

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

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING MAINTENANCE, ADMINISTRATION,
AND CONTINUATION OF DEBTORS' CUSTOMER PROGRAMS**

BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, these “Chapter 11 Cases”) hereby move the Court (this “Motion”) for entry of an interim order (the “Interim Order”) and a final order (the “Final Order,” and together with the Interim Order, the “Proposed Orders”), substantially in the forms attached hereto as **Exhibits A** and **B**, respectively, pursuant to sections 105(a) and 363(b) 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”), (a) authorizing the Debtors to maintain and administer customer-related programs in the ordinary course of business and in a manner consistent with past practice as described herein (collectively, the “Customer Programs”), (b) authorizing the Debtors to continue, replace, implement, modify and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (c) authorizing banks and other financial institutions (collectively, the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

“Banks”) to honor and process check and electronic transfer requests related to the foregoing, and (d) granting related relief. In support of this Motion, the Debtors rely on the *Declaration of Spencer M. Ware in Support of Chapter 11 Petitions and Requests for First Day Relief* (the “First Day Declaration”),² which was filed contemporaneously with this Motion and is incorporated herein by reference. In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over these Chapter 11 Cases and this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue of these Chapter 11 Cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105 and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

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

BACKGROUND

A. General Background

3. On January 14, 2022 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases. Additional factual background relating to the Debtors’ business, capital structure and the commencement of these Chapter 11 Cases is set forth in detail in the First Day Declaration.

4. The Debtors are a leading beauty brand specializing in clean, vegan, and cruelty-free cosmetics and other beauty products. The Debtors sell their products on their e-commerce platform directly to consumers and wholesale to various major retailers. On or about September 29, 2021, the Debtors engaged an investment banker to conduct an exhaustive search to identify a going concern buyer. In parallel, the Debtors commenced various operational cost-savings initiatives to improve liquidity. When it became clear that a going concern sale may not be successful, the Debtors engaged a professional liquidator to commence a liquidation of their physical inventory assets (the “Inventory Sale Process”). In addition, the Debtors engaged a firm to focus on the sale of their intellectual property assets (together with the Inventory Sale Process, the “Sale Process”).

5. After a robust and thorough approximately four (4) month marketing and solicitation process, and in consultation with their professional advisors and prepetition lenders, the Debtors ultimately secured a stalking horse agreement with RBI Acquisition Holdings, LLC for the sale of a substantial portion of the Debtors’ assets.

6. The Debtors filed these Chapter 11 Cases with the goal of (i) monetizing their assets; (ii) maximizing the value of their assets for the benefit of their creditors and parties in interest; and (iii) minimizing estate obligations, to the extent possible. To that end, the Debtors will proceed with a robust bidding and auction process to maximize the value of the Debtors' assets for the benefit of the Debtors' estates and all stakeholders. Once the Debtors consummate the sale of their assets, the Debtors will close their merchandise distribution center and look to unburden the estates of the administrative expenses associated therewith and monetize the non-inventory assets located therein. The Debtors anticipate that the Sale Process will be completed in the first quarter of 2022.

B. The Customer Programs

7. The Debtors' customers are e-commerce end users of the Debtors' product and major cosmetics retailers who purchase the Debtors' products for resale. In the ordinary course of business, the Debtors provide their customers with certain Customer Programs that generate goodwill, maintain loyalty, and increase the Debtors' sales opportunities. Specifically, the Debtors offer gift cards, electronic vouchers and discount codes, coupons and other promotional offers to their customers, as well as process customer purchases through the use of credit cards and other non-cash methods of payment. The Debtors believe that their ability to continue the Customer Programs during the Sale Process will maximize proceeds realized therefrom, thereby benefitting all of the Debtors' stakeholders.

i. Gift Card Program

8. In the ordinary course of business, the Debtors have historically sold electronic gift cards (the "Gift Cards") to customers in various denominations that can be redeemed to purchase goods and services from the Debtors through their e-commerce platform (the "Gift

Card Program”). Customers could purchase Gift Cards through the Debtors’ website, www.bhcosmetics.com.

9. The Debtors have discontinued the practice of selling Gift Cards. However, the Debtors intend to honor previously purchased Gift Cards during the pendency of the Sale Process. The Debtors estimate that there is approximately \$104,000 outstanding on account of the Gift Card Program. The Debtors request authority, in their sole discretion, to honor all Gift Cards purchased prior to the Petition Date.

ii. Promotional Offers

10. The Debtors offer various online promotional offers to customers throughout the year (collectively, the “Promotions”). The Promotions are aimed at driving sales and maintaining market competitiveness, and they generally provide discounts to customers, such as “percentage off,” student discounts, discount codes, and free shipping. The Debtors seek authority to continue offering these Promotions postpetition in the ordinary course of business and in a manner consistent with past practice in an effort to bolster sales, thus creating value for the estates and all interested parties.

iii. Rebate Program

11. The Debtors also maintain a rebate program for certain wholesale customers (the “Rebate Program”). The Rebate Program is available to certain of the Debtors’ wholesale customers, in an amount up to 2%, depending on whether the Debtors’ wholesale customers meet certain sales targets and other related metrics. Under the Rebate Program, certain of the Debtors’ customers accrue rebates over time, which are applied to outstanding invoices and are not a cash obligation.

iv. Refund and Return Program

12. The Debtors allow refunds or replacements of product in certain limited circumstances (the “Refund or Replacement Program”), for example, in the event that a customer’s order has missing, wrong, or damaged items. The Debtors request authority, in their sole discretion, to honor prepetition obligations associated with the Refund or Replacement Program and to maintain and continue honoring the Refund or Replacement Program in the ordinary course of business and in a manner consistent with past practice during the pendency of these Chapter 11 Cases.

13. In addition, for certain of the Debtors’ wholesale customers, the Debtors accept returns of unsold product (the “Return Program”). Specifically, in the ordinary course of the Debtors’ business, the Debtors sell product to certain wholesale customers, who, in turn, sell the products to consumers at the retail level. In some circumstances, if the wholesale customers are unable to sell the Debtors’ products, the Debtors will accept a return of the unsold product in exchange for a credit against current or future amounts owed by the wholesale customer. Notably, credits offered under the Return Program are not eligible for a cash refund. As of the Petition Date, the Debtors estimate that accruals on account of the Return Program could total up to approximately \$325,000.

C. Credit Card and Other Payment Processors

14. In addition to cash, the Debtors accept several other methods of payment from customers, including: (i) credit cards; (ii) PayPal; (iii) Afterpay; (iv) Shop Pay; and (v) debit cards. For all methods of payment, the Debtors receive the net customer sales less any chargebacks, returns and processing fees charged by the credit card companies, internet vendors, or other third-party payment processors (the “Payment Processors”). The processing fees charged by each Payment Processor varies, but are in the range of 1% to 4%. The fees that are owing to

the Payment Processors are set off from the funds that are remitted to the Debtors by the Payment Processors on a daily basis.

15. Maintaining continued use of the credit cards and other non-cash payment mechanisms, such as PayPal, Shop Pay, and Afterpay, which are used for online purchases from the Debtors' website, is essential to the Debtors' sale efforts and to preserve and promote liquidity because the vast majority of the Debtors' retail sales are made using these payment methods. By this Motion, the Debtors request authority, in their sole discretion, to allow the Payment Processors to continue to process the customer payments, including deducting processing fees in the ordinary course of business and in a manner consistent with past practice.

RELIEF REQUESTED

16. The Debtors hereby request entry of the Proposed Orders, pursuant to sections 105 and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtors to maintain and administer the Customer Programs in the ordinary course of business and in a manner consistent with past practice; (ii) authorizing the Debtors to continue, replace, implement, modify and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order; (iii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and (iv) granting related relief.

BASIS FOR RELIEF

A. Honoring Customer Program Commitments Is Warranted Under Sections 105(a) and 363(b) of the Bankruptcy Code

17. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363 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). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (discussing prior order authorizing payment of prepetition wage claims pursuant to section 363(b) of the Bankruptcy Code). To do so, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” *Id.*

18. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the equitable powers of the bankruptcy court, empowers the court to “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). Under section 105(a) of the Bankruptcy Code, courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *Ionosphere Clubs*, 98 B.R. at 175. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “doctrine of necessity.” *Id.* at 175–76.

19. The United States Court of Appeals for the Third Circuit recognized the doctrine of necessity in *In re Lehigh & New England Railway. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (recognizing that the necessity of payment doctrine permits “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 Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

20. The rationale for the doctrine of necessity—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *see also Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process.”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation . . .” is appropriate); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.”); 2 Collier on Bankruptcy ¶ 105.04[5][a] (16th ed. 2013) (discussing cases in

which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

21. Accordingly, the Court has authority to authorize the Debtors to continue the Customer Programs, and pay prepetition claims arising thereunder (as applicable), pursuant to sections 363(b) and 105(a) of the Bankruptcy Code.

22. The Customer Programs are standard in the retail industry. The Customer Programs allow the Debtors to meet competitive pressures, ensure customer satisfaction, and generate customer goodwill, thereby enhancing revenue. Continuing to administer the Customer Programs without interruption during the pendency of these Chapter 11 Cases will help generate maximum value as the Debtors pursue their sale efforts.

23. The Debtors submit that the substantial benefit conferred on the Debtors’ estates by the Customer Programs substantially outweighs the costs associated therewith. Accordingly, the Debtors respectfully request the authority to continue the Customer Programs and honor prepetition commitments related thereto, all in the Debtors’ sole discretion, in the ordinary course of business, and in a manner consistent with past practice. In addition, the Debtors respectfully request authority to continue, replace, implement, modify and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order.

B. Processing of Checks and Electronic Fund Transfers Should be Authorized

24. The Debtors have sufficient funds to pay any amounts related to the Customer Programs in the ordinary course of business. Under the Debtors’ existing cash management system, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the Customer Programs, as applicable. The Debtors believe that there is minimal risk that checks or wire transfer requests that the Court has not authorized will be

inadvertently made. Thus, the Debtors request that the Court authorize all applicable Banks to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Customer Programs.

IMMEDIATE RELIEF IS NECESSARY

25. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. The Debtors submit that for the reasons set forth above and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors.

WAIVER OF ANY APPLICABLE STAY

26. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates through, among other things, the Debtors’ liquidation efforts. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

27. Nothing contained herein is intended to be or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors’ rights to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest

any invoice or claim on account of any Customer Obligation. 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 as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

28. Notice of this Motion has been given to (i) the U.S. Trustee; (ii) counsel to Fifth Third Bank, National Association; (iii) holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (iv) the Office of the United States Attorney General for the District of Delaware; (v) the Internal Revenue Service; (vi) the Securities Exchange Commission; (vii) the Banks; and (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the Proposed Orders, substantially in the forms attached hereto as **Exhibits A** and **B**, (i) granting the relief requested herein, and (ii) granting such other relief as is just and proper.

Dated: January 15, 2022
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ S. Alexander Faris

M. Blake Cleary (No. 3614)
Allison S. Mielke (No. 5934)
S. Alexander Faris (No. 6278)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Tel: (302) 571-6600
Fax: (302) 571-1253
Email: mbcleary@ycst.com
amielke@ycst.com
afaris@ycst.com

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Interim Order

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

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Jointly Administered)

Ref. Docket No. ____

**INTERIM ORDER AUTHORIZING MAINTENANCE, ADMINISTRATION, AND
CONTINUATION OF DEBTORS' CUSTOMER PROGRAMS**

Upon consideration of the motion (the "Motion")² of the Debtors for entry of an interim order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtors to maintain and administer customer-related programs as described in the Motion (collectively, the "Customer Programs") in the ordinary course of business and in a manner consistent with past practice, (ii) authorizing the Debtors to continue, replace, implement, modify and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (iii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (d) granting related relief; and upon consideration of the First Day Declaration and the entire record of these Chapter 11 Cases; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors' service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

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

Delaware dated February 29, 2012; and it appearing that the matter is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Chapter 11 Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; 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 THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs and to honor the obligations thereunder in the ordinary course of business and in a manner consistent with past practice as set forth in the Motion.
3. The Debtors are authorized to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order.
4. The Banks are authorized, but not directed, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that

sufficient funds are available in the applicable bank accounts to make such payments. The Banks are authorized, but not directed, to rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

5. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as (i) an admission as to the validity or priority of any claim or lien against the Debtors or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or (ii) a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity or amount of any payment made pursuant to this Order.

6. The Payment Processors used by the Debtors are authorized to offset chargebacks, returns, and fees on account of customer purchases in the ordinary course of business and in a manner consistent with past practice that may have arisen before the Petition Date.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the Customer Programs.

8. Objections to entry of an order granting the Motion on a final basis must be filed by _____, 2022 at 4:00 p.m. (ET) and served on: (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. (mbcleary@ycst.com) and Allison S. Mielke, Esq. (amielke@ycst.com); (ii) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington,

Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov); (iii) counsel to the Debtors' prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100 Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300 Wilmington, DE 19801; and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases. A final hearing, if required, on the Motion will be held on _____, 2022 at _____ .m. (ET). If no objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

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

10. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (iii) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Order.

11. This Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

EXHIBIT B

Final Order

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

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Jointly Administered)

Ref. Docket Nos. __ & __

**FINAL ORDER AUTHORIZING MAINTENANCE, ADMINISTRATION, AND
CONTINUATION OF DEBTORS' CUSTOMER PROGRAMS**

Upon consideration of the motion (the "Motion")² of the Debtors for entry of a final order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtors to maintain and administer customer-related programs as described in the Motion (collectively, the "Customer Programs") in the ordinary course of business and in a manner consistent with past practice, (ii) authorizing the Debtors to continue, replace, implement, modify and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order, (iii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing, and (d) granting related relief; and upon consideration of the First Day Declaration and the entire record of these Chapter 11 Cases; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors' service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

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

February 29, 2012; and it appearing that the matter is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Chapter 11 Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest; 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 THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs and to honor the obligations thereunder in the ordinary course of business and in a manner consistent with past practice as set forth in the Motion.
3. The Debtors are authorized to continue, replace, implement, modify, and/or terminate one or more of the Customer Programs, in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court order.
4. The Banks are authorized, but not directed, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks

are authorized, but not directed, to rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

5. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as (i) an admission as to the validity or priority of any claim or lien against the Debtors or an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code or (ii) a waiver of the right of the Debtors, or shall impair the ability of the Debtors, to contest the validity or amount of any payment made pursuant to this Order.

6. The Payment Processors used by the Debtors are authorized to offset chargebacks, returns, and fees on account of customer purchases in the ordinary course of business and in a manner consistent with past practice that may have arisen before the Petition Date.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the Customer Programs.

8. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (iii) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Order.

9. This Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order