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Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NOS. 09-

In re:

TARRAGON CORPORATION, *et al.*,
Debtors-in-Possession.

Chapter 11
(Joint Administration Pending)

**NOTICE OF MOTION FOR
EMERGENCY AND FINAL ORDERS: (I)
AUTHORIZING THE DEBTORS TO (A)
SATISFY, AND TO THE EXTENT
APPLICABLE, DIRECT ADP AND ANY
PAYROLL BANKS TO HONOR, PRE-
PETITION GROSS SALARIES,
PAYROLL TAXES AND RELATED
EMPLOYEE BENEFIT OBLIGATIONS
TO THE DEBTORS' EMPLOYEES AND
(B) HONOR, IN THEIR DISCRETION,
PRE-PETITION SICK, VACATION AND
PERSONAL DAYS; AND (II)
GRANTING OTHER RELATED RELIEF**

HEARING DATE AND TIME:

January ____, 2009, at __:__ .m.

ORAL ARGUMENT REQUESTED

TO: All Parties-in-Interest

PLEASE TAKE NOTICE that pursuant to an Order Regarding Application For
Expedited Consideration of First Day Matters served herewith, on the ____ day of January, 2009,



at ____ .m., or as soon thereafter as counsel may be heard, the undersigned, proposed attorneys for Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”),¹ shall move before the assigned United States Bankruptcy Judge, at the United States Bankruptcy Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Third Floor, Newark, New Jersey, 07102, for entry of Emergency and Final Orders: (i) authorizing the Debtors to (a) satisfy, and to the extent applicable, direct ADP and any payroll banks to honor, pre-petition gross salaries, payroll taxes and related employee benefit obligations to the Debtors’ employees, and (b) honor, in their discretion, pre-petition sick, vacation and personal days; and (ii) granting other related relief (the “Motion”).

PLEASE TAKE FURTHER NOTICE that in support of the Motion, the undersigned shall rely on the Affidavit of William S. Friedman submitted in support of “First Day Motions” and the accompanying Verified Application, which collectively set forth the relevant factual and legal bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Motion is being submitted herewith.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall be presented in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters.

¹ The Debtors are Tarragon Corporation, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park Tarragon L.L.C., Fenwick Plantation Tarragon LLC, One Las Olas, Ltd., The Park Development West LLC, 800 Madison Street Urban Renewal, LLC, 900 Monroe Development LLC, Block 88 Development, LLC, Central Square Tarragon LLC, Charleston Tarragon Manager, LLC, Omni Equities Corporation, Tarragon Edgewater Associates, LLC, The Park Development East LLC, and Vista Lakes Tarragon, LLC.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NOS. 09-

In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Chapter 11
(Joint Administration Pending)

**VERIFIED APPLICATION IN SUPPORT
OF MOTION FOR EMERGENCY AND
FINAL ORDERS: (I) AUTHORIZING
THE DEBTORS TO (A) SATISFY, AND
TO THE EXTENT APPLICABLE,
DIRECT ADP AND ANY PAYROLL
BANKS TO HONOR, PRE-PETITION
GROSS SALARIES, PAYROLL TAXES
AND RELATED EMPLOYEE BENEFIT
OBLIGATIONS TO THE DEBTORS'
EMPLOYEES AND (B) HONOR, IN
THEIR DISCRETION, PRE-PETITION
SICK, VACATION AND PERSONAL
DAYS; AND (II) GRANTING OTHER
RELATED RELIEF**

HEARING DATE AND TIME:
January ____, 2009, at __:__.m.

ORAL ARGUMENT REQUESTED

TO: Honorable Judge of the
United States Bankruptcy Court

The Verified Application of Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”),¹ by and through their proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully states as follows:

I. INTRODUCTION AND JURISDICTION

1. This Verified Application is submitted in support of the Debtors’ motion for Emergency Order and Final Orders: (i) authorizing them to (A) satisfy, and to the extent applicable, direct their payroll service, Automated Data Processing (“ADP”), and any payroll banks to honor, pre-petition gross salaries, payroll taxes and related employee benefit obligations to the Debtors’ employees, and (B) honor, in their discretion, pre-petition sick, vacation and personal days; and (ii) granting other related relief (the “Motion”).

2. The Debtors’ payroll is processed through ADP in that, among other things, the Debtors wire transfer funds evidencing their gross payroll obligations to ADP two (2) days before payroll is due and, in turn, ADP either issues a paycheck from an ADP account or provides notice of a direct deposit, as the case may be, to the employees. The Debtors have, or will have, on deposit sufficient funds in their bank accounts to satisfy all the subject pre-petition employee obligations. Accordingly, ADP will not be prejudiced by an Order directing it to honor the Debtors’ checks or to fund transfer requests with respect to such amounts.

¹ The Debtors are Tarragon Corporation (“Tarragon Corp.”), Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, Tarragon Management, Inc. (“TMI”), Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park Tarragon L.L.C., Fenwick Plantation Tarragon LLC, One Las Olas, Ltd., The Park Development West LLC, 800 Madison Street Urban Renewal, LLC, 900 Monroe Development LLC, Block 88 Development, LLC, Central Square Tarragon LLC, Charleston Tarragon Manager, LLC, Omni Equities Corporation, Tarragon Edgewater Associates, LLC, The Park Development East LLC, and Vista Lakes Tarragon, LLC.

3. In addition, granting the requested relief will minimize the personal hardship the employees and their families will suffer if the pre-petition payroll obligations are not honored as a result of the Chapter 11 filings. Granting the Motion also will maintain employee morale at this critical juncture and will enhance the likelihood that the Debtors' employees will remain with the Debtors as needed through the Chapter 11 proceedings.

4. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

II. BACKGROUND

6. On January 12, 2009 (the "Filing Date"), each of the Debtors filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Since the Filing Date, the Debtors have remained in possession of their assets and continued management of their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

7. A detailed description of the Debtors' businesses and facts precipitating the filing of the Debtors' Chapter 11 proceedings is set forth in the Affidavit of William S. Friedman (the "Friedman Affidavit") submitted in support of the Debtors' various "First Day Motions." Those facts are incorporated herein by reference.

8. As set forth in the Friedman Affidavit, Tarragon Corp. and its direct and indirect, debtor and non-debtor affiliates (collectively, "Tarragon") are real estate developers, owners and managers. Tarragon operates two (2) business divisions, a real estate development division (the "Development Division") and an investment division (the "Investment Division"). The Development Division focuses on developing, renovating, building and marketing homes in

high-density, urban locations and in master-planned communities. The Investment Division owns and operates a portfolio of stabilized rental apartment communities.

9. Tarragon, through TMI, employs approximately 300 people consisting of site level and field employees (the “Field Employees”) and corporate employees (the “Corporate Employees”).² Additionally, Tarragon Corp. employs seven (7) executives (the “Executives,” which, together with the Field Employees and Corporate Employees, collectively are referred to herein as the “Employees”). By this Motion, the Debtors seek authority to honor, in the ordinary course of business, certain payroll and related obligations to their Employees owed as of the Filing Date. The Debtors also seek an Order allowing them to continue, in their sole discretion, all employee health and benefit plans and programs in effect as of the Filing Date (other than benefits that might be due pursuant to written agreements signed with the Debtors such as, for example, deferred compensation, stock options or employment agreements, which the Debtors will address by a separate motion).

A. The Debtors’ Employee Compensation Obligations

10. In the ordinary course of business, the Debtors incur payroll obligations to the Employees for the performance of services. The Debtors remit salary to all Employees on a bi-weekly basis, every other Friday. Payroll for the Field Employees is paid on the second Friday for the two (2) week period beginning Thursday and ending Wednesday. Payroll for the Corporate Employees and Executives is paid every other Friday for all work performed for the prior two (2) week period through and including the pay date, except for overtime for Corporate

² TMI serves as the payroll company for most of Tarragon’s employees. Tarragon Corp., however, through its centralized cash management system, actually funds payroll and related benefit obligations to the Employees.

Employees for the week immediately preceding the pay date. That overtime is included in the payroll for the next pay period.

11. On January 9, 2009, payroll checks were distributed to (i) Field Employees for the period December 18, 2008 through and including December 31, 2008, and (ii) Corporate Employees for the period December 29, 2008 through and including January 9, 2009, who do not receive their pay via direct deposit (the “January 9th Payroll”). The Debtors believe that some of their Employees may not have cashed their January 9th Payroll checks before the Filing Date.

12. The payroll for the period January 1, 2009 through and including January 14, 2009 is due to the Field Employees on January 23, 2009, which includes eleven (11) pre-petition days (the “Field Employee Payroll,” which, together with the January 9th Payroll, collectively shall be referred to herein as the “Pre-Petition Payroll”).³ Additionally, on January 23, 2009, payroll for the period January 10, 2009 through and including January 23, 2009 is due to the Corporate Employees and Executives, which does not include any pre-petition days.

13. The Debtors are required by law to withhold from an Employee’s wages amounts related to federal and state taxes, social security and Medicare taxes (collectively, the “Trust Fund Taxes”), and to remit the Trust Fund Taxes to the appropriate taxing authorities (collectively, the “Taxing Authorities”). ADP calculates the withholding taxes and remits them to the appropriate Taxing Authorities in connection with each processed payroll. Additionally, the Debtors are obligated to match from their own funds the social security and Medicare taxes and to remit to the Taxing Authorities based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance (collectively, the “Employer Payroll Taxes,”

³ The Field Employee Payroll totals approximately \$259,295.00.

which, together with the Trust Fund Taxes, collectively shall be referred to herein as the “Payroll Taxes”).

B. Business Expense Reimbursement

14. Customarily, the Debtors reimburse Employees who incur business expenses in the ordinary course of performing their duties on the Debtors’ behalf. Such reimbursements typically include travel and meal expenses incurred by the Employees through the use of their own funds or credit cards (the “Reimbursement Obligations”).⁴ Because the Employees do not always submit claims for reimbursement promptly, it is difficult for the Debtors to ascertain the precise amount of the Reimbursement Obligations outstanding at any particular time. Based on historical average monthly reimbursement submissions, the Debtors believe that the Reimbursement Obligations for the pre-petition period total approximately \$32,000.00.

C. Employee Benefits

15. The Debtors maintain an employee benefit policy pursuant to which Employees are provided with certain specific personal days, sick time, vacation, and holiday pay (collectively, the “Total Benefit Days”).

16. The Employees accrue vacation time at a rate of eighty (80) hours each year for the first five (5) years of employment, one-hundred twenty (120) hours per year in years six (6) through ten (10) of employment and one-hundred sixty (160) hours per year of employment thereafter. Employees who have accrued more than eighty (80) hours of vacation time as of their employment anniversary date are required to take a minimum of eighty (80) hours off during that employment year. In the event that available vacation is not used by the end of the year,

⁴ The Debtors also reimburse certain Corporate Employees, whose positions require significant travel, for car allowances in the aggregate amount of approximately \$1,000.00 per month.

Employees may carry accrued hours in one year forward to the next employment year. Unused vacation in excess of the permitted carryover, however, is forfeited. An employee who gives and works at least (2) weeks after providing notice of resignation is entitled to be paid for unused vacation time.

17. All regular full time employees are entitled to up to eight (8) hours of holiday pay for each designated holiday. In addition to designated holiday, full time employees are entitled to be paid for two (2) floating holidays.

18. Employees also accrue sick leave benefits at the rate of six (6) days per year. Unused sick leave benefits are allowed to accumulate until an employee has accrued a maximum of one-hundred twenty (120) hours of sick leave benefits, after which further accrual of sick leave benefits are suspended until sick time is used. Unused sick leave benefits are not paid to Employees while they are employed or upon termination of employment. Additionally, Employees are granted three (3) personal days per calendar year. Personal days do not carry over from one calendar year to the next.

19. It is likely that many of the Debtors' Employees have accrued and unused Total Benefit Days as of the Filing Date.

20. Additionally, in the ordinary course of business, as is customary in many large companies, the Debtors provide certain benefits to their employees including a 401(k) savings plan, a flexible spending account ("FSA"), Section 529 college savings plan, medical and dental insurance, long and short term disability insurance, and term life insurance.

21. With respect to the company-sponsored 401(k) plan, the Debtors match one hundred percent (100%) of the Employees' first three percent (3%) contribution to the 401(k) plan and fifty percent (50%) of the next two percent (2%) contribution. As of the Filing Date,

the Debtors have an outstanding 401(k) funding obligation of approximately \$44,540.11, of which approximately \$13,703.08 represents the Debtors' contributions and \$30,837.03 represents Employee withholdings.

22. The Employees' contributions to the FSA are deducted from their paychecks on a pre-tax basis. The Debtors retain the Employees' FSA deductions and wire payments to Conexis, a third-party administrator ("Conexis"), each Friday for payment claims submitted by the Employees. As of the Filing Date, \$2,477.92 is due to Employees on account of the FSA and \$2,500.00 is due to Conexis for administrative fees.

23. The Debtors provide medical and dental insurance to all full time employees through a plan administered by United Healthcare. Costs of medical and dental insurance premiums are shared between the Debtors and the Employees. The Employees' contributions are deducted from their paychecks on a pre-tax basis. The Debtors' share of these costs per month totals approximately \$157,135, representing approximately seventy-five percent (75%) of the total costs.

24. Life insurance, short term disability and long term disability insurance is provided to full time employees through a plan administered by Assurant Employee Benefits. The Debtors fund one hundred percent (100%) of the premiums for these insurance programs. The Debtors' short term disability insurance is self-insured through the Debtors and, therefore, all final claims decisions are made by the Debtors. As of the Filing Date, the Debtors estimate that the total amount of money due on account of life insurance, short term disability insurance and long term disability insurance, including premiums and claims, is \$170,000.00.

III. RELIEF REQUESTED AND BASIS THEREFOR

25. Given the timing of the Debtors' Chapter 11 filings, the Pre-Petition Payroll and Payroll Taxes constitute pre-petition obligations of the Debtors. The Debtors seek an Order

authorizing payment of the Pre-Petition Payroll and the Payroll Taxes, as well as authority to continue paying and/or otherwise honoring the other ordinary employee benefits enumerated above (collectively, the “Payroll Obligations”).⁵

26. To the extent necessary, the Debtors also request entry of an Order directing ADP to honor all outstanding checks and electronic wire transfer requests evidencing the Payroll Obligations and Payroll Taxes. None of the Employees will, through receipt of the Pre-Petition Payroll, exceed the \$10,950.00 cap contained in Section 507(a)(4) of the Bankruptcy Code.

27. The Debtors submit that the relief the Debtors seek herein is authorized pursuant to Section 363(b)(1) of the Bankruptcy Code, which provides that “[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate,” and further justified by the Court’s broad equitable powers under Section 105 of the Bankruptcy Code.

28. Section 105(a) of the Bankruptcy Code empowers the Bankruptcy Court to “[i]ssue any order, process or judgment that is necessary or appropriate to carry out the provisions of . . .” the Bankruptcy Code. As one court observed:

The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept. It was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C. & S.W. R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882) and is commonly referred to as either the “doctrine of necessity” or the “necessity of payment” rule. This rule recognizes

⁵ The Debtors’ request for authority to honor the pre-petition Total Benefit Days is not intended to convert the employees’ claim for pre-petition Total Benefit Days to administrative expense obligations of the Debtors or to obligate the Debtors in any way to compensate the employees for pre-petition Total Benefit Days in cash. In addition, this request is not intended to be an assumption of (or authorization to assume) any of the employee compensation, benefits or reimbursement policies, plans or programs of the Debtors, or any written agreement any employee might have with the Debtors, pursuant to Section 365 of the Bankruptcy Code.

the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.

In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989). Accord In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (quoting In re Penn Central Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (the “necessity of payment” doctrine permits immediate payment of claims to creditors who will not supply services or material essential to the debtor’s business until their pre-petition claims are paid). Application of the “necessity of payment” doctrine here establishes that the Debtors should be authorized to honor their Pre-Petition Payroll and related obligations.

29. First, if the Debtors are not authorized to pay their outstanding pre-petition obligations to the Employees, the Debtors’ relationship with the Employees will be adversely affected and the Employees’ morale, dedication, confidence, and cooperation might be compromised irreparably. The Employees’ unmitigated support for the Debtors’ reorganization efforts is critical and cannot be jeopardized. Allowing the Debtors to satisfy the Pre-Petition Payroll and honor their ordinary employee benefits and entitlements will instill confidence in the Employees that the Debtors are in a position to satisfy, and intend to satisfy, their post-petition payroll and related obligations and will ensure that the Debtors have a sufficient support system to operate in and ultimately emerge from Chapter 11.

30. Equally important, absent an Order granting the relief requested in the Motion, the Employees will suffer significant financial hardship. Some of the Debtors’ Employees live from paycheck to paycheck and rely exclusively on receiving their full compensation from the Debtors to pay their daily living expenses. Denying them their pre-petition salaries will be detrimental and unjust, especially in today’s challenging economic times.

31. Finally, payment of the Debtors' pre-petition payroll obligations will not prejudice other creditors of the Debtors' estates as the Employees, in any event, are entitled to priority status under Section 507(a)(4) of the Bankruptcy Code with respect to such obligations of the Debtors and payment in full pursuant to a plan of reorganization. See 11 U.S.C. § 1129(a)(9)(B).

32. With respect to the Payroll Taxes, the payment of such taxes also will not prejudice the Debtors' other creditors as the relevant Taxing Authorities generally would hold priority claims under Section 507(a)(8) of the Bankruptcy Code with respect to such obligations and are entitled to payment in full pursuant to a plan of reorganization. See 11 U.S.C. § 1129(a)(C). Moreover, the portion of the Payroll Taxes withheld from the Employee's wages on behalf of the applicable Taxing Authority are held in trust by the Debtors. As such, that portion of the Payroll Taxes is not property of the Debtors' estates under Section 541 of the Bankruptcy Code. See, e.g., Begier v. IRS, 496 U.S. 53, 110 S.Ct. 2258, 11 L.Ed.2d 46 (1990).

33. For all these reasons and authorities, the Debtors respectfully submit that ample cause exists to grant the relief requested in the Motion. The Debtors further submit that because the relief requested in this Motion, including the Emergency Order, is necessary to avoid "immediate and irreparable harm" to the Debtors, for the reasons set forth herein, Federal Rule of Bankruptcy Procedure 6003 has been satisfied.

VERIFICATION

WILLIAM S. FRIEDMAN, of full age, certifies as follows:

1. I am the Chief Executive Officer of Tarragon Corporation, one of the within debtors and debtors-in-possession (collectively, the “Debtors”). As such, I have full knowledge of the facts set forth in, and am duly authorized to make, this Application on the Debtors’ behalf.
2. I have read the foregoing Verified Application and certify that the statements contained therein are true based upon my personal knowledge, information and belief.
3. I am aware that if any of the factual statements contained in the Verified Application are willfully false, I am subject to punishment.

DATED: January 12, 2009

/s/ William S. Friedman
WILLIAM S. FRIEDMAN

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)
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In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Case Nos. 09-

Chapter 11

Hearing Date:

EMERGENCY INTERIM ORDER AUTHORIZING THE DEBTORS TO SATISFY, AND, TO THE EXTENT APPLICABLE, DIRECTING ADP AND ANY PAYROLL BANKS TO HONOR, CERTAIN PRE-PETITION GROSS SALARIES AND PAYROLL TAXES OF THEIR EMPLOYEES PENDING HEARING ON “FIRST DAY” MOTIONS

The relief set forth on the following pages, numbered two (2) and three (3), is hereby **ORDERED**.

(Page 2)

Debtors: TARRAGON CORPORATION, *et al.*
Case Nos. 09-
Caption of Order: EMERGENCY INTERIM ORDER AUTHORIZING THE DEBTORS TO SATISFY, AND, TO THE EXTENT APPLICABLE, DIRECTING ADP AND ANY PAYROLL BANKS TO HONOR, CERTAIN PRE-PETITION GROSS SALARIES AND PAYROLL TAXES OF THEIR EMPLOYEES PENDING HEARING ON “FIRST DAY” MOTIONS

Upon emergency request of Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”),¹ as delineated in the Affidavit of William S. Friedman in Support of the Debtor’s Various “First Day Motions” and Emergency Interim Order Authorizing the Debtors to Satisfy, and, to the Extent Applicable, Directing ADP and Any Payroll Banks to Honor, Certain Pre-Petition Gross Salaries and Payroll Taxes of their Employee Pending Hearing on “First Day” Motions; and the Court having considered the Debtors’ motion for an Order: (i) authorizing them to (A) satisfy, and, to the extent applicable, directing ADP and any payroll banks to honor, pre-petition gross salaries, payroll taxes and related employee benefit obligations to the Debtors’ employees, and (B) to honor, in their discretion, pre-petition sick, vacation and personal days; and (ii) granting other related relief (the “Payroll Motion”); and it appearing that the payroll and related obligations that are the subject of the emergency request have been fully funded to ADP and, in turn, in certain circumstances, ADP has issued payroll checks from its own bank account; and it further appearing that the relief requested is in the best

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(Page 3)

Debtors: TARRAGON CORPORATION, *et al.*
Case Nos. 09-
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interests of the Debtors, their estates and creditors; and after due deliberation and sufficient cause appearing therefor;

IT IS ORDERED as follows:

1. Pending the hearing on the Payroll Motion, ADP and any payroll banks hereby are directed to honor any checks to the Debtors’ employees for payroll and related obligations dated as of January 9, 2009.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)
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In re:

TARRAGON CORPORATION, *et al.*,

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Case Nos. 09-

Chapter 11

Hearing Date:

FINAL ORDER: (I) AUTHORIZING THE DEBTORS TO (A) SATISFY, AND TO THE EXTENT APPLICABLE, DIRECT ADP AND ANY PAYROLL BANKS TO HONOR, PRE-PETITION GROSS SALARIES, PAYROLL TAXES AND RELATED EMPLOYEE BENEFIT OBLIGATIONS TO THE DEBTORS' EMPLOYEES, AND (B) HONOR, IN THEIR DISCRETION, PRE-PETITION SICK, VACATION AND PERSONAL DAYS; AND (II) GRANTING OTHER RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through five (5), is hereby **ORDERED**.

(Page 2)

Debtor: TARRAGON CORPORATION, *et al.*
Case Nos: 09-
Caption of Order: FINAL ORDER: (I) AUTHORIZING THE DEBTORS TO (A) SATISFY, AND TO THE EXTENT APPLICABLE, DIRECT ADP AND ANY PAYROLL BANKS TO HONOR, PRE-PETITION GROSS SALARIES, PAYROLL TAXES AND RELATED EMPLOYEE BENEFIT OBLIGATIONS TO THE DEBTORS' EMPLOYEES AND, (B) HONOR, IN THEIR DISCRETION, PRE-PETITION SICK, VACATION AND PERSONAL DAYS; AND (II) GRANTING OTHER RELATED RELIEF

THIS MATTER having been opened to the Court by Cole, Schotz, Meisel, Forman & Leonard, P.A., proposed counsel for Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the "Debtors"),¹ upon a motion for entry of an Emergency Order and Final Order: (i) authorizing the Debtors to (a) satisfy, and to the extent applicable, direct ADP and any payroll banks to honor, pre-petition gross salaries, payroll taxes and related employee benefit obligations to the Debtors' employees, and (b) honor, in their discretion, pre-petition sick, vacation and personal days; and (ii) granting other related relief (the "Motion");² and it appearing that good and sufficient notice of the Motion having been provided in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters previously entered by the Court, as evidenced by the Affidavit of Service filed with the Court; and the Court

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² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Verified Application submitted in support of the Motion (the "Application")

(Page 3)

Debtor: TARRAGON CORPORATION, *et al.*
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having considered all the motion papers, the opposition thereto, if any, and the arguments of counsel, if any; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estate and creditors and is necessary to avoid immediate and irreparable harm to the Debtors; and other good cause having been shown,

IT IS ORDERED as follows:

1. To the extent the relief set forth in this paragraph previously has not been approved by that Emergency Interim Order Authorizing the Debtors to Satisfy, and, to the Extent Applicable, Directing ADP and Any Payroll Banks to Honor, Certain Pre-Petition Gross Salaries and Payroll Taxes of their Employees Pending Hearing on "First Day" Motions entered by the Court on January ____, 2009, the Debtors hereby are authorized and empowered, but not directed, in their sole and absolute discretion, on a case by case basis, to satisfy in the ordinary course of business the Payroll Obligations including, but not limited to the Pre-Petition Payroll, Payroll Taxes and Reimbursement Obligations.

2. The Debtors hereby are authorized and empowered, but not directed, in their sole and absolute discretion, on a case by case basis, to honor the Employees' earned pre-petition personal days, sick time, vacation, and holiday pay (the "Total Benefit Days") by allowing the Employees to use, in the Debtors' sole discretion and consistent with the Debtors' policies and

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Debtor: TARRAGON CORPORATION, *et al.*

Case Nos: 09-

Caption of Order: FINAL ORDER: (I) AUTHORIZING THE DEBTORS TO (A) SATISFY, AND TO THE EXTENT APPLICABLE, DIRECT ADP AND ANY PAYROLL BANKS TO HONOR, PRE-PETITION GROSS SALARIES, PAYROLL TAXES AND RELATED EMPLOYEE BENEFIT OBLIGATIONS TO THE DEBTORS' EMPLOYEES AND, (B) HONOR, IN THEIR DISCRETION, PRE-PETITION SICK, VACATION AND PERSONAL DAYS; AND (II) GRANTING OTHER RELATED RELIEF

procedures, all or portions of their pre-petition Total Benefit Days post-petition in the ordinary course.

3. Notwithstanding the relief granted in the preceding paragraph, nothing herein shall be construed to create or impose any administrative expense liability on the Debtors with regard to the pre-petition Total Benefit Days or to obligate the Debtors to compensate their Employees for pre-petition Total Benefit Days in cash.

4. The relief granted herein shall not be deemed or construed as an assumption or an authorization to assume any of the employee compensation, benefits or reimbursement policies, plans, or programs of the Debtors or the Executive Agreements pursuant to Section 365 of the Bankruptcy Code.

5. Any and all financial institutions honoring the aforementioned obligations to the Debtors' Employees, including ADP, are authorized and directed to receive, process, honor and pay all checks, drafts, and automatic clearing house and wire transfers drawn on bank accounts of the Debtors or ADP to the extent authorized herein or directed by the Debtors, whether presented, drawn or issued before or after the commencement of the bankruptcy case for payment by the holder thereof, provided that sufficient funds, whether deposited prior to or subsequent to the commencement of the bankruptcy case, are in, or otherwise are available

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pursuant to the Debtors' cash management system to fund, the relevant bank accounts to cover and permit payment thereof.

6. The Debtors be and are hereby authorized (consistent with this Order) to issue post-petition checks (or electronic fund transfers) in payment of pre-petition obligations to their employees, including, but not limited, to wage garnishments, child support payments, and alimony, covered by a check that is dishonored or rejected as a consequence of the commencement of these bankruptcy cases.

7. The Debtors' proposed counsel shall serve a copy of this Order on all parties-in-interest by regular mail within seven (7) days hereof.