

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Pure Prairie Poultry, Inc.,

Case No. 24-32426 KAC

Debtor.

Chapter 11 Case

**NOTICE OF HEARING AND MOTION FOR AN EXPEDITED HEARING
AND FOR AN ORDER AUTHORIZING DEBTOR TO PAY THE PREPETITION
SECTION 503(b)(9) AND PASA CLAIMS OF CERTAIN CRITICAL VENDORS**

TO: THE OFFICE OF THE UNITED STATES TRUSTEE AND OTHER PARTIES-IN-INTEREST AS SPECIFIED IN LOCAL RULE 9013-3.

1. The above-named Debtor (“Debtor”), through its undersigned attorneys, move the Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at 3:00 p.m. on Wednesday, September 25, 2024 before the Honorable Katherine A. Constantine, Courtroom 8, U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. Due to the request for expedited hearing, the Debtor will not object to the timeliness of any response that is filed and delivered to Debtor’s counsel two (2) hours prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

JURISDICTION AND VENUE

4. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. The petition commencing this case was filed on September 20, 2024 (the “Petition Date”). The case is now pending before this Court.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

6. This motion requests relief under 11 U.S.C. §§ 105(a), 363(b), 503(b)(9), 541(d), 1107 and 1108, and is filed pursuant to Local Rules 9013-1 through 9013-3. The Debtor seeks an order authorizing the Debtor, in its sole discretion, to pay the prepetition Section 503(b)(9) claims of certain critical vendors and claims that may be subject to a lien under the Packers and Stockyard Act (“PASA”) in the ordinary course of business.

7. The Debtor own and operates a poultry production plant in Charles City, Iowa (the “Plant”).

8. The events precipitating the Debtor’s Chapter 11 filing are described in the Declaration of George Peichel, Chief Financial Officer of Debtor, filed on September 20, 2024.

9. On the Petition Date, the Debtor filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor’s Chapter 11 cases. No creditors or other official committee has been appointed pursuant to Section 1102 of the Bankruptcy Code.

RELIEF REQUESTED

10. The Debtor requests entry of an order on an expedited basis authorizing, but not obligating, them to pay, in the reasonable exercise of their business judgment, certain valid prepetition amounts due to certain critical vendors (listed on Exhibit A to this Motion), each of whom provides essential goods and/or services to the Debtor (collectively, the “Critical Vendors”

and each a “Critical Vendor”). The Critical Vendors include, but are not limited to, approximately 45 live poultry dealers, otherwise known as “growers” (hereafter, “Growers”), who contract with the Debtor to raise the chickens from hatchlings to maturity, feed the birds a 100%-vegetable diet and who do not, as a matter of principle and practice, treat the birds with antibiotics. All of the prepetition amounts proposed to be paid pursuant to this Motion are entitled to be treated as administrative expenses under Section 503(b)(9) of the bankruptcy code and/or are subject to liens under PASA. The maximum amount the Debtor seeks authority to pay to the Critical Vendors is approximately **\$960,325.88** for Section 503(b)(9) and/or 13-Week Catch-Up Payment expenses, and **\$871,123.03** in amounts owed to Growers that are or may be subject to PASA poultry liens, for a total amount of **\$1,831,448.91**, as set forth on **Exhibit A**.

11. The Debtor also requests that the Court authorize and direct banks and financial institutions at which the Debtor maintains disbursement and other accounts, at the Debtor’s instruction, to receive, honor, process, and pay to the extent of funds on deposit, any and all checks or electronic funds transfers relating to the prepetition claims of the Critical Vendors.

12. The Debtor is fundamentally dependent upon the Critical Vendors to supply essential goods and/or services that are necessary for the Debtor to operate the Plant. There are no alternative vendors who could supply these essential goods and/or services in the same quantities, with the same quality standards, and with the same efficiency and cost as the Critical Vendors. Even if the Debtor is able to find alternative vendors, changing the supply chain would result in a significant interruption in the Debtor’s supply, including without limitation, access to live poultry from the Growers. This would result in a disruption in the Debtor’s business, an inability to operate processing facilities for value-add, premium, air-chilled poultry products sold in regional grocery stores and food markets in Minnesota, Iowa, North Dakota, South Dakota, Missouri, and Nebraska

(the “Product”), and ultimately a loss of good will with customers that would diminish the going concern value of the Debtor.

13. The Debtor intends to use its discretion to pay only those Section 503(b)(9) and PASA claims that are absolutely necessary to provide for an uninterrupted flow of necessary goods and services to maintain the going concern value of their businesses.

14. Prior to the Petition Date, many of the Critical Vendors agreed to extend their payment terms from net 21 days to net 28 days or, in some cases, even net 40 days. The Debtor does not seek authorization to pay any prepetition claims that would be either outside of the 20-day period of Section 503(b)(9) or not subject to a PASA lien.

15. In a typical month, the Debtor generates in excess incur new invoices for approximately \$500,000 to \$550,000 worth of live poultry from the Growers, plus hundreds of thousands of dollars from the remaining, non-Grower Critical Vendors. These goods are used by the Debtor in the preparation of the Product. Thus, the uninterrupted supply of these goods is essential to the Debtor’s business operations. The Debtor anticipates that it will be able to pay the Section 503(b)(9) and PASA prepetition claims of Critical Vendors from business operations and that paying these claims will not result in a significant diminution of the amount of cash that the Debtor held on the Petition Date.

16. The Debtor proposes to condition the payment of Section 503(b)(9) and PASA prepetition claims to Critical Vendors on their agreement to continue supplying goods and services to the Debtor on the same terms that existed prior to the Petition date during the pendency of the Debtor’s Chapter 11 cases, or such other favorable trade practices as are at least as favorable to the Debtor as those that were in effect on the Petition Date. The Debtor reserves the right to negotiate new trade terms with any Critical Vendor.

17. Based on the above, and pursuant to Debtor's 13-Week short term financing plan, Debtor intends to: (a) pay each non-Grower Critical Vendor approximately 10% the amount currently outstanding, for a total of **\$960,325.88**, and (b) pay each Grower Critical Vendor the approximate amount of their PASA lien amounts, for a total of **\$871,123.03**. In sum, Debtor proposes paying a total of **\$1,831,448.91** to Critical Vendors by and through this Motion.

18. Nothing in this Motion shall be deemed to accelerate any of the obligations owed to the Critical Vendors.

19. Nothing in this Motion shall be deemed to constitute an assumption or rejection of any executory contract or agreement between the Debtor and any Critical Vendor, or to require the Debtor to make any of the payments authorized by an order on this Motion. Moreover, nothing in this Motion shall be construed as prejudicing the Debtor's right to dispute or contest the amount or validity of any claims asserted against the Debtor by any of the Critical Vendors.

20. Based on the foregoing, the Debtor submits that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

WAIVER OF STAY

21. In addition, by this Motion, the Debtor seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[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." As set forth above, the Debtor requires immediate relief to continue ordinary business operations for the benefit of all parties in interest. Accordingly, the Debtor submits that ample cause exists to justify a waiver

of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

22. No previous request for the relief sought herein has been made by the Debtor to this or any other court.

23. Pursuant to Local Rule 9013-2(a), this Motion is verified and accompanied by a memorandum of law, proposed order, and proof of service.

24. Pursuant to Local Rule 9013-2(c), the debtor gives notice that it may, if necessary, call George Peichel, Chief Financial Officer of Debtor to testify on behalf of the Debtor about the factual matters raised in this Motion.

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion and authorize the payment of to pay the prepetition Section 503(b)(9) claims of certain critical vendors and claims that may be subject to a lien under PASA and for such other and further relief as the court may deem just and equitable.

Dated: September 20, 2024

TAFT STETTINIUS & HOLLISTER LLP

By: /s/ James M. Jorissen

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PROPOSED COUNSEL FOR THE DEBTOR

VERIFICATION

I, George Peichel, Chief Financial Officer of the Debtor named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 20th day of September, 2024.


George Peichel

EXHIBIT A

Name	Balance	13-Week Catch-Up Payment	PASA Trust Claim
AgState	\$ 356,214.64	\$ 35,621.46	
Centra Sota Cooperative	\$ 640,499.43	\$ 64,049.94	
Central MN Electric, Inc	\$ 5,601.81	\$ 560.18	
City of Charles City	\$ 529,151.56	\$ 52,915.16	
East Central Energy	\$ 4,098.98	\$ 409.90	
Gold-Eagle Cooperative	\$ 96,880.33	\$ 9,688.03	
Heartland Natural Gas	\$ 12,444.19	\$ 1,244.42	
Hull Cooperative	\$ 28,375.92	\$ 2,837.59	
Jendro Sanitation Services	\$ 16,567.80	\$ 1,656.78	
Kempz Poultry Services Inc	\$ 39,304.40	\$ 3,930.44	
Mala Mills LLC	\$ 12,550.50	\$ 1,255.05	
Masterson Staffing Solutions	\$ 1,965,719.61	\$ 196,571.96	
MidAmerican Energy	\$ 310,093.50	\$ 31,009.35	
Mid-low a Milling, LLC	\$ -	\$ -	
Minnesota Pow er	\$ 5,375.52	\$ 537.55	
MTech Systems USA LLC	\$ 47,716.66	\$ 4,771.67	
Parity Factory LLC	\$ 73,979.80	\$ 7,397.98	
Pehler LP Gas LLC	\$ 1,481.66	\$ 148.17	
Pow er Pro Electric, LLC	\$ 1,567.15	\$ 156.72	
Premier Cooperative	\$ 1,595,899.67	\$ 159,589.97	
PSSI Packers Sanitation Services Inc	\$ 53,033.55	\$ 5,303.36	
QPS Employment Group	\$ 741,068.38	\$ 74,106.84	
Riverland Energy	\$ 10,331.22	\$ 1,033.12	
Rock Hill Genetics, LLC	\$ 202,172.82	\$ 20,217.28	
Safe Foods	\$ 176,065.25	\$ 17,606.53	
Sanimax	\$ 125,609.30	\$ 12,560.93	
Tri-State Poultry	\$ 2,418,953.84	\$ 241,895.38	
WNI IT Services LLC	\$ 5,000.00	\$ 500.00	
Win LLC	\$ 1,035.92	\$ 103.59	
Xcel Energy	\$ 10,000.00	\$ 1,000.00	
Zee Company	\$ 116,465.37	\$ 11,646.54	
Total	\$ 9,603,258.78	\$ 960,325.88	\$ -

GROWER	13-Week Catch Up Payment	Updated Total	PASA Trust Claim Amt Estimate
All 14 LLC		\$99,707.56	\$47,493.69
Aqua Ag		\$34,600.80	\$10,649.13
Ben Weltzien		\$57,236.06	\$14,391.15
BKT		\$144,190.54	\$36,536.13
Chad Crowell		\$64,242.08	\$11,409.78
Chicken Defenders		\$0.00	\$0.00
Chris Uhlenkemp		\$31,125.31	\$14,345.28
Dale Lahn		\$121,525.45	\$35,620.26
Dan Byl		\$234,441.46	\$59,765.55
Dan Schlichting- Barn 1		\$62,198.59	\$24,657.77
David Kloss - Site 2		\$31,758.76	\$15,439.77
Dean Suchla		\$26,476.08	\$12,880.26
Debra Erickson		\$16,432.00	\$8,679.02
Eddie Garcia		\$21,146.47	\$0.00
Ekler		\$179,026.03	\$19,686.39
Fred Kloss		\$17,098.34	\$17,098.34
Golden Acres Poultry		\$42,035.14	\$22,638.45
Greg Gibbons		\$3,132.99	\$3,132.99
Greg Marten		\$57,544.83	\$11,894.40
IBEX Broilers		\$159,840.23	\$59,765.55
Jason Farrow		\$76,917.89	\$23,746.83
Joe & Cathy Kulig		\$18,700.00	\$8,976.00
John Bortle		\$41,376.51	\$12,212.16
John Tschida		\$77,437.10	\$19,709.47
John Wollum		\$12,880.26	\$12,880.26
Kevin Dienger		\$3,500.00	\$3,500.00
Kevin Mehrwerth		\$52,057.54	\$16,563.22
Klassen Poultry Farm		\$59,725.97	\$21,190.98
Kuehl Poultry		\$105,990.84	\$23,746.83
Larry Falk		\$40,393.89	\$10,595.49
Mike Schirmers		\$29,743.17	\$9,709.47
Myron Klarenbeek Trust		\$44,078.38	\$13,929.43
Nathan Bellefeuille		\$26,476.08	\$12,880.26
ON 10		\$160,687.87	\$59,765.55
Pleasant Valley Poultry		\$118,569.97	\$23,746.83
Pops Poultry		\$93,496.84	\$23,746.83
Ray and Lori Maciej		\$26,476.08	\$12,880.26
Ray Weltzien		\$99,090.44	\$26,307.90
Richland		\$35,791.00	\$10,649.13
Roxanne Welle		\$5,400.00	\$1,800.00
Ridgeley Farms		\$37,337.39	\$15,831.22
S&C Organic Farms		\$258,493.51	\$73,806.03
Stephanie & Aaron Suchla		\$26,476.08	\$8,586.84
Terry Filla		\$74,349.12	\$20,925.42
Tri-B		\$62,451.21	\$21,298.26
Total Due	\$0.00	\$2,991,655.86	\$797,495.03
		July Bonus due August	73,628.00
		Total PASA Claim	871,123.03

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Pure Prairie Poultry, Inc.

Debtor.

Case No. 24-32426 KAC

Chapter 11 Case

**DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION
FOR AN EXPEDITED HEARING AND FOR AN ORDER AUTHORIZING
THE DEBTOR TO PAY THE PREPETITION SECTION 503(b)(9)
AND PASA CLAIMS OF CERTAIN CRITICAL VENDORS**

The above-named Debtor (collectively, the "Debtor"), by and through its undersigned counsel, submits this memorandum of law in support of the accompanying motion in the above-entitled matter and in accordance with Local Rule 9013-2(a).

FACTUAL BACKGROUND

The Debtor relies on the statement of facts set forth in the verified motion and the petition, and the Debtor's Declaration in Support of First Day Motions. The defined terms used in this Memorandum have the same meaning as in the accompanying motion.

ARGUMENT

I. THE DEBTOR'S REQUEST FOR EXPEDITED RELIEF SHOULD BE GRANTED.

The Debtor requests expedited relief. Bankruptcy Rule 9006(c) provides that the Court may reduce the notice period for a Motion "for cause shown." Cause exists here to grant the Motion on an expedited basis. As described in the motion, the Debtor will suffer a disruption in the business, an inability to process its chicken products and/or foods, and ultimately a loss of good will with customers that will diminish the going concern value of the Debtor. Expedited relief authorizing

payment of the Section 503(b)(9) and PASA prepetition claims of Critical Vendors is thus necessary to avoid immediate and irreparable harm.

II. THE CRITICAL VENDORS MAY AND SHOULD BE PAID UNDER 11 U.S.C. § 503(b)(9) AND PASA

A. The Court May Authorize Payment of the Section 503(b)(9) and PASA Claims

As the operator owner and operator of a poultry production plant in Charles City, Iowa (the “Plant”), Debtor processes live poultry into value-add, premium, air-chilled poultry products sold in regional grocery stores and food markets in Minnesota, Iowa, North Dakota, South Dakota, Missouri, and Nebraska (the “Product”), the Debtor, in the ordinary course of their business, receive various essential goods and/or services from critical vendors (collectively, the “Critical Vendors” and each a “Critical Vendor,” listed on Exhibit A to this Motion. The Critical Vendors include, but are not limited to, approximately 45 live poultry dealers, otherwise known as “growers” (hereafter, “Growers”), who contract with the Debtor to raise the chickens from hatchlings to maturity, feed the birds a 100%-vegetable diet and who do not, as a matter of principle and practice, treat the birds with antibiotics. These goods, along with the other goods and services provided by the remaining Critical Vendors, are used by the Debtor in the preparation of the Product. Thus, the uninterrupted supply of these goods is essential to the Debtor’s business operations.

The Debtor believes all of the Critical Vendors who delivered goods to the Debtor during the 20-day period prior to the Petition Date but have not received payment for such goods likely will seek the allowance and payment of those claims as administrative expenses under Section 503(b)(9) of the Bankruptcy Code. This could result in multiple motions to this Court. Individually addressing the Section 503(b)(9) claims asserted by the Critical Vendors will divert resources in these cases toward drafting, filing, prosecuting and defending individual motions and

related responses. In addition, many of the goods provided by the Growers fall under and may have priority pursuant to the Packers and Stockyard Act (“PASA”) and statutory liens thereunder.

1. Payment of PASA Claims Will Not Prejudice Creditors

To the extent that a Critical Vendor/Grower is a PASA claimant, it has a statutory trust upon the delivery of the poultry to the Debtor. *See In re Fresh Approach, Inc.*, 51 B.R. 412, 423 (Bankr. N.D. Tex.1985); *In re Frosty Morn Meats, Inc.*, 7 B.R. 988, 1005 (M.D. Tenn. 1980). As such, “[a]ll poultry obtained by a live poultry dealer,” including “and all inventories of, or receivables or proceeds from such poultry or poultry products derived therefrom” is “ held by such live poultry dealer in trust for the benefit of all unpaid cash sellers or poultry growers of such poultry, until full payment has been received.” 7 U.S.C. § 197(b); *see also In re Jack-Rich, Inc.*, 176 B.R. 476, 482 (Bankr. C.D. Ill. 1994) (explaining that PASA applies to “*all* proceeds from the sale of meat shall be held in trust for the benefit of all unpaid cash sellers until full payment has been received by such unpaid sellers.”) (emphasis added). If such trust exists, 11 U.S.C. § 541(d) excludes those assets in the trust from a debtor's estate. *In re Frosty Morn Meats*, 7 B.R. at 1005 (“[PASA] provides for a statutory trust fund which is not an asset of the bankrupt's estate.”); *see also Matter of Great Am. Veal, Inc.*, 59 B.R. 27, 33 (Bankr. D.N.J. 1985) (“The legislative history of the 1976 amendment to the Act makes it clear that Congress intended to establish a statutory trust whose corpus is not subject to creditors' rights even in bankruptcy proceedings.”). Therefore, paying PASA claimants will not prejudice the other creditors, as such PASA claimants rights are superior pursuant to the federal statutory protections afforded thereunder.

2. Non-Payment May Harm the Debtor

If these Critical Vendors stop supplying their essential products postpetition, the Debtor's reorganization efforts will be irreparably harmed. Under these circumstances, relief is necessary

to permit the Debtor to pay any vendor that delivered goods in the ordinary course of business within twenty days of the Petition Date or who is a PASA claimant. Under Section 503(b)(9) of the Bankruptcy Code, claims for the value of goods received by the Debtor in the ordinary course of their business during the 20-day period prior to the petition date are entitled to administrative claim status. And, PASA claimants trump all other creditors.

Prior to providing payment for Section 503(b)(9) and/or PASA claims, the Debtor reserves the right to require each Critical Vendor receiving such payment to agree to (a) continue to supply goods and services to the Debtor postpetition on trade terms substantially similar or better than those provided to the Debtor prior to the Petition date, and (b) certain other provisions as agreed between the Debtor and each Critical Vendor. If, following receipt of payment of its Section 503(b)(9) and/or PASA claim, a Critical Vendor refuses to supply goods and services in accordance with the agreed trade terms, the Debtor seeks authority to demand the repayment of the Section 503(b)(9) and/or PASA claim without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or otherwise.

3. The Section 503(b)(9) Claims Are Entitled to Payment

The Debtor submits that the relief sought herein is noncontroversial and entirely consistent with the applicable provisions of the Bankruptcy Code. The Critical Vendors' Section 503(b)(9) claims are administrative expenses and should be payable in the ordinary course if appropriate in the Debtor's business judgment, because the payments encourage vendors to continue business with the Debtor after the Petition Date and provide the Debtor with the best terms of sale possible. Further, obligations arising out of the postpetition delivery of goods and the provision of services to the Debtor are expenses generally incurred for the benefit of the Debtor's estate and assist in preserving the value of the Debtor's businesses.

Section 503(b)(9) of the Bankruptcy Code does not establish the timing by which any claim allowed under such section must be paid. Indeed, there is nothing in the text of Section 503(b)(9) that requires immediate payment. *See In re Bookbinders' Restaurant, Inc.*, No. 06-12302, 2006 WL 3858020, at *4 (Bankr. E.D. Pa. Dec. 28, 2006) (finding that “[t]he text of 503(b)(9) neither states nor even implies that allowance of the expenses encompasses an unqualified right to immediate payment. . . [n]or does the text of the provision suggest that an administrative expense allowed under Section 503(b)(9) is to be treated in a more favorable manner than any other allowed Section 503(b) administrative expense.”); *see also In re Global Home Products, LLC*, No. 06-10340, 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (noting that “Section 503(b)(9) ‘is a rule of priority, rather than payment.’” (citations omitted)).

When determining whether to allow immediate payment of an administrative expense claim, courts have looked to various factors, including: (1) prejudice to the debtor, (2) hardship to the claimant, and (3) potential detriment to other creditors. *See In re Garden Ridge Corp.*, 323 B.R. 136, 143 (Bankr. D. Del. 2005); *see also In re Global Home Products, LLC*, 2006 WL 3791955, at *5 (Bankr. D. Del. Dec. 21, 2006). Courts have also considered the overarching bankruptcy goal of creating an orderly and equal distribution among creditors. *See In re Austin*, No. 85-40639, 1994 WL 245224 at *1 (Bankr. S.D. Ga. 1994) (citing *In re Baptist Medical center of New York, Inc.*, 52 B.R. 417, 421 (E.D.N.Y. 1985)).

The Debtor submits that it should be authorized to determine, in the exercise of their business judgment, that certain Section 503(b)(9) claims should be paid now to allow the Debtor to continue to operate its businesses without interruption. In order to preserve its going concern value, the Debtor will need to continue to purchase goods from the Critical Vendors on payment and other terms that are equally or more favorable than those terms that were available to Debtor

prior to the Petition Date. Moreover, other creditors will not be prejudiced by payment of certain Section 503(b)(9) claims prior to confirmation of a plan because (a) all such allowed administrative claims would be payable in connection with any confirmed plan of reorganization and/or plan of liquidation pursuant to Section 1129, and (b) the Debtor will require those creditors that obtain accelerated payment of their allowed Section 503(b)(9) claims to provide acceptable trade terms to the appropriate Debtor, in the Debtor's sole discretion. Providing the Debtor with a tool to assist them in securing more favorable trade terms will help maximize the value of the estate as it will allow the Debtor to more efficiently and effectively operate their business.

B. Regardless of the Rationale, the Payments at Issue Should Be Authorized

1. Sound Business Justifications Support the Payments

The Court should authorize the Debtor to make the payments at issue in the Motion “outside the ordinary course” pursuant to Section 363(b). Funding the prepetition Section 503(b)(9) and PASA claims of the Critical Vendors, like any other use of property outside the ordinary course of business, is appropriate in instances where the debtor can demonstrate a “business justification” for doing so:

Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances. However, the debtor must articulate some business justification, other than mere appeasement of major creditors, for using, selling or leasing property out of the ordinary course of business, before the court may permit such disposition under section 363(b).

See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D. N.Y. 1989); *see also Michigan Bureau of Workers' Disability Compensation v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 281 (Bankr. S.D.N.Y. 1987) (court allowed debtor to continue payment of pre-petition wages and other benefits because it was consistent with debtor's “imperatives”).

In the instant case, the Debtor has demonstrated that it has a significant and obvious business justification for the relief sought in the Motion. Specifically, the Debtor's funding of prepetition Section 503(b)(9) and PASA claims will stabilize the Debtor's operations and maximize the going-concern value of the Debtor's business. Specifically, without poultry from the Growers, Debtor cannot continue to process, produce, and distribute the Product, which is the focus of and chief revenue generator of its business. If, on the other hand, the Debtor does not fund their prepetition Section 503(b)(9) and PASA claims, there is a significant risk that the Debtor will have to discontinue operations entirely. The Debtor's inability to continue generating revenue as a going concern would have a negative impact, to say the least, on all parties in interest.

2. The Payments are Appropriate Under the Doctrine of Necessity

The relief at issue should also be granted pursuant to the "Doctrine of Necessity" in the event that the Court analyzes the Motion under Section 105(a) or Section 549. Section 105(a) grants the Court authority to issue any order "necessary or appropriate to carry out the provisions" of the Code, and also provides a basis for authorizing the debtor to pay prepetition Section 503(b)(9) and PASA claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175; *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991). Bankruptcy Code Section 549(a)(2)(b) also recognizes that a court may authorize the payment of prepetition debts. *In re Payless Cashways, Inc.*, 268 B.R. at 546; *Dubuque Packing Co. v. Stonitsch (In re Isis Foods, Inc.)*, 37 B.R. 334, 336 n.3 (Bankr. W.D. Mo. 1984). Many courts hearing large Chapter 11 reorganization cases have recognized the "doctrine of necessity," acknowledging that paying certain prepetition claims may be required in Chapter 11 cases. *See, e.g., In re Payless Cashways, Inc.* 268 B.R. 543, 547 (Bankr. W.D. Mo. 2001).

3. *In re K-Mart Corp.* Does Not Apply

The above analysis holds true regardless of the decision issued by the United States Court of Appeals for the Seventh Circuit in *In re K-Mart Corp.*, 359 F.3d 866 (7th Cir. 2004). In *K-Mart*, the Seventh Circuit considered whether the bankruptcy court could authorize payments to fund the pre-petition claims of “critical vendors.” Ultimately, the Seventh Circuit determined that the bankruptcy court had not established its authority to do so. The Seventh Circuit acknowledged, however, that Section 363(b) might provide a basis for authorizing such payments under the right circumstances. *In re K-mart Corp.*, 359 F.3d at 872. The Seventh Circuit also indicated that, in order to justify the payment of pre-petition claims, the debtor should be required to show that (i) it would suffer damage if such payments were not made, and (ii) that other creditors would not suffer harm as a result of the proposed payments. *Id.* The Debtor has made such a showing in this case.

As opposed to the facts in *K-mart*, the factors required to support payments to critical vendors are readily apparent here. Unlike *K-mart*—a mammoth general retail chain seeking goods and services from a myriad of sources across the globe—the Debtor operates a specialized business involving the processing of live poultry into the Product, and is, therefore, far more limited in its ability to seek alternate Critical Vendors to supply essential goods and services (*i.e.*, live poultry). Accordingly, a refusal by any one of the Critical Vendors to supply goods and services to the Debtor would truly cripple the Debtor’s ongoing operations—for example, leaving Debtor without the requisite live poultry from the Growers needed to process and produce the Product.

With respect to the first factor in *K-mart*, whether vendors will in fact cease shipping live poultry, the Debtor hopes to avoid having to resort to the relief requested. The payment to Critical Vendors will not be made unless there is a serious threat to cease providing critical goods and services and/or there is a valid PASA lien for that particular Critical Vendor.

With respect to the second factor, the Debtor submits that the Bankruptcy Code and the protections of the automatic stay do not provide sufficient protections to prevent the Critical Vendors from refusing to continue to supply the necessary goods and services. The instant Chapter 11 case is distinguishable from *K-mart* in this regard. Unlike in *K-mart*, where the supplier that received the largest critical vendor payment was legally required to continue to deliver goods and K-mart accounted for a majority of its business, here, the Critical Vendors may not be obligated to continue to supply the Debtor through any long-term contracts. For example, most of the Growers supply goods to the Debtor on via cash sales or by poultry growing arrangement. Where a contract does exist, that contract covers issues such as price and delivery terms, but not an obligation to supply goods and services. What is more, PASA protections requires Debtor to promptly pay the Growers in order to avoid PASA liens and/or other applicable penalties for non-payment. As such, the Debtor will not be able to rely upon the Court's contempt powers to compel the Critical Vendors to continue supplying these goods.

Given that the Debtor's utilization of live poultry — as well as the other essential good and services provided by the remaining Critical Vendors — are obviously the key and central component of processing the Product, disruptions of key supplies for even days would have a serious effect on the Debtor's business. For example, without access to live poultry from the Growers, the Debtor's processing plants would cease operations and its access to revenue generating sales from the sale and distribution of the Product would quickly dissipate and disappear, rendering Debtor nothing but empty processing Plant and unused equipment.

With respect to the third factor in *K-mart*, the prospect of added benefit to the other creditors is evident from the higher recovery that would be gained from maintaining the going-concern value of the Debtor's business. Here, unlike *K-mart*, it is also clear the continued delivery

of goods and services from the Critical Vendors will inure to the benefit of all creditors in these Chapter 11 cases. The Debtor's ability to maintain going concern value will allow the Debtor to achieve a higher return for its estate than would be accomplished if the Debtor was forced to close. Accordingly, supplying critical goods and services to allow the Debtor to operate postpetition is in the best interests of all creditors. Bankruptcy courts routinely grant authorization for Chapter 11 debtors to pay critical vendors where, as here, such payment is necessary to effectuate the purpose of Chapter 11 of the Bankruptcy Code and to prevent the debtors from going into liquidation. *See In re Payless Cashways, Inc.*, 268 B.R. 543, 547 (Bankr. WD. Mo. 2001); *In re Just for Feet, Inc.*, 242 B.R. 821, 825-26 (D. Del. 1999) .

It is critical to note that Congress specifically amended the Bankruptcy Code in 2005, after the K-mart decision was handed down, to provide for administrative expense status to vendors that supplied goods within 20 days prior to the commencement of the case. Ongoing support from the Critical Vendors is vital to preserving the Debtor's estate. At this precarious stage, an interruption in the goods and services provided to the Debtor by the Critical Vendors would likely cause the Plant to close, adversely impacting the employment of 138 employees, as well as 123 part-time and/or temporary workers from various employment agencies (there are a total of 206 workers at the Plant). The goods and services provide by the Critical Vendors must continue unabated if a loss of enterprise value is to be avoided. Accordingly, the Debtor's interest, as well as its estate and creditors, will be best served if the Debtor is authorized to pay the obligations due to the Critical Vendors.

CONCLUSION

The Debtor respectfully requests that this Court enter an order substantially in the form attached to the Motion (a) granting its request for an expedited hearing; (b) authorizing, but not obligating, the Debtor to pay, in its sole discretion, the prepetition amounts due to the Critical Vendors for Section 503(b)(9) and PASA claims; (c) authorizing and requiring banks to honor any checks drawn or fund transfer requests made for payment of obligations owing to the Critical Vendors; and (d) granting such other and further relief as is just and proper.

Dated: September 20, 2024

TAFT STETTINIUS & HOLLISTER LLP

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PROPOSED COUNSEL FOR THE DEBTOR

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Pure Prairie Poultry, Inc.,

Debtor.

Case No. 24-32426 KAC

Chapter 11 Case

ORDER

This case is before the court on Debtor's Motion for Expedited Relief and an Order Authorizing Debtor to Pay the Pre-Petition Section 503(b)(9) and PASA Claims of Certain Critical Vendors (the "Motion"). Based on the motion, and this court having determined that it is in the best interests of Debtor's estate to grant the Motion, and it appearing that due and proper notice of this action was given,

IT IS HEREBY ORDERED:

1. The Debtor's Motion is granted.
2. The Debtor's request for expedited relief is granted.
3. Pursuant to Section 105(a) of the Bankruptcy Code, the Debtor is hereby authorized, but not required, to pay all prepetition Critical Vendors claims that would qualify for administrative expense status under Section 503(b)(9) of the Bankruptcy Code or that fall under the Packers and Stockyards Act, in an amount that shall not exceed the sum of **\$1,831,448.91** in the aggregate without further order of the court, that Debtor believes in its reasonable business judgment are valid, in the ordinary course of business and consistent with historical practice, including any and all amounts relating to the 20 day period prior to the Petition Date.
4. This Order shall be without prejudice to the Debtor's right to contest the validity or amount of any Critical Vendor Claims (including Section 503(b)(9) claims and/or claims under the Packers and Stockyard Act).
5. Any Critical Vendor who accepts payment from the Debtor in satisfaction of its valid Critical Vendor Claim shall be deemed to have acknowledged and agreed that any and all claims of

whatever type, kind, or priority, against the Debtor, its property and its estate with respect to such Critical Vendor Claim are satisfied in full, said acknowledgment and agreement being expressly conditioned upon the absence of any challenge or objection to the Critical Vendor Claim.

6. Nothing contained in the Motion or this Order shall be deemed (a) an assumption or rejection of any executory contract between the Debtor or any Critical Vendor pursuant to Section 365 of the Bankruptcy Code, (b) an admission as to the validity or priority of any claim against the Debtor, (c) a requirement that the Debtor make any of the payments authorized herein, or (d) a waiver of the Debtor's rights under the Bankruptcy Code or any applicable non-bankruptcy law.

7. The Debtor's banks and financial institutions are authorized and directed to receive, honor, process, and pay, to the extent of funds on deposit, any and all checks or electronic transfers drawn on the Debtor's bank accounts relating to the Critical Vendor Claims, including those checks or electronic transfers that have not cleared the banks as of the Petition Date.

8. The Debtor is authorized to replace any prepetition checks or electronic transfers relating to the Critical Vendor Claims that may have been dishonored or rejected.

9. The Debtor's banks may rely on the representations of the Debtor as to which checks or electronic transfers are in payment of the Critical Vendor Claims.

10. The Debtor is authorized to take such actions as are necessary to implement and effectuate the terms of this Order.

11. Notwithstanding Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2024

United States Bankruptcy Judge