

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

In re:

AMERICAN VIRTUAL CLOUD  
TECHNOLOGIES, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 23-10020 (MFW)

(Joint Administration Requested)

**DECLARATION OF KEVIN J. KEOUGH IN SUPPORT OF  
CHAPTER 11 PETITIONS AND FIRST-DAY PLEADINGS**

I, Kevin J. Keough, declare and state as follows:

1. I am the Chief Executive Officer for American Virtual Cloud Technologies, Inc. (“AVCT”) and each of its direct and indirect debtor and non-debtor subsidiaries, including debtors, AVCtechnologies USA, Inc. and Kandy Communications LLC (collectively, the “Debtors” and together with certain non-Debtor operating affiliates, “Kandy” or the “Company”) that have filed voluntary petitions (the “Chapter 11 Petitions”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing these chapter 11 cases (the “Chapter 11 Cases”).

2. I have served as the Chief Executive Officer of AVCT since August 22, 2022, having previously served as the Company’s Chief Transformation Officer since April 2022, and prior to that as the Company’s President since July 2021. In my capacity as Chief Executive Officer, I have been actively involved in preparing the Debtors’ chapter 11 filings, developing the Debtors’ business plans, and providing diligence to and negotiating with certain of the Debtors’ key constituencies. I have also been actively involved in the prepetition efforts to raise capital and

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: American Virtual Cloud Technologies, Inc. (2421), AVCtechnologies USA, Inc. (8886), and Kandy Communications LLC (5853). The Debtors’ corporate headquarters is 1720 Peachtree Road, Suite 629, Atlanta, Georgia 30309.

sell the business. I am generally familiar with the Debtors' day-to-day operations, financial affairs, and books and records. As part of my duties in the Chapter 11 Cases, I will be overseeing and advising the Debtors on their day-to-day business operations, budgets, cash flows, financial analysis and overall restructuring and reorganization efforts.

3. To minimize the adverse effects of filing chapter 11 while at the same time preserving value for the benefit of stakeholders, the Debtors have filed a number of pleadings requesting various kinds of "first day" relief (collectively, the "First Day Pleadings").<sup>2</sup> I submit this Declaration in support of the Chapter 11 Petitions and the First Day Pleadings. I am familiar with the contents of each First Day Pleading (including the exhibits and other attachments thereto) and, to the best of my knowledge, after reasonable inquiry, believe the relief sought in each First Day Pleading: (a) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption; (b) is critical to the Debtors' efforts to preserve value and maximize the likelihood of the successful restructuring of their businesses; and (c) best serves the Debtors' estates and creditors' interests. Further, it is my belief that the relief sought in the First Day Pleadings is narrowly tailored and necessary to achieve the goals of the Chapter 11 Cases.

4. Except as otherwise indicated, all statements set forth in this Declaration are based upon: (a) my personal knowledge; (b) information supplied to me by other members of the Debtors' management or the Debtors' advisors that I believe in good faith to be reliable; (c) my review of relevant documents, including the Debtors' books and records;<sup>3</sup> or (d) my opinion based

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<sup>2</sup> Unless otherwise defined herein, capitalized terms in this Declaration shall have the meanings ascribed to them in the relevant First Day Pleading.

<sup>3</sup> I believe the Debtors' accounting system and records to be generally accurate. However, certain of the Debtors' systems require manual input of data, which, in my experience, sometimes results in inaccuracies. Accordingly, while I have made reasonable attempts to ensure the accuracy of the data relied upon for this Declaration and believe the information to be accurate based upon diligent inquiry, I cannot with certainty confirm the accuracy of every amount

upon my experience and knowledge of the Debtors' operations and financial condition. If called upon to testify, I could and would testify competently to the facts set forth in this Declaration. The Debtors have authorized me to submit this Declaration.

5. This Declaration is divided into four parts: (i) an overview of the Company; (ii) a summary of the Debtors' capitalization and primary prepetition indebtedness; (iii) the circumstances leading to the commencement of, and the proposed course of action during, the Chapter 11 Cases; and (iv) relevant facts in support of the First Day Pleadings.

#### **PRELIMINARY STATEMENT**

6. The Debtors offer cloud-based business communication services to customers looking to transition business-critical services, phone services and other business applications to the cloud. The Debtors' "Kandy" product is one of the largest pure-play providers of unified communications as a service (UCaaS), communications platform as a service (CPaaS), and Microsoft Teams Direct Routing as a Service (DRaaS) for blue-chip enterprise customers such as AT&T, IBM/Kyndryl, and Etisalat. Kandy enables service providers, enterprises, software vendors, systems integrators, partners, and developers to enrich their applications and services with real-time contextual communications, providing a more engaging user experience. With Kandy, companies of all sizes and types can quickly embed real-time communications capabilities into their existing applications and business processes.

7. The Debtors' need to seek bankruptcy protection is not due to shortcomings in its products, services, or technology. Rather, the Company remains an emerging growth company and as is typical of such companies at this phase in their life cycle, the Company continues to

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described herein. To the extent any material inaccuracies are discovered, I will file a supplemental Declaration disclosing such inaccuracies.

experience negative cash flow from operations while it has sought to grow to a profitable scale and it will, in short order, face a liquidity shortfall.

8. Although the Debtors have continued to grow revenue and have made tremendous strides recently in reducing costs to improve profitability and cash flows across its businesses, as a public company, the Debtors have a significant cost structure, including regulatory accounting, auditing and financial disclosure filing requirements that necessitate reporting functions and related professional staff and costs, that are disproportionately high in relation to the Company's revenues.

9. With those costs, together with costs to fund current operations including research and development and capital investment requirements, the Company has struggled to grow to the scale necessary to generate positive cash flow that permits cash self-sufficiency.

10. In response to these challenges, AVCT's Board of Directors, through a recently formed restructuring committee, actively pursued and examined a number of potential strategic alternatives. These efforts included engaging advisors to assist the Debtors in their efforts to restructure their debt, explore initiatives to improve operational efficiency, while at the same time exploring strategic alternatives, including a sale of assets.

11. Specifically, after having made certain changes in the senior management team in the earlier part of 2022, and again in July/August 2022, the Debtors retained SOLIC Capital Advisors, LLC and SOLIC Capital, LLC (collectively, "SOLIC"), and Cole Schotz P.C. to assist the Debtors in analyzing their financial position and exploring potential strategic and operating restructuring initiatives. In late August 2022, the Debtors also retained Northland Capital Markets ("Northland") to advise the Company in connection with a comprehensive strategic review process that could lead to the sale of the Company or selected assets.

12. Immediately upon its engagement, Northland identified and conducted a targeted outreach, contacting seventy-nine (79) prospective financial and/or strategic partners to gauge interest in a strategic transaction with the Debtors. A majority of those contacted requested more information, *e.g.*, a “teaser” relative to the opportunity. Twenty-nine (29) parties executed non-disclosure agreements, were provided access to a virtual data room with more than 500 documents (in addition to the commercial and financial information already publicly available in SEC filings) and these prospective buyers have conducted varying levels of diligence. In addition, the Company held sixteen (16) management presentations for prospective buyers.

13. Based on the robust marketing process to date, the Debtors believe there is interest in some or all of the Debtors’ business segments. To date, the Company has received, subject to further due diligence, three (3) written term sheets/letters of intent to date and at least one other verbal expression of interest; with certain parties expressing an interest in acquiring only a portion of the Debtors’ assets (*e.g.*, some parties expressing an interest in the assets relating to UCaaS only, while others expressing an interest in CPaaS/DRaaS only), while others have having expressed an interest in all of the Debtors’ assets.

14. The Debtors have chosen to use these Chapter 11 Cases to continue their marketing efforts and run a robust sale process, including a public auction, so that the Debtors can ultimately realize the highest and otherwise best value for the benefit of all parties in interest. The Debtors believe that the opportunity to leverage a Chapter 11 marketing process – together with the tools afforded to debtors-in-possession, including the opportunity to sell assets free and clear under section 363 of the Bankruptcy Code – is the optimal way to consummate a transaction that delivers value to stakeholders. However, given the Debtors’ waning liquidity position, and after considering all of their alternatives, the Debtors believe that completing their sale process, through

an expeditious post-petition marketing process, following several months of marketing efforts that have already taken place prepetition, would best preserve liquidity, help convert existing interest to tangible results, and otherwise maximize the value of the enterprise.

## I. THE DEBTORS' BUSINESS

### A. Company History

15. The debtor holding company, AVCT (formerly, Pensare Acquisition Corp. “Pensare”), was incorporated in Delaware on April 7, 2016, as a blank-check acquisition company. On April 7, 2020, Pensare consummated a business combination transaction (“Computex Business Combination”) in which Pensare acquired Stratos Management Systems, Inc. (“Computex”), a private operating company that does business as Computex Technology Solutions.

16. In connection with the closing of the Computex Business Combination, the Company changed its name to American Virtual Cloud Technologies, Inc.

17. On December 1, 2020, pursuant to the terms of an Amended and Restated Purchase Agreement, dated as of December 1, 2020 (the “Kandy Purchase Agreement”), AVCT acquired the Kandy Communications business from Ribbon Communications, Inc. and certain of its affiliates (collectively, the “Ribbon Parties”), by acquiring certain assets, assuming certain liabilities and acquiring all of the outstanding membership interests of Kandy Communications LLC.<sup>4</sup>

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<sup>4</sup> On August 29, 2022, the Company entered into a Settlement Agreement with the Ribbon Parties. Pursuant to that Settlement Agreement, the Company and modified and/or terminated certain agreements that had been entered into between them in connection with the consummation of the transactions contemplated by the Kandy Purchase Agreement filed by the Company on December 7, 2020 and settled certain disputes that had arisen between them under certain of such agreements. Among other relief, pursuant to that Settlement Agreement and documents entered into pursuant thereto, the Company granted an affiliate of Ribbon certain non-exclusive perpetual rights to use certain intellectual property owned by the Company comprising certain WebRTC gateway technology that is integrated with Ribbon’s SBCs and Application Servers. In consideration of the resolution of the disputes between the parties encompassed within the Settlement Agreement with the Ribbon Parties, among other things, (i) a Ribbon affiliate paid the Company cash, (ii) the common stock issued to Ribbon pursuant to the Kandy Purchase Agreement were redeemed

18. On September 16, 2021, the Company announced that as a result of a decision by the Company's Board of Directors to explore strategic alternatives previously announced on April 7, 2021, the Board had authorized the Company to focus its strategy on acquisitions and organic growth in its cloud technologies business as well as to explore strategic opportunities for its IT solutions business, including the divestiture of Computex. The Company believed that such changes would allow it to optimize resource allocation, focus on core competencies, and improve its ability to invest in areas of maximal growth potential.

19. On March 15, 2022, the sale of Computex was consummated, completing the Company's transition to a pure-play cloud communications and collaboration company, centered on the Kandy platform.

#### **B. Corporate Structure**

20. AVCT is a public held company, with its common stock listed on the NASDAQ. AVCtechnologies USA, Inc. ("AVCT USA") is a wholly owned direct subsidiary of AVCT. AVCT USA, in turn, owns Kandy Communications LLC, which operates/owns the rights to the Debtors' Kandy platform.

21. ACVT also owns (indirectly) the following non-debtor foreign subsidiaries: AVCTechnologies Canada Ltd. ("AVCT Canada"), which operates out of Ontario; American Virtual Cloud Technologies Mexico S.A. de C.V., which operates out of Mexico City; and

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by the Company for no further consideration and were canceled, and (iii) the warrants exercisable to purchase shares of common stock issued to Ribbon pursuant to the Kandy Purchase Agreement were terminated and canceled. In addition, the Company and certain of the Ribbon Parties entered into amendments to agreements pursuant to which the Company (i) subleases and/or licenses certain premises from the Ribbon Parties, in order to, among other things, reduce the portion of the premises used by the Company (and the corresponding rent or other fees payable), and (ii) purchases and/or licenses certain hardware, software, products and related services from the Ribbon Parties, in order to, among other things, amend the license fee structure from a bulked fixed pricing schedule to a variable rate pricing structure so as to reduce the fees payable by the Company.

American Virtual Cloud Technologies Ireland, Limited, which operates out of Ireland (together, the “Non-Debtor Foreign Subsidiaries”).

22. A chart reflecting the organizational structure of the Company, showing both the Debtors and the Non-Debtor Foreign Subsidiaries, is attached hereto as Exhibit A.<sup>5</sup>

**C. Business Operations**

23. The Debtors’ principal place of business is Atlanta, Georgia, though its employees are interspersed throughout the United States. The Company also maintains a lab and related facilities in North Carolina, a lab and related facilities in Ottawa and North Carolina, a facility in Mexico City; and approximately 10 co-located data centers that are used as server locations. The Debtors do not own any real property. The majority of the Debtors’ business operations are conducted through AVCT USA.

24. Business with entities outside the United States is primarily conducted through the Non-Debtor Foreign Subsidiaries.

25. The Kandy platform is the primary source of the Debtors’ income. The Company derives its revenue from subscriptions to the Company’s cloud-based technology platform as well as revenue from the Company’s on-premise software. In addition, the Company receives a portion of revenue for professional and managed services, which includes services provided to the Company’s customers to assist them with the integration of the Company’s products to their network. Cloud subscription and software revenue was \$11.6 million in the YTD period ended September 30, 2022, compared with \$10.8 million in the YTD period ended September 30, 2021,

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<sup>5</sup> As reflected on that chart, AVCT still owns Stratos Management Systems, Inc. and its subsidiaries, including Computex, Inc. However, as discussed above, the assets related to Computex were sold pursuant to a transaction that was consummated on March 15, 2022, and the Debtors no longer operate the Computex business.

an increase of \$0.8 million or 7.9%, due primarily to increased UCaaS business by 4 of the Company customers. Managed and professional services revenues was \$0.9 million in the YTD period ended September 30, 2022, compared with \$1.8 million in the YTD period ended September 30, 2021, a decrease of \$0.9 million.

26. Kandy's cloud-based, real-time communications platform enables service providers, enterprises, software vendors, systems integrators, partners and developers to enrich their applications and their services with real-time contextual communications empowering the API (Application Programming Interface) economy. With Kandy's platform, companies of various sizes and types can quickly embed real-time communications capabilities into their existing applications and business processes, providing a more engaging user experience.

27. While the cloud communications business is focused on highly complex, medium and large enterprise deployments, the customer experience is augmented by the Company's managed services capabilities. In addition, the Company's strategic partnerships with companies such as AT&T, IBM/Kyndryl, and Etisalat, give it access to a marquee customer base and the ability to sell end-to-end solutions.

28. As a provider of cloud-based enterprise services, Kandy deploys a global carrier grade cloud communications platform that supports the digital and cloud transformation of mid-market and enterprise customers across virtually any device, on virtually any network, in virtually any location. The Kandy platform is based on a powerful, proprietary multi-tenant, highly scalable, and secure cloud platform that includes pre-built customer engagement tools, based on WebRTC technology, known as Kandy Wrappers, and provides white-labeled services to a variety of customers including communications service providers and systems integrators. With Kandy, companies can quickly embed real-time communications capabilities into their existing

applications and business processes, to enable frictionless communications. Further, the Debtors support rapid service creation and multiple go to market models including white labelling, multi-tier channel distribution, enterprise direct, and self-service via our SaaS (software as a service) web portals.

29. With the general trend towards the movement to the cloud and the change in how people work, including the “work from anywhere” mindset, the Company is poised to see continued growth in its revenue. A number of other key trends are expected to positively impact the results of the Company’s operations. Those key factors include (i) the increased complexity in mid and large enterprises and the desire by enterprises for integrated internal and external communications for UCaaS, CPaaS and DRaaS, (ii) the demand for services similar to Teams, Zoom and WebEx, and partners that can add to and/or complement such tools and players, (iii) the trend towards CPaaS technology, and (iv) the increasing use of multi-cloud strategies, whereby cloud architectures and cloud-enabled frameworks, whether public, private, or hybrid, provide the core foundation of modern IT.

30. The Debtors currently employ 57 individuals located in the United States. AVCT Canada employs approximately 47 individuals. The Company also utilizes several professional employer organizations and similar contractors to provide labor services, which, together supply approximately 23 workers to the Debtors and their Non-Debtor Foreign Subsidiaries, including approximately 20 workers in Mexico City, 2 in the United Arab Emirates and 1 in the United Kingdom. In addition, the Company’s workforce is supplemented with independent contractors, including approximately 83 individual workers provided by Orion Innovation AG.

31. Most recently, aggregate revenue for all product lines together was \$4.7 million in the 3rd quarter of 2022 compared with \$4.1 million, an increase of 14.2% compared with the 3rd

quarter of 2021. Cost of revenue, which primarily consists of labor costs and costs of software support, was \$4.5 million in the 3rd quarter of 2022 compared with \$4.2 million in the 3rd quarter of 2021, an increase of \$0.3 million, due primarily to a \$0.7 million increase in platform software support. The aggregate gross margin in the 3rd quarter of 2022 was 4.4% compared with a negative gross margin in the 3rd quarter of 2021. The improved margin is due to a combination of the increase in revenues coupled with the impact of recent cost saving actions taken by the Company. Such savings have been generated from the Company's ongoing operating restructuring initiatives including, but not limited to, selective reductions in workforce and the negotiated conversions of certain material vendor support costs from fixed to variable, thereby eliminating certain cost burdens associated with unused capacity. For the YTD period ended September 30, 2022, the Company had total revenues in excess of \$12.55 million, but suffered a net loss from continuing operations, net of tax, exceeding \$31 million.

32. For the period ending September 30, 2022, the Company's balance sheet reflects approximately \$31.1 million in total assets and approximately \$13.6 million in total liabilities. As of the Petition Date, aggregate cash in the Company's operating bank accounts was approximately \$5 million.

## **II. DEBTORS' CAPITALIZATION AND PRIMARY PRE-PETITION INDEBTEDNESS**

33. The Debtors have no secured debt obligations, having satisfied all secured obligations over the course of the past year. Their books and records reflect approximately \$6 million in liquidated, non-contingent, general unsecured claims.

34. AVCT's common stock and certain of its warrants are listed on the NASDAQ, trading under the ticker "AVCT." AVCT is authorized to issue 500,000,000 shares of common stock with a par value of \$0.0001 per share. Holders of common stock are entitled to one vote per

share. As of the Petition Date, a total of 32,470,06 shares of AVCT's common stock were issued and outstanding. AVCT's common stock is widely dispersed among various investors including many "day trader" investors. As of Petition Date, there are approximately 15,000 holders of AVCT's common stock.

### **III. EVENTS LEADING TO CHAPTER 11 AND PROPOSED COURSE OF THE CHAPTER 11 CASES**

35. The Debtors need for chapter 11 protection is driven primarily by an inability to operate profitably as a going concern and its waning liquidity position. Since the Computex Business Combination, the Debtors have sustained consistent losses each fiscal quarter.

36. As noted above, the Debtors search for a strategic partner began in early September 2022. During that time, the Company has worked diligently to maintain its operations in the face of declining liquidity and increasing financing challenges. As described above, the Company implemented several cost savings measures, including, but not limited to, selective reductions in workforce and negotiated conversions of certain material vendor contracts. The Company has seen the cost savings in the third quarter of 2022 and those savings are expected to continue into the fourth quarter and beyond.

37. However, as noted above, for the YTD period ending September 30, 2022, the Debtors have suffered losses from the operation of their business exceeding \$31 million. Net loss from continuing operations, net of tax, for the 3rd quarter of 2022 alone was \$25.5 million.

38. The Debtors simply can no longer sustain their operations with their limited available resources. Moreover, following the Company's latest capital raise in October 2022, the Company is constrained to secure additional capital at this point.

39. The Debtors thus determined that they need to implement a sale transaction to maximize recoveries for all stakeholders. As noted above, since September 2022, the Company

has been earnestly pursuing that process. Despite having received ongoing interest from multiple parties, as discussed above, the Debtors have no actionable offers that could be consummated on the necessary liquidity timeline without a chapter 11 filing. The Debtors and their advisors are continuing their marketing and outreach efforts and engaging with parties that have expressed interest in the Debtors' assets to encourage them to participate in the chapter 11 sale process.

40. The value of the Debtors' business is keyed to its intellectual property of the software, the knowhow of the employees and the integrated approach of the software combined with the Company's proprietary processes. The Debtors believe that continuing the business as a going concern while undertaking further marketing efforts is essential to be able to realize the full value of the business, even if a sale is for all or less than all of the assets.

41. After considering all of these facts and circumstances, the Debtors made the determination that an expedited, in-court process was the best available alternative to preserve and maximize the value of their business for the benefit of all stakeholders. The Chapter 11 Cases offer the Debtors the best opportunity to increase creditors' recoveries and preserve jobs under the circumstances.

#### **IV. FIRST DAY PLEADINGS**

42. To enable the Debtors to minimize the adverse effects of these cases, the Debtors are requesting various types of relief in their First Day Pleadings. Generally, the First Day Pleadings are designed to meet the Debtors' goals of (a) continuing their operations in chapter 11 with as little disruption and loss of productivity as possible, (b) maintaining the confidence and support of their customers, employees, vendors, suppliers, and service providers during the Debtors' reorganization process, and (c) establishing procedures for the smooth and efficient administration of the Chapter 11 Cases.

43. I have reviewed each of the First Day Pleadings and believe the facts set forth therein are true and correct. I believe that the relief sought in each of the First Day Pleadings is narrowly tailored to meet the goals described above and, ultimately, will enhance the Debtors' ability to achieve a successful reorganization. Furthermore, I believe that with respect to those First Day Pleadings requesting the authority to pay discrete prepetition claims or to continue selected prepetition programs, the relief requested is essential to the Debtors' reorganization and granting the relief within the first twenty-one days of the chapter 11 cases is necessary to avoid immediate and irreparable harm to the Debtors and their employees, customers, vendors, and creditors.

**A. Administrative and Procedural First Day Pleadings**

**1. Joint Administration Motion**

44. The Debtors are requesting that the Chapter 11 Cases be jointly administered for procedural purposes only. As set forth above, each of the Debtors is affiliated with the others. Joint administration of the cases will avoid the unnecessary time and expense of duplicative motions, applications, orders and other papers and related notices that otherwise would need to be filed in all of the cases absent joint administration. Moreover, joint administration will relieve the Court of the burden of entering duplicative orders and maintaining duplicative files and will ease the burden on the U.S. Trustee in supervising these cases. Accordingly, joint administration will save considerable time and expense for all parties in interest and this Court.

**2. Waiver of Equity List and Notice Requirements and Consolidated Creditors Matrix Motion**

45. The Debtors seek entry of an order (i) waiving the requirements to file a list of equity holders (the "Equity Lists") for holders of equity securities (common stock and warrants) in AVCT and modifying the manner for giving notice to equity security holders, (ii) authorizing

the Debtors to (a) file a consolidated list of the Debtors' 20 largest unsecured creditors and (b) a consolidated list of creditors for the creditor matrix, and (iii) authorizing the Debtors to redact personal identifiable information for the Debtors' individual creditors and parties in interest.

46. All Debtors, other than AVCT, have disclosed their respective holders in the corporate ownership statements filed with their respective petitions. AVCT has filed with its petition a list of holders of five percent or more of its outstanding common stock based upon information ascertained from filings with the United States Securities and Exchange Commission ("SEC"). AVCT is a NASDAQ listed public company with, as of the Petition Date, approximately 32,470,006 million shares of issued and outstanding publicly held common stock and outstanding warrants. Preparing a list of AVCT's equity security holders with last known addresses and sending notices to all those holders will be unduly expensive, burdensome and time consuming. Instead, the Debtors propose to provide notice by: (i) publishing the notice of commencement on the Debtors' case website established by Kroll Restructuring LLC, the Debtors' proposed claims and noticing agent (the "Claims Agent"); (ii) filing an 8-K with the United States Securities and Exchange Commission (the "SEC") within four business days following the Petition Date, notifying their investors and other parties in interest of the commencement of these Chapter 11 Cases, as well any other filings with the SEC, as necessary, and other public announcements, and (iii) serving the notice of commencement on all known registered holders of common stock and warrants. Therefore, I believe that equity securities holders will not be prejudiced by the relief requested in the motion.

47. Numerous creditors are shared amongst certain of the Debtors. Compiling separate top 20 creditor lists for each individual Debtor would consume an excessive amount of the Debtors' scarce time and resources. Moreover, because the Debtors will request that the Office of

the United States Trustee for the District of Delaware (the “United States Trustee”) appoint a single official committee of unsecured creditors in the Chapter 11 Cases, if one is needed at all, a consolidated list of the Debtors’ largest creditors will better represent the Debtors’ most significant unsecured creditors. As such, the Debtors believe that filing a single, consolidated list of the 20 largest unsecured creditors in the Chapter 11 Cases is appropriate.

48. I believe that permitting the Debtors to maintain a single consolidated list of creditors, in lieu of filing a separate creditor matrix for each Debtor, is warranted. Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix format would be burdensome and result in duplicate mailings.

49. Finally, it is also appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in these Chapter 11 Cases personally identifiable information, specifically home addresses, of the Debtors’ individual creditors and parties-in-interest, including current or former employees and shareholders, because such information could be used, among other things, to perpetrate identity theft or for other unlawful purposes. The Debtors propose to provide an unredacted version of the creditor matrix and any other applicable filings to the Court, the U.S. Trustee, counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases (if any), and other parties in interest upon reasonable request.

### **3. The Claims Agent Application**

50. The Debtors seek authority to retain Kroll Restructuring Administration LLC (“Kroll”) as claims and noticing agent in the Chapter 11 Cases. I understand that requesting such appointment is likely required by the rules of this Court given that the Debtors have more than 200 creditors and/or parties in interest. I believe that Kroll retention is the most effective and efficient manner of noticing creditors and parties in interest of filings and other developments in the Chapter 11 Cases. In addition, Kroll will transmit, receive, docket and maintain proofs of claim filed in

connection with the Chapter 11 Cases. Accordingly, I believe that retention of Kroll, an independent third party with significant experience in this role, to act as an agent of this Court, is in the best interests of the Debtors and their estates and their creditors.<sup>6</sup>

**B. Operational First Day Pleadings**

**1. Cash Management Motion**

51. In the ordinary course of business, the Debtors operate a cash management system (the “Cash Management System”) that involves two (2) bank accounts (the “Bank Accounts”). The Cash Management System is designed to effectuate the collection of revenue from customers, pay operating expenses, and payroll obligations. Any distribution caused by requiring the Debtors to close and open new bank accounts and establish a new cash management system would jeopardize the Debtors’ ability to satisfy postpetition obligations and maintain their relationships with customers. The Debtors’ ability to continue their Cash Management System is essential to their operations.

52. The Debtors engage in intercompany transactions by and among the different Debtors (together, the “Intercompany Transactions”). In the ordinary course, the Debtors maintain business relationships with each other, which results in intercompany receivables and payables. These transactions are traceable and the Debtors keep records accounting for them. Debtors seek authority to continue engaging in the Intercompany Transactions. Consistent with their prepetition practice, the Debtors will maintain records of all transfers and account for all of the Intercompany Transactions.

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<sup>6</sup> The Debtors also intend to file an application to retain Kroll to perform certain administrative services under section 327 of the Bankruptcy Code.

53. Additionally, the Debtors seek authority to continue to utilize the Cash Management System to engage in Intercompany Transactions that collect receivables and pay obligations associated with the Debtors' overseas business, which is run through its foreign non-debtor subsidiaries (the "Foreign Affiliate Transactions"). The Foreign Affiliate Transactions also enable the foreign affiliates to pay vendors and other necessary payments or where the foreign affiliate does not have its own bank accounts.

54. I believe that the relief sought in the Cash Management Motion is appropriate and in the best interest of the Debtors.

## **2. Employee Wages Motion**

55. As set forth above, as of the Petition Date, the Debtors employ approximately 57 employees in the United States (the "Employees"). Non-Debtor AVCT Canada employs approximately 47 individuals (the "Canada Employees"). Although the Canada Employees are employed by a non-Debtor, their payroll and benefits are funded by Debtor AVCT USA. As described above, the Debtors and the Non-Debtor Foreign Affiliates also supplement their workforce with staffing from professional employer organizations and with contractors supplied by Orion Innovation AG (the contractors together with the staff provided by the professional employer organizations, the "Contractors"). Accordingly, the relief requested in this Motion is with respect to the Canada Employees and the Contractors as well.

56. I believe that it is critically important that the Debtors continue to honor a number of prepetition obligations to their Employees (and to the Canada Employees/Contractors) in order to minimize the personal hardship that these individuals will suffer if those obligations are not honored as well as to prevent that harm that could occur to the Debtors if they do not maintain employee morale.

57. The Debtors believe that the skills and experience of their Employees, as well as their relationships with customers and vendors and institutional knowledge are essential to the Debtors' ability to effectively operate their businesses. The same applies with respect to the Canada Employees and the Contractors. The Debtors request authority to pay and honor certain prepetition claims and obligations to all of their Employees (and to fund the obligations due to the Canada Employees). In particular, I believe it is necessary for the Debtors to:

- a. pay and/or perform, as applicable, prepetition obligations to Employees, including accrued prepetition wages, commissions, processing services related thereto and other cash and non-cash compensation claims, except as otherwise set forth in the Wages Motion;
- b. pay obligations to or on account of the Canada Employees and the Contractors;
- c. honor and continue in the ordinary course of business, until further notice, and pay (but not assume) the prepetition amounts associated with, the Debtors' holiday, vacation and sick time policies;
- d. honor and continue in the ordinary course of business, until further notice, and pay (but not assume) the prepetition amounts associated with Employee benefit plans, and programs and workers' compensation plans and programs;
- e. reimburse Employees for prepetition Reimbursable Expenses (as defined in the Wages Motion), consisting of out-of-pocket expenses incurred in the ordinary course of business; and
- f. pay over to the appropriate parties all prepetition withholdings from Employees and payroll-related taxes associated with the Employee Claims and the Employee Benefit Obligations.

58. Many in the Company's workforce, including the Employees and the Canada Employees, rely on their compensation, benefits and reimbursement of expenses to satisfy their daily living expenses and these individuals may suffer substantial personal hardship and, in some cases, be unable to meet their basic needs. In order to avoid resignations and to maintain morale,

it is critical that the Debtors be authorized to pay these obligations consistent with past practices, subject to the limitations described in the Wages Motion.

59. In addition, the Debtors maintain workers' compensation insurance as required by statute in each of the states in which they operate (the "Workers' Compensation Programs"). The Debtors seek authority to maintain their prepetition Workers' Compensation Programs, including the authority to make any and all payments required in connection therewith.

### **3. Utilities Motion**

60. In connection with the operation of their businesses, the Debtors receive internet and similar utility products and services (the "Utility Services") from various utility companies (the "Utility Companies"). The Debtors have filed a motion requesting that this Court approve the Debtors' proposed form of adequate assurance of postpetition payment (the "Proposed Adequate Assurance") to the Utility Companies, as that term is used in section 366 of the Bankruptcy Code, approving procedures for resolving any objections by the Utility Companies relating to the Proposed Adequate Assurance, and prohibiting the Utility Companies from altering, refusing or discontinuing service to, or discriminating against, the Debtors.

61. In particular, the Debtors have proposed for the Utility Companies the establishment of a newly created, interest-bearing segregated account in which the Debtors will place a deposit equal to approximately two weeks of Utility Services (the "Utility Deposit Account"). I believe that creation of the Utility Deposit Account and the additional procedures set forth in the motion adequately protect the rights that I have been advised are provided to the Utility Companies under the Bankruptcy Code, while also protecting the Debtors' need to continue to receive, for the benefit of their estates, the Utility Services upon which their businesses depend. The Debtors estimate the aggregate of all the Utility Deposits will be approximately \$12,150.

62. I believe that any interruption in Utility Services, even for a brief period of time, would disrupt the Debtors' ability to continue operations. Such a result could potentially jeopardize the Debtors' ability to perform under their customer contracts and impair the Debtors' reorganization efforts and, ultimately, the value of the Debtors' business. In my opinion, it is critical that Utility Services continue uninterrupted during the Chapter 11 Cases.

63. For all the reasons set forth herein and in the First Pleadings, I respectfully request that the Court grant the relief requested in each of the First Day Pleadings.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge, information and belief.

Dated: January 11, 2023

/s/Kevin J. Keough

Kevin J. Keough  
Chief Executive Officer

**EXHIBIT A**

**CORPORATE ORGANIZATIONAL CHART**

