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*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.¹**

Chapter 11

Case No. 20-22962

(Joint Administration Requested)

**DEBTORS' MOTION FOR INTERIM AND FINAL AUTHORITY TO
(I) MAINTAIN AND ADMINISTER CUSTOMER PROGRAMS, PROMOTIONS AND
PRACTICES AND (II) PAY AND HONOR RELATED PREPETITION OBLIGATIONS**

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. By this Motion, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, the Debtors request authority to, in the ordinary course of business and consistent with past practice, (i) maintain and administer the Customer Programs (as defined below) and (ii) pay and otherwise honor their obligations to customers relating thereto, whether arising prior to or after the Commencement Date, as necessary and appropriate in the Debtors' business judgment.

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

The Debtors' Customer Programs

7. The Debtors' businesses depend upon the loyalty of their customers. To maximize customer loyalty, the Debtors have maintained and followed, in the ordinary course of business, the practices and programs described herein and others (collectively, the "**Customer Programs**") to reward and provide incentives to existing customers and to attract new customers to the Debtors' stores. The Debtors operate stores under two brands: Kings Food Markets ("**Kings**") and Balducci's Food Lover's Market ("**Balducci's**"), each of which maintain certain Customer Programs. Customer programs are standard in the retail food business. Without the ability to continue their Customer Programs and to satisfy prepetition obligations in connection therewith, the Debtors risk losing market share and value in their businesses.

A. Return and Exchange Policies

8. Consistent with industry practice and to accommodate customers' needs, the Debtors maintain return, refund, exchange, price-guarantee, and rain-check policies with

respect to both cash and credit purchases (collectively, the “**Return and Exchange Policies**”). These policies assure the Debtors’ customers that they will be “made whole” if merchandise is inadequate, damaged or defective, incorrectly processed, unavailable,³ or subject to recall. By this Motion, the Debtors seek authorization to honor the Return and Exchange Policies with respect to merchandise purchased prior to the Commencement Date.

B. Sales Promotions and Discounts

9. From time to time, the Debtors conduct sales promotions at selected stores (the “**Sales Promotions**”). The Sales Promotions include “buy one get one free” programs, rebates if a customer purchases a certain amount of merchandise, and sweepstakes programs. Sales Promotions are only available to customers who are members of a Reward Card Program (as defined below). The Debtors also occasionally engage in sales promotions in which customers can win gift cards to the Debtors’ stores by interacting with the Debtors’ social media websites.

10. In addition to the Sales Promotions described above, the Debtors provide employees at Kings stores with a discount of 20% off every purchase at Kings stores, and employees at Balducci’s stores with a discount of 30% off every purchase at Balducci’s stores. The Debtors’ corporate employees receive both discounts. The Debtors are also currently offering discounts to healthcare workers during the COVID-19 pandemic. At a relatively low cost to the Debtors, these Sales Promotions allow the Debtors to increase their vendors’ exposure to the Debtors’ customer base and generate additional income by driving foot traffic at the stores. By this Motion, the Debtors seek authorization to honor these Sales Promotions and discounts.

³ “Rain checks” are provided to customers when a product subject to a Sales Promotion (as defined below) is unavailable due to demand for that product exceeding supply. The customer may then purchase the product at the promotional price at a later date.

C. Coupon Program

11. The Debtors maintain a coupon redemption program pursuant to which they honor (a) certain third-party coupons distributed to the Debtors' customers and (b) the Debtors' own coupons that are included in advertising or electronic mail, or are distributed in the Debtors' stores (collectively, the "**Coupons**"). When a customer redeems a valid third-party Coupon in one of the Debtors' stores, the Debtors deduct the amount of the Coupon (or such other deduction as may be advertised) from the relevant item's purchase price. Third-party Coupons are then processed and remitted to third-party intermediaries, who in turn collect the amounts from various vendors and pay the Debtors the value of the Coupons collected. The Debtors do not receive any reimbursement for the value of their own Coupons. To preserve the goodwill of their customer base and continue their competitive marketing programs, the Debtors seek authorization to honor the Coupons issued prior to the Commencement Date in a manner consistent with their ordinary business practices.

D. Gift Card Programs

12. The Debtors maintain programs by which their customers can purchase gift cards, primarily from the Debtors' supermarkets that can be redeemed for merchandise at a later date (collectively, the "**Gift Card Programs**"). As of the Commencement Date, approximately \$661,000 in issued gift cards are outstanding—\$446,000 for Kings stores and \$215,000 for Balducci's stores. Kings gift cards can only be used at Kings stores, and Balducci's gift cards can only be used at Balducci's stores. The Debtors believe that any customer claims arising under the Gift Card Programs are entitled to priority over other general unsecured claims pursuant to section 507(a)(7) of the Bankruptcy Code. By this Motion, the Debtors seek authorization to maintain the Gift Card Programs and to honor all gift cards purchased by customers prior to the Commencement Date.

E. State Lotteries

13. The Kings Stores located in New York and New Jersey sell lottery tickets and similar games of chance sponsored by those states (collectively, the “**Lottery Tickets**”). In the ordinary course of their business, the Debtors “cash out” customers’ winning lottery tickets in amounts no greater than \$600.00 at stores located in New York and \$599.50 at stores located in New Jersey and then present the honored Lottery Tickets to the applicable state regulatory agency for reimbursement. By this Motion, the Debtors seek authorization to “cash out” any Lottery Tickets purchased prepetition and presented postpetition for payment at their stores.⁴

F. Reward Card Programs

14. The Debtors also offer their customers an opportunity to enroll in customer reward card programs, including myKingsExtra and myBALDUCCI’S Gourmet Rewards Club (collectively, the “**Reward Card Programs**”). myBALDUCCI’S Gourmet Rewards Club is a Reward Card Program offered to Balducci’s customers that gives customers a “point” for every dollar spent at a Balducci’s store. For every 250 points earned, the customer receives a \$10 off coupon that must be used within the next 28 days. myKingsExtra is a Reward Card Program offered to Kings customers that does not provide coupons, but instead provides discounts on hundreds of items that are specially marked throughout Kings stores. These Sales Promotions are only available to customers who are members of the relevant Rewards Card Program. The Reward Card Programs can only be redeemed in the form of discounts on goods or services at the Debtors’ Balducci’s stores, for myBALDUCCI’S Gourmet Rewards Club, and Kings stores, for

⁴ Pursuant to the Motion of Debtors to (i) Maintain Certain Trust Programs, (ii) Release Certain Funds Held In Trust, and (iii) Continue To Perform And Honor Related Obligations (the “**Trust Funds Motion**”), filed contemporaneously herewith, the Debtors have sought authority, but not direction, to honor prepetition obligations owed to the relevant state lottery agencies and related entities for Lottery Tickets purchased at the Debtors’ stores.

myKingsExtra. The Debtors deduct any customer savings provided through these programs from revenue otherwise generated at the point of sale.

G. Charitable Donations

15. From time to time, the Debtors make donations to certain charitable organizations or otherwise support community organizations and other groups to build brand awareness and otherwise strengthen local community ties (collectively, the “**Charitable Donations**”). For example, at the corporate level, the Debtors regularly donate to the Central New Jersey Food Pantry and related organizations focused on combatting food insecurity. At the local store level, the Debtors support local charitable events and organizations by donating merchandise or funding. The Debtors also participate in “shopping days” to support local charities, in which a charity receives a percentage of the store’s sales revenue for a specified day. By this Motion, the Debtors seek authorization to honor their commitments under these charitable programs and to pay any outstanding Charitable Donations.

Relief Requested Should Be Granted

A. Ample Authority Exists to Support Payment of Amounts Owed in Connection with the Customer Programs

16. 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 if a sound business purpose 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). The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted). Courts in this District consistently have declined to interfere with corporate decisions absent a showing a bad faith, self-interest, or gross negligence, and have upheld a board’s decisions as long as such decisions are attributable to any “rational business purpose.” *Integrated*, 147 B.R. at 656 (quoting *CRTF Corp. v. Federated Dep’t Stores*, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)).

17. 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 Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts 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. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a 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.”).

18. 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”).

19. Allowing the Debtors to honor prepetition obligations is appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Sav. Assoc. v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999).

20. Courts in this and other districts specifically have authorized debtors to honor prepetition obligations arising from customer programs substantially similar to those discussed herein in comparable chapter 11 proceedings. *See, e.g., In re The Great Atl. & Pac. Tea Co.*, Case No. 15-23007 (Bankr. S.D.N.Y. August 11, 2015); *In re The Great Atl. & Pac. Tea Co.*,

Inc., Case No. 10-24549 (Bankr. S.D.N.Y. January 13, 2011) (authorizing approximately \$11,140,000 of prepetition customer programs expenses); *In re AWI Delaware, Inc.*, Case No. 14-12092 (Bankr. D.Del. Sept. 10, 2014) (approving \$120,000 worth of prepetition customer programs expenses); *In re Bruno's, Inc.*, Case No. 09-00634 (Bankr. N.D. Ala. Feb. 5, 2009) (approving \$900,000 worth of prepetition customer programs expenses); *In re Sbarro LLC*, Case No. 14-10557 (Bankr. S.D.N.Y. Apr. 7, 2014) (approving \$87,500 worth of prepetition customer program expenses).

B. Continuing the Customer Programs and Honoring the Obligations Thereunder Is in the Best Interests of the Debtors' Businesses and Estates

21. The ability to continue administering the Customer Programs without interruption is absolutely critical to the Debtors' valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors' stakeholders. If the Debtors are unable to continue the Customer Programs postpetition or honor obligations thereunder, the Debtors risk alienating certain customer constituencies (who then could form relationships with the Debtors' competitors) and could suffer corresponding losses in customer loyalty and goodwill that will harm their prospects for maximizing recoveries to their stakeholders.

22. The Debtors' Customer Programs also are essential marketing strategies for attracting new customers. Failure to continue the Customer Programs and offer even basic programs such as the Return and Exchange Policies will place the Debtors at a significant—and potentially insurmountable—competitive disadvantage in the marketplace, amplifying the negative effect of customer uncertainty that may arise from these chapter 11 cases. Such uncertainty could erode the Debtors' hard-earned reputation and brand loyalty, which, in turn, could adversely impact their ability to successfully administer their chapter 11 cases and maximize recoveries to stakeholders. The relief requested herein will pay dividends with respect to their

businesses, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of these chapter 11 cases.

23. The Customer Programs do not prejudice other stakeholders. For example, the Debtors are reimbursed for honoring Lottery Tickets and third-party Coupons. The Debtors' own Coupons are essential to their marketing program to attract new customers, and the Debtors' Charitable Donations allow the Debtors to build strong community relationships that will enhance the goodwill of the Kings and Balducci's brands. Under these circumstances, the benefits of continuing to honor the Customer Programs far outweigh the relatively minimal costs associated therewith. Accordingly, the Debtors have shown cause sufficient to warrant the authority to continue administering the Customer Programs and to honor any customer obligations relating thereto.

24. Further, pursuant to section 507(a)(7) of the Bankruptcy Code, up to \$3,025 in claims arising from a consumer's prepetition deposit "of money for the purchase of property or services for personal, family or household use" to the extent that such property or services were not delivered, have priority over other general unsecured claims. *See* 11 U.S.C. § 507(a)(7). This provision was added to the Bankruptcy Code in 1984 to "protect consumers who had deposited money for goods and services with a business that subsequently filed for bankruptcy" and has since been adjusted to increase the priority amount. *In re River Vill. Assocs.*, 161 B.R. 127, 133 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa. 1995). The obligations that arise in connection with the Gift Card and Gift Certificate Programs are priority claims under section 507(a)(7) of the Bankruptcy Code.

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. Immediate and irreparable harm exists where the absence of relief would impair a debtor's ability to reorganize or threaten the debtor's future as a going concern. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (discussing the elements of "immediate and irreparable harm" in relation to Bankruptcy Rule 4001).

27. As described above, the Customer Programs are integral to the Debtors' continued operations because they are necessary to maintain the confidence and goodwill of the Debtors' customer base. The Debtors are at a critical juncture at which they must make every effort to retain customer support, drive revenues, and maximize cash flow. The Debtors' inability to continue the Customer Programs could materially—and perhaps fatally—impair their efforts and thwart the Debtors' chapter 11 cases before they have had a chance to begin. 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)

28. 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

29. 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;⁵ (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Southern District of New York; and (vi) Bank of America, N.A. (collectively, the "**Notice Parties**") The Debtors respectfully submit that no further notice is required.

⁵ The "Unions" include United Food and Commercial Workers International Union, Local 1245 (now known as Local No. 360), United Food and Commercial Workers International Union, Local 464A, United Food and Commercial Workers International Union, Local 1500, United Food and Commercial Workers International Union, Local 342, and United Food and Commercial Workers International Union, Local 371.

30. 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 interim and final 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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*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

(Joint Administration Requested)

**INTERIM ORDER
AUTHORIZING DEBTORS TO MAINTAIN AND
ADMINISTER CUSTOMER PROGRAMS, PROMOTIONS AND
PRACTICES AND PAY AND HONOR RELATED PREPETITION OBLIGATIONS**

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(b), and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), for an order authorizing the Debtors to, in the ordinary course of business and consistent with past practice, (i) maintain and administer their Customer Programs, promotions, and practices and (ii) pay and otherwise honor obligations relating thereto, whether arising prior to or after the Commencement Date, as necessary and appropriate in the Debtors’ business judgment, 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-431, dated January 31, 2012 (Preska, C.J.); and

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.

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 maintain and administer the Customer Programs and honor any related prepetition obligations in the ordinary course of business and consistent with past practice, as necessary and appropriate in the Debtors’ business judgment; provided that, the Debtors are authorized, but not directed, to pay or honor only amounts or obligations that are or become due and payable between the Commencement Date and the date that a final order on the Motion is entered, unless otherwise ordered by the Court.

3. 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**”).

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 any party.

7. This Interim Order is effective only from the date of entry through this Court’s disposition of the Motion on a final basis; provided that the Court’s ultimate disposition of the Motion on a final basis shall not impair or otherwise affect any action taken pursuant to this Interim Order.

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

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

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

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

12. 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.

13. 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.); 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

UNITED STATES BANKRUPTCY JUDGE