

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:	:	Chapter 11
GENERAL WIRELESS OPERATIONS	:	Case No. 17-_____
INC. DBA RADIOSHACK, <u>et al.</u> , <sup>1</sup>	:	(Joint Administration Requested)
Debtors.	:	
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**MOTION FOR AN ORDER AUTHORIZING THE DEBTORS  
TO (I) MAINTAIN CERTAIN CUSTOMER PROGRAMS AND (II) HONOR  
OR PAY RELATED PREPETITION OBLIGATIONS TO THEIR CUSTOMERS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) move (the “Motion”), pursuant to sections 105(a), 363 and 507(a)(7) of title 11 of the Bankruptcy Code: (i) authorizing the Debtors to (a) maintain certain Customer Programs (as defined below) and (b) honor or pay certain prepetition obligations related to the Customer Programs (collectively, the “Customer Obligations”); and (ii) granting certain related relief. In support of this motion, the Debtors incorporate the statements contained in the Declaration of Dene Rogers in Support of First Day Pleadings (the “First Day Declaration”) filed contemporaneously herewith and further respectfully represents as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. sections 157 and 1334 and the *Amended Standing Order of Reference from the United States District*

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

*Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. section 157(b). The Debtors confirm their consent pursuant to Local Rule 9013-1(f) 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.

2. Venue for this matter is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 363 and 507(a)(7) of the Bankruptcy Code; (ii) Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and (iii) Local Rules 6004-1 and 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

## **BACKGROUND**

### ***General Background***

4. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors’ cases.

6. Simultaneously with the filing of this Motion, the Debtors have sought an order pursuant to Bankruptcy Rule 1015(b) that would provide for the joint administration of these cases and for consolidation for procedural purposes only.

7. An overview of the Debtors’ history and businesses, a summary of the events leading to the commencement of these chapter 11 cases, and the facts supporting this Motion are

set forth in the *Declaration of Dene Rogers in Support of Chapter 11 Petitions and First Day Motions*, filed contemporaneously herewith and incorporated by reference herein.

***The Debtors' Customer Programs Generally***

8. The Debtors, in the ordinary course of their businesses, engage in certain marketing and sales practices that are, among other things, (i) targeted to develop and sustain a positive reputation for their goods in the marketplace and (ii) designed to attract new customers and to enhance loyalty and sales among the Debtors' existing customer base. These customer-targeted practices (collectively, the "Customer Programs") include, but are not limited to, those practices described in the following paragraphs.

9. Return and Exchange Policies. Consistent with industry practice, the Debtors maintain return, refund and credit policies with respect to both cash and credit purchases to accommodate their customers' needs (collectively, the "Refund Policies"). These policies provide the Debtors' customers with comfort that they will be able to receive a refund or other appropriate adjustment if the product is not to their satisfaction. With exceptions for certain products (which may be subject to a shorter return period or ineligible for returns), the Refund Policies generally permit returns, refunds, or credit within thirty days of purchase. During 2016, the average monthly cost to honor the Refund Policies was approximately \$3.73 million. By this Motion, the Debtors seek authorization to maintain, with modifications as appropriate in the Debtors' sole discretion to account for these chapter 11 cases, the Refund Policies with respect to merchandise purchased prior to the Petition Date. After the Petition Date, by their *Emergency Motion for Interim and Final Orders Authorizing Debtors to Conduct Store Closing Sales and Related Relief* filed on this date, the Debtors seek authority to conduct store closing and similarly themed sales, where all sales will be final. As such, the Debtors do not plan to continue the Refund Policies with respect to merchandise purchased after the Petition Date.

10. The Gift Card Program. The Debtors maintain a program by which their customers can purchase gift cards that can be redeemed for merchandise at a later date (the "RadioShack Gift Card Program"). Gift cards are sold to customers through customer purchases at one of the Debtors' retail locations or in lieu of merchandise in connection with certain policies of the Debtors, including customer returns without a receipt (the "RadioShack Purchased Gift Cards"). As of the Petition Date, approximately \$250,000 in RadioShack Purchased Gift Cards were outstanding. In 2016, on average each month, customers redeemed approximately 22% of the total value of the RadioShack Purchased Gift Cards purchased or outstanding during such month. Additionally, from time to time, customers may be issued gift cards as a promotional reward in conjunction with purchases of certain products and/or services. In particular, certain customers received gift cards (at no additional cost to the customers) issued by the Debtors when they purchased new Sprint mobile service activations in connection with holiday promotions offered in November and December 2016 (the "RadioShack Holiday Reward Gift Cards"). As of the Petition Date, approximately \$374,000 in RadioShack Holiday Reward Gift Cards were outstanding. Customers may also redeem valid legacy RadioShack gift cards issued by RS Legacy Corporation, the preceding owner of the RadioShack retail business (the "Legacy Gift Cards"). The average amount of monthly redemptions of Legacy Gift Cards in 2016 was approximately \$5,300, with an average of 450 redemption transactions per month. From December 2, 2015 to December 2, 2016, customers in possession of Legacy Gift Cards have had the option to file a claim with RS Legacy for the value of their Legacy Gift Cards, or in the alternative, redeem fifty percent of the value of the Legacy Gift Card on certain products at the Debtors' stores upon launch of RadioShack Gift Card Program. During the past seven (7) months, however, Legacy Gift Card redemption rates at the Debtors' stores have been

appreciably negligible in comparison to the total outstanding amount of the Legacy Gift Cards. By this Motion, the Debtors seek authorization, but not the obligation, to honor the RadioShack Purchased Gift Cards and the Legacy Gift cards outstanding as of the Petition Date for a period of thirty (30) days following the Petition Date. The Debtors will not honor the RadioShack Holiday Reward Gift Cards after the Petition Date. The Debtors will post notices at their stores and on their retail website to inform customers of the changes to the manner in which the various gift cards will be honored. The Debtors will no longer issue any gift cards following the Petition Date.

11. Extended Service Contract and Warranty Programs. The Debtors historically offered extended service contracts (the "Extended Service Contracts") to customers that were provided, marketed and administered by certain third parties (the "Third Party Providers"). The Extended Service Contracts were not included in a product's cost, were purchased separately, and were contracts directly between the Third Party Providers and the customers. The Debtors are filing a separate motion to reject the contracts with the Third Party Providers *nunc pro tunc* to the Petition Date and will no longer continue to offer the Extended Service Contract program.

12. The Debtors also offer warranties on private label products (the "RadioShack Warranties") akin to manufacturers' warranties. The RadioShack Warranties are not purchased separately, and the cost is included in the cost of the product purchased. The majority of the RadioShack Warranties permit the customer to return a covered, defective product to one of the Debtors' locations for a replacement. Because the RadioShack Warranties are directly associated with the Debtors and the Debtors' private label products, failure to honor the RadioShack Warranty obligations would harm customer confidence in the Debtors and their products. As a result, the Debtors seek authority to continue honoring their obligations, which consist primarily

of product replacement, pursuant to the RadioShack Warranties, with regard to products purchased prior to the Petition Date. After the Petition Date, by their *Emergency Motion for Interim and Final Orders Authorizing Debtors to Conduct Store Closing Sales and Related Relief* filed on this date, the Debtors seek authority to conduct store closing and similarly themed sales, where all sales will be final. As such, the Debtors do not plan to continue to offer RadioShack Warranties with respect to sales occurring after the Petition Date.

**RELIEF REQUESTED**

13. The Debtors request entry of an order authorizing them to continue the Customer Programs as they deem appropriate in their discretion, to honor and pay, in their discretion, the Customer Obligations arising prior to the Petition Date and to renew, modify, terminate or replace such Customer Programs in their discretion is necessary to avoid significant disruption to the Debtors' operations and is in the best interests of the Debtors' estates.<sup>2</sup>

**BASIS FOR RELIEF REQUESTED**

***The "Doctrine of Necessity" Provides a Basis for Honoring the Customer Obligations***

14. Section 363(b)(1) of the Bankruptcy Code provides: "The trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary

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<sup>2</sup> Nothing contained herein is intended or shall be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim against the Debtors would constitute a claim for a Customer Obligation; or (v) the assumption of any contract.

or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

15. Courts have repeatedly recognized "the existence of the judicial power to authorize a debtor . . . to pay prepetition claims where such payment is essential to the continued operations of the debtor." In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); see also In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (finding that a debtor is entitled to pay certain prepetition creditors upon a showing that the payment is "essential to the continued operation of the business") (citations omitted). The United States Supreme Court first articulated the equitable common law principle commonly referred to as the "doctrine of necessity" over 125 years ago in Miltenberger v. Logansport, C. & S.W.R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882). "The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of prepetition claims when such payment is necessary for the debtor's survival during chapter 11." In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999).

16. Under the doctrine of necessity, a bankruptcy court may exercise its equitable power to authorize a debtor to pay critical prepetition claims, even though such payment is not explicitly authorized under the Bankruptcy Code. See In re Columbia Gas Sys., Inc., 136 B.R. 930, 939 (Bankr. D. Del. 1992) (citing In re Lehigh & New England Rwy. Co., 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that "if payment of a prepetition claim 'is essential to the continued operation of [the debtor], payment may be authorized.'").

17. The bankruptcy court's exercise of its authority under the "doctrine of necessity" is appropriate to carry out specific statutory provisions of chapter 11, specifically sections 1107(a), 1108 and 363(b)(1) of the Bankruptcy Code, which collectively authorize a debtor in

possession to maintain and operate the debtor's business and use estate property outside of the ordinary course of business. Indeed, a debtor in possession operating a business under section 1108 of the Bankruptcy Code has a duty to protect and preserve the value of its business, and prepetition claims may be paid if necessary to perform the debtor's duty. See In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this duty can only be fulfilled by the preplan satisfaction of a prepetition claim.").

18. This Motion satisfies the foregoing criteria, as the relief sought herein is essential to preserve the value of the Debtors' business, property and assets. The Debtors operate in a very competitive sector. As such, the Debtors cannot afford to present anything less than a "business as usual" appearance to the public during the early stages of these cases. Much of the success and viability of the Debtors' businesses are dependent upon brand loyalty, reputation and confidence of their customers. The continued support of customers is necessary to the success of the Debtors' businesses and the preservation of the value of their estates. Were the Debtors to fail to honor the Customer Obligations in the ordinary course and without interruption, they would almost certainly suffer an irreparable loss of customer support and confidence.

19. The expenditure of estate funds required to fulfill the Debtors' Customer Obligations is minimal when compared to the benefits accruing to the Debtors from the preservation of their customer relationships. Accordingly, to preserve the value of their estates, the Debtors request that they be permitted to continue honoring and/or paying all Customer Obligations without interruption or modification. In addition, to provide necessary assurances to the Debtors' customers on a prospective basis, the Debtors request authority to continue



honoring or paying all obligations to customers that arise from and after the Petition Date as appropriate under the circumstances.<sup>3</sup>

20. Courts in this District regularly have authorized debtors to honor and pay obligations to customers arising prior to and after the filing of their chapter 11 cases in the ordinary course of business. See, e.g., In re Old FENM Inc., et al., Case No. 13-12569 (KJC) (Bankr. D. Del. Oct. 1, 2013); In re MSD Performance, Inc. et al., Case No. 13-12286 (PJW) (Bankr. D. Del. Sept. 9, 2013); In re AFA Investment Inc., et al., Case No. 12-11127 (MFW) (Bankr. D. Del. Apr. 3, 2012); In re Blitz U.S.A., Inc. et al., Case No. 11-13603 (PJW) (Bankr. D. Del. Nov. 10, 2011); In re Chef Solutions Holdings, LLC, Case No. 11-13139 (KG) (Bankr. D. Del. Oct. 5, 2011); In re Harry & David Holdings, Inc., et al., Case No. 11-10884 (MFW) (Bankr. D. Del. Mar. 29, 2011).

**Request for Authority for Banks to  
Honor and Pay Checks in Connection Herewith**

21. In addition, by this Motion, the Debtors request that all applicable banks and other financial institutions (collectively, the "Banks") be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, Customer Obligations, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that these checks are drawn on specific disbursement accounts and can be readily identified as relating directly to the authorized payment of Customer

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<sup>3</sup> The Debtors believe that, pursuant to section 363(c) of the Bankruptcy Code and other governing statutory and case law, they possess the authority to continue such Customer Programs without an express grant of authority from the Court but seek such approval out of an abundance of caution to provide further assurances to their customers that these programs will continue to be available if offered by the Debtors.

Obligations. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

**Requests for Immediate Relief & Waiver of Stay**

22. Pursuant to Rules 6003(b) and 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors seek (i) immediate entry of an order granting the relief sought herein and (ii) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to pay all or part of a claim that arose before the filing of the petition." Accordingly, where the failure to grant any such requested relief would result in immediate and irreparable harm to the Debtors' estates, the Court may allow the Debtors to pay all or part of a claim that arose before the Petition Date prior to the twenty-first day following the Petition Date. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise."

23. As set forth above and the First Day Declaration, the honoring and payment of the Customer Obligations is necessary to prevent the immediate and irreparable damage to the Debtors' retail operations and going-concern value that would result from a collapse of customer confidence in the Debtors. Accordingly, the Debtors submit that ample cause exists to justify: (i) the immediate entry of an order granting the relief sought herein; and (ii) a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

**Consent to Jurisdiction**

24. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

**Notice**

25. Notice of this motion will be provided to: (i) the office of the United States Trustee for the District of Delaware; (ii) those creditors holding the 30 largest unsecured claims on a consolidated basis against the Debtors' estates; (iii) Royal Bank of Canada, in its capacity as administrative and collateral agent for certain senior secured lenders; (iv) GACP Finance Co., LLC; (v) Cortland Capital Market Services LLC, in its capacity as agent for certain junior secured lenders; (vi) Standard General Master Fund L.P.; and (vii) Kensington Technology Holdings, LLC. As this Motion is seeking "first day" relief, within two business days of the hearing on this Motion, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). The Debtors submit that no other or further notice need be provided.

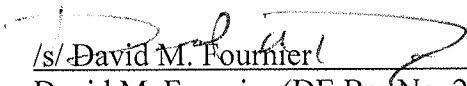
**No Prior Request**

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

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit A, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

Dated: March 8, 2017  
Wilmington, Delaware

**PEPPER HAMILTON LLP**

  
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*Proposed Attorneys for Debtors  
and Debtors-in-Possession*

**Exhibit A**

**(Proposed Interim Order)**

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

In re:

GENERAL WIRELESS OPERATIONS INC.  
DBA RADIOSHACK et al.,<sup>1</sup>  
  
Debtors.

Chapter 11

Case No. 17-[•] (\_\_\_\_)

Joint Administration Requested

Re: Docket No. \_\_\_\_\_

**INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) MAINTAIN CERTAIN  
CUSTOMER PROGRAMS AND (II) HONOR OR PAY  
RELATED PREPETITION OBLIGATIONS TO THEIR CUSTOMERS**

This matter coming before the Court on the motion (the "Motion")<sup>2</sup> of the above-captioned Debtors for the entry of an order, pursuant to sections 105(a), 363 and 507(a)(7) of title 11 of the Bankruptcy Code: (i) authorizing the Debtors to (a) maintain certain Customer Programs (as defined below) and (b) honor or pay certain prepetition obligations related to the Customer Programs (collectively, the "Customer Obligations"); the Court has reviewed the First Day Declaration and has considered the statements of counsel and the evidence adduced with respect to the Motion. The Court has found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. sections 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. section 157(b) and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012, and that this Court may enter a final order consistent with Article III of the United States Constitution, (iv) notice of the Motion and the

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor's U.S. tax identification number are as follows: General Wireless Operations Inc. dba RadioShack (8040); General Wireless Holdings Inc. (4262); General Wireless Inc. (9245); General Wireless Customer Service Inc. (5813). The notice address for all of the Debtors is: 300 RadioShack Circle, Fort Worth, TX 76102-1964.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Hearing was sufficient under the circumstances, and (v) there is good cause to waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h) to the extent it is applicable. After due deliberation, the Court has determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors, and good and sufficient cause having been shown;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. On \_\_\_\_\_, 2017, at \_\_\_\_\_ .m. (ET), a hearing (the “Final Hearing”) will be held before this Court to consider the relief requested in the Motion, on a final basis. All objections, if any, to the Motion shall be in writing and filed with this Court and served on counsel for the Debtors, any duly appointed committee, and the United States Trustee, so as to be received on or before \_\_\_\_\_, 2017 at 4:00 p.m. (ET).
3. Subject to the limitations set forth in the Motion, the Debtors are authorized, in their sole discretion, but not obligated, to satisfy, honor and fulfill Customer Obligations, including pre-petition Customer Obligations, as set forth in the Motion and in the ordinary course of business.
4. The Banks are authorized, when requested by the Debtors, to receive, process, honor and pay all checks presented for payment of, and to honor all funds transfer requests made by the Debtors related to, Customer Obligations, whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and funds transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Order.

5. Nothing in the Motion or this Order, nor the Debtors' payment of claims pursuant to this Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute a Customer Obligation; or (v) the assumption of any contract.

6. The requirements of Bankruptcy Rule 6003(b) have been satisfied with respect to the payments authorized by this Order.

7. This Order shall be immediately effective and enforceable upon its entry. The fourteen-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Dated: March \_\_\_\_, 2017  
Wilmington, Delaware

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United States Bankruptcy Judge