

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

In re:

LUCKY'S MARKET PARENT COMPANY,
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-10166 (JTD)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR INTERIM AND FINAL AUTHORITY TO (I) MAINTAIN
AND ADMINISTER CUSTOMER PROGRAMS, PROMOTIONS AND PRACTICES
AND (II) PAY AND HONOR RELATED PREPETITION OBLIGATIONS**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move the Court (the “**Motion**”) for entry of an interim order, substantially in the form attached hereto as Exhibit A (the “**Proposed Order**”), pursuant to sections 105(a), 363(b), and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), authorizing, but not directing, the Debtors to in the ordinary course of business and consistent with past practice, (i) maintain and administer customer programs, promotions, and practices and (ii) pay and otherwise honor their obligations to customers relating thereto, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors’ business judgment. In support of the Motion, the Debtors rely upon the *Declaration of Andrew T. Pillari, Chief Financial Officer of Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day**”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Lucky’s Market Parent Company, LLC (2055), Lucky’s Farmers Market Holding Company, LLC (5480), Lucky’s Market Operating Company, LLC (7064), LFM Stores LLC (3114), Lucky’s Farmers Market, LP (0828), Lucky’s Farmers Market Resource Center, LLC (7711), Lucky’s Market Holding Company 2, LLC (0607), Lucky’s Market GP 2, LLC (9335), Lucky’s Market 2, LP (8384), Lucky’s Market of Longmont, LLC (9789), Lucky’s Farmers Market of Billings, LLC (8088), Lucky’s Farmers Markets of Columbus, LLC (3379), Lucky’s Farmers Market of Rock Hill, LLC (3386), LFM Jackson, LLC (8300), Lucky’s Farmers Market of Ann Arbor, LLC (4067), Lucky’s Market of Gainesville, LLC (7877), Lucky’s Market of Bloomington, LLC (3944), Lucky’s Market of Plantation, LLC (4356), Lucky’s Market of Savannah, GA, LLC (1097), Lucky’s Market of Traverse, City, LLC (2033), Lucky’s Market of Naples, FL, LLC (8700), and Sinoc, Inc. (0723).

Declaration”). In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

BACKGROUND

1. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

2. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

3. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

JURISDICTION

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. Pursuant to 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**”), the Debtors consent 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 consistent with Article III of the United States Constitution.

RELIEF REQUESTED

6. By this Motion, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, the Debtors request authority to, in the ordinary course of business and consistent with past practice, (i) maintain and administer customer programs, promotions, and practices and (ii) pay and otherwise honor their obligations to customers relating thereto, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors' business judgment.

THE DEBTORS' CUSTOMER PROGRAMS

7. Traditionally, the Debtors' businesses have been dependent upon the loyalty of their customers. To maximize customer loyalty, the Debtors maintained and followed, in the ordinary course of business, the practices and programs described herein and others (collectively, the "**Customer Programs**") to reward and provide incentives to existing customers and to attract new customers to the Debtors' stores. Customer programs are standard in the retail food business. Without the ability to continue their Customer Programs and to satisfy prepetition obligations in connection therewith, the Debtors risk disrupting the store closing sales and eroding estate value and losing customers at continuing Lucky's Market stores.

Return and Exchange Policies

8. Consistent with industry practice and to accommodate customers' needs, the Debtors maintain return, refund, exchange, price-guarantee, and rain-check policies with respect to both cash and credit purchases (collectively, the "**Return and Exchange Policies**"). These policies assure the Debtors' customers that they will be "made whole" if merchandise is

inadequate, damaged or defective, incorrectly processed, or unavailable. By this Motion, the Debtors seek authorization to honor the Return and Exchange Policies with respect to merchandise purchased prior to the Petition Date.

Sales Promotions

9. From time to time, the Debtors conduct sales promotions at selected stores or banners (the “**Sales Promotions**”). The Sales Promotions include “buy one get one free” programs and percent off sales. These Sales Promotions allow the Debtors to increase their vendors’ exposure to the Debtors’ customer base and generate additional income by driving foot traffic at the stores. By this Motion, the Debtors seek authorization to honor these Sales Promotions.

Coupon Program

10. The Debtors maintain a coupon redemption program pursuant to which they honor (a) certain third-party coupons distributed to the Debtors’ customers and (b) the Debtors’ own coupons that are included in advertising circulars, electronic mail, or distributed in the Debtors’ stores (collectively, the “**Coupons**”). When a customer redeems a valid third-party Coupon in one of the Debtors’ stores, the Debtors deduct the amount of the Coupon (or such other deduction as may be advertised) from the relevant item’s purchase price. Third-party Coupons are then processed and remitted to third-party intermediaries, who in turn collect the amounts from the various vendors and pay the Debtors the value of the Coupons collected. To not disrupt the store closing sales, which may erode value to the Company and to preserve the good will of their existing customer base, the Debtors seek authorization to honor the Coupons issued prior to the Petition Date in a manner consistent with their ordinary business practices.

Gift Card Programs

11. Pre-petition, the Debtors maintained a program by which their customers could purchase gift cards that would be redeemed for merchandise at a later date (collectively, the “**Gift Card Programs**”). As of the Petition Date, approximately \$775,000 in issued gift cards are outstanding, of which \$475,000 has had no activity since June 1, 2019. To not disrupt the store closing sales, which may erode value to the Debtors and to preserve the goodwill of their existing customer base, the Debtors seek authorization to honor all gift cards purchased by customers prior to the Petition Date in a manner consistent with their ordinary business practices.

Script Programs

12. The Debtors maintain two script programs, pursuant to which non-profit organizations and schools can purchase gift cards (\$500 minimum purchase) and receive a 7% discount on the purchase (the “**Script Programs**”). The first program is an “upfront only” sale where the non-profit organization or school resells the gift cards at face value at various fundraising functions. At that point, the gift cards are treated like any other gift card purchased for full value. The second program is a “reloadable” gift card. In this program, the purchasing organization and card numbers in the initial purchase are recorded when the sale occurs. The non-profit organization or school resells the gift cards at face value at various fundraising functions. The card holder has the option of reloading funds onto these cards once the initial balance has been used or significantly depleted. Reload dollars are manually tracked and 7% of the total reload amount is remitted to the non-profit organization or school quarterly. The Reloadable program has only been implemented in Colorado. By this Motion, the Debtors seek authorization to maintain the Script Programs and to honor all gift cards purchased as part of the Script Programs prior to the Petition Date.

RELIEF REQUESTED SHOULD BE GRANTED

A. Ample Authority Exists to Support Payment of the Customer Obligations

13. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363 of the Bankruptcy Code, a court may authorize a debtor to pay certain prepetition claims if a sound business purpose exists for doing so. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (requiring that debtor show a “sound business purpose” to justify its actions under section 363 of Bankruptcy Code); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *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”).

14. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain

objections to the debtor's conduct." *Comm. Of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *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").

15. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. Section 1107(a) of the Bankruptcy Code "contains an implied duty of the debtor-in-possession" to "protect and preserve the estate, including an operating business' going-concern value," on behalf of a debtor's creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) ("[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.").

16. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor's business. *See, e.g., CoServ*, 273 B.R. at 497 ("[I]t is only logical that the bankruptcy court be able to use § 105(a) of the Bankruptcy Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate."); and *Just for Feet*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding

that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under doctrine of necessity and noting that the Court has “power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that doctrine of necessity is standard in Third Circuit for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

17. Allowing a debtor to honor prepetition obligations under this authority is appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Sav. Assoc. v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999).

18. Courts in this and other districts specifically have authorized debtors to honor prepetition obligations arising from customer programs substantially similar to those discussed herein in comparable chapter 11 proceedings. *See, e.g., In re AWI Delaware, Inc.*, Case No. 14-12092 (Bankr. D. Del. Sept. 10, 2014) (approving \$120,000 worth of prepetition customer programs expenses); *In re The Great Atl. & Pac. Tea Co.*, Case No. 15-23007 (Bankr. S.D.N.Y. August 11, 2015); *In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 10-24549 (Bankr. S.D.N.Y. January 13, 2011) (authorizing approximately \$11,140,000 of prepetition customer programs expenses); *In re Bruno’s, Inc.*, Case No. 09-00634 (Bankr. N.D. Ala. Feb. 5, 2009) (approving \$900,000 worth of prepetition customer programs expenses); *In re Sbarro LLC*, Case No. 14-10557 (Bankr. S.D.N.Y. Apr. 7, 2014) (approving \$87,500 worth of prepetition customer program expenses).

B. Continuing the Customer Programs and Honoring the Customer Obligations Is in the Best Interests of the Debtors' Businesses and Estates

19. The ability to continue administering the Customer Programs without interruption is absolutely critical to the Debtors' valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors' stakeholders. If the Debtors are unable to continue the Customer Programs postpetition or honor obligations thereunder, the Debtors risk alienating certain customer constituencies (who then could form relationships with the Debtors' competitors) and could suffer corresponding losses in customer loyalty and goodwill that will harm their prospects for maximizing recoveries to their creditors.

20. The Debtors' Customer Programs also are essential marketing strategies for attracting new customers. Failure to continue the Customer Programs and offer even basic programs such as the Return and Exchange Policy will place the Debtors at a significant—and potentially insurmountable—competitive disadvantage in the marketplace, amplifying the negative effect of customer uncertainty that may arise from these chapter 11 filings. Such uncertainty could erode the Debtors' hard-earned reputation and brand loyalty, which, in turn, could adversely impact their ability to successfully administer their chapter 11 cases and maximize recoveries to stakeholders. The relief requested herein will pay dividends with respect to their businesses, both in terms of profitability and the engendering of goodwill, especially at this critical time following the filing of these chapter 11 cases.

21. Under these circumstances, the benefits of continuing to honor the Customer Programs far outweigh the relatively minimal costs associated therewith. Accordingly, the Debtors have shown cause sufficient to warrant the authority to continue administering the Customer Programs and to honor any customer obligations relating thereto.

22. Further, pursuant to section 507(a)(7) of the Bankruptcy Code, up to \$2,775 in claims arising from a consumer's prepetition deposit "of money for the purchase of property or services for personal, family or household use" to the extent that such property or services were not delivered, have priority over other general unsecured claims. *See* 11 U.S.C. § 507(a)(7). This provision was added to the Bankruptcy Code in 1984 to "protect consumers who had deposited money for goods and services with a business that subsequently filed for bankruptcy" and has since been adjusted to increase the priority amount. *In re River Vill. Assocs.*, 161 B.R. 127, 133 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa. 1995). The obligations that arise in connection with the Gift Card Program are priority claims under section 507(a)(7) of the Bankruptcy Code.

RESERVATION OF RIGHTS

23. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder; or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

DEBTORS HAVE SATISFIED BANKRUPTCY RULE 6003(B)

24. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a Bankruptcy Court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” before twenty-one (21) days after filing of the petition. As described above, the Customer Programs are integral to the Debtors’ continued operations because they are necessary to maintain the confidence and goodwill of the Debtors’ customer base. The Debtors are at a critical juncture at which they must make every effort to retain customer support, drive revenues, and maximize cash flow. The Debtors’ inability to continue the Customer Programs could materially—and perhaps fatally—impair their efforts and thwart the Debtors’ chapter 11 cases before they have had a chance to begin. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

BANKRUPTCY RULES 6004(A) AND (H)

25. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

NOTICE

26. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Prepetition Secured Lender; (c) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (d) any party that has requested notice pursuant to Bankruptcy Rule 2002; (e) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (f) the Banks (collectively, the "**Notice Parties**"). The Debtors submit that, under the circumstances, no other or further notice is required.

27. If the Court enters the Interim Order granting this Motion, the Debtors propose to serve notice of such entry on the Notice Parties. The notice will provide that any objections to the relief granted in the Interim Order must be filed with the Court and served upon counsel for the Debtors no later than seven (7) days prior to the final hearing to be held on the Motion (the "**Objection Deadline**"). If an objection is timely filed and served prior to the Objection Deadline, such objection will be heard at the final hearing on the Motion. If no objections are timely filed and served, Debtors' counsel will file a certification of counsel to that effect attaching a final form of order.

NO PRIOR REQUEST

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

WHEREFORE the Debtors respectfully request entry of interim and final orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: January 27, 2020
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Christopher A. Ward

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222 Delaware Avenue, Suite 1101
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-and-

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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:

LUCKY'S MARKET PARENT COMPANY,
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-10166 (JTD)

(Joint Administration Pending)

Re: Docket No.

**INTERIM ORDER AUTHORIZING DEBTORS TO MAINTAIN AND ADMINISTER
CUSTOMER PROGRAMS, PROMOTIONS AND PRACTICES AND PAY AND HONOR
RELATED PREPETITION OBLIGATIONS**

Upon the motion (the “**Motion**”) of Lucky’s Market Parent Company and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**” or “**Lucky’s**”), pursuant to sections 105(a), 363(b), and 507(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), for an order authorizing the Debtors to, in the ordinary course of business and consistent with past practice, (i) maintain and administer their Customer Programs, promotions, and practices and (ii) pay and otherwise honor their obligations to customers relating thereto, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors’ business judgment, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Lucky’s Market Parent Company, LLC (2055), Lucky’s Farmers Market Holding Company, LLC (5480), Lucky’s Market Operating Company, LLC (7064), LFM Stores LLC (3114), Lucky’s Farmers Market, LP (0828), Lucky’s Farmers Market Resource Center, LLC (7711), Lucky’s Market Holding Company 2, LLC (0607), Lucky’s Market GP 2, LLC (9335), Lucky’s Market 2, LP (8384), Lucky’s Market of Longmont, LLC (9789), Lucky’s Farmers Market of Billings, LLC (8088), Lucky’s Farmers Markets of Columbus, LLC (3379), Lucky’s Farmers Market of Rock Hill, LLC (3386), LFM Jackson, LLC (8300), Lucky’s Farmers Market of Ann Arbor, LLC (4067), Lucky’s Market of Gainesville, LLC (7877), Lucky’s Market of Bloomington, LLC (3944), Lucky’s Market of Plantation, LLC (4356), Lucky’s Market of Savannah, GA, LLC (1097), Lucky’s Market of Traverse, City, LLC (2033), Lucky’s Market of Naples, FL, LLC (8700), and Sinoc, Inc. (0723).

United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the First Day Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to maintain and administer the Customer Programs and honor any related prepetition obligations in the ordinary course of business and consistent with past practice, as necessary and appropriate in the Debtors’ business judgment; provided that, the Debtors are authorized, but not directed, to pay or honor only amounts or obligations that are or become due and payable between the Petition Date and the date that a final order on the Motion is entered in an amount not to exceed \$775,000, unless otherwise ordered by the Court.

3. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the final hearing to consider the relief requested in the Motion (the “**Final Hearing**”).

4. Notwithstanding anything to the contrary contained herein, any payments made or to be made by the Debtors under this Interim Order, and any authorization contained in this Order, shall be in compliance with, and shall be subject to any order approving the Debtors’ use of cash collateral.

5. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

6. Nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

7. This Interim Order is effective only from the date of entry through this Court’s disposition of the Motion on a final basis; provided that the Court’s ultimate disposition of the Motion on a final basis shall not impair or otherwise affect any action taken pursuant to this Interim Order.

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

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

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

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

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

13. The Final Hearing shall be held on _____, 2020, at _____ (**Prevailing Eastern Time**) and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (a) Lucky's Market Parent Company, LLC, 6328 Monarch Park Place, Niwot, CO 80503, Attn: Maria Woods (mariaw@luckysmarket.com); (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Christopher A. Ward (cward@polsinelli.com); (c) counsel to the official committee of unsecured creditors, if one is appointed; and (d) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Timothy Fox (timothy.fox@usdoj.gov).

Dated: January ____, 2020
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE