

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

In re:

PBS BRAND CO., LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 20-13157 (JTD)

(Joint Administration Requested)

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS
AUTHORIZING: (I) MAINTENANCE OF EXISTING BANK ACCOUNTS,
(II) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM,
AND (III) CONTINUED USE OF BUSINESS FORMS PURSUANT TO
11 U.S.C. §§ 105, 345, 363, 364, 503, 1107 AND 1108 OF THE BANKRUPTCY CODE**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, hereby move (the “Motion”) for the entry of an interim (the “Interim Order”) and a final order (the “Final Order” and, together, the “Orders”), substantially in the forms attached hereto as Exhibits A and B, respectively, pursuant to sections 105, 345, 364, 363, 503, 1107, and 1108 of Title 11 of the United States Code (the “Bankruptcy Code”), authorizing (1) maintenance of existing bank accounts, (2) continued use of existing cash management system, and (3) continued use of business forms. In support of the Motion, the Debtors respectfully represent as follows:

As set forth below, the Debtors seek entry of the Orders authorizing them to maintain and utilize their existing cash management system and existing bank accounts (“Bank Accounts”)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are (1) PBS Brand Co., LLC, a Delaware limited liability company (7897), (2) Punch Bowl Social, Inc., a Delaware corporation (9826), (3) Punch Bowl Arlington, LLC, a Delaware limited liability company (7250), (4) Punch Bowl Atlanta Battery, LLC, a Delaware limited liability company (8973), (5) Punch Bowl Austin, LLC, a Delaware limited liability company (0366), (6) Punch Bowl Chicago West Loop, LLC, a Delaware limited liability company (4024), (7) Punch Bowl Cleveland, LLC, a Delaware limited liability company (8583), (8) Punch Bowl Dallas Deep Ellum, LLC, a Delaware limited liability company (8239), (9) Punch Bowl, LLC, a Colorado limited liability company (2287), (10) Punch Bowl Indianapolis, LLC, a Delaware limited liability company (0144), (11) Punch Bowl Minneapolis, LLC, a Delaware limited liability company (9815), (12) Punch Bowl Sacramento, LLC, a Delaware limited liability company (8092), and (13) Punch Bowl SanDiego, LLC, (6440).

including their Store Operating Accounts (for credit card processing, cash deposits and certain vendor payments), Deposit Account, Corporate Operating Account, Payroll Accounts, Sweep Account, SBA Account and Letter of Credit Reserve Account identified below, located at the banks (“Banks”) listed below (“Cash Management System”), and to continue to use their existing business forms (letterhead, purchase orders, invoices, etc.) (“Existing Forms”) without reference to “Debtor in Possession” pursuant to 11 U.S.C. §§ 105(a), 345, and 363. Notwithstanding the relief requested in the Cash Management Motion, the Banks will be instructed to designate the Bank Accounts as debtor in possession bank accounts.

In support of the Motion, the *Declaration of Stacy J. Galligan in Support of First Day Motions* (the “First Day Declaration”).²

Given the size of the Debtors’ chapter 11 cases (“Cases”) and the complexity of their cash management system, requiring the Debtors to close the Bank Accounts and open new ones will disrupt the Debtors’ operations because (a) depositors will not respond quickly to the change and will likely continue to send deposits to the original deposit accounts, (b) any changes to the disbursement accounts will slow down the payment to crucial vendors as they are paid through electronic fund transfers, and (c) the Debtors rely heavily on credit card transactions for their sales and as such, it is absolutely necessary that the Debtors be allowed to maintain their Merchant Accounts. Closing the Bank Accounts will also increase the work of the Debtors’ accounting personnel, who are already dealing with the many and varied issues related to these Cases. Furthermore, closing the Bank Accounts and opening new ones would needlessly cost the Debtors time and money and would result in no discernable benefit to the Debtors’ bankruptcy estates.

² Capitalized terms not defined herein have the meaning assigned to same in the First Day Declaration.

In connection with keeping the Bank Accounts open, the Debtors seek entry of the Orders authorizing and directing the Banks to honor postpetition checks, if any, drawn and transfers from the Bank Accounts. Further, in the event that a Bank refuses to honor a check drawn or a transfer made on a Bank Account maintained by the Debtors (provided there are sufficient good funds in the Bank Account to complete the transfer), the Bank must immediately turn over the deposits held in the applicable Bank Account upon the Debtors' request. In addition, the Orders granting the Motion will grant the Banks limited relief from the automatic stay to continue to offset standard monthly or periodic bank fees against the Bank Accounts in the same manner as such fees were offset prepetition.

The Debtors are also requesting authorization to continue using their existing checks without the "Debtor in Possession" designation; provided, however, that if the Debtors are required to generate new checks during the pendency of the Cases, then the checks will include this designation. The Debtors believe it would be an unwise expenditure of estate resources to require the Debtors to obtain all new checks simply to have "Debtor in Possession" printed on the check when all parties with whom the Debtors will be transacting business will know that the Cases have been filed as a result of the publicity of the Cases, the press releases issued by the Debtors, additional press coverage and creditors will receive notice of the bankruptcy filings.

The Debtors also seek authority to continue to use their Existing Forms without reference to "Debtor in Possession." The Debtors are seeking this relief out of an abundance of caution as there is no requirement from the United States Trustee that such a designation be printed on these items.

The Debtors request that the relief sought herein be granted on an emergency basis because the uninterrupted use of the Bank Accounts, Cash Management System, and their Existing Forms, are essential to the Debtors' ability to seamlessly operate under chapter 11.

JURISDICTION AND VENUE

1. This 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. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent pursuant to Local Rule 9013-1(f) to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. The statutory basis for the relief sought in this Motion are sections 105, 345, 363, 364, 503, 1107, and 1108 of the Bankruptcy Code; Rules 6003, 6004, and 9013 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and Local Rules 2015-2 and 9013-1(f). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. Commencement of the Debtors' Bankruptcy Cases

3. On December 21, 2020, the Debtors, filed their respective chapter 11 petitions with this Court ("Petition Date"). The Debtors continue to operate their businesses and manage their affairs as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No creditors' committee has been appointed in these cases. No trustee or examiner has been appointed.

5. The Debtors are a chain of “eatertainment” venues that blends best in category scratch-kitchen culinary specialties, and industry leading craft cocktail and craft non-alcoholic programs. What makes the Punch Bowl experience unique is that each of the locations – which vary in size from 15,000 to 30,000 square feet – are design-forward environments that provide its patrons with a different and diverse selection of games including, among other things, bowling, scrabble, shuffleboard, virtual reality, billiards, karaoke, vintage arcade games, ping-pong, darts, and skee-ball, and in one location, a nine-hole miniature golf course, that create a setting conducive to large corporate gathers as well as á la carte sales.

6. The Debtors are 13 related entities (together with Holdings, and other related non-debtors, the “Company”). Eleven of the Debtors are limited liability companies that each operate one location.

7. As recently as the week of December 8, 2020, the Company was operating just three venues at limited capacity. Unfortunately, because of restrictions limiting the number of patrons at each venue, as well as the public’s uneasiness of going out to eat or drink in public during a pandemic, each of those venues was losing money on a daily basis. The Debtors have determined that, in light of the need to preserve cash during these Chapter 11 bankruptcy cases, the Debtors are closing all of the remaining venues effective immediately.

B. Cash Management System and Bank Accounts

8. Pursuant to 11 U.S.C. §§ 105(a), 345(b), and 363(c), the Debtors seek authorization to maintain their existing Cash Management System. The Cash Management System has been in place for almost a year. The Cash Management System was implemented to facilitate the timely and efficient collection, management, and disbursement of funds used in the Debtors’ day-to-day businesses. The Cash Management System facilitates reporting, monitors collection, and

disbursement of funds, reduces administrative expenses by facilitating the movement of funds and the development of more timely and accurate balance and presentment information, and administers the various Bank Accounts required to effectuate the collection, disbursement, and movement of cash. Because of the nature of the Debtors' businesses and the disruption that would result if they were forced to close their existing Bank Accounts and establish a new cash management system, it is critical that the existing Cash Management System remain in place. The following chart describes the flow of funds for each Bank Account:

<u>Description of Account</u>	<u>Debtor Name on Account</u>
<p>Chase - Account No. XXXX 0699 ("<u>Store Operating Account</u>") Cash operating account This account is funded by transactions at the Denver store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295.</p>	Punch Bowl LLC
<p>Chase - Account No. XXXX 7500 ("<u>Store Operating Account</u>") Cash operating account This account is funded by transactions at the Portland store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Portland, LLC
<p>Chase - Account No. XXXX 9233 ("<u>Store Operating Account</u>") Cash operating account This account is funded by transactions at the Austin store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Austin, LLC

<u>Description of Account</u>	<u>Debtor Name on Account</u>
<p>Chase - Account No. XXXX 0622 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Detroit store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Detroit, LLC
<p>Chase - Account No. XXXX 7339 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Cleveland store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Cleveland, LLC
<p>Chase - Account No. XXXX 7915 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Schaumburg store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Schaumburg, LLC
<p>Chase - Account No. XXXX 8655 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Indianapolis store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Indianapolis, LLC
<p>Chase - Account No. XXXX 6761 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Minneapolis store, including credit card receipt and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Minneapolis, LLC

<u>Description of Account</u>	<u>Debtor Name on Account</u>
<p>Chase - Account No. XXXX 3118 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Ranchocucamonga store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Ranchocucamonga, LLC
<p>Chase - Account No. XXXX 9825 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Stapleton store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Stapleton, LLC
<p>Chase - Account No. XXXX 5328 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the San Diego store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl San Diego, LLC
<p>Chase - Account No. XXXX 9132 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Arlington store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Arlington, LLC
<p>Chase - Account No. XXXX 5838 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Atlanta store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Atlanta Battery, LLC

<u>Description of Account</u>	<u>Debtor Name on Account</u>
<p>Chase - Account No. XXXX 1191 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Chicago West Loop store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	<p>Punch Bowl Chicago West Loop, LLC</p>
<p>Chase - Account No. XXXX 5188 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Sacramento store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	<p>Punch Bowl Sacramento, LLC</p>
<p>Chase - Account No. XXXX 0891 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Dallas Deep Ellum store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	<p>Punch Bowl Dallas Deep Ellum, LLC</p>
<p>Chase - Account No. XXXX 2996 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Milwaukee store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	<p>Punch Bowl Milwaukee, LLC</p>
<p>Chase - Account No. XXXX 9578 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Austin Congress store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	<p>Punch Bowl Austin Congress, LLC</p>

<u>Description of Account</u>	<u>Debtor Name on Account</u>
<p>Chase - Account No. XXXX 6356 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Miami Wynwood store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Miami Wynwood, LLC
<p>Chase - Account No. XXXX 1865 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Salt Lake City store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Salt Lake City, LLC
<p>Chase - Account No. XXXX 7817 (“<u>Store Operating Account</u>”) Cash operating account This account is funded by transactions at the Phoenix store, including credit card receipts and cash deposits. The funds in the account are used to pay credit card processing fees, tips to employees, alcohol vendors, and are manually transferred out of the account to the account ending 0295. Currency: US Dollar</p>	Punch Bowl Phoenix, LLC
<p>Chase - Account No. XXXX 0295 (“<u>Corporate Operating Account</u>”) Corporate operating account This account is funded by various deposits, including checks on refunds, COBRA reimbursement, funding from CrowdOut Capital LLC and sweeps from all the Store Operating Accounts, including account ending 0622. The funds in the account are used for payments to all corporate and store vendors and landlords, transfers to payroll account ending 0121 and account ending 8513. Currency: US Dollar</p>	PBS Brand Co., LLC
<p>Chase - Account No. XXXX 5139 (“<u>Payroll Account</u>”) Payroll account There is a sweep between this account and account ending 0622. Currency: US Dollar</p>	Punch Bowl Detroit, LLC

<u>Description of Account</u>	<u>Debtor Name on Account</u>
<p>Chase - Account No. XXXX 0121 (“<u>Payroll Account</u>”) Payroll account This account is funded by transfers from accounts ending 6107 and 0295, though current balance of account ending 6107 is \$0. The funds in the account are used for funding all employees’ payroll. Currency: US Dollar</p>	<p>PBS Brand Co., LLC</p>
<p>Chase - XXXX 8513 (Sweep Account) This account is funded by transfers from account ending 0295. The funds in the account are used to pay all bank fees. Currency: US Dollar</p>	<p>PBS Brand Co., LLC</p>
<p>Chase - Account No. XXXX 6107 (“<u>SBA Account</u>”) PPP account This account is funded by the PPP loan received by PBS Brand Co., LLC The funds in the account were transferred to account ending 0121 and 5139. Currency: US Dollar</p>	<p>PBS Brand Co., LLC</p>
<p>FirstBank - Account No. XXXX 9765 (“<u>Letter of Credit Reserve Account</u>”) This account consists of cash collateralized letter of credit. Funds in the account are disbursed to landlord of Punch Bowl Atlanta Battery, LLC - BDC/FUQUA Retail, LLC, landlord of Punch Bowl Ranchocucamonga, LLC - Rancho Mall, LLC; Brookfield Properties Retail Inc., landlord of Punch Bowl Arlington, LLC – FC Ballston Common, LLC, or disbursed to PBS Atlanta Battery, LLC or PBS Brand Co, LLC upon approval by the landlord. Currency: US Dollar</p>	<p>PBS Brand Co., LLC</p>

RELIEF REQUESTED

9. By this Motion, the Debtors seek entry of the Orders authorizing (1) maintenance of existing bank accounts, (2) continued use of existing cash management system, and (3) continued use of business forms. The Cash Management System preserves orderly flow of cash and also permits the Debtors to accurately track income and expense for each location. The Cash Management System facilitates the Debtors’ cash monitoring, forecasting, and reporting, and

enables the Debtors to maintain control over the administration of their bank accounts. If the Bank Accounts had to be closed and re-opened it would wreak havoc on the cash flow of the business as the Debtors generate a large amount of revenue from credit card sales.

10. In addition, closing the Merchant Accounts would cause a severe disruption in the Debtors' cash flow. For one thing, deposits are made into the Merchant Accounts every two to three days from the credit card companies and the Debtors rely heavily on this revenue for their operations. And opening new merchant accounts will require extensive documentation with the credit card companies and could take multiple days or even weeks. If the Debtors are not authorized to keep the Merchant Accounts open, the credit card companies would be able to hold the Debtors' receipts for possibly more than a week, which is cash the Debtors desperately need for operations – which could result in irreparable harm to the Debtors due to their need for working capital.

A. The Court Should Authorize the Debtors to Maintain Existing Bank Accounts

11. The United States Trustee for the District of Delaware has established certain operating guidelines for debtors in possession. One such provision requires chapter 11 debtors in possession to close all existing bank accounts and open new bank accounts. The guidelines also require that debtors maintain new bank accounts in certain financial institutions designated as authorized depositories by the United States Trustee. This requirement, designed to provide a clear line of demarcation between prepetition and post-petition claims and payments, helps protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date.

12. The Debtors seek a waiver of the UST's requirements that they close the existing Bank Accounts. Instead, the Debtors request that they be allowed to convert the Bank Accounts,

which are already at depositories authorized by the UST, to “debtor in possession” accounts and continue to utilize them as necessary to best serve their business needs and to maintain their current Cash Management System. The Bank Accounts are (a) covered by FDIC insurance or (b) located at the Banks that have standing agreements with the UST with the exception of FirstBank. Therefore, the Bank Accounts comply with § 345 of the Bankruptcy Code and the UST Guidelines. To protect against the unauthorized payment of prepetition obligations, the Debtors represent that, if they are authorized to continue to use the Bank Accounts, they will not pay, and the Banks will be directed not to pay, any debts incurred before the Petition Date, other than as authorized by this Court.

13. In addition, the Bank Accounts cover the three accounts the Debtors would otherwise have to open pursuant to the UST Guidelines. Given the size of the Debtors’ operations and the complexity of the Cash Management System, requiring the Debtors to close the Bank Accounts and to open new accounts will disrupt the Debtors’ operations. It will disrupt operations because (a) depositors will not respond quickly to the change and will likely continue to send deposits to the original deposit accounts, and (b) any changes to the disbursement accounts will slow down the payment to crucial vendors as they are paid through electronic fund transfers. Closing the Bank Accounts will also increase the work of the Debtors’ accounting personnel, who are already dealing with the many and varied issues related to these Cases. Furthermore, closing the Bank Accounts and opening new ones would needlessly cost the Debtors time and money and would result in no discernable benefit to the Debtors’ bankruptcy estates.

14. In addition, the Debtors request that the Banks be permitted to debit the Debtors’ accounts in the ordinary course of business without the need for further order of this Court for all checks drawn on the Bank Accounts which are cashed at the Banks’ counters or exchanged for

cashier's checks by the payees thereof after to the Petition Date. The Debtors further request that the Banks be restrained from honoring any check, draft, wire, or electronic funds transfer presented, issued, or drawn on the Bank Accounts on account of a prepetition claim unless (a) authorized in an order of this Court, as represented to the Banks by the Debtors as set forth below; (b) not otherwise prohibited by a "stop payment" request received by the Banks from the Debtors; and (c) supported by sufficient funds in the Bank Account in question.³

15. Allowing the Debtors to utilize their prepetition Cash Management System and engage in related "routine transactions" is entirely consistent with applicable provisions of the Bankruptcy Code. In particular, 11 U.S.C. § 363(c)(1) authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The authority granted by § 363(c)(1) extends to a debtor in possession's continued use of its customary cash management system and, thus, supports the relief requested. *See e.g. Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (indicating that an order authorizing the debtor to employ a cash management system that was "usual and customary in the past" was "entirely consistent" with § 363(c)(1)) (internal quotation omitted).

16. To the extent that use of the existing Cash Management System is beyond the ordinary course of the Debtors' business, such use is permitted by sections 363(b)(1) and 105(a)

³ Both in this Motion and in other motions that have been concurrently filed, the Debtors are requesting authority to pay, in their sole discretion, certain prepetition obligations. With respect to some of these obligations, the Debtors issued checks prior to the Petition Date that have yet to clear the banking system. In other instances, the Debtors will issue the relevant check once the Court enters an order permitting the Debtors to do so. The Debtors intend to inform the Banks which such checks should be so honored. Therefore, the Debtors request that the Banks be authorized and directed to rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored. The Debtors further request that the Orders specify that the Banks shall not have any liability to any party for relying on such representations. This relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular prepetition check may be honored in accordance with an order by the Court or otherwise.

of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, 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). Section 105(a) of the Bankruptcy Code further provides that the Court may “issue any order . . . that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. 11 U.S.C. § 105(a).

B. Payment of Outstanding Routine Expenses Relating to the Operation of the Cash Management System

17. In the ordinary course of the operation and maintenance of the Cash Management System, the Debtors have and will continue to incur fees and other charges (collectively, all such fees and charges, the “Cash Management Claims”) in connection with (i) Bank services (the “Service Charges”), (ii) checks deposited with the Banks that have been dishonored or returned for insufficient funds in the applicable amount, (iii) any reimbursement or other payment obligations, such as overdrafts, arising under agreements governing the Bank Accounts, including, without limitation, any prepetition cash management agreements or treasury services agreements (the “Bank Account Agreements”). The Debtors seek authority, in their sole discretion, to pay: (i) all undisputed prepetition Cash Management Claims; and (ii) any such routine Cash Management Claims that accrue to the Banks post-petition, in a monthly aggregate amount not to exceed \$40,000 (excluding merchant/credit card fees and chargebacks).

18. As with the Cash Management System, payment of the Cash Management Claims will minimize disruption to the Debtors’ operations and is therefore in the best interests of the estates. Absent payment of the Cash Management Claims, the Banks might assert setoff rights against the funds in the Bank Accounts on account of the Cash Management Claims or freeze the Bank Accounts. The payment of Cash Management Claims will not prejudice unsecured creditors

given that, as noted above, the Banks may have setoff rights with respect to the Cash Management Claims in any event.

19. Accordingly, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors seek authority, in their sole discretion, to pay and/or reimburse the Banks and service providers in the ordinary course of business for any Cash Management Claims arising prior to or after the Petition Date. The Debtors further request that the Cash Management Claims be granted administrative priority status pursuant to § 503(b) of the Bankruptcy Code.

C. The Court Should Authorize the Debtors to Continue to Use Existing Forms

20. In the ordinary course of business, the Debtors use business letterhead, purchase orders, invoices, envelopes, promotional materials, and a number of other business forms and correspondence (collectively, the “Existing Forms”). Because the Existing Forms were used prepetition, they do not reference the Debtors’ current status as debtors in possession. The Debtors are seeking authorization to continue using all Existing Forms in the forms existing immediately prior to the Petition Date. The Debtors are not aware of any requirement that they include a reference to themselves as a “Debtor in Possession” on their Existing Forms, but are requesting authorization out of an abundance of caution.

21. As noted above, most parties doing business with the Debtors undoubtedly will be aware of the Debtors’ status as debtors in possession as a result of the publicity of the Cases, the press releases issued by the Debtors, and additional press coverage. Moreover, the Court will provide notice of the commencement of the Cases to creditors and other parties-in-interest. Changing the Debtors’ Existing Forms would be expensive, unnecessary, and burdensome to the Debtors’ estates. Further, such changes would be disruptive to the Debtors’ business operations and would not confer any benefit upon those dealing with the Debtors. For these reasons, the

Debtors request that they be authorized to use their Existing Forms without being required to place the label “Debtor in Possession” (or any similar label) on each.

22. Bankruptcy courts routinely grant authority to continue using existing business instruments in chapter 11 cases. *See e.g., In re Johnson*, 106 B.R. 623, 624 (Bankr. D. Neb. 1989) (debtor not required to obtain new checks imprinted with “Debtor in Possession” legend); *see also supra* note 4 and the cases cited therein. The reason that such authority is routinely granted is fundamental – there is simply no reason to force a complex business enterprise to incur the disruption and expense of stamping or otherwise placing the “Debtor in Possession” designation on all of its business forms, or to hamper administration of a chapter 11 case to the further economic detriment of creditors while the new forms are being generated. For these reasons, the Debtors request that the relief should be granted here.

D. The Court Should Grant a Limited Waiver Pursuant to Section 345(b) of the Bankruptcy Code

23. The Debtors seek a waiver of section 345(b) of the Bankruptcy Code to the extent required. The waiver would permit the Debtors to maintain the Bank Accounts without posting a bond or other security, as would otherwise be required under section 345(b) whenever the funds on deposit exceed the amount permitted under section 345(b). As explained above, the Bank Accounts are maintained at federally insured institutions and except for FirstBank, are approved depositories under the applicable United States Trustee Guidelines.

BASIS FOR RELIEF REQUESTED

A. The Continued Use of the Cash Management System and Bank Accounts Is Essential and Approval to Maintain the Status Quo Is Routinely Granted Under Bankruptcy Code Sections 363 and 105

24. Bankruptcy courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems, and treat requests for such authority as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321,327 (Bankr. S.D. Ohio 1987). This is particularly true where, as here, the chapter 11 case involves affiliated entities with complex financial affairs. In *In re Charter Co.*, 778 F.2d 617 (11th Cir. 1985), for example, the bankruptcy court entered an order authorizing the debtors and forty-three (43) of their subsidiaries “to continue to consolidate the management of their cash as has been usual and customary in the past, and to transfer monies from affiliated entity to entity, including operating entities that are not debtors.” *Id.* at 620. The Eleventh Circuit Court of Appeals then affirmed a subsequent district court decision denying a creditor’s motion for leave to appeal the bankruptcy court’s cash management order, holding that authorizing the debtors to utilize their prepetition “routine cash management system” was “entirely consistent” with applicable provisions of the Bankruptcy Code. *Id.* at 621.

25. Likewise, in another context, the bankruptcy court in the *Columbia Gas* chapter 11 case explained that a centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticability of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1993), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied sub nom Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 114 S.Ct. 1050 (1994). The Third Circuit agreed, emphasizing that a

requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 111, 114 (5th Cir. 1995) (cash management system allows debtors “to administer more efficiently and effectively their financial operations and assets”); *In re UNR Indus., Inc.*, 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

26. Section 363(c)(1) of the Bankruptcy Code authorizes the debtors in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate their business without undue oversight by creditors or the court. *Med. Malpractice Ins. Ass’n. v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997). Included within the purview of section 363(c) is a debtors’ ability to continue the “routine transactions” necessitated by a debtors’ cash management system. *Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtors seek authority under section 363(c)(1) of the Bankruptcy Code to continue the collection and disbursement of cash pursuant to their existing Cash Management System. Additionally, the Court may exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a). Continuing the Cash Management System without interruption is vital to the success of their chapter 11 cases.

27. In other cases in the District of Delaware, this Court has granted relief substantially similar to that requested in this Motion. *See, e.g., In re The Walking Company Holdings, Inc.*, Case No. 18-10474 (LSS) (Bankr. D. Del. Mar. 8, 2018); *In re Aquion Energy*,

Inc., Case No. 17-10500 (KJC) (Bankr. D. Del. Mar. 10, 2017); *In re Basic Energy Services, Inc., et al.*, Case No. 16-12320 (KJC) (Bankr. D. Del. October 26, 2016); *In re Key Energy Services, Inc., et al.*, Case 16-12306 (BLS) (Bankr. D. Del. October 25, 2016); *In re Malibu Lighting Corporation, et al.*, Case No. 15-12082 (KG) (Bankr. D. Del. Oct. 9, 2015); *In re Cache, Inc.*, Case No. 15-10172 (MFW) (Bankr. D. Del. Feb. 5, 2015). Accordingly, the Debtors request that the Court approve the continued use of the Cash Management System and Bank Accounts.

B. The Debtors' Bank Accounts Are In Compliance With Section 345(b) of the Bankruptcy Code

28. Section 345(a) authorizes deposits or investments of money “as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” Section 345(b) requires a depository to provide a bond, unless deposits with such depository are, “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States.”

29. As noted above, the Bank Accounts are in compliance with the security or bonding requirements prescribed by section 345(b) of the Bankruptcy Code, with the exception of FirstBank, and no security or bonds are necessary to secure the funds in such accounts.

C. The Court Should Grant the Debtors Authority to Use Existing Checks and Related Forms

30. To minimize expense to their estates, the Debtors request authority to continue using their respective existing pre-printed check stock, deposit slips, and related forms without reference to their “debtors in possession” status until the existing stock has been exhausted, provided that the Debtors shall add the “debtor in possession” designation to any new checks ordered after the depletion of the existing stock. The Debtors’ business forms are primarily electronically generated, but certain forms used by the Debtors’ accounts payable department are

preprinted. Parties doing business with the Debtors undoubtedly will be aware, as a result of the notice that will be sent of the filing of the Debtors' chapter 11 cases and the publicity of the filing, of the Debtors' status as a chapter 11 debtors in possession. For this reason, the Debtors request that they be authorized to use existing checks and deposit slips without placing the label "debtor in possession" on each such form until such a time as their existing stocks are depleted. In addition, the Debtors request a reasonable amount of time to alter their software to provide for the insertion of "debtor in possession" on postpetition purchase orders and invoices, which the Debtors estimate may take up to three weeks to implement.

31. Similar relief has been granted in this district. *See, e.g., In re The Walking Company Holdings, Inc.*, Case No. 18-10474 (LSS) (Bankr. D. Del. Mar. 8, 2018); *In re Aquion Energy, Inc.*, Case No. 17-10500 (KJC) (Bankr. D. Del. Mar. 10, 2017); *In re Malibu Lighting Corporation, et al.*, Case No. 15-12082 (KG) (Bankr. D. Del. Oct. 9, 2015).

WAIVER OF BANKRUPTCY RULES 6003 AND 6004

32. Pursuant to Bankruptcy Rule 6003(b), "a motion to pay all or part of a claim that arose before the filing of the petition" shall not be granted by the Court within 21 days of the Petition Date "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm..." Fed. R. Bankr. P. 6003(b). For the reasons described more fully above, and as supported by the First Day Declaration, and to the extent that the relief requested herein implicates Bankruptcy Rule 6003(b), the Debtors submit that the requirements of Bankruptcy Rule 6003 have been met and that the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

33. Finally, to implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay of an order

authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h), to the extent these rules are applicable.

NOTICE

34. The Debtors will provide notice of this motion to: (a) the U. S. Trustee for Region 3; (b) the entities listed on the List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) CrowdOut Capital LLC; (d) PBS DIP Lender, LLC; (e) the Banks and (f) any such other party entitled to notice pursuant to Local Rule 9013-1(m). As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Rule 9013-1(m) of the Local Rules for the United States Bankruptcy Court for the District of Delaware. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is needed or required.

NO PRIOR REQUEST

35. No prior motion for the relief requested herein has been made to this Court or any other Court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order substantially in the form attached hereto as Exhibit A and the Final Order granting the relief requested herein substantially in the form attached hereto as Exhibit B and granting such other relief as is just and proper.

THIS SPACE INTENTIONALLY LEFT BLANK

Dated: December 21, 2020

MORRIS JAMES LLP

/s/ Brya M. Keilson

Jeffrey R. Waxman, Esquire (DE Bar No. 4159)

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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:

PBS BRAND CO., LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 20-13157 (JTD)

(Jointly Administered)

Re: Docket No.

**INTERIM ORDER AUTHORIZING: (I) MAINTENANCE OF EXISTING
BANK ACCOUNTS, (II) CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM, AND (III) CONTINUED USE OF BUSINESS
FORMS PURSUANT TO 11 U.S.C. §§ 105, 345, 363, 364, 503, 1107 AND
1108 OF THE BANKRUPTCY CODE**

Upon consideration of the Motion² filed by the Debtors, pursuant to sections 105, 345, 363, 364, 503, 1107 and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rules 2015-2 and 9013-1(f) seeking entry of interim and final orders: (a) authorizing maintenance of existing bank accounts, (b) authorizing continued use of existing cash management system, (c) authorizing continued use of business forms, and (d) providing any additional relief in order to effectuate the foregoing; and upon the First Day Declaration; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are (1) PBS Brand Co., LLC, a Delaware limited liability company (7897), (2) Punch Bowl Social, Inc., a Delaware corporation (9826), (3) Punch Bowl Arlington, LLC, a Delaware limited liability company (7250), (4) Punch Bowl Atlanta Battery, LLC, a Delaware limited liability company (8973), (5) Punch Bowl Austin, LLC, a Delaware limited liability company (0366), (6) Punch Bowl Chicago West Loop, LLC, a Delaware limited liability company (4024), (7) Punch Bowl Cleveland, LLC, a Delaware limited liability company (8583), (8) Punch Bowl Dallas Deep Ellum, LLC, a Delaware limited liability company (8239), (9) Punch Bowl, LLC, a Colorado limited liability company (2287), (10) Punch Bowl Indianapolis, LLC, a Delaware limited liability company (0144), (11) Punch Bowl Minneapolis, LLC, a Delaware limited liability company (9815), (12) Punch Bowl Sacramento, LLC, a Delaware limited liability company (8092), and (13) Punch Bowl SanDiego, LLC, (6440).

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

the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. A final hearing (“Final Hearing”) on the Motion shall be held on _____, 2021 at _____ .m. prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m. prevailing Eastern Time, on _____, 2021, and shall be served on: (a) the Debtors, 65 Broadway, Denver, Colorado 80203, Attn: Stacy Galligan; (b) proposed counsel to the Debtors, Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801 Attn: Jeffrey R. Waxman, Eric J. Monzo, Brya M. Keilson, and Sarah M. Ennis; (c) CrowdOut Capital LLC; (d) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Timothy J. Fox; and (e) the official committee of unsecured creditors (if any) appointed in these chapter 11 cases and their counsel. If no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without further notice or hearing.
3. The Debtors are authorized, but not directed, on an interim basis, to maintain and utilize their existing Cash Management System and Bank Accounts, and to continue to use their Existing Forms without reference to “Debtor in Possession” pursuant to 11 U.S.C. §§ 105(a), 345, and 363.
4. The Debtors are hereby granted an extension of time to comply with the requirements of 11 USC § 345(b) for a period of thirty (30) days, without prejudice to the Debtors' rights to seek a further waiver.”
5. The Banks are authorized to debit the Debtors’ accounts in the ordinary course of business without the need for further order of this Court for all checks drawn on the Bank Accounts which are cashed at the Banks’ counters or exchanged for cashier’s checks by the payees thereof after the Petition Date.

6. The Banks are prohibited from honoring any check, draft, wire, or electronic funds transfer presented, issued, or drawn on the Bank Accounts on account of a prepetition claim unless (a) authorized in an order of this Court, as represented to the Banks by the Debtors; (b) not otherwise prohibited by a “stop payment” request received by the Banks from the Debtors; and (c) supported by sufficient funds in the Bank Account in question. The Banks are authorized and directed to rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored and the Banks shall not have any liability to any party for relying on such representations.

7. The Banks are authorized and directed to honor postpetition checks, if any, drawn and transfers from the Bank Accounts; and in the event that a Bank refuses to honor a check drawn or a transfer made on a Bank Account maintained by the Debtors (provided there are sufficient good funds in the Bank Account to complete the transfer), the Bank must immediately turn over the deposits held in the applicable Bank Account upon the Debtors’ request.

8. The Banks are granted limited relief from the automatic stay to continue to offset standard monthly or periodic bank fees against the Bank Accounts in the same manner as such fees were offset prepetition.

9. The Debtors are authorized, in their sole discretion, to pay: (a) all undisputed prepetition Cash Management Claims; and (b) any such routine Cash Management Claims that accrue to the Banks postpetition in a monthly aggregate amount not to exceed \$40,000 (excluding merchant/credit card fees).

10. The Cash Management Claims are granted administrative priority status pursuant to section 503(b) of the Bankruptcy Code.

11. The Debtors are authorized to continue using their existing pre-printed check stock, deposit slips, and related forms without the “Debtor in Possession” designation; provided, however, that if the Debtors are required to generate new checks, deposit slips, and related forms during the pendency of the Cases, then they will include this designation.

12. The Debtors are authorized to continue to use their Existing Forms without reference to “Debtor in Possession.”

13. Nothing contained herein shall prevent the Debtors from opening any new bank accounts or closing any of the Bank Accounts as the Debtors may deem necessary and appropriate; provided, however, that the Debtors shall provide notice within fifteen (15) days thereof to (i) the U.S. Trustee; (ii) counsel to the Debtors' first lien lender; (iii) counsel to the Debtors' second lien lender; and (iv) counsel for any official committee appointed in the Chapter 11 Cases; provided further, however, that the Debtors shall only open any such new bank accounts at banks that have executed a Uniform Depository Agreement (a "UDA") with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

14. Despite use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. section 1930(a)(6) based on the disbursements of each debtor, regardless of which Debtor pays such disbursements.

14. Notwithstanding anything to the contrary in this Interim Order, any payment made or to be made under this Interim Order, and any authorization contained in this Interim Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' use of debtor-in-possession financing and cash collateral and any budget in connection therewith.

15. For banks at which the Debtors hold bank accounts that are party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days of the date of entry of this Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors' employer identification numbers and (c) identify each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and provide the case number.

16. For banks at which the Debtors hold accounts that are not party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within thirty (30) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice

in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

17. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

18. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of order this shall be immediately effective and enforceable upon its entry.

19. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this order.

20. The Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this order.

EXHIBIT A

Proposed Interim Order

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

In re:

PBS BRAND CO., LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 20-13157 (JTD)

(Jointly Administered)

Re: Docket No.

**INTERIM ORDER AUTHORIZING: (I) MAINTENANCE OF EXISTING
BANK ACCOUNTS, (II) CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM, AND (III) CONTINUED USE OF BUSINESS
FORMS PURSUANT TO 11 U.S.C. §§ 105, 345, 363, 364, 503, 1107 AND
1108 OF THE BANKRUPTCY CODE**

Upon consideration of the Motion² filed by the Debtors, pursuant to sections 105, 345, 363, 364, 503, 1107 and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rules 2015-2 and 9013-1(f) seeking entry of interim and final orders: (a) authorizing maintenance of existing bank accounts, (b) authorizing continued use of existing cash management system, (c) authorizing continued use of business forms, and (d) providing any additional relief in order to effectuate the foregoing; and upon the First Day Declaration; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that

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

the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. A final hearing (“Final Hearing”) on the Motion shall be held on _____, 2021 at _____ .m. prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m. prevailing Eastern Time, on _____, 2021, and shall be served on: (a) the Debtors, 65 Broadway, Denver, Colorado 80203, Attn: Stacy Galligan; (b) proposed counsel to the Debtors, Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801 Attn: Jeffrey R. Waxman, Eric J. Monzo, Brya M. Keilson, and Sarah M. Ennis; (c) CrowdOut Capital LLC; (d) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Timothy J. Fox; and (e) the official committee of unsecured creditors (if any) appointed in these chapter 11 cases and their counsel. If no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without further notice or hearing.
3. The Debtors are authorized, but not directed, on an interim basis, to maintain and utilize their existing Cash Management System and Bank Accounts, and to continue to use their Existing Forms without reference to “Debtor in Possession” pursuant to 11 U.S.C. §§ 105(a), 345, and 363.
4. The Debtors are hereby granted an extension of time to comply with the requirements of 11 USC § 345(b) for a period of thirty (30) days, without prejudice to the Debtors' rights to seek a further waiver.”
5. The Banks are authorized to debit the Debtors’ accounts in the ordinary course of business without the need for further order of this Court for all checks drawn on the Bank Accounts which are cashed at the Banks’ counters or exchanged for cashier’s checks by the payees thereof after the Petition Date.

6. The Banks are prohibited from honoring any check, draft, wire, or electronic funds transfer presented, issued, or drawn on the Bank Accounts on account of a prepetition claim unless (a) authorized in an order of this Court, as represented to the Banks by the Debtors; (b) not otherwise prohibited by a “stop payment” request received by the Banks from the Debtors; and (c) supported by sufficient funds in the Bank Account in question. The Banks are authorized and directed to rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored and the Banks shall not have any liability to any party for relying on such representations.

7. The Banks are authorized and directed to honor postpetition checks, if any, drawn and transfers from the Bank Accounts; and in the event that a Bank refuses to honor a check drawn or a transfer made on a Bank Account maintained by the Debtors (provided there are sufficient good funds in the Bank Account to complete the transfer), the Bank must immediately turn over the deposits held in the applicable Bank Account upon the Debtors’ request.

8. The Banks are granted limited relief from the automatic stay to continue to offset standard monthly or periodic bank fees against the Bank Accounts in the same manner as such fees were offset prepetition.

9. The Debtors are authorized, in their sole discretion, to pay: (a) all undisputed prepetition Cash Management Claims; and (b) any such routine Cash Management Claims that accrue to the Banks postpetition in a monthly aggregate amount not to exceed \$40,000 (excluding merchant/credit card fees).

10. The Cash Management Claims are granted administrative priority status pursuant to section 503(b) of the Bankruptcy Code.

11. The Debtors are authorized to continue using their existing pre-printed check stock, deposit slips, and related forms without the “Debtor in Possession” designation; provided, however, that if the Debtors are required to generate new checks, deposit slips, and related forms during the pendency of the Cases, then they will include this designation.

12. The Debtors are authorized to continue to use their Existing Forms without reference to “Debtor in Possession.”

13. Nothing contained herein shall prevent the Debtors from opening any new bank accounts or closing any of the Bank Accounts as the Debtors may deem necessary and appropriate; provided, however, that the Debtors shall provide notice within fifteen (15) days thereof to (i) the U.S. Trustee; (ii) counsel to the Debtors' first lien lender; (iii) counsel to the Debtors' second lien lender; and (iv) counsel for any official committee appointed in the Chapter 11 Cases; provided further, however, that the Debtors shall only open any such new bank accounts at banks that have executed a Uniform Depository Agreement (a "UDA") with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

14. Despite use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. section 1930(a)(6) based on the disbursements of each debtor, regardless of which Debtor pays such disbursements.

14. Notwithstanding anything to the contrary in this Interim Order, any payment made or to be made under this Interim Order, and any authorization contained in this Interim Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' use of debtor-in-possession financing and cash collateral and any budget in connection therewith.

15. For banks at which the Debtors hold bank accounts that are party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware, within fifteen (15) days of the date of entry of this Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors' employer identification numbers and (c) identify each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and provide the case number.

16. For banks at which the Debtors hold accounts that are not party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within thirty (30) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice

in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

17. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

18. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of order this shall be immediately effective and enforceable upon its entry.

19. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this order.

20. The Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this order.