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Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)		
In re:)	Chapter 11	
)		
GLOBAL A&T ELECTRONICS LTD., <i>et al.</i> , ¹)	Case No. 17-23931 (RDD)	
)		
Debtors.)	(Joint Administration Requested)	
)		

**DEBTORS' MOTION FOR ENTRY OF ORDER
AUTHORIZING THE DEBTORS TO CONTINUE THEIR PREPETITION
BUSINESS OPERATIONS, POLICIES, AND PRACTICES AND PAY RELATED
CLAIMS IN THE ORDINARY COURSE OF BUSINESS ON A POSTPETITION BASIS**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state the following in support of this motion (this "Motion"):

Relief Requested²

1. The Debtors seek entry of an order, substantially in the form attached hereto as

Exhibit A (the "Order"), authorizing the Debtors to continue their prepetition business operations,

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification, registration, or like number, include: Global A&T Electronics Ltd. (9744); Global A&T Finco Ltd. (N/A); UGS America Sales Inc. (7511); United Test and Assembly Center Ltd. (070H); UTAC (Shanghai) Co., Ltd. (919N); UTAC (Taiwan) Corporation (9456); UTAC Cayman Ltd. (2839); UTAC Dongguan Ltd. (6386); UTAC Group Global Sales Ltd. (0797); UTAC Headquarters Pte. Ltd. (214R); UTAC Hong Kong Limited (1526); UTAC Thai Holdings Limited (4876); and UTAC Thai Limited (6324). The debtors' service address for purposes of these chapter 11 cases is: 11 Martine Avenue, 12th Floor, White Plains, New York 10606.

² Capitalized terms used but not defined have the meanings given to them elsewhere in this Motion.

policies, and programs and to pay General Unsecured Claims (as defined herein), on a postpetition basis in the ordinary course of business.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), 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.

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

4. The bases for the relief requested herein are sections 105, 363, and 364 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and rule 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Background

5. The Debtors operate a global enterprise that performs assembly and testing services for customers that utilize semiconductors (*i.e.*, microchips) in a variety of products, including smartphones, tablets, personal digital assistants, Bluetooth and WiFi equipment, personal computers, and automotive, industrial, and medical applications. The Debtors manage their business enterprise from their corporate headquarters in Singapore. The Debtors employ approximately 10,000 highly trained engineers, technicians, and corporate, legal, and sales professionals at locations in the People’s Republic of China, the Republic of China, Singapore,

Thailand, and the United States. As of December 31, 2016, the Debtors generated gross revenue of approximately \$687 million and posted earnings before interest, taxes, and amortization of approximately \$189.2 million.

6. On November 2, 2017, the Debtors entered in the Global Settlement, Forbearance, and Restructuring Support Agreement (the “Restructuring Support Agreement”) with all of their major stakeholders, pursuant to which the Debtors agreed to a comprehensive financial reorganization of their capital structure. Pursuant to the Restructuring Support Agreement, on November 20, 2017, the Debtors commenced a prepetition solicitation process and distributed the *Debtors’ Joint Chapter 11 Plan of Reorganization* (the “Prepackaged Plan”) and a related disclosure statement (the “Disclosure Statement”) to creditors entitled to vote to accept the Prepackaged Plan. As of December 13, 2017, the proposed Prepackaged Plan voting deadline, 100 percent of the holders of claims entitled to vote to accept or reject the Prepackaged Plan had voted to accept the Prepackaged Plan.

7. On December 17, 2017 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. In connection therewith, the Debtors requested that the Court schedule a combined hearing to approve the adequacy of the Disclosure Statement and confirm the Prepackaged Plan.

8. The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”) has not appointed an official committee of unsecured creditors in these chapter 11 cases.

9. Additional information regarding the Debtors’ business, their capital structure, and the circumstances leading to these chapter 11 filings is contained in the *Declaration of Michael E.*

Foreman, General Counsel and Authorized Officer of Global A&T Electronics Ltd., (I) in Support of Debtors' Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Rule 1007-2 (the "First Day Declaration"), filed in connection herewith.

Prepetition Claims and Programs

10. In the ordinary course of business, the Debtors incur numerous fixed, liquidated, and undisputed obligations (collectively, the "General Unsecured Claims") to a variety of creditors, including employees, utilities, insurers, governmental authorities, ordinary course service providers, equipment sellers and servicers, and numerous other vendors and unsecured creditors (collectively, the "General Unsecured Creditors"). As further described below, the General Unsecured Claims fall into two principal categories: Trade Claims; and Employee Compensation and Benefit Claims (as each is defined below).

11. Here, the Prepackaged Plan—which has garnered overwhelming support from creditors entitled to vote on the Prepackaged Plan—provides that the Debtors will satisfy all General Unsecured Claims in full in cash in the ordinary course of business. And, pursuant to the Restructuring Support Agreement, the Debtors' senior secured noteholders have agreed to permit the Debtors to continue to access cash collateral during the pendency of these chapter 11 cases, thereby providing the Debtors with the funding necessary to satisfy the General Unsecured Claims in the ordinary course of business. Therefore, the requested relief will merely affect the timing of payments to the Debtors' General Unsecured Creditors, substantially all of which are based outside of the United States in jurisdictions with very different cultural views and laws on bankruptcy. This may lead certain General Unsecured Creditors to initiate self-help remedies against the Debtors in foreign jurisdictions if the relief in this Motion is not granted based upon an erroneous belief that they are not subject to the jurisdiction of the Court, the automatic stay provisions of section 362(a) of the Bankruptcy Code, or any penalties imposed by this Court for any violations

of the automatic stay. Accordingly, authorizing the Debtors to pay undisputed prepetition General Unsecured Claims of the General Unsecured Creditors as such claims become due and payable in the ordinary course of business will minimize any disruption to the Debtors’ business, allow for a smooth and expeditious reorganization in these chapter 11 cases, and lay the groundwork for an essential element of the Prepackaged Plan, which leaves such claims unimpaired.

I. Trade Claims.

12. The Debtors incur a variety of foreign and domestic obligations in the ordinary course of business, including expenses related to taxes and fees, utility services, insurance, goods, and services to ensure they meet the needs of their customers and maintain smooth operations throughout the various jurisdictions in which the Debtors operate, some of which may be entitled to administrative expenses status pursuant to section 503(b)(9) of the Bankruptcy Code (collectively, the “Trade Claims”). The following table summarizes the Trade Claims that the Debtors estimate are accrued but unpaid as of the Petition Date.

Category	Description of Services Provided	Estimated Amount Outstanding as of the Petition Date
Insurance Policies	Insurance policies administered by multiple third-party insurance carriers providing coverage for, among other things, directors’ and officers’ liability (including tail coverage), property liability, business interruption risk, marine cargo liability, general liability, and general risk.	\$575,000
Taxes and Fees	Sales taxes, use taxes, annual report and licensing fees, personal property taxes, franchise taxes and fees, and various other governmental taxes, fees, and assessments.	\$8.5 million
Service Claims	Claims related to the supply of goods or services, domestic and foreign, including those that may be entitled to liens, import and export charges, and/or 503(b)(9) claims.	\$70.0 million
Utility Services	Electricity services at certain sales offices in the United States that support the Debtors’ domestic customers.	<i>de minimis</i>
Total estimated amount		\$79 million

II. Employee Compensation and Benefit Claims.

13. As of the Petition Date, the Debtors employed approximately 10,100 full-time employees at locations in the People's Republic of China, the Republic of China, Singapore, Switzerland, Thailand, and the United States (collectively, the "Employees"). The Employees perform a wide variety of functions critical to the administration of these chapter 11 cases. Their skills, knowledge, and understanding of the Debtors' business are essential to preserving operational stability and efficiency. In many instances, the Employees include highly-trained engineers, technicians, and corporate professionals who possess unique technological skills and experience, or who have developed long-standing relationships with semiconductor customers and suppliers that are essential to the Debtors' business. These individuals cannot be easily replaced. Without the continued, uninterrupted services of the Employees, the ability of the Debtors to maintain and administer their estates will be materially and irretrievably impaired.

14. The Employees principally consist of Operational Employees and Corporate Employees (as each such term is defined below):

- As of the Petition Date, approximately 9,900 Employees were employed at the Debtors' operational facilities in the People's Republic of China, the Republic of China, Singapore, and Thailand, and were involved in the day-to-day operations of the assembly and testing of the semiconductors (collectively, the "Operational Employees").
- As of the Petition Date, the Debtors also employed approximately 200 Employees as corporate, financial, and legal managers, supply chain managers, sales professionals, production specialists, industrial engineers, R&D engineers, quality control specialists, finance personnel, human resources personnel, marketing personnel, and information technology specialists at their corporate headquarters in Singapore, their legal headquarters in White Plains, New York, and/or their sales offices located in Switzerland and the United States (collectively, the "Corporate Employees").

15. In addition to the Employees, the Debtors have also historically retained from time-to-time specialized individuals as independent contractors (collectively, the "Independent Contractors") to complete discrete projects, as well as temporary workers (collectively,

the “Temporary Staff”) from several staffing agencies (collectively, the “Staffing Agencies”) to fulfill certain duties, including, among other things, consulting on specific research, development, and technology projects, recruiting services, and providing Employee training and seminars. As of the Petition Date, the Debtors engaged approximately 200 Independent Contractors and Temporary Staff in the aggregate, although this number fluctuates based on the Debtors’ specific needs at any given time.

16. The vast majority of the Employees, Independent Contractors, and Temporary Staff rely exclusively on their compensation and benefits to pay their daily living expenses and support their families. These workers will be exposed to significant financial constraints if the Debtors are not permitted to continue paying their compensation and providing them with health and other benefits in the ordinary course of business.

17. To minimize the personal hardship the Employees would suffer if prepetition Employee-related obligations are not paid when due or as expected, and to maintain stability in the Debtors’ workforce during the administration of these chapter 11 cases, the Debtors seek authority to pay and honor certain prepetition claims relating to, among other things, wages, salaries, and other compensation, payroll services and processing, various withholding taxes and other amounts withheld (including garnishments, Employees’ share of insurance premiums, taxes, and retirement savings contributions), reimbursable expenses, director fees and reimbursements, health plans, insurance benefits, retirement savings plans, time-off benefits (including sick and vacation time), incentive recognition programs, severance programs, monthly allowances, and other benefits the Debtors historically have provided to Employees (collectively, the “Employee Compensation and Benefit Claims”).

18. The following table summarizes the Employee Compensation and Benefit Claims that the Debtors estimate are accrued but unpaid as of the Petition Date.

Category	Description of Employee Compensation and Benefit Claims	Estimated Amount Outstanding as of the Petition Date
Employee Compensation and Unpaid Wages	General Unsecured Claim with respect to Employees' salaries, wages, and overtime compensation.	\$21.0 million
Unpaid Independent Contractor and Temporary Staff Amounts	General Unsecured Claim with respect to amounts payable to Independent Contractors, Temporary Staff, and Staffing Agency for critical services rendered including, consulting on specific research, development, and technology projects, recruiting services, and providing Employee training and seminars.	\$200,000
Unpaid Employee Withholding Obligations	General Unsecured Claim with respect to amounts withheld from Employee compensation and unpaid wages related to, among other things, various income taxes, health and welfare programs, government-issued pensions, garnishments, child support and service charges, various governmental social programs, health insurance premiums and retirement savings contribution.	\$1.8 million
Unpaid Employer Obligations	General Unsecured Claim with respect to amounts due under applicable law requiring the Debtors to remit certain funds to the appropriate taxing authority on account of various taxes and fees for, among other things, unemployment insurance, Social Security and Medicare taxes, health and insurance programs, skill development programs, and foreign worker programs.	\$1.4 million
Reimbursable Expenses	General Unsecured Claim with respect to reimbursement claims of certain Employees or credit card invoices on behalf of Employees for approved expenses incurred on behalf of the Debtors in the scope of their employment.	\$200,000
Supplemental Private Insurance Plans	General Unsecured Claim with respect to certain Employees eligible to receive supplemental private insurance coverage for services and benefits that are not covered by the government-sponsored health plans.	\$100,000
UGS Health Benefits	General Unsecured Claim with respect to certain U.S. Employees eligible to receive private health insurance benefits, including medical, dental, vision, and disability benefits.	\$10,000
Government-Sponsored Retirement Plans	General Unsecured Claim with respect to contributions required under applicable law in Singapore and Thailand to government-mandated retirement programs.	\$2.0 million
Incentive and Recognition Programs	General Unsecured Claim with respect to certain incentive programs established for the benefit of the Debtors' <i>non-insider</i> Employees, including, among other programs, sales and non-sales incentive programs, contract and work period completion programs, retention programs, and recognition programs.	\$3.5 million

Category	Description of Employee Compensation and Benefit Claims	Estimated Amount Outstanding as of the Petition Date
Monthly Allowances	General Unsecured Claim with respect to housing, automotive, and food allowances of certain non-resident Employees.	\$400,000
Total estimated amount		\$30.61 million

19. Prior to confirmation of the Prepackaged Plan, the Debtors shall not make any non-ordinary course bonus, incentive, or severance payments to any Employee that is an “insider” (as such term is defined in section 101(31) of the Bankruptcy Code) or satisfy any Employee Wage and Benefit Claims payable to any individual Employee that exceeds the statutory cap of \$12,850 set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, in each case, without further order of the Court. Furthermore, prior to confirmation of the Prepackaged Plan, the Debtors will not satisfy any Employee Compensation and Benefit Claims with respect to reimbursable expenses of insider Employees or the Debtors’ incentive and recognition programs.

Basis for Relief

I. The Court Should Authorize the Payment of the General Unsecured Claims Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.

20. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing debtor to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (authorizing the payment of prepetition claims to suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

21. Pursuant to section 363(b) of the Bankruptcy Code, courts may authorize payment of prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification); *see also James A. Phillips*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *CoServ*, 273 B.R. at 497.

22. In addition, courts may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may authorize preplan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See, e.g., In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the “doctrine of necessity” stands for the principle that a bankruptcy court may allow preplan payments of prepetition obligations where such payments are critical to the debtor’s reorganization). Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See e.g., Ionosphere Clubs*, 98 B.R. at 176.

23. The relief requested herein is appropriate and warranted under the circumstances. The authority to satisfy the General Unsecured Claims in the initial days of these cases without

disrupting the Debtors' operations will maintain the integrity of the Debtors' supply chain, facilitate the Debtors' accounts receivable collection and sale of inventory, and allow the Debtors to efficiently administer these chapter 11 cases. Failure to pay the General Unsecured Claims could potentially destroy value that would otherwise inure to the benefit of the Debtors' estates.

24. Where, as here, debtors have shown that the payment of prepetition claims is critical to maximize the value of their estates, courts in this district and other jurisdictions have routinely authorized payments to international vendors and lien claimants on account of prepetition claims. *See, e.g., In re Avaya Inc.*, No. 17-10089 (SMB) (Bankr. S.D.N.Y. Feb. 10, 2017) (approving the payment of prepetition claims of shipper, warehousemen, and other critical claimants on the basis that shippers and warehousemen could refuse to deliver or return the debtors' goods if prepetition claims were not satisfied); *In re BCBG Max Azria Global Holdings, LLC*, No. 17-10466 (SCC) (Bankr. S.D.N.Y. Mar. 29, 2017) (authorizing the payment of prepetition claims of various lien claimants and foreign vendors to avoid disruption to the debtors' business operations); *In re Sabine Oil & Gas Corp.*, No. 15-11835 (SCC) (Bankr. S.D.N.Y. Oct. 15, 2015) (approving the payment of prepetition claims of shipper and warehousemen claimants on the basis that shippers and warehousemen could refuse to deliver or return the debtors' goods if prepetition claims were not satisfied); *In re AMR Corp.*, No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 29, 2011) (authorizing payment of all claims to critical international creditors up to an estimated \$355 million); *see also In re Pac. Sunwear of Calif., Inc.*, No. 16-10882 (LSS) (Bankr. D. Del. Apr. 8, 2016) (approving the payment of prepetition claims arising from the receipt of merchandise from foreign and domestic vendors on the basis that the vendors would withhold the debtors' merchandise and disrupt the debtors' supply chain if not paid); *In re Quiksilver, Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Sept. 10, 2015) (approving payment of prepetition claims and ongoing costs arising from

the debtors' vast network of shippers, including global vendors, global freight forwarders, and other parties that maintain the debtors' international supply chain in order to prevent any disruption to the debtors' business).³

25. Moreover, no parties in interest will be prejudiced by the relief requested herein because all General Unsecured Claims are unimpaired and will be paid in full pursuant to the Prepackaged Plan. The relief sought here seeks to alter only the timing, not the amount of payments. Delaying payments to the General Unsecured Claimants could harm the business, which could result in injury to the Debtors' estates and all their stakeholders. In addition, the parties to the Restructuring Support Agreement, the constituencies that include holders of approximately 97 percent in principal face amount of the Initial Notes Claims (as defined in the Prepackaged Plan) and approximately 98 percent in principle face amount of the Additional Notes Claims (as defined in the Prepackaged Plan), consist of the overwhelming majority of the only two voting classes under the Prepackaged Plan and support the relief sought in this Motion.

26. Allowing the Debtors to pay the General Unsecured Claims is especially appropriate where, as here, doing so is consistent with the "two recognized policies" of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust Savs. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999). Based on these circumstances, the Debtors submit that the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code.

³ Because of the voluminous nature of the orders cited herein, such order have not been attached to this Motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

II. Certain Employee Compensation and Benefit Claims Are Entitled To Priority Treatment.

27. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain Employee Compensation and Benefit Claims to priority treatment. As priority claims, the Bankruptcy Code generally requires that the Debtors pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for: (a) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; and (b) contributions to an employee benefit plan). To the extent that an Employee receives no more than \$12,850 on account of claims entitled to priority, the relief sought with respect to Employee Compensation and Benefit Claims only affects the timing of payments to Employees, and does not have any material negative impact on recoveries for general unsecured creditors. Indeed, the Debtors submit that the payment of the Employee Compensation and Benefit Claims at this time enhances value for the benefit of all interested parties. Finding, attracting, and training new qualified talent would be extremely difficult and would most likely require higher salaries, guaranteed bonuses, and more comprehensive compensation packages than are currently provided to Employees.

III. Payment of Certain Employee Compensation and Benefit Claims Is Required by Law.

28. The Debtors seek authority to pay Employee Compensation and Benefit Claims with respect to withholding obligations and the withholding taxes to the appropriate third-party payees. These amounts principally represent Employee earnings that governments, Employees, and/or judicial authorities have designated for deduction from certain applicable Employee compensation. Indeed, certain Employee Compensation and Benefit Claims with respect to withholding obligations and the withholding taxes are not property of the Debtors' estates because

the Debtors have withheld such amounts on another party's behalf. *See* 11 U.S.C. § 541(b)(1), (d). Further, applicable law requires the Debtors to withhold certain tax payments from the Employee compensation and to pay such amounts to the appropriate taxing authority. *See, e.g.*, 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the withholding obligations and the withholding taxes held by the Debtors may not be property of the Debtors' estates, the Debtors request authorization to transmit any such amounts to the proper parties in the ordinary course of business.

IV. Payment of the Taxes and Fees is Authorized by the Bankruptcy Code.

29. Many of the General Unsecured Claims with respect to taxes and related fees are collected or withheld by the Debtors on behalf of the applicable governmental authorities and are held in trust by the Debtors. *See, e.g.*, I.R.C. § 7501 (stating that certain taxes and fees are held in trust). As such, these taxes and fees are not property of the Debtors' estates under section 541 of the Bankruptcy Code. *See, e.g.*, 11 U.S.C. § 541(d); *Begier v. U.S. Internal Rev. Serv.*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not an avoidable preference since funds are not the debtor's property); *In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (finding that sales tax required by applicable law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same). To the extent these "trust fund" taxes are collected, they are not property of the Debtors' estates under section 541(d) of the Bankruptcy Code. *See In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 104–05 (Bankr. E.D. Pa. 1987). Because

the Debtors may not have an equitable interest in funds held on account of such “trust fund” taxes, the Debtors should be permitted to pay those funds to the governmental authorities as they become due.⁴

Processing of Checks and Electronic Fund Transfers Should Be Authorized

30. The Debtors have sufficient funds to pay the amounts described in this Motion by virtue of expected cash flows during the chapter 11 cases and anticipated access to cash collateral. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment with regard to a General Unsecured Claim. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

31. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, granting the relief requested herein is essential to the Debtors’ ability to transition their operations into these chapter 11 cases and maintain the value of their estates postpetition. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ ability to maintain their estates at this critical juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and

⁴ For the avoidance of doubt, the Debtors hereby request authority to pay the taxes and fees as provided herein regardless of whether such taxes and fees constitute trust fund obligations.

irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

32. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the Order, as applicable, is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the Debtors’ rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors’ rights to subsequently dispute such claim.

Motion Practice

33. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

34. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and

that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

35. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the indenture trustee under the Debtors' senior secured notes; (d) Milbank, Tweed, Hadley & McCloy LLP, counsel to an *ad hoc* committee of initial senior secured noteholders; (e) Dechert LLP, counsel to an *ad hoc* committee of initial senior secured noteholders; (f) Ropes & Gray LLP, counsel to an *ad hoc* committee of additional senior secured noteholders; (g) counsel to the Debtors' ultimate equity sponsors; (h) the United States Attorney's Office for the Southern District of New York; (i) the Internal Revenue Service; (j) the Environmental Protection Agency; (k) the office of the attorneys general for the states in which the Debtors operate; (l) the Securities and Exchange Commission; (m) the holders of the General Unsecured Claims; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

36. No prior request for the relief sought in this Motion has been made to this or any other court.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: December 17, 2017
New York, New York

/s/ Marc Kieselstein

Marc Kieselstein, P.C.

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- and -

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Gregory F. Pesce (*pro hac vice* pending)

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
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GLOBAL A&T ELECTRONICS LTD., <i>et al.</i> , ¹)	Case No. 17-23931 (RDD)
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**ORDER AUTHORIZING THE DEBTORS
TO (I) PAY CERTAIN PREPETITION OBLIGATIONS
AND (II) CONTINUE CERTAIN PREPETITION PROGRAMS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order (this “Order”), authorizing the Debtors to the Debtors to continue their prepetition business operations, policies, and programs and to pay General Unsecured Claims, on a postpetition basis in the ordinary course of business, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification, registration, or like number, include: Global A&T Electronics Ltd. (9744); Global A&T Finco Ltd. (N/A); UGS America Sales Inc. (7511); United Test and Assembly Center Ltd. (070H); UTAC (Shanghai) Co., Ltd. (919N); UTAC (Taiwan) Corporation (9456); UTAC Cayman Ltd. (2839); UTAC Dongguan Ltd. (6386); UTAC Group Global Sales Ltd. (0797); UTAC Headquarters Pte. Ltd. (214R); UTAC Hong Kong Limited (1526); UTAC Thai Holdings Limited (4876); and UTAC Thai Limited (6324). The debtors’ service address for purposes of these chapter 11 cases is: 11 Martine Avenue, 12th Floor, White Plains, New York 10606.

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

found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein on a final basis.
2. The Debtors are authorized, in their sole discretion, to continue their prepetition business operations, policies, and programs and pay, without acceleration of any existing payment terms, any accrued but unpaid prepetition General Unsecured Claims, on a postpetition basis in the ordinary course of business; *provided* that, prior to confirmation of the Prepackaged Plan, the Debtors shall not make any non-ordinary course bonus, incentive, or severance payments to any Employee that is an "insider" (as such term is defined in section 101(31) of the Bankruptcy Code) or satisfy any Employee Wage and Benefit Claims payable to any individual Employee in excess of the statutory cap of \$12,850 set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, in each case, without further order of the Court; *provided, further*, that the Debtors shall not accelerate payment of any General Unsecured Claims.
3. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or

the Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights or the rights of any other person under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

5. Any payments made by the Debtors pursuant to the authority granted in this Order must be in compliance with, and shall be subject to, the requirements imposed on the Debtors under the interim and final orders, as applicable, approving and governing the Debtors' use of cash collateral.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any of the Prepetition Claims.

7. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

10. The Debtors and their affiliates are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion (including, without limitation, making copies of this Order, the Motion, and any materials or other information related thereto available in any local language in a jurisdiction in which the Debtors or their affiliates operate).

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

White Plains, New York
Dated: _____, 2017

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE