

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
www.flmb.uscourts.gov

In re:	Chapter 11
STEIN MART, INC. ¹	Case No. 3:20-bk-2387
STEIN MART BUYING CORP.	Case No. 3:20-bk-2388
STEIN MART HOLDING CORP.,	Case No. 3:20-bk-2389
Debtors.	Joint Administration Requested

DEBTORS' EMERGENCY MOTION PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 365 AND 507(a) FOR INTERIM AND FINAL AUTHORITY TO (I) MAINTAIN AND ADMINISTER PRE-PETITION CUSTOMER PROGRAMS, PROMOTIONS, AND PRACTICES, (II) PAY AND HONOR RELATED PRE-PETITION OBLIGATIONS, AND (III) DIRECT THE CREDIT CARD PROCESSORS TO HONOR THE DEBTORS' CREDIT CARD PROCESSING AGREEMENT PENDING ITS ASSUMPTION OR REJECTION

(Emergency Hearing Requested on or before Friday, August 14, 2020)

Stein Mart, Inc. (“SM”), Stein Mart Buying Corp. (“SMB”) and Stein Mart Holding Corp. (“SMHC” and together with SM and SMB, the “Debtors” or the “Company”), as Debtors and Debtors-in-Possession in the above-captioned chapter 11 cases, respectfully represent as follows:

¹ The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors' principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors' claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors' first day pleadings and other information related to the case.

I. JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The bases for the relief requested herein are sections 105(a), 363(b), 365, and 507(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”).

II. BACKGROUND

3. On the date hereof (the “**Petition Date**”), each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

4. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Local Bankruptcy Rule 1015-1.

5. Information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Debtors’ Chapter 11 Case Management Summary* sworn to on the date hereof (the “**Case Management Summary**”), which has been filed with the Court contemporaneously herewith.²

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Case Management Summary.

III. THE CUSTOMER PROGRAMS

6. The Debtors' business depends upon the loyalty of their customers. In order to maintain their positive reputation for goods and services in the marketplace and to maximize customer loyalty, the Debtors have maintained, in the ordinary course of business, the practices and programs described herein (collectively, the "**Customer Programs**"), which provide incentives to existing customers and attract new customers to the Debtors' stores and website. The Customer Programs detailed herein are standard in the retail business. Without the ability to continue their Customer Programs and satisfy their pre-petition obligations in connection therewith, the Debtors risk losing market share and would face a precipitous drop in the value of their business. The Customer Programs are described below.

A. The Return and Exchange Policies

7. Consistent with industry practice and to accommodate customers' needs, the Debtors maintain liberal return, exchange, and store credit policies with respect to both in-store and online purchases (collectively, the "**Return and Exchange Policies**"). These policies provide the Debtors' customers with comfort that they will be able to receive a refund, store credit, or other appropriate adjustment if a product is not to their satisfaction.

8. The ability to continue to honor the Return and Exchange Policies is necessary to meet basic customer expectations in the retail industry and to maintain the Debtors' ongoing relationship with their customers. The preservation of customer loyalty generated by the Return and Exchange Policies outweighs the associated costs. As a result, the Debtors seek authorization to continue to honor the Return and Exchange Policies in the ordinary course of business with respect to merchandise purchased before the Petition Date, and subject to those exceptions set forth in any order granting the Debtors' *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement, (II)*

Approving Procedures for Store Closing Sales, and (III) Approving the Implementation of Customary Store Program Bonus Program and Payments to Non-Insiders Thereunder, filed contemporaneously herewith.

9. The Debtors do not intend to extend the Refund and Exchange Program to any merchandise sold in accordance with their store-closing sales. Accordingly, the Debtors request authority to maintain the Refund and Exchange Program consistent with their past practice and to the ordinary course of business for merchandise sold prior to the store-closing sales. Maintaining the Refund and Exchange Program for the customers who purchased goods prepetition is critical to the Debtors' maintaining goodwill of their customers, many of whom will likely purchase items during the store-closing sales.

B. The Gift Card Program

10. The Debtors maintain a program (the "**Gift Card Program**") through which their customers can purchase physical, non-expiring gift cards in various denominations (the "**Gift Cards**"). The Debtors historically sold the Gift Cards in their retail stores and through their website. On occasion, the Debtors also sell and distribute Gift Cards in connection with sales promotions and other special events. Customers can also purchase Gift Cards. All of the Debtors' Gift Cards can be redeemed in-store or online.

11. As of the Petition Date, the Debtors have suspended the issuance of new Gift Cards and notified third-party vendors to cease selling the Gift Cards through other retailers and to pull any unsold Gift Cards from the shelves. By this Motion, the Debtors seek authority to continue honoring all Gift Cards for 30 days following the Petition Date.

C. The Loyalty Program

12. The Debtors operate a customer loyalty program, SMart Rewards, whereby holders of the Debtors' co-branded or private label credit cards accrue points towards award

certificates. The Debtors' credit cardholders accrue two points for every \$1.00 they spend at the Debtors' stores, and Elite cardholders (\$500 annual spend) accrue four points for every \$1.00 they spend at the Debtors' stores. Upon accruing 500 points, cardholders earn a \$5.00 awards certificate, called Stein Mart SMart Cash, that can be exchanged for merchandise. Program members typically account for about 21.4% of the Debtors' sales. However, as of the Petition Date, the Debtors have discontinued the SMart Rewards program and are no longer honoring reward points or any other benefits accrued thereunder. Accordingly, the Debtors are not seeking authority to continue the SMart Rewards program on a postpetition basis or compensate members for benefits accrued prepetition.

13. The credit cards are issued by Synchrony Bank ("Synchrony"), which bears all credit risks associated with the cards. While the primary purpose of offering the credit cards is to increase customer loyalty and drive sales, the Debtors also receive credit card revenue through a program agreement with Synchrony, which provides the Debtors with certain financial benefits.

D. Coupons and Sales Promotions

14. The Debtors also maintain a coupon redemption program pursuant to which they distribute and honor their own coupons (the "**Coupons**"). To preserve the goodwill of their customer base, the Debtors seek authority to honor their Coupons in a manner consistent with their ordinary business practices, whether such Coupons were issued before or after the Petition Date.

15. Moreover, in the ordinary course of business, the Debtors conduct sales promotions, either online or at selected stores (the "**Sales Promotions**"). The Sales Promotions include "buy one get one free" programs, seasonal discounts, online promotions and discount codes, and free shipping promotions. By this Motion, the Debtors seek authority to honor the Sales Promotions, whether such Sales Promotions before or after the Petition Date.

IV. THE PROCESSING OBLIGATIONS

16. In addition to cash, the Debtors accept payment by Visa, MasterCard, Discover, and American Express credit cards as well as by debit cards in stores and online (the “**Credit Card Payments**”). The Debtors also accept Apple Pay, Samsung Pay, and Google Pay in stores and PayPal online (together with the Credit Card Payments, each a “**Non-Cash Payment**”). Non-Cash Payments account for a majority of the Debtors sales. The Debtors contract (the “**Payment Processing Agreement**”) with a third party (the “**Payment Processing Company**”), to process Non-Cash Payments. In connection with Non-Cash Payments, each day the Payment Processing Company remits to the Debtors the gross customer sales less any credits, refunds, adjustments, applications of discount fees (when due), chargebacks, association fines and assessments, and any other amounts then due from the Debtors to the Payment Processing Company.

17. Maintaining the use of credit cards is essential to the continuing operation of the Debtors’ business because the majority of the Debtors’ sales are made using Non-Cash Payments. In order to avoid disrupting vital payment processing services, the Debtors (i) seek authority to continue to pay the amounts due to the Payment Processing Company per the Payment Processing Agreement (the “**Processing Obligations**”) in the ordinary course of their business, and (ii) request that the Court authorize the Payment Processing Company to offset the Processing Obligations against amounts remitted to the Debtors, in each case in the ordinary course, whether arising before or after the Petition Date.

18. As of the Petition Date, the Debtors are not aware of any outstanding pre-petition Processing Obligations. Nevertheless, out of an abundance of caution, the Debtors seek authority to pay any existing pre-petition Processing Obligations.

V. RELIEF REQUESTED

19. Pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, the Debtors request authority, in the ordinary course of business and consistent with past practice, to maintain, administer, pay, and otherwise honor their pre-petition Customer Programs and Processing Obligations, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors' business judgment. Additionally, pursuant to sections 365 and 105(a) of the Bankruptcy Code, the Debtors request entry of an order directing the Payment Processing Company to honor the Payment Processing Agreement pending assumption or rejection.

20. The proposed orders submitted herewith (i) authorize and direct financial institutions to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing to the extent the Debtors have sufficient funds standing to their credit with such bank, whether such checks were presented or electronic requests were submitted before or after the Petition Date, and (ii) provide that all such financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

21. The Debtors the immediate entry of the contemporaneously submitted proposed form of order granting the relief requested herein on an interim basis. Pending a final hearing on the relief requested herein, the Debtors request the entry of the contemporaneously submitted proposed form of order granting the relief requested herein on a final basis.

VI. BASIS FOR RELIEF REQUESTED

A. Ample Authority Exists to Support the Continuation of the Customer Programs and the Payment of the Processing Obligations

22. The Court may grant the relief requested herein pursuant to sections 105(a) and 363(b) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that, “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b)(1). This provision grants a court broad flexibility to authorize a debtor to pay pre-petition claims where a sound business purposes exists. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989).

23. Further, section 105(a) provides, in relevant part, that, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. §105(a). This provision codifies the inherent equitable powers of the bankruptcy court, including the power to authorize payment of pre-petition claims, under what is known as the “doctrine of necessity” or the “necessity of payment” doctrine, when such payment is critical to a debtor’s reorganization or necessary for the preservation of the value of the debtor’s estate. *See, e.g., In re Lehigh & N. E. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that “the sine qua non for the application of the ‘necessity of payment’ doctrine is the possibility that the creditor will employ an immediate economic sanction, failing such payment. In such a circumstance, it is evident that the payment made under the ‘necessity of payment’ rule is in the interest of all parties . . . because such payment will facilitate the [debtor’s] continued operation”); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102, n.1 (3d Cir. 1972) (citations omitted) (“A number of cases declare a so-called ‘necessity of payment’ exception to the normal deferment of the payment of pre[-]reorganization claims until their disposition can be made part of a plan of reorganization. These cases permit immediate payment of claims of creditors where

those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid.”); *In re Motor Coach Indus. Int'l, Inc.*, No. 08-12136-BLS, 2009 WL 330993, at *2, n.5 (D. Del. Feb. 10, 2009) (citing *Lehigh*, *inter alia*, for the proposition that “[t]he ‘doctrine of necessity’ or ‘necessity of payment’ doctrine is a general rubric for the proposition that a court can authorize the payment of prepetition claims if such payment is essential to the continued operation of the debtor”); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (stating “it is only logical that the bankruptcy court be able to use Section 105(a) of the Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”).

24. The payment of pre-petition claims under the doctrine of necessity is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code: preserving going concern value and maximizing property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 453 (1999). It is consistent with Bankruptcy Rule 6003, which implies that the payment of pre-petition obligations may be permissible within the first twenty-one (21) days of a case where doing so is “necessary to avoid immediate and irreparable harm.”

25. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code.

26. Courts have authorized debtors in comparable chapter 11 proceedings to honor pre-petition obligations arising from customer programs substantially similar to those discussed herein. *See, e.g., In re Fla. Gaming Ctrs., Inc.*, Case No. 13-29597-RAM (Bankr. S.D. Fla. Aug.

26, 2013); *In re DM Indus., Ltd.*, Case No. 09-15533-LMI (Bankr. S.D. Fla. May 6, 2009); *In re E-Brands Restaurants, LLC*, et al., Case No. 10-18282-KRM (Bankr. M.D. Fla. Aug. 20, 2010).

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

27. The ability to continue administering the Customer Programs without interruption is critical to the Debtors' valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors' stakeholders. If the Debtors are unable to continue the Customer Programs post-petition or honor obligations thereunder, the Debtors risk alienating certain customers (who could then form relationships with the Debtors' competitors) and could suffer corresponding losses in customer loyalty and goodwill that will harm their ability to preserve going concern value.

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

29. Further, pursuant to section 507(a)(7) of the Bankruptcy Code, up to \$3,025 in claims arising from a consumer's pre-petition deposit "of money in connection with the purchase . . . of property . . . for the personal, family, or household use of such individuals," to the extent that such property or services were not delivered, have priority over other general unsecured claims. See 11 U.S.C. § 507(a)(7). This provision was added to the Bankruptcy Code in 1984 to "protect consumers who leave a deposit . . . and who do not receive the merchandise *from the retailer who files a bankruptcy petition*" and has since been adjusted to increase the priority amount. *In re Pinnacle Airlines Corp.*, Case No. 15-1615, 2015 WL 10818589, at *2, *4 (S.D.N.Y. July 27, 2015) (citations and internal marks omitted, emphasis in the original); *In re River Vill. Assocs.*, 161 B.R. 127, 133 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa. 1995). The obligations that arise in connection with the Gift Card Program, and certain of the obligations that arise in connection with the Return and Exchange Program, are priority claims under section 507(a)(7) of the Bankruptcy Code.

30. Claims entitled to priority status pursuant to section 507(a)(7) of the Bankruptcy Code must be paid in full under a confirmable plan pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Therefore, payment of certain of the Customer Programs at this time may only affect the timing of the payment for the amounts at issue and will not unduly prejudice the rights and recoveries of other creditors. Thus, satisfaction of claims arising under these particular Customer Programs on a post-petition basis will not enhance the priority of the customers or prejudice the rights of general unsecured creditors or other parties in interest. Moreover, the Debtors' ability to implement their restructuring is dependent upon preventing the erosion of their customer base and maintaining goodwill, a task that will prove extremely difficult if the Debtors are unable to honor their obligations under the Customer Programs.

C. Compelling the Payment Processing Company to Honor the Payment Processing Agreement Is in the Best Interests of the Debtors' Businesses and Estates

31. Section 365 of the Bankruptcy Code “generally permits” a debtor in possession to assume or reject any executory contract. *In re Fleming Cos., Inc.*, 499 F.3d 300, 304 (3d Cir. 2007) (citing 11 U.S.C. § 365(a)). More specifically, section 365(a) provides:

Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, [a debtor in possession], subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

U.S.C. § 365(a).

32. An executory contract stays in effect until it is rejected. *Mason v. Official Comm. Of Unsecured Creditors (In re FBI Distribution Corp.)*, 330 F.3d 36, 42-43 (1st Cir. 2003) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984)); *Data-Link Sys., Inc. v. Whitcomb & Keller Mortg. Co., Inc. (In re Whitcomb & Keller Mortg. Co., Inc.)*, 715 F.2d 375, 378 (7th Cir. 1983). In a case under Chapter 11, a debtor in possession is not required to assume or reject an executory contract until a plan is confirmed (unless the Court orders otherwise). *Pub. Serv. Co. of N.H. v. N.H. Elec. Coop. (In re Pub. Serv. Co. of N.H.)*, 884 F.2d 11, 14 (1st Cir. 1989) (citing 11 U.S.C. § 365(d)(2)). In addition, under section 105(a) of the Bankruptcy Code, the Court may compel a party to perform its obligations under an executory contract until the contract is rejected. *See Whitcomb & Keller Mortg. Co.*, 715 F.2d at 378 (holding that the bankruptcy court may preserve the status quo until the debtor in possession decides to assume or reject an executory contract).

33. In general, a credit card processing agreement is an executory contract that section 365 permits a debtor in possession to assume or reject. *See, e.g., In re Boscov's, Inc.*, Case No. 08-11637, 2008 WL 4975882, at *2 (Bankr. D. Del. Nov. 21, 2008); *Citizens & S. Nat'l Bank v. Thomas B. Hamilton Co. (In re Thomas B. Hamilton Co.)*, 969 F.2d 1013, 1022

(11th Cir. 1992); *In re United Airlines, Inc.*, 368 F.3d 720, 722 (7th Cir. 2004). As such, a credit card processing agreement stays in effect post-petition and cannot be terminated unilaterally absent unusual circumstances, such as if “the [debtor] is involved in fraud,” if the debtor’s “sales result in an unusually high percentage of chargebacks,” or if the debtor defaulted under the processing agreement and failed to cure its default. *Hamilton*, 969 F.2d at 1021; *accord In re Nat’l Hydro-Vac Indus. Servs., L.L.C.*, 262 B.R. 781, 786-87 (Bankr. E.D. Ark. 2001); *In re Best Prods. Co.*, 210 B.R. 715, 718 (Bankr. E.D. Va. 1997).

34. In *Hamilton*, the U.S. Court of Appeals for the Eleventh Circuit made clear that a credit card processing agreement is an executory contract that may be assumed or rejected under section 365 of the Bankruptcy Code. 969 F.2d at 1014. There, a credit card processor asked the bankruptcy court for permission to terminate its credit card processing agreement with the debtor, contending that section 365(c)(2) of the Bankruptcy Code barred the debtor from assuming the credit card processing agreement because it was a “financial accommodation.” *Id.* In rejecting the credit card processor’s argument, the Eleventh Circuit held that the credit card processing agreement was outside the scope of section 365(c)(2). *Id.* at 1021. Instead, the court recognized that the credit card processing agreement was just a contract “for an exchange of items, sales drafts, for money, with an obligation by [the debtor] to repay [the credit card processor] in certain limited situations” *Id.* at 1020. Therefore, the court held that the credit card processing agreement was executory and subject to assumption or rejection by the debtor under section 365. *Id.* at 1022.

35. The Eleventh Circuit also observed that credit card processing is essential for a debtor to emerge from Chapter 11, stating that “[s]ound policy considerations support” the court’s conclusion that the credit card processing agreement was not a contract to extend financial

accommodations within the meaning of §§ 365(c)(2) and 365(e)(2)(B). The court continued: “The [a]greement at issue here is typical of credit card merchant agreements between all kinds of merchants and merchant banks. If these agreements may not be assumed by the [debtor in possession] following a bankruptcy filing, rehabilitation will be virtually impossible for any merchant who relies heavily on credit card sales.” *Id.* at 1020. In sum, the court concluded that “such agreements . . . may not be automatically terminated due to a bankruptcy filing.” *Id.* at 1022; *see also Nat’l Hydro-Vac*, 262 B.R. at 788 (concluding that a credit card processor violated the automatic stay by terminating a debtor’s credit card processing agreement post-petition).

36. The U.S. Bankruptcy Court for the Northern District of Illinois has also held that a credit card processing agreement is not a “financial accommodation” and may be assumed. *In re UAL Corp.*, 293 B.R. 183, 189 (Bankr. N.D. Ill. 2003). In *UAL Corp.*, as in *Hamilton*, a credit card processor argued that its credit card processing agreement with the debtor was a financial accommodation and, therefore, the debtor could not assume it under section 365. *UAL Corp.*, 293 B.R. at 186-87. The court, relying, *inter alia*, on *Hamilton*, rejected the credit card processor’s argument and held that the credit card processing agreement could be assumed. *UAL Corp.*, 293 B.R. at 188-89. Like the Eleventh Circuit in *Hamilton*, the court in *UAL Corp.* recognized that such a contract is essential to a debtor’s success in Chapter 11. *See UAL Corp.*, 293 B.R. at 189 (“And, of course, requiring termination of the . . . credit card processing agreement at the outset of the case would significantly impair the prospects for a successful reorganization.”).

37. Here, as in *Hamilton* and *UAL Corp.*, the Payment Processing Agreement is executory and integral to the Debtors’ ability to operate their businesses without interruption and

maximize the value of their estates. Further, the Debtors are not in default under the Payment Processing Agreement, have not engaged in or been accused of engaging in fraudulent activities, and do not have a history of requiring an excessive number of chargebacks. Therefore, the Payment Processing Agreement should remain in full force and effect, and the Payment Processing Company should be required to perform thereunder until the Debtors assume or reject it the Payment Processing Agreement.

VII. RESERVATION OF RIGHTS

38. Nothing contained herein is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party-in-interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

VIII. BANKRUPTCY RULE 6003 HAS BEEN SATISFIED

39. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting a "motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" before twenty-one (21) days after filing of the petition. Fed. R. Bankr. P. 6003(b). As described above, the Customer Programs are integral to the Debtors' continued operations because they are necessary to maintain the confidence and goodwill of the Debtors' customer base. The Debtors are at a critical juncture at which they must make every effort to retain customer support, drive revenues,

and maximize cash flow. The Debtors' inability to continue the Customer Programs would materially, and perhaps fatally, impair their efforts and thwart their chapter 11 cases before they have had a chance to begin. Accordingly, the Debtors have satisfied the requirements of Bankruptcy Rule 6003.

IX. REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

40. To implement the foregoing successfully, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such stay applies.

X. NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully request entry of the proposed interim and final orders granting the relief requested herein, an emergency hearing on this Motion, and such other and further relief as the Court may deem just and appropriate.

Dated: Jacksonville, Florida
August 12, 2020

Respectfully submitted,
FOLEY & LARDNER LLP

/s/ Gardner F. Davis

Gardner F. Davis (FL 0471712)

Telephone: 904.359.8726

Email: gdavis@foley.com

John J. Wolfel (FL 30664)

Telephone: 904.359.8778

Email: jwolfel@foley.com

Neda A. Sharifi (FL 112172)

Telephone: 904.359.8719

Email: nsharifi@foley.com

Richard E. Guyer (FL 1004150)

Telephone: 904.633.8902

Email: rguyer@foley.com

One Independent Drive, Suite 1300

Jacksonville, FL 32202-5017

and

Mark J. Wolfson (FL 0352756)

Foley & Lardner LLP

100 N Tampa St Suite 2700

Tampa, FL 33602

Telephone: 813.225.4119

Email: mwolfson@foley.com

and

Marcus Helt (TX 24052187)

Foley & Lardner LLP

2021 McKinney Avenue, Suite 1600

Dallas, TX 75201

Telephone: 214.999.4526

Email: mhelt@foley.com

Pro hac vice admission pending

*Proposed Counsel for Debtors
and Debtors in Possession*

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INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 365, AND 507(a) FOR INTERIM AND FINAL AUTHORITY TO (I) MAINTAIN AND ADMINISTER PRE-PETITION CUSTOMER PROGRAMS, PROMOTIONS, AND PRACTICES, (II) PAY AND HONOR RELATED PRE-PETITION OBLIGATIONS, AND (III) DIRECT THE CREDIT CARD PROCESSORS TO HONOR THE DEBTORS' CREDIT CARD PROCESSING AGREEMENT PENDING ITS ASSUMPTION OR REJECTION

THIS CASE came on for consideration upon the motion (the “**Motion**”)¹ (Doc. No. __) of Stein Mart, Inc. (“**SM**”), Stein Mart Buying Corp. (“**SMB**”) and Stein Mart Holding Corp. (“**SMHC**” and together with SM and SMB, the “**Debtors**” or the “**Company**”), as Debtors and Debtors-in-Possession in the above-captioned chapter 11 cases, pursuant to sections 105(a),

¹ Capitalized terms not otherwise herein defined shall have the meanings ascribed to such terms in the Motion.

363(b), 365, and 507(a) of the Bankruptcy Code, for entry of an order (i) authorizing, but not directing, the Debtors, in the ordinary course of business and consistent with past practice to maintain, administer, pay, and otherwise honor their pre-petition Customer Programs and Processing Obligations, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors' business judgment, (ii) authorizing and directing the Payment Processing Company to honor the Debtors' Payment Processing Agreement pending its assumption or rejection, and (iii) authorizing and directing financial institutions to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to the foregoing to the extent the Debtors have sufficient funds standing to their credit with such financial institutions, all as more fully set forth in the Motion; and the Court having jurisdiction to decide the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(a)-(b) and 1334(b); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice of the Motion need be provided; and the Court having held a hearing on _____, 2020 to consider the interim relief requested in the Motion (the "**Hearing**"); and upon the *Debtors' Chapter 11 Case Management Summary*, the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion and granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their respective estates and creditors, and all parties-in-interest, provides a net benefit to the Debtors and their estates after taking into account the priority scheme of the

Bankruptcy Code, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED:

1. The Motion is **GRANTED** on an interim basis.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), and 507(a) of the Bankruptcy Code, to maintain and administer the Customer Programs and honor any related pre-petition obligations in the ordinary course of business and consistent with past practice, as necessary and appropriate in the Debtors' business judgment, subject to those exceptions set forth in any order granting the Debtors' *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Approving Procedures for Store Closing Sales, and (III) Approving the Implementation of Customary Store Program Bonus Program and Payments to Non-Insiders Thereunder*; provided that the Debtors are authorized, but not directed, to pay only amounts due and payable as of the Petition Date and amounts that are or become due and payable between the Petition Date and the date that a final order on the Motion is entered, unless otherwise ordered by this Court.
3. The Payment Processing Company is authorized to offset Processing Obligations that may have arisen before the Petition Date.
4. In accordance with this interim order (the "**Interim Order**") (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is authorized and directed to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which

checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise, and without liability for following the Debtors' instructions.

5. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, on account of pre-petition Customer Programs to replace any pre-petition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

6. Absent any further Order of this Court, the Payment Processing Company is authorized and directed to continue performing all services contemplated under the Payment Processing Agreement.

7. Nothing in this Interim Order or the Motion shall be deemed to constitute the post-petition assumption or adoption of the Payment Processing Agreement or any other credit card processing or other agreement pursuant to section 365 of the Bankruptcy Code.

8. Notwithstanding anything to the contrary in this Interim Order, payment made or action taken by any of the Debtors pursuant to the authority granted in this Interim Order must be in compliance with and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "**Cash Collateral Order**"); (ii) the documentation in respect of any such use of cash collateral and/or postpetition financing; and (iii) the budget governing any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the Cash Collateral Order and this Interim Order, the terms of the Cash Collateral Order shall control.

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

10. Nothing contained in the Motion or this Interim Order or any payment made pursuant to the authority granted by this Interim Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors’ or any party-in-interest’s rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

11. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

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

13. The requirements of Bankruptcy Rule 6004(a) are waived.

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

15. The Final Hearing on the Motion shall be held on _____, 2020, at _____**.m. (Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, with a copy to chambers, and served upon (i) the proposed attorneys for the Debtors, Foley & Lardner LLP, One Independent Drive, Suite 1300, Jacksonville, Florida 32202, Attn: Gardner F. Davis, Esq.); (ii) the Office of the United States Trustee for Region 21, 400 West Washington Street, Suite 1100, Orlando, Florida 32801; and (iii) counsel for the administrative agent under the Debtors’ prepetition revolving credit facility, Wells Fargo Bank, National Association, c/o (a) Otterbourg P.C. (Attn: Daniel F. Fiorillo, Esq. and Chad B. Simon, Esq.), 230 Park Avenue, New York, NY 10169-0075 and (b) Smith Hulsey & Busey, One Independent Drive,

Suite 3300, Jacksonville, Florida 32202 (Attn: Stephen D. Busey, Esq.); (iv) counsel for the administrative agent under the Debtors' prepetition term loan, Gordon Brothers Finance Company LLC, c/o (a) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110-1726 (Attn: Matthew F. Furlong, Esq., Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.); and (b) Holland & Knight, 50 North Laura Street, Suite 3900, Jacksonville, Florida 32202 (Attn: Alan Weiss, Esq.); and (v) the Payment Processing Company, in each case so as to be received no later than **4:00 p.m. (Eastern Time) on _____, 2020.**

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

17. The Debtors are authorized to take all action necessary to carry out this Interim Order.

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

Debtors' counsel is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
www.flmb.uscourts.gov

In re:	Chapter 11
STEIN MART, INC. ¹	Case No. 3:20-bk-2387
STEIN MART BUYING CORP.	Case No. 3:20-bk-2388
STEIN MART HOLDING CORP.,	Case No. 3:20-bk-2389
Debtors.	Joint Administration Requested

FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 365, AND 507(a) FOR INTERIM AND FINAL AUTHORITY TO (I) MAINTAIN AND ADMINISTER PRE-PETITION CUSTOMER PROGRAMS, PROMOTIONS, AND PRACTICES, (II) PAY AND HONOR RELATED PRE-PETITION OBLIGATIONS, AND (III) DIRECT THE CREDIT CARD PROCESSORS TO HONOR THE DEBTORS' CREDIT CARD PROCESSING AGREEMENT PENDING ITS ASSUMPTION OR REJECTION

THIS CASE came on for consideration upon the motion (the “**Motion**”)¹ (Doc. No. ____)
of Stein Mart, Inc. (“**SM**”), Stein Mart Buying Corp. (“**SMB**”) and Stein Mart Holding Corp.

¹ The tax identification numbers of the Debtors are as follows: Stein Mart, Inc. 6198; Stein Mart Buying Corp. 1114; and Stein Mart Holding Corp. 0492. The address of the Debtors’ principal offices: 1200 Riverplace Blvd., Jacksonville, FL 32207. The Debtors’ claims agent maintains a website, <https://cases.stretto.com/SteinMart>, which provides copies of the Debtors’ first day pleadings and other information related to the case.

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

(“**SMHC**” and together with SM and SMB, the “**Debtors**” or the “**Company**”), as Debtors and Debtors-in-Possession in the above-captioned chapter 11 cases pursuant to sections 105(a), 363(b), 365, and 507(a) of title 11 of the Bankruptcy Code, for entry of an order (the “**Final Order**”) (i) authorizing, but not directing, the Debtors, in the ordinary course of business and consistent with past practice to maintain, administer, pay, and otherwise honor their pre-petition Customer Programs and Processing Obligations, whether arising prior to or after the Petition Date, as necessary and appropriate in the Debtors’ business judgment, (ii) authorizing and directing the Payment Processing Company to honor the Debtors’ Payment Processing Agreement pending its assumption or rejection, and (iii) authorizing and directing financial institutions to receive, process, honor, and pay checks presented for payment and electronic payment requests relating to the foregoing to the extent the Debtors have sufficient funds standing to their credit with such financial institutions, all as more fully set forth in the Motion; and the Court having jurisdiction to decide the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(a)-(b) and 1334(b); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice of the Motion need be provided; and the Court having held hearings on _____ and _____ to consider the relief requested in the Motion on an interim (the “**Interim Hearing**”) and final basis (the “**Final Hearing**”), respectively, and the Court having entered an order granting the relief requested in the Motion on an interim basis; and upon the *Debtors’ Chapter 11 Case Management Summary*, filed contemporaneously with the Motion, the records of the Interim Hearing and the Final Hearing, and all of the proceedings had before the

Court; and the Court having found and determined that the relief sought in the Motion and granted herein is in the best interests of the Debtors, their respective estates and creditors, and all parties-in-interest, provides a net benefit to the Debtors and their estates after taking into account the priority scheme of the Bankruptcy Code, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED:

1. The Motion is **GRANTED** on a final basis.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), and 507(a), to maintain and administer the Customer Programs and honor related pre-petition obligations in the ordinary course of business and consistent with past practice, as necessary and appropriate in the Debtors' business judgment, subject to those exceptions set forth in any order granting the Debtors' *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreement, (II) Approving Procedures for Store Closing Sales, and (III) Approving the Implementation of Customary Store Program Bonus Program and Payments to Non-Insiders Thereunder*.
3. The Payment Processing Company is authorized to offset Processing Obligations that may have arisen before the Petition Date.
4. In accordance with this Final Order (or other order of this Court), each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is authorized and directed to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept

and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise, and without liability for following the Debtors' instructions.

5. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, on account of pre-petition Customer Programs to replace any pre-petition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

6. Absent any further Order of this Court, the Payment Processing Company is authorized and directed to continue performing all services contemplated under the Payment Processing Agreement.

7. Nothing in this Order or the Motion shall be deemed to constitute the post-petition assumption or adoption of the Payment Processing Agreement or any other credit card processing or other agreement pursuant to section 365 of the Bankruptcy Code.

8. Notwithstanding anything to the contrary in this Final Order, payment made or action taken by any of the Debtors pursuant to the authority granted in this Final Order must be in compliance with and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "**Cash Collateral Order**"); (ii) the documentation in respect of any such use of cash collateral and/or postpetition financing; and (iii) the budget governing any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the Cash Collateral Order and this Final Order, the terms of the Cash Collateral Order shall control.

9. Nothing contained in the Motion or this Final Order or any payment made pursuant to the authority granted by this Final Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party-in-interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

10. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

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

12. The Debtors are authorized to take all action necessary to carry out this Final Order.

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

Debtors' counsel is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.