

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 AUTHORIZING THE DEBTORS
TO (I) PAY PREPETITION PAYROLL; (II) CONTINUE EMPLOYEE BENEFITS; (III)
PAY PREPETITION EMPLOYEE BENEFIT OBLIGATIONS; AND
(IV) GRANTING 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 (this "Motion").

RELIEF REQUESTED

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the "Interim Order" and "Final Order," respectively): (a) authorizing the Debtors to pay the prepetition portion of wages, salaries, expense reimbursements, and other compensation with respect to the Debtors' March 10, 2023 payroll, as well as payroll withholding taxes and other withholding amounts (including garnishments, employees' share of insurance premiums, taxes, and 401(k) contributions), in an aggregate amount of up to \$600,000; (b) authorizing the Debtors to continue Employee Benefits (as defined below)

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.



nunc pro tunc as of the Petition Date in the ordinary course of business, (c) authorizing the Debtors to pay Employee Benefit Obligations (as defined below) *nunc pro tunc* to the Petition Date; (d) authorizing the Debtors' banks to honor the Debtors' prepetition transfers for payment of any of the foregoing as well certain uncashed payroll checks that were issued to employees prior to the Petition Date; (e) scheduling a final hearing as soon as practicable to consider approval of this Motion on a final basis; and (f) granting related relief.

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 or judgment 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), 362(d), 363(b), and 507(a) of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m).

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 *Declaration of Jignesh Pandya, Chief Executive Officer and Chief Operating Officer of CBC Restaurant Corp. in Support of First Day Motions* being filed substantially contemporaneously with this Motion (collectively, the "First Day Declarations").

8. On February 22, 2023 (the "Petition Date") the Debtors filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code. 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.

B. Payment of Outstanding Prepetition Wages

9. *The Motion of the Debtors for Entry of Interim and Final Orders: (1) Authorizing Debtors to Pay Prepetition Employee Obligations, Prepetition Withholding Obligations, and Postpetition Employee Obligations in the Ordinary Course; and (B) Authorizing Banks to Honor Related Transfers* [D.I. 7] (the "Wage Motion") sought authority for the Debtors to pay certain prepetition wages, salaries, expense reimbursements, and other compensation as well as payroll withholding taxes and other withholding amounts (including garnishments, employees' share of insurance premiums, taxes, and 401(k) contributions) ("Prepetition Wages") on an interim basis in connection with the Debtors' regular payroll on February 28, 2023. This interim relief was granted pursuant to the Interim Wage Order.

10. The Debtors next regular payroll is scheduled for March 10, 2023, whereas the final hearing on the Wage Motion is not scheduled until March 28, 2023. Accordingly, the Debtors respectfully request the Court enter an interim order pursuant to the instant Motion allowing the Debtors to pay Prepetition Wages, in an aggregate amount of up to \$600,000, on an interim basis in relation to their March 10, 2023, payroll.

11. In addition, the Debtors have identified 433 outstanding payroll checks in the aggregate amount of \$250,672.00 that were issued to various Employees in the ordinary course prior to the Petition Date, but which were not cashed by those Employees before the Debtors commenced these cases. For all of the reasons set forth in the Wage Motion, the Debtors request entry of an order authorizing all banks to honor the Debtors' prepetition transfers for payment of these prepetition payroll checks.

C. Employee Benefits

12. The Debtors seek to minimize the personal hardship that their non-insider employees (the "Employees") would suffer if employee benefits were not honored or paid when due or as expected. Therefore, the Debtors seek authority in this Motion to pay and honor certain prepetition claims relating to, among other things, prepetition medical, dental and vision insurance, life insurance, short- and long-term disability insurance, workers' compensation benefits, paid and unpaid leave, and other benefits (as described below) that the Debtors historically have directly or indirectly provided to the Employees in the ordinary course of business (collectively, the "Employee Benefits"). In addition, the Debtors seek to pay all costs and fees incurred and to be incurred by the Debtors (as described below) to provide the Employee Benefits ("Employee Benefits Obligations").

13. Subject to the Court's approval of the relief requested herein, the Debtors intend to continue their prepetition Employee Benefits in the ordinary course of business. Out of an abundance of caution, the Debtors request the ability to modify, change, and discontinue any of their Employee Benefits and to implement new programs, policies, and benefits, in the ordinary course of business during these chapter 11 cases, without the need for further Court approval, subject to applicable law.

14. When the Employee Benefits and prepetition wages are aggregated with the amounts set forth in the Wages Motion and approved pursuant to this Court's *Interim Order: (I) Authorizing Debtors to Pay Prepetition Employee Obligations, Prepetition Withholding Obligations, and Postpetition Employee Obligations in the Ordinary Course; and (B) Authorizing Banks to Honor Related Transfers* [D.I. 31] (the "Interim Wage Order"), the Debtors do not believe any Employee is owed over \$15,150.00.

(1) Health and Welfare Programs.

15. The Debtors offer various insurance policies to eligible Employees² for medical, dental, and vision care coverage, income protection and certain other benefits (each as described below, collectively, the “Health and Welfare Programs”). By this Motion, the Debtors seek authority to pay any unpaid amounts due on the Petition Date under the Health and Welfare Programs and to continue and pay the obligations of the Health and Welfare Programs postpetition in the ordinary course of the Debtors’ business and consistent with past practices.

(a) Health Insurance.

16. The Debtors offer their Employees the opportunity to participate in various health benefit plans, including the Medical Plans, the FSA, the Dental Plans, mental health benefits, including an Employee Assistance Plan,³ and a Vision Plan (described below, and collectively, the “Health Insurance Programs”).

17. For the year 2023, the Debtors offer Employees the following plans administered by certain providers (together referred to as the “2023 Providers”): general medical insurance administered by Surest, drug benefits administered by TRIA Health, a surgical program administered by SurgeryPlus, COBRA administered by Health Equity, and a vision insurance plan administered by Community Eye Care (“CEC”) (the “Medical Plans”). Coverage in the Medical Plans differs, depending on the level of coverage selected. Monthly health care premiums differ depending on the Medical Plan in which an Employee is enrolled and whether such Employee has

² Employees are eligible to participate in Medical Plans after working for Corner Bakery (i) 11 months and averaging 29.5 hours over the past 10 months, or (ii) averaging 29.5 hours during the period of 12/1/2021 – 7/1/2022. Benefit elections are effective on the first of the month following 30 days of continuous, active employment, with the exception of Short-Term Disability and Long-Term Disability which are effective the first month following 90 days of continuous, active full-time employment. Benefits cannot be changed until the next enrollment period unless an employee experiences a qualifying life event.

³ The mental health and employee assistance benefits are included as part of the Medical Health Plan.

dependents covered by the applicable plan. The Debtors pay certain monthly premiums, claims and administrative fees to the 2023 Providers, as well as forwarding premium payments deducted from Employee wages.

18. For the year 2022, the Debtors offered Medical Plans that were administered by BlueCross Blue Shield, VSP Vision, Optum Rx, HSA Bank, and Health Equity (“2022 Providers”). The Debtors continue to resolve claims and pay administration fees to the 2022 Providers and the 2023 Providers. The Debtors estimate that approximately \$137,750.31 was owed as of the Petition Date for both the Debtors’ and the Employees’ contributions to the Medical Plans and pending claims for both 2022 and 2023. The Debtors will continue to pay premiums and claims pursuant to the Medical Plans after the Petition Date.

19. The Debtors agreed to pay various administrative fees to the 2022 and the 2023 Providers in connection with the operation of the Medical Plans. As of the Petition Date, the Debtors owed a total of approximately \$40,207.16 in administrative fees. Administrative fees will continue to accrue after the Petition Date at the rate of at least \$10,000 per month.

20. For 2023 the Debtors offer a dental plan (the “Dental Plan”) through MetLife. For 2022, the provider was BlueCross Blue Shield. As of the Petition Date, the outstanding balance of amounts due to the dental providers was \$4,760.04. Claims and administrative fees pursuant to the Dental Plan will continue to accrue after the Petition Date.

21. The Debtors offer Employees the ability to set up a flexible spending account (the “FSA”), administered by HSA Bank, which can be used to reimburse Employees or their dependents for certain medical, dental, and vision expenses. The Debtors do not make contributions to any Employee’s FSA but do pay administrative fees. As of the Petition Date, the

Debtors estimate that approximately \$1,712.00 is owed on account of accrued FSA administrative fees. FSA administrative fees will continue to accrue after the Petition Date.

22. By this Motion, the Debtors seek authority to continue to provide the Health Insurance Programs, and to pay, in a manner consistent with historical practice, any unpaid amounts on account of the Health Insurance Programs and to continue to pay for such programs in the ordinary course of the Debtors' business and consistent with past practice.

(b) Disability Insurance & Life Insurance.

23. The Debtors offer Basic Short-Term Disability and Basic Long Term Disability Insurance ("Disability Insurance") to Employees at no cost to the Employees through BlueCross Blue Shield. The Debtors also offer Basic Life insurance to Employees who are enrolled in one of the Medical Plans at no cost to the Employee. Employees may also purchase voluntary life insurance ("Voluntary Life Insurance", and with Basic Life Insurance, the "Life Insurance") through BCBS. Voluntary Life Insurance is fully paid by the Employee through payroll deductions.

24. For 2022 and 2023 the Life Insurance provider was BlueCross Blue Shield, with Sun Life as a stop loss. As of the Petition Date, the amount of \$49,143.25 was outstanding for both the Debtors' and Employee costs related to Disability Insurance and Life Insurance. Costs and fees related to the Disability Insurance and Life Insurance will continue to accrue after the Petition Date. The Debtors request the authority to continue providing Disability Insurance and Life Insurance and to continue administering and paying for those programs in the ordinary course of the Debtors' business and consistent with past practice.

(c) Additional Benefits

25. The Debtors offer various additional benefits. Those benefits include Travel Resource Services, Prepaid Legal Coverage, Travel Assistance and Pet Insurance ("Additional

Benefits”). For 2022 the providers of these benefits included AllState Insurance Company, NationWide Insurance Company, New Benefits, and MetLife (“2022 Providers”). For 2023, MetLife is the provider. Employees pay the premiums for each of these benefits through payroll deductions. The Debtors pay administrative and related costs. On the Petition Date, the Debtors estimate that approximately \$9,079.02 was outstanding with respect to these Additional Benefit obligations. Costs and fees related to the Additional Benefits will continue to accrue after the Petition Date. The Debtors request the authority to continue providing the Additional Benefits and to continue administering and paying for those programs in the ordinary course of the Debtors’ business and consistent with past practice.

(d) Workers’ Compensation.

26. The Debtors maintain workers’ compensation insurance for Employees at the levels required by laws in the states in which the Debtors operate (collectively, the “Workers’ Compensation Program”). All Employees are entitled to participate in the Workers’ Compensation Program. For 2023, coverage for Employees is maintained through QBE Insurance Corporation. The Debtors pay approximately \$1.35 million annually to that insurer for maintaining the Workers’ Compensation Program. The payments are approximately \$107,000 per month. For 2022, the Debtors were self-insured. As of the Petition Date, the amount of \$513,741 was outstanding in connection with the Workers’ Compensation Program. Costs and fees related to the Workers’ Compensation Program will continue to accrue after the Petition Date. By this Motion, the Debtors seek authority to pay any unpaid amounts on account of the Workers’ Compensation Program and to continue the Workers’ Compensation Program in the ordinary course of the Debtors’ business on a postpetition basis.

27. The Debtors must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers’ Compensation Program without regard to whether such

liabilities are outstanding before the Petition Date to ensure that the Debtors comply with applicable workers' compensation laws and requirements. There are currently open claims under the Workers' Compensation Program which must be evaluated. Accordingly, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to permit the Employees to proceed with their claims under the Workers' Compensation Program. This required modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

(2) Wage Benefits

(a) Sick Leave

28. Employees are entitled to Sick Leave under certain terms and conditions. As of the Petition Date the Debtors have \$487,303.37 in accrued sick leave obligations. Sick Leave Obligations will continue to accrue after the Petition Date. The Debtors request the authority to pay that amount and continue providing the Sick Leave benefits in the ordinary course of the Debtors' business and consistent with past practice.

(b) Paid Leave.

29. The Debtors maintain several paid leave benefit programs for Employees, providing for paid time off ("PTO") in the forms provided by the Company ("Paid Leave") in the ordinary course of business. The Debtors believe that the payment of and continuation of Paid Leave in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend.

30. PTO for non-exempt employees accrues at a specified rate based on the Employee's years of service and date of hire and accrued each year subject to certain limitations. Employees

who are terminated or resign are entitled to a cash payment in lieu of the accrued but unused PTO, subject to deduction for any amounts owed to the Debtors. Unused PTO for non-exempt employees is accrued and is a current cash payment obligation of the Debtors, as non-exempt Employees may use PTO at any time. For exempt employees, PTO is not accrued and is not a current cash payment obligation. As of the Petition Date the Debtors obligations under this PTO program were \$916,927.36. PTO will continue to accrue after the Petition Date; therefore, the Debtors request the authority to pay the outstanding amount, and to continue providing and paying for this PTO benefit in the ordinary course of the Debtors' business and consistent with past practice.

31. The Debtors believe that the continuation of the Paid Leave policies in accordance with prior practice is essential to maintaining Employee morale during these chapter 11 cases. Further, the policies are broad-based programs upon which all Employees have come to depend.

(c) Auto Allowance

32. The Debtors provide 22 non-insider Employees with a monthly auto allowance at a monthly cost of approximately \$5,372.59. The Debtors do not believe that any prepetition amounts are outstanding in connection with these auto allowances. The Debtors request the authority to continue providing the auto allowance benefit in the ordinary course of the Debtors' business and consistent with past practice.

(d) 401(k) Plan.

33. The Debtors offer eligible Employees the opportunity to participate in a 401(k)-retirement savings plan (the "401(k) Plan"). The 401(k) Plan provides for pre-tax deductions of compensation up to limits set by the Internal Revenue Code, and for certain post-tax deductions. Each Employee's 401(k) contributions are deducted automatically from each paycheck and

transferred to a trust established under the 401(k) Plan (collectively, the “401(k) Deductions”). The Debtors do not match the Employees contributions.

34. The 401(k) Plan currently is administered by the Standard and audited by BDO. As of the Petition Date, the outstanding amount owed in connection with the 401(k) Plan was \$45,245.72. After the Petition Date the Debtors will be subject to an annual audit fee from BDO of \$19,140.36, and an annual administration fee from The Standard of \$6,965.

35. Many Employees’ retirement savings solely consist of the 401(k) Plan. Thus, the Debtors believe that continuing the 401(k) Plan is essential to maintaining Employee morale and protecting Employee expectations. The Debtors request the authority to continue administering the 401(k) Plan and to pay the outstanding administration fees in the ordinary course of the Debtors’ business and consistent with past practice.

ARGUMENT

A. Cause Exists to Authorize the Debtors to Continue Employee Benefits and to Pay Employee Benefits Obligations

1) Certain Employee Benefits Are Entitled to Priority Treatment.

36. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Employee Benefits owed to the Employees to priority treatment. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(b) (requiring payment of certain allowed unsecured claims for (b) contributions to an employee benefit plan). Thus, granting the relief sought herein should only affect the timing of certain payments to the Employees, and should not negatively affect recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of the Employee Benefits currently enhances value for the benefit of all interested parties.

2) Payment of Certain Employee Compensation and Benefits Is Required by Law.

37. The Debtors seek authority to pay the applicable Workers Compensation Obligations to the appropriate third-party entities. Indeed, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state laws may prohibit the Debtors from operating in those states. Payment of all workers' compensation amounts is therefore crucial to the Debtors' continued operations and the success of the Debtors' ongoing chapter 11 efforts.

3) Payment of the Employee Benefits Is Proper Pursuant to Section 363 of the Bankruptcy Code and the Doctrine of Necessity.

38. Section 363(c)(1) of the Bankruptcy Code expressly grants the Debtors the authority to "enter into transactions . . . in the ordinary course of business" and "use property of the estate in the ordinary course of business without notice or a hearing." Therefore, the Debtors believe they are permitted to pay all postpetition amounts due pursuant to the Employee Benefits as such actions are in the ordinary course of the Debtors' business. Out of an abundance of caution, however, the Debtors seek entry of an order granting the relief requested herein to avoid any disruptions to their business operations.

39. The relief requested herein may also be granted by the Court pursuant to sections 363(b) and 105(a) of the Bankruptcy Code. Section 363 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." *See* 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, courts require only that the debtor "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted) (requiring that the debtor show a "sound business purpose" to justify its actions under section 363 of the Bankruptcy Code). "Where 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." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task").

40. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of a bankruptcy court, empowers bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of the Employee Benefits under the "necessity of payment" rule (also referred to as the "doctrine of necessity"). The United States Court of Appeals for the Third Circuit recognized the "necessity of payment" doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment were essential to the continued operation of the debtor. *Id.* (stating 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").

41. The necessity of payment doctrine is designed to foster a debtor's rehabilitation, which courts have recognized is "the paramount policy and goal of Chapter 11." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was "essential to the survival of the debtor during the chapter 11 reorganization"); *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 toolmakers as “necessary to avert a serious threat to the Chapter 11 process”).

42. Payment of the Employee Benefits is warranted under this authority and the facts and circumstances of these chapter 11 cases. Many of the Employees rely exclusively on the Employee Benefits to satisfy certain expenses. Consequently, Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor obligations for unpaid Employee Benefits. Additionally, continuing ordinary course benefits will help maintain Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases on the Debtors’ ongoing business operations.

43. Moreover, Employees provide the Debtors with services necessary to conduct the Debtors’ business, and the Debtors believe that absent the payment of the Employee Benefits, the Debtors may experience turnover and instability at this critical time in these chapter 11 cases. Debtors operate a business that requires stability in their workforce. The Debtors believe that without these payments, the Employee may become demoralized and unproductive because of the potentially significant financial strain and other hardships these Employees may face. Such Employees may then elect to seek alternative employment opportunities. Additionally, a significant portion of the value of the Debtors’ business is tied to their workforce, which cannot be replaced without significant efforts—which efforts may not be successful given the overhang of these chapter 11 cases. Enterprise value may be materially impaired to the detriment of all

stakeholders in such a scenario. The Debtors therefore believe that payment of the prepetition obligations with respect to the Employee Benefits is a necessary and critical element of the Debtors' efforts to preserve value and will give the Debtors the greatest likelihood of retention of their Employees as the Debtors seek to operate their business in these chapter 11 cases.

44. Indeed, courts in this district have recognized the importance of satisfying employee obligations in cases requesting relief similar to that requested here. *See, e.g., In re Town Sports Intl., LLC*, 20-12168 (CSS) (Bankr. D. Del. Sept. 14, 2020) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on a postpetition basis); *In re Brooks Brothers Grp., Inc.*, 20-11785 (CSS) (Bankr. D. Del. Jul. 8, 2020) (same); *In re Extraction Oil and Gas, Inc.*, 20-11548 (CSS) (Bankr. D. Del. Jun. 14, 2020) (same); *In re Longview Power, LLC*, 20-10951 (BLS) (Bankr. D. Del. Apr. 14, 2020) (same); *In re Quorum Health Corp.*, 20-10766 (KBO) (Bankr. D. Del. Apr. 7, 2020) (same).⁸ Accordingly, the Debtors respectfully request that the Court authorize the Debtors to pay and continue the Employee Benefits in the ordinary course of the Debtors' business and consistent with past practice.

4) A Limited Waiver of the Automatic Stay for Workers' Compensation Program Is Appropriate in this Case.

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

[T]he 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 . . .

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

47. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code, to permit their Employees to proceed with their claims against the Workers' Compensation Program in the appropriate judicial or administrative forum. The Debtors believe that cause exists to modify the automatic stay because staying the resolution of Employee's workers' compensation claims is mandated by relevant state law, and failure to continue to manage and pay these claims would have a detrimental effect on the financial well-being and morale of the Employees and lead to the departure of critical Employees. Such departures could cause a severe disruption in the Debtors' business and dramatically decrease the value of these estates. Accordingly, the Debtors request a limited waiver of the automatic stay to allow the Debtors' Workers' Compensation Program to proceed.

5) Processing of Checks and Electronic Fund Transfers Should Be Authorized

48. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, debtor-in-possession financing, and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can identify checks or wire transfer requests relating to an authorized payment in respect of the amounts requested in this Motion. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay all checks or wire transfer requests in respect of the relief requested in this Motion.

RESERVATION OF RIGHTS

49. 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.

THE REQUIREMENTS OF BANKRUPTCY RULES 6003 ARE SATISFIED

50. 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 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.

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

51. 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

52. 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, 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

53. 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 2, 2023
Wilmington, Delaware

/s/ Mette H. Kurth

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Proposed Counsel to the Debtors and Debtors-in-Possession

Exhibit A

Proposed Interim 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 (I) AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION
PAYROLL; (II) CONTINUE EMPLOYEE BENEFITS; (III) PAY PREPETITION
EMPLOYEE BENEFIT OBLIGATIONS AND (IV) GRANTING RELATED RELIEF**

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”): authorizing the Debtors to (a) pay prepetition payroll; (b) continue employee benefits programs *nunc pro tunc* as of the Petition Date in the ordinary course of business, (c) pay certain prepetition obligations related thereto; and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; 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.

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

§§ 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 to pay Prepetition Wages as set forth in the Motion.
3. The Debtors are hereby authorized to continue Employee Benefits *nunc pro tunc* to the Petition Date in the ordinary course of business, including payment of certain prepetition Employee Benefit Obligations related thereto as set forth in the Motion.
4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the Local Rules are satisfied by such notice.
5. The terms and conditions of this Interim Order are effective and enforceable immediately upon its entry.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.
7. 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.

Exhibit B

Proposed Final 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 (I) AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION
PAYROLL; (II) CONTINUE EMPLOYEE BENEFITS; (III) PAY PREPETITION
EMPLOYEE BENEFIT OBLIGATIONS AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)⁴ of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”): authorizing the Debtors to (a) pay prepetition payroll; (b) continue employee benefits programs *nunc pro tunc* as of the Petition Date in the ordinary course of business, (c) pay certain prepetition obligations related thereto; and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; 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; and this Court finding that the Debtors’ notice of the Motion and opportunity for a hearing on the

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.

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:

8. The Motion is **GRANTED** on a final basis as set forth herein.
9. The Debtors are authorized to pay Prepetition Wages as set forth in the Motion.
10. The Debtors are hereby authorized to continue Employee Benefits *nunc pro tunc* to the Petition Date in the ordinary course of business, including payment of certain prepetition Employee Benefit Obligations related thereto as set forth in the Motion.
11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the Local Rules are satisfied by such notice.
12. The terms and conditions of this Final Order are effective and enforceable immediately upon its entry.
13. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.
14. 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.