

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)**

IN RE:

Chapter 11 Cases

RED LOBSTER MANAGEMENT LLC, <sup>1</sup>	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 (A) MAINTAIN AND ADMINISTER PREPETITION CUSTOMER PROGRAMS, PROMOTIONS, AND PRACTICES AND (B) HONOR PREPETITION OBLIGATIONS RELATED THERETO AND (II) GRANTING RELATED RELIEF**

**(Emergency Hearing Requested)**

**Basis for Requested Emergency Relief**

The Debtors respectfully request that the Court set this Motion for hearing on an emergency basis. In the operation of its business, the Debtors maintain several customer programs. By this Motion, the Debtors seek authority to continue to maintain and administer customer programs and to honor or pay certain prepetition obligations to their customers in the ordinary course of business. The Debtors

<sup>1</sup> 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.

reasonably believe that a hearing to consider the relief requested must be held on an emergency basis as soon as the Court's calendar will permit to avoid direct, immediate, and substantial harm to the Debtors' bankruptcy estate.

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through their proposed undersigned counsel, file this emergency motion ("Motion"), requesting the entry of an order (I) authorizing the Debtors to (a) maintain and administer their prepetition customer programs, promotions, and practices, and (b) honor prepetition obligations related thereto; and (II) providing any additional relief required to effectuate the foregoing. In support of the Motion, the Debtors rely upon the *Declaration of Jonathan Tibus in Support of Debtors' Chapter 11 Petitions and First Day Relief* (the "First Day Declaration"), which was filed on or about the date hereof, and is incorporated herein by reference, and represent as follows:

#### **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).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a) and 363(b) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), rules 6003 and 6004 of the Federal Rule 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.

#### **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 sections 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) and 363 of the Bankruptcy Code, the Debtors request (i) authority, but not direction, to (a) continue, renew, replace, implement or terminate customer-related programs, promotions, and practices, and (b) pay and otherwise honor the obligations thereunder, whether arising prior to or after the Petition Date, in each case as they deem appropriate and in the ordinary course of business and consistent with past practices and (ii) related relief. Although they arise in the ordinary course of business, out of an abundance of caution the Debtors request the authority to continue honoring their customer-related obligations on a go-forward basis.

**The Customer Programs**

8. To attract new customers, reward and provide incentives to existing customers, the Debtors employ, in the ordinary course of business, certain programs, promotions, and practices described herein (collectively, the “Customer Programs” and their obligations related thereto, the “Customer Programs Obligations”). Customer programs, like those administered by the Debtors, are standard in the restaurant and hospitality industries. Without the unfettered ability to continue the Customer Programs and satisfy any prepetition obligations owed in connection therewith, the Debtors risk losing customer loyalty, goodwill, and market share in a saturated and competitive environment, which loss could cause a precipitous decline in the value of the Debtors’ businesses at this critical juncture. The Debtors’ ability to continue the Customer Programs and honor obligations related thereto is necessary to keep the Debtors’ reputation intact, meet competitive market pressures, ensure customer satisfaction, and, ultimately, maximize value for the Debtors’ estates and stakeholders.

9. The Customer Programs are a critical aspect of the Debtors' marketing strategy and responsible for driving significant incremental revenue. Many of the Customer Programs change periodically on a seasonal basis in connection with the Debtors' marketing efforts, thereby optimizing customer engagement and rewarding loyalty. As of the Petition Date, the Debtors estimate that there are approximately \$121 million of prepetition obligations outstanding related to the Customer Programs, which could be exercised in the ordinary course of the Debtors' restaurant business.

10. The Customer Programs include: (i) coupons and sales promotions; (ii) a gift card program; (iii) the My Red Lobster Rewards Loyalty Program (as defined below); and (iv) the Debtors' ordinary course refund policy. A summary of each Customer Program is set forth below:

<b>Customer Programs Obligations</b>	<b>Approximate Prepetition Amount</b>
Coupons and Sales Promotions	\$11 million
Gift Card Program	\$89 million
My Red Lobster Rewards Program	\$21 million
Refund Policy	\$30,000

#### **A. Coupons and Sales Promotions**

11. Red Lobster competes and markets its brand in the casual dining market. As part of the Debtors' marketing efforts in this segment, the Debtors offer various in-store and online sales promotions (the "Sales Promotions"). These Sales Promotions are adjusted seasonally to grow customer engagement, drive traffic, and showcase popular menu items. These Sales Promotions operate in tandem with the Debtors' My Red Lobster Rewards Loyalty Program.

12. The Debtors also maintain a coupon redemption program pursuant to which they distribute coupons in-store, online, or in electronic mailings (collectively, the "Coupons," and together with the Sales Promotions, the "Coupons and Sales Promotions"). The Coupons include

vouchers distributed pursuant to certain Sales Promotions and bonus coupons distributed pursuant to certain gift card sales. To preserve the goodwill of Red Lobster's customer base, the Debtors seek authorization to honor the Coupons issued prior to the Petition Date and to continue the Coupons and Sales Promotions in a manner consistent with their ordinary business practices.

13. Prior to the Petition Date, the Debtors' current Coupons and Sales Promotions include, for example, a 10% discount on dining bills over \$40, free appetizers or desserts, and/or offers of a free kid's meal. Based on prior practice and current utilization of the Coupons and Sales Promotions, the Debtors estimate that the entire amount of extant prepetition Coupons and Sales Promotions that the Debtors request to honor in the ordinary course will not exceed \$11 million, which the Debtors expect to be realized over the course of eight months at a rate of \$450,000 per week.

**B. Gift Card Program**

14. The Debtors maintain programs by which their customers can purchase gift cards at any Red Lobster location nationwide, online at [www.redlobster.com](http://www.redlobster.com), or through participating third-party retailers and distributors, and redeem such gift cards at any Red Lobster location (the "Gift Card Program"). In each instance, customers can purchase prepaid, no-fee gift cards (the "Gift Cards") in customizable denominations up to \$250 in the United States and Canada to be used at the Debtors' restaurants. As part of their Gift Card Program, the Debtors also conduct promotional contests and giveaways pursuant to which gift cards redeemable at Red Lobster's restaurants are given away as prizes. The Gift Card Program includes grand prize winners from Red Lobster's instant win scratch game, Scratch & Sea, who may be entitled to redeem "Ultimate Endless Shrimp for a Year" upon successful activation.

15. The Debtors rely upon third parties to manufacture, distribute, and manage the Gift Cards. The Debtors sell Gift Cards in-store, online, and through third-party sales channels (the

“Third-Party Sale Cards”), relying upon third party intermediaries (each a “Gift Card Intermediary” and collectively, the “Gift Card Intermediaries”). The applicable Gift Card Intermediary distributes Gift Cards to third-party retailers (e.g., shopping centers, kiosks, and grocery stores) with physical or electronic gift cards and also collects proceeds from the retailer upon the gift card sale. In most cases, the Gift Card Intermediary remits the proceeds to the Debtors, net of commissions. However, some Gift Card Intermediaries prefer to separately invoice on account of processing fees.<sup>2</sup> Customers can redeem and use the Third-Party Sale Cards at the Debtors’ restaurants just as they do Gift Cards purchased directly from the Debtors. When customers use Third-Party Sale Cards at the Debtors’ restaurants, the Debtors’ outstanding liability on their books and records is reduced accordingly, though the Debtors do not receive any additional cash at the time of use unless the customer’s dining bill requires money in excess of the current balance on the Third-Party Sale Cards.

16. The Debtors also allow corporate customers to purchase Gift Cards in bulk for clients, employees, or other purposes. Furthermore, Red Lobster employees purchase gift cards for use at Red Lobster locations as part of the Gift Card Program. These include providing Red Lobster gift cards to be used in the evaluation of a Red Lobster dining experience, food preparation, and guest services (the “Research Dining Program”). Red Lobster believes the Research Dining Program is essential to driving employee traffic and engagement, and thereby stimulating innovation regarding the customer experience.

17. Importantly, the Debtors have continued to honor Gift Cards without expiration as part of their business judgment. In the twelve-month period preceding the Petition Date, the

---

<sup>2</sup> In the situations where Gift Card Intermediary processing fees are invoiced separately, such invoices are comparatively small, amounting to less than \$10,000 per month. Upon information and belief, the Debtors are current on all such invoices.

Debtors issued approximately \$127 million worth of Gift Cards through cash sale purchases. In the same twelve-month period preceding, the Debtors' customers redeemed approximately \$119 million worth of Gift Cards. As of the Petition Date, the Debtors estimate that the aggregate amount outstanding for issued gift cards is approximately \$170 million, which, based on the Debtors' current data tracking, the Debtors estimate will be redeemed at a rate of approximately \$2.5 million per week.

18. Given the various methods through which Red Lobster gift cards are distributed and sold, Red Lobster is unable to track the aggregate gift card hold size on a per-customer basis. However, based on general customer usage the Debtors believe that any customer claims arising under the Gift Card Program are likely entitled to priority over other general unsecured claims pursuant to section 507(a)(7) of the Bankruptcy Code, up to \$3,350 per individual, because individual customers do not typically hold gift cards in aggregate amounts exceeding the statutory cap. Accordingly, the Debtors seek authority to maintain the Gift Card Program and to honor all gift cards purchased or given away to customers, including any gift cards that were issued prior to the Petition Date.

### **C. My Red Lobster Rewards Loyalty Program**

19. The Debtors administer a three-tier (Red, Gold, and Platinum) customer loyalty program, known as My Red Lobster Rewards (MRLR) (the "My Red Lobster Rewards Loyalty Program" or "MRLR Loyalty Program"). Through the MRLR Loyalty Program, the customer has the ability to determine their tier status based on level of participation and annual spend with Red Lobster. As part of the MRLR Loyalty Program, every dollar spent earns the customer points in accordance with their applicable tier level and in connection with various promotions (e.g., twice the points for to-go orders). As of the Petition Date, there are approximately 19 million members in the MRLR Loyalty Program, of which over 3 million currently hold loyalty program points.

The Debtors believe the My Red Lobster Rewards Loyalty Program is a strategic way of incentivizing customer loyalty and repeat visits by providing added value to customers. The Debtors utilize the My Red Lobster Rewards Loyalty Program in two manners: (i) as a rewards-based loyalty program designed to drive marginal sales through data-driven offers and (ii) as a brand-owned channel for efficiently communicating with customers to increase engagement. As part of the My Red Lobster Rewards Loyalty Program, rewards are loaded into the accounts of members who achieve sufficient points and spending required to receive them. The rewards are available for members who earn 125 points and the rewards, which include a free appetizer, dessert, or specialty drink, change on a monthly basis.

20. As of the Petition Date, the Debtors' estimate that total liabilities for the My Red Lobster Rewards Loyalty Program are \$21 million. Based on historical data, the Debtors estimate that customer utilization of the My Red Lobster Rewards Loyalty Program will convert to an average monthly liability of \$500,000.

21. The Debtors' continued participation in the My Red Lobster Rewards Loyalty Program is both (a) fundamentally important to the continued operation of Red Lobster restaurants, and (b) a critical means of maintaining customer loyalty from existing customers and attracting new customers. Accordingly, by way of this Motion, the Debtors seek authority to continue the My Red Lobster Rewards Loyalty Program in the ordinary course of business.

#### **D. Ordinary Course Refund Practices**

22. Consistent with industry practice and to accommodate customers' needs, the Debtors maintain in-store and online refund practices with respect to both cash and credit purchases as applicable (collectively, the "Refund Policy"). Based on the nature of the Debtors' business, refunds are typically requested within 24-48 hours of the underlying transaction, and are processed, either through repayment of cash or credit card refund, within seven days. The Refund



Policy assures that guest issues will be resolved if the in-store or online food or service provided does not meet their expectations. By way of this Motion, the Debtors seek authorization to continue to honor the Refund Policy in the ordinary course of business. Because most customer refunds are typically processed at point of sale, the Debtors estimate that the aggregate prepetition amount of outstanding refunds that have yet to be processed is approximately \$30,000.

#### **E. Charitable Programs**

23. From time to time, the Debtors sponsor certain charitable programs either by facilitating and encouraging customer donations to certain sponsored charities or by donating unused, wholesome food to local food pantries and community organizations (the “RL Shares Program”).<sup>3</sup> The RL Shares Program includes partnerships with non-profit organizations under section 501(c)(3) of the Internal Revenue Code and with certain universities. The RL Shares Program’s annual budget is determined to align with the Debtors’ procurement and marketing strategies. The Debtors believe that there are no prepetition liabilities associated with current charitable initiatives through the RL Shares Program; however, to the extent there are any prepetition liabilities associated with the RL Shares Program, the Debtors believe such liabilities are de minimis. Any postpetition expenditures associated with the RL Shares Program will be (i) consistent with the Debtors’ historic expenditures, (ii) made within the ordinary course of business, and (iii) will be part of any approved budget in connection with the Debtors’ postpetition financing and use of cash collateral.

24. Through a non-debtor affiliate, Red Lobster Cares, Inc., the Debtors collect and administer funds earmarked from employee wages at their discretion as part of an employee

---

<sup>3</sup> Certain jurisdictions require casual dining restaurants to limit food waste, including through donations to local charities. For the avoidance of doubt, the Debtors have complied and will continue to apply with applicable law regarding such food waste reduction programs and policies.

emergency assistance fund that covers unexpected expenses and financial hardship experienced by other employees (the “RL Cares Program,” and together with the RL Shares Program and other charitable partnerships, the “Charitable Programs”). Administering the Charitable Programs is a meaningful way for the Debtors to maintain goodwill and customer loyalty and to give back to the communities in which the Debtors operate. Because the RL Cares Program is primarily funded by funds donated by Red Lobster employees out of their wages, most or all of the costs to the Debtors are in connection with administering the RL Cares Program.

25. The Debtors believe that the positive impact on the communities they serve, coupled with customer goodwill and increased foot traffic generated by the Charitable Programs, warrants their continued sponsorship on a postpetition basis, including honoring any related outstanding obligations that arose prior to the Petition Date. Customers, employees, and partners who make donations to the Charitable Programs expect the Debtors to honor their representations regarding the use of such donations or otherwise continue operating under the partnerships. Failing to do so would tarnish the Debtors’ reputation and customer relationships during an already sensitive, transitional time for the Debtors’ businesses. Certain donations made under the Charitable Programs are held in trust by the Debtors on behalf of the charities and consequently may not be considered property of the Debtors’ estates. By way of this Motion, the Debtors seek authority to continue the Charitable Programs and to honor all prepetition obligations related thereto, including by remitting the funds held in trust for a sponsored charity to that charity in the ordinary course of business.

#### **F. Third Party Food Delivery Service Providers**

26. As noted in the First Day Declaration, the Debtors’ have a robust to-go order business, including through the use of its “Red Lobster To Go” website and in-store curbside convenience infrastructure (the “Debtor In-Store To-Go Infrastructure”). Additionally, to remain

competitive during the COVID-19 pandemic, the Debtors have developed strategic commercial relationships with popular third party food delivery service providers, including Uber Eats, DoorDash, GrubHub, and others (collectively, the “Third Party Food Delivery Service Providers” and together with the Debtor In-Store To-Go Infrastructure, the “Debtor Off-Premises Business Infrastructure”). Pursuant to the applicable service agreements, the Third Party Food Delivery Service Providers, in most cases, net out their delivery costs and service fees on a per-order basis. The Debtors, therefore, do not remit payment to the Third Party Food Delivery Service Providers.

27. Altogether, the Debtor Off-Premises Business Infrastructure has fueled the Debtors’ off-premises business segment, which today accounts for hundreds of millions in revenue annually. It is, therefore, critical to the Debtors’ business to maintain the strategic relationships and commercial agreements that make up the Debtor Off-Premises Business Infrastructure. It is possible that through the process of netting proceeds on a per-order basis, the Debtors may owe, in the aggregate, approximately \$1 million to the Third Party Food Delivery Service Providers or in connection with the Debtor In-Store To-Go Infrastructure. Out of an abundance of caution, the Debtors’ seek authority, but not direction, through this Motion for such prepetition amounts to be paid in the ordinary course.

**Relief Requested Should Be Granted**

**A. Payment of Obligations Arising Under the Customer Programs is Warranted Under Sections 363(b)(1) and 105(a) of the Bankruptcy Code and the Doctrine of Necessity**

28. The Court may grant the relief requested herein pursuant to sections 105(a) and 363 of the Bankruptcy Code.

29. A bankruptcy court may authorize a debtor to pay certain prepetition obligations pursuant to section 363(b) of the Bankruptcy Code. 11 U.S.C. § 363(b)(1). Section 363(b) provides, in pertinent part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease,

other than in the ordinary course of business, property of the estate.” To approve the use of assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, courts require only that the debtor “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); accord *In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); see also *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

30. The Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105; see *In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (applying section 105(a) to justify an order authorizing the payment of certain prepetition wages, salaries, medical benefits, and business expense claims to debtor’s employees). Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to act as a fiduciary to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); see also *Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession

and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”). Courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus”).

31. The Court may authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor’s business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

32. Moreover, to the extent that such prepetition obligations relating to the Customer Programs constitute claims arising from prepayments, many, if not all, of such claims are entitled to priority under section 507(a)(7) of the Bankruptcy Code. Accordingly, the value of the prepetition prepayments currently held by the Debtors are value that would not otherwise have been available for distribution to the Debtors’ unsecured creditors in the absence of the relief sought herein. Thus, the honoring of such prepetition prepayments does not serve to prejudice any of the Debtors’ other stakeholders.

33. In furtherance of the foregoing policies, courts in this District, this Circuit and elsewhere have regularly authorized debtors to honor and pay obligations to customers arising prior to and after the filing of their chapter 11 cases in the ordinary course of business. *See, e.g., In re Robb & Stucky LLLP*, Case No. 8:11-bk-02801-CAD (Bankr. M.D. Fla. Mar. 11, 2011); *In re E-Brands Rests., LLC, et al.*, Case No. 10-bk-18282-KRM (Bankr. M.D. Fla. Aug. 20, 2010); *In re Vital Pharmaceuticals, Inc., et al.*, Case No. 22-17842-PDR (Bankr. S.D. Fla. Oct. 14, 2022); *It's Sugar FL I LLC, et al.*, Case No. 20-20259-RAM (Bankr. S.D. Fla. Sept. 29, 2020); *In re Toojay's Management LLC, et al.*, Case No. 20-14792-EPK (Bankr. S.D. Fla. May 22, 2020); *In re Adinath Corp., et al.*, Case No. 15-16885-LMI (Bankr. S.D. Fla. April 21, 2015); *In re Fla. Gaming Ctrs., Inc.*, Case No. 13-29597-RAM (Bankr. S.D. Fla. Aug. 26, 2013); *In re DM Indus., Ltd.*, Case No. 09-15533-LMI (Bankr. S.D. Fla. May 6, 2009); *In re Jack Cooper Ventures, Inc.*, Case No. 19-62393 (PWB) (Bankr. N.D. Ga. Sep. 3, 2019); *In re Beaulieu Grp., LLC*, Case No. 17-41677 (PWB) (Bankr. N.D. Ga. July 20, 2017); *In re Delta Air Lines, Inc.*, Case No. 05-17923-PCB (Bankr. S.D.N.Y. Sept. 16, 2005); *In re Northwest Airlines Corp.*, Case No. 05-17930-ALG (Bankr. S.D.N.Y. Sept. 15, 2005); *In re Tower Auto., Inc.*, Case No. 05-10578-ALG (Bankr. S.D.N.Y. Feb. 3, 2005); *In re Footstar, Inc.*, Case No. 04-22350-ASH (Bankr. S.D.N.Y. Mar. 30, 2004); *accord In re Kaiser Aluminum Corp.*, Case No. 02-10429-PJW (Bankr. D. Del. Feb. 13, 2002); *In re Burlington Indus., Inc.*, Case No. 01-11282-PJW (Bankr. D. Del. Nov. 15, 2001).

34. In the instant case, the Court may authorize the Debtors to continue Customer Programs in the ordinary course of business under Section 363(b) of the Bankruptcy Code. Section 363(b) provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To approve the use of assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, courts require only that the debtor “show that a sound business purpose

justifies such actions.” *Montgomery Ward*, 242 B.R. at 153 (D. Del. 1999); *see also Phoenix Steel*, 82 B.R. at 335–36.

35. The relief requested by the Motion represents a sound exercise of the Debtors’ business judgment, necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. The Debtors’ businesses depend upon their ability to assure their customers of consistent, high-quality goods and services, and their customers’ continued support and patronage is critical to the success of these chapter 11 cases. The Debtors’ ability to maintain and continue administering the Customer Programs without interruption is critical to the Debtors’ valuable customer relationships and goodwill, which will inure to the benefit of the Debtors’ key stakeholders. If the Debtors are unable to continue the Customer Programs or honor the obligations thereunder, Red Lobster risks alienating customers, resulting in losses of customer support and goodwill that will harm the Debtors’ prospects for a successful postpetition sale process and their ability to maximize the value of their estates. Such harm would amplify the negative effective of customer uncertainty that may arise from the commencement of these chapter 11 cases. In particular, the Debtors believe that the interruption of any of their Customer Programs may subject them to significant negative press and deterioration of market share.

36. The Debtors operate in the highly competitive casual dining industry. If the Debtors are unable to continue these practices and honor their obligations under the Customer Programs, the Debtors risk alienating their customers to select competing restaurants. A significant portion of the value of the Debtors’ businesses is, and will continue to be, dependent on the loyalty and confidence of their customers. If the Debtors fail to honor the obligations arising under the Customer Programs due in the ordinary course, they would almost certainly suffer an irreparable loss of customer support and confidence, thereby undermining their efforts to maximize value for

their estates. The relief requested in the Motion will help minimize any disruption in the Debtors' business operations during these chapter 11 cases, thereby preserving the value of the Debtors' estates.

37. For the foregoing reasons, the relief requested herein will preserve and enhance the value of the Debtors' businesses. Accordingly, the relief requested is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these chapter 11 cases. Accordingly, the Court should authorize the Debtors to continue maintaining and administering the Customer Programs in the ordinary course of business and to pay and honor, as applicable, any prepetition obligations that may be outstanding with respect thereto.

**B. Continuing the Customer Programs and Honoring the Obligations Related Thereto are in the Best Interests of the Debtors' Businesses and Estates**

38. The ability to continue administering the Customer Programs without interruption is critical to the Debtors' valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors' stakeholders. If the Debtors are unable to continue the Customer Programs or honor obligations thereunder, the Debtors risk alienating customers (who then could form relationships with the Debtors' competitors), thereby damaging goodwill and customer loyalty.

39. Most, if not all, of the Customer Programs are standard programs for casual dining restaurants such as those of the Debtors. The Debtors' principal competitors maintain programs similar to those offered by the Debtors. As such, customers have come to expect these types of programs to be offered in the ordinary course of business by the Debtors and their competitors. Therefore, it is essential that the Debtors be permitted to continue the Customer Programs in the ordinary course of business and honor their prepetition obligations related thereto.



40. Moreover, maintaining the Customer Programs is an integral part of the marketing strategy the Debtors use to attract and retain customers. Failure to continue the Customer Programs and just offer even basic programs such as the Refund Policy will place the Debtors at a significant competitive disadvantage in the marketplace, amplifying the negative effect of customer uncertainty that may arise from these chapter 11 filings. Such uncertainty could erode the Debtors' hard-earned reputation and customer loyalty, which, in turn, could adversely impact the Debtors' ability to successfully administer their chapter 11 cases and maximize the value of their estates. In the Debtors' business judgment, the substantial benefit of the relief requested herein exceeds its marginal cost with respect to the Debtors' businesses, both in terms of profitability and customer goodwill.

**Financial Institutions Should be Authorized to Receive, Process, Honor  
and Pay Checks and Electronic Funds Transfers**

41. 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 electronic fund transfers drawn on the Debtors' accounts relate to Customer Programs. Accordingly, the Debtors further request that all applicable banks and other financial institutions be authorized and directed, when requested by the Debtors in the Debtors' sole discretion, to receive, process, honor, and pay any and all checks or electronic funds transfers drawn on the Debtors' accounts in payment of Customer Programs Obligations, whether such checks were presented or electronic funds transfers were made prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments, 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**

42. 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.

**Request for Bankruptcy Rule 6004(a) and (h) Waivers**

43. To implement the foregoing successfully, the Debtors seek waivers of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14)-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

**Reservation of Rights**

44. 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.

**WHEREFORE**, the Debtors respectfully request that the Court enter an Order in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other and further relief as is just and proper.

*[Remainder of Page Intentionally Left Blank]*

Dated: May 19, 2024

W. Austin Jowers (pro hac vice pending)  
Jeffrey R. Dutson (pro hac vice pending)  
Sarah Primrose (Bar No. 98742)  
Christopher K. Coleman (pro hac vice pending)  
Brooke L. Bean (pro hac vice pending)  
Taeyeong Kim (pro hac vice pending)  
**KING & SPALDING LLP**  
1180 Peachtree Street, NE, Suite 1600  
Atlanta, GA 30309  
Telephone: (404) 572-4600  
Email: [ajowers@kslaw.com](mailto:ajowers@kslaw.com)  
[jdutson@kslaw.com](mailto:jdutson@kslaw.com)  
[sprimrose@kslaw.com](mailto:sprimrose@kslaw.com)  
[christopher.coleman@kslaw.com](mailto:christopher.coleman@kslaw.com)  
[bbean@kslaw.com](mailto:bbean@kslaw.com)  
[tkim@kslaw.com](mailto:tkim@kslaw.com)

– and –

Michael Fishel (pro hac vice pending)  
**KING & SPALDING LLP**  
1100 Louisiana, Suite 4100  
Houston, TX 77002  
Telephone: (713) 751-3200  
Email: [mfishel@kslaw.com](mailto:mfishel@kslaw.com)

Respectfully submitted,

/s/ Paul Steven Singerman  
Paul Steven Singerman  
Florida Bar No. 378860  
**BERGER SINGERMAN LLP**  
1450 Brickell Avenue, Suite 1900  
Miami, FL 33131  
Telephone: (305) 755-9500  
Email: [singerman@bergersingerman.com](mailto:singerman@bergersingerman.com)

– and –

Nicolette C. Vilmos  
Florida Bar No. 469051  
**BERGER SINGERMAN LLP**  
300 S. Orange Avenue, Suite 1000  
Orlando, FL 32801  
Telephone: (407) 749-7900  
Email: [nvilmos@bergersingerman.com](mailto:nvilmos@bergersingerman.com)

*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](http://www.flmb.uscourts.gov)

IN RE:

Chapter 11 Cases

RED LOBSTER MANAGEMENT LLC, <sup>1</sup>	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-_____

---

<sup>1</sup> 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 (A) MAINTAIN AND  
ADMINISTER PREPETITION CUSTOMER PROGRAMS, PROMOTIONS,  
AND PRACTICES AND (B) HONOR PREPETITION OBLIGATIONS  
RELATED THERETO AND (II) GRANTING RELATED RELIEF**

**THIS CASE** came before the Court for consideration on May [●], 2024 at [●] [a.m./p.m.], in Orlando, Florida upon the hearing (the "Hearing") to consider *Debtors' Emergency Motion for Entry of an Order (I) Authorizing Debtors to (A) Maintain and Administer Prepetition Customer Programs, Promotions, and Practices and (B) Honor Prepetition Obligations Related Thereto and (II) Granting Related Relief* ("Motion") filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), Federal Rules of Bankruptcy Procedure 6003 (the "Bankruptcy Rules") and Local Rule 9013-1(d), for the entry of an Order authorizing, but not directing, the Debtors to maintain and administer customer-related programs, promotions, and practices, and to pay and otherwise honor their obligations to customers thereunder, in each case as they deem appropriate and in the ordinary course of business, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion and Hearing thereon having been provided with such notice having been adequate and appropriate under the circumstances such that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held the Hearing to consider the relief requested in the Motion; and upon the First Day Declaration, filed contemporaneously with the Motion, and the record of

the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, their creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to maintain and administer the Customer Programs<sup>2</sup> in effect and to honor and pay any prepetition Customer Program Obligations thereunder, in each case, in the ordinary course of business in accordance with practices and procedures that were in effect before the Petition Date. The Debtors are further authorized, but not directed, to honor, solely in their business judgment and in the ordinary course, obligations owed in connection with the Debtor Off-Premises Business Infrastructure, including, without limitation, prepetition obligations owed to any Third Party Food Delivery Service Providers.
3. The Debtors are authorized, but not directed, to continue to issue, sell, maintain, and honor Gift Cards through the Gift Card Program in the ordinary course of business in accordance with practices and procedures that were in effect before the Petition Date. The Debtors are further authorized, but not directed, to honor, solely in their business judgment and in the ordinary course, obligations owed to the Gift Card Intermediaries.

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.



4. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to maintain and administer the Charitable Programs in effect and to honor and pay any prepetition obligations related thereto in the ordinary course of business in accordance with practices and procedures that were in effect before the Petition Date.

5. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to honor customer refunds in accordance with the Debtors' Refund Policy.

6. 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; (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.

7. 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).

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 requirements of Bankruptcy Rule 6003(b) have been satisfied.

11. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

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

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

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

# # #

*(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.)*