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and Debtors in Possession*

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

In re

**KB US Holdings, Inc., et al.,
Debtors.¹**

Chapter 11

Case No. 20-22962

(Joint Administration Requested)

**DEBTORS' MOTION
FOR AUTHORITY, BUT NOT DIRECTION, TO (A) PAY CERTAIN
PREPETITION WAGES AND REIMBURSABLE EMPLOYEE EXPENSES,
(B) PAY AND HONOR EMPLOYEE MEDICAL AND OTHER BENEFITS, AND
(C) CONTINUE EMPLOYEE BENEFITS PROGRAMS, AND FOR RELATED RELIEF**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: KB US Holdings, Inc. (1000), KB Holding, Inc. (3082), AG Kings Holdings Inc. (8681), AG Holdings II Inc. (3828), Kings Super Markets, Inc. (6769), Balducci's Holdings LLC (1913), Balducci's Connecticut LLC (1945), Balducci's Maryland LLC (1926), Balducci's Virginia LLC (1949), and Balducci's New York LLC (1934). The location of the Debtors' corporate headquarters is 700 Lanidex Plaza Parsippany, NJ 07054.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

KB US Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Background

1. On the date hereof (the “**Commencement Date**”), the Debtors each 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 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 statutory committee of creditors has been appointed in these chapter 11 cases.

2. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of M. Benjamin Jones Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York*, sworn to on the date hereof (the “**Jones Declaration**”), which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.²

Jurisdiction

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference M-431, dated January 31, 2012

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Jones Declaration.

(Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

5. The Debtors' employees perform a variety of critical functions, including sales, customer service, distribution, information technology, purchasing, administrative, legal, accounting, finance, and management-related tasks. The skills and experience of the Debtors' employees, as well as their relationships with customers and vendors and knowledge of the Debtors' infrastructure, are essential to the Debtors' ongoing operations and ability to effectively administer their businesses during these chapter 11 cases. To maintain morale and enhance the Debtors' ability to retain key employees during these chapter 11 cases, the Debtors request the authority, but not direction, pursuant to sections 105(a), 363, and 507(a) of the Bankruptcy Code and Bankruptcy Rules 6003(b), 6004(a), and 6004(h), to pay and honor certain prepetition claims and obligations, continue programs, and maintain funding, in the exercise of their discretion, relating to, among other things: (a) Unpaid Compensation, Deductions, and Payroll Taxes; (b) compensation for their Supplemental Workforce; (c) Reimbursable Expenses and Bank of America Credit Cards Program; (d) Union and Non-Union Employee Benefit Plans; (e) Insurance Plans; (f) Union Retirement Plans; and (g) Non-Union 401(k) Savings Plans (each as defined herein, and collectively, the "**Employee Obligations**").

6. A proposed form of order granting the relief requested in this Motion on an interim basis is attached hereto as **Exhibit A**.

The Debtors' Workforce and Wage and Benefit Obligations

I. The Debtors' Workforce

7. As of the Commencement Date, the Debtors employ approximately 2,900 employees, of which approximately 1,121 are full-time (the "**Full-Time Employees**") and

approximately 1,770 are part-time (the “**Part-Time Employees**” and, together with the Full-Time Employees, the “**Employees**”).³

8. As of the Commencement Date, approximately 1,920 Employees (approximately 66% of the workforce) are represented by unions.⁴ The Debtors are party to five (5) collective bargaining agreements (“**CBAs**”) with various bargaining units of the United Food and Commercial Workers International Union (“**UFCW**”), which represent all of the Debtors’ union-represented Employees.⁵ The Debtors pay all union-represented Employees on an hourly basis.

II. Wages, Salaries, and Other Compensation

A. Unpaid Compensation

9. The Debtors’ payroll obligations generally include wages, salaries, and payments on account of unused vacation time and other paid time off. In the ordinary course of business, the Debtors pay all their Employees on either a weekly or bi-weekly basis. The weekly payments are issued on Thursdays for the period ending the previous Saturday. The bi-weekly payments are issued on Thursdays for the period ending the following Saturday (*e.g.*, the July 16, 2020 payroll covers the period from July 5 to July 18, 2020). The Debtors’ most recent payroll payment was made on August 20, 2020 for the period ending August 15, 2020 as to Employees paid on a weekly basis, and on August 13, 2020 as to the Employees paid bi-weekly for the period ending August 15, 2020, in the aggregate amount of \$2.1 million. The majority of the Debtors’

³ Approximately 2,129 employees are employed through Kings Food Market (“**Kings**”), of which approximately 768 are full-time and approximately 1,361 are part-time. Approximately 784 are employed through Balducci’s Food Lover’s Market (“**Balducci’s**”), of which approximately 353 are full-time, approximately 409 are part-time, and approximately 22 have been furloughed due to COVID-19.

⁴ None of Balducci’s Employees is represented by unions.

⁵ UFCW members belong to one of several local unions, of which Local 360 is by far the largest, representing approximately 1,250 of the Debtors’ Employees.

payroll is made by direct deposit through electronic transfer of funds to the Employees' accounts or through physical paychecks.⁶

10. The Debtors estimate that, as of the Commencement Date, they owe approximately \$2.3 million to Employees on account of prepetition payroll obligations, which amount includes accrued but unpaid wages and salaries (the "**Unpaid Compensation**"). This amount is based on a (i) seven-day accrual for salaried employees because the payroll submitted on August 13, 2020 covered the *two-week* pay period through August 15, and (ii) seven-day accrual for hourly employees because the payroll submitted on August 20, 2020 covered the *one-week* pay period through August 15. No Employees are owed Unpaid Compensation in an amount exceeding the \$13,650 statutory cap imposed by section 507(a)(4) of the Bankruptcy Code.

11. Through this Motion, the Debtors request authority to pay all prepetition amounts owed to Employees on account of Unpaid Compensation (including issued but uncashed checks).

B. Gross Pay Deductions, Governmental Withholdings and Payroll Taxes

12. Federal and state laws require the Debtors to withhold amounts related to federal, state and local income taxes, Social Security, and Medicare taxes for remittance to the appropriate federal, state, or local taxing authorities (collectively, the "**Withheld Amounts**"). The Debtors must then match from their own funds for Social Security and Medicare withholdings, based on gross earnings and additional amounts for federal and state unemployment insurance (collectively the "**Employer Payroll Taxes**," and together with the Withheld Amounts, the "**Payroll Taxes**"). In the aggregate, the Payroll Taxes, including both the Employee and employer

⁶ The Debtors use three (3) accounts at Bank of America, N.A. to perform direct deposits.

portions, total approximately \$700,000. As of the Commencement Date, the Debtors estimate approximately \$590,000 remains outstanding on account of prepetition Payroll Taxes.

13. For each applicable pay period, the Debtors routinely deduct certain amounts from each Employee's gross payroll, including garnishments, child support, spousal support and service charges and similar deductions, union dues and initiation fees (as applicable), and other pre- and after-tax deductions payable pursuant to certain of the employee benefit plans discussed herein (such as an Employee's share of health care benefits and insurance premiums, contributions to flexible spending accounts, 401(k) savings plan contributions, legally ordered deductions, and miscellaneous deductions) or state law benefit programs⁷ (collectively, the "**Deductions**"). The Debtors deduct a total of approximately \$125,000 from Employees' paychecks, which the Debtors remit to the appropriate third-party recipients. The frequency and schedule of payments for the Deductions and the due dates on the various pay cycles may encompass more than one period. The Debtors may not have forwarded certain of the Deductions to the appropriate third-party recipients prior to the Commencement Date.

14. To the extent any of the Deductions or Payroll Taxes may not have been forwarded to the appropriate third-party recipients, through this Motion, the Debtors seek authority to forward prepetition Deductions and Payroll Taxes (and to continue to forward Deductions and Payroll Taxes on a postpetition basis whether or not related to the prepetition period) to the applicable third-party recipients in the ordinary course of business and consistent with past practice.

⁷ Such programs include New Jersey state's Family Leave Insurance (the "**NJ Family Leave Insurance**"). The Debtors do not contribute to the NJ Family Leave Insurance program, which is funded entirely by Employee payroll deductions equal to 0.16% of wages, with an annual maximum deduction of \$215.84 for the 2020 calendar year.

C. Transaction Bonus Agreements

15. Prior to the Commencement Date, the Debtors entered into certain transaction bonus agreements (collectively, the “**Transaction Bonus Agreements**”) with seven (7) Employees, including one (1) Employee who would qualify as an insider within the meaning of Bankruptcy Code section 101(31).⁸ The purpose of the Transaction Bonus Agreements was to recognize the critical roles the covered Employees are expected to play in connection with the successful sale of all or substantially all of the Debtors’ assets or similar transaction.

16. Covered Employees who entered into Transaction Bonus Agreements were paid cash transaction bonuses in the aggregate amount of \$290,000. Such bonuses are subject to repayment in full by all covered Employees if (a) the consideration in connection with the consummation of a sale or similar transaction is less than \$75 million (minus the amount of any permitted expenses) or (b) the consummation of a sale or similar transaction does not occur on or before the 240th day following the Commencement Date. Such bonuses are also subject to repayment in full by any covered Employee who is terminated from employment with the Debtors for “Cause” (as defined in the Transaction Bonus Agreements) or in the event of a breach of any agreements with, or policies and procedures of, the Debtors prior to the consummation of a sale or similar transaction. The repayment provision creates a strong incentive for covered Employees to remain with the Debtors and assist in the consummation of a sale or similar transaction notwithstanding (a) the financial and operational uncertainty the Debtors and their Employees face as the Debtors navigate unprecedented circumstances arising from the adverse impact of the coronavirus pandemic on the already competitive food retail industry, and (b) the substantial

⁸ The Debtors also entered into certain special retention bonus award agreements (collectively, the “**Retention Bonus Agreements**”) with four (4) Employees. The outstanding payments under the Retention Bonus Agreements are payable on or after December 31, 2020. The Debtors are **not** seeking at this time authority to honor its obligations pursuant to the Retention Bonus Agreements.

additional demands placed upon, and expected to be placed upon, such covered Employees in light of a potential sale or similar transaction and extremely challenging business environment.

17. Under their respective applicable Transaction Bonus Agreements, the Chief Executive Officer received \$150,000, the Vice President of Information Technology received \$20,000, the Vice President of Marketing received \$25,000, the Vice President of Human Resources and Labor Relations received \$35,000, the Manager of Budget and Treasury received \$10,000, the Vice President of Operations received \$25,000, and the Vice President of Engineering, Real Estate and Construction received \$25,000.

18. The Debtors do not seek any approval or affirmation with respect to the Transaction Bonus Agreements pursuant to this Motion. As of the Commencement Date, the Debtors have no current or future payment obligations in respect of the Transaction Bonus Agreements. The Debtors provide this information in this Motion solely in the interest of disclosure and for no other purpose.

III. Supplemental Workforce Obligations

19. In addition to their Employees, the Debtors rely on services of a supplemental workforce (the “**Supplemental Workforce**”) comprised of (a) temporary employees and (b) independent contractors and consultants that provide services related to the Debtors’ operations.

20. From time to time, the Debtors retain temporary employees through CoSource, Accountemps, and Aston Carter (collectively, the “**Temporary Agencies**”). The Debtors remit fees for the services of temporary employees to the Temporary Agencies on a weekly basis through accounts payable. As of the Commencement Date, the Debtors owe approximately \$25,000 to the Temporary Agencies for prepetition services provided by temporary employees. The Debtors believe it is necessary to pay the obligations owed to the Temporary

Agencies, for the benefit of temporary employees, so that the temporary employees and the Temporary Agencies will continue to assist with the Debtors' staffing needs as needed.

21. The independent contractors (approximately two (2) at the time of the Commencement Date) include individuals who have expertise related to the Debtors' operations and provide consulting services in those specific areas, including, but not limited to, marketing and creative design. The Debtors generally procure the services of the independent contractors through individualized contracts that set forth the terms of retention, including remuneration. The Debtors remit compensation directly to the independent contractors through accounts payable. On average, the Debtors pay a total of approximately \$15,000 per month to or on account of the independent contractors. As of the Commencement Date, the Debtors estimate approximately \$10,000 remains outstanding in the aggregate for prepetition services by the independent contractors. The Debtors believe that if these amounts go unpaid, the independent contractors may stop providing their services to the Debtors. Accordingly, the Debtors request authority to pay, in their sole discretion, any unpaid compensation for or on account of the independent contractors in the ordinary course of business and consistent with past practice. The Debtors do not seek interim relief to pay any individual independent contractor amounts in excess of the \$13,650 statutory priority cap imposed by section 507(a)(4) of the Bankruptcy Code. Through this Motion, the Debtors request authority to pay all prepetition amounts owed to the Supplemental Workforce on account of Unpaid Compensation.

IV. Reimbursable Expenses

22. In the ordinary course of business, the Debtors reimburse certain Employees and all directors for travel and other miscellaneous business expenses⁹ incurred on behalf of the Debtors and for certain professional license fees, tuition reimbursement, and trade association dues and membership fees (collectively, the “**Reimbursable Expenses**”). Generally, Employees and directors pay for these Reimbursable Expenses personally and submit expense report forms to the Debtors for reimbursement. In some cases, Employees and directors may not have submitted reimbursement requests in time to have been processed prior to the Commencement Date. In the aggregate, the Debtors’ Employees and directors incur, on average, approximately \$20,000 per month in Reimbursable Expenses. Based on historical figures, the Debtors estimate approximately \$25,000 remains outstanding on account of prepetition Reimbursable Expenses as of the Commencement Date and seek authority to honor such obligations. The Debtors process the Reimbursable Expenses through payroll. Through this Motion, the Debtors also seek authority, but not direction, to honor such obligations arising from the Reimbursable Expenses as they accrue and to continue such programs in the ordinary course.

V. Bank of America Credit Cards Program

23. Certain Employees have corporate credit cards with Bank of America, N.A. (the “**Bank of America Credit Cards**”) which they use to make authorized business purchases on behalf of the Debtors. The Debtors pay such Bank of America Credit Cards directly. The Debtors are primarily liable for the Bank of America Credit Cards. There are eight (8) Employees who carry company-issued Bank of America Credit Cards that are used for, among other things, information technology, finance, and marketing-related expenses. In the aggregate, the Debtors’

⁹ The miscellaneous expenses include business office expenses, business phone calls, gas for car rentals or vehicles owned by the Debtors, monthly vehicle allowance (as applicable), postage, parking, taxis and tolls.

Employees incur approximately \$65,000 per month in business expenses charged to the Bank of America Credit Cards. Based on historical figures, the Debtors estimate approximately \$35,000 remains outstanding on account of prepetition business expenses charged to such corporate credit cards as of the Commencement Date. The use of the Bank of America Credit Cards is critical to the Debtors' business operations insofar as it is one of the mechanisms by which Employees' expenses incurred in the ordinary-course discharge of their employment duties are paid.

24. Through this Motion, the Debtors seek authority to honor obligations arising from the Bank of America Credit Cards as they accrue and to continue such programs in the ordinary course.

VI. Employee Benefit Plans

25. Eligible union-represented Employees participate in certain employee benefit programs, including health and welfare benefit plans provided under their respective CBAs (collectively, the "**Union Employee Benefit Plans**"). Pursuant to such CBAs, the Debtors make contributions to various multiemployer health and welfare funds. The Debtors estimate, based on historical obligations and withholdings that, as of the Commencement Date, they are obligated to contribute approximately \$825,000 to various multiemployer health and welfare funds that maintain the Union Employee Benefit Plans, which include union Medical Plans, Prescription Plans, Dental Plans, and Vision Plans (each as defined below) as well as other Union Employee Benefit Plans, further described below.

26. In the ordinary course of business, the Debtors maintain various employee benefit plans and policies for their Employees. The benefits available to non-union Employees include Debtors-sponsored medical plans, prescription plans, dental plans, a vision plan, life insurance plans, long-term disability insurance plans, short-term disability insurance plans, statutory disability benefit programs, flexible spending account plan, a transit benefit program,

vacation, and other paid time off (collectively, the “**Non-Union Employee Benefit Plans**”).¹⁰ The Debtors estimate, based on historical obligations and withholdings, that, as of the Commencement Date, approximately \$375,000 remains outstanding on account of the prepetition claims related to the Non-Union Employee Benefit Plans, administrative fees, premiums, and funds withheld, which amount includes amounts outstanding under the non-union Medical Plans, Prescription Plans, Dental Plans, and Vision Plans (each as defined below) as well as other Non-Union Employee Benefit Plans, further described below.

27. Through this Motion, the Debtors seek authority, but not direction, in the exercise of their discretion, to pay prepetition claims (if applicable), to honor obligations, and to continue programs, in the ordinary course of business and consistent with past practices, as they relate to the Union Employee Benefits Programs and Non-Union Employee Benefit Plans, subject to the Debtors’ ability to modify or discontinue any Non-Union Employee Benefit Plans or Union Employee Benefit Plans (as permitted by the CBAs and applicable law) to reduce applicable costs or the benefits provided thereunder.

A. Health Care Plans

28. Eligible Employees can participate in programs, through either Debtors’ sponsored plans or multiemployer health and welfare plans available for union-represented Employees under their respective CBAs, which plans provide medical insurance coverage (the “**Medical Plans**”), prescription drug benefits (the “**Prescription Plans**”), dental insurance coverage (the “**Dental Plans**”), and vision coverage (the “**Vision Plans**”, and, together with the Medical Plans, Prescription Plans, and Dental Plans, the “**Health Care Plans**”).

¹⁰ Some of these Non-Union Benefit Plans are also provided to union-represented Employees, such as the Insurance Plans (unless otherwise provided), vacation, and paid time off.

29. With respect to the union Health Care Plans, the Debtors contribute to the following multiemployer health and welfare funds, through which union-represented Employees receive benefits: (i) the UFCW Local 342 Health Care Fund; (ii) the Local 371 Health Fund; (iii) the UFCW Local 464A Welfare Service Benefit Fund; (iv) the Local 1245 Health Fund; and (v) the UFCW Local 1500 Welfare Fund (all health and other welfare plans are collectively, the “**Union Welfare Plans**”).¹¹ The Debtors’ aggregate contributions to the Union Welfare Plans total approximately \$828,000 per month.

i. *Medical Plans*

30. UFCW Union Medical Plans. The union-represented Employees who are members of UFCW unions are eligible for Medical Plans through their respective multiemployer health and welfare funds.

31. Non-Union Medical Plans. Non-union Employees are generally eligible to participate in one of the two (2) following non-union Medical Plans: the (i) Kings Super Markets, Inc. Health Insurance Plan; and (ii) Balducci’s Holdings, LLC Welfare Plan. Certain executive employees are also eligible to participate in the Kings Super Markets Ultimate Health Plan. Eligible Employees include Full-Time Employees and most, but not all, Part-Time Employees. Eligible Employees may participate in the Medical Plans on the first of the month following 60 days of employment. The non-union Medical Plans are fully-insured, administered by Horizon Blue Cross Blue Shield of New Jersey and Ultimate Health by AmadaCare with respect to Kings, and Aetna with respect to Balducci’s. The Debtors pay approximately \$325,000 per month for premiums related to the non-union Medical Plans (remaining premiums are funded by

¹¹ In addition, the Debtors contribute to certain ancillary multiemployer welfare benefit funds that provide benefits such as education and legal services.

contributions from plan participants, *i.e.*, the plan premiums are deducted from non-union Employees' paychecks). As of the Commencement Date, the Debtors estimate approximately \$325,000 remains outstanding on account of the non-union Medical Plan, which amount is included in the total amount related to the Non-Union Employee Benefit Plans outstanding as of the Commencement Date.

ii. *Prescription Plans*

32. UFCW Union Prescription Plans. UFCW members who participate in a Medical Plan automatically receive benefits under the related Prescription Plan. The Debtors pay into the multiemployer health and welfare funds for these Prescription Plans.

33. Non-Union Prescription Plans. Non-union Employees who participate in a Medical Plan are automatically enrolled in the related Prescription Plan, which is administered by Horizon Blue Cross Blue Shield of New Jersey with respect to Kings, and Aetna with respect to Balducci's. These Prescription Plans are fully-insured.

iii. *Dental Plans*

34. UFCW Union Dental Plans. Union-represented Employees who participate in the Medical Plan are automatically enrolled in the related Dental Plan through their respective multiemployer health and welfare fund.

35. Non-Union Dental Plans. Non-union Employees are eligible to participate in one of three (3) Dental Plans, all of which are fully-insured and offered through Horizon Blue Cross Blue Shield of New Jersey and Ultimate Health by AmadaCare with respect to Kings, and Aetna with respect to Balducci's. The Debtors pay approximately \$15,000 per month for premiums related to the non-union Dental Plans (remaining premiums are funded by contributions from plan participants, *i.e.*, the plan premiums are deducted from non-union Employees' paychecks). As of the Commencement Date, the Debtors estimate approximately \$15,000 remains

outstanding on account of the non-union Dental Plans, which amount is included in the total amount related to the Non-Union Employee Benefit Plans outstanding as of the Commencement Date.

iv. *Vision Plans*

36. UFCW Union Vision Plans. Union-represented Employees who participate in the Medical Plan are automatically enrolled in the related Vision Plan through their respective multiemployer health and welfare fund. These Vision Plans are self-insured.

37. Non-Union Vision Plan. The Vision Plan for non-union Employees is fully insured and is funded partially with contributions from program participants, *i.e.*, the plan premiums are deducted from each non-union Employees' paycheck. The Debtors pay approximately \$700 per month for premiums related to the non-union Vision Plan. As of the Commencement Date, the Debtors estimate approximately \$700 remains outstanding on account of the non-union Vision Plan, which amount is included in the total amount related to the Non-Union Employee Benefit Plans outstanding as of the Commencement Date.

38. Through this Motion, the Debtors seek authority to honor any prepetition obligations related to the Health Care Plans and to continue such programs in the ordinary course.

B. Insurance Plans

39. The Debtors provide eligible Employees with basic life insurance, long-term disability coverage, statutory short-term disability benefits, and basic short-term disability coverage (collectively, the "**Insurance Plans**").

40. Basic Life Insurance. The Debtors provide automatic basic life insurance coverage to eligible Employees, equal to (a) one times annual base pay for non-exempt Employees, (b) two times annual base pay for exempt Employees, and (c) three times annual base pay for certain Employees grandfathered in from the Debtors' prior basic life insurance program. Eligible

Employees covered by basic life insurance are also covered for accidental death and dismemberment. The Debtors transfer approximately \$5,800 per month on account of such benefits.

41. Long-Term Disability Insurance. The Debtors provide eligible Employees with long-term disability coverage. The premium for this program is added to eligible Employees' salary as imputed income and then deducted on the same paycheck. Depending on the Employee's salary, the program pays 60% of the Employee's monthly income, up to a maximum of \$5,000 per month. For non-exempt Employees, the Debtors transfer approximately \$3,300 per month in premiums related to this coverage.

42. Statutory Short-Term Disability Insurance. The Debtors also provide all Employees with short-term disability benefits required under state law.¹² In New York, when a claim is duly made, the law requires the Debtors to pay 50% of the participant's salary, up to a maximum payment of \$170 per week over a maximum term of 26 weeks. In New Jersey, when a claim is duly made, the law requires the Debtors to pay 66-2/3% of the average weekly wage up to the state maximum benefits over a maximum term of 26 weeks. The short-term disability benefits are fully insured and administered by Arch Insurance Company ("**Arch**") with respect to Kings, and Mutual of Omaha with respect to Balducci's. The Debtors paid approximately \$510,000 in 2019 in premiums on account of short-term disability coverage and, as of the Commencement Date, the Debtors estimate no amounts remain outstanding on account of such claims.

¹² Connecticut, Maryland, and Virginia do not require the Debtors to provide short-term disability insurance. The Debtors, however, provide short-term disability benefits for Employees through Arch (with respect to Kings, except for its stores in Connecticut) and Mutual of Omaha Insurance Company (with respect to Balducci's) ("**Mutual of Omaha**"). Union Employees in Kings' Connecticut store receive short-term disability insurance through their respective unions.

C. New York State Paid Family Leave

43. As of January 1, 2018, the Debtors began taking a weekly tax deduction amount for eligible Employees who work in New York state toward the cost of the Debtors' fully-insured paid family leave benefit (the "NYSPFL") paid by Arch (with respect to Kings) and Mutual of Omaha (with respect to Balducci's). The NYSPFL annual premium payment amount paid to Arch and Mutual of Omaha is equal to the annual deduction in amounts taken from the New York state Employees. The deduction amount equals 0.27% of wages, not to exceed \$196.72 per week. The estimated Employee contribution to the NYSPFL is approximately \$100 (with respect to Kings) and \$246 (with respect to Balducci's) per week. Through this Motion, the Debtors seek authority to honor their obligations under the NYSPFL and to continue such program in the ordinary course.

D. Flexible Spending Plan

44. The Debtors offer eligible Employees the ability to contribute a portion of their pre-tax compensation to fund certain health care and expenses or dependent care expenses through a program (the "Flexible Spending Account Program") administered by Total Administrative Services Corp. ("TASC") with respect to Kings, and Benefit Analysis Inc. ("BAI") with respect to Balducci's. Employees are eligible to participate in the Flexible Spending Account Program after the first of the month following initial 90 days of employment. Flexible accounts are funded with Employee pre-tax payroll deductions. Annual maximum contributions for 2020 are \$2,750 for eligible health care expenses and \$5,000 for eligible dependent care expenses (as adjusted). TASC and BAI, as applicable, reimburse claims using funds in the flexible spending accounts as appropriate.

45. Approximately 26 Employees participate in the Flexible Spending Account Program. The Debtors estimate they withhold approximately \$5,160 per month to contribute to

participants' flexible spending accounts. As of the Commencement Date, the Debtors estimate they may hold approximately \$15,000 in withholdings intended to fund the Flexible Spending Account Program. In addition, the Debtors pay TASC approximately \$215 per month, and BAI approximately \$53¹³ per month, in administrative fees related to the Flexible Spending Account Program and, as of the Commencement Date, estimate approximately \$500 remains outstanding on account of the prepetition administrative fees.

46. Through this Motion, the Debtors seek authority to honor their obligations under the Flexible Spending Account Program and to continue such program in the ordinary course.

E. Vacation and Paid Time Off

47. The Debtors maintain a policy of providing paid time off to eligible Employees (the "**PTO Policy**") in the form of vacation days, personal days, holidays, bereavement pay, and payment for absences due to jury duty. The accrual and use of paid time off under the PTO Policy varies depending on, among other things, the particular type of paid time off in question as well as eligibility under the applicable CBAs or non-union paid time off policy.¹⁴

48. Through this Motion, the Debtors seek authority to honor their obligations under the vacation policy and the PTO Policy and to continue such program in the ordinary course.

¹³ Includes administrative fee for BAI's management of Balducci's COBRA program, and transit benefit program.

¹⁴ The amount of annual vacation days available to a given Program Participant ranges from one (1) to five (5) weeks based on length of service and whether the Employee is a union or non-union member, part-time or full-time, and exempt or non-exempt. Program participants accrue one (1) or two (2) vacation week(s) upon completion of their first year of service. The annual allotment of vacation days is earned either on a pro rata monthly basis or earned immediately on an annual basis. Employees are also generally entitled to between one (1) and five (5) days' bereavement pay, triggered upon the death of a family member, and wages that would have been earned while serving on a jury. Finally, eligible Employees generally receive six (6) paid holidays, which are determined by a set schedule of holidays and are paid with regular payroll for the applicable holiday week. Eligible Employees also receive personal days depending on length of service and union or non-union status.

F. Miscellaneous Benefits

49. As of the Commencement Date, there is a small group of Employees and their dependents as well as former Employees and their dependents who qualify to elect continuation of benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”). For non-union Employees, COBRA applies when the Employees and/or dependents are no longer eligible for certain Debtor- sponsored benefits. COBRA costs are built into the estimated cost figures for the Medical, Pharmacy, Dental, and Vision Plans spend. COBRA is administered by the Debtors with respect to Kings, and BAI with respect to Balducci’s. As noted above, the Debtors pay BAI approximately \$53 per month, in administrative fees related to the Flexible Spending Account Program, COBRA, and the Debtors’ transit benefit program.¹⁵

50. Additionally, the Debtors provide an Employee Assistance Program, which covers counseling for issues including, but not limited to, substance abuse, mental health, and marital issues for Employees.

51. The Debtors intend to continue and honor such practices, programs, and policies after Commencement Date, as such practices, programs, and policies may be modified, amended, or supplemented from time to time in the ordinary course of the Debtors’ operations. Through this Motion, the Debtors seek authority to honor such obligations and to continue such miscellaneous benefits program in the ordinary course.

¹⁵ The Debtors are required to provide commuter benefits for mass transit and parking to its Employees pursuant to state law in New York and New Jersey. The program is funded by pre-tax deductions from Employees’ paychecks. The benefit is administered by Benefit Resource, LLC (“**BRI**”) for Kings and BAI for Balducci’s. The Debtors pay BRI approximately \$50 per month in administrative fees related to Kings’ transit benefit program.

VII. Retirement Plans

A. Union Retirement Plans

52. With respect to the union-represented Employees, the Debtors make multiemployer pension fund contributions and 401(k) savings plan contributions. Through this Motion, the Debtors seek the authority to continue to honor their prepetition obligations related to the Union Retirement Plans and to continue to honor such obligations in the ordinary course after the Commencement Date.

i. *UFCW Pension Programs*

53. Under certain CBAs, eligible Employees are able to participate in pension plans administered by various funds (the “**UFCW Pension Programs**”). Pursuant to CBAs with UFCW Local Union Nos. 1245 (now known as Local No. 360), 464A, and 1500, the Debtors are required to contribute to multiemployer defined benefit pension funds on behalf of their employees represented by each respective local union. These multiemployer pension funds are: (i) the Local 1245 Labor-Management Pension Fund (the “**Local 1245 Plan**”), (ii) UFCW Union Local 464A Pension Plan (the “**Local 464A Plan**”), and (iii) UFCW Local 1500 Pension Fund (the “**Local 1500 Plan**”). In total, the Debtors pay approximately \$325,500 per month to in connection with the UFCW Pension Programs. As of the Commencement Date, the Debtors estimate approximately \$325,000 is owed on account of contributions to the UFCW Pension Programs.

ii. *UFCW 401(k) Plans*

54. Under certain CBAs, eligible union Employees are able to participate in a 401(k) savings plan administered by various funds (the “**UFCW 401(k) Plans**”, and together with the UFCW Pension Programs, the “**Union Retirement Plans**”). CBAs with UFCW Local Union Nos. 342 and 371 obligate the Debtors to contribute to defined contribution retirement funds on behalf of their employees represented by each respective local union. These plans are: (i) the

UFCW Local 342 Savings and 401(k) Plan and (ii) the Local 371 Annuity/401K Plan. An Employee who is a member of UFCW Local No. 342 or a Full-Time Employee who is a member of UFCW Local No. 371 is eligible for the UFCW 401(k) Plan after twelve (12) months of service. Part-Time Employees who are members of UFCW Local No. 371 are also able to participate after one year of service, provided such Employee has reached 21 years of age. In total, the Debtors pay approximately \$4,600 per month in various UFCW-related 401(k) savings plan employer contributions. The Debtors estimate that they have no amounts accrued on account of this program as of the Commencement Date.

B. Non-Union 401(k) Savings Plans¹⁶

55. The Debtors maintain defined contribution plans for the benefit of all non-union eligible Employees meeting the requirements of sections 401(a) and 401(k) of the Internal Revenue Code (the “**Non-Union 401(k) Savings Plans**”), which are managed by Massachusetts Mutual Life Insurance Company as the record keeper. There are approximately 362 Employees or former employees with current account balances in the Non-Union 401(k) Savings Plans, with a total of approximately \$12,435 withheld each week for Employees paid weekly, and approximately \$35,725 withheld every other week for Employees paid bi-weekly, from plan participants’ paychecks on account of the Non-Union 401(k) Savings Plans. The Debtors currently make matching contributions for eligible non-union plan participants who have earned twelve (12) months of service, and have worked at least 1,000 hours within those twelve (12) months and are at least 21 years-old. Pursuant to the Non-Union 401(k) Savings Plans, for those earning less than \$100,000 annually, the Debtors match plan participants’ contributions at a rate of 50% of the first 3% of eligible compensation. For those earning \$100,000 or more annually,

¹⁶ The Debtors do not provide a pension plan for non-union Employees.

the Debtors match plan participants' contributions at a rate of 50% of the first 1.5% of eligible compensation. The Debtors estimate they pay approximately \$4,205 per weekly pay period and approximately \$7,190 per bi-weekly pay period in matching contributions under the Non-Union 401(k) Savings Plans. As of the Commencement Date, the Debtors estimate they may hold approximately \$48,000 in prepetition 401(k) savings plan withholdings and approximately \$8,000 has accrued on account of prepetition matching obligations. Through this Motion, the Debtors seek the authority to continue to honor their prepetition obligations related to Non-Union 401(k) Savings Plans and to continue to honor such obligations in the ordinary course after the Commencement Date.

The Relief Requested Should be Granted

I. Payment of the Employee Obligations is Warranted Under Section 363(b)(1) of the Bankruptcy Code and the Doctrine of Necessity.

56. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], 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). Under section 363 of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims where a sound business purposes exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174 (Bankr. S.D.N.Y. 1989) (finding that there must be a sound business justification to justify payment of prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims for suppliers).

57. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such

relief is necessary for the Debtor to carry out its fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to act as a fiduciary to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of the debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”). 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” the Bankruptcy Code. 11 U.S.C. § 105(a); *see Ionosphere Clubs*, 98 B.R. at 175 (applying section 105(a) to justify an order authorizing the payment of certain pre-petition wages, salaries, medical benefits, and business expense claims to debtor’s employees); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code provides a statutory basis for the payment of prepetition claims).

58. The Court may also rely on its general equitable powers to grant the relief requested in this Motion. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court (commonly referred to as the “necessity of payment” rule or the “doctrine of necessity”), empowers the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Long standing precedent in this district has established that the doctrine of necessity allows a debtor to make payments outside of a plan of reorganization on account of prepetition obligations where

such payment is necessary for the preservation of value. *See, e.g., In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *In re Fin. News Network Inc.*, 134 B.R. 732, 735-36 (Bankr. S.D.N.Y. 1991); *see also CoServ*, 273 B.R. at 497 (“[I]t is only logical that the bankruptcy court be able to use § 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”)

59. Courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport, C&S W.R. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent “stoppage of the continuance of [crucial] business relations”); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (extending doctrine for payment of prepetition claims beyond railroad reorganization cases), *cert. denied* 325 U.S. 873 (1945); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-86 (S.D.N.Y. 1987) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits).

60. This “doctrine of necessity” functions in a chapter 11 reorganization as a mechanism by which the Court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing “existence of a judicial power to authorize trustees . . . to pay claims . . . [for] goods or services indispensably necessary” to debtors’ continued operation); *In re Structurlite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988) (“[A] *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.”). The rationale for the doctrine of

necessity is consistent with the paramount goal of chapter 11 - “facilitating the continued operation and rehabilitation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176.

61. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. Authorizing the Debtors to pay prepetition wages, employee benefits and similar items will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption. Indeed, without the relief requested herein being granted, the Debtors’ Employees may seek alternative opportunities, perhaps with the Debtors’ competitors. The loss of valuable Employees, who are the lifeblood of the Debtors’ operations, would deplete the Debtors’ workforce, thereby hindering the Debtors’ ability to meet their customer obligations and, likely, diminishing stakeholder confidence in the Debtors’ ability to successfully carry out their chapter 11 strategy.

62. Failure to satisfy certain prepetition obligations will jeopardize Employee morale and loyalty at a time when Employee support is critical to the Debtors’ businesses. The majority of the Debtors’ Employees rely exclusively on their compensation, benefits and reimbursement of expenses to satisfy their daily living expenses. These Employees will be exposed to significant financial difficulties and other distractions if the Debtors are not permitted to honor their obligations for unpaid compensation, benefits and reimbursable expenses. Furthermore, if the Court does not authorize the Debtors to honor their various obligations under the insurance programs, the Employees will not receive health coverage and, thus, may become obligated to pay certain health care claims in cases where the Debtors have not paid the respective insurance providers. The loss of health care coverage will result in considerable anxiety for

Employees (and likely attrition) at a time when the Debtors need such Employees to perform their jobs at peak efficiency—especially during the COVID-19 pandemic. Additionally, as set forth above, Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors' operations at a critical juncture. Certain obligations are also entitled to priority treatment under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

II. Payment of Certain of the Employee Obligations Is Required by Law.

63. The Debtors seek authority to pay Deductions and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including contributions to the Employee Benefit Programs and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b). Further, federal and state laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co., Inc. v. State of Mich (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Payroll Taxes to the proper parties in the ordinary course of business.

Reservation of Rights

64. 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' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

The Debtors Satisfy Bankruptcy Rule 6003(b)

65. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may approve a motion to "pay all or part of a claim that arose before the filing of the petition" prior to twenty-one (21) days after the commencement date. Fed. R. Bankr. P. 6003(b). The Debtors request authority, on an interim basis, to the honor and satisfy any Employee Obligations as they become due and payable prior to the entry of a final order. As described above, the Debtors' Employees and Supplemental Workforce are vital to the Debtors' operations. Failure to satisfy obligations with respect to these persons in the ordinary course of business during the first 21 days of these chapter 11 cases will jeopardize their loyalty and trust, which may cause such individuals to leave the Debtors' employ or service at a time when they are needed most. The disruption to the Debtors' businesses and operations by Employee unrest would be severe and potentially irreparable. Moreover, the Debtors' Employees and Supplemental Workforce rely on the Debtors' compensation, benefits and reimbursement of expenses to pay their living expenses and the effect could be financially

ruinous if the Debtors cannot immediately pay them in the ordinary course of business. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

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

66. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the Jones Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

Notice

67. Notice of this Motion has been provided to (i) the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Susan Arbeit, Esq. and Richard C. Morrissey, Esq.); (ii) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis; (iii) counsel to the Prepetition Secured Lenders and proposed DIP Lenders, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611 (Attn: Peter P. Knight, Esq. and Jeramy D. Webb, Esq.); (iv) the Unions;¹⁷ (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Southern District of New York; and (vii) Bank of America, N.A. (collectively, the "**Notice Parties**"). The Debtors respectfully submit that no further notice is required.

¹⁷ The "Unions" include UFCW Local 1245 (now known as Local No. 360), UFCW Local 464A, UFCW Local 1500, UFCW Local 342, and UFCW Local 371.

68. 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 entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: August 23, 2020
New York, New York

/s/ Vincent Indelicato

Vincent Indelicato

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*Proposed Attorneys for Debtors
and Debtors in Possession*

Exhibit A

Proposed Interim Order

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

In re

KB US Holdings, Inc., et al.,

Debtors.¹

Chapter 11

Case No. 20-22962

(Jointly Administered)

**INTERIM ORDER AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO
(A) PAY CERTAIN PREPETITION WAGES AND REIMBURSABLE
EMPLOYEE EXPENSES, (B) PAY AND HONOR EMPLOYEE MEDICAL
AND OTHER BENEFITS, AND (C) CONTINUE EMPLOYEE BENEFITS
PROGRAMS, AND FOR RELATED RELIEF**

Upon the motion (the “**Motion**”)² of KB US Holdings, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105(a), 363 and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), for an interim order (i) authorizing, but not directing, the Debtors, in their discretion, to (a) pay prepetition wages, salaries and other compensation, taxes, withholdings and related costs and reimbursable employee expenses, (b) pay and honor obligations relating to employee medical, insurance and other benefits programs, (c) continue their employee medical, insurance and other benefits programs on a postpetition basis; and (d) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: KB US Holdings, Inc. (1000), KB Holding, Inc. (3082), AG Kings Holdings Inc. (8681), AG Holdings II Inc. (3828), Kings Super Markets, Inc. (6769), Balducci’s Holdings LLC (1913), Balducci’s Connecticut LLC (1945), Balducci’s Maryland LLC (1926), Balducci’s Virginia LLC (1949), and Balducci’s New York LLC (1934). The location of the Debtors’ corporate headquarters is 700 Lanidex Plaza Parsippany, NJ 07054.

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

Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the Jones Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor

IT IS HEREBY ORDERED THAT

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay and honor all prepetition obligations associated with the Employee Obligations and to continue programs and maintain funding in the ordinary course of business, to the extent requested in the Motion, on account of: (a) Unpaid Compensation, Deductions, and Payroll Taxes; (b) compensation for their Supplemental Workforce; (c) Reimbursable Expenses and Bank of America Credit Cards Program; (d) Union and Non-Union Employee Benefit Plans; (e) Insurance Plans; (f) Union Retirement Plans; and (g) Non-Union 401(k) Savings Plans; provided that the Debtors are authorized, but not directed, to pay only amounts due and payable as of the Commencement Date and amounts that

are or become due and payable between the Commencement Date and the date that a final order on the Motion is entered, and payments for wages, salaries, or commissions, and sick leave earned by an individual shall not exceed \$13,650 for each individuals; provided, further, that the Debtors shall not pay any prepetition Reimbursable Expense unless and until an itemized list of the nature and recipient of such Reimbursement Expense has been provided to the U.S. Trustee and the U.S. Trustee has not objected to such payment within three (3) days of receiving such list.

3. The Debtors are authorized, but not directed, to modify or discontinue any benefit program to reduce or eliminate program expenses or the benefits provided thereunder, at any time, in their sole discretion without prior court approval, subject to applicable requirements, and as permitted by the CBAs.

4. The Debtors are authorized, but not directed, to pay and honor all prepetition obligations associated with the Supplemental Workforce and to continue to utilize the services of the Supplemental Workforce in the ordinary course; provided that the Debtors are authorized, but not directed, to pay only amounts due and payable as of the Commencement Date and amounts that are or become due and payable between the Commencement Date and the date that a final order on the Motion is entered, and such payments shall not exceed \$13,650 for each individual.

5. The Debtors and any applicable third parties are authorized to continue to allocate and distribute Deductions and Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' stated policies and prepetition practices.

6. The Debtors are authorized, but not directed, to pay all processing and administrative fees associated with and all costs and expenses incidental to payment of the Employee Obligations.

7. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

8. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the final hearing to consider the relief requested in the Motion (the "**Final Hearing**").

9. Notwithstanding anything to the contrary contained herein, any payments made or to be made by the Debtors under this Interim Order, and any authorization contained in this Interim Order, shall be in compliance with, and shall be subject to, any then-applicable order approving the Debtors' debtor-in-possession financing facility and/or use of cash collateral, and the documentation in respect of any such debtor-in-possession financing facility, including, without limitation, the then-applicable Approved Budget under, and as defined in, any such order.

10. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

11. Nothing in the Motion or this Interim Order, nor as a result of any payment made pursuant to this Interim Order, shall be deemed or construed as a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity and amount of any payment made pursuant to this Interim Order.

12. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

13. Nothing in this order should be construed as approving any transfer pursuant to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any request that could fall within section 503(c).

14. This Interim Order does not implicitly or explicitly approve any bonus plan, incentive plan, or other plan covered by section 503(c) of the Bankruptcy Code.

15. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

16. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

17. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

18. The Final Hearing shall be held on _____, 2020, at _____ (**Prevailing Eastern Time**) and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (i) the proposed attorneys for the Debtors, Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Vincent Indelicato, Esq. and Timothy Q. Karcher, Esq.), One International Place, Boston, Massachusetts 02110 (Attn: Charles A. Dale, Esq.), and 2029 Century Park East, Suite 2400, Los Angeles, California (Attn: Steve Y. Ma, Esq.); (ii) the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York,

NY 10014 (Attn: Susan Arbeit, Esq. and Richard C. Morrissey, Esq.); (iii) counsel to the Prepetition Secured Lenders and proposed DIP Lenders, Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611 (Attn: Peter P. Knight, Esq. and Jeramy D. Webb, Esq.); and (iv) the Debtors' twenty (20) largest unsecured creditors on a consolidated basis, in each case, so as to be actually received on or prior to **4:00 p.m. (Prevailing Eastern Time) on** _____ **2020.**

19. The Interim Order is effective only from the date of entry through the Court's disposition of the Motion on a final basis shall not impair or otherwise affect any action taken pursuant to this Interim Order.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order.

21. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

Dated: _____, 2020
White Plains, New York

UNITED STATES BANKRUPTCY JUDGE