

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
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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

**DEBTORS' EMERGENCY MOTION TO ESTABLISH
PROCEDURES TO PERMIT MONTHLY PAYMENT OF INTERIM FEE
APPLICATIONS OF CHAPTER 11 PROFESSIONALS**

(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, hereby file this Motion to Establish Procedures to Permit Monthly Payment of Interim Fee Applications of Chapter 11 Professionals (the "Motion") and request the entry of an order approving the payments set forth below. In support of its Motion, the Debtors respectfully represent the following:

Jurisdiction And Venue

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§157 and 1334. Venue is proper pursuant to 28 U.S.C. §§1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

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 statutory predicates for the relief requested herein include 11 U.S.C. §§ 105, 362, 363, and 541.

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* and the *Declaration of Hunt Hawkins in Support of Debtors’ Chapter 11 Petitions and First Day Motions*, sworn to on the date hereof (the “**First Day Declaration**”), which has been filed with the Court contemporaneously herewith.²

6. The Debtors continue to operate its business and manage its property as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

7. No trustee or examiner has been appointed in this case.

Relief Requested and Grounds for Relief

8. By this Motion, the Debtors seek entry of an order, pursuant to Sections 105(a) and 331 of the Bankruptcy Code establishing an orderly and regular process for allowance and

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

payment of compensation and reimbursement for attorneys and other professionals (“Professionals”) whose services are authorized by this Court pursuant to Section 327 or 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code.

9. Pursuant to Section 331 of the Bankruptcy Code, all Professionals are entitled to submit applications for interim compensation and reimbursement every 120 days, or more frequently if the Court permits. In addition, Section 105(a) of the Bankruptcy Code authorizes the Court to issue any order “that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code],” thereby codifying the bankruptcy court’s inherent equitable powers.

10. The procedures suggested herein will enable the Debtors to closely monitor the costs of administration, maintain a level cash flow, and implement efficient case management procedures. These procedures will also allow the Court, the Office of the United States Trustee, and the key parties in interest to ensure the reasonableness and necessity of the compensation and reimbursement sought. Moreover, these procedures will assist Professionals in their work on these cases without undue burdens on themselves and their firms and will avoid having Professionals finance the reorganization proceedings.

11. No previous application for relief sought herein has been made by the Debtors to this Court or any other court.

Proposed Procedures for Monthly Payment of Chapter 11 Professionals

12. The Debtors propose that the procedures set forth below be incorporated in an order (the “Order”) of this Court, specifically:

- a. On or before the 15th day of each month following the month for which compensation is sought, each Professional whose employment was

approved by order of this Court authorized to seek compensation may serve a monthly statement, by email to: (i) counsel for the Debtors, Gardner F. Davis at gdavis@foley.com, and John J. Wolfel, Jr. at jwolfel@foley.com, Foley & Lardner LLP,; (ii) counsel for the Office of the United States Trustee, _____ at _____@usdoj.gov; (iii) [counsel for the Official Committee of Unsecured Creditors], by email, _____ at _____; (iv) counsel for the administrative agent under the Debtors' prepetition revolving loan facility, Wells Fargo Bank, National Association, c/o Daniel F. Fiorillo at dfiorillo@otterbourg.com and Chad B. Simon at csimon@otterbourg.com, Otterbourg, P.C.; (v) counsel for the administrative agent under the Debtors' prepetition term loan, Gordon Brothers Finance Company LLC, c/o (a) Matthew Furlong at matthew.furlong@morganlewis.com, Julia Frost-Davies at Julia.frost-davies@morganlewis.com, and Christopher Carter at Christopher.carter@morganlewis.com, Morgan, Lewis & Bockius, and (b) Alan Weiss at alan.weiss@hklaw, Holland & Knight; and (vi) any other party that the Court may designate (collectively, the "Service Parties").

- b. The monthly statement need not be filed with the Court and a courtesy copy need not be delivered to the presiding judge's chambers because this Order is not intended to alter the fee application requirements outlined in Sections 330 and 331 of the Bankruptcy Code because professionals are still required to serve and file interim and final applications for approval of fees and expenses in accordance with the relevant provisions of the Bankruptcy Code, and the Bankruptcy Rules.
- c. Each monthly fee statement must contain an abbreviated narrative of the services rendered, accompanied by a printout or schedule of the reimbursable expenses incurred and the Professional and paraprofessional time spent (in sufficient detail to allow the review of the time by the Service Parties), which shall ordinarily be for services rendered through a particular calendar month.
- d. Each Service Party receiving a statement may object to the payment of the fees and the reimbursement of costs set forth therein by serving a written objection (which shall not be filed with the Court) upon the other Service Parties on or before the 25th day of the month in which the statement is received. The objection shall state the nature of the objection and identify the amount of the fees or costs to which objection is made. The objecting party shall attempt in good faith to object only to the portion of the statement that is deemed to be objectionable.
- e. In absence of any timely objection, the Debtors are authorized to pay up to 80% of the fees and 100% of the expenses identified in each monthly

statement to which no objection had been timely made in accordance with paragraph (d).

- f. If the Debtors receive an objection to a particular fee statement, they shall withhold payment of that portion of the fee statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in paragraph (e) above. All Professionals subject to this Order will establish a separate billing number for any time spent on the resolution of fee disputes. Any fees incurred in connection with such fee disputes shall not be paid pursuant to the monthly statement, but may only be sought and paid upon the filing of an interim fee application as set forth in paragraph 3(j) below and after order of the Court.
- g. Similarly, if parties to an objection are able to resolve their dispute, then the Debtors are authorized to pay that portion of the fee statement that is no longer subject to an objection, if the party whose statement was objected to serves on the Service Parties a statement indicating that the objection was withdrawn and describing in detail the terms of the resolution.
- h. Any objections that are not resolved by the parties would be preserved and presented to the Court by the objecting party at the next interim or final fee application hearing to be heard by the Court.
- i. The service of an objection in accordance with paragraph (d) shall not prejudice the objecting party's right to object to any fee application on any ground, whether or not raised in the objection. Further, the decision by any party not to object to a fee statement shall not be a waiver of, nor otherwise prejudice, that party's right to object to any subsequent fee application.
- j. Unless the Court orders otherwise, each of the Professionals utilizing the procedures described in this Order shall file interim fee applications, for the amount of fees and costs sought in paragraph (e) above, in accordance with the 120 day guideline set forth in Section 331 of the Bankruptcy Code as follows:
 - i. First Interim Fee Applications may be filed on or before December 10, 2020 ("First Interim Fee Applications"). The First Interim Fee Applications shall represent fees and costs incurred by the Professionals from Present through November 30, 2020.
 - ii. Second Interim Fee Applications may be filed on or before April 9, 2021 ("Second Interim Fee Applications"). The Second Interim Fee Applications shall represent fees and costs incurred by the Professionals from December 1, 2020 through March 31, 2021.

- iii. Thereafter, interim fee applications may be filed in accordance with the schedule set forth above covering the preceding four month time period. All interim fee applications shall comply with the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330 (Appendix A to 28 C.F.R. §58). The Court shall schedule and conduct a hearing, upon proper notice in accordance with Bankruptcy Rule 2002(a)(6), to determine all interim fee applications pending before it.
- k. A Professional who fails to file an application seeking approval of compensation and expenses previously paid under this Order when such application is due shall preclude such Professional from utilizing the automatic pay procedures as provided herein until an interim fee application has been filed and heard by the Court.
- l. A determination, by the Court, that payment of compensation or reimbursement of expenses was improper as to a particular monthly statement shall not disqualify a Professional from the future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.
- m. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses of any Professionals.
- n. The Debtors shall include all payments to Professionals on its monthly operating reports, detailed so as to state the amount paid to each of the Professionals.
- o. The Debtors may not make any payments under this Order if the Debtors have not timely filed monthly operating reports or remained current with its administrative expenses and 28 U.S.C. § 1930. Otherwise, this Order shall continue and shall remain in effect during the pendency of this case unless otherwise ordered by this Court.
- p. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).
- q. Upon motion or application, and after due notice to all parties set forth on the Court's mailing matrix, additional professionals employed by the Debtors or a committee may be authorized to participate in modified interim compensation procedures as set forth in this Order.
- r. All Professionals subject to this Order shall be required to monitor their own compliance with the terms of this Order and shall include the following certification on each monthly invoice: I hereby certify that I am

in compliance with the terms of the Order Establishing Procedures to Permit Monthly Payment of Interim Fee Applications of Chapter 11 Professionals.

13. Similar relief has been granted in other large cases in this District. See, e.g., In re Winn Dixie Stores, Inc., et al., Case No. 3:05-bk-3817-JAF, Order Approving Interim Compensation Procedures for Professionals (Doc. No. 265).

WHEREFORE, the Debtors respectfully request an emergency hearing on this Motion and entry of an order:

- A. Granting this Motion;
- B. Establishing procedures to permit monthly payment to Professionals whose services are authorized by this Court pursuant to Sections 327 and 1103 of the Bankruptcy Code and who will be required to file applications for allowance of compensation and reimbursement of expenses pursuant to Sections 330 and 331 of the Bankruptcy Code; and
- C. Granting such other and further relief as may be just and proper.

(Signature page follows)

Dated: Jacksonville, Florida
August 12, 2020, 2020

Respectfully submitted,
FOLEY & LARDNER LLP

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Pro hac vice admission pending

*Proposed Counsel for Debtors
and Debtors in Possession*

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Debtors.	Joint Administration Requested

**ORDER ESTABLISHING PROCEDURES FOR
PAYMENTS TO PROFESSIONALS OF INTERIM COMPENSATION
FOR SERVICES AND REIMBURSEMENT OF EXPENSES**

THIS CASE came before the Court for hearing on _____, 2020 at _____ a.m/p.m. upon the Debtors' motion requesting the Court to establish procedures to permit monthly payments to Chapter 11 professionals of interim compensation for services rendered and reimbursement for expenses incurred (Document No. ____) (the "Motion"). For the reasons stated orally and recorded in open court, which shall constitute the decision of the Court, it is

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ORDERED:

1. The Motion is granted.
2. The request to provide for monthly payments to professionals employed pursuant to Section 327 of the Bankruptcy Code (“Professional(s)”) of compensation for services rendered and reimbursement for expenses incurred is approved. Each Professional seeking payment on an interim basis of compensation for services rendered and reimbursement for expenses incurred shall follow the procedures set forth in this Order.
3. On or before the 15th day of the month following the month for which payment is sought, each Professional seeking interim compensation and expenses reimbursement shall by electronic mail serve a monthly statement (the “Monthly Statement”) upon the following persons (each, a “Service Party,” and collectively, the “Service Parties”):
 - (a) Counsel for the Debtors: Foley & Lardner LLP, Attention: Gardner F. Davis at gdavis@foley.com, and John J. Wolfel, Jr. at jwolfel@foley.com;
 - (b) Counsel for the administration agent under Debtors’ prepetition revolving credit facility, Wells Fargo Bank, National Association: Otterbourg P.C, Attention: Daniel F. Fiorillo at dfiorillo@otterbourg.com and Chad B. Simon at CSimon@otterbourg.com;
 - (c) Counsel for the administrative agent under Debtors’ prepetition term loan, Gordon Brothers Finance Company LLC:
 - (i) Morgan, Lewis & Bockius LLP, Attention Matthew F. Furlong at matthew.furlong@morganlewis.com, Julia Frost-Davies at Julia.frost-davies@morganlewis.com and Christopher L. Carter at christopher.carter@morganlewis.com; and
 - (ii) Holland & Knight, Attention: Alan Weiss at alan.weiss@hkclaw.com;
 - (d) Office of the United States Trustee, Attention: _____; and
 - (e) any other party that the Court designates.

4. The Monthly Statement shall not be filed with the Court inasmuch as the implementation of these procedures shall not obviate the requirement to file interim and final applications for allowance in accordance with Sections 330 and 331 of the Bankruptcy Code.

5. Each Monthly Statement shall contain a list of the individuals who provided services during the statement period, their respective job titles and billing rates, the aggregate number of hours spent by each individual, contemporaneously maintained time entries for each individual, and a reasonably detailed breakdown of disbursements incurred. The descriptions of time entries may be redacted as appropriate.

6. A Professional who fails to file a Monthly Statement shall not be precluded from utilizing the interim compensation procedures prescribed by this Order in subsequent months.

7. A Service Party asserting an objection to the compensation or reimbursement sought in a particular Monthly Statement shall serve, so as to be received within ten (10) days after service of the Monthly Statement, upon the Professional to whose Monthly Statement the objection is asserted and the other Service Parties a written notice of objection setting forth the nature of the objection and the amount of compensation or expense reimbursement at issue. The objecting party shall attempt in good faith to object to only that portion of the statement that is deemed to be objectionable.

8. Unless a timely written objection has been served in accordance with this Order, the Debtor is authorized, immediately following the completion of the 10-day period referenced in Paragraph 7 above, to pay eighty percent (80%) of the compensation amount and one hundred percent (100%) of the expense reimbursement amount identified in each Monthly Statement. Professionals holding retainer balances may draw down one hundred percent (100%) of their fees and expenses from retainer funds until the retainer funds have been exhausted.

9. If the Debtor receives an objection to a particular Monthly Statement, it shall withhold payment of that portion of the Monthly Statement to which the objection is directed and promptly pay the remainder of compensation and expense reimbursement in the percentages set forth in Paragraph 8 above.

10. If an objecting party resolves a disputed fee or expense amount with the Professional, the objecting party or the Debtor shall provide written notice to the Service Parties that the objection has been withdrawn and shall describe the terms of the resolution.

11. Any objection that is not resolved by the parties shall be preserved and presented to the Court at the next fee application hearing.

12. The decision by a party not to object to the Monthly Statement of a Professional shall neither constitute a waiver of nor prejudice that party's right to object to any subsequent fee application.

13. Approximately every four (4) months, each Professional utilizing the procedures described in this Order shall serve and file with the Court, pursuant to Sections 330 and 331 of the Bankruptcy Code and Fed. R. Bankr. P. 2016, an application for interim or final approval and allowance of compensation and reimbursement of expenses, including compensation and expense reimbursement amounts previously paid by the Debtor on the basis of Monthly Statements.

14. The first series of interim fee applications, reflecting fees and costs incurred by the Professionals from August 12, 2020 through November 30, 2020, may be filed on or before December 10, 2020. The second series of interim fee applications, reflecting fees and costs incurred by Professionals from December 1, 2020 through March 31, 2021, may be filed on or before April 9, 2021. Thereafter, interim fee applications may be filed in similarly scheduled four-month intervals. Upon each four-month interval, the Court will schedule and conduct a hearing,

upon notice in accordance with Fed. R. Bankr. P. 2002(a)(6), to consider and act upon all pending interim fee applications.

15. Notwithstanding anything to the contrary in this Order, payment made or action taken by any of the Debtors pursuant to the authority granted in this 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 Order, the terms of the Cash Collateral Order shall control.

16. A determination by the Court that payment of compensation or reimbursement of expenses was improper with respect to a particular Monthly Statement shall not disqualify a Professional from future payment of compensation or reimbursement of expenses as set forth above, unless otherwise ordered by the Court.

17. Neither the payment of nor the failure to pay, in whole or in part, monthly compensation and expense reimbursement as provided in this Order shall have any effect on the Court's interim or final allowance of compensation and reimbursement of expenses of any Professional.

18. The Debtor shall include all payments to Professionals in its monthly operating reports, detailed to reflect the amount paid to each Professional.

19. Additional Professionals employed by the Debtor or the Official Committee of Unsecured Creditors pursuant to authorization from this Court are authorized to participate in the interim compensation procedures set forth in this 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.