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 AND 363 FOR INTERIM AND FINAL ORDERS AUTHORIZING THE DEBTORS TO PAY PRE-PETITION SHIPPING CHARGES IN THE ORDINARY COURSE OF BUSINESS

(Emergency Hearing Requested on or before 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:

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 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**").

[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.

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).

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]

III. THE THIRD-PARTY SHIPPERS

6. To successfully operate their businesses, the Debtors must ensure that their consolidation and distribution center (the "**Distribution Center**") and their retail stores (the "**Stores**") are continuously replenished with a supply of goods for sale to the Debtors' customers (the "**Merchandise**").

7. The Merchandise is delivered to the Distribution Center and stores by third-party shippers (the "**Third-Party Shippers**").

8. In the event that the Debtors fail to pay the Third-Party Shippers for charges incurred in connection with the transportation of the Merchandise, various state laws may permit the Third-Party Shippers to assert statutory liens against any Merchandise in their possession that

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

is the subject of a delinquent charge. If a Third-Party Shipper were to take such an action, it could prevent the Debtors from accessing their Merchandise. Accordingly, in order to maintain access to the Merchandise (which is essential to the continued viability of their retail operations) and to preserve the value thereof, the Debtors seek authority to pay any and all pre-petition amounts related to the shipping, logistics, and other services the Third-Party Shippers provided to the Debtors before the Petition Date (collectively, the "**Shipping Charges**"). In their sole discretion, the Debtors intend to undertake appropriate efforts to cause the Third-Party Shippers to acknowledge in writing that payment of their respective claims is conditioned upon such Third-Party Shippers continuing to supply services to the Debtors on trade terms that such Third-Party Shippers have historically provided.

IV. RELIEF REQUESTED

9. Pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "**Bankruptcy Code**"), the Debtors request entry of interim and final orders authorizing, but not directing, them to pay the Shipping Charges in the ordinary course of business.

10. The Debtors also request that the Court (i) authorize and direct financial institutions to receive, process, honor, and pay certain 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 or any other Order of this Court without any duty of further inquiry and without liability for following the Debtors' instructions.

V. BASIS FOR THE RELIEF REQUESTED

A. Payment of Pre-Petition Claims of Third-Party Shippers Is in the Best Interest of the Debtors' Estates and Warranted Under the Doctrine of Necessity.

11. 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).

12. 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").

13. 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."

14. 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. As noted above, paying the Shipping Charges will benefit the Debtors' estates and their creditors by allowing the Debtors' operations to continue uninterrupted. Absent the relief requested herein, the Third-Party Shippers might be unwilling to release the Merchandise in their possession and as to which they may have liens because relinquishing possession of such Merchandise might convert their

claims against the Debtors from secured to unsecured. Therefore, unless the Court authorizes the Debtors to pay the Third-Party Shippers, it is unlikely the Debtors will continue to have access to Merchandise in the possession of the Third-Party Shippers. Such an occurrence would disrupt the flow of Merchandise to the Debtors and would lead to customer dissatisfaction and undermine customer confidence in the Debtors' ability to conduct business at this critical juncture. The Debtors therefore submit that the relief requested herein is warranted pursuant to the doctrine of necessity and in the best interest of the Debtors' estates, their creditors, and all parties-in-interest. Accordingly, the Court should authorize the Debtors to pay the Shipping Claims, regardless of whether such claims accrued pre- or post-petition, in the ordinary course of business.

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

15. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. Under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Shipping Charges. Accordingly, the Debtors believe that checks or wire transfer requests, relating to unauthorized payments, will not be honored inadvertently and that the Court should authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein, solely to the extent the Debtors have sufficient funds standing to their credit with such financial institution, and authorize such financial institutions to rely on the representations of such Debtors as to which checks are issued and authorized and

which transfers are authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtors' instructions.

VI. RESERVATION OF RIGHTS

16. 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 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.

VII. BANKRUPTCY RULE 6003 HAS BEEN SATISFIED

17. 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, payment of the Shipping Charges is integral to the Debtors' operations and is necessary to maintain such operations as well as the confidence and goodwill of the Debtors' customer base. Failure to implement the relief during the first 21 days of these chapter 11 cases will jeopardize value for the Debtors' estates and creditors. Moreover, it is the Debtors' business judgment that continuation of their positive relationship with the Third-Party Shippers is imperative to their continued operations. Accordingly, the Debtors have satisfied the requirements of Bankruptcy Rule 6003.

VIII. REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

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

IX. NO PRIOR REQUEST

19. 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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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

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 363 THE DEBTORS TO PAY PRE-PETITION SHIPPING CHARGES IN THE ORDINARY COURSE OF BUSINESS

[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.

THIS CASE came on for consideration upon the motion (the "**Motion**")[1] 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 (collectively, the "**Debtors**"), pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, for entry of an order (i) authorizing, but not directing, the Debtors to pay the Shipping Charges and (ii) 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 ________________ to consider the interim relief requested in the Motion (the "**Hearing**"); and upon the *Debtors' Chapter 11 Case Management Summary*, filed contemporaneously with the Motion, 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, is in the best interests of the Debtors, their respective estates and creditors, and all

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

parties-in-interest, and 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) and 363(b) of the Bankruptcy Code, to pay the pre-petition Shipping Charges; provided that the Debtors are authorized to pay only amounts due and payable as of the Petition Date and amounts that 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 Debtors, in their sole discretion, shall undertake appropriate efforts to cause the Third-Party Shippers to acknowledge in writing that payment of their respective claims is conditioned upon such Third-Party Shippers continuing to supply services to the Debtors on trade terms that, at a minimum, such Third-Party Shippers provided to the Debtors on a historical basis prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect during such time, and the Debtors reserve the right to negotiate new trade terms with any Third-Party Shippers as a condition to payment of any claim.

4. Neither the Debtors nor any other party-in-interest concede that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim Order are valid, and the Debtors expressly reserve the right to challenge the extent, validity, perfection, or possible avoidance of the related liens and payments.

5. In accordance with this interim order (the "**Interim Order**") (or any 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.

6. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, on account of the Shipping Charges 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.

7. 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.

8. 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**").

9. 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.

10. Notwithstanding entry of this Interim Order, nothing herein shall create, or is intended to create, any rights in favor of, or enhance the status of, any claim held by any party.

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

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

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

14. 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 (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; (iii) counsel for the administrative agent under the Debtors' pre-petition 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' pre-petition 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) all known Third-Party Shippers, in each case so as to be received no later than **______ _.m. (Eastern Time) on ________, 2020.**

15. 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.

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

17. 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
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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 AND 363 AUTHORIZING THE DEBTORS TO PAY PRE-PETITION SHIPPING CHARGES IN THE ORDINARY COURSE OF BUSINESS

THIS CASE came on for consideration upon the motion (the "**Motion**")[1] 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) and 363(b) of the

[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.

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

Bankruptcy Code, for entry of an order (i) authorizing, but not directing, the Debtors to pay the Shipping Charges and (ii) 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, and upon the record of the Interim Hearing, 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, and 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) and 363(b) of the Bankruptcy Code, to pay the pre-petition Shipping Charges.

3. The Debtors, in their sole discretion, shall undertake appropriate efforts to cause the Third-Party Shippers to acknowledge in writing that payment of their respective claims is conditioned upon such Third-Party Shippers continuing to supply services to the Debtors on trade terms that, at a minimum, such Third-Party Shippers provided to the Debtors on a historical basis prior to the Petition Date, or such other trade practices and programs that are at least as favorable to the Debtors as those in effect during such time, and the Debtors reserve the right to negotiate new trade terms with any Third-Party Shippers as a condition to payment of any claim.

4. Neither the Debtors nor any other party-in-interest concedes that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order are valid, and the Debtors expressly reserve the right to contest the extent, validity, perfection, or possible avoidance of the related liens and payments.

5. In accordance with this Final Order (or any 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.

6. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, on account of pre-petition Shipping Charges 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.

7. 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.

8. 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.

9. Notwithstanding entry of this Final Order, nothing herein shall create, or is intended to create, any rights in favor of, or enhance the status of, any claim held by any party.

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

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

12. 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.