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

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:  
**In re:** :  
: **Chapter 11 Case No.**  
:  
**STAR TRIBUNE HOLDINGS** : **09-10244 (\_\_\_)**  
**CORPORATION, et al.,** :  
: **(Jointly Administered)**  
:  
**Debtors.**<sup>1</sup> :  
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**DEBTORS' MOTION FOR AUTHORIZATION TO (i) HONOR PRE-PETITION  
OBLIGATIONS TO CUSTOMERS AND TO OTHERWISE CONTINUE  
CUSTOMER PROGRAMS AND PRACTICES IN THE ORDINARY COURSE  
OF BUSINESS AND (ii) AUTHORIZE FINANCIAL INSTITUTIONS TO  
HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Star Tribune Holdings Corporation (“**Star Tribune Holdings**”) and The Star  
Tribune Company (“**Star Tribune**”) and, together with Star Tribune Holdings, the  
“**Debtors**”) respectfully represent:

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<sup>1</sup> The Debtors are Star Tribune Holdings Corporation and The Star Tribune Company. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

### **Background and Jurisdiction**

1. On the date hereof (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have filed a motion seeking joint administration of these chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

2. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the Affidavit of David W. Montgomery, Chief Financial Officer of Star Tribune, which is incorporated herein by reference.

3. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

4. Prior to the Petition Date and in the ordinary course of their businesses, the Debtors offered and engaged in certain customer and other programs and practices to develop and sustain a positive reputation in the marketplace for their print and online products and services and to engender customer loyalty (the “**Customer Programs**”), certain of which are described in greater detail below. The Customer Programs include, among others, pre-payments for subscriptions and customer credits, rebates and discounts.

5. By this motion (the “**Motion**”), the Debtors request entry of an order, pursuant to sections 105(a), 363(b), 363(c), 365(a), 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rules 2016(a) and 6006, in the form attached hereto as Exhibit A, authorizing but not directing them in their business judgment to (a) perform and honor such of their pre-petition obligations related to the Customer Programs as they deem appropriate and (b) continue, renew, replace, implement new and/or terminate Customer Programs as they deem appropriate, in the ordinary course of business, without further application to the Court.

6. As part of their cash management system, the Debtors maintain bank accounts at certain banks and financial institutions (the “**Banks**”). The Debtors draw upon funds in their accounts to satisfy their obligations arising from the Customer Programs. In addition to the relief requested above, the Debtors request that the Court authorize the Banks to receive, honor, process and pay any and all checks drawn, or electronic fund transfers requested or to be requested on the Debtors’ Banks, to the extent that such checks or electronic fund transfers related to any of the foregoing.

### **The Debtors’ Customer Programs**

7. The Debtors need to continue during the post-petition period those Customer Programs that are beneficial and cost-effective to their businesses. Such relief is necessary to preserve the Debtors’ critical business relationships and customer goodwill for the benefit of their estates. The revenue generated by the Customer Programs exceeds the operational and administrative cost to implement and maintain them, and for this and the other reasons set forth herein, it is essential and in the best interests of the Debtors, their estates and their creditors that the Debtors be permitted to

honor their pre-petition obligations in connection with the Customer Programs and to continue the Customer Programs in the ordinary course of their businesses.

8. The following are general descriptions and examples of some, but not all, of the Debtors' Customer Programs.

***Customer Credits and Goodwill Allowances***

9. From time to time, customers of the Debtors may become entitled to credits or allowances, including service error adjustments, billing adjustments and publishing error adjustments and allowances (collectively, the "**Customer Credits**") from the Debtors. Such Customer Credits may arise from inadvertent overbilling by the Debtors and overpayments and prepayments by customers. In addition, in some instances, the Debtors and a customer may agree upon a discounted price for certain of the Debtors' products or services, but that discount may not be immediately reflected on the invoices issued by the Debtors. As a result, the Debtors sometimes must retroactively adjust the price of prior invoices through the issuance of a Customer Credit.

10. In addition to such billing, payment and pricing corrections, from time to time certain customers are entitled to Customer Credits due to advertising production errors, publishing errors or newspaper delivery problems. When such problems arise, the Debtors may remedy these problems by issuing Customer Credits.<sup>2</sup>

11. The Debtors issued approximately \$2,600,000 in Customer Credits in 2008. As of the Petition Date, the Debtors may not yet have honored all Customer Credits issued before the Petition Date. Similarly, the Debtors may not have issued

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<sup>2</sup> Even if the Debtors disagree with a customer's assertion that there were publication or delivery errors, the Debtors sometimes will issue customer goodwill allowances (effectively a Customer Credit) to resolve the dispute in an amicable fashion.

Customer Credits for events that occurred prior to the Petition Date and that would have given rise to Customer Credits under the Debtors' normal customer practices.<sup>3</sup> As of the Petition Date, the Debtors estimate that the aggregate amount of accrued Customer Credits is \$250,000. The Debtors believe that a refusal to honor the accrued Customer Credits or to issue new Customer Credits based upon pre-petition activities would engender significant ill will among the Debtors' customers and ultimately would erode the Debtors' customer base. Thus, the Debtors submit that short-term savings that could be obtained through disavowing the Customer Credits would be more than offset by the resulting long-term losses. Therefore, the Debtors request authority to honor or pay the Customer Credits.

***Customer Rebates, Discounts and Prepayments***

12. In connection with the Debtors' sales programs, the Debtors offer certain of their customers a number of rebates and other incentives (collectively, the "**Customer Rebates**"). The Debtors offer these programs to provide customers with an incentive to purchase print and online advertising services from the Debtors.

13. With respect to their Customer Rebate programs, the Debtors (a) provided their customers with approximately \$97,054 in earned but unpaid Customer Rebates in calendar year 2008 on account of such programs and (b) estimate that a similar amount was accrued (and not yet honored or paid) as of the Petition Date.<sup>4</sup> Failure to honor and pay the Customer Rebates would be perceived by the Debtors' customers as a repudiation

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<sup>3</sup> Once issued, Customer Credits are applied immediately to outstanding receivables or prepaid subscription balances. To the extent that any such Customer Credits remained outstanding, the Debtors seek authority to pay them pursuant to this Motion.

<sup>4</sup> This amount does not include discounts that are built into the price of the Debtors' products or services.

of the parties' agreements and could alienate the Debtors' customer base. The Debtors submit that the cost of honoring and paying the Customer Rebates is far less than the harm that could be caused by not paying such amounts. The Debtors therefore request authority to honor and pay Customer Rebates.

14. There are certain instances when the Debtors receive payments from their customers in advance of providing goods and services (the "**Prepayments**"). For instance, nearly all the Debtors' subscribers prepay for newspaper subscriptions in advance of being provided the newspapers (the "**Prepaid Subscriptions**"). The Debtors also receive payments from certain advertisers in advance of providing publication advertising slots for such advertisers (the "**Prepaid Advertisements**"), primarily for certain classified advertising. The Debtors generally do not incur actual cash liability on account of the Prepaid Subscriptions or Prepaid Advertisements, but instead incur the obligation to deliver the prepaid services. However, in the event a Prepaid Subscription or Prepaid Advertisement is cancelled by a customer, the Debtors are obligated in certain instances to return certain prepaid amounts (the "**Refunds**"). In 2008, the Debtors issued Refunds totaling approximately \$430,000.

**The Debtors Should Be Authorized to Honor  
Pre-petition Obligations in Relation to Customer Programs**

15. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. Section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or a hearing. Consequently, continuing, renewing, replacing, initiating and terminating their Customer Programs in the ordinary course of business is permitted by

sections 363(c), 1107(a) and 1108 of the Bankruptcy Code, without further application to the Court. However, out of an abundance of caution, the Debtors request the relief stated herein.

16. As to honoring pre-petition claims, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” A bankruptcy court’s use of its equitable powers 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.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under 11 U.S.C. § 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Club*, 98 B.R. at 177). The Debtors strongly believe that the uninterrupted supply of goods and services, on customary trade terms, and the continuing support of their customers are imperative to the ongoing operations and viability of the Debtors.

17. The “necessity of payment” doctrine further supports the relief requested herein. This doctrine “recognizes 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.” *Ionosphere Clubs*, 98 B.R. 176; *see also Michigan Bureau of Workers’ Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–86 (S.D.N.Y. 1987). The rationale for the necessity of payment rule is consistent with the paramount goal of chapter 11, which is

“facilitating the continued operating and rehabilitation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176.

18. As described above, the loyalty and continued patronage of the Debtors’ customers is critical to the Debtors’ financial health and reorganization. Where retaining loyalty and patronage of customers is critical to a successful reorganization, courts in this district have granted relief similar to that requested here. *See, e.g., Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 14, 2008); *In re PLVTZ, Inc.*, No. 07-13532 (REG) (Bankr. S.D.N.Y. Nov. 8, 2007); *In re Dana Corp.*, Case No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); *In re Delphi Corp.*, Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 8, 2005); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 14, 2005); *In re WorldCom, Inc.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Jul. 22, 2002); *In re AI Realty Mktg. of New York, Inc.*, Case Nos. 01-40252 through 01-40290 (AJG) (Bankr. S.D.N.Y. 2001).

19. Moreover, section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Debtors’ decisions to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him a good business reason to grant such application); *see also Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Global Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y.

2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that standard for determining a section 363(b) motion is “good business reason”).

20. The business judgment rule is satisfied “when the following elements are present: (1) a business decision, (2) disinterestedness, (3) due care, (4) good faith, and (5) according to some courts and commentators, no abuse of discretion or waste of corporate assets.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (internal quotations omitted). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board’s decisions as long as they are attributable to any “rational business purpose.” *In re Integrated Res. Inc.*, 147 B.R. at 656.

21. The Debtors submit that the requested relief represents a sound exercise of the Debtors’ business judgment and is justified under section 363(b), as well as under section 105(a) of the Bankruptcy Code. If the Debtors are prohibited from honoring pre-petition obligations and maintaining the Customer Programs consistent with their past business practices, customers will likely be alienated and will lose confidence in the Debtors’ ability to reorganize. Ultimately, the damage from refusing to honor these obligations far exceeds the cost associated with honoring pre-petition obligations and

continuing these practices. The relief requested herein will protect the Debtors' goodwill during this critical time and enhance the Debtors' ability to generate revenue.

Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

22. Accordingly, the Debtors request that they be authorized, but not directed, in their business judgment, to (a) perform and honor their pre-petition obligations under the Customer Programs as they deem appropriate and (b) continue, renew, replace, implement new, and terminate such of the Customer Programs as they deem appropriate, in the ordinary course of business, without further application to the Court. Any delay in the relief sought—indeed, even being forced to advise customers and advertisers that further judicial relief is necessary—could result in the Debtors losing a substantial portion of their customer base and severely harm their reorganization.

23. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' right to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order granting the Motion is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

24. As it is difficult, or impossible, to calculate the actual amount owed in respect of the Customer Programs as of the Petition Date, the Debtors seek the authority to pay all pre-petition obligations arising thereunder.

### **Honoring of Payments Related to the Customer Programs**

25. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before or after the Petition Date, *provided, however*, that: (a) funds are available in the Debtors' accounts to cover the checks and fund transfers and (b) all the banks and other financial institutions are authorized to rely on the Debtors' designation of any particular check as approved by the attached proposed Order.

### **Necessity for Immediate Relief**

26. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant . . . (b) a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . . .” If the Debtors are not permitted to continue their Customer Programs without interruption, it would cause immediate and irreparable harm by inducing doubt about the Debtors' ability to serve their customers and would drive customers to competitors. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003.

### **Request for Waiver of Stay**

27. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h),

“[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” As set forth above, the Debtors require immediate relief to continue ordinary business operations for the benefit of all parties in interest. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the ten-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

### **Notice**

28. No trustee, examiner, or creditors’ committee has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on (a) the Office of the United States Trustee for the Southern District of New York, (b) attorneys to the agent for the Debtors’ first lien pre-petition lenders, (c) attorneys to an ad hoc committee of the Debtor’s second lien pre-petition lenders, (d) those creditors holding the five largest secured claims against the Debtors’ estates on a consolidated basis, (e) those creditors holding the 30 largest unsecured claims against the Debtors’ estates on a consolidated basis, (f) the Internal Revenue Service and (g) Avista Capital Partners.

### **No Previous Request**

29. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

New York, New York  
Dated: January 15, 2009

By: /s/ Marshall S. Huebner

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*Proposed Counsel to the Debtors  
and Debtors in Possession*

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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**In re:** :  
: **Chapter 11 Case No.**  
:  
**STAR TRIBUNE HOLDINGS** : **09 -10244 (\_\_\_)**  
**CORPORATION, et al.,** :  
: **(Jointly Administered)**  
:  
**Debtors.**<sup>1</sup> :  
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**ORDER AUTHORIZING DEBTORS TO (i) HONOR PRE-PETITION OBLIGATIONS TO CUSTOMERS AND TO OTHERWISE CONTINUE CUSTOMER PROGRAMS AND PRACTICES IN THE ORDINARY COURSE OF BUSINESS AND (ii) AUTHORIZE FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)<sup>2</sup> of Star Tribune Holdings Corporation (“**Star Tribune Holdings**”) and The Star Tribune Company (“**Star Tribune**” and, together with Star Tribune Holdings, the “**Debtors**”), pursuant to sections 105(a), 363(b), 363(c), 365(a), 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rules 2016(a) and 6006, for authority in their business judgment to (a) perform and honor their pre-petition obligations related to Customer Programs as they deem appropriate and (b) continue, renew, replace, implement new and terminate Customer Programs as appropriate and in the ordinary course of business, without further application to the Court; and upon consideration of the Affidavit of David W. Montgomery filed in support of the Debtors’ first-day pleadings; and the Court having jurisdiction to consider the Motion and the

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<sup>1</sup> The Debtors are Star Tribune Holdings Corporation and The Star Tribune Company.

<sup>2</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

relief requested therein pursuant to 28 U.S.C. § 1334 and the Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court for the Southern District of New York dated July 10, 1984 (Ward, Acting C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to (a) the Office of the United States Trustee for the Southern District of New York, (b) attorneys to the agent for the Debtors' first lien pre-petition lenders, (c) attorneys to an ad hoc committee of the Debtor's second lien pre-petition lenders, (d) those creditors holding the five largest secured claims against the Debtors' estates on a consolidated basis, (e) those creditors holding the 30 largest unsecured claims against the Debtors' estates on a consolidated basis, (f) the Internal Revenue Service and (g) Avista Capital Partners (collectively, the "**Notice Parties**"), and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the "**Hearing**"); and the 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 the Court having determined that immediate relief is necessary to avoid irreparable harm; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Motion is hereby granted; and it is further

ORDERED that the Debtors, in their business judgment, are authorized to (a) perform and honor their pre-petition obligations related to the Customer Programs as they deem appropriate and (b) continue, renew, replace, implement new, and terminate, Customer Programs as appropriate and in the ordinary course of business, without further application to the Court, including making all payments, satisfying all obligations and permitting and effecting all setoffs in connection therewith, whether relating to the period prior or subsequent to the Petition Date; and it is further

ORDERED that nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any claim by any party with respect to any Customer Program; and it is further

ORDERED that each of the banks and financial institutions (the "**Banks**") at which the Debtors maintain their accounts relating to the payment of the claims that the Debtors request authority to pay in the Motion are authorized to receive, process, honor and pay all checks presented for payment, and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts, and are authorized to rely on the Debtors' designation of any particular payment as approved by this Order; and it is further

ORDERED that, notwithstanding anything to the contrary in any other order of this Court, the Banks (a) are authorized to accept and honor all representations from the Debtors as to which checks, drafts, wires or automated clearing house transfers ("**ACH Transfers**") should be honored or dishonored, consistent with any order of this Court and governing law, whether such checks, drafts, wires, or ACH Transfers are dated prior to, on, or subsequent to the Petition Date, and whether the Banks believe the payment is or is

not authorized by an order of this Court and (b) have no duty to inquire as to whether such payments are authorized by an order of this Court; and it is further

ORDERED that the Banks shall not be liable to any party on account of (a) following the Debtors' instructions or representations as to any order of this Court, (b) the honoring of any pre-petition check or item in a good faith belief that the Court has authorized such pre-petition check or item to be honored or (c) an innocent mistake made despite implementation of reasonable item handling procedures; and it is further

ORDERED that notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

New York, New York  
Dated: January \_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE