

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

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245 (KBO)

(Jointly Administered)

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS: (I) AUTHORIZING THE DEBTORS TO (A) HONOR GIFT CARDS
AND (B) ADMINISTER EXISTING CUSTOMER PROGRAMS IN THE
ORDINARY COURSE OF BUSINESS; AND (II) FOR RELATED RELIEF**

CBC Restaurant Corp. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, "Corner Bakery" or the "Debtors"), respectfully state the following in support of this motion (the "Motion").

RELIEF REQUESTED

1. Corner Bakery seeks entry of orders, on an interim and final basis, substantially in the forms attached hereto as **Exhibit A** (the "Interim Order") and **Exhibit B** (the "Final Order"): (i) authorizing the Debtors to honor Gift Cards (as defined herein) in the ordinary course of business; (ii) authorizing the Debtors to administer existing Customer Programs (as defined herein) in the ordinary course of business; (iii) authorizing the Debtors to continue, modify and/or terminate the Customer Programs in their business judgment and without further application to this Court; and (iv) granting related relief.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors' service address is 121 Friends Lane, Suite 301, Newtown PA 18940.



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JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has 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 (Sleet, C.J.).

3. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BASIS FOR RELIEF

5. The bases for the relief requested in this Motion are Sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Bankruptcy Rules 6003 and 6004.

BACKGROUND

A. The Business and Events Leading to These Bankruptcy Filings

6. Corner Bakery is a fast-casual restaurant serving kitchen-crafted breakfast, lunch, and dinner and catering to guests. Its restaurants have been a neighborhood favorite since the brand was established in 1991. The original American Italian bakery cafe was founded on a philosophy of creating a warm and comfortable place for people to relax with friends, family, and neighbors. Today, the restaurant features artisan-inspired, seasonal menu options made with fresh ingredients,

while delivering a premier bakery cafe experience in the heart of neighborhoods and urban markets across California, Texas, Pennsylvania, Illinois, Virginia, Maryland, and the District of Columbia.

7. A detailed description of Corner Bakery's business and the facts and circumstances supporting this Motion and the Debtors' chapter 11 cases are set forth in detail in the *Declaration of Jignesh Pandya, Chief Executive Officer and Chief Operating Officer of CBC Restaurant Corp. in Support of Chapter 11 Petitions and First Day Motions* filed on February 23, 2023 [D.I. No. 22] and the *Supplemental Declaration of Jignesh Pandya, Chief Executive Officer and Chief Operating Officer of CBC Restaurant Corp. in Support of Chapter 11 Petitions and First Day Motions* being filed substantially contemporaneously with this Motion (collectively, the "First Day Declarations").

8. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

B. Corner Bakery's Customer Loyalty Programs

9. Maintaining the loyalty and goodwill of their restaurant customers is critical to the Debtors' restructuring efforts. The Debtors must maintain positive customer relationships and their reputation for reliability to ensure that their customers continue to patronize the Debtors' restaurants during the pendency of these Chapter 11 Cases.

10. To retain and attract customers, Customer Bakery offers a number of customer programs. Specifically, in the ordinary course of business, the Debtors issue gift cards (the "Gift Cards") and such programs, the "Gift Card Program") to customers for dining at their restaurant locations. In addition, the Debtors maintain a customer loyalty program that incentivizes customers

to return to their restaurants by providing coupons and/or discounts (the “Customer Loyalty Program”). The Debtors also support a Charitable Donation Program, which includes donations, partnership opportunities, and fundraisers for local organizations and certain qualified charitable organizations (the “**Charitable Donation Program**,” and together with the Gift Card Program and the Customer Loyalty Program, the “**Customer Programs**”). To continue the Debtors’ goodwill with its customers and to ensure that such customers do not suffer any loss as a result of the Chapter 11 Cases, the Debtors seeks authority to continue the Customer Programs.

11. The Customer Programs are typical of the Debtors’ industry and, without the ability to continue the Customer Programs, the Debtors risk losing customer loyalty and goodwill, the results of which may jeopardize the Debtors’ restructuring efforts.

C. The Gift Card Program

12. The Debtors maintain the Gift Card Program, by which their customers can purchase pre-paid, non-expiring Gift Cards in various denominations for use towards dining at their restaurants. Gift Card programs of this nature are commonplace and popular in the restaurant industry, and the Debtors’ competitors offer similar programs to their customers.

13. As December 25, 2022, approximately \$6,519,000 in purchased and unredeemed Gift Cards were outstanding across all of their corporate-owned locations, and the Debtors estimate that the amount of gift cards outstanding as of the Petition Date does not materially exceed that amount. The Debtors seek authority to continue to honor obligations to customers holding Gift Cards.

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D. The Customer Loyalty Program

14. In the ordinary course of business, the Debtors maintain the Customer Loyalty Program to attract and retain customers by providing incentives for returning customers. Such incentives include discounts and/or coupons or other rewards.

15. To ensure that the Debtors' customers can rely upon the Customer Loyalty Program, the Debtors seek authority to maintain the Customer Loyalty Program after the Petition Date in the ordinary course of business and to honor all incentives awarded as a result thereof, consistent with the Debtors' prepetition practice.

E. The Charitable Donation Program

16. In the ordinary course of business, the Debtors maintain the Charitable Donation Program to support local charitable organizations. The Debtors do so by contributing fresh baked goods, certain product donations, and other special offers. The Debtors do not provide monetary support.

17. To ensure the Debtors' continued goodwill, the Debtors seek authority to maintain the Charitable Donation Program after the Petition Date in the ordinary course, consistent with the Debtors' prepetition practices.

ARGUMENT

A. Ample Authority Exists for Approval of the Customer Programs

18. Under section 363(b)(1) of the Bankruptcy Code, "[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). This provision grants courts broad flexibility to authorize a debtor to pay prepetition claims where a sound business purpose exists. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

19. In addition, under section 105(a) of the Bankruptcy Code, “[t]he court may 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). Pursuant to section 105(a) and the doctrine of necessity, the bankruptcy court may exercise its broad equitable powers to authorize the payment of prepetition obligations when such payment is essential to the continued operation of a debtor’s business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (finding that section 105(a) of the Bankruptcy Code provides a statutory basis for the payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 89, 191-92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is the standard in the Third Circuit for enabling a court to authorize the payment of prepetition claims prior to the confirmation of a reorganization plan).

20. Bankruptcy courts regularly rely on their authority under section 105(a) and the doctrine of necessity to grant debtors the discretionary authority to pay certain prepetition claims “where the payment is necessary to permit the effectuation of the rehabilitative purposes of the Bankruptcy Code.” *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Penn. 1993); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570,581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of the debtor); *Ionosphere Clubs*, 98 B.R. at 175 (authorizing the payment of prepetition claims and explaining that the “ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept”).

21. The rationale for making payments to prepetition creditors under the doctrine of necessity is consistent with the paramount goal of chapter 11: “the continued operation and rehabilitation of the debtor . . .” *Ionosphere Clubs*, 98 B.R. at 176. To that end, approval of such payments often benefits, rather than harms, the debtors’ other creditors. *See, e.g., Sharon Steel*, 159 B.R. at 737 (approving payments of prepetition wages under the doctrine of necessity where doing so would maximize the value of the debtors’ assets and noting that payments made pursuant to the doctrine of necessity “must not only be in the best interest of the debtor but also in the best interest of its other creditors”).

22. Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first twenty-one days of a case where doing so is “necessary to avoid immediate and irreparable harm.” *See* Fed. R. Bankr. P. 6003.

B. The Relief Sought is in the Best Interests of the Debtors’ Businesses and the Estates

23. The ability to continue administering the Customer Programs without interruption is critical to the Debtors’ valuable customer and franchisee relationships and goodwill, which will inure for the benefit of all of the Debtors’ stakeholders. If the Debtors are unable to continue the Customer Programs as described herein, the Debtors risk alienating customers and franchisees and could suffer corresponding losses in customer loyalty and goodwill that will harm its prospects for a successful reorganization.

24. The Customer Programs are also essential for attracting new customers. Failure to continue the Customer Programs and offer programs, such as the Gift Card Program, will place the Debtors at a significant competitive disadvantage against competing restaurants. Such uncertainty could erode the Debtors’ hard-earned customer loyalty, which, in turn, could adversely impact its ability to successfully administer these Chapter 11 Cases. Moreover, upholding the Gift

Card Program also benefits the Corner Bakery Franchisees and the Debtors' relationship with such franchisees, who will be able to continue to provide and honor Gift Cards.

25. For the foregoing reasons, the benefits of continuing to honor the Customer Programs outweigh the minimal associated costs. As such, the Debtors respectfully request the entry of the Interim and Final Orders authorizing the Debtors to continue to honor the Customer Programs in the ordinary course of business.

THE REQUIREMENTS OF BANKRUPTCY RULES 6003 ARE SATISFIED

26. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, authorizing the relief requested in this Motion is integral to Corner Bakery's ability to transition its operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt its operations at this critical juncture. For the reasons discussed herein, the relief requested in this Motion is necessary in order for Corner Bakery to operate its business in the ordinary course and preserve the ongoing value of its operations and maximize the value of its estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

RESERVATION OF RIGHTS

27. Nothing contained in this Motion is intended or should be construed as an admission as to the validity of any claim against Corner Bakery, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under Bankruptcy Code section 365. Corner Bakery expressly reserves its right to contest any claim

related to the relief sought in this Motion. Likewise, if the Court grants the relief sought in this Motion, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

WAIVER OF BANKRUPTCY RULES 6004(a) AND 6004(h)

28. To implement the foregoing successfully, Corner Bakery requests that the Court enter an order providing that notice of the relief requested in this Motion satisfies Bankruptcy Rule 6004(a) and that it has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

29. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) SSCP Restaurant Investors LLC ("SSCP"), the Debtor's prepetition lender, Ken Schwab (kschwab@sscpmanagement.com), and counsel to SSCP, Foley & Lardner LLP, 2021 McKinney Avenue, Suite 1600, Dallas, TX. 75201, Attn: Holland N. O'Neil (honeil@foley.com), Mark C. Moore (mmoore@foley.com), and Stephan A. Jones (sajones@foley.com) and Ashby & Geddes, P.A, 500 Delaware Avenue, 8th Floor, P.O. Box 1150, Wilmington, DE. 19899, Attn: Ricardo Palacio (RPalancio@ashbygeddes.com); (d) the United States Attorney's Office for the District of Delaware, Attn: Linda Casey (Linda.Casey@usdoj.gov); (e) the Internal Revenue Service; (f) the office of the attorneys general for the states in which the Debtors operate; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, the Debtors will serve copies of this Motion and any order entered on this Motion as required by Local Rule 9013-1(m). Corner

Bakery submits that, in light of the nature of the relief requested, no other or further notice need be given.

NO PRIOR REQUEST

30. No prior request for the relief sought in this Motion has been made by Corner Bakery to this or any other court.

WHEREFORE, Corner Bakery respectfully requests that the Court enter an Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: March 1, 2023
Wilmington, Delaware

/s/ Mette H. Kurth

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Proposed Counsel to the Debtors and Debtors In Possession

Exhibit A

Proposed Order

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

In re:

CBC RESTAURANT CORP., et al.,¹

Debtors.

Chapter 11

Case No. 23-10245 (KB)

(Jointly Administered)

Re: D.I. No. [●]

**INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) HONOR
GIFT CARDS AND (II) ADMINISTER EXISTING CUSTOMER
PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”): (a) authorizing the Debtors to (i) honor Gift Cards and (ii) administer the existing Customer Programs in the ordinary course of business and consistent with past practice, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, all as more fully set forth in the Motion; and upon the First Day Declarations; and this 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 this Court finding that it may enter a final order consistent with Article III of the United States Constitution; and this Court finding that venue of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors’ service address is 121 Friends Lane, Suite 301, Newtown PA 18940.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion

this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court finding that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; 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 as set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to maintain and administer the Customer Programs and honor any related prepetition obligations in the ordinary course of business and consistent with their prepetition practice, as necessary and appropriate in the Debtors' business judgment.
3. The Debtors are authorized to renew, modify, terminate, or replace, in their discretion, their Customer Programs without further order of the Court; provided, however, that if the Debtors at any time during these Chapter 11 Cases cease to honor Gift Cards, they shall file a notice of the same with the Court and serve such notice on the U.S. Trustee, the United States Attorney's Office for the State of Delaware, the attorneys general for the states in which the Debtors operate, and any party filing a request for service under Bankruptcy Rule 2002.
4. Nothing contained herein 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 any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

5. A final hearing to consider the relief requested in the Motion shall be held on _____, **2023 at _____ (Eastern Time)**, and any objections or responses to the Motion shall be filed and served on or prior to _____, **2023 at 4:00 p.m. (Eastern Time)**.

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

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

8. The Debtors are authorized to take all steps necessary or appropriate to carry out this Interim Order.

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

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

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

In re:

CBC RESTAURANT CORP., et al.,³

Debtors.

Chapter 11

Case No. 23-10245 (KB)

(Jointly Administered)

Re: D.I. No. [●]

**FINAL ORDER AUTHORIZING THE DEBTORS TO (I) HONOR
GIFT CARDS AND (II) ADMINISTER EXISTING CUSTOMER
PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)⁴ of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”): (a) authorizing the Debtors to (i) honor Gift Cards and (ii) administer the existing Customer Programs in the ordinary course of business and consistent with past practice, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, all as more fully set forth in the Motion; and upon the First Day Declarations; and this 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 this Court finding that it may enter a final order consistent with Article III of the United States Constitution; and this Court finding that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

³ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include CBC Restaurant Corp. (0801), Corner Bakery Holding Company (3981), and CBC Cardco, Inc. (1938). The Debtors’ service address is 121 Friends Lane, Suite 301, Newtown PA 18940.

⁴ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

and this Court finding that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

11. The Motion is **GRANTED** on a final basis as set forth herein.

12. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to maintain and administer the Customer Programs and honor any Customer Program obligations in the ordinary course of business and consistent with their prepetition practice, as necessary and appropriate in the Debtors' business judgment.

13. The Debtors are authorized to honor Gift Cards in an amount up to \$6,519,000 on a final basis.

14. The Debtors are authorized to renew, modify, terminate or replace, in their discretion, their Customer Programs without further order of the Court; provided, however, that if the Debtors at any time during these Chapter 11 Cases cease to honor Gift Cards, they shall file a notice of the same with the Court and serve such notice on the U.S. Trustee, the United States Attorney's Office for the State of Delaware, the attorneys general for the states in which the Debtors operate, and any party filing a request for service under Bankruptcy Rule 2002.

15. Nothing contained herein 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 any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

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

17. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all steps necessary or appropriate to carry out this Final Order.

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation or enforcement of this Final Order.

20. This Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.