

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (___)

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS,
PURSUANT TO 11 U.S.C. §§ 105(a), 363, 507(a)(2), 541, 1107(a), AND 1108
(I) AUTHORIZING THE PAYMENT OF PREPETITION CLAIMS ARISING UNDER
(A) THE PERISHABLE AGRICULTURAL COMMODITIES ACT AND (B) THE
PACKERS AND STOCKYARDS ACT AND (II) AUTHORIZING BANKS TO HONOR
AND PROCESS CHECKS AND ELECTRONIC TRANSFER
REQUESTS RELATED TO THE FOREGOING**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) by and through their proposed undersigned counsel, hereby submit this *Motion of the Debtors for Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 105(a), 363, 507(a)(2), 541, 1107(a), and 1108 (I) Authorizing the Payment of Prepetition Claims Arising Under (A) the Perishable Agricultural Commodities Act and (B) the Packers and Stockyards Act and (II) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related to the Foregoing* (the “Motion”). In support of the Motion, the Debtors rely on the *Declaration of Matthew R. Manning in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Millburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.



(the “First Day Declaration”), and respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.²

2. The statutory predicates for the relief sought herein are sections 105(a), 363, 507(a), 541, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended or modified, the “Bankruptcy Code”), the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§ 499a-499t (“PACA”), the Packers and Stockyards Act of 1921, as amended, 7 U.S.C. §§ 181-231 (“PASA”), rules 6004(a) and (h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 9013-1(m).

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

GENERAL BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date of

² Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedures for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors hereby confirm their consent to entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

6. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors' businesses and capital structure is set forth in detail in the First Day Declaration filed contemporaneously with this Motion and incorporated herein by reference.

THE PACA AND PASA CLAIMS

7. As the owners and operators of 47 full-service restaurants, in the ordinary course of business, the Debtors regularly receive from various vendors fresh fruits and vegetables ("PACA Vendors") and fresh meat, poultry and other similar products ("PASA Vendors" and, together with the PACA Vendors, the "PACA/PASA Vendors"). The Debtors believe that without the relief requested herein, many of the PACA/PASA Vendors may cease delivering goods and providing services to the Debtors, which would have devastating consequences for the Debtors' business operations and their going concern value in these Chapter 11 Cases.³

A. PACA Claims

8. Congress enacted PACA to regulate the sale of "perishable agricultural commodities." 7 U.S.C. § 499a; *see also Endico Potatoes, Inc. v. CIT Grp./Factoring*, 67 F.3d 1063, 1067 (2d Cir. 1995). Under PACA, the term "perishable agricultural commodity" is generally defined as "fruits and fresh vegetables of every kind and character" "whether or not

³ The Debtors have filed concurrently with this Motion the *Motion of the Debtors for Entry of Interim and Final Orders (A) Authorizing the Debtors to Pay All or a Portion of the Prepetition Claims of Certain Critical Vendors and (B) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* (the "Critical Vendor Motion"). None of the claims to be paid under the Critical Vendor Motion are PACA Claims or PASA Claims. Thus, there is no overlap between the relief requested in the Critical Vendor Motion and this Motion.

frozen or packed in ice” (“PACA Goods”).⁴ 7 U.S.C. § 499a(b)(4). PACA provides various protections to certain fresh fruit and vegetable sellers (“PACA Claimants”), including the establishment of a statutory constructive trust (a “PACA Trust”), consisting of a purchaser’s entire inventory of food or other derivatives of perishable agricultural commodities, the products derived therefrom and the proceeds related to any sale of the commodities or products (collectively, the “PACA Trust Assets”). See 7 U.S.C. § 499e(c)(2). PACA Trust Assets are preserved as a non-segregated floating trust and may be commingled with non-trust assets. However, courts in this district and other districts have consistently held that PACA Trust Assets are not property of a debtor’s estate. See *Stanziale v. Rite Way Meat Packers, Inc. (In re CFP Liquidating Estate)*, 405 B.R. 694, 697 (Bankr. D. Del. 2009); *In re Long John Silver’s Rests., Inc.*, 230 B.R. 29, 32 (Bankr. D. Del. 1999); accord *Morris Okun, Inc. v. Harry Zimmerman, Inc.*, 814 F. Supp. 346, 348 (S.D.N.Y. 1993).

9. PACA requires that certain procedural steps be taken by a seller of perishable agricultural commodities in order to preserve its rights as a trust beneficiary. Specifically, a PACA Vendor must provide written notice to the purchaser of such goods of its intent to preserve the benefits of the PACA Trust. See *Merrill Farms Corp. v. H.R. Hindle & Co. (In re H.R. Hindle & Co.)*, 149 B.R. 775, 785 (Bankr. E.D. Pa. 1993); *Debruyn Produce Co. v. Richmond Produce Co. (In re Richmond Produce Co.)*, 112 B.R. 364, 368-69 (Bankr. N.D. Cal. 1990). Written notice under PACA may be accomplished by either (i) including the statutorily mandated language on the face of the vendor’s invoices or (ii) providing written notice to the

⁴ Some states have enacted statutes granting protection similar to that of PACA. See, e.g., N.Y. AGRIC. & MKTS. LAW § 244, *et seq.* (1996). Accordingly, references to PACA, PACA Goods, PACA Claims, and PACA Claimants in this Motion are also intended to refer to those state statutes and the goods, claims and claimants protected by those statutes. The relief requested in this Motion with respect to PACA Goods, PACA Claims and PACA Claimants is also requested with respect to the goods, claims and claimants under those state statutes having an effect and purpose similar to PACA.

purchaser of the PACA Goods within thirty (30) days after the time payment is due. Beneficiaries of a PACA Trust that adhere to the statutory notice requirements are entitled to prompt payment from the PACA Trust Assets ahead of secured and unsecured creditors of a debtor's estate ("PACA Claim(s)"). See "*R*" *Best Prod., Inc. v. 646 Corp.*, No. 00-CV-8536, 2002 U.S. Dist. LEXIS 21134, at *5 (S.D.N.Y. Oct. 31, 2002). However, a PACA Vendor's failure to comply with the notice requirements renders its claim a general unsecured claim in a debtor's chapter 11 case. See *In re H.R. Hindle*, 149 B.R. at 786.

10. PACA's application is limited to sales to commission merchants, brokers and dealers. 7 U.S.C. § 499e(c). "Dealer," as such term is defined in PACA, is "any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary of Agriculture, any perishable agricultural commodity in interstate or foreign commerce." 7 U.S.C. § 499a(b).

11. Any PACA Vendor who accepts payment from the Debtors in satisfaction of its valid PACA Claim will be deemed to have waived any and all claims of whatever type, kind or priority, against the Debtors, their property, their estates and any PACA Trust Assets, but only to the extent that payment has been received by such PACA Vendor on account of its PACA Claim.

12. The Debtors believe that a certain portion of the goods purchased from certain of the vendors may qualify as "perishable agricultural commodit[ies]" under PACA. As a result, insofar as those vendors abide by the notice requirements of PACA, such vendors will be eligible to assert PACA Claims granting them priority ahead of all other secured and unsecured creditors in the Debtors' Chapter 11 Cases. As of the Petition Date, the Debtors estimate they owe holders of PACA Claims approximately \$500,000 in the aggregate for PACA Goods delivered but unpaid prior to the Petition Date, including estimates for amounts not yet invoiced. The Debtors

expect to be invoiced for substantially all of this amount within thirty (30) days following the Petition Date.

B. PASA Claims

13. Much like PACA, PASA protects unpaid sellers of livestock or poultry (“PASA Claimants”) by imposing a statutory trust (the “PASA Trust” and, together with the PACA Trust, the “PACA/PASA Trusts”) on a buyer’s entire inventory of livestock or poultry (“PASA Goods” and, together with the PACA Goods, the “PACA/PASA Goods”),⁵ as applicable, and any related proceeds (the “PASA Trust Assets” and, together with the PACA Trust Assets, the “PACA/PASA Trust Assets”). *See* 7 U.S.C. §§ 196, 197. This PASA statutory trust scheme is virtually identical to that under PACA, and also includes a thirty (30) day notice requirement. *See* 7 U.S.C. §§ 206(b), 207(d). Indeed, “PACA’s trust provision was modeled on that of [PASA].” *In re Magic Rests., Inc.*, 205 F.3d 108, 115 n.8 (3d Cir. 2000); *see also In re W.L. Bradley Co.*, 75 B.R. 505, 509 (Bankr. E.D. Pa. 1987) (“The legislative history expressly notes that the PACA trust was modeled on the trust amendments to the Packers and Stockyards Act”). PASA Trust Assets are not property of a debtor’s estate; thus, as with PACA Claims, claims based on a PASA statutory trust (“PASA Claim(s)” and, together with the PACA Claims, the “PACA/PASA Claim(s)”) must be satisfied ahead of the claims of any secured creditors holding liens on a buyer’s inventory or accounts receivable. *See Bast v. Orange Meat Packing Co. (In re G&L Packing Co.)*, 20 B.R. 789, 801 (Bankr. N.D. 1982) (“Congress intended unpaid cash sellers to satisfy their claims from the packer’s assets (inventoried livestock

⁵ Some states have enacted statutes granting protection similar to that of PASA. *See, e.g.*, N.Y. AGRIC. & MKTS. LAW § 244, *et seq.* (1996). Accordingly, references to PASA, PASA Goods, PASA Claims, and PASA Claimants in this Motion are also intended to refer to those state statutes and the goods, claims and claimants protected by those statutes. The relief requested in this Motion with respect to PASA Goods, PASA Claims and PASA Claimants is also requested with respect to the goods, claims and claimants under those state statutes having an effect and purpose similar to PASA.

delivered by cash seller and accounts receivable and other proceeds from the sale of such livestock) before satisfying any (Uniform Commercial Code) Article 9 perfected security interest in those assets.”); *First State Bank of Miami v. Gotham Provision Co. (In re Gotham Provision Co.)*, 669 F.2d 1000, 1010 (5th Cir. 1982) (“Where the packer has given a lender a security interest in inventories or receivables that are subject to the [PASA] trust, the unpaid cash sellers have priority over those assets and may recover the proceeds of those receivables to the extent of the outstanding balance on the cash sales.”).

14. Any PASA Vendor who accepts payment from the Debtors in satisfaction of its valid PASA Claim will be deemed to have waived any and all claims of whatever type, kind or priority, against the Debtors, their property, their estates, and any PASA Trust Assets, but only to the extent that payment has been received by such PASA Vendor on account of its PASA Claim.

15. The Debtors believe that a certain portion of the goods purchased from vendors may qualify for treatment under PASA. As a result, insofar as those PASA Vendors abide by the notice requirements of PASA, such vendors will be eligible to assert PASA Claims granting them priority ahead of all other secured and unsecured creditors in the Debtors’ Chapter 11 Cases. As of the Petition Date, the Debtors estimate they owe holders of PASA Claims approximately \$800,000 in the aggregate for PASA Goods delivered but unpaid prior to the Petition Date, including estimated amounts not yet invoiced. The Debtors expect to be invoiced for substantially all of this amount within thirty (30) days following the Petition Date.

RELIEF REQUESTED

16. By this Motion, the Debtors seek authority to pay, in their sole discretion and as necessary to avoid interruption of their businesses, prepetition PACA/PASA Claims and to continue to pay postpetition PACA/PASA Claims in the ordinary course of business.

17. Specifically, the Debtors request entry of the proposed interim and final orders, substantially in the forms attached hereto, (i) authorizing, but not directing, the Debtors, in their sole discretion, to pay all claims arising under PACA and PASA in the ordinary course of business and (ii) authorizing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests.

18. Subject to the terms set forth below, the Debtors propose to condition the payment of the PACA/PASA Claims on the agreement of individual PACA/PASA Vendors to continue to provide goods to the Debtors during the pendency of these Chapter 11 Cases on the most favorable terms that existed prior to the Petition Date (the "Historical Trade Terms"), unless this requirement is waived by the Debtors, in their sole discretion.

19. In the event that any PACA/PASA Vendor that has received payment for its PACA/PASA Claims refuses to continue to provide goods on an uninterrupted basis to the Debtors in accordance with (i) the terms and provisions of any order granting the relief requested herein, (ii) the Historical Trade Terms or (iii) such other terms agreed upon by the Debtors and such PACA/PASA Vendor, the Debtors propose that, without further order of the Court and in their sole discretion, they be authorized to deem the payments made to any such PACA/PASA Vendor to have been in payment of any then-outstanding postpetition claims of such PACA/PASA Vendor. If this situation arises, the previously paid PACA/PASA Claims of the PACA/PASA Vendor shall be reinstated as PACA/PASA Claims in the amount deemed by the Debtors to have been in payment of any then-outstanding postpetition claims of such PACA/PASA Vendor. To the extent that the payments made to the PACA/PASA Vendor on account of the previously paid PACA/PASA Claims exceed the postpetition amounts then owed to such PACA/PASA Vendor, the Debtors and their estates reserve all rights to recover such

payments.

BASIS FOR RELIEF

20. It is essential to the Debtors' ongoing operations that the flow of PACA/PASA Goods continues unimpeded. If the Debtors are not permitted to pay the PACA/PASA Claims, it will have a substantial negative impact on the Debtors' going-concern value. Moreover, there is no harm in paying the PACA/PASA Claims because the amounts owed are not property of the Debtors' estates.

A. Payment of the PACA/PASA Claims is Warranted Under the Doctrine of Necessity.

21. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor's business); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in Bankruptcy Code sections 363(b) and 105(a).

22. Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments under Bankruptcy Code section 363(b). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business judgment justification existed

to pay prepetition wages); *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).

23. Courts also have authorized payment of prepetition claims in appropriate circumstances pursuant to Bankruptcy Code section 105(a). Bankruptcy Code section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to a debtor’s business reorganization plan. *See In re UNR Indus., Inc.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); *In re Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

24. In addition to the authority granted a debtor-in-possession under Bankruptcy Code sections 363(b) and 105(a), courts have developed the “doctrine of necessity” or the “necessity of payment” rule, which originated in the landmark case of *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor’s reorganization, *see Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not “helpless” to apply the rule to supply creditors where the alternative was the cessation of operations),

including the United States Court of Appeals for the Third Circuit, which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

25. In *In re Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating that a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Just for Feet*, 242 B.R. at 824-25 (noting that debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

26. The necessity of payment doctrine is designed to foster the rehabilitation of a debtor in a reorganization case, which courts have recognized is “the paramount policy and goal of Chapter 11.” *In re Ionosphere Clubs*, 98 B.R. at 176; *In re Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as

“necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when necessary for rehabilitation”); Collier on Bankruptcy ¶ 105.02 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately). The Debtors submit that the relief requested herein represents a sound exercise of the Debtors’ business judgment, and will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption.

27. The authority, but not direction, to satisfy the PACA/PASA Claims in the initial days of these Chapter 11 Cases without disrupting their business operations will send a clear signal to the marketplace, including key suppliers and customers, that the Debtors are willing and, importantly, able to conduct business as usual during their Chapter 11 Cases.

28. The Debtors’ operations also require the seamless coordination of many unrelated third parties at every stage in the supply chain. Collectively, the Debtors’ supply chain ensures that the Debtors receive all of the food, products and supplies necessary to operate their businesses and provide their customers with the high-quality food expected under their brands and concepts. Any significant disruption in the Debtors’ supply chain, such as a vendor halting delivery of certain necessary goods, could result in the Debtors not having sufficient food, products and supplies to operate their restaurants. Given the highly-competitive restaurant industry, such a result could cause a devastating impact on the Debtors’ businesses and significantly impair their going-concern value.

B. Payment of PACA/PASA Claims in the Ordinary Course of Business is Warranted.

29. The prompt and full payment of PACA/PASA Claims should be authorized by this Court. As described above, assets governed by PACA and PASA do not constitute property of the Debtors' estates. *See, e.g., In re CFP Liquidating Estate*, 405 B.R. at 697 (PASA trust assets are excluded from debtor's estate); *Long John Silver's*, 230 B.R. at 32 (PACA trusts are excluded from property of the estate). As a result, the distribution of assets to the holders of PACA/PASA Claims falls outside the priority scheme set forth in the Bankruptcy Code, and such holders are entitled to payment from the PACA/PASA Trusts ahead of the Debtors' other creditors. *See In re Magic Rests.*, 205 F.3d at 110; *Consumers Produce Co. v. Volante Wholesale Produce, Inc.*, 16 F.3d 1374, 1377-78 (3d Cir. 1994). The Debtors' requested relief thus affects only the timing of the PACA/PASA Claims payment, and will not prejudice the recovery of other creditors. Moreover, the disposition of the PACA/PASA Trust Assets is subject to the jurisdiction of the bankruptcy court. *See Monterey Mushrooms, Inc. v. Carolina Produce Distribs., Inc.*, 110 B.R. 207, 209 (W.D.N.C. 1990); *Allied Growers Co-Op, Inc. v. United Fruit & Produce Co.*, 86 B.R. 14, 16 (Bankr. D. Conn. 1988). Accordingly, the relief requested herein does not prejudice the Debtors' creditors or any party in interest in these Chapter 11 Cases.

30. Furthermore, payment of allowed PACA/PASA Claims will inure to the benefit of the Debtors' estates by preserving goodwill between the Debtors and the PACA/PASA Vendors. Any delays in satisfying amounts owed to PACA/PASA Vendors could adversely affect the Debtors' ability to obtain fresh produce, meat, poultry, and other similar goods, thereby undercutting the Debtors' efforts in connection with these Chapter 11 Cases. Failing to pay allowed PACA/PASA Claims in the ordinary course of business could subject the Debtors to

numerous claims and adversary proceedings, including motions by PACA/PASA Vendors for relief from the automatic stay or injunctive relief, which would result in the unnecessary expenditure of time, effort and money by the Debtors, their management team and their professional advisors.

31. Lastly, in certain circumstances, officers or directors of a corporate entity who are in a position to control trust assets but breach the fiduciary duty to preserve those assets may be held personally liable under PACA and PASA. *See Sunkist Growers, Inc. v. Fisher*, 104 F.3d 280, 283 (9th Cir. 1997); *Morris Okun*, 814 F. Supp. At 349 (noting that PASA, like PACA, provides that “any failure to account for or preserve trust assets, for whatever reason and however innocent, creates a liability for those trust assets”); *see also Golman-Hayden Co., v. Fresh Source Produce, Inc.*, 217 F.3d 348, 350 (5th Cir. 2000) (noting that a court determining personal liability under PACA will inquire as to (i) whether the individual’s involvement with the corporation was sufficient to establish legal responsibility and (ii) whether the individual, in failing to exercise appreciable oversight of the corporation’s management, breached a fiduciary duty owed to the PACA creditors). Thus, to the extent that any valid obligations arising under PACA or PASA remain unsatisfied by the Debtors, the Debtors’ officers and directors may be subject to lawsuits during the pendency of these Chapter 11 Cases. Any such lawsuit (and the ensuing potential liability) would distract the Debtors and their officers and directors in their attempt to implement a successful strategy in these Chapter 11 Cases and, moreover, could lead to the assertion of substantial indemnification claims under the Debtors’ governing documents, employment agreements and applicable laws, to the detriment of all of the Debtors’ stakeholders.

32. The Debtors further request that the Debtors’ banks be authorized, when requested by the Debtors in their sole discretion, to process, honor and pay any and all checks or

electronic fund transfers drawn on the Debtors' bank accounts to pay all PACA/PASA Claims, whether those checks or electronic fund transfers were presented prior to or after the Petition Date, and to make other transfers provided that sufficient funds are available in the applicable account to make such payments. The Debtors represent that each of these checks and transfers can be readily identified as relating directly to the authorized payment of PACA/PASA Claims. Accordingly, the Debtors believe checks and transfers, other than those relating to authorized payments, will not be honored inadvertently.

33. Nothing in this Motion, or the proposed interim or final orders (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to Bankruptcy Code section 365 or an admission as to the validity of any claim against the Debtors or their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or causes of action against a PACA/PASA Vendor or (iv) shall be construed as a promise to pay a claim.

34. This Court has granted the same or similar relief in other chapter 11 cases. *See, e.g., In re iPic-Gold Class Entertainment, LLC*, Case No. 19-11739 (LSS) (Bankr. D. Del. Sept. 10, 2019); *In re Perkins & Marie Callender's, LLC*, Case No. 19-11743 (KG) (Bankr. D. Del. Sept. 10, 2019); *In re RUI Holding Corp.*, Case No. 19-11509 (JTD) (Bankr. D. Del. Aug. 7, 2019); *In re Kona Grill, Inc.*, Case No. 19-10953 (CSS) (Bankr. D. Del. May 23, 2019); *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 3, 2018); *In re MAC Acquisition LLC*, Case No. 17-12224 (MFW) (Bankr. D. Del. Oct. 19, 2017); *In re Garden Fresh Rest. Intermediate Holding, LLC*, Case No. 16-12174 (CSS) (Bankr. D. Del. Oct. 4, 2016); *In re Last Call Guarantor, LLC*, Case No. 16-11844 (KG) (Bankr. D. Del. Aug. 12, 2016).

35. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.

**BANKRUPTCY RULE 6003 SATISFIED AND
REQUEST FOR WAIVER OF STAY**

36. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

37. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding the following: . . . (b) 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, but not a Motion under Rule 4001.

Fed. R. Bankr. P. 6003.

38. The Third Circuit Court of Appeals has interpreted language similar to that used in Bankruptcy Rule 6003 in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 F. App'x. 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cnty.*, 40 F.3d 645, 653-55 (3d Cir. 1994).

39. As discussed above, if the PACA/PASA Claims are not paid, the PACA/PASA Vendors likely will refuse to deliver critical fresh produce and fresh meat the Debtors require to operate their restaurants. The failure of any PACA/PASA Vendor to deliver essential food, products or supplies or to render services to the Debtors would have immediate and detrimental consequences to the Debtors' businesses and would decrease value to the detriment and prejudice of all of the Debtors' stakeholders. The Debtors cannot risk even the perception that their restaurants will offer anything but the highest level of food quality and quantity for the duration of these Chapter 11 Cases. Moreover, it is the Debtors' business judgment that continuation of their positive relationship with the PACA/PASA Vendors is critical to their continued operations. Accordingly, the Debtors respectfully submit they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and seek authority to pay PACA/PASA Claims as set forth in this Motion.

40. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, "[an] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise." As set forth above, the relief requested herein is essential to prevent irreparable damage to the Debtors' operations and going-concern value.

41. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rule 6003 and 6004(h).

NOTICE AND NO PRIOR REQUEST

42. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware;

(b) each of the Debtors' creditors holding the thirty (30) largest unsecured claims as set forth in the consolidated list filed with the Debtors' petitions; (c) the Lenders; (d) the United States Department of Justice; and (e) all parties who have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

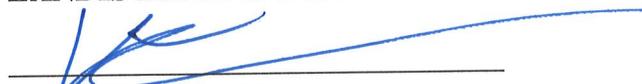
43. No prior request for the relief sought in this Motion has been made to this or any other court.

[REMAINDER OF SPACE INTENTIONALLY LEFT BLANK]

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, (a) authorizing the Debtors to pay unpaid PACA/PASA Claims; (b) authorizing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests for payment of the PACA/PASA Claims and (c) granting such other and further relief as is just and proper.

Dated: November 14, 2019
Wilmington, Delaware

LANDIS RATH & COBB LLP



Adam G. Landis (No. 3407)
Kimberly A. Brown (No. 5138)
Matthew R. Pierce (No. 5946)
Nicolas E. Jenner (No. 6554)
919 Market Street, Suite 1800
Wilmington, Delaware 19801
Telephone: (302) 467-4400
Facsimile: (302) 467-4450
Email: landis@lrclaw.com
brown@lrclaw.com
pierce@lrclaw.com
jenner@lrclaw.com

*Proposed Counsel for the Debtors
and Debtors-In-Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (____)

(Joint Administration Requested)

Ref. No. ____

**INTERIM ORDER (I) AUTHORIZING THE PAYMENT OF PREPETITION
CLAIMS ARISING UNDER (A) THE PERISHABLE AGRICULTURAL
COMMODITIES ACT AND (B) THE PACKERS AND STOCKYARDS ACT
AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS
AND ELECTRONIC TRANSFER REQUESTS RELATED TO THE FOREGOING**

Upon the *Motion of the Debtors for Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 105(a), 363, 507(a)(2), 541, 1107(a), and 1108 (I) Authorizing the Payment of Prepetition Claims Arising Under (A) the Perishable Agricultural Commodities Act and (B) the Packers and Stockyards Act and (II) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related to the Foregoing* (the “Motion”)² and upon the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and the Court having found that this is a core

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

² Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates; and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED on an interim basis as set forth herein; and it is further

ORDERED that the final hearing (the "Final Hearing") on the Motion shall be held on _____, 2019 at _____ .m. (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion must be filed on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2019 and served on the following parties: (i) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 North King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy, Esq.); (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Kimberly A. Brown, Esq. and Matthew R. Pierce, Esq.) and (iii) counsel to any official committee. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing; and it is further

ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to pay or otherwise satisfy all valid PACA/PASA Claims in an aggregate amount not to exceed \$780,000; and it is further

ORDERED that any PACA/PASA Vendor who accepts payment from the Debtors in satisfaction of its valid PACA/PASA Claim shall be deemed to have waived any and all

PACA/PASA claims of whatever type, kind or priority against the Debtors, their property, their estates and any PACA/PASA Trust Assets, but only to the extent that payment has been received by such PACA/PASA Vendor on account of its PACA/PASA Claim; and it is further

ORDERED that in the event any PACA/PASA Vendor that has received payment for its Claim refuses to continue to provide goods and services, as applicable, on an uninterrupted basis, to the Debtors in accordance with (i) the terms and provisions of this Order; (ii) the Historical Trade Terms; or (iii) such other terms agreed upon by the Debtors and such PACA/PASA Vendors, in their sole discretion, the Debtors shall be authorized, but not obligated, to deem the payments made to any such PACA/PASA Vendor to have been in payment of any then-outstanding postpetition claims of such PACA/PASA Vendor. If this situation arises, the previously paid prepetition Claims of the PACA/PASA Vendor shall be reinstated as prepetition Claims. To the extent that the payments made to the PACA/PASA Vendor on account of the previously paid Claims exceed the postpetition amounts then owed to such PACA/PASA Vendor, all rights of the Debtors and their estates to recover such payments shall be reserved; and it is further

ORDERED that nothing in this Order impairs the rights of holders of the PACA/PASA Claims to enforce their rights consistent with applicable law, including the Bankruptcy Code and specifically the automatic stay of Bankruptcy Code section 362 or to seek redress from the Court with respect to their rights under PACA/PASA; and it is further

ORDERED that nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to Bankruptcy Code section 365 or an admission as to the executory nature of any contract or agreement, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of

any claim against the Debtors and their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against a PACA/PASA Vendor and (d) shall be construed as a promise to pay any claim; and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that Rule 6003 of the Bankruptcy Rules has been satisfied; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: November ____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

HRI HOLDING CORP., *et al.*¹

Debtors.

Chapter 11

Case No. 19-12415 (____)

(Joint Administration Requested)

Ref. No. _____

FINAL ORDER (I) AUTHORIZING THE PAYMENT OF PREPETITION CLAIMS ARISING UNDER (A) THE PERISHABLE AGRICULTURAL COMMODITIES ACT AND (B) THE PACKERS AND STOCKYARDS ACT AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND ELECTRONIC TRANSFER REQUESTS RELATED TO THE FOREGOING

Upon the *Motion of the Debtors for Entry of Interim and Final Orders, Pursuant to 11 U.S.C. §§ 105(a), 363, 507(a)(2), 541, 1107(a), and 1108 (I) Authorizing the Payment of Prepetition Claims Arising Under (A) the Perishable Agricultural Commodities Act and (B) the Packers and Stockyards Act and (II) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related to the Foregoing* (the “Motion”)² and upon the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and the Court having found that this is a core

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

² Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and it appearing that the relief requested by the Motion is in the best interests of the Debtors' estates; and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED on a final basis as set forth herein; and it is further

ORDERED that the Debtors are authorized, but not directed, in their sole discretion, to pay or otherwise satisfy all valid PACA/PASA Claims in an aggregate amount not to exceed \$1.3 million; and it is further

ORDERED that any PACA/PASA Vendor who accepts payment from the Debtors in satisfaction of its valid PACA/PASA Claim shall be deemed to have waived any and all PACA/PASA claims of whatever type, kind or priority against the Debtors, their property, their estates and any PACA/PASA Trust Assets, but only to the extent that payment has been received by such PACA/PASA Vendor on account of its PACA/PASA Claim; and it is further

ORDERED that in the event any PACA/PASA Vendor that has received payment for its Claim refuses to continue to provide goods and services, as applicable, on an uninterrupted basis, to the Debtors in accordance with (i) the terms and provisions of this Order; (ii) the Historical Trade Terms or (iii) such other terms agreed upon by the Debtors and such PACA/PASA Vendors, in their sole discretion, the Debtors shall be authorized, but not obligated, to deem the payments made to any such PACA/PASA Vendor to have been in payment of any then-outstanding postpetition claims of such PACA/PASA Vendor. If this situation arises, the

previously paid prepetition Claims of the PACA/PASA Vendor shall be reinstated as prepetition Claims. To the extent that the payments made to the PACA/PASA Vendor on account of the previously paid Claims exceed the postpetition amounts then owed to such PACA/PASA Vendor, all rights of the Debtors and their estates to recover such payments shall be reserved; and it is further

ORDERED that nothing in this Order impairs the rights of holders of the PACA/PASA Claims to enforce their rights consistent with applicable law, including the Bankruptcy Code and specifically the automatic stay of Bankruptcy Code section 362 or to seek redress from the Court with respect to their rights under PACA/PASA; and it is further

ORDERED that nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to Bankruptcy Code section 365 or an admission as to the executory nature of any contract or agreement, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates; (c) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against a PACA/PASA Vendor; and (d) shall be construed as a promise to pay any claim; and it is further

ORDERED that all applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order; and it is further

ORDERED that the Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion; and it is further

ORDERED that Bankruptcy Rule 6003 has been satisfied; and it is further

ORDERED that notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE