer & Braunstein LLP (attn.: Donald Rothman) as counsel for (i) Bank of America, N.A., in its capacity as Administrative Agent and Collateral Agent under the Second Amended and Restated Credit Agreement, dated as of May 17, 2012, and (ii) certain DIP Lenders under the Debtors' proposed postpetition financing facility; (c) Brown Rudnick LLP (attn.: Robert Stark and Bennett Silverberg) as counsel for (i) Wilmington Savings Fund Society, FSB as Administrative Agent and Collateral Agent (the "**Term Loan Agent**") under the Amended and Restated Credit Agreement, dated as of May 3, 2006 and amended and restated as of November 16, 2010 and (ii) certain Term Lenders under the Amended and Restated Credit Agreement, dated as of May 3, 2006 and amended and restated as of November 16, 2010; (d) Choate, Hall & Stewart LLP (attn.: Kevin Simard) as counsel for (i) Wells Fargo Bank, National Association, in its capacity as FILO Agent under the Second Amendment to Second Amended and Restated Credit Agreement, dated as of November 3, 2015, and (ii) certain DIP Lenders under the Debtors' proposed postpetition financing facility; (e) O'Melveny & Meyers LLP (attn: John Rapisardi) as counsel for certain holders of 11.5% Senior Subordinated Notes Due February 19,

2018 under the Securities Purchase Agreement, dated as of May 3, 2006; (f) all holders of 11.5% Senior Subordinated Notes Due February 19, 2018 under the Securities Purchase Agreement, dated as of May 3, 2006; (g) proposed counsel to the Committee; and (h) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. The Debtors respectfully submit that, in light of the nature of the relief requested, no other notice need be given.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (i) enter an order substantially in the form attached hereto as Exhibit C granting the relief sought herein with respect to the approval of the Modified KEIP; (ii) enter an order substantially in the form attached hereto as Exhibit D authorizing the Debtors to file the unredacted Modified KEIP under seal; and (iii) grant to the Debtors such other and further relief as the Court may deem proper.

Dated: August 10, 2016
Wilmington, Delaware

/s/ Kenneth J. Enos
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Counsel to the Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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Debtors.

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Objection Deadline: August 24, 2016 at 4:00 p.m. (ET)

NOTICE OF MOTION

TO: (A) THE U.S. TRUSTEE; (B) PACHULSKI STANG ZIEHL & JONES LLP, 919 NORTH MARKET ST., 17TH FLOOR, WILMINGTON, DE 19801 (ATTN: BRADFORD J. SANDLER AND COLIN ROBINSON), COUNSEL FOR THE COMMITTEE; (C) RIEMER & BRAUNSTEIN LLP (ATTN: DONALD ROTHMAN) AS COUNSEL FOR (I) BANK OF AMERICA, N.A., IN ITS CAPACITY AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT UNDER THE SECOND AMENDED AND RESTATED CREDIT AGREEMENT, DATED AS OF MAY 17, 2012, AND (II) CERTAIN DIP LENDERS UNDER THE DEBTORS' POSTPETITION FINANCING FACILITY; (D) BROWN RUDNICK LLP (ATTN: ROBERT STARK AND BENNETT SILVERBERG) AS COUNSEL FOR (I) WILMINGTON SAVINGS FUND SOCIETY, FSB AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT UNDER THE AMENDED AND RESTATED CREDIT AGREEMENT, DATED AS OF MAY 3, 2006 AND AMENDED AND RESTATED AS OF NOVEMBER 16, 2010 AND (II) CERTAIN TERM LENDERS UNDER THE AMENDED AND RESTATED CREDIT AGREEMENT, DATED AS OF MAY 3, 2006 AND AMENDED AND RESTATED AS OF NOVEMBER 16, 2010; (E) CHOATE, HALL & STEWART LLP (ATTN: KEVIN SIMARD) AS COUNSEL FOR (I) WELLS FARGO BANK, NATIONAL ASSOCIATION, IN ITS CAPACITY AS FILO AGENT UNDER THE SECOND AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT, DATED AS OF NOVEMBER 3, 2015, AND (II) CERTAIN DIP LENDERS UNDER THE DEBTORS' POSTPETITION FINANCING FACILITY; (F) O'MELVENY & MEYERS LLP (ATTN: JOHN RAPISARDI) AS COUNSEL FOR CERTAIN HOLDERS OF 11.5% SENIOR SUBORDINATED NOTES DUE FEBRUARY 19, 2018 UNDER THE SECURITIES PURCHASE AGREEMENT,

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: TSAWD Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); TSAWD, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

The Debtors were formerly known as: Sports Authority Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); The Sports Authority, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664).

DATED AS OF MAY 3, 2006; (G) ALL HOLDERS OF 11.5% SENIOR SUBORDINATED NOTES DUE FEBRUARY 19, 2018 UNDER THE SECURITIES PURCHASE AGREEMENT, DATED AS OF MAY 3, 2006; AND (H) ALL PARTIES THAT HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that TSAWD Holdings, Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) have filed the attached **Debtors’ Motion for Order (A) Approving Modified Executive Incentive Program and Authorizing Payments Thereunder and (B) Authorizing the Debtors to File the Unredacted Modified Key Employee Incentive Program Under Seal** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any objections to the relief requested in the Motion must be filed on or before **August 24, 2016 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 N. Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON **AUGUST 31, 2016 AT 11:30 A.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM #4, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

[Signature Page Follows]

Dated: August 10, 2016
Wilmington, Delaware

/s/ Kenneth J. Enos
Michael R. Nestor (No. 3526)
Kenneth J. Enos (No. 4544)
Andrew L. Magaziner (No. 5426)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
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-and-

Robert A. Klyman (CA No. 142723)
Matthew J. Williams (NY No. 3019106)
Jeremy L. Graves (CO No. 45522)
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*Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Modified KEIP

TSA Proposed KEIP Metrics

<u>Metric</u>	<u>Notes</u>	<u>Potential Incentive</u>	<u>Maximum Incentive Payment</u>			<u>Distribution and KEIP Participants [c]</u>		
			<u>(\$)</u>	<u>(%)</u>	<u>Measurement Date</u>	<u>Participant One</u>	<u>Participant Two</u>	<u>Participant Three</u>
<u>Store Closing/Agency Agreement</u> -Sharing (Sliding Scale)	[a]	7.50% of excess Proceeds to the Estate	\$ 1,100,000	77%	October 15, 2016	15%	40%	45%
<u>Winddown Budget</u> -Winddown Cost Savings	[b]	7.50% of savings relative to the \$24.7 million controllable costs in the winddown budget	<u>325,000</u>	23%	January 28, 2017	0%	45%	55%
Total			\$ 1,425,000	100%				

Notes:

[a] Per Section 3.2 of the Agency Agreement, Sharing of profits that are paid to the Estate are realized after Guarantee amount (101.0%) plus Agency Fee (6.0%) is achieved.

Any amounts above 107.0% are shared 50/50 between Agent and Merchant (Estate).

[b] Controllable costs equal operating cash disbursements plus professional fees plus KERP but excluding sales taxes from week ending 8/6/16 through week ending 1/28/17 as reflected in the Approved Winddown budget.

[c] The identities of the KEIP Participants have been filed under seal.

EXHIBIT B

Form Release Agreement

This GENERAL RELEASE (“**Release**”), dated as of this ___ day of _____, 201_, by and between the Company (as hereinafter defined) and _____ (the “**Participant**”).

WHEREAS, the Participant [was / is] an employee of TSA Stores Inc. (“**TSA**”) and / or certain of its direct and indirect affiliates (collectively, the “**Company**”); and

WHEREAS, pursuant to The Sports Authority, Inc. Executive Incentive Program (the “**Executive Incentive Program**”), the Participant is eligible for certain incentive compensation (the “**Executive Incentive Program Payments**”), contingent upon the full execution and non-revocation of this Release; and

WHEREAS, the Executive Incentive Program is subject to the approval of the United States Bankruptcy Court for the District of Delaware (the “**Court**”) in that certain case captioned In re: Sports Authority Holdings, Inc., *et al.*, Case No. 16-10527 (MFW) (the “**Case**”); and

WHEREAS, in connection with the Case, the Company filed a motion (the “**Motion**”), seeking the entry of an order (the “**Order**”) approving the Executive Incentive Program; and

WHEREAS, the terms of the Executive Incentive Program, as described in the Motion, and this Release, supersede any and all prior agreements between Participant and TSA (collectively, the “**Employment Agreements**”), whether written or oral, as to the subject matter of the Executive Incentive Program or the subject matter contained herein; and

WHEREAS, in the event of conflict, the terms of the Executive Incentive Program, as described in the Motion, and this Release, shall supersede and replace the terms of the Employment Agreements; and

WHEREAS, Participant shall forfeit any remaining Executive Incentive Program Payments following termination of Participant's employment by TSA with "Cause," as defined in the Employment Agreements; and

WHEREAS, Participant shall forfeit any remaining Executive Incentive Program Payments following resignation unless such resignation by Participant is for "Good Reason," as defined herein; and

WHEREAS, the Court has approved the Order and the Executive Incentive Program, including the Executive Incentive Program Payments pursuant thereto, on the terms and conditions set forth in the Motion; and

WHEREAS, the Participant understands, acknowledges and agrees that he shall not receive any Executive Incentive Program Payment unless he executes and does not revoke this Release;

NOW, THEREFORE, in consideration of the premises and mutual agreements contained in the Executive Incentive Program, the Participant agrees as follows:

1. Participant, knowingly and voluntarily, on Participant's own behalf and on behalf of Participant's spouse and dependents, if any, as well as on behalf of Participant's descendants, ancestors, heirs, estate, beneficiaries, executors, administrators, grantees, successors, assigns, advisors, counsel, insurers, representatives and agents, does hereby release the Company, Wilmington Savings Fund Society, FSB (the "**Prepetition Term Loan Agent**") in its capacity as administrative and collateral agent under that certain Amended and Restated Credit Agreement, dated as of November 16, 2010, by and among the Company, as Borrower, Slap Shot Holdings Corp., as Holdings, the Prepetition Term Loan Agent, and the lenders from time to time party thereto (the "**Term Loan Lenders**"), the Term Loan Lenders, and any and all of their affiliates, and each past or present officer, director, agent, employee, shareholder, member, partner, counsel, advisor, and insurer of any such entities, in their capacities as such (collectively, the "**Released Parties**"), from any and all claims made, to be made, or which might have been made of whatever nature, whether known or unknown, from the beginning of time, including those that arose as a consequence of Participant's employment by the Company, or arising out of the severance of such employment relationship, or arising out of any act committed or omitted during or after the existence of such employment relationship, all up through and including the date on which this Release is executed, including, but not limited to, those which were, could have been or could be the subject of an administrative or judicial proceeding filed by Participant or on Participant's behalf under federal, state, local or foreign law, whether by statute, regulation, in contract or tort, and including, but not limited to, every claim for front pay, back pay, wages, bonus, fringe benefit, any form of discrimination (including but not limited to, every claim of race, color, sex, religion, national origin, disability or age discrimination), wrongful termination, emotional distress, pain and suffering, breach of contract, compensatory or punitive damages, interest, attorney's fees, reinstatement or reemployment, every claim for benefits under the Employee Retirement Income Security Act, as amended or other applicable law (other than the Executive Incentive Program Payments to which the Participant is entitled or payments or benefits required under applicable law or the terms of the applicable employee benefit plan), every claim arising under the Internal Revenue Code of 1986, as amended, every claim arising under the federal, state, local or foreign employment or human rights laws, including without limitation, any claims or rights arising under the Worker Adjustment and Retraining Notification Act of 1988, as amended ("**WARN**"), and every claim arising under any state, local or foreign law similar to WARN. If any court rules that such waiver of rights to file, or have filed on Participant's behalf, any administrative or judicial charges or complaints is ineffective, Participant agrees not to seek or accept any money damages or any other relief upon the filing of any such administrative or judicial charges or complaints. Participant acknowledges and agrees that even though claims and facts in addition to those now known or believed by Participant to exist may subsequently be discovered, it is Participant's intention to fully settle and release all claims Participant may have against the Released Parties, whether known, unknown or suspected, arising up to and including the date of execution of this Release.

2. The Participant has been informed and acknowledges that Participant is also releasing any rights or claims Participant may have against the Released Parties (or any of them) under the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621, *et seq.* ("**ADEA**"), up to and including the date of execution of this Release. Participant acknowledges and agrees that Participant has been advised to consult with, has had a reasonable and sufficient

opportunity to consult with, and has consulted with, an attorney before signing this Release, and further understands that Participant has a period of twenty-one (21) calendar days during which time Participant may consider whether to accept the terms of this Release and execute it. The Participant further acknowledges and agrees that the Participant may sign this Release prior to the expiration of this twenty-one (21) day period, with any such early execution reflecting the Participant's knowing and voluntary decision with respect to the same. The Participant further acknowledges and agrees that the Participant has a right to revoke this Release as far as it extends to potential claims under the ADEA, by informing the Company of Participant's intent to revoke this Release within seven (7) calendar days following its execution. To be effective, written notice of revocation must be delivered by hand or overnight mail to the Company's general counsel at the following address: Douglas Garrett, The Sports Authority Inc., 1050 West Hampden Avenue, Englewood, Colorado 80110 by 5:00 PM (MT), with a copy to counsel to the Term Loan Agent: Bennett S. Silverberg, Brown Rudnick LLP, Seven Times Square, New York, NY 10036, and on such seventh (7th) day following the execution of this Release. No Executive Incentive Program Payments shall be made to Participant until Participant executes this Release and the revocation period described in this paragraph, which cannot be waived, has expired.

3. The Company and Participant acknowledge and agree that the releases contained in Paragraphs 1 and 2 do not, and shall not be construed to, release or limit the scope of any existing obligation of the Company (i) to indemnify Participant for Participant's acts as an employee of the Company in accordance with the bylaws of the Company and the policies and procedures of the Company that are presently in effect, but only to the extent applicable to the Participant under the circumstances then prevailing; (ii) to Participant and Participant's eligible, participating dependents or beneficiaries under any existing group welfare or retirement plan of the Company in which Participant and/or such dependents are participants, but only to the extent required under applicable law and/or the terms of the applicable benefit plan; (iii) to the Participant under the terms of the Executive Incentive Program, including any rights Participant may have to Executive Incentive Program Payments following the execution of this Release, or (iv) to the Participant for any wages that have accrued and remain unpaid as of the date that Participant is terminated, with or without Cause, or resigns, with or without Good Reason.

4. The Company and Participant acknowledge and agree that the releases contained in Paragraphs 1 and 2 do not, and shall not be construed to, release or limit the scope of any obligation of the Company's insurers to the Company and/or to the Participant under any applicable insurance policy (collectively, the "**Insurance Obligations**") or any obligation of the Company to the Participant that would have the effect of modifying or vitiating any Insurance Obligation. Notwithstanding the foregoing, the Company and the Participant understand, acknowledge and agree that, in the event that, at any time, WARN liability incurred through the date on which this Release is executed is assessed against, or imposed on, the Prepetition Term Loan Agent and/or any of the Term Loan Lenders (the "**Lender WARN Liability**"), each or both of them, as applicable, reserve the right to assert a claim with respect thereto against the Company and/or the Participant but solely to the extent that such claims, whether for contribution, indemnity or otherwise, (and the cost of defending such claims) shall be satisfied through the Insurance Obligations. Under no circumstances shall the Prepetition Term Loan Agent and/or any of the Term Loan Lenders assert any claim in respect of Lender WARN

Liability for which the Participant will be personally liable to any person or entity for any such claim or the cost of defense of such claims.

5. The Company and the Participant acknowledge and agree that this Release does not apply to claims arising after the date on which this Release is executed, provided that the revocation period described in paragraph 2 hereof has expired.

6. The Participant acknowledges and agrees that the Executive Incentive Program Payments that are conditioned upon the execution and non-revocation of this Release constitute adequate consideration for the releases contained herein and would not be made to the Participant but for the execution and non-revocation of this Release.

7. The Participant acknowledges and agrees that this Release involves consideration in addition to anything or value to which the Participant already is entitled. Such consideration comprises the Executive Incentive Program Payments to which the Participant is entitled pursuant to the Motion and the Order. For the avoidance of doubt, as a condition precedent to receiving each Executive Incentive Program Payment, the Participant must execute this Release and the revocation period therefor must expire, in each case prior to the applicable payment date under the Executive Incentive Program.

8. Provided that this Release is executed and the revocation period described in paragraph 2 hereof has expired, the Executive Incentive Program Payments due to the Participant shall be made as provided therein even if the Participant is terminated, with or without Cause, or resigns, with or without Good Reason, prior to the expiration of the revocation period described in paragraph 2 hereof.

9. For purposes of this Release, "Good Reason" means the occurrence of any of the following: (i) a reduction by TSA in the Participant's "Base Salary," as defined in the Employment Agreements, of ten percent (10%) or greater; (ii) TSA's relocation of the Participant's principal executive office to a location more than twenty-five (25) miles further from the Participant's principal executive office immediately prior to such relocation; or (iii) any other material breach by TSA of any of the terms and conditions of the Employment Agreements containing provisions relating to the Executive Incentive Program. Notwithstanding the foregoing, Good Reason shall not exist unless (a) the Participant provides written notice to TSA of the event giving rise to Good Reason within five (5) days following the initial occurrence thereof, (b) such written notice provides TSA with at least five (5) days within which to cure the purported Good Reason event, (c) such five (5)-day period expires without TSA curing the Good Reason Event and (d) Participant thereafter promptly resigns his position by sending written notice thereof to TSA .

10. If any provision of this Release is deemed by a court of competent jurisdiction to be invalid, such provision shall be deemed stricken to the extent of its invalidity without affecting the remaining provisions of this Release.

11. The Participant acknowledges and agrees that he has (i) fully considered the terms of this Release, (ii) been advised in writing, by virtue of being given this Release to review, to

consult with an attorney before signing this Release and has had an adequate opportunity to do so, and (iii) not relied on any statement by any of the Released Parties, whether express or implied, either by statement or omission, in making his decision to execute this Release.

12. The Participant voluntarily executes this Release after having had full opportunity to consult with legal counsel, and without being pressured or influenced by any person, including, without limitation, any of the Released Parties.

13. The Participant understands, acknowledges and agrees that this Release does not constitute an admission of wrongdoing by any of the Released Parties.

14. The Participant agrees not to make to any person(s) any public statement or perform or do any other act prejudicial or injurious to the reputation or goodwill of any of the Released Parties or otherwise interfere with the business of any of the Released Parties.

15. The provisions of this Release are severable, and if any provision hereof is determined by a court of competent jurisdiction or any other governing body having jurisdiction of the subject matter of this Release to be invalid, the remainder of the Release shall be construed without regard to such invalid provision and to the maximum extent enforceable under applicable law.

16. The provisions of this Release shall be governed by the laws of the State of Delaware, without regard to any provisions in respect of conflicts of laws.

17. The provisions of this Release shall survive the payment of all amounts due the Participant under the Executive Incentive Program.

18. PLEASE READ THIS RELEASE CAREFULLY. IT CONTAINS A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. THE PARTICIPANT ACKNOWLEDGES AND AGREES THAT HE HAS READ THIS RELEASE CAREFULLY, UNDERSTANDS ITS TERMS FULLY, HAS BEEN ADVISED IN WRITING TO CONSULT AN ATTORNEY REGARDING ITS SUBJECT MATTER AND HAS HAD AN ADEQUATE OPPORTUNITY TO DO SO, AND VOLUNTARILY IS ENTERING INTO THIS RELEASE.

IN WITNESS WHEREOF, the parties have executed this Release on the date first above written.

PARTICIPANT

THE COMPANY

By: _____

EXHIBIT C

Proposed KEIP Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TSAWD HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Ref. Docket No. _____

**ORDER APPROVING MODIFIED EXECUTIVE INCENTIVE
PROGRAM AND AUTHORIZING PAYMENTS THEREUNDER**

Upon the *Debtors' Motion for Order (a) Approving Modified Executive Incentive Program and Authorizing Payments Thereunder and (b) Authorizing Debtors to File Modified Key Employee Incentive Program Under Seal* (the "**Motion**")²; and it appearing that this Court has jurisdiction to consider the Motion 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 as of February 29, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: TSAWD Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); TSAWD, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

² All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. The Modified KEIP is approved on the terms described in the Motion; provided that the maximum aggregate Modified KEIP payment shall be \$1,425,000.
3. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Modified KEIP, and to make all payments provided under the Modified KEIP.
4. Notwithstanding the provisions of Bankruptcy Rules 6004 and 6006, or any applicable provisions of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Code for the District of Delaware, this Order shall not be stayed for 14 days after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14 day stay provided in such rules is hereby expressly waived and shall not apply.
5. This Court shall retain jurisdiction over the parties for the purpose of enforcing the terms and provisions of this Order.

Dated: Wilmington, Delaware
August ____, 2016

Mary F. Walrath
United States Bankruptcy Judge

EXHIBIT D

Proposed Seal Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TSAWD HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10527 (MFW)

(Jointly Administered)

Ref. Docket No. _____

**ORDER AUTHORIZING DEBTORS TO FILE
MODIFIED EXECUTIVE INCENTIVE PROGRAM UNDER SEAL**

Upon the *Debtors' Motion for Order (a) Approving Modified Executive Incentive Program and Authorizing Payments Thereunder and (b) Authorizing Debtors to File Modified Key Employee Incentive Program Under Seal* (the "**Motion**")²; and it appearing that this Court has jurisdiction to consider the Motion 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 as of February 29, 2012; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: TSAWD Holdings, Inc. (9008); Slap Shot Holdings, Corp. (8209); TSAWD, Inc. (2802); TSA Stores, Inc. (1120); TSA Gift Card, Inc. (1918); TSA Ponce, Inc. (4817); and TSA Caribe, Inc. (5664). The headquarters for the above-captioned Debtors is located at 1050 West Hampden Avenue, Englewood, Colorado 80110.

² All terms not otherwise defined herein shall be given the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, Local Rule 9018-1(b), the Debtors are authorized to file the unredacted Modified KEIP under seal, which shall remain under seal and confidential, and which shall not made available to anyone, except that copies shall be provided to: (i) this Court; (ii) the Office of the U.S. Trustee; (iii) the Debtors' prepetition and post-petition secured lenders; (iv) counsel to the Committee; and (v) others upon further Court order.
3. Each of the parties in the preceding paragraph receiving an unredacted copy of the Modified KEIP shall keep such information confidential.
4. In the event that any party files a responsive pleading to the Motion, such party shall redact any confidential information from its pleading(s) and any such confidential information included in a pleading filed with this Court shall be deemed under seal.
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
6. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware
August ____, 2016

Mary F. Walrath
United States Bankruptcy Judge