

**ALSTON & BIRD LLP**

Gerard S. Catalanello  
James J. Vincequerra  
William Hao  
90 Park Avenue  
New York, NY 10016  
Telephone: (212) 210-9400  
Email: [Gerard.Catalanello@alston.com](mailto:Gerard.Catalanello@alston.com)  
[James.Vincequerra@alston.com](mailto:James.Vincequerra@alston.com)  
[William.Hao@alston.com](mailto:William.Hao@alston.com)

*Proposed Counsel to the Debtors and  
Debtors in Possession*

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

In re:	)	CHAPTER 11
	)	
K.G. IM, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	CASE NO. 20-11723 (MG)
Debtors.	)	
	)	(Joint Administration Requested)
	)	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I)  
AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION EMPLOYEE WAGES  
AND SALARIES, AND RELATED AMOUNTS AND EXPENSES; (II) AUTHORIZING  
DEBTORS TO MAINTAIN THEIR EMPLOYEE-RELATED INSURANCE AND BENEFIT  
PROGRAMS POSTPETITION AND HONOR ANY PREPETITION OBLIGATIONS IN  
RESPECT THEREOF; (III) AUTHORIZING DEBTORS TO MAKE DEDUCTIONS  
FROM EMPLOYEES’ PAYCHECKS; (IV) AUTHORIZING DEBTORS TO CONTINUE  
WORKERS’ COMPENSATION PROGRAMS; (V) AUTHORIZING AND DIRECTING  
BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR ALL CHECKS AND  
ELECTRONIC PAYMENTS; AND (VI) GRANTING RELATED RELIEF**

K.G. IM, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**”), by and through their undersigned proposed counsel, hereby submit

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), include: K.G. IM, LLC (8556); Il Mulino USA, LLC (1682); IM LLC – III (2613); IMNYLV, LLC (9805); IM NY, Florida, LLC (9385); IM NY, Puerto Rico, LLC (0901); IMNY AC, LLC (5082); IM Products, LLC (0303); IM Long Island Restaurant Group, LLC (1623); IM Long Island, LLC (1488); IM Franchise, LLC (0565); IM 60th Street Holdings, LLC (9997); IM Broadway, LLC (4335); IMNY Hamptons, LLC (0423) and IM Payroll, LLC (0807). For the purpose of these chapter 11cases, the service address for the Debtors is: 1761 Yardley Langhorne Rd Yardley PA 19067.

this motion (the “**Motion**”) for entry of an interim (“**Interim Order**,” attached hereto as **Exhibit A**) and final order (“**Final Order**,” attached hereto as **Exhibit B**) pursuant to, without limitation, 11 U.S.C. §§ 105, 363, 503, 507, 541, 1107, and 1108, (i) authorizing debtors to pay certain prepetition employee wages and salaries, and related amounts and expenses; (ii) authorizing debtors to maintain their employee-related insurance and benefit programs postpetition and honor any prepetition obligations in respect thereof; (iii) authorizing debtors to make deductions from employees’ paychecks; (iv) authorizing debtors to continue workers’ compensation programs; (v) authorizing and directing banks and other financial institutions to honor all checks and electronic payments; and (vi) granting such other and further relief as requested herein or as the Court otherwise deems necessary or appropriate. The Debtors respectfully represents as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Bankruptcy Rule 7008, the Debtors consent to 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 a final order or judgment consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409

2. The statutory predicates for the relief requested herein are section 105(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

### **BACKGROUND**

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Bankruptcy Rule 7008, the Debtors consent to 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 a final order or judgment consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409

4. Detailed information regarding the Debtors' businesses, their debt and capital structure, and the events leading to the filing of these chapter 11 cases is contained in the Declaration of Gerald Katzoff, pursuant to Local Bankruptcy Rule 1007-2 and 9077-1 (ECF No. 4, the "**Original First Day Declaration**") and the supplement thereto filed contemporaneously herewith (the "**Supplemental First Day Declaration**"). The contents of the Original First Day Declaration and Supplemental First Day Declaration are incorporated herein by reference.

5. The Debtors are operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or official committee of unsecured creditors has been appointed in these chapter 11 cases.

6. The Debtors own and operate seven restaurant locations across the United States and Puerto Rico: (i) the Il Mulino New York location in Las Vegas, Nevada, operated by Debtor IMNYLV, LLC, (ii) the Il Mulino New York location in Miami Beach, Florida, operated by Debtor IM NY, Florida, LLC, (iii) the Il Mulino New York location in Puerto Rico, operated by Debtor IM NY, Puerto Rico, LLC, (iv) the Il Mulino New York and Trattoria Il Mulino locations

located in Atlantic City, New Jersey, operated by Debtor IMNY AC, LLC, (v) the Il Mulino New York location in Roslyn, New York, operated by Debtor IM Long Island Restaurant Group, LLC, and (vi) the Il Mulino New York location in East Hampton, New York, operated by Debtor IMNY Hamptons, LLC (collectively the “**Restaurant Operator Debtors**”). Original First Day Declaration ¶ 4.

7. Presently, only two of the Debtors’ restaurant locations—the Il Mulino New York locations in Miami and Roslyn, New York—are open and their operations are limited. These two locations employ approximately 65 active employees in total, including cooks, servers, bussers, dishwashers, management, hosts, and office administrators (the “**Restaurant Debtor Employees**”). None of the remaining Restaurant Operator Debtors had any active employees as of the Petition Date except IMNY AC, LLC (“**IMNY AC,**”) which had one.

8. As discussed in more detail below, while Debtor IMNYLV, LLC (“**IMNYLV**”) terminated all 23 of its employees working at the Las Vegas location as of March 18, 2020, (the “**Terminated Employees**”), the Debtors continue to provide the Terminated Employees with certain Insurance Benefits (defined below).

9. Debtor IL Mulino USA, LLC (“**Il Mulino USA**”) manages the Restaurant Operator Debtors and provides administrative support and back office functions such as payroll and accounting. Il Mulino USA employs six active employees in total.

10. As of the Petition Date, the Debtors employ approximately 71 full time employees (“**Employees**”). In addition to the Employees, the Debtors utilize independent subcontractors (“**Independent Contractors**”). As of the Petition Date, the Debtors employ approximately 4 Independent Contractors to supplement the efforts of the Employees.

11. As detailed in the Original First Day Declaration, each of the Restaurant Operator Debtors applied for and received funds under the Paycheck Protection Program (“**PPP Funds**”) provided for by the Coronavirus Aid, Relief, and Economic Security Act. *See* Original First Day Declaration ¶¶ 22-26. In addition, Debtor Il Mulino USA applied for and received PPP Funds, which are held by Debtor IM Payroll, an entity formed for the sole purpose of receiving and holding Il Mulino USA’s PPP Funds. The Debtors would satisfy any prepetition employee obligations from their PPP Funds and, during the pendency of the Chapter 11 cases, to the extent available, satisfy all eligible employee related expenses, including wages, from PPP Funds.

12. The Debtors seek to minimize the personal financial burden Employees and Independent Contractors would suffer if prepetition obligations are not paid or remitted when due or as expected. By this Motion, the Debtors seek authority to: (a) pay and honor certain prepetition claims relating to, among other things, wages, salaries, and other compensation, payroll services, federal and state withholding taxes and other amounts withheld (including garnishments, Employees’ share of insurance premiums, and taxes), health insurance, workers’ compensation benefits, paid time off, and certain other benefits that the Debtors have historically provided in the ordinary course as discussed in more detail below (collectively, the “**Compensation and Benefits**”); and (b) pay any prepetition amounts related thereto.

13. The Debtors’ Compensation and Benefits include the following:

***Payroll***

14. These obligations consist of the Debtors’ wages, salaries and related amounts owed or to become owed to the Employees and Independent Contractors (the “**Payroll Obligations**”).

15. In the ordinary course of business, the Debtors issue weekly payroll to Employees and Independent Contractors. By way of example, certain Employees of Restaurant Operator Debtors working from July 20, 2020 through July 26, 2020 would be paid on August 4, 2020. For Il Mulino USA, payroll is paid every Monday for wages earned the preceding week. By way of example, Employees of Il Mulino USA working from July 20, 2020, through July 26, 2020 would be paid on August 3, 2020. Because Employees and Independent Contractors are generally paid in arrears, certain Employees and Independent Contractors will be owed accrued but unpaid wages as of the Petition Date (the “**Prepetition Wages**”).

16. As of the Petition Date, the Debtors estimate that they owe approximately \$60,000 in Prepetition Wages.<sup>2</sup>

17. No single Employee or Independent Contractors would be paid more than the \$13,650 priority cap under section 507(a)(4) of the Bankruptcy Code for the Prepetition Wages.

18. Included in the payroll amounts described above are funds withheld by the Debtors for the benefit of third parties, including amounts relating to mandatory and voluntary withholdings for employee taxes, deductions, insurance (discussed below), and other withholdings.

19. The Debtors are required by law to withhold from the Employees’ wages amounts related to federal and state taxes, social security and Medicare taxes (collectively, the “**Trust Fund Taxes**”), and to remit the Trust Fund Taxes to the appropriate taxing authorities (collectively, the “**Taxing Authorities**”). Additionally, the Debtors are obligated to match from its own funds the social security and Medicare taxes and to remit to the Taxing Authorities,

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<sup>2</sup> The Employee working at IMNY AC began his employment on July 27, 2020, therefore he has *de minimis* prepetition wages, but such amount is included in the estimated Prepetition Wage calculation.

based on a percentage of gross payroll, additional amounts for state and federal unemployment insurance (collectively the “**Employer Payroll Taxes**” and, together with the Trust Fund Taxes, the “**Payroll Taxes**”). The Prepetition Wages include the corresponding payroll taxes due (the “**Prepetition Payroll Taxes**”).

20. The Debtors seek the Court’s authority and permission, but not direction, to (a) honor and satisfy any Payroll Obligations that accrued prior to the Petition Date, (b) honor and satisfy any Payroll Obligations which accrue during the pendency of these Bankruptcy Cases; (c) continue to withhold from the applicable Employees’ and Independent Contractors’ paychecks the amounts relating to mandatory and voluntary withholdings for employee taxes, deductions, insurance and other withholdings, and release such withholdings to the appropriate recipient (whether such withholdings relate to amounts which accrued prior or subsequent to the Petition Date), (d) honor and satisfy the Prepetition Payroll Taxes, and (e) generally maintain and continue their practices and procedures with respect to the Employees and Independent Contractors, and the Payroll Obligations during the pendency of these Chapter 11 cases.

21. The Debtors would utilize only PPP Funds to pay Prepetition Wages and Prepetition Payroll Taxes relating to Employees. During the pendency of these Chapter 11 cases, to the extent available, the Debtors would utilize only PPP Funds to satisfy any Payroll Obligations relating to Employees.

***Employee Related Insurance***

22. The Debtors provide medical, dental, and vision, insurance to the Employees (the “**Insurance Benefits**”), and Employees also have the option of purchasing certain supplemental insurance for themselves and/or their family members, including, among other things, certain disability insurance (the “**Supplemental Insurance**”). The Insurance Benefits are partially

funded by deductions from the Employee's wages and partially by the Debtors. Specifically, Debtors pay 50%-100% of the lowest plan offered for each Employee.<sup>3</sup>

23. In addition, Insurance Benefits for the Terminated Employees are currently paid out by the Debtors at 100%.

24. The premiums for the Debtors' Insurance Benefits are billed monthly on the first day of each month, with the month of July unpaid, and the next bill cycle beginning August 1, 2020.

25. The Debtors estimate that there is approximately \$15,500 in prepetition premiums and related expenses and costs associated with the Insurance Benefits that has not been paid.

26. The Supplemental Insurance is fully funded by deductions from the Employees' wages. The Debtors estimate that there is approximately \$8,625.40 in prepetition premiums and related expenses and costs associated with the Supplemental Insurance that have not been paid.

27. The Debtors anticipate that its Employees will express substantial and immediate concern about their Insurance Benefits and Supplemental Insurance, and the inability to advise the employees early on with respect to those benefits would undoubtedly lead to unnecessary stress among the employees and thus create substantial detriment to the moral of the workforce. These concerns are heightened due to the Covid-19 pandemic. Accordingly, the Debtors seek authority, but not direction, to (a) pay all prepetition amounts owed with respect to and related to the Insurance Benefits and Supplemental Insurance, (b) generally maintain and continue their practices and procedures with respect to the Insurance Benefits and Supplemental Insurance during the pendency of these Chapter 11 cases, including, without limitation, paying all amounts which become due with respect thereto or related thereto during the pendency of these chapter 11

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<sup>3</sup> This does not include family plans.



cases, and renewing, replacing, extending, renegotiating, amending and/or modifying the policies and agreements which relate to the Insurance Benefits and Supplemental Insurance in the ordinary course of their businesses.

28. During the pendency of these chapter 11 cases, to the extent available, the Debtors would utilize only PPP Funds to pay for Insurance Benefits and Supplemental Insurance.

***Workers' Compensation Program***

29. Applicable law requires the Debtors to maintain workers' compensation policies and programs to provide their employees with workers' compensation benefits for claims arising from or related to their employment with the Debtors. The Debtors maintain their current workers' compensation coverage through a fully insured, third-party insurance program provided by Employers Compensation Insurance Company ("**Employers Comp. Policy**"). The Debtors' policies, practices and procedures with respect to the workers' compensation are referred to herein as the "**Workers' Compensation Program.**"

30. The Debtors estimate that there is approximately \$22,741.20 in premiums associated with the Employers Comp. Policy that accrued prior to the Petition Date, but that have not been paid. The Debtors are seeking the Court's authorization, but not direction, to (a) pay, in its discretion, the prepetition amounts due under and with respect to the Employers Comp. Policy; (b) and to maintain their practices and procedures with respect to the Employers Comp. Policy and their workers' compensation obligations during the pendency of these Chapter 11 cases.

31. The Debtors would utilize only PPP Funds to pay prepetition premiums associated with the Employers Comp. Policy. During the pendency of these Chapter 11 cases, to

the extent available, the Debtors would utilize only PPP Funds to satisfy any Employers Comp. Policy.

32. The Debtors further seek limited relief from the automatic stay to permit the Employees to proceed with any prepetition or postpetition workers' compensation claims in the appropriate judicial or administrative forum; solely to the extent that (1) such claims are pursued in accordance with the Employers Comp. Policy; and (2) recoveries, if any, are limited to the proceeds of the Employers Comp. Policy. The Debtors are aware of no pending or contemplated workers' compensation claims at this time.

***Paid Time Off Program***

33. The Debtors offer paid time off ("**PTO**") programs (the "**PTO Programs**") to the Employees. Under the PTO program, PTO hours accrue to the Employees' benefit at a rate which varies per Employee based on length of time the Employee has been employed by the Debtors beginning after the employees' first year of employment. Depending on the Debtors, certain of the PTO Programs include sick time, while others do not.

34. The Debtors' seek the Court's authorization, but not direction, to continue and maintain the PTO Program in its current form and their practices, policies and procedures with respect thereto during these chapter 11 cases, and, in the event of an Employee's termination of Employment with the Debtors during the pendency of these cases, to pay such Employee the salary or wages corresponding to any accrued but unused PTO in accordance with the Debtors' current PTO Program.

35. The Debtors do not believe that any single Employee has significant accrued PTO that, combined with the Prepetition Wages, would amount in value to more than the \$13,650 priority cap in section 507(a)(4) of the Bankruptcy Code.

**REQUEST FOR RELIEF**

36. The Debtors file this motion seeking authority, but not direction from the Court to pay Prepetition Wages and to honor and satisfy any Payroll Obligations which accrue during the pendency of these Bankruptcy Cases; authority, but not direction from the Court to maintain Debtors' employee-related Insurance Benefits and Supplemental Insurance; authority, but not direction from the Court to continue make Payroll Tax deductions from employees' paychecks, and to honor and satisfy any Prepetition Payroll Taxes; authority, but not direction from the Court to continue the Workers' Compensation Program, with limited relief from the automatic stay to permit the Employees to proceed with any prepetition or petition workers' compensation claims; and authority and authority, but not direction from the Court to continue to honor PTO Programs.<sup>4</sup>

37. Additionally, and in furtherance of the relief requested above, the Debtors also request that their banks and other financial institutions be authorized and directed, when requested by any applicable Debtor, to receive, process, honor and pay any and all checks drawn on any of the Debtors' accounts for any payments authorized by this Court, whether such checks were presented prior to or subsequent to the Petition Date, provided that sufficient funds are available.

38. The relief requested herein will allow the Debtors to offer their employees the same compensation and benefits they received in the ordinary course of the Debtors' business prior to the commencement of these chapter 11 cases. To the extent they do not, or if there is any interruption to the employees' receipt of such compensation and/or benefits, the Debtors will be at risk of losing critical employees that they simply cannot afford to lose at this pivotal juncture

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<sup>4</sup> The Insurance Benefits, Supplemental Insurance, Workers' Compensation Program, and PTO Programs are collectively referred to as the "**Employee Programs.**"

in their corporate life cycle. Accordingly, the relief requested herein is crucial to the success of these chapter 11 cases.

### **BASIS FOR RELIEF**

39. Section 105(a) of the Bankruptcy Code empowers the bankruptcy court to “[i]ssue any order, process or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. As one court observed:

The ability of a Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept. It was first articulated by the United States Supreme Court in *Miltenberger v. Logansport, C. & S.W. R. Co.*, 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882) and is commonly referred to as either the “doctrine of necessity” or the “necessity of payment” rule. This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.

*In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (quoting *In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (the “necessity of payment” doctrine permits immediate payment of claims to creditors who will not supply services or material essential to the debtors’ business until their pre-petition claims are paid)).

#### **I. The Relief Requested Herein Related to the Employee Programs and the Payment of the Prepetition Amounts Owed with Respect Thereto is Necessary to Preserve the Estate**

40. Application of the “necessity of payment” doctrine here establishes that the Debtor should be authorized to honor the Payroll Obligations and Employee Programs. *See In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996); *see also In re Fin. News Network Inc.*, 134 B.R. 732, 735–36 (Bankr. S.D.N.Y. 1991) (holding that the ““doctrine of

necessity’ stands for the principle that a bankruptcy court may allow pre-plan payments of prepetition obligations where such payments are critical to the debtor’s organization”); *Mich. Bureau of Workers’ Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279-285-86 (S.D.N.Y. 1987), *appeal dismissed* 838 F.2d 59 (2d Cir. 1988) (approving lower court order authorizing payment of prepetition wages, salaries, expenses, and benefits). This doctrine is consistent with the paramount goal of chapter 11 of “facilitating the continued operation and rehabilitation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176.

41. The amount to be paid to any Employee or Independent Contractors for the Prepetition Wages will not exceed the \$13,650 cap contained in Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. In addition, approval of the payment of the Debtors’ Prepetition Wages will not prejudice other creditors of the Debtors’ estates as the Employees and Independent Contractors are entitled to priority status under Section 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to such obligations and payment in full pursuant to a Chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B).

42. If the Debtors are not permitted to honor and satisfy the prepetition Payroll Obligations, in addition to the disruption to the usual operations of the Debtors’ business that would be caused by the likely attrition of employees, Debtors would also would also experience other significant costs, including the out-of-pocket and intangible costs to recruit and train new employees, or the complete cessation of the Debtors’ businesses during this already fragile time as a result of the COVID-19 pandemic.

43. The relief sought is vital to the Employees and Independent Contractors. Nonpayment of prepetition Payroll Obligations and the inability to create some level of normalcy in the postpetition workplace by assuring Employees and Independent Contractors that they will

be compensated for their service to the Debtors in the ordinary course could severely undermine moral, thus creating a significant risk of attrition at a time when the Employees' and Independent Contractors' support is critical. The Debtors believe that if the prepetition Payroll Obligations are not satisfied, otherwise loyal employees will seek other employment, which could cause a very substantial disruption in Debtors' business operations.

44. Further, it cannot be overlooked that Employees and Independent Contractors will suffer financial and personal hardship, and perhaps lose access to critical services or be unable to meet their own personal obligations through no fault of their own, if the Debtors are unable to satisfy the prepetition Payroll Obligations, particularly in light of the Covid-19 pandemic. Certain of the Employees may live paycheck-to-paycheck, and in such circumstances, even a minimal delay in payment can create a financial hardship.

45. With respect to the Prepetition Payroll Taxes, the payment of such taxes also will not prejudice the Debtors' other creditors as the appropriate taxing authorities generally would hold priority claims under Section 507(a)(8) of the Bankruptcy Code with respect to such obligations and are entitled to payment in full pursuant to a Chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(C). Moreover, the portion of the Prepetition Payroll Taxes withheld from the Employees' and Independent Contractors' wages on behalf of the Taxing Authorities (as well as the other deductions) are held in trust by the Debtors. As such, that portion of the Prepetition Payroll Taxes (as well as the other deductions) is not property of the Debtors' estates under Section 541 of the Bankruptcy Code. *See, e.g., Begier v. IRS*, 496 U.S. 53 (1990); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes).

46. The Employee Programs are equally critical to the preservation of the Debtors' estates because, among other reasons, they represent material components of the Employees' compensation packages with the Debtors. If the Debtors are not permitted to continue the Employee Programs and pay all prepetition amounts owed with respect thereto, the Debtors could risk the loss of their Employees during these bankruptcy cases and a resulting substantial impairment or cessation of their businesses.

47. Further, applicable state law mandates that the Debtors maintain workers' compensation coverage for their employees. Failure by the Debtors to pay the premiums associated with the Employers Comp. Policy and to maintain such policy or any successor policy during the pendency of these cases could expose the Debtors to substantial liability in fines by the state workers' compensation boards.

48. In addition, the risk that eligible workers' compensation claimants will not receive timely payment for employment-related injuries, or that employees will not continue to receive Insurance Benefits or Supplemental Insurance, could have a devastating effect on the financial well-being and morale of the Debtors' Employees. As set forth above, departures by Employees at this critical time may result in a severe disruption of Debtors' business with a substantially adverse impact on the Debtors, the value and their assets, and their businesses.

49. The importance of a debtor's employees to their operations has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re Jason Indus. Inc.*, No. 20-22766 (RDD) (Bankr. S.D.N.Y. June 26, 2020) (authorizing debtors to continue employee compensation and benefit programs and pay certain prepetition obligations related thereto on an interim basis); *In re Frontier Commc'ns. Corp.*, No. 20-22476 (RDD) (Bankr. S.D.N.Y. May 26, 2020) (authorizing debtors to continue

employee compensation and benefit programs and pay certain prepetition obligations related thereto on a final basis); *In re Deluxe Entm't Servs. Grp. Inc.*, No. 19-23774 (RDD) (Bankr. S.D.N.Y. Oct. 25, 2019) (same); *In re Barneys New York, Inc.*, No. 19-36300 (CGM) (Bankr. S.D.N.Y. September 4, 2019) (same); *In re Hollander Sleep Prods., LLC*, No. 19-11608 (MEW) (Bankr. S.D.N.Y. July 2, 2019) (same).

50. Accordingly, the Debtors respectfully request that the Bankruptcy Court authorize the Debtors to pay Prepetition Wages and any prepetition Insurance Benefits and Supplemental Insurance amounts accrued and unpaid. Furthermore, Debtors respectfully request the Court's authorization to continue the Payroll Obligations and Employee Programs on a postpetition basis in the ordinary course of business and consistent with past practices.

**II. Cause Exists to Authorize and Direct the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers**

51. The Debtors expect to have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of the PPP Funds that the Debtors secured prior to the filing of these chapter 11 cases. *See* Original First Day Declaration ¶ 26. Also, under the Debtors' existing cash management system, the Debtors represent that checks or wire transfer requests can be readily identified as relating to an authorized payment with respect to the Payroll Obligations and/or obligations related to the Employee Programs. A more detailed request will be made in the Debtors' forthcoming Cash Management Motion.

52. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by any of the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests with respect to and related to the Payroll Obligations and the Employee Programs.



53. Therefore, the Debtors respectfully request that the Bankruptcy Court authorize and direct 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.

### **III.A Limited Waiver of the Automatic Stay is Warranted**

54. Section 362(a) of the Bankruptcy Code operates to stay the 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 claims against a Debtor that arose before the commencement of the case under this title. 11 U.S.C. § 362(a)(1). Section 362, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for “cause.” § 362(d)(1).

55. No workers’ compensation claims are currently pending against or with respect to the Debtors. To the extent the Debtors’ employees currently hold valid workers’ compensation claims (which the Debtors do not believe is the case), or valid workers’ compensation claims arise during the course of these chapter 11 cases, the Debtors seek authorization, under Section 362(d) of the Bankruptcy Code, to permit these employees to proceed with their claims in the appropriate judicial or administrative forum. The Debtors believe cause exists to modify the automatic stay because prohibiting the Debtors’ employees from proceeding with their claims could have a detrimental effect on the financial well-being and morale of such employees and lead to their departure. As discussed above, such departures could cause a severe disruption in Debtors’ business to the detriment of all parties in interest.

56. To this end, and solely with respect to workers' compensation claims covered under the Employers Comp. Policy, the Debtors seek to modify the automatic stay as it relates to workers' compensation claims; provided that such claims are pursued in accordance with the Employers Comp. Policy and recoveries, if any, are limited to the proceeds of the Employers Comp. Policy.

### **RESERVATION OF RIGHTS**

57. Nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an admission as to the validity of any particular claim against the Debtors, (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or in this Motion or any order granting the relief requested by this Motion, (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law, or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserves their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Bankruptcy Court grants the relief sought herein, any payment made pursuant to the Bankruptcy Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**NO PRIOR REQUEST**

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

**MOTION PRACTICE**

59. In accordance with Local Bankruptcy Rule 9013-1(a) for the Southern District of New York, no separate memorandum of law is necessary as all authorities relied on in support of this Motion are set forth herein.

**NOTICE**

60. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the Debtors' twenty (20) largest unsecured creditors; (c) counsel to the secured lender; and (d) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submits that no further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Bankruptcy Court enter the Interim Order and Final Order granting the relief requested herein and such other relief as the Bankruptcy Court deems appropriate under the circumstances.

Dated: July 31, 2020

**ALSTON & BIRD LLP**

By: /s/ Gerard S. Catalanello

Gerard S. Catalanello

James J. Vincequerra

William Hao

90 Park Avenue

New York, NY 10016

Telephone: (212) 210-9400

Email: [Gerard.Catalanello@alston.com](mailto:Gerard.Catalanello@alston.com)

[James.Vincequerra@alston.com](mailto:James.Vincequerra@alston.com)

[William.Hao@alston.com](mailto:William.Hao@alston.com)

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**Proposed Order**

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

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In re:	)	CHAPTER 11
	)	
K.G. IM, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	CASE NO. 20-11723 (MG)
Debtors.	)	
	)	(Joint Administration Requested)
	)	

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**INTERIM ORDER (I) AUTHORIZING DEBTORS TO PAY  
CERTAIN PREPETITION EMPLOYEE WAGES AND  
SALARIES, AND RELATED AMOUNTS AND EXPENSES; (II) AUTHORIZING  
DEBTORS TO MAINTAIN THEIR EMPLOYEE-RELATED INSURANCE  
AND BENEFIT PROGRAMS POSTPETITION AND HONOR ANY PREPETITION  
OBLIGATIONS IN RESPECT THEREOF; (III) AUTHORIZING DEBTORS TO MAKE  
DEDUCTIONS FROM EMPLOYEES' PAYCHECKS; (IV) AUTHORIZING DEBTORS  
TO CONTINUE WORKERS' COMPENSATION PROGRAMS; (V) AUTHORIZING  
AND DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR ALL  
CHECKS AND ELECTRONIC PAYMENTS; AND (VI) GRANTING RELATED RELIEF**

Upon the Motion (the "**Motion**")<sup>2</sup> of the above captioned debtor and debtor-in-possession (the "**Debtors**"), for entry of an order (i) authorizing debtors to pay certain prepetition employee wages and salaries, and related amounts and expenses; (ii) authorizing debtors to maintain their employee-related insurance and benefit programs postpetition and honor any prepetition obligations in respect thereof; (iii) authorizing debtors to make deductions from employees' paychecks; (iv) authorizing debtors to continue workers' compensation programs; (v) authorizing and directing banks and other financial institutions to honor all checks and electronic payments;

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if any), include: K.G. IM, LLC (8556); Il Mulino USA, LLC (1682); IM LLC – III (2613); IMNYLV, LLC (9805); IM NY, Florida, LLC (9385); IM NY, Puerto Rico, LLC (0901); IMNY AC, LLC (5082); IM Products, LLC (0303); IM Long Island Restaurant Group, LLC (1623); IM Long Island, LLC (1488); IM Franchise, LLC (0565); IM 60th Street Holdings, LLC (9997); IM Broadway, LLC (4335); IMNY Hamptons, LLC (0423) and IM Payroll, LLC (0807). For the purpose of these chapter 11 cases, the service address for the Debtors is: 1761 Yardley Langhorne Rd Yardley PA 19067.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

and (vi) granting such other and further relief as requested herein or as the Court otherwise deems necessary or appropriate; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been given; and it appearing that no other notice need be given; and after an interim hearing having been held on August \_\_, 2020 before this Court; and after due deliberation and sufficient cause therefore, it is hereby:

**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 to, continue, modify, change and discontinue its Payroll Obligations in the ordinary course of business during these chapter 11 cases and without need for further Bankruptcy Court approval, subject to applicable law;
3. The Debtors are authorized, but not directed, to pay and/or honor, in their sole discretion, the Prepetition Wages up to but not exceeding the amounts afforded priority status pursuant to Section 507(a)(4) of the Bankruptcy Code;
4. Nothing herein shall be deemed to authorize the payment of any prepetition amounts above the \$13,650 statutory cap imposed by section 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to the prepetition amounts owed on account of the Pre-petition Wages, except upon further order of this Bankruptcy Court;
5. The Debtors are authorized to (a) continue to withhold from the applicable Employees' paychecks the amounts relating to mandatory and voluntary withholdings for employee taxes, deductions, insurance and other withholdings, and release such withholdings to

the appropriate recipient (whether such withholdings relate to amounts which accrued prior or subsequent to the Petition Date), (b) honor and satisfy the Prepetition Payroll Taxes;

6. The Debtors are authorized, but not required, to continue and maintain the Employee Programs and all of the Debtors' practices, policies and procedures with respect thereto in the ordinary course of the Debtors' business during the pendency of these chapter 11 cases in all respects in the same manner that they did so prior to the Petition Date, including, without limitation, paying and satisfying all amounts which arise or accrue under, with respect to or related to the Employee Programs in the ordinary course of the Debtors' businesses during the pendency of these bankruptcy;

7. To the extent there are any prepetition amounts accrued and unpaid on account of certain Employee Programs, the Debtors are authorized, but not directed, to pay and satisfy such amounts;

8. Any and all banks or financial institutions are hereby authorized and directed to honor any check issued by the Debtor prior to the Petition Date to pay the Employee Benefit obligations;

9. Relief from the automatic stay is granted to the Employees to permit the Employees to proceed with any prepetition or postpetition workers' compensation claims in the appropriate judicial or administrative forum; solely to the extent that (1) such claims are pursued in accordance with the Employers Comp. Policy; and (2) recoveries, if any, are limited to the proceeds of the Employers Comp. Policy;

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order;



11. Nothing in this Order nor any action taken by the Debtor in furtherance of the implementation hereof shall be deemed an approval of the assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code;

12. Nothing in this Order shall impair the ability of the Debtors or an appropriate party in interest to contest any claim of any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto;

13. Nothing in this Order should be construed as approving any transfer pursuant to 11 U.S.C. § 503(c), and a separate motion will be filed for any request that could fall within 11 U.S.C. Section 503(c);

14. The requirements set forth in Rule 6003 of the Federal Rules of Bankruptcy Procedure are satisfied by the contents of this Motion, statements made by in the Supplemental First Day Declaration, and/or on the record at the hearing on this Motion;

15. Notwithstanding the possible applicability of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry;

16. Not later than three (5) business days after entry of this Order on an interim basis, the Debtor shall serve by United States mail, first class postage prepaid, copies of this Interim Order and a notice of the hearing to consider entry of a final order on the Motion (the “**Final Hearing Notice**”) to be held on August \_\_, 2020 at 10:00 a.m. (prevailing Eastern time) (the “**Final Hearing**”), upon the Notice Parties. The Final Hearing Notice shall state that any objections to the entry of the proposed final order shall be in writing, filed with the Court in accordance with General Order M-242 and served upon the Debtors’ counsel, and the Office of

the United States Debtor, so as to be received no later than 4:00 p.m. (prevailing Eastern time) on August \_\_, 2020 (the “**Objection Deadline**”);

17. If no objections are timely filed and served as set forth herein, the Debtors may request that this Order be treated as final with no further notice or opportunity to be heard afforded to any party;

18. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT B**

**Proposed Final Order**

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

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In re:	)	CHAPTER 11
	)	
K.G. IM, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	CASE NO. 20-11723 (MG)
Debtors.	)	
	)	(Joint Administration Requested)
	)	

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**FINAL ORDER (I) AUTHORIZING DEBTORS TO PAY  
CERTAIN PREPETITION EMPLOYEE WAGES  
AND SALARIES, AND RELATED AMOUNTS AND EXPENSES; (II) AUTHORIZING  
DEBTORS TO MAINTAIN THEIR EMPLOYEE-RELATED INSURANCE  
AND BENEFIT PROGRAMS POSTPETITION AND HONOR ANY PREPETITION  
OBLIGATIONS IN RESPECT THEREOF; (III) AUTHORIZING DEBTORS TO MAKE  
DEDUCTIONS FROM EMPLOYEES' PAYCHECKS; (IV) AUTHORIZING DEBTORS TO  
CONTINUE WORKERS' COMPENSATION PROGRAMS; (V) AUTHORIZING  
AND DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS TO HONOR ALL  
CHECKS AND ELECTRONIC PAYMENTS; AND (VI) GRANTING RELATED RELIEF**

Upon the Motion (the "**Motion**")<sup>2</sup> of the above captioned debtor and debtor-in-possession (the "**Debtors**"), for entry of a final order ("**Final Order**") (i) authorizing debtors to pay certain prepetition employee wages and salaries, and related amounts and expenses; (ii) authorizing debtors to maintain their employee-related insurance and benefit programs postpetition and honor any prepetition obligations in respect thereof; (iii) authorizing debtors to make deductions from employees' paychecks; (iv) authorizing debtors to continue workers' compensation programs; (v) authorizing and directing banks and other financial institutions to honor all checks and electronic payments; and (vi) granting such other and further relief as requested herein or as

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if any), include: K.G. IM, LLC (8556); Il Mulino USA, LLC (1682); IM LLC – III (2613); IMNYLV, LLC (9805); IM NY, Florida, LLC (9385); IM NY, Puerto Rico, LLC (0901); IMNY AC, LLC (5082); IM Products, LLC (0303); IM Long Island Restaurant Group, LLC (1623); IM Long Island, LLC (1488); IM Franchise, LLC (0565); IM 60th Street Holdings, LLC (9997); IM Broadway, LLC (4335); IMNY Hamptons, LLC (0423) and IM Payroll, LLC (0807). For the purpose of these chapter 11 cases, the service address for the Debtors is: 1761 Yardley Langhorne Rd Yardley PA 19067.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

the Court otherwise deems necessary or appropriate; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion and opportunity for objection having been given; and it appearing that no other notice need be given; and after an interim hearing having been held on August \_\_, 2020 before this Court; and after due deliberation and sufficient cause therefore, it is hereby:

**IT IS HEREBY ORDERED THAT**

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2. The Debtors are authorized, but not directed to, continue, modify, change and discontinue its Payroll Obligations in the ordinary course of business during these chapter 11 cases and without need for further Bankruptcy Court approval, subject to applicable law;
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4. Nothing herein shall be deemed to authorize the payment of any prepetition amounts above the \$13,650 statutory cap imposed by section 507(a)(4) and 507(a)(5) of the Bankruptcy Code with respect to the prepetition amounts owed on account of the Pre-petition Wages, except upon further order of this Bankruptcy Court;
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6. The Debtors are authorized, but not required, to continue and maintain the Employee Programs and all of the Debtors' practices, policies and procedures with respect thereto in the ordinary course of the Debtors' business during the pendency of these chapter 11 cases in all respects in the same manner that they did so prior to the Petition Date, including, without limitation, paying and satisfying all amounts which arise or accrue under, with respect to or related to the Employee Programs in the ordinary course of the Debtors' businesses during the pendency of these bankruptcy;

7. To the extent there are any prepetition amounts accrued and unpaid on account of certain Employee Programs, the Debtors are authorized, but not directed, to pay and satisfy such amounts;

8. Any and all banks or financial institutions are hereby authorized and directed to honor any check issued by the Debtor prior to the Petition Date to pay the Employee Benefit obligations;

9. Relief from the automatic stay is granted to the Employees to permit the Employees to proceed with any prepetition or postpetition workers' compensation claims in the appropriate judicial or administrative forum; solely to the extent that (1) such claims are pursued in accordance with the Employers Comp. Policy; and (2) recoveries, if any, are limited to the proceeds of the Employers Comp. Policy;

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order;

11. Nothing in this Order nor any action taken by the Debtor in furtherance of the implementation hereof shall be deemed an approval of the assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code;

12. Nothing in this Order shall impair the ability of the Debtors or an appropriate party in interest to contest any claim of any creditor pursuant to applicable law or otherwise dispute, contest, setoff, or recoup any claim, or assert any rights, claims or defenses related thereto;

13. Nothing in this Order should be construed as approving any transfer pursuant to 11 U.S.C. § 503(c), and a separate motion will be filed for any request that could fall within 11 U.S.C. Section 503(c);

14. The requirements set forth in Rule 6003 of the Federal Rules of Bankruptcy Procedure are satisfied by the contents of this Motion, statements made by in the Supplemental First Day Declaration, and/or on the record at the hearing on this Motion;

15. Notwithstanding the possible applicability of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry;

16. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE