

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.¹**

Chapter 11

Case No. 20-22962

(Joint Administration Requested)

**DEBTORS' MOTION FOR (I) AUTHORITY
TO (A) CONTINUE TO MAINTAIN THEIR INSURANCE
POLICIES AND PROGRAMS AND (B) HONOR ALL OBLIGATIONS
WITH RESPECT THERETO AND (II) MODIFICATION OF THE AUTOMATIC
STAY WITH RESPECT TO THE WORKERS' COMPENSATION PROGRAM**

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), 362(d), 363(b) and 503(b) of the Bankruptcy Code, the Debtors request (i) authority, but not direction to (a) continue to maintain, and renew, in their sole discretion, their Insurance Policies and Programs (including the Workers' Compensation Program and the Debtors' premium financing arrangements), (b) honor their Insurance Obligations (as defined herein) in the ordinary course of business during the administration of these chapter 11 cases, (c) pay any prepetition Insurance Obligations, including, without limitation, amounts owed under the Premium Financing Agreement and to the Insurance Service Providers (each as defined herein), and (ii) modification of the automatic stay if necessary to permit the Debtors' employees to proceed with any claims they may have under the Workers' Compensation Program.

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

The Debtors' Insurance Policies and Programs

7. In connection with the operation of the Debtors' businesses and the management of their properties, the Debtors maintain various insurance policies and the Workers' Compensation Program (collectively, the "**Insurance Policies and Programs**," and all premiums and other obligations related thereto, including any broker or advisor fees, assessments, taxes or other fees, collectively, the "**Insurance Obligations**") through several different insurance carriers

(the “**Insurance Carriers**”) including, but not limited to, those Insurance Policies and Programs and Insurance Carriers listed on **Annex 1** annexed to the Proposed Interim Order.³

A. The Insurance Policies

8. The Debtors maintain various liability, property and other insurance policies, which provide the Debtors with insurance related to, among other things, general liability, directors’ and officers’ liability, property, automobile, cyber, umbrella, travel accident, flood, and workers’ compensation (collectively, the “**Insurance Policies**”). The Debtors maintain the Insurance Policies to help manage and limit the various risks associated with operating their businesses. The Insurance Policies are essential to the ongoing operation of the Debtors’ business. Some of the Insurance Policies are required by the various regulations, laws, and contracts that govern the Debtors’ commercial activities. Section 1112(b)(4)(C) of the Bankruptcy Code provides that “failure to maintain appropriate insurance that poses a risk to the estate or to the public,” is “cause” for mandatory conversion or dismissal of a chapter 11 case. 11 U.S.C. § 1112(b)(4)(C). Furthermore, the Guidelines of the Office of the United States Trustee for Region 2 require debtors to maintain insurance coverage throughout their chapter 11 cases. By this Motion, the Debtors seek authority, but not direction, to continue and renew, as applicable, the Insurance Policies and Programs.

9. Pursuant to the Insurance Policies, the Debtors pay premiums based upon fixed rates established and billed by each Insurance Carrier (collectively, the “**Insurance Premiums**,” including, but not limited to, those listed on **Annex 1** to the Proposed Interim Order).

³ Due to the size, complexity and number of business units that the Debtors operate, it is possible that certain of the Debtors’ Insurance Policies and Programs may have been inadvertently omitted from the list of Insurance Policies and Programs annexed as **Annex 1** to the Proposed Interim Order. Accordingly, **Annex 1** represents a non-exhaustive list of the Debtors’ Insurance Policies and Programs. Further, the Debtors may, in the future, enter into new Insurance Policies and Programs not listed on **Annex 1**.

The aggregate annual cost of the Insurance Premiums is approximately \$2.23 million. By this Motion, the Debtors seek authority, but not direction, to pay such Insurance Premiums and any other Insurance Premiums that may become due and owing during these chapter 11 cases.

B. The Workers' Compensation Program

10. The Debtors maintain workers' compensation insurance, as required by statute, that insures their employees in each of the states in which they operate (the "**Workers' Compensation Program**"). The Debtors' Worker's Compensation Program is self-insured up to \$250,000 per claim. The Debtors maintain an excess workers' compensation policy with a third-party insurer, The Hartford, which covers claims in excess of \$250,000 (the "**Excess Policy**"). As of the Commencement Date, there are approximately 71 open claims under the Workers' Compensation Program. The Debtors estimate that they pay approximately \$305,000 per month on account of workers' compensation claims. During 2019, the Debtors paid \$3.6 million with respect to all workers' compensation claims.

11. To maintain the Excess Policy, The Hartford required the Debtors to secure payment of the Debtors' obligations under the Workers' Compensation Program by posting cash collateral (the "**Collateral**"). The Debtors' Excess Policy expires on April 1, 2021. As of the Commencement Date, the aggregate amount of outstanding Collateral posted by the Debtors in support of their Workers' Compensation Program is approximately \$422,000.

12. In addition, the Debtors pay approximately \$136,221 annually in state assessments on account of the Workers' Compensation Program, which are billed as part of the Insurance Premiums the Debtors pay to The Hartford on account of the Workers' Compensation Program. Insurance carriers and self-insured employers are required to pay state assessments to cover the administrative costs of the state workers' compensation board, and insurance carriers pass through the cost to employers through a surcharge on annual premiums. Assessments are

billed by states in which the Debtors currently operate as well as by states in which the Debtors previously operated and for which workers' compensation claims remain pending. As of the Commencement Date, the Debtors do not believe they have any outstanding prepetition obligations owed on account of state assessments.

13. By this Motion, the Debtors request authority, but not direction, to pay any prepetition workers' compensation assessments, claims and other obligations, and to maintain their Workers' Compensation Program in the ordinary course of business, including maintenance of the Excess Policy with The Hartford and the posting of any collateral in connection therewith.

The Debtors' Insurance Financing Arrangements

14. Generally, the Debtors' Insurance Policies require annual premium payments to be made at the beginning of the applicable policy period. Because it is not always economically advantageous for the Debtors to pay premiums on a lump-sum basis, the Debtors finance certain of their Insurance Premiums, typically in the amount of approximately \$1.9 million per year, including for policies relating to general liability, property, automobile, umbrella, and workers' compensation. The Debtors have approximately \$1.6 million in financed insurance premiums as of the Commencement Date. The Debtors finance such policies pursuant to a premium financing agreement (the "**Premium Financing Agreement**") with AFCO Credit Corporation ("**AFCO**"), as described on **Annex 2** annexed to the Proposed Interim Order.

15. Under the Premium Financing Agreement, AFCO has agreed to pay the financed premium payments to the Debtors' respective Insurance Carriers when due. In exchange, the Debtors agreed to pay AFCO a down payment followed by monthly installments of similar-sized payments. The aggregate down payment is approximately \$389,000, followed by ten (10) monthly installments of approximately \$159,000 million per month. The amount financed under the Premium Financing Agreement accrues interest at a rate of 4.76%. As part of the Premium

Financing Agreement, the Debtors granted AFCO a security interest in, among other things, any and all unearned premiums and dividends which may become payable for any reason under the financed Insurance Policies. If the Debtors do not satisfy their obligations under the Premium Financing Agreement, AFCO has the right, subject to the automatic stay, to, among other things, terminate any covered Insurance Policies. As of the Commencement Date, the Debtors are not aware of any outstanding prepetition amounts owed to AFCO under the Premium Financing Agreement, but do anticipate payment will be made in the first twenty-one (21) days of the case, as payment under the Premium Financing Agreement is due on the first (1st) of each month.

16. By this Motion, the Debtors request authority, but not direction, to continue making payments pursuant to the Premium Financing Agreement, and to renew such agreement and enter into new premium financing agreements as necessary in the ordinary course of business.

The Debtors' Insurance Service Providers

17. In connection with the Insurance Policies and Programs, the Debtors employ certain insurance service providers (the “**Insurance Service Providers**”) to help them procure, negotiate and evaluate the Insurance Policies and Programs and process claims related thereto.

18. The Debtors utilize certain insurance brokers, primarily Alliant Americas and Lockton (the “**Insurance Brokers**”), to assist with the procurement and negotiation of certain Insurance Policies and, in certain circumstances, to remit payment to the Insurance Carriers on behalf of the Debtors for the relevant policy periods. The Insurance Brokers' fees and commission (the “**Brokers' Fees**”) are generally paid through the premium payments made on account of the Insurance Policies. In addition, the Debtors pay Lockton an annual fee of approximately \$1,620. The Debtors do not believe that they have any outstanding obligations owed to the Insurance Brokers for Brokers' Fees. However, because of the Insurance Brokers' intimate familiarity with

the Debtors and the Insurance Policies, the Debtors request authority, but not direction, to pay any prepetition Brokers' Fees that may be owed to the Insurance Brokers.

19. The Debtors' employ third-party administrators, The Hartford, Broadspire Services, Inc. ("**Broadspire**"), and Liberty Mutual Insurance ("**Liberty Mutual**," and together with The Hartford and Broadspire, the "**Third-Party Administrators**"), to investigate, administer, and pay claims arising under the Insurance Policies and Programs.

20. In addition, the Debtors pay the Third-Party Administrators fees for their services on a monthly basis (the "**Administrative Fees**" and, together with the Brokers' Fees, the "**Service Providers' Fees**"). The Administrative Fees are based on the amount of claims processed per period, and total approximately \$6,500 per year.⁴

21. Although no prepetition amounts are currently due and owing to the Third-Party Administrators, the Debtors may be required to fund claims attributable to the prepetition period processed by Liberty Mutual, The Hartford, and Broadspire due the first week of September. By this Motion, the Debtors seek approval to pay any Administrative Fees related to the prepetition period that may be owed to the Third-Party Administrators.

Relief Requested Should Be Granted

A. Maintaining Insurance Policies and Programs and Payment of Obligations Related Thereto Is Warranted under the Bankruptcy Code

22. The Court may grant the relief requested herein pursuant to sections 105(a), 363(b) and 503(b) of the Bankruptcy Code.

23. Section 503(b)(1) of the Bankruptcy Code provides that:

⁴ Liberty Mutual only processes claims under a former insurance policy and charges the Debtors processing and documentation fees when it processes a claim (up to approximately \$500 per month).

After notice and a hearing, there shall be allowed, administrative expenses [], including . . . the actual, necessary costs and expenses of preserving the estate.

11 U.S.C. § 503(b)(1)(A). The Court, therefore, can authorize the Debtors to use estate funds to pay any Insurance Obligations arising or relating to the period after the Commencement Date.

24. The Court may also 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)).

25. 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.”).

26. 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”).

27. As noted herein, the Debtors are required legally and contractually to maintain certain Insurance Policies and Programs and the nature of the Debtors’ businesses makes it essential for them to maintain all Insurance Policies and Programs on an ongoing and uninterrupted basis. If any of the Debtors’ Insurance Policies and Programs are terminated or lapse, the Debtors could be exposed to substantial liability to the detriment of all parties in interest. Additionally, the Debtors must maintain most of the Insurance Policies and Programs to comply with the guidelines of the Office of the United States Trustee.

28. Similarly, pursuant to state law, the Debtors must maintain the Workers’ Compensation Program. If the Debtors fail to maintain the Workers’ Compensation Program, among other things, state law may prohibit them from operating. *See, e.g.*, New York Workers’ Compensation Law, Article 8, § 141(a)-(b); New Jersey Worker’s Compensation Law, Article 5, § 34:15-79; Conn. Gen. Stat. § 31-288; Va. Code § 65.2-805; Md. Code § 9-407. Granting authority to pay all workers’ compensation obligations, therefore, is crucial to the continued operation of the Debtors’ businesses.

29. With respect to the continued assistance of the Insurance Service Providers and the payment of their fees in the ordinary course, the Insurance Brokers and the Third-Party Administrators are intimately familiar with the Debtors’ Insurance Policies and Programs, and the Debtors believe that the loss of either Insurance Service Provider (or even a temporary disruption in their services) would be detrimental to the Debtors’ chapter 11 estates, because the Debtors’ would need to shift some of their focus from administering their estates to managing the Debtors’

multitude of insurance policies and the claims arising thereunder. The cost incurred in transitioning to alternative service providers likely would outweigh the prepetition amounts that may ultimately be owed to such parties. Accordingly, the continuation of the Insurance Policies and Programs and the authority to pay, in the Debtors' discretion, all Insurance Obligations, including any unpaid prepetition Insurance Obligations, is essential to preserve the Debtors' businesses and the value of the Debtors' estates for all parties in interest.

B. Automatic Stay Should Be Modified for Workers' Compensation Claims

30. Section 362(a)(1) of the Bankruptcy Code operates to stay:

the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title

11 U.S.C. § 362(a)(1). Section 362(d)(1), however, permits a debtor or other party in interest to request a modification or termination of the automatic stay for "cause."

31. To the extent the Debtors' employees hold valid claims under the Workers' Compensation Program, the Debtors request a modification of the automatic stay to permit the Debtors' employees to proceed with their workers' compensation claims, in the appropriate judicial or administrative forum, and for the Debtors to pay and honor any prepetition workers' compensation claims. There is cause to modify the automatic stay because staying the workers' compensation claims could cause employee departures or otherwise harm employee morale, which would severely disrupt the Debtors' business and prevent a successful reorganization.

32. Courts in this district and others have regularly approved modification of the automatic stay to permit the debtors' employees to proceed with their workers' compensation claims. *See, e.g. In re Fairway Grp. Holdings Corp.*, Case No. 20-10161 (JLG) (Bankr. S.D.N.Y.

Feb. 25, 2020) [ECF No. 214]; *In re Tops Holding II Corp.*, Case No. 18-22279 (RDD) (Bankr. S.D.N.Y. Mar. 22, 2018) [ECF No. 186]; *In re Walter Inv. Mgmt. Corp.*, Case No. 17-13446 (JLG) (Bankr. S.D.N.Y. Dec. 6, 2017) [ECF No. 66]; *In re Cent. Grocers, Inc.*, Case No. 17-10993 (LSS) (Bankr. D. Del. May 5, 2017) [ECF No. 63]; *In re Basic Energy Services, Inc.*, Case No. 16-12320 (KJC) (Bankr. D. Del. Oct. 26, 2016) [ECF No. 56]; *In re Golfsmith Int'l Holdings, Inc.*, Case No. 16-12033 (LSS) (Bankr. D. Del. Sept. 15, 2016) [ECF No. 68]; *In re Breitburn Energy Partners LP*, Case No. 16-11390 (SMB) (Bankr. S.D.N.Y. May 20, 2016) [ECF No. 64]; *In re Chassix Holdings, Inc.*, Case No. 15-10578 (MEW) (Bankr. S.D.N.Y. Mar. 13, 2015) [ECF No. 84]; and *In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 30, 2011) [ECF No. 61].

Reservation of Rights

33. 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)

34. 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 described herein and in the Jones Declaration, the Debtors' are legally and contractually required to maintain many of their Insurance Policies and Programs. In addition, the termination or non-renewal of any of the Insurance Policies and Programs as a result of the Debtors' failure to pay any Insurance Obligations could subject the Debtors to substantial administrative liability as well as a potential cessation of operations, to the detriment of all parties in interest. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

35. 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)

36. 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

37. 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; (vii) the Insurance Carriers identified on **Annex 1** to the Proposed Interim Order; (viii) the Insurance Service Providers; and (ix) AFCO (collectively, the “**Notice Parties**”). The Debtors respectfully submit that no further notice is required.

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

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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.

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

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

-and-

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*

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 (I) AUTHORIZING DEBTORS
TO (A) CONTINUE TO MAINTAIN THEIR INSURANCE
POLICIES AND PROGRAMS AND (B) HONOR ALL OBLIGATIONS
WITH RESPECT THERETO AND (II) MODIFYING THE AUTOMATIC
STAY WITH RESPECT TO THE WORKERS' COMPENSATION PROGRAM**

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), 362(d), 363(b) and 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), for (i) authorization of the Debtors to (a) continue to maintain, and renew, in their sole discretion, their Insurance Policies and Programs (including the Workers’ Compensation Program and the Debtors’ premium financing arrangements), (b) honor their Insurance Obligations in the ordinary course of business during the administration of these chapter 11 cases, (c) pay any prepetition Insurance Obligations, including, without limitation, amounts owed under the Premium Financing Agreement and to the Insurance Service Providers, and (d) modify the automatic stay if necessary to permit the Debtors’ employees to proceed with any

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.

claims they may have under the Workers' Compensation Program; and (ii) 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 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, in the ordinary course of business and not on an accelerated basis, all Insurance Obligations (including, without limitation, amounts owed under the Premium Financing Agreement and to the Insurance Service Providers) arising under or relating to the Insurance Policies and Programs, including, without limitation, any new Insurance Policies and Programs, and whether or not such Insurance Policies

and Programs are listed on **Annex 1** hereto, and any new premium financing agreements, whether or not such premium financing agreements are listed on **Annex 3** hereto, regardless of whether accruing or relating to the period before or after the Commencement Date; 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, unless otherwise ordered by the Court.

3. The Debtors are further authorized, but not directed, to maintain their Insurance Policies and Programs, including the arrangements under the Premium Finance Agreements, in accordance with practices and procedures that were in effect before the commencement of these chapter 11 cases.

4. The Debtors are further authorized, but not directed, to revise, extend, supplement or otherwise modify their insurance coverage as needed, including without limitation, through the purchase or renewal of new or existing insurance policies or through entering into or renewing new or existing premium financing agreements; *provided* that the Debtors shall consult with the agent under their debtor-in-possession financing facility regarding the same in advance and otherwise comply with all obligations under such facility; *provided, further*, that the Debtors shall provide to the Office of the United States Trustee for Region 2 written notice and copies of insurance policies with respect to the same.

5. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay shall be modified to the extent necessary to permit the Debtors' employees to proceed with any claims that they may have under the Workers' Compensation Program and for the Debtors to honor and pay such obligations whether or not arising prior to the Commencement Date.

6. 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 on a final basis(the “**Final Hearing**”).

7. 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.

8. 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.

9. 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.

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

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

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

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

14. 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.

15. 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

ANNEX 1

Policy Schedule

	Type of Coverage	Insurer	Policy Number(s)	Policy Term	Annual Premium
1.	Business Auto	The Hartford	10AB526603	4/1/20 – 4/1/21	29,751.00
2.	CODA D&O	ACE American Ins Co	G31332217 003	8/10/20 – 8/20/21	60,000.00
3.	D&O, Excess Policy	Continental Insurance Company	652138769	8/10/20 – 8/20/21	68,000.00
4.	D&O, EPL, Fiduciary	Travelers Casualty & Surety Co. America	107133693	8/10/20 – 8/20/21	118,308.00
5.	Cyber	Chubb/ACE American Ins Co	D94939665	11/24/19 – 11/24/20	108,158.00
6.	Excess Umbrella	Ohio Casualty	ECO 2157901470	4/1/20 – 4/1/21	49,853.34
7.	Flood - Hillsdale, NJ	American Bankers	69000055782019	7/24/20 – 7/23/21	56,697.00
8.	Flood - Hoboken South	American Bankers	69000107692018	9/23/19 – 9/23/20	1,876.00
9.	Flood - Livingston NJ	The Hartford	8705197986	4/15/20 – 4/15/21	1,599.00
10.	Flood - Morristown NJ	The Hartford	87059226932019	6/8/20 – 6/8/21	3,806.00
11.	General Liability	The Hartford	10ESC526605	4/1/20 – 4/1/21	234,083.00
12.	Property	Affiliated FM	1063751	4/1/20 – 4/1/21	458,938.00
13.	Travel Accident	Chubb	D94939665	4/1/20 – 4/1/21	4,050.00
14.	Umbrella	Travelers	2UP 71M95152-20-NF	4/1/20 – 4/1/21	184,759.00
15.	Workers' Compensation	The Hartford	10WNS26604	4/1/20 – 4/1/21	867,253.00

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Exhibit A

ANNEX 2

Premium Financing Arrangements

	Type of Coverage	Insurer	Policy Term	Financed Premium	Premium Financier	Down Payment	Installment Amount	No. of Installments Outstanding
1.	Auto	The Hartford	4/1/20 – 4/1/21	\$1,552,671.34	AFCO	\$389,048.00	\$188,674.66	6
2.	Excess Umbrella	Ohio Casualty						
3.	General Liability	The Hartford						
4.	Property	Affiliated FM						
5.	Umbrella	Travelers						
6.	Workers' Compensation	The Hartford						

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