

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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IN RE:

Chapter 11 Cases

RED LOBSTER MANAGEMENT LLC, ¹	Case No. 6:24-bk-_____
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-_____
RLSV, INC.,	Case No. 6:24-bk-_____
RED LOBSTER CANADA, INC.	Case No. 6:24-bk-_____
RED LOBSTER HOSPITALITY LLC	Case No. 6:24-bk-_____
RL KANSAS LLC	Case No. 6:24-bk-_____
RED LOBSTER SOURCING LLC	Case No. 6:24-bk-_____
RED LOBSTER SUPPLY LLC	Case No. 6:24-bk-_____
RL COLUMBIA LLC	Case No. 6:24-bk-_____
RL OF FREDERICK, INC.	Case No. 6:24-bk-_____
RED LOBSTER OF TEXAS, INC.	Case No. 6:24-bk-_____
RL MARYLAND, INC.	Case No. 6:24-bk-_____
RED LOBSTER OF BEL AIR, INC.	Case No. 6:24-bk-_____
RL SALISBURY, LLC,	Case No. 6:24-bk-_____
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-_____

Debtors.

(Joint Administration Pending)

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING DEBTORS TO PAY CERTAIN SECTION 503(b)(9) CLAIMS IN
THE ORDINARY COURSE OF BUSINESS, AND (II) GRANTING RELATED RELIEF**

(Emergency Hearing Requested)

Basis for Requested Emergency Relief

The Debtors respectfully request that the Court conduct an emergency hearing on this Motion. It is essential that the Debtors continue to receive uninterrupted goods from vendors which are essential to the Debtors' continued operations of their retail restaurant business. In order to secure continued supply of essential goods by these vendors, the Debtors seek through this Motion to pay

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices are located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

in the ordinary course for goods delivered to the Debtors within twenty (20) days of the Petition Date and which are therefore eligible for payment as administrative expense claims pursuant to Bankruptcy Code section 503(b)(9). The Debtors reasonably believe that a hearing to consider the relief requested herein must be held on an emergency basis as soon as the Court's calendar will permit in order to avoid direct, immediate, and substantial harm to the Debtors' bankruptcy estates.

The above-captioned debtors and debtors-in-possession (each, a "Debtor", and collectively, the "Debtors"), hereby file this motion (the "Motion"), seeking the entry of an order, in the form attached as **Exhibit A** (the "Proposed Order"), authorizing the Debtors to pay in the ordinary course certain vendors solely in respect of claims that are entitled to administrative expense claim priority status pursuant to section 503(b)(9) of the Bankruptcy Code. The goods provided by these vendors are essential to the ongoing operation of the Debtors' retail restaurant business. In support of this Motion, the Debtors rely upon the *Declaration of Jonathan Tibus in Support of Chapter 11 Petitions and First Day Relief* (the "First Day Declaration"), which was filed on or about the date hereof, and respectfully represent the following:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are sections 105, 363, and 503 of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9013-1(d) of the Local Rules of the United States Bankruptcy Court for the Middle District of Florida.

Procedural Background

4. On May 19, 2024 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors are operating their businesses and managing their affairs as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

6. For a detailed description of the Debtors and their operations, the Debtors respectfully refer the Court and parties in interest to the First Day Declaration.

Relief Requested

7. By the Motion, pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, the Debtors request authority, but not direction, to (i) pay in the ordinary course of business prepetition amounts owed to certain vendors solely for goods delivered to the Debtors within twenty (20) days of the Petition Date and whose prepetition claims are thus entitled to administrative expense priority status under section 503(b)(9) of the Bankruptcy Code; (ii) provide administrative expense priority status for all undisputed obligations of the Debtors arising out of Outstanding Orders (defined below); and (iii) obtain related relief. The Debtors request, pursuant to this Motion, authority to pay upon entry of the Proposed Order, the 503(b)(9) Claims (as defined below) in an amount not to exceed \$49,838,000 as they become due in the ordinary course of business and only on such terms and conditions as are appropriate, in the Debtors' business judgment, to minimize any disruptions to the Debtors' businesses. For the avoidance of doubt, the Debtors do not seek relief to pay a 503(b)(9) Vendor (defined herein) for any prepetition claim that is not entitled to administrative expense priority pursuant to section 503(b)(9) of the Bankruptcy Code.

8. The Debtors further request that the Court (a) authorize all applicable financial institutions (collectively, the “Banks”) to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing to the extent directed by the Debtors in accordance with the Motion and to the extent the Debtors have sufficient funds on deposit in their accounts with such Banks, whether such checks were presented or electronic requests were submitted before, on, or after the Petition Date and (b) authorize all Banks to rely on the Debtors’ designation of any particular check or electronic payment request as appropriate pursuant to the Motion without any duty of further inquiry and without liability for following the Debtors’ instructions.

The Debtors’ 503(b)(9) Vendors

A. 503(b)(9) Vendors

9. The Debtors are a leading seafood restaurant unit operator in the United States and one of the largest sustainable seafood purchasers worldwide. As of the Petition Date, the Debtors own and operate approximately 551 restaurants in 44 states across the United States and 27 restaurants in Canada. To operate these restaurants, the Debtors rely on various vendors, suppliers, and distributors to provide the Debtors with various perishable and nonperishable items (such vendors, suppliers, and distributors, each a “503(b)(9) Vendor” and collectively, the “503(b)(9) Vendors” and their prepetition claims, each a “503(b)(9) Claim” and collectively, the “503(b)(9) Claims”). In the past twelve months, the Debtors paid approximately \$750 million in the ordinary course of business to purchase perishable and nonperishable goods from approximately 4,000 vendors.

10. Within the 20-day period before the Petition Date and in the ordinary course of business, the Debtors received goods (including food and beverages) from approximately 450 503(b)(9) Vendors totaling approximately \$49,838,000. Failure to pay the 503(b)(9) Vendors at

the outset of these Chapter 11 Cases on account of their 503(b)(9) Claims—100% of which claims are entitled to administrative expense priority under section 503(b)(9)—could result in the 503(b)(9) Vendors refusing to do business with the Debtors moving forward. Further, absent timely payment of their 503(b)(9) Claims, the 503(b)(9) Vendors may also impose stricter payment terms on the Debtors, negatively impacting their liquidity position.

11. Moreover, because of the Debtors' size and demand for supply, many of the 503(b)(9) Vendors also manage the Debtors' upstream supply chain, including by entering into third party agreements with suppliers of discrete goods, obtaining the goods from that supplier, warehousing the goods and subsequently apportioning and delivering them to each of the Debtors' Canadian and American store locations. If the management and delivery of supplies to the Debtors is interrupted or altogether stopped, the Debtors will be unable to operate their restaurants and would suffer short- and long-term negative economic effects as a result.

12. Without ongoing and uninterrupted operation of their businesses, the Debtors would be immediately and seriously disadvantaged given the highly competitive casual dining restaurant market segment in which they operate. Any disruption in the Debtors' operations may lead to negative customer perception of the Debtors' brand and irreparable loss of business. The stability and performance of the Debtors' business depends on, among other things, the Debtors' ability to retain the 503(b)(9) Vendors and to maintain their reputation, goodwill, and customer loyalty. Further, replacing the 503(b)(9) Vendors would, in many instances, be impossible during the pendency of these chapter 11 cases, and when possible, would result in substantial additional costs and delays for the Debtors and their estates that could materially harm the Debtors' going-concern value.

13. Additionally, some of the 503(b)(9) Vendors supply the Debtors with fresh produce, seafood, meat, poultry, and other foodstuffs (the “Fresh Goods”) in order to serve their customers in the Debtors’ restaurant business. Without ongoing and uninterrupted access to the Fresh Goods, the Debtors will be unable to operate their businesses.

14. Certain portions of the Fresh Goods sold to the Debtors qualify as “perishable agricultural commodities” under PACA.² See *Pacific Int’l Marketing v. A & B Produce, Inc.*, 462 F.3d 279, 282 (3d Cir. 2006). PACA provides various protections to fresh fruit and vegetable sellers, including the establishment of a statutory constructive trust (“PACA Trust”) consisting of a purchaser’s entire inventory of food or other derivatives of perishable agricultural commodities, the products derived therefrom and the proceeds related to any sale of the commodities or products (collectively, the “PACA Trust Assets”). See 7 U.S.C. § 499e(c)(2). PACA Trust beneficiaries are entitled to receive payment of sale goods ahead of other creditors of the buyer, including creditors that have liens or other security interest in the buyers’ interests. *Bear Mountain Orchards v. Mich-Kim, Inc.*, 623 F.3d 163, 167 (3d Cir. 2010), *Pacific Int’l Marketing*, 262 F.3d at 283 (“PACA statutory trust grants certain unpaid suppliers and sellers of produce and their agents an interest in the PACA trust assets superior to that of a buyer’s perfected, secured creditor.”). PACA requires that certain procedural steps be taken by a seller of perishable agricultural commodities in order to preserve its rights as a trust beneficiary. For the vendors of the Fresh Goods that qualify under PACA, insofar as those vendors abide by the notice requirements of PACA, such vendors will be eligible to assert claims (the “PACA Claims”) granting them priority ahead of all other secured and unsecured creditors in these chapter 11 cases.

² The Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§ 499a *et seq.* (“PACA”) and the Packers and Stockyards Act of 1921, as amended, 7 U.S.C. § 181 *et seq.* (“PASA”).

15. Similarly, certain of the Debtors' suppliers may be eligible to assert claims under PASA, which prescribes the conditions of operations for businesses dealing in livestock and poultry. Much like PACA, PASA creates a statutory trust (the "PASA Trust" and, together with the PACA Trust, the "Statutory Trusts") scheme, in respect of delivery of livestock, meat products and related products, products derived therefrom and the proceeds related to the sale of such commodities or products (collectively, the "PASA Trust Assets" and, together with the PACA Trust Assets, the "Trust Assets"). PASA Trust Assets are not property of a debtor's estate; thus, as with PACA Claims, claims based on a PASA statutory trust (the "PASA Claims") must be satisfied ahead of the claims of any secured creditors holding liens on a buyer's inventory or accounts receivable. *See Bast v. Orange Meat Packing Co. (In re G&L Packing Co.)*, 20 B.R. 789, 801 (Bankr. N.D. 1982) ("Congress intended unpaid cash sellers to satisfy their claims from the packer's assets (inventoried livestock delivered by the cash seller and accounts receivable and other proceeds from the sale of such livestock) before satisfying any (Uniform Commercial Code) Article 9 perfected security interest in those assets.") Potential claimants arising under PACA and/or PASA include large food distributors. The Debtors believe that at least \$3,856,000 of the 503(b)(9) Claims are entitled to PACA/PASA protections on account of Fresh Goods.

B. Outstanding Orders

16. As of the Petition Date, the Debtors have certain prepetition purchase orders outstanding with 503(b)(9) Vendors for goods requested by the Debtors that have not yet been delivered or provided to the Debtors (the "Outstanding Orders"). These 503(b)(9) Vendors may be concerned that because the Debtors' obligations under these Outstanding Orders arose before the Petition Date, such obligations will be treated as general unsecured claims in these chapter 11 cases. Accordingly, these 503(b)(9) Vendors may refuse to provide goods or services to the Debtors purchased pursuant to the Outstanding Orders unless the Debtors issue substitute purchase

orders postpetition or obtain an order of the Court (a) confirming that all undisputed obligations of the Debtors arising from the postpetition delivery of goods or services subject to the Outstanding Orders are afforded administrative expense priority status under section 503(b) of the Bankruptcy Code and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

17. As discussed above and in the First Day Declaration, any delay in the shipment or delivery of goods or services could bring the Debtors' operations to a halt, which would irreparably harm the Debtors' businesses. The Debtors estimate that the total amount due and owing under the Outstanding Orders for goods that are not scheduled to be delivered or provided until after the Petition Date are approximately \$16,423,000.

Relief Requested Should Be Granted

A. Payment of 503(b)(9) Vendor Claims is Warranted Under Sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code and Under the Doctrine of Necessity

18. Section 503(b)(9) provides administrative priority for the "value of any goods received by the debtor within 20 days before the commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). Accordingly, the 503(b)(9) Claims are entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code and would have to be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A).

19. Importantly, pursuant to their proposed debtor-in-possession financing, the Debtors will have sufficient funds to satisfy these administrative expenses in the ordinary course, and the proposed DIP lenders affirmatively support the payments on account of 503(b)(9) Claims. Bankruptcy Courts regularly approve payment of claims entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code. *See, e.g., In re KidKraft, Inc., et al*, No. 24-80045-mvl-11 (Bankr. N.D. Tex. May 14, 2024); *In re Steward Health Care System LLC, et al.*, No. 24

90213 (CML) (Bankr. S.D. Tex. May 8, 2024); *In re Casa Systems, Inc.* et al., No. 24-10695 (KBO) (Bankr. D. Del. Apr. 5, 2024); *In re Never Slip Holdings, Inc.*, et al., No. 24-10663 (LSS) (Bankr. D. Del. Apr. 4, 2024); *In re Eiger Biopharmaceuticals, Inc.*, et al., No. 24-80040 (SGJ) (Bankr. N.D. Tex. Apr. 5, 2024); *In re Enviva Inc.*, et al., No. 24-10453 (BFK) (Bankr. E.D. Va. Mar. 14, 2024); *In re Thrasio Holdings, Inc.*, et al., No. 24-11840 (CMG) (Bankr. D. N.J. Mar. 1, 2024); *In re Robertshaw US Holding Corp.*, et al., No. 24-90052 (CML) (Bankr. S.D. Tex. Feb. 15, 2024); *In re Nanostring Technologies, Inc.*, et al., No. 24-10160 (CTG) (Bankr. D. Del. Feb. 6, 2024); *In re Careismatic Brands, LLC, et al.*, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 24, 2024); *In re PARTS iD, Inc.*, et al., No. 23-12098 (LSS) (Bankr. D. Del. Dec. 28, 2023); *In re Mercon Coffee Corporation*, et al., No. 23-11945 (MEW) (Bankr. S.D.N.Y. Dec. 13, 2023); *In re Strategic Materials, Inc.*, et al., No. 23-90907 (CML) (Bankr. S.D. Tex. Dec. 5, 2023); *In re Anagram Holdings, LLC*, et al., No. 23-90901 (MI) (Bankr. S.D. Tex. Nov. 10, 2023); *In re Rite Aid Corporation*, et al., No. 23-18993 (MBK) (Bankr. D.N.J. Oct. 18, 2023); *In re MVK FarmCo LLC*, et al., No. 23-11721 (LSS) (Bankr. D. Del. Oct. 17, 2023); *In re SmileDirectClub, Inc.*, et al., No. 23-90786 (CML) (Bankr. S.D. Tex. Oct. 2, 2023).

20. In addition to the status provided in the Bankruptcy Code for these 503(b)(9) Claims, the Court also has authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code as well as section 363 of the Bankruptcy Code, to approve the relief requested herein. Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to “issue any order, process, or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Under section 105(a), a

court can permit the pre-plan payment of a prepetition obligation when it is essential to the continued operation of the debtor. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (“[t]o invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is ‘critical to the debtor’s reorganization.’”) (internal quotation omitted); *see also, e.g., Miltenberger v. Logansport, Crawfordsville and Southwestern Ry. Co.*, 106 U.S. 286, 311 (1882) (“[m]any circumstances may exist which may make it necessary and indispensable to the business of the road and the preservation of the property, for the receiver to pay pre-existing debts of certain classes out of the earnings of the receivership....”); *Just For Feet, Inc.*, 242 B.R. at 825 (“[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of prepetition claims when such payment is necessary for the survival during Chapter 11.”);³ *In re Jeans.com, Inc.*, 502 B.R. 250, 253-54, 257-59 (Bankr. D. P.R. 2013) (authorizing payment of budgeted pre-petition amounts applying three-part standard enunciated in *Tropical Sportwear*, and discussing related necessity of payment doctrine); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payments of prepetition claims where “the payment is necessary to avert a serious threat to the Chapter 11 process.”); *see also In re Cargo Transp. Svcs., Inc.*, No. 8:11-bk-00432-MGW (Bankr. M.D. Fla. Jan. 20, 2011) (court enters interim order granting motion to pay prepetition claims of certain vendors under authority of sections 105 and 363 of the Bankruptcy Code); *In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 17 (Bankr. M.D. Fla. 2005) (noting that “[b]ankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks” and approving over \$6 million in payments to four critical vendors); *In re UAL Corp.*,

³ The “doctrine of necessity” is sometimes referred to as the “necessity of payment” doctrine or “necessity of payment” rule, and falls within a bankruptcy court’s equitable powers under Section 105(a) of the Bankruptcy Code. *See id.* at 824 (“Certain prepetition claims by employees and trade creditors . . . may need to be paid to facilitate a successful reorganization.”) (citing 11 U.S.C. § 105(a)).

et al., No. 02-B-48191 (ERW) (Bankr. N.D. Ill. Dec. 11, 2002) (authorizing the debtors to pay pre-petition trade claims of essential trade creditors pursuant to sections 363 and 364 of the Bankruptcy Code)); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 397–98 (S.D.N.Y. 1983) (reasoning that payment to prepetition vendors was a reasonable response to business exigencies).

21. Under the “necessity of payment” doctrine articulated in the above cases, the payment of the 503(b)(9) Claims is manifestly warranted. The seamless transition into chapter 11 is critical to the continued operations of the Debtors’ business. The Debtors’ ongoing ability to obtain goods necessary for its business operations is essential to its ability to preserve and enhance value for all parties in interest in these chapter 11 cases. Absent the authority to pay the 503(b)(9) Claims in the ordinary course of business at the outset of these chapter 11 cases, the Debtors could be denied access to the goods necessary to maintain the Debtors’ business operations. The failure to timely honor the 503(b)(9) Claims may also cause the Debtors’ supply chains to withhold their support for the Debtors during the chapter 11 process or eliminate favorable trade terms. Such costs and distractions would likely impair the Debtors’ ability to stabilize their operations at this critical juncture to the detriment of all parties in interest. Furthermore, authorizing the Debtors to pay the 503(b)(9) Claims pursuant to the terms set forth herein will eliminate the burden on the Court and the Debtors of individual motions requesting payment on account of the 503(b)(9) Claims.

22. If the 503(b)(9) Claims are not paid, the 503(b)(9) Vendors may terminate the supply services they provide to the Debtors and operations of the Debtors’ business will be jeopardized to the detriment of all creditors. Interrupting the business relationship of the Debtors, on the one hand, and the 503(b)(9) Vendors, on the other hand, if not fatal to the Debtors’ efforts

to operate inside a chapter 11 proceeding, will severely impair that effort to the detriment of the Debtors' estate and the creditors thereof.

23. For these reasons, even apart from the administrative expense status afforded by the Bankruptcy Code, the 503(b)(9) Claims easily satisfy the standard applied in this District for a determination as to whether a prepetition claim should be paid: "(i) the payments are necessary to the reorganization process; (ii) a sound business justification exists in that the critical vendor(s) refuse to continue to do business with the debtor absent being afforded critical vendor status; and (iii) the disfavored creditors are at least as well off as they would have been had the critical vendor order not been entered." *Tropical Sportswear*, 320 B.R. at 17.

24. The Debtors' request for authority to honor the 503(b)(9) Claims is consistent with the priorities established by the Bankruptcy Code and necessary to preserve the value of their operations during these chapter 11 cases. The Debtors' authority to address the 503(b)(9) Claims in the initial days of these cases will send a clear signal to their suppliers and customers that the Debtors are both willing and, importantly, able to conduct business as usual after the Petition Date. As such, failure to authorize the Debtors to pay the 503(b)(9) Claims as provided herein would substantially jeopardize these chapter 11 cases and result in degradation of value to the detriment of the Debtors' creditors. And Bankruptcy Courts in the Middle District of Florida and others within the Eleventh Circuit have approved payment of prepetition claims held by vendors who provided services that were deemed essential to the debtor's business and reorganization efforts. *In re Alrod Logistics, Inc.*, No. 3:23-bk-01820-BAJ (Bankr. M.D. Fla. Mar. 19, 2024); *In re International Granite & Stone, LLC*, No. 8:24-bk-00706-RCT (Bankr. M.D. Fla. Mar. 18, 2024); *In re Starboard Group of Space Coast, LLC, et al.*, No. 6:23-bk-04797 (Bankr. M.D. Fla. Nov. 27, 2023); *In re Post Oak TX, LLC*, No. 21-18563-EPK (Bankr. S.D. Fla. Sept. 17, 2021); *In re*

TooJay's Management LLC, et al., No. 20-14792-EPK (Bankr. S.D. Fla. June 29, 2020); *Cargo Transp. Svcs., Inc.*, No. 8:11-bk-00432-MGW (Bankr. M.D. Fla. Jan. 20, 2011); *Tropical Sportswear Int'l Corp.*, No. 8:04-bk-24134-MGW (Bankr. M.D. Fla. 2005); *In re HearUSA, Inc.*, No. 11-23341-BKC-EPK (Bankr. S.D. Fla. May 20, 2011); *In re Gulfstream Intern. Group, Inc., et al.*, No. 10-44131-BKC-JKO (Bankr. S.D. Fla. Nov. 8, 2010 and Dec. 16, 2010); *In re HNI Holdco, Inc. (F/K/A Medical Staffing Network Holdings, Inc., et al.)*, No. 9:10-bk-29101-BKC-EPK (Bankr. S.D. Fla. July 2, 2010).

B. Obligations Owed Under Outstanding Orders are Administrative Expense Priority Claims Under Section 503(b) of the Bankruptcy Code

25. Furthermore, it is necessary to the uninterrupted operation of the Debtors' business that obligations owed under the Outstanding Orders for goods or services delivered or provided postpetition by 503(b)(9) Vendors be explicitly granted administrative expense status. Pursuant to section 503(b) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of necessary goods and services are afforded administrative expense priority because they benefit the estate postpetition. 11 U.S.C. § 503(b)(1)(A); *In re Tropicana Entm't, LLC*, No. 08-10856 (KJC), 2015 WL 6112064, at *5 (Bankr. D. Del. Oct. 14, 2015) (internal quotation omitted) (“[Pursuant to] Bankruptcy Code § 503(b)(1)(A), the Court may allow as administrative expenses, the actual, necessary costs and expenses of preserving the estate, including wages, salaries, commissions for services rendered after the commencement of the case.”); *In re Chateaugay Corp.*, 10 F.3d 944, 956 (2d. Cir. 1993) (holding that an obligation arising from the postpetition performance relating to a prepetition transaction is entitled to administrative expense priority). Accordingly, granting the relief sought herein and explicitly granting the Outstanding Orders administrative expense priority status will not provide affected claimants with any greater priority than they would otherwise be entitled to, and will not prejudice any party in interest.

26. Absent such relief, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide affected claimants with perceived assurance of administrative expense priority status. The disruption to the continuous and timely flow of critical goods and services to the Debtors would force the Debtors to potentially halt operations, damage the Debtors' business reputation, erode the Debtors' customer base, and ultimately lead to a loss of revenue, all to the detriment of the Debtors and all parties in interest. The Debtors submit that the Court should confirm the administrative expense priority status of the Outstanding Orders and should authorize the Debtors to pay the Outstanding Orders in the ordinary course of business.

Applicable Financial Institutions Should be Authorized to Receive, Process, Honor and Pay Checks Issued and Transfers Requested to Pay the Vendor Claims

27. The Debtors anticipate having sufficient funds to pay the amounts described herein in the ordinary course of business using expected cash flows from ongoing business operations, cash collateral, and funds from DIP financing. In addition, under the Debtors' existing cash management system, the Debtors can readily identify whether checks or wire transfer requests are payments authorized by the relief requested in the Motion. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. As such, the Court should authorize the Banks to receive, process, honor and pay any and all checks or wire transfer requests as directed by the Debtors in respect of the relief requested herein, to the extent the Debtors have sufficient funds on deposit in their accounts with such Banks, whether such checks or wire transfer requests were submitted before, on or after the Petition Date, and such Banks may rely on the representations of the Debtors without any duty of further inquiry and without liability for following the Debtors' instructions.

Bankruptcy Rule 6003(b) Has Been Satisfied

28. 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” prior to twenty-one (21) days after the Petition Date. Fed. R. Bankr. P. 6003(b). As explained above and in the First Day Declaration, the Debtors would suffer immediate and irreparable harm if the relief sought herein is not promptly granted. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

Expedited Consideration and Waiver of any Applicable Stay

29. The Debtors respectfully request expedited consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” Here, the Debtors believe an orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an expedited basis.

30. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and

that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

31. 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 or any liens satisfied pursuant to the Motion; (ii) an agreement or obligation to pay any claims; (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (iv) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim; or (v) an approval, assumption, or rejection 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.

Conclusion

32. If the requested relief is not granted, the Debtors' business operations will be significantly – and perhaps irreparably – undermined. If the Motion is denied, the Debtors' business will suffer immediate and substantial interruptions to the detriment of all of the Debtors' stakeholders. In this precarious environment, it is especially important to maintain a "business as usual" atmosphere to ensure smooth and uninterrupted business operations. It is the Debtors' business judgment, therefore, that authority to pay the 503(b)(9) Claims described in the Motion is critical to the success of these chapter 11 cases and the maximization of the value of the Debtors' enterprise.

WHEREFORE, the Debtors respectfully request that the Court enter an order in the form attached hereto as **Exhibit A** (i) granting the relief requested in this Motion; (ii) authorizing, but not directing the Debtors to pay, in the ordinary course of business, the 503(b)(9) Claims;

(iii) authorizing and directing the Debtors' Banks to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing; and (iv) granting such other relief as the Court deems just and proper.

Dated: May 19, 2024

Respectfully submitted,

W. Austin Jowers (*pro hac vice* pending)
Jeffrey R. Dutson (*pro hac vice* pending)
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Filer's Attestation: Pursuant to Local Rule 1001-2(g)(3) regarding signatures, Paul Steven Singerman attests that concurrence in the filing of this paper has been obtained.

Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

(Proposed Order)

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

IN RE:

Chapter 11 Cases

RED LOBSTER MANAGEMENT LLC, ¹	Case No. 6:24-bk-_____
RED LOBSTER RESTAURANTS LLC,	Case No. 6:24-bk-_____
RLSV, INC.,	Case No. 6:24-bk-_____
RED LOBSTER CANADA, INC.	Case No. 6:24-bk-_____
RED LOBSTER HOSPITALITY LLC	Case No. 6:24-bk-_____
RL KANSAS LLC	Case No. 6:24-bk-_____
RED LOBSTER SOURCING LLC	Case No. 6:24-bk-_____
RED LOBSTER SUPPLY LLC	Case No. 6:24-bk-_____
RL COLUMBIA LLC	Case No. 6:24-bk-_____
RL OF FREDERICK, INC.	Case No. 6:24-bk-_____
RED LOBSTER OF TEXAS, INC.	Case No. 6:24-bk-_____
RL MARYLAND, INC.	Case No. 6:24-bk-_____
RED LOBSTER OF BEL AIR, INC.	Case No. 6:24-bk-_____
RL SALISBURY, LLC,	Case No. 6:24-bk-_____
RED LOBSTER INTERNATIONAL HOLDINGS LLC,	Case No. 6:24-bk-_____

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6889); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7825); RL of Frederick, Inc. (9184); RL Salisbury, LLC (7836); RL Maryland, Inc. (7185); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc. (2240); RLSV, Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices are located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

Debtors.

(Joint Administration Pending)

ORDER GRANTING DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN SECTION 503(b)(9) CLAIMS IN THE ORDINARY COURSE OF BUSINESS, AND (II) GRANTING RELATED RELIEF

THIS CASE came before the Court on May [●], 2024, at [●] a.m./p.m., in Orlando, Florida for a hearing (the "Hearing") upon the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to Pay Certain Section 503(b)(9) Claims in the Ordinary Course of Business, and (II) Granting Related Relief* [ECF No. [●]] (the "Motion"), seeking the entry of an order (i) authorizing, but not directing, the Debtors² to pay prepetition claims of 503(b)(9) Claimants in the ordinary course of business and (ii) authorizing and directing the Debtors' Banks to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing; and (iii) granting such other relief as the Court deems just and proper. The Court, having considered the Motion, finds that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (c) this matter is core pursuant to 28 U.S.C. § 157(b)(2); (d) the Court may enter a final order consistent with Article III of the United States Constitution; (e) notice of the Motion and the Hearing thereon was sufficient under the circumstances and no other or further notice need be provided; (f) the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and (g) upon a review of the record before the Court, including the legal and factual bases set forth in the Motion and the First Day Declaration and the statements made by counsel at the Hearing, and being otherwise fully advised in the premises, does for the reasons stated on the record of the Hearing, all of which are incorporated herein; and after due

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

deliberation and sufficient cause appearing therefor, has determined that good and sufficient cause exists to grant the relief requested. Accordingly, it is

ORDERED as follows:

1. The Motion is **GRANTED**.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a), 363(b), and 503(b) of the Bankruptcy Code, to pay, or cause to be paid, certain 503(b)(9) Claims in their business judgment, in an aggregate amount not to exceed \$49,838,000, upon such terms and in the manner provided in this order (the "Order") and the Motion.
3. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amounts of any claims or liens held by any 503(b)(9) Claimant and the Debtors' rights to contest the extent, validity, or perfection or seek the avoidance of all such liens or the priority of such claims are fully preserved.
4. All Banks are (i) authorized and directed to receive, process, honor and pay all checks presented for payment and electronic payment requests as directed by the Debtors on account of the 503(b)(9) Claims, to the extent the Debtors have sufficient funds on deposit in their accounts with such Banks, whether such checks were presented or electronic requests were submitted before, on or after the Petition Date; (ii) authorized to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to the Motion without any duty of further inquiry and without liability for following the Debtors' instructions; and (iii) prohibited from placing any hold on, or attempting to reverse, any automatic transfer on account of the 503(b)(9) Claims.
5. 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 their chapter 11 cases with respect to prepetition amounts owed in connection with any 503(b)(9) Claims referenced herein.

6. Nothing in the Motion or this Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due.

7. Nothing contained in the Motion or this Order nor any payment made pursuant to the authority granted by this Order is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors or any lien satisfied pursuant to the Motion, (ii) an agreement or obligation to pay any claims, (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (iv) a waiver of the Debtors' or any appropriate party in interest's rights to dispute any claim, or (v) an approval, assumption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

8. Except as otherwise set forth herein, 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. Notwithstanding anything to the contrary contained herein, (i) any payment made or to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved postpetition financing facility or any order regarding the use of cash collateral approved by the Court in these chapter 11 cases, including, without limitation, the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral on a Limited Basis, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, (VI) Scheduling A Final Hearing, and (VII) Granting Related Relief* (the "DIP Order"), and (ii) to the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the DIP Order and the Approved DIP Budget

(as defined in the DIP Order) shall control. For the avoidance of doubt, the Debtors are not authorized to make payments pursuant to this Order except as permitted by the Approved DIP Budget (as defined in the DIP Order).

10. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

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

12. The Debtors are authorized to take all reasonable actions necessary or appropriate to effectuate the relief granted in this Order.

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

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(Attorney Paul Steven Singerman 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 the order.)