

Vincent Indelicato  
Timothy Q. Karcher  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, New York 10036  
Telephone: (212) 969-3000  
Facsimile: (212) 969-2900

Charles A. Dale  
**PROSKAUER ROSE LLP**  
One International Place  
Boston, MA 02110  
Telephone: (617) 519-9600  
Facsimile: (617) 519-9899

Steve Y. Ma  
**PROSKAUER ROSE LLP**  
2029 Century Park East, Suite 2400  
Los Angeles, CA 90067-3010  
Telephone: (310) 557-2900  
Facsimile: (310) 557-2193

*Proposed Attorneys for Debtors  
and Debtors in Possession*

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

**In re**

**KB US Holdings, Inc., et al.,  
Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-22962**

**(Joint Administration Requested)**

**DEBTORS' MOTION FOR (I) AUTHORITY  
TO (A) MAINTAIN CERTAIN TRUST PROGRAMS,  
(B) RELEASE CERTAIN FUNDS HELD IN TRUST, AND (C) CONTINUE TO  
PERFORM AND HONOR RELATED OBLIGATIONS AND (II) RELATED RELIEF**

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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, 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.<sup>2</sup>

### **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

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<sup>2</sup> 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. By this Motion, pursuant to sections 105(a), 363, and 541 of the Bankruptcy Code, the Debtors request authority, but not direction, to continue to perform and honor obligations under programs or other arrangements requiring the Debtors to release certain funds held in trust for the benefit and on behalf of non-Debtor third parties (collectively, the “**Trust Programs**”; the funds arising or collected therefrom, the “**Trust Funds**”; and the non-Debtor third parties receiving the Trust Funds, the “**Trust Funds Counterparties**”).

6. A proposed form of order granting the relief requested herein on an interim basis is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

### **The Debtors’ Programs**

7. As explained herein, in the ordinary course of their business, the Debtors engage in certain marketing and sales practices that are, among other things, designed to offer a convenience to their customers, attract new customers, promote loyalty among the existing customer base, and produce alternative streams of income. Such practices include selling lottery tickets, third-party retail gift cards and special event tickets, offering charitable donation opportunities, and coin and bottle depository. The Debtors are also parties to other beneficial relationships with certain vendors or suppliers that allow them to receive additional streams of income by way of commission payments. It is important for the Debtors to honor their obligations in connection with such services and arrangements to preserve reputational integrity and continue to attract existing and new customers to their stores.

**A. State Lottery Products.**

8. Many of the Debtors' stores located in New York and New Jersey sell lottery tickets and similar games of chance sponsored by the states in which they operate (the "**Lottery Programs**"). The Lottery Programs consist of (i) games of chance purchased by the Debtors from the state at face value and (ii) lottery products sold by the Debtors in their capacity as a designated vendor under which the lottery drawings are conducted by a state agency, such as Powerball. The Lottery Programs help attract new customers, retain current customers, and generate income.

9. Pursuant to the agreements governing the Lottery Programs, the Debtors sell various products available in the Lottery Programs to their customers and remit the funds collected (the "**Lottery Proceeds**") to the appropriate state agency (each, a "**Lottery Agency**" and, collectively the "**Lottery Agencies**") on a regular basis. In accordance with applicable state laws and regulations and/or the terms and conditions of the agreements governing the Lottery Programs, the Debtors deposit the Lottery Proceeds for and on behalf of the Lottery Agencies in a specially designated checking account where such amounts are made available to the Lottery Agencies by electronic funds transfers. In exchange for participating in the Lottery Programs and serving as a vendor for the various Lottery Agencies, the Debtors receive a commission from each contracting Lottery Agency, the amount of which varies by state. For example, the Debtors receive a six percent (6%) commission on lottery sales conducted in their New York stores and a five percent (5%) commission on every ticket sold for their New Jersey stores.

10. The Debtors estimate that on an average week they owe the various state Lottery Agencies approximately \$80,000 for lottery products sold, but not yet transferred, to the Lottery Agencies. Pursuant to the laws and contracts governing the Lottery Programs, the Lottery Proceeds constitute property of the Lottery Agencies at all times, including while in the Debtors'

possession, and such amounts are held in trust by the Debtors for and on behalf of the Lottery Agencies. Accordingly, the Debtors seek authority to honor their prepetition contractual obligations and release any prepetition Lottery Proceeds currently being held in trust to the applicable Lottery Agency identified by the Debtors after reconciling their accounts.<sup>3</sup>

**B. Third-Party Retail Gift Cards.**

11. Pursuant to that certain (a) *Master Distribution and Service Agreement* entered into by and between Kings Super Martkets, Inc. and Interactive Communications International, Inc. (“**InComm**”), effective as of November 17, 2017 (as subsequently amended or modified, the “**InComm Agreement**”), and (b) *Appointment Agreement for Payment Services* entered into by Kings Super Markets, Inc. and InComm Financial Services, Inc., effective as of November 15, 2017 (as subsequently amended or modified, the “**InComm Payment Services Agreement**”), the Debtors sell gift cards for third-party retailers in a variety of denominations (collectively, the “**Gift Cards**”).<sup>4</sup> Generally and subject to certain restrictions, the Gift Cards are issued by the Debtors in exchange for cash and are redeemable by their holders in exchange for merchandise sold by other retailers. For example, the Debtors provide Gift Cards for retailers such as Bed Bath & Beyond, Crate & Barrel, H&M, and IHOP. The Debtors also provide Gift Cards for telecommunications service providers such as AT&T, Verizon, and T-Mobile, as well as prepaid cards from Visa and MasterCard.

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<sup>3</sup> In some states, the Debtors also cash out certain winning lottery tickets up to a maximum amount, which amounts are then reimbursed by the Lottery Agencies. The Debtors are separately seeking authority honor certain winning lottery tickets presented by their customers in the *Motion of Debtors for Interim and Final Authority to (i) Maintain and Administer Customer Programs, Promotions and Practices and (ii) Pay and Honor Related Prepetition Obligations* (the “**Customer Programs Motion**”), filed contemporaneously herewith.

<sup>4</sup> The Debtors also sell gift cards to their customers that can be redeemed for merchandise at the Debtors’ stores at a later date. Such gift cards are not the subject of this Motion or the InComm Agreement and InComm Payment Services Agreement and are addressed in the Customer Programs Motion filed contemporaneously herewith.

12. Pursuant to the InComm Agreement, the Debtors turn over the proceeds from the sale of Gift Cards (the “**Gift Card Proceeds**”) to InComm, in its capacity as an intermediary between the Debtors and the applicable retailers. The Debtors receive a commission for each Gift Card sold under the InComm Agreement, the amount of which varies by retailer and based on the value of the Gift Card.

13. At all times that the Debtors are in possession of Gift Card Proceeds, the InComm Agreement and the InComm Payment Services Agreement expressly provide that such amounts remain the property of InComm and must be held in trust for the benefit of InComm. In addition, each purchase of a Gift Card in the Debtors’ stores is automatically noted in the Debtors’ systems and is traceable. The Debtors estimate that, as of the Commencement Date, they owe InComm approximately \$85,000 in Gift Card Proceeds. The Debtors seek authority to honor their prepetition contractual obligations and release to InComm any prepetition Gift Card Proceeds identified by the Debtors after reconciling their accounts.

### **C. Bottle Deposit Program**

14. The Debtors’ store located in Garden City, NY is required by its jurisdiction to accept empty beverage containers through reverse vending machines. To comply with state environmental and container deposit laws, the Debtors hold as deposit a portion of the purchase price for each bottled product sold, and customers may deposit bottles in exchange for a refund of the deposit (the “**Bottle Deposit Program**”; the deposits generated from the Bottle Deposit Program, the “**Bottle Deposit Proceeds**”; and the customers that participate in the Bottle Deposit Program, the “**Customers**”). Under the Bottle Deposit Program, the Debtors accept empty beverage containers through in-store machines. In the event that the containers are not returned, the Debtors are required by law to remit a portion of the Bottle Deposit Proceeds to the relevant regulatory body (the “**Regulatory Body**,” and together with the Customers, the “**Bottle Deposit**

**Counterparties**”) and are entitled to keep the rest of the Bottle Deposit Proceeds as the Debtors’ commission for participation in the Bottle Deposit Program.

15. Pursuant to the laws governing the Bottle Deposit Program, the Bottle Deposit Proceeds are held in trust by the Debtors for and on behalf of the Bottle Deposit Counterparties. The Debtors estimate that, as of the Commencement Date, they hold approximately \$3,000 in Bottle Deposit Proceeds. Accordingly, the Debtors seek authority to honor their prepetition contractual obligations and release any prepetition Bottle Deposit Proceeds currently being held in trust for the benefit of the Bottle Deposit Counterparties after reconciling their accounts.

#### **D. Charitable Donation Programs**

16. From time to time, the Debtors donate items like gift certificates, gift baskets, and foodstuffs to certain charitable organizations or otherwise support community organizations to build brand awareness and strengthen local community ties. The Debtors administer a program through which customers at the Debtors’ stores may elect to make donations online or at checkout registers to a select group of charities. The Debtors’ employees may also opt to make pre-tax charitable contributions out of their paychecks, which are generally held by the Debtors for one week. Donations from customers are held by the Debtors for one to three months before they are remitted to the appropriate charities (the “**Charitable Proceeds**”). Charities sponsored by the Debtors include, among others, Check-Out Hunger and Round Up Change (collectively, the “**Charities**”).

17. As of the Commencement Date, the Debtors estimate that they hold approximately \$60,000 in Charitable Proceeds for the benefit of the Charities. Accordingly, the Debtors seek authority to honor their prepetition obligations and release any Charitable Proceeds

currently being held in trust to the applicable Charities identified by the Debtors after reconciling their accounts.

**Relief Requested Should Be Granted**

18. The uninterrupted continuation of the Trust Programs described herein and payment of the Trust Funds are important to the Debtors' continued business operations. Not only do the Debtors earn commission or bonuses under the Trust Programs, but the Trust Programs also serve to attract customers to the Debtors' stores, resulting in increased revenues for the Debtors. The value of the Debtors' businesses could be significantly harmed if the Debtors are unable to continue to offer the Trust Programs and may drive customers to the Debtors' competitors for access to these programs and products. Thus, it is essential for the Debtors' chapter 11 strategy to continue to offer the Trust Programs described in the Motion without interruption.

19. The Debtors believe that the Trust Funds, which are required to be collected from third parties and held in trust for payment to the Trust Funds Counterparties, do not constitute property of the Debtors' estates. Section 541(b) of the Bankruptcy Code provides that property of the estate does not include "any power that the debtor may exercise solely for the benefit of an entity other than the debtor." 11 U.S.C. § 541(b)(1). *See, e.g., Begier v. I.R.S.*, 496 U.S. 53, 59 (1990) (finding that under bankruptcy law, a debtor "does not own an equitable interest in property he holds in trust for another."); *United States v. Whiting Pools*, 462 U.S. 198, 205 n10 (1983) (finding that the debtor or bankruptcy trustee has no real interest in trust funds); *see also In re The 1031 Tax Grp., LLC*, 439 B.R. 47, 64 n.4 (Bankr. S.D.N.Y. 2010) ("The Court agrees that funds held in trust by a debtor for the benefit of a third party are not funds of the estate."); *In re Appalachian Oil Co.*, 2012 BANKR. LEXIS 171 (Bankr. E.D. Tenn. 2012) (holding that money collected in the sale of lottery tickets by a debtor that operated convenience stores was not property



of the estate). Accordingly, the Debtors do not have an equitable interest in any of the Trust Funds and such funds are not available for the satisfaction of claims of the Debtors' creditors.

20. The Bankruptcy Code does not prohibit a debtor from paying trust fund obligations, and the proposed relief will not prejudice the rights of general unsecured creditors or other parties in interest. Relief similar to that requested herein has been granted in other Chapter 11 cases, including in cases of other grocery operators. *See, e.g., In re Fairway Group Holdings Corp.*, Case No. 20-10161 (Bankr. S.D.N.Y. Mar. 12, 2020); *In re Tops Holding II Corp.*, Case No. 18-22279 (Bankr. S.D.N.Y. Feb. 26, 2018); *In re Great Atlantic & Pacific Tea Company, Inc.*, Case No. 15-23007 (Bankr. S.D.N.Y. August 11, 2015); *In re Git-N-Go, Inc.*, Case No. 04-10509 (Bankr. N.D. Okla. April 26, 2004); *In re FiberMark, Inc.*, Case No. 04-10463 (Bankr. D. Vt. April 27, 2004); *In re Penn Traffic Co.*, Case No. 03-22945 (Bankr. S.D.N.Y. May 30, 2003); *In re Gentek, Inc.*, Case No. 02-12986 (Bankr. D. Del. Oct. 17, 2002). The Debtors submit that the present circumstances warrant similar relief in their chapter 11 cases.

21. Alternatively, even if the Court were to find the Trust Funds are considered property of the Debtors' estate, the relief requested herein remains appropriate pursuant to section 363(c)(1) of the Bankruptcy Code. The Debtors seek authority, but not direction, to continue the Trust Programs that they perform in the ordinary course of business. Section 363(c)(1) of the Bankruptcy Code states that:

If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204 or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in ordinary course transactions without unnecessary oversight by its creditors or the Court.

22. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor's business. *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); *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.”); and *Just for Feet*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under doctrine of necessity and noting that the Court has “power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”).

23. The Debtors believe that the continuation of the Trust Programs is justified because it is essential to the success of these chapter 11 cases. The Trust Programs require no capital expenditure from the Debtors and provide an additional means to generate revenue by driving store traffic. By providing a convenience to customers, the Trust Programs facilitate the Debtors’ maintenance and expansion of their customer base, which will be critical to the Debtors’ financial future on an on-going basis. Moreover, honoring their prepetition contractual obligations and releasing any prepetition Trust Funds will not prejudice the rights of general unsecured creditors or other parties in interest because the Debtors anticipate that many, if not most, of the contracts or agreements with the Trust Funds Counterparties, where applicable, will be assumed

pursuant to section 365 of the Bankruptcy Code. Since any defaults for prepetition obligations must be cured upon the Debtors' emergence from these chapter 11 cases, it is likely only a matter of time before the Debtors' prepetition obligations under the Trust Programs are satisfied.

24. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of their estates.

#### **Reservation of Rights**

25. 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.

#### **Debtors Have Satisfied Bankruptcy Rule 6003(b)**

26. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a Bankruptcy Court may issue an order granting "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" before twenty-one (21) days after filing of the petition. As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtors' operations, value and ability to reorganize. Based on the foregoing, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate payment of the Trust Funds. Accordingly, the

Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

**Bankruptcy Rules 6004(a) and (h)**

27. 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**

28. 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 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 Internal Revenue Service; (v) the United States Attorney's Office for the Southern District of New York; and (vi) the Trust Funds Counterparties (collectively, the "**Notice Parties**"). The Debtors respectfully submit that no further notice is required.

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

WHEREFORE the Debtors respectfully request entry of an orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: August 23, 2020  
New York, New York

*/s/ Vincent Indelicato*

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Vincent Indelicato  
Timothy Q. Karcher  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, New York 10036  
Telephone: (212) 969-3000  
Facsimile: (212) 969-2900

Charles A. Dale  
**PROSKAUER ROSE LLP**  
One International Place  
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-and-

Steve Y. Ma  
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2029 Century Park East, Suite 2400  
Los Angeles, CA 90067-3010  
Telephone: (310) 557-2900  
Facsimile: (310) 557-2193

*Proposed Attorneys for Debtors  
and Debtors in Possession*

**Exhibit A**

**Proposed Order**

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

**In re**

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

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 20-22962**

**(Jointly Administered)**

**INTERIM ORDER AUTHORIZING THE DEBTORS  
TO (I) MAINTAIN CERTAIN TRUST PROGRAMS, (II) RELEASE  
CERTAIN FUNDS HELD IN TRUST, (III) CONTINUE TO PERFORM AND  
HONOR RELATED OBLIGATIONS AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)<sup>2</sup> 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 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), for an order authorizing the Debtors continue to perform and honor obligations under programs or other arrangements requiring the Debtors to release certain funds held in trust for the benefit, and on behalf, of non-Debtor third parties (collectively, the “**Trust Programs**”; the funds arising or collected therefrom, the “**Trust Funds**”; and the non-Debtor third parties receiving the Trust Funds, the “**Trust Funds Counterparties**”), 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 Order of Reference M-

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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, 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.

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

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 continue to perform and honor obligations under the Trust Funds Programs requiring the Debtors to release the Trust Funds to applicable Trust Funds Counterparties, whether or not the Trust Funds were collected or the obligations were incurred prior to the Commencement Date.
3. Entry of this Interim Order is without prejudice to the right of the Debtors to contest the amount of the Trust Funds, whether or not paid pursuant to this Interim Order, or to seek a refund of the same.



4. 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.

5. 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.

6. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by the Trust Funds Counterparties, or any third party.

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

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

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

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

11. 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.

12. 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 Morrissey, Esq.); and (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.), in each case, so as to be actually received on or prior to **4:00 p.m. (Prevailing Eastern Time)** on \_\_\_\_\_ **2020**.

Dated: \_\_\_\_\_, 2020  
White Plains, New York

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UNITED STATES BANKRUPTCY JUDGE