

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

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 :
In re : **Chapter 11**
 :
PACIFICCO INC., et al., : **Case No. 23-10740 (PB)**
 :
Debtors.¹ : **(Jointly Administered)**
 : **Re: ECF No. 11**
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**INTERIM ORDER (I) AUTHORIZING DEBTORS TO PAY
 PREPETITION TRADE CLAIMS IN ORDINARY COURSE
 OF BUSINESS, AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated March 28, 2023 (the “**Motion**”)² of PacificCo 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 503(b)(9) of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order (a) authorizing the Debtors to pay the prepetition Trade Claims in the ordinary course of business, and (b) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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 relief requested therein being a core proceeding pursuant to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Catalina Marketing Corporation (9007); PacificCo Inc. (1563); PacificCo Intermediate Corp. (8394); PacificCo Acquisition Corp. (4852); Catalina Marketing Procurement, LLC (9333); Catalina Marketing Technology Solutions, Inc. (8728); Modiv Media, LLC (3507); Cellfire LLC (5599); Catalina Marketing Worldwide, LLC (9687); Catalina-Pacific Media, L.L.C. (3931); CMJ Investments L.L.C. (0561); Supermarkets Online, Inc. (6998); Supermarkets Online Holdings, Inc. (1736); Catalina Marketing Loyalty Holdings, Inc. (3746); and Catalina Digital Holdings, LLC (3488). The Debtors’ principal offices are located at 200 Carillon Parkway, Suite 200, St. Petersburg, FL 33716.

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



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28 U.S.C. § 157(b); and venue being proper before this 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 this Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the First Day Declarations and the record of the Hearing; and all objections to the relief requested in the Motion on an interim basis, if any, having been withdrawn, resolved, or overruled; 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 this 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, pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code, in the reasonable exercise of their business judgment, to pay, in the ordinary course of business, some or all of the prepetition Trade Claims of Trade Creditors; in an aggregate amount not to exceed \$21.1 million, unless otherwise directed by this Court, and in all cases subject to the following:

- (a) The Debtors, in their sole discretion, subject to the limitations set forth below, shall determine which Trade Claims, if any, will be paid pursuant to this Interim Order.
- (b) If a creditor accepts payment under this Interim Order, such creditor is deemed to have agreed to continue to provide goods or services to the Debtors on terms that are as good as or better than the terms and conditions, including credit terms, that existed 180 days before the Petition Date (before any unilateral acceleration), or on

other terms satisfactory to the Debtors in the reasonable exercise of their sound business judgment (the “**Customary Trade Terms**”), during the pendency of these chapter 11 cases.

- (c) In the event that the relationship between a creditor accepting payment under this Interim Order and the Debtors does not extend to 180 days before the Petition Date, the Customary Trade Terms shall mean the terms that the creditor generally extends to its customers or such terms as are acceptable to the Debtors in the reasonable exercise of their sound business judgment.
- (d) If a creditor accepts payment under this Interim Order and thereafter does not continue to provide goods or services on at least the Customary Trade Terms during the pendency of these chapter 11 cases, then (i) any payment on a prepetition claim received by such creditor shall be deemed to be an unauthorized voidable postpetition transfer under section 549 of the Bankruptcy Code and, therefore, recoverable by the Debtors in cash upon written request and (ii) upon recovery by the Debtors, any such prepetition claim shall be reinstated as if the payment had not been made.
- (e) If the Debtors seek to recover a payment from a creditor because the creditor does not continue to provide goods or services to the Debtors on at least the Customary Trade Terms during the pendency of these chapter 11 cases, the creditor may contest such action by making a written request (a “**Request**”) to the Debtors to schedule a hearing before this Court. If such a Request is made, the Debtors shall provide notice of a hearing on such Request to the creditor making the Request and other interested parties in accordance with the Bankruptcy Code and the orders of this Court.
- (f) Before making a payment to a creditor under this Interim Order, the Debtors may, in their discretion, settle all or some of the prepetition claims of such creditor for less than their face amount without further notice or hearing.

3. The undisputed obligations of the Debtors arising under the Prepetition Purchase Orders shall be afforded administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code.

4. The Debtors are authorized, but not directed, in their sole discretion, pursuant to section 363(c)(1) of the Bankruptcy Code, to pay in the ordinary course of their businesses all undisputed obligations arising from the postpetition delivery or shipment of goods or provision of services under the Prepetition Purchase Orders consistent with their customary past practice.

5. 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 hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the “**Final Hearing**”).

6. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the Trade Claims are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit and in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, electronic funds or automated clearing house transfers are dated before, on, or after the Petition Date, without any duty to inquire otherwise.

7. The Debtors are further authorized, but not directed, to issue new postpetition checks, or effect new electronic funds or automated clearing house transfers, and to replace any prepetition checks or electronic fund or automated clearing house transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors’ chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Interim 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 (a) an admission as to the validity of any claim against the Debtors, (b) 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, (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (d) 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. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

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. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on April 28, 2023, at **10:00 a.m.** (Eastern Time) and any objections or responses to the Motion shall be in writing, filed with the Court, submitted electronically to pb.chambers@nysb.uscourts.gov, and served by no later than **4:00 p.m. (Eastern Time) on April 18, 2023**, on the following:

- a. proposed attorneys for the Debtors: Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com), Kevin Bostel, Esq. (kevin.bostel@weil.com), and Rachael Foust, Esq. (rachael.foust@weil.com));
- b. the Office of the United States Trustee for Region 2, One Bowling Green, Suite 534, New York, New York 10004 (Attn: Brian Masumoto (brian.masumoto@usdoj.gov); Tara Tiantian (tara.tiantian@usdoj.gov); and Daniel Rudewicz (Daniel.rudewicz@usdoj.gov)); and
- c. counsel to any creditors' committee appointed in these chapter 11 cases.

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

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

Dated: March 31, 2023
New York, New York

/s/ Lisa G. Beckerman
THE HONORABLE LISA G. BECKERMAN
UNITED STATES BANKRUPTCY JUDGE