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12
13 IN THE UNITED STATES BANKRUPTCY COURT
14 FOR THE DISTRICT OF ARIZONA

15 In Re:
16 REALTY EXECUTIVES, INC.,

17 Debtor.

18 Proceedings Under Chapter 11

19 Case No. 2:11-bk-12947-RJH

20 **EMERGENCY MOTION FOR**
21 **ORDER AUTHORIZING PAYMENT**
22 **OF PRE-PETITION WAGE, BENEFIT**
23 **AND REIMBURSEMENT AND**
24 **CERTAIN OTHER EMPLOYEE-**
25 **RELATED OBLIGATION CLAIMS**

26 **Hearing Date:**
Hearing Time:
Hearing Loc.:

19 Realty Executives, Inc. ("Debtor"), as debtor and debtor-in-possession, hereby
20 moves this Court for an order authorizing the Debtor to pay, in its discretion and subject
21 to available funding, pre-petition wages, salaries, or commissions owing to its employees,
22 including related taxes and other obligations, as well as certain reimbursement obligations
23 owed to employees. Upon information and belief, the only secured creditor asserting an
24 interest in the cash collateral consented to Debtor's use of cash collateral, and all of the
25 wages sought to be paid are less than the statutory priority amount of 11 U.S.C. §
26 507(a)(4). Accordingly, Debtor does not anticipate any objections to this Motion and

1 believes this Motion can be entered with limited notice. This Motion is supported by the
2 following Memorandum of Points and Authorities.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I.**

5 **JURISDICTION**

6 1. This Court has jurisdiction to hear this Motion pursuant to 28 U.S.C.
7 §§ 1334 and 157. This Motion represents a core proceeding pursuant to 28 U.S.C.
8 § 157(b)(2)(A) and (O). Venue in this district is proper pursuant to 28 U.S.C. §§ 1408
9 and 1409.

10 2. The Debtor seeks relief pursuant to 11 U.S.C. §§ 105(a) and 363(b).

11 **II.**

12 **BACKGROUND**

13 3. On April 30, 2011 (the "Petition Date"), the Debtor filed a voluntary
14 petition for relief under Chapter 11, Title 11, of the United States Code (the "Bankruptcy
15 Code"), in the United States Bankruptcy Court for the District of Arizona (the "Court").
16 Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, the Debtor is managing its
17 assets and properties as debtor-in-possession.

18 4. With its original Petition, the Debtor contemporaneously filed an
19 "Emergency Ex Parte Motion for Expedited Hearing on Accelerated Notice With Respect
20 to First Day Matters" ("Hearing Motion"). Among the motions included within the
21 Hearing Motion is this Motion.

22 5. The Debtor is a franchisee of Realty Executives International, Inc. Realty
23 Executives International, Inc. is the franchisor and is not a party to this proceeding. The
24 Debtor is headquartered in Phoenix, Arizona. The Debtor was founded in October of
25 1965 with an innovative concept that allowed Realtors to be paid full commissions for
26 their closed real estate transactions while paying a monthly "desk fee" to the company.

1 For 20 years after its inception, the Debtor’s company grew steadily and focused on hiring
2 only the most productive and experienced Realtors in Maricopa County. Debtor’s motto
3 was “no beginners, no kidding.”

4 6. In 1985, the Debtor’s focus became more widespread with the launch of
5 new agent trainee programs, the development of vendor partnerships, and creation of more
6 than 60 different commission fee plans. By 2007, the company grew to more than 1,800
7 Sales Executives (agents) who were members of Realty Executives, Inc., in the Phoenix
8 area.

9 7. With this growth in Sales Executives (agents) also came a significant
10 increase in brokerage overhead and expenses. Most notably, the company’s operations
11 grew to 17 branch offices and employed more than 120 non-agent staff members.

12 8. In the spring of 2007, the real estate market significantly decreased
13 nationally and in the Metropolitan Phoenix market, and the Debtor was unable to maintain
14 its profitability. At the same time, the Debtor continued to renew and expand office leases
15 and greatly outspent its competitors from a marketing and advertising perspective. As a
16 result, the Debtor was unable to maintain its profitability.

17 9. In October of 2009, the Debtor put in place a restructuring plan aimed at
18 right sizing the Debtor’s operations and overhead so that the Debtor could return to
19 profitability and its founding principles. In December of 2010, a specific restructuring
20 plan was adopted by the Board to eliminate costs, improve operations, and restructure
21 executive fee plans. By mid-April of 2011, it became clear that the Debtor could not
22 complete the necessary restructuring plan, which required significant office lease
23 terminations and modifications, without the help of a Chapter 11 filing.

24 10. Presently, the Debtor employs approximately fifty six (56) employees as of
25 the Petition Date (the “Employees”). The Employees include approximately: (i) forty
26

1 seven (47) full-time employees; (ii) seven (7) part-time employees; and (iii) two (2)
2 contract employees.

3 **III.**

4 **RELIEF REQUESTED**

5 **WAGE CLAIMS**

6 11. As of the Petition Date, the Debtor owed accrued and unpaid wages,
7 salaries, bonuses and/or commissions, including vacation, severance, and sick leave
8 obligations (collectively, the “Wage Claims”) to its Employees. All of the Wage Claims
9 are less than the priority amount of \$11,725 per Employee and in the aggregate will be
10 approximately \$103,000 (excluding employer’s portion of payroll taxes, which is
11 discussed below). A chart showing the amount owed to each Employee is attached hereto
12 as **Exhibit “A,”** and is incorporated herein by this reference.¹

13 12. As demonstrated in Exhibit A, none of the Employees are owed more than
14 the statutory priority amount of \$11,725 set forth in 11 U.S.C. § 507(a)(4), and this
15 Motion only seeks authorization to satisfy accrued pre-petition obligations owing to
16 individual Employees up to the statutory cap for priority claims in the amount of \$11,725.

17 13. The continued operation of Debtor’s ongoing business operations requires
18 the Employees to continue to work. Debtor believes that some of the Employees may stop
19 working if they do not receive their earned compensation and that the failure to pay pre-
20 petition wages would adversely affect the morale of the Employees.

21 14. In connection with the payment of wages and other compensation, the
22 Debtor is required under applicable law to withhold from employee payroll checks certain
23 obligations of the Employees, including, without limitation, federal, state and local
24 income taxes, Social Security, Medicare, and unemployment taxes. In the ordinary course
25 of business, Debtor may also withhold from payroll checks: (i) Employee contributions to

26 ¹ An unredacted version of Exhibit A shall be provided to the office of the United States Trustee.

1 401(k) or other retirement plans; (ii) Employee contributions to medical, dental,
2 insurance, disability, or similar plans, and (iii) other contributions or obligations of the
3 Employees as directed by the Employees or pursuant to applicable law.

4 15. In addition, the Debtor makes payments for the employer's portion of
5 payroll taxes and other obligations as required by applicable law. Debtor anticipates that
6 Debtor's pre-petition portion of payroll taxes is approximately \$7,600. *See Ex. A.*

7 16. In the ordinary course of the Debtor's business, as is customary with most
8 large companies, the Debtor established various benefit plans, programs and policies for
9 their Employees (collectively, the "Benefit Obligations"). The Benefit Obligations may
10 include, but are not necessarily limited to, obligations with respect to the following:
11 (a) medical, dental, vision, and similar plans or benefits; (b) life insurance, accidental
12 death and dismemberment, short-term disability, and similar plans or benefits; and
13 (c) other miscellaneous benefits. The Debtor hereby request authorization to pay in its
14 discretion such pre-petition Benefit Obligations for their Employees in full as they come
15 due in the ordinary course of business. The Debtor further request authorization to take
16 such actions as may be necessary or appropriate, in its discretion, to ensure the
17 continuation of the benefits for their Employees.

18 17. The Debtor hereby request authorization to pay at its discretion all unpaid
19 Wage Claims that had accrued as of the commencement of these cases up to the statutory
20 cap for priority claims in the amount of \$11,725. Further, the Debtor request
21 authorization to make all such normal and customary deductions and withholdings and to
22 pay all taxes and other obligations associated with the payment of the Wage Claims in the
23 ordinary course of business.

24 **Reimbursement Obligations**

25 18. In the ordinary course of their duties on behalf of the Debtor, various
26 Employees may from time to time incur certain expenses for which they are customarily

1 reimbursed by the Debtor. In other cases, such expenses are charged directly to the
2 Debtor, although the Employee(s) could be obligated on the expense if it is not paid by the
3 Debtor (the “Reimbursement Obligations”). The Debtor hereby request authority to pay
4 in their discretion such Reimbursement Obligations in full in the ordinary course of
5 business.

6 **Authorization to Honor Existing Plans, Practices, Programs and Policies**

7 19. The Debtor also seeks authorization, in their discretion and in the exercise
8 of its business judgment, to honor and continue the existing plans, practices, programs,
9 and policies referenced herein in the ordinary course of business. Such authorization shall
10 not be deemed to constitute post-petition assumption or adoption of any such plan,
11 practice, program, policy, or agreement pursuant to section 365 of the Bankruptcy Code.
12 The Debtor is in the process of reviewing these matters and reserves all of its rights under
13 the Bankruptcy Code with respect thereto. Moreover, the Debtor will retain its right to
14 modify or terminate any such plan, practice, or policy at any time, and to treat any
15 obligation arising thereunder as a general unsecured claim to the extent consistent with the
16 provisions of the Bankruptcy Code.

17 **IV.**

18 **BASIS FOR REQUESTED RELIEF**

19 20. Under the circumstances, it is appropriate and necessary for the Court to
20 authorize Debtor to pay the pre-petition obligations set forth herein. Not only is payment
21 of these obligations justified under Section 105 and the “doctrine of necessity,” the Wage
22 Claims are accorded priority under Sections 507(a)(4) and (a)(5) of the Bankruptcy Code.

23 21. Section 363(b)(1) of the Bankruptcy Code authorizes the debtor-in-
24 possession to “use, sell, other than in the ordinary course of business, property of the
25 estate” Section 105(a) further permits courts to approve immediate payment of pre-
26 petition obligations where necessary to preserve or enhance the value of a debtor’s estate

1 for the benefit of all creditors, specifically including payment of the pre-petition claims of
2 employees. *In re Chateaugay Corp.*, 80 B.R. 279, 286-88 (S.D.N.Y. 1987), *appeal*
3 *dismissed*, 838 F.2d 59 (2d Cir. 1988) (authorizing payment of pre-petition wages,
4 salaries, expenses and benefits); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175-76
5 (Bankr. S.D.N.Y. 1989) (authorizing payment of pre-petition wages, salaries,
6 reimbursable business expenses and health benefits); *In re Gulf Air, Inc.*, 112 B.R. 152,
7 153 (Bankr. W.D. La. 1989).

8 22. Moreover, courts have allowed immediate payment of certain pre-petition
9 obligations under the “necessity of payment” doctrine. *See In re Adams Apple, Inc.*, 829
10 F.2d 1484, 1490 (9th Cir. 1987). *But see, B&W Enterprises, Inc. v. Goodman Oil Co. (In*
11 *re B&W Enterprises, Inc.)*, 713 F.2d 534, 537 (9th Cir. 1983) (declining to apply the
12 necessity of payment doctrine beyond the context of railroad reorganizations).

13 23. The payment of the obligations set forth herein in accordance with the
14 Debtor’s pre-petition business practices is in the best interests of the Debtor, its estates,
15 and creditors and is critical to enabling the Debtor to maximize the value of its assets
16 without undue disruption. A further deterioration in the morale and loyalty of the
17 Debtor’s Employees at this time would have a substantial adverse impact on the Debtor’s
18 abilities to maximize the value of their assets for the benefit of their creditors.

19 24. Moreover, Section 507(a)(4) grants priority to employee claims up to
20 \$11,725 per employee for “wages, salaries or commissions, including vacation, severance
21 and sick leave pay” earned within one hundred eighty (180) days of the Petition Date. 11
22 U.S.C. § 507(a)(4). Similarly, Section 507(a)(5) provides that claims for contributions to
23 certain employee benefit plans are also afforded priority treatment to the extent of \$11,725
24 per employee covered by such plan, less any amounts paid pursuant to section 507(a)(4).
25 11 U.S.C. § 507(a)(5).

26

1 DATED this 30th day of April, 2011.

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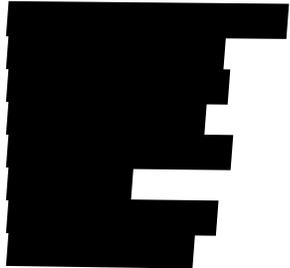
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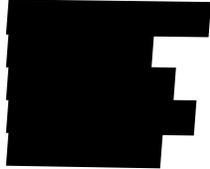
EXHIBIT A

Realty Executives, Inc
Payroll For the Period April 16 - 29

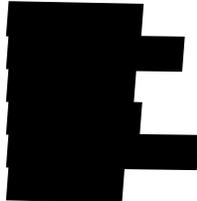
<u>Name</u>	<u>Position</u>	<u>Amount</u>	
[REDACTED]	Designated Broker / President	\$ 11,075.00	
[REDACTED]	Managing Broker	\$ 6,250.00	
[REDACTED]	Human Resources	\$ 1,696.58	
[REDACTED]	Managing Broker - Tucson	\$ 3,750.00	
[REDACTED]	Supervising Broker	\$ 8,621.17	
[REDACTED]	Recruiter	\$ 3,260.23	
[REDACTED]	Office Manager	\$ 3,200.00	
[REDACTED]	Marketing	\$ 1,870.83	
[REDACTED]	Contract Review	\$ 1,515.94	
[REDACTED]	Contract Review	\$ 1,533.50	
[REDACTED]	HR Assistant - Executive administrator	\$ 1,655.64	
[REDACTED]	Receptionist ESC	\$ 1,105.82	
[REDACTED]	Systems Analyst	\$ 3,213.42	
[REDACTED]	IT Technition	\$ 1,852.40	
[REDACTED]	IT Technition	\$ 1,533.50	
[REDACTED]	IT Technition	\$ 1,496.00	
[REDACTED]	Accounting	\$ 1,390.31	
[REDACTED]	Accounting - Commissions	\$ 1,516.24	
[REDACTED]	Accounting - AP	\$ 1,514.10	
[REDACTED]	Accounting - AR	\$ 1,946.19	
[REDACTED]	Administration	\$ 1,692.24	
[REDACTED]	Recruiter	\$ 1,000.00	
[REDACTED]	Runner	\$ 826.50	
[REDACTED]	File Clerk	\$ 917.00	
[REDACTED]	REO Accounting	\$ 1,750.00	contract employee
[REDACTED]	REO Accounting	\$ 1,600.00	contract employee
[REDACTED]	Property Management - Bookkeeper	\$ 1,660.05	
[REDACTED]	Property Management - Bookkeeper	\$ 1,452.02	
[REDACTED]	AOM - South East Valley	\$ 1,837.10	
[REDACTED]	AOM - North Scottsdale	\$ 1,883.40	
[REDACTED]	AOM - Center Point	\$ 1,681.53	
[REDACTED]	AOM - Forum	\$ 1,654.40	
[REDACTED]	AOM - Scottsdale Shea	\$ 1,575.20	



AOM - Tempe Tower	\$	1,500.94
AOM - Arrowhead	\$	1,389.18
AOM - Desert Ridge	\$	1,400.28
AOM - Pinnacle Peak	\$	1,387.76
AOM - PV	\$	1,320.54
AOM - Ahwatukee	\$	1,480.70
AOM - Tucson	\$	1,269.22
AOM - Tucson	\$	1,144.00



MSA - Litchfield, Arrowhead	\$	1,436.50	
MSA - Forum	\$	1,438.80	
MSA - Tempe Tower, Ahwatukee, Chandler	\$	1,331.10	
MSA - PP	\$	736.00	part time employee
MSA - Tucson	\$	1,666.67	



Roving Secretary - full time	\$	1,708.76	
Roving Secretary - on call	\$	1,238.16	
PT Receptionest - Tucson	\$	770.00	
PT Receptionest - Tucson	\$	700.00	
Roving Secretary - on call			part time employee
Roving Secretary - on call			part time employee



Call center - weekend	\$	182.75	part time employee
Call center - weekend	\$	266.56	part time employee
Call center - weekend	\$	263.50	part time employee
Call center - weekend	\$	178.50	part time employee

Total Employee Payroll	\$	102,336.23
Employer Portion	\$	7,675.22
Total Company	\$	<u>110,011.45</u>

EXHIBIT B

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11 In Re:
12 REALTY EXECUTIVES, INC.,
13 Debtor.

Proceedings Under Chapter 11
Case No. 2:11-bk-12947-RJH

**ORDER AUTHORIZING PAYMENT
OF PRE-PETITION WAGE, BENEFIT
AND REIMBURSEMENT AND
CERTAIN OTHER EMPLOYEE-
RELATED OBLIGATION CLAIMS**

14
15
16 Upon consideration of the "Emergency Motion for Order Authorizing Payment of
17 Pre-Petition Wage, Benefit and Reimbursement and Certain Other Employee-Related
18 Obligation Claims" (the "Motion") filed by Realty Executives, Inc. ("Debtor") seeking
19 entry of an order pursuant to 11 U.S.C. §§ 105(a) and 363(b); and good cause appearing
20 therefor:

21 The Court hereby FINDS that:

22 A. The Court has jurisdiction over the matter pursuant to 28 U.S.C.
23 § 157(b)(2);

24 B. The relief requested by Debtor in the Motion is in the best interests of the
25 Debtor, its estates, creditors, and other parties-in-interest;

26 C. Johnson Bank, the only creditor asserting an interest in the cash collateral
27 that will be used to pay the pre-petition wages identified in the Motion consented to the
28 use of cash collateral; and

1 D. Due and proper notice of the Motion has been given to the U.S. Trustee's
2 Office and, because of the urgency of the relief requested, no other or further notice need
3 be given.

4 Based on the foregoing and good cause appearing therefor:

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

6 1. The relief requested by Debtor in the Motion is granted;

7 2. The Debtor is hereby authorized, in its discretion, to pay and honor pre-
8 petition wages, salaries, bonuses, and/or commissions, including vacation, severance, and
9 sick leave owed to its current employees (collectively, the "Employees") up to \$11,725,
10 and related taxes and other obligations as well as all reimbursement obligations owed to
11 Employees;

12 3. The Debtor is authorized to make all normal and customary withholdings
13 and deductions from wages and other compensation paid to their Employees and to pay all
14 applicable taxes and other obligations normal associated with such payments;

15 4. Debtor is authorized to issue new post-petition checks or make new money
16 transfers to replace any pre-petition checks or money transfers that may have been
17 dishonored or denied in respect to the pre-petition checks or money transfers that may
18 have been dishonored or denied in respect to the pre-petition obligations referenced in this
19 Order;

20 5. Debtor is authorized to take such action as may be appropriate or necessary,
21 in its discretion, to ensure the continuation of Employee benefits, including paying pre-
22 petition claims of benefit provisions, service providers and other third parties.

23 6. The relief granted herein shall not be deemed an assumption of any contract
24 under 11 U.S.C. § 365.

25 7. The Order is without prejudice to any rights Debtor may otherwise have
26 under applicable law to modify or terminate any plan, practice, program, or policy
27 referenced herein at any time.
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8. Nothing herein shall operate to create any rights in favor of, or enhance the status of, any claim held by any employee or other party in interest.

DATED AND SIGNED ABOVE