

**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 THE DEBTOR TO HONOR AND CONTINUE CERTAIN
CUSTOMER LOYALTY PROMOTIONS IN THE ORDINARY COURSE OF BUSINESS**

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, moves the court for the relief requested below and gives 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 at least 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.**

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 17, 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.

6. This Motion requests relief under 11 U.S.C. §§ 105(a), 362, 363, 1007(a), and 1108, and Federal Rules of Bankruptcy Procedure 6003 and 6004. This Motion is filed pursuant to Federal Rule of Bankruptcy Procedure 9013 and Local Rules 9013-1 through 9013-3.

7. The Debtor operates a poultry production plant in Charles City, Iowa (the “Plant”). As of the Petition Date, its poultry products are sold in regional grocery stores and food markets in Minnesota, Iowa, North Dakota, South Dakota, Missouri, and Nebraska.

8. The events precipitating the Debtor’s chapter 11 filing are described in the Declaration of George Peichel, Chief Financial Officer of the Debtor, filed on September 17, 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 §§ 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor’s Chapter 11 case. No creditors or other official committee has been appointed pursuant to Section 1102 of the Bankruptcy Code.

10. The Debtor requests an order authorizing the Debtor to honor certain pre-petition obligations to customers, to continue their pre-petition customer promotional programs and practices in the ordinary course of business, including Debtor’s obligations related to certain advertising and product limited-time sale promotions.

11. Without the requested relief, the Debtor’s customer relations and good will stands to be negatively impacted, tarnishing the value of the business as a going concern.

CUSTOMER LOYALTY PROMOTIONS

12. In the ordinary course of their business, the Debtor offers its retail customers a variety of promotional pricing rates on certain products as incentive for purchase of Debtor's product offerings (the "Promotions").

13. These Promotions are generally planned well in advance and have certain strategic goals, such as promoting certain products, or increasing sales in particular markets or at certain time periods throughout the year. Thus, they are typically developed and implemented through a collaboration of Debtor's marketing department and business leaders or other key individuals employed by the Debtor. The Debtor may additionally consult certain customers.

14. The Promotions include a temporary price reduction of certain products, typically ranging from 15 percent to 33 percent off standard retail price ("Promotional Pricing"). When Debtor implements this Promotional Pricing, it is for a limited time and is generally coupled with certain ads distributed to customers in print or digital form. The limited-time nature of this Promotional Pricing encourages increased purchase and benefits all parties involved.

15. In addition to Promotional Pricing, Debtor may offer certain buy-one-get-one promotions or other incentivizing, limited-time offers. This includes certain rebate programs that Debtor offers, whereby customers receive a rebate of several cents per pound of product sold.

16. In second trimester 2024 (between April 28 and August 25), for example, Debtor ran sixteen Promotions. Through these Promotions, Debtor's retail customers were able to offer Debtor's family pack chicken drum sticks, family pack chicken thighs, family pack chicken breasts, whole chickens, wing portions, and three-piece chicken breast packs at various discounts off standard retail price. This Promotional Pricing resulted in an estimated sales volume of 24,236 units, while Debtor's retail customers still received an average profit margin on the

product sold of 18.8 percent.

17. Debtor's Promotions for the third trimester of 2024 commenced September 1, with twenty-five Promotions planned between September 1 and December 29. These planned Promotions include retail customers offering the same select products identified above at an average discount of \$1.32 per product from ordinary retail price. These Promotions will allow individuals to purchase Debtor's products at a discounted rate, increasing sales volume and brand recognition, while still permitting retail customers to enjoy an average profit margin of 21 percent.

18. The Promotions benefit all parties. Debtor benefits by way of increased sales volume, brand recognition, and customer loyalty. Retail customers benefit by way of increased sales volume and retained profit margin. And individuals and families benefit by reduced-cost products in times where groceries are increasingly more expensive.

19. The Promotions are a normal part of the Debtor's marketing and sales efforts and are common practice in the Debtor's industry. These Promotions play an important role in maintaining the Debtor's competitive position in the markets in which it operates, and also increase visibility and awareness of the Debtor's products by both retail distributors and individual customers.

20. As previously stated, Debtor currently has Promotions planned and coordinated through the end of December 2024.

21. It is the Debtor's position that these Promotions are essential to its ongoing business operations and its competitive position in the marketplace. Further, these Promotions benefit all parties involved and will ultimately result in more sales, which will inure to the benefit of credits and the long-term prospects of Debtor's successful reorganization.

22. As such, Debtor by this Motion requests the authority to honor all current Promotions, whether the corresponding obligations arose before or after the Petition Date. Further, Debtor requests relief to continue to plan, coordinate, offer, and honor such Promotions during the pendency of this case.

RELIEF REQUESTED

23. By this Motion, Debtor requests entry of an order granting Debtor authority to: (i) honor prepetition obligations relating to its Promotions; (ii) continue, renew, replace, modify, and/or terminate any Promotion in the ordinary course of business and in Debtor's exercise of business judgment without the need to seek further relief from this Court to do so; (iii) perform any other obligations related to Promotions and/or Customer Program which may arise in the course of this bankruptcy.

24. Notwithstanding anything in the contrary in this Motion or the Proposed Order which accompanies it, nothing herein constitutes, or shall be deemed to constitute, a request to assume any executory contract under any Customer Program. The Debtor expressly reserves all rights with respect to the continuation or termination of any contract with any customer, and expressly reserves the right to contest, in the ordinary course of business, any amounts or performance obligations claimed to be due, if any, by any customer.

25. Notwithstanding anything to the contrary in the Motion or the Proposed Order, the relief sought by this Motion shall be subject to any applicable terms of any orders of this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtor, any documents providing for such debtor-in-possession financing, and any other relevant documents governing such debtor-in-possession and use of cash collateral.

26. The Court should grant the relief requested herein because: (i) the continuation of

and performance by Debtor under the Promotions is in the ordinary course of business and, therefore, authorized by Section 363(c) of the Bankruptcy Code, and (ii) with respect to any payment or obligation incurred in connection with the Promotions prior to the Petition Date, such payment and performance obligation may be authorized under Sections 105(a) and 363(b) of the Bankruptcy Code and the “necessity of payment” doctrine.

WHEREFORE, the Debtor respectfully requests that the Court grant the Motion and authorize the Debtor to continue all such Promotions, and for such further relief as the court may deem just and equitable.

TAFT STETTINIUS & HOLLISTER LLP

Dated: September 20, 2024

By: /s/ James M. Jorissen

James M. Jorissen, #262833
Adam G. Chandler, #397408
Schaan P. Barth, #397898
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: 612-977-8400
Facsimile: 612-977-8650
jjorissen@taftlaw.com
achandler@taftlaw.com
sbarth@taftlaw.com

**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

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

In re:

Pure Prairie Poultry, Inc.

Debtor.

Case No. 24-32426 KAC

Chapter 11 Case

**MEMORANDUM IN SUPPORT OF MOTION FOR AN EXPEDITED HEARING AND
FOR AN ORDER AUTHORIZING THE DEBTOR TO HONOR AND CONTINUE
CERTAIN CUSTOMER LOYALTY PROMOTIONS IN THE ORDINARY
COURSE OF BUSINESS**

The above-named Debtor (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, the Petition, and the Declaration of George Peichel 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’s Promotions are instrumental to its business operations and are common practice in the industry to procure customer awareness and goodwill. Should Debtor be forced to forego scheduled Promotions, it would not only damage

Debtor's relationship with customers, but would waste substantial marketing resources already expended to plan, coordinate, and effect the Promotions.

Because Promotions are currently ongoing and are similarly scheduled to occur through the rest of 2024, immediate relief is necessary to ensure that this bankruptcy filing does not result in a lapse of Debtor's promotional schedule with customers. Such a lapse would not only damage Debtor's image with customers, but could result in lost product as a consequence of the limited shelf life of Debtor's product. Expedited relief is thus necessary to avoid the possibility of immediate harm and to maintain customer relationships necessary to effectuate a successful reorganization.

II. CONTINUATION AND HONORING OF PROMOTIONS IS WITHIN THE ORDINARY COURSE OF THE DEBTOR'S BUSINESS.

Section 363(c) of the Bankruptcy Code provides that a debtor-in-possession may "enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. §363(c)(1). Section 363 is designed to serve the "'overriding goal of maximizing the value of the estate' by striking the optimal balance between the interests of the debtor and the creditors." *Habinger, Inc. v. Metro. Cosmetic and Reconstructive Surgical Clinic, P.A.*, 124 B.R. 784, 786 (D. Minn. 1990) (quoting *United States ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 599 (Bankr. M.D. Tenn. 1990)).

To that end, "the 'ordinary course of business' standard is intended to allow a debtor 'the flexibility it needs to run its business and respond quickly to changes in the business climate.'" *Id.* (quoting *United States ex rel. Harrison v. Estate of Deutscher*, 115 B.R. at 599). With these policies in mind, the courts have formulated two tests to determine the ordinary course of business:

(1) the vertical test and (2) the horizontal test. *Id.*; see also *Johnston v. First Street Cos. (In re Waterfront Cos., Inc.)*, 56 B.R. 31, 34-35 (Bankr. D. Minn. 1985).

The vertical test asks whether the proposed transaction subjects a creditor to economic risks of a nature different from those accepted when it decided to extend credit to the debtor. *Habinger*, 124 B.R. at 786; *Johnston*, 56 B.R. at 34-35. This test compares the debtor-in-possession's prepetition business activities with its post-petition activities. *Habinger*, 124 B.R. at 786. If the activity does not increase the creditor's risk, then it is an ordinary course transaction as contemplated by the vertical test.

The Debtor has maintained the Promotions for a long period prior to the Petition Date. Indeed, the Promotions represent the Debtor's standard practice, as all businesses within the Debtor's industry offer comparable incentives to customers. Maintaining the Promotions will not subject the Debtor's creditors to different risks than those they accepted when extending credit prepetition. Creditors, moreover, benefit from continuation of the Promotions. Through Promotions, the Debtor maintains customer loyalty, visibility, and goodwill, all of which are vital to the Debtor's going concern value and the Debtor's ability to continue to realize revenue from operations.

The horizontal test holds that a proposed transaction is in the ordinary course if it is one that would be entered into by a business similar to the debtor's business. *Habinger*, 124 B.R. at 786; *Johnston*, 56 B.R. at 34-35. The Promotions are typical for the Debtor's industry—the majority, if not all, of the Debtor's competitors deploy similar programs and incentives that compete directly with the Debtor's Promotions. Thus, the horizontal test is also satisfied.

Continuation and maintenance of the Promotions satisfies both the vertical and horizontal tests. The Promotions are in the ordinary course of the Debtor's business. The Debtor should be permitted to continue and maintain the Promotions pursuant to 11 U.S.C. § 363(c).

III. CONTINUATION OF THE PROMOTIONS IS APPROPRIATE AND AUTHORIZED BY 11 U.S.C. §§ 363(b) AND 105(a).

As noted above, the Debtor has always offered Promotions in the ordinary course of business. The Debtor's contemplated continuation and maintenance of the Promotions independently satisfies standards applicable to the use of property of the estate outside the ordinary course of business under 11 U.S.C. § 363(b). The use or sale of estate property, other than in the ordinary course of business is authorized "when a sound business purpose dictates such action." *Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); see also *In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990). In determining whether to approve a transaction involving estate property outside of the ordinary course of business, court's generally limit their inquiry to whether the Debtor's decision is supported by some articulated business justification. *Four B v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 567 (8th Cir. 1997); *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991). When applying the business judgment rule, courts give deference to the debtor's business decision making. *In re GSC, Inc.*, 453 B.R. 132, 174 (Bankr. S.D.N.Y. 2011); see also *In re LeBlanc*, 299 B.R. 456, 552 (Bankr. N.D. Iowa 2003).

In the Debtor's business judgment, continuation and maintenance of the Promotions is necessary to maintain loyalty and goodwill with current and future customers. The Debtor believes that failing to honor the Promotions will cause a loss of customers and related goodwill that will result in a severe and negative impact on the Debtor's business both in terms of revenue and going concern value.

The Debtor's Promotions are marketing tools that the Debtor also utilizes to procure new business. Cancelling the Promotions will also impact the Debtor's ability to attract new customers. There is a clear and articulated business justification to maintain and honor the Promotions.

IV. CONTINUATION OF THE PROMOTIONS IS APPROPRIATE AND AUTHORIZED BY THE NECESSITY OF PAYMENT DOCTRINE.

Section 105(a) of the Bankruptcy Code provides an additional basis to grant the requested relief. Section 105(a) allows a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition 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, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); see also *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (Bankr. D. Del. 1999) ("To invoke the necessity of payment doctrine, a debtor must show that the payment of the prepetition claims is 'critical to the debtor's reorganization.'").

The well-settled "necessity of payment" doctrine authorizes post-petition payment of pre-petition obligations when necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. See, e.g., *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286 (1882) (articulating a legal theory later termed the "doctrine of necessity" or "necessity of payment doctrine," and allowing receiver to pay pre-receivership claim to prevent disruption of critical business relations); *In re Lehigh & New England Ry. Co.*, 657 F.2d 570 (3d Cir. 1981) (approving and applying the necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 192 (Bankr. D. Del. 1994) (reiterating applicability of the necessity of payment doctrine, and noting

that such doctrine provides for payment of prepetition claims if such payment is essential to a debtor's continued business operations).

Bankruptcy courts routinely invoke their equitable powers under Section 105(a) to authorize a debtor to pay certain critical prepetition claims. Indeed, substantial precedent exists for authorizing payment of prepetition obligations to customers where, as here, customer retention is critical to a debtor's successful chapter 11 case. *See, e.g., In re Granite City Food & Brewery, Ltd.*, No. 19-43756 (Bankr. D. Minn. Dec. 19, 2019); *In re School Specialty, Inc.*, No. 13-10125 (Bankr. D. Del. Jan. 30, 2013) (authorizing the debtors to honor certain prepetition obligations to customers); *In re Buffets Restaurants Holdings, Inc.*, No. 12-10237 (Bankr. D. Del. Jan. 19, 2012); *In re Perkins & Marie Callender's Inc.*, No. 11-11795 (Bankr. D. Del. June 14, 2011); *In re Allen Family Foods, Inc.*, No. 11-11764 (Bankr. D. Del. June 10, 2011). The Promotions meet the requirements of Section 105(a) and the necessity of payment doctrine, because expenses associated with continuing and honoring the Promotions are critical to preserving the value of the Debtor's estate and the Debtor's long-term business viability.

The Promotions are integral to the Debtor's business strategy for retaining customers and increasing revenues, just as they are for every competitor in Debtor's industry. The Debtor operates in a competitive and highly fluctuating market. Its business depends on the ability to retain a stable and loyal customer base, while simultaneously procuring innovative marketing tactics to attract and retain new customers. The Debtor's ongoing performance of its obligations under the Promotions is critical to maintaining customer support and loyalty and easing any apprehension felt by existing or potential customers about doing business with the Debtor following the commencement of these Chapter 11 cases. A failure to honor prepetition obligations under the

Promotions would no doubt undermine the Debtor's relationships with their customers and impair the Debtor's ongoing ability to compete in the marketplace.

Prepetition claims arising from, or related to, the Promotions meet the requirements for post-petition payment because if they are not satisfied, the Debtor's goodwill and going concern value will be adversely impacted. Authorization to continue performing under the Promotions is a critical element of the Debtor's continued business operations and is necessary for the maximization of value in this Chapter 11 case. The Debtor requests authority to honor all pre-petition and post-petition obligations under its Promotions, and to continue the Promotions in the ordinary course of business during the pendency of this case.

CONCLUSION

For the foregoing reasons, the Debtor respectfully requests that the Court grant the relief requested in the Motion on an expedited basis to allow Debtor to continue operating and honoring its Promotions.

TAFT STETTINIUS & HOLLISTER LLP

Dated: September 20, 2024

By: /s/ James M. Jorissen
James M. Jorissen, #262833
Adam G. Chandler, #397408
Schaan P. Barth, #397898
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: 612-977-8400
Facsimile: 612-977-8650
jjorissen@taftlaw.com
achandler@taftlaw.com
sbarth@taftlaw.com

PROPOSED COUNSEL FOR THE DEBTOR

**UNITED STATES BANKRUPTCY COURT
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ORDER

This case is before the court on Debtor's Motion for Expedited Relief and an Order Authorizing Debtor to Honor and Continue Certain Customer Loyalty Promotions in the Ordinary Course of Business (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. The Debtor is authorized, but not required, to honor and continue all current customer loyalty programs, including all promotional programs with customers.
4. The Debtor is authorized, but not required, to plan, coordinate, and undertake future customer loyalty promotions, to the extent Debtor may deem necessary. Debtor may do so in the ordinary course of business and without future leave of court.
5. The Debtor, and all applicable banks and other financial institutions, are authorized to receive, process, honor and pay any and all transfers evidencing amounts paid by the Debtor under this Order whether presented prior to or after the Petition Date to the extent necessary and to the extent the Debtor has good funds standing to its credit with such bank or other financial institution. Such banks and financial institutions are authorized to rely on the representations of the Debtor as to which checks are issued or authorized to be paid pursuant to this Order without

any duty of further inquire and without liability for following the Debtor's instructions.

6. Nothing in the Motion or this Order, nor any payments made pursuant to this Order, shall be deemed to be, or constitute, (a) an admission as to the validity or priority of any claim against the Debtor, (b) an assumption or post-petition reaffirmation of any agreement, plan, practice, program, policy, executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, (c) a grant of third-party beneficiary status of any additional rights on any third party, or (d) a waiver of any rights, claims or defenses of the Debtor.

7. Nothing in the Motion or this Order shall impair the ability of the Debtor to contest the validity or amount of any payment made pursuant to this Order.

8. 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.

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

Dated:

United States Bankruptcy Judge