

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), 507(a), AND 541 FOR ENTRY OF AN ORDER AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY CERTAIN PRE-PETITION TAXES AND FEES

(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:

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.

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. The bases for the relief requested herein are sections 105(a), 363(b), 507(a), and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

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 SALES AND USE TAXES

6. In the ordinary course of operating their businesses, the Debtors collect, withhold, or incur an assortment of state and local sales taxes in connection with the sale of various products to their customers (“**Sales Taxes**”). The Debtors remit the Sales Taxes to various state and local taxing authorities (collectively, the “**Authorities**”) on a monthly basis. Sales Taxes are essentially general consumption taxes charged at the point of purchase for certain goods and

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

services. Sales Taxes are usually set by the applicable taxing Authority as a percentage of the retail price of the good or service purchased.

7. Similarly, the Debtors incur use taxes on account of the purchase of various supplies or other goods utilized by the Debtors in the ordinary course of their businesses (“**Use Taxes**” and, collectively with Sales Taxes, the “**Sales and Use Taxes**”) and remit such taxes to the Authorities when an audit indicates same are due. Use Taxes typically arise if a supplier does not have business operations in the state in which it is supplying goods and, therefore, does not charge sales tax, but the goods are otherwise taxable to the Debtors as purchasers.

8. The pre-petition Sales and Use Taxes are not property of the Debtors’ estates but, rather, are held in trust for the Authorities. The Debtors seek to pay the pre-petition Sales and Use Taxes in order to, among other things, prevent the Authorities from taking actions that might interfere with the Debtors’ administration of their chapter 11 cases, which may include bringing personal liability actions against the Debtors’ directors, officers, and other key employees (whose full-time attention to the Debtors’ chapter 11 cases is required to avoid business disruptions and maximize recoveries to the Debtors’ creditors) or assessing penalties and/or significant interest on past-due taxes. In addition, non-payment of the Sales and Use Taxes may give rise to priority claims pursuant to section 507(a)(8) of the Bankruptcy Code. Accordingly, the Debtors submit that the proposed relief is in the best interest of the Debtors’ estates.

9. Although the Debtors believe they are generally current with respect to their payment of Sales and Use Taxes, as of the Petition Date, they have collected or incurred pre-petition Sales and Use Taxes that have not yet been remitted to the appropriate Authorities.

IV. RELIEF REQUESTED

10. Pursuant to sections 105(a), 363(b), 507(a), and 541 of title 11 of the Bankruptcy Code, the Debtors request entry of interim and final orders authorizing, but not directing, the payment of Sales and Use Taxes, in the ordinary course of business and without regard to whether such obligations accrued or arose before or after the Petition Date.

11. 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.

12. The Debtors request 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.

V. BASIS FOR THE RELIEF REQUESTED

A. The Sales and Use Taxes Are Not Property of the Debtors' Estates.

13. Section 541(d) of the Bankruptcy Code provides, in relevant part, that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d).

14. The Sales and Use Taxes constitute “trust fund” taxes, which the Debtors are required to collect from their customers and hold in trust for payment to the Authorities. As a result, courts have held that such taxes are not part of a debtor’s estate. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57-60 (1990) (holding that any pre-petition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor’s property); *In re Calabrese*, 689 F.3d 312, 321 (3d Cir. 2012) (sales tax collected by debtor from its customers pursuant to state law is a non-dischargeable “trust fund” tax). To the extent these “trust fund” taxes are collected, they are not property of the Debtors’ estates under section 541(d). *See, e.g., Old Republic Nat’l Title Ins. Co. v. Tyler (In re Dameron)*, 155 F.3d 718, 721-22 (4th Cir. 1998) (funds from various lenders held by closing agent in trust for designated third parties are not property of a debtor’s estate); *In re Am. Int’l Airways, Inc.*, 70 B.R. 102, 104-5 (Bankr. E.D. Pa. 1987).

15. Additionally, a constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question. *See Integrated Health Servs., Inc.*, 344 B.R. 262, 270 (Bankr. D. Del. 2006). The Debtors, therefore, may not have a legally cognizable interest in funds held on account of such “trust fund” taxes and, accordingly, such taxes, which generally consist of sales taxes, would not constitute “property of the [Debtors’] estate[s]” as such term is defined in section 541 of the Bankruptcy Code.

16. In light of the fact that they generally do not have an equitable interest in funds held on account of such “trust fund” taxes, the Debtors should be permitted to pay the Sales and Use Taxes to the Authorities as they become due.

B. Certain of the Pre-Petition Sales and Use Taxes May Be Priority Claims.

17. Claims for some or all of the Sales and Use Taxes owed by the Debtors are or may be entitled to priority status under section 507(a)(8) of the Bankruptcy Code such that

payment of such Sales and Use Taxes (i) would give the Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan and (ii) will save the Debtors potential interest expense, legal expense, and penalties that otherwise might accrue on, or be incurred in connection with, such Sales and Use Taxes.

18. More specifically, section 507(a)(8) of the Bankruptcy Code provides that claims entitled to priority status include unsecured claims of governmental units for (i) taxes on or measured by income or gross receipts for a taxable year ending on or before the Petition Date, for which a return, if required, is last due after three years prior to the Petition Date, or which is assessed within 240 days before the Petition Date, *see* 11 U.S.C. § 507(a)(8)(A); (ii) taxes incurred before the Petition Date and last payable without penalty after one year before the Petition Date, *see* 11 U.S.C. § 507(a)(8)(B); and (iii) taxes required to be collected or withheld and for which the Debtor is liable in whatever capacity, *see* 11 U.S.C. § 507(a)(8)(C). Moreover, to the extent that the Sales and Use Taxes are entitled to priority treatment under section 507(a)(8) of the Bankruptcy Code, the Authorities also may attempt to assess penalties that may also be accorded priority status. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth-priority status to “a penalty related to a claim of a kind specified in [section 507(a)(8)] and in compensation for actual pecuniary loss”).

C. Payment of the Sales and Use Taxes May Eliminate Unnecessary Distractions from Administration of Chapter 11 Estates.

19. If the Debtors fail to pay the Sales and Use Taxes in a timely manner, the Authorities may assert that the Debtors’ directors, officers, and other key employees are personally liable for payment of same. This is the case even if the failure to pay certain Sales and Use Taxes was not a result of malfeasance on their part. Any claims or litigation related to the failure to pay Sales and Use Taxes would be distracting for the Debtors, their directors,

officers, and other key employees as well as this Court, which could be asked to entertain various motions seeking injunctions relating to potential court actions. As such, it is in the best interest of the Debtors' estates to eliminate the possibility of these distractions and to enable the Debtors to continue operating without interruption and to focus on their restructuring efforts.

D. Ample Authority Exists to Support Payment of the Sales and Use Taxes.

20. Notwithstanding the foregoing, to the extent certain Sales and Use Taxes constitute property of the Debtors' estates, 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).

21. 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”).

22. 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.”

23. To the extent certain Sales and Use Taxes constitute property of the Debtors’ estates, 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 Sales and Use Taxes will benefit the Debtors' estates and their creditors by allowing the Debtors' operations to continue without interruption and will not prejudice the Debtors' stakeholders.

Accordingly, the proposed relief is in the best interest of the Debtors and their estates.

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

24. 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. Under the Debtors' existing cash management system, the Debtors can readily identify check or wire transfer requests as relating to an authorized payment in respect of the Sales and Use Taxes. Accordingly, the Debtors believe that check 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 check 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.

VI. RESERVATION OF RIGHTS

25. 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

26. 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). The Debtors require immediate relief to pay Sales and Use Taxes that become due within twenty-one (21) days of the Petition Date to avoid the harmful consequences noted above to their business and restructuring efforts. Accordingly, the Debtors have satisfied the requirements of Bankruptcy Rule 6003.

VIII. REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

27. 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.

IX. NO PRIOR REQUEST

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

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WHEREFORE, the Debtors respectfully request an emergency hearing on this Motion and entry of the proposed interim and final orders granting the relief requested herein 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

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and Debtors in Possession*

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STEIN MART BUYING CORP.	Case No. 3:20-bk-2388
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Debtors.	Joint Administration Requested

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 507(a), AND 541
AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS TO PAY
CERTAIN PRE-PETITION TAXES AND FEES**

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), 363(b), 507(a),

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

and 541 of the Bankruptcy Code, for entry of an Order (i) authorizing, but not directing, the Debtors to remit and pay certain state and local sales taxes in connection with the operation of their businesses (as more fully described in the Motion, the “**Sales and Use Taxes**”) for periods prior to the Petition Date (including those subsequently determined, upon an audit or otherwise, to be owed) 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* (the “**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 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), 507(a), and 541 of the Bankruptcy Code, to pay pre-petition Sales and Use Taxes, including, but not limited to, all of those Sales and Use Taxes subsequently determined, upon an audit or otherwise, to be owed for periods before the Petition Date; 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. 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 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.
4. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, on account of pre-petition Sales and Use Taxes to replace

any pre-petition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of the Debtors' chapter 11 cases.

5. 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.

6. 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**").

7. 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.

8. 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.

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

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

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

12. 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 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' 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) the Authorities, in each case so as to be received no later than **4:00 p.m. (Eastern Time)** on _____, 2020.

13. 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.

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

15. 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
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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),
507(a), AND 541 AUTHORIZING, BUT NOT DIRECTING, THE DEBTORS
TO PAY CERTAIN PRE-PETITION TAXES AND FEES**

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), 363(b), 507(a),

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and 541 of the Bankruptcy Code, for entry of an Order (i) authorizing, but not directing, the Debtors to remit and pay certain state and local sales and use taxes in connection with the sale with the operation of their businesses (as more fully described in the Motion, the “**Sales and Use Taxes**”) for periods prior to the Petition Date (including those subsequently determined, upon an audit or otherwise, to be owed) 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, 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 and 1334; 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 to the Notice Parties and the Authorities 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 record 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), 507(a), and 541 of the Bankruptcy Code, to pay pre-petition Sales and Use Taxes, including, but not limited to, all of those Sales and Use Taxes subsequently determined, upon an audit or otherwise, to be owed.
3. In accordance with this Final Order (or other order of this Court), each of the financial institutions at which the Debtors maintain 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.
4. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, on account of pre-petition Sales and Use Taxes to replace any pre-petition checks or electronic fund transfer requests that may be lost, dishonored, or rejected as a result of the commencement of the Debtors' chapter 11 cases.

5. 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.

6. 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.

7. 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.

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

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

10. 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.