

Dennis F. Dunne, Esq. (pro hac vice pending)
Andrew M. Leblanc, Esq. (pro hac vice pending)
Michael W. Price, Esq. (pro hac vice pending)
Lauren C. Doyle, Esq. (pro hac vice pending)

MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Tyler P. Brown, Esq. (VSB No. 28072)
Justin F. Paget, Esq. (VSB No. 77949)
Jennifer E. Wuebker, Esq. (VSB No. 91184)

HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

Thomas R. Kreller, Esq. (pro hac vice pending)

MILBANK LLP
2029 Century Park East
33rd Floor
Los Angeles, California 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063

Proposed Co-Counsel for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

)	
In re:)	Chapter 11
)	
GUITAR CENTER, INC. <i>et al.</i> , ¹)	Case No. 20-34656 (KRH)
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS: (I) AUTHORIZING THE DEBTORS TO MAINTAIN AND
ADMINISTER CERTAIN CUSTOMER PROGRAMS AND TO HONOR CERTAIN
RELATED PREPETITION OBLIGATIONS; AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (this “Motion”):

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Guitar Center Holdings, Inc. (3262); Guitar Center, Inc. (0862); Guitar Center Stores, Inc. (4340); GTRC Services, Inc. (9503); GC Business Solutions, Inc. (3928); Guitar Center Gift Card Company, LLC (3370); Music & Arts Instructor Services, LLC (7811); and AVDG, LLC (4440). The Debtors’ service address is 5795 Lindero Canyon Rd., Westlake Village, CA 91362.

Preliminary Statement

1. The Debtors, known for their iconic Hollywood, California, Guitar Center music store and their family of brands, Guitar Center, Music & Arts, Musician’s Friend, and Woodwind and Brasswind, are the leading United States retailers of musical instruments and related products and services.

2. The Debtors have commenced these chapter 11 cases to implement a comprehensive restructuring pursuant to a restructuring support agreement and “prepackaged” chapter 11 *plan overwhelmingly supported by stakeholders spanning the Debtors’ capital structure, including:*

- holders of **100%** in aggregate principal amount of the Debtors’ senior secured superpriority notes;
- holders of over **71%** in aggregate principal amount of the Debtors’ senior secured notes;
- holders of **84%** in aggregate principal amount of the Debtors’ senior unsecured cash/PIK notes; and
- the holder of substantially all of the Debtors’ existing common equity.

3. The restructuring transactions contemplated by the Restructuring Support Agreement² and the Plan will allow the Debtors to achieve certain objectives that are critical to their survival: (a) to continue operations without interruption, including minimizing any potential adverse effects to the Debtors’ businesses, customers, employees, and trade partners; (b) to consummate an expedient emergence from these cases; and (c) to ensure ample liquidity and

² Capitalized terms used but not otherwise defined in this Motion have the meanings given to such terms in the *Declaration of Tim Martin of Guitar Center, Inc., in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”).

emerge with a de-leveraged capital structure well-positioned for future success. The Debtors believe, and all of their major stakeholders resoundingly concur, that a smooth and fast path to Plan confirmation and emergence from chapter 11 is imperative as the Debtors strive to maximize the value of their operations and maintain their critical relationships with all of their key constituents. Delay and distraction will jeopardize those objectives.

4. The restructuring transactions are essential to the Debtors' survival during these difficult times. The Debtors are the largest national omni-channel musical instrument retailer, serving their customers in over 500 brick and mortar locations nationwide and through their direct sales websites. The Debtors employ approximately 13,000 people³ and generated over \$2.3 billion in revenue in fiscal year 2019. Prior to the outbreak of the COVID-19 pandemic, the Debtors had been enjoying sustained comparable sales growth over 10 straight quarters. However, like many retailers, COVID-19 wiped out much of the Debtors' progress.

5. Despite the implementation of numerous cost saving measures, the liquidity constraints caused by the Debtors' significant debt burden and upcoming maturities, coupled with the economic upheaval created by the persistence of the COVID-19 pandemic, could not be resolved through short-term measures. By mid-summer 2020, the Debtors were working in earnest on a dual-track process to gauge potential investors' interest in making a new equity investment in Guitar Center and engage with the holders of the Debtors' outstanding funded indebtedness to explore potential long-term solutions to the Debtors' capital structure, hopefully with the benefit of some infusion of new capital.

³ Of the more than 8,750 employees that were furloughed at the peak of the COVID-19 pandemic, as of the Petition Date, only approximately 900 remain furloughed due to ongoing store closures and reduced hours.

6. On November 13, 2020, the Debtors and their key stakeholders executed the Restructuring Support Agreement outlining the key terms of the *Joint Pre-Packaged Chapter 11 Plan of Guitar Center, Inc. et al.* and comprehensive debtor in possession financing arrangements. The Restructuring Support Agreement provides for, among other things: (a) an equity infusion of up to \$165 million, from a consortium of parties including the Debtors' existing equity sponsor and two co-investors; (b) \$375 million in Debtor-In-Possession financing provided by certain of its existing noteholders and ABL lenders; (c) and a capital raise of \$335 million in new senior secured notes. The restructuring transactions will reduce the Debtors' overall funded debt burden by over \$800 million, while maintaining ordinary course operations and unimpairing all non-funded debt creditors.

7. In accordance with the Restructuring Support Agreement, on November 20, 2020, the Debtors commenced solicitation of votes on the Plan from holders of claims in the two classes of claims entitled to vote—the senior secured noteholder and the senior unsecured cash/PIK noteholders.

8. Contemporaneously with the commencement of these cases, and in addition to the Plan and the disclosure statement for the Plan, the Debtors filed a number of motions seeking different types of “first day” relief. The First Day Motions are designed: (a) to protect and preserve the Debtors' key relationships with its employees, vendors, other supply chain participants, and customers; (b) to provide the Debtors with adequate and readily available liquidity to meet their needs during these cases, which were commenced during the critical holiday selling season; and (c) to establish a prompt and efficient schedule for Plan confirmation that will provide all parties with visibility into and certainty around the Debtors' quick emergence from chapter 11. With the

support of the vast majority of its capital structure already in hand, the Debtors believe they are in a prime position to achieve all of these objectives.

Background

9. On the date of this Motion (the "Petition Date"), each Debtor commenced a chapter 11 case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the "Bankruptcy Code").

10. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. The Debtors have requested that their cases be consolidated for procedural purposes only and administered jointly. No request for the appointment of a trustee or examiner has been made and no official committee of unsecured creditors has been appointed.

12. A comprehensive description of the Debtors' business and operations, capital structure, and the events leading to the commencement of these cases can be found in the First Day Declaration filed contemporaneously with this Motion and which is incorporated in this Motion by reference.

Jurisdiction and Venue

13. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The bases for the relief requested in this Motion are sections 105(a) and 363(b) and (c) of the Bankruptcy Code, rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the "Local Bankruptcy Rules").

15. The Debtors consent to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection with this Motion consistent with Article III of the United States Constitution.

Relief Requested

16. By this Motion, the Debtors seek entry of interim and final orders, substantially in the forms annexed to this Motion as **Exhibit A** and **Exhibit B**, respectively: (a) authorizing the Debtors to continue to maintain and administer certain customer-related programs (collectively, the “Customer Programs”) and to honor certain prepetition obligations related to the Customer Programs; and (b) granting certain related relief. In addition, the Debtors request that the Court schedule a final hearing twenty-one (21) days after the commencement of these cases to consider approval of the relief sought in this Motion on a final basis.

Description of the Customer Programs

17. The Debtors’ business depends upon the loyalty of its customers. To maximize customer loyalty, the Debtors have maintained the Customer Programs in the ordinary course of business to reward and incentivize existing customers and to attract new customers to the Debtors’ stores and websites. Being unable to continue the Customer Programs may cause irreparable harm to the Debtors’ business, goodwill, customer base, and market share. The Customer Programs are as follows:

A. The Refund and Exchange Program

18. The Debtors’ primary Customer Program is their refund and exchange program (the “Refund and Exchange Program”). As is customary in the retail industry, the Debtors have historically allowed their customers to return or exchange merchandise (with limited exceptions) within forty-five (45) days of purchase so long as it is returned in saleable condition and

accompanied with a return authorization code. The Refund and Exchange Program assures the Debtors' customers that they will be "made whole" if merchandise is inadequate, damaged or defective, incorrectly processed, or unavailable. Generally, customers are refunded the full purchase price of each returned item in the manner in which the item was purchased or they receive store credit.⁴

19. The Debtors believe that the Refund and Exchange Program is critical to maintaining the goodwill of the Debtors' customer base, particularly at the outset of these cases and with the upcoming holiday season. Without the Refund and Exchange Program, customers may be unwilling to shop at the Debtors' stores, thus jeopardizing the Debtors' reorganization.

20. As of the Petition Date, approximately \$6,961,036 of credit issued for returned merchandise remain outstanding. Accordingly, the Debtors seek authorization to continue the Refund and Exchange Program and pay any prepetition obligations arising from the Refund and Exchange Program.

B. The Musician's Friend Rewards Programs

21. In the ordinary course of business, the Debtors offer a loyalty rewards program (the "Rewards Program") to customers of their Musician's Friend brand (the "Rewards Members"). Among other benefits, Rewards Members receive eight points for every dollar spent at Musician's Friend (with various promotions doubling or tripling points earned) and five dollars for every 500 points earned, which may be applied towards their next purchase (each, a "Reward Certificate"). Reward Certificates are not redeemable for cash and expire six months from a Rewards Member's last purchase.

⁴ Customers seeking refunds for cash purchases over \$250 are refunded by check or a Visa Debit Card.

22. As of the Petition Date, approximately \$10,769,296 worth of Reward Certificates remain outstanding. Assuming a historical percentage of Reward Certificates are redeemed within the prescribed periods, the Reward Certificates represent a contingent prepetition claim of approximately \$2,844,227. By this Motion, the Debtors seek authority to maintain the Rewards Program and allow Rewards Members to redeem all qualified Rewards Certificates earned prior to the Petition Date.

C. Gear Card Rewards Program

23. The Debtors' Guitar Center brand offers its customers a private-label credit card (the "Gear Card"), which is issued and serviced by a third-party provider. Holders of the Gear Card automatically receive points under a loyalty program (the "Gear Card Rewards Program") towards five-percent back on purchases made within the Guitar Center brand of stores ("Rewards Points"). Rewards Points convert to ten dollar e-certificates for every \$200 spent. Such e-certificates expire ninety (90) days after issuance.

24. As of the Petition Date, approximately \$4,291,304 worth of Reward Points remain outstanding. Assuming a historical percentage of Reward Points are redeemed within the prescribed periods, the Reward Points represent a contingent prepetition claim of approximately \$2,374,566. By this Motion, the Debtors seek authority to maintain the Gear Card Rewards Program and allow redemption of all qualified Rewards Points earned prior to the Petition Date.

D. The Gift Card Program

25. Like many retailers, the Debtors maintain a program (the "Gift Card Program") that allows their customers to purchase physical, pre-paid, non-expiring gift cards that can be redeemed for merchandise at a later date (the "Gift Cards"). The Gift Cards are issued in various denominations and are sold in the Debtors' retail stores, online, and at certain third-party vendor

locations. The Debtors pay a monthly fee of approximately \$5,000 to outside vendors to administer the Gift Card Program.

26. It is critical to the Debtors' goodwill that they continue honoring their obligations under the Gift Card Program in accordance with customer expectations, especially because Gift Cards are often exchanged as gifts during the holiday season. Without the ability to continue to honor these obligations, including those that arose before the Petition Date, the Debtors risk losing foot- and web-traffic, as well as the loyalty of their valued customers.

27. As of the Petition Date, approximately \$13,307,736 in issued and unredeemed Gift Cards remain outstanding. By this Motion, the Debtors seek authority to maintain the Gift Card Program, including honoring all Gift Cards purchased prior to the Petition Date, as well as authority to pay any corresponding fees, including those fees to administer the Gift Cards.

E. Purchase Deposits

28. In the ordinary course of business, the Debtors sell certain merchandise or services to customers that require a deposit or prepayment (the "Purchase Deposits") to be placed on such purchases, such as custom orders, special orders, or prepaid music lessons. The Debtors retain Purchase Deposits until the customer receives the product or service, at which point the Debtors apply the Purchase Deposit against the total cost of such goods or services.

29. If the Debtors' customers fail to receive assurance that their Purchase Deposits will be honored and applied, such customers may cancel their product orders and seek an immediate return of their Purchase Deposit, disrupting the Debtors' revenue stream. Further, the Debtors' goodwill may erode because consumers would no longer trust the Debtors to be able to fulfill custom orders or music lessons.

30. As of the Petition Date, approximately \$9,908,549 in Purchase Deposits remain outstanding. Accordingly, to maintain the Debtors' revenue stream, the Debtors request authority

to continue accepting Purchase Deposits, as well as to honor prepetition Purchase Deposits in the ordinary course of business.

F. Layaway Program

31. The Debtors also offer a layaway program at their Guitar Center stores that allows a customer to pay for products over a thirty day period (the "Layaway Program"). Under the Layaway Program, a customer deposits 25% of the purchase price towards an item, and must pay the balance and pick up the item within the prescribed period. There are no fees, and deposits are 100% refundable. Layaways are cancelled if a customer does not pay the balance or pick up the item timely, and the customer's deposit is credited to an account in the customer's name.

32. As of the Petition Date, approximately \$1,684,952 in deposits under the Layaway Program remain outstanding. To maintain the Debtors' goodwill and honor the trust customers placed with them, the Debtors request authority to maintain the Layaway Program, as well as honor prepetition obligations under the Layaway Program in the ordinary course of business.

G. Credit Card and Other Payment Processors

33. In addition to cash, the Debtors accept the following methods of payment from in-store and online points of sale: (a) Visa, MasterCard, Discover, and American Express; (b) PayPal; and (c) checks at in-store points of sale only (collectively, the "Non-Cash Payments"). To process the Non-Cash Payments, the Debtors are party to certain agreements (the "Payment Processing Agreements") with several payment processors (the "Payment Processing Companies"). Pursuant to the Payment Processing Agreements, funds on account of the Non-Cash Payments are remitted to the Debtors on a daily basis, net of any Chargebacks (as defined below), returns, and processing fees. The processing fees charged by each Payment Processing Company (the "Processing Fees") vary, but generally are in the range of one to five percent (with the exception of the Gear Card, which charges no transaction fees).

34. When customers either return merchandise to the Debtors following a purchase made through a Non-Cash Payment or dispute a particular charge, the Debtors may be obligated to refund the purchase price of the returned or disputed merchandise, subject to certain adjustments (collectively, “Chargebacks” and, together with the Processing Fees, the “Processing Obligations”) to the applicable Payment Processing Company. Generally, Chargebacks are satisfied by the applicable Payment Processing Company by netting the amount charged against pending payments owed by such Payment Processing Company to the Debtors. Some Processing Obligations incurred by the Debtors immediately prior to the Petition Date may not have been fully netted out prior to the Petition Date.

35. Thus, to avoid disrupting their business, the Debtors seek authority to continue paying the Processing Obligations in the ordinary course of their business pursuant to the terms of the Payment Processing Agreements, and request that the Court authorize the Payment Processing Companies to continue to set off the Processing Obligations against amounts remitted to the Debtors, whether arising before or after the Petition Date, in a manner consistent with past practices.

Basis for Relief

36. Honoring the Customer Programs is critical to the Debtors’ continued, uninterrupted operations and, as such, may be authorized under section 363 of the Bankruptcy Code, as well as pursuant to section 105(a) and the “doctrine of necessity.”

A. Section 363 of the Bankruptcy Code Authorizes the Debtors to Honor the Customer Programs In the Ordinary Course of Business.

37. Pursuant to section 363(c)(1) of the Bankruptcy Code, the Debtors may “enter into transactions . . . in the ordinary course of business” and “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1).

38. Furthermore, pursuant to section 363(b) of the Bankruptcy Code, the Court may also authorize the Debtors to “use property of the estate . . . other than in the ordinary course of business.” 11 U.S.C. § 363(b)(1). Courts “apply the deferential business judgment test when analyzing transactions under § 363(b)(1).” *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016); *see also In re W.A. Mallory Co.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) (“This Court follows the ‘sound business purpose’ test when examining § 363(b) sales.”).⁵ Under this deferential standard, “courts should defer to – should not interfere with – decisions of corporate directors upon matters entrusted to their business judgment except upon a finding of bad faith or gross abuse of their ‘business discretion.’” *Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1047 (4th Cir. 1985); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”); *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where 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.”). Thus, if a transaction satisfies the business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code. Under section 363(b), courts have authorized debtors in possession, among other things, to pay certain prepetition obligations when such payment was shown to be justified by the debtor’s sound business judgment. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition obligations under section 363(b)).

⁵ *See also In re Cont’l Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1070-71 (2d Cir. 1983); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999).

39. As the continuation of the Customer Programs and incurrence of related obligations postpetition is in the ordinary course of the Debtors' business, the Debtors respectfully submit that the Bankruptcy Code authorizes them to continue their prepetition practices with respect to the Customer Programs without further order from the Court.

40. Additionally, honoring the Customer Programs would be a sound exercise of the Debtors' business judgment. The continued satisfaction of the Debtors' customers is crucial to maintaining the Debtors' position as the leading retailer of musical instruments, lessons, repairs, and services. If the Debtors do not pay amounts accrued prepetition in connection with the Customer Programs and the Processing Obligations, the Debtors risk alienating their customers, and the corresponding loss of goodwill will harm their prospects for reorganization. Continuing to administer the Customer Programs without interruption during the pendency of these cases will help preserve the Debtors' valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors' stakeholders and enhance the value of the Debtors' estates.

41. Likewise, the Debtors' continued acceptance of Non-Cash Payments is essential to the operation of the Debtors' business. The majority of the Debtors' sales—and all online sales—are made using Non-Cash Payments. The Debtors cannot afford to cede their online presence, particularly as many of their brick and mortar locations face COVID-19 pandemic-related closures or restrictions. Moreover, the Debtors' customers overwhelmingly prefer to pay with the convenience of Non-Cash Payments, and removing the preferred payment option would result in the loss of both sales and existing customers, as well as diminish the ability to attract new customers. In addition, the Debtors' cannot administer many of their Customer Programs, particularly the Refund and Exchange Program and the Gear Card Rewards Program, without Non-

Cash Payments. Simply, being unable to accept Non-Cash Payments would devastate the Debtors' operations.

42. In addition, the Debtors' other unsecured creditors would not be prejudiced if the Court grants this Motion because the value of preserving the Debtors' estates will inure to the benefit of the Debtors' estates and their creditors. Thus, satisfaction of these claims postpetition will not enhance their priority or prejudice the rights of the Debtors' general unsecured creditors.

43. Further, certain obligations under the Gift Card Programs, the Purchase Deposits, and the Layaway Program may enjoy priority pursuant to section 507(a)(7) of the Bankruptcy Code. Section 507(a)(7) provides that up to \$3,025 in claims arising from a consumer's prepetition deposit of money for the purchase of property or services for "personal, family, or household use," to the extent that such property or services were not delivered, are entitled to priority over general unsecured claims. 11 U.S.C. § 507(a)(7). This statute "protect[s] consumers who had deposited money for goods and services with a business that subsequently filed for bankruptcy." *In re River Vill. Assocs.*, 161 B.R. 127, 133 (Bankr. E.D. Pa. 1993), *aff'd*, 181 B.R. 795 (E.D. Pa. 1995). In addition, certain state laws may require that the Debtors continue to honor their obligations under the Gift Card Program.

44. Therefore, the Debtors would properly exercise their business judgment by continuing the Customer Programs and Processing Obligations, including paying any obligations arising prepetition.

B. This Court May Also Rely on Its Equitable Powers to Grant the Requested Relief.

45. In addition, courts have the authority to grant the relief requested in this Motion under section 105(a) of the Bankruptcy Code. Section 105(a) codifies bankruptcy courts' inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry

out the provisions of this title.” Among other things, under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); *In re Synteen Tech., Inc.*, 2000 WL 33709667, at *2 (Bankr. D. S.C. Apr. 14, 2000); *see also Ionosphere Clubs Inc.*, 98 B.R. at 175-76 (noting that the bankruptcy court’s ability to authorize payment of pre-petition debt under 105(a) is “not a novel concept”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”).

46. Payments of critical prepetition claims not explicitly authorized by the Bankruptcy Code have also been authorized under the equitable “doctrine of necessity” or the “necessity of payment” doctrine. *See In re United Am., Inc.*, 327 B.R. 776, 781 (Bankr. E.D. Va. 2005) (acknowledging the doctrine of necessity “is a necessary deviation because otherwise there will be no reorganization and no creditor will have an opportunity to recoup any part of its pre-petition claim”); *NVR L.P.*, 147 B.R. at 127 (“Under [section 105(a)] the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for payment of pre-petition claims” under the doctrine of necessity).

47. The doctrine of necessity is designed to foster debtors’ rehabilitation, which courts have recognized to be “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R.

at 176; *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp.* (*In re Chateaugay Corp.*), 80 B.R. 279, 285-86 (S.D.N.Y. 1987) (approving bankruptcy court order authorizing payment of prepetition obligations).

48. Courts in the Fourth Circuit have applied the doctrine of necessity where payment of a prepetition claim (1) is “necessary for the successful reorganization of the debtor,” (2) falls within “the sound business judgment of the debtor,” and (3) will not “prejudice other unsecured creditors.” *In re United Am., Inc.*, 327 B.R. at 782; *see also In re Universal Fin., Inc.*, 493 B.R. 735, 738-40 (Bankr. M.D. N.C. 2013) (applying the *United Am.* three-part test); *In re Movie Gallery, Inc.*, 2010 Bankr. LEXIS 5819, at *4 (E.D. Va. Mar. 23, 2010). Each of these three prongs is met here.

49. As explained above, maintaining the Customer Programs and relationships with the Payment Processing Companies are both necessary to the Debtors’ reorganization and justified by the Debtors’ sound business judgment. And the Debtors’ other unsecured creditors would not be harmed if this Court grants this Motion because the value of preserving the Debtors’ estates will inure to the benefit of the Debtors’ estates and their creditors.

50. Based on all of the foregoing, this Court should grant the relief requested in this Motion. Similar relief has been granted by courts in this and other districts. *See, e.g., In re Le Tote, Inc.*, No. 20-33332 (KLP), [Docket No. 258] (Bankr. E.D. Va. Aug. 27, 2020); *In re Ascena Retail Grp., Inc.*, No. 20-33113 (KRH), [Docket No. 447] (Bankr. E.D. Va. Aug. 27, 2020); *In re Intelsat S.A.*, No. 20-32299 (KLP), [Docket No. 275] (Bankr. E.D. Va. June 9, 2020); *In re Chinos Holdings, Inc.*, No. 20-32181 (KLP), [Docket No. 380] (Bankr. E.D. Va. May 28, 2020); *In re*

Pier 1 Imports, Inc., No. 20-30805 (KRH) [Docket No. 376] (Bankr. E.D. Va. Mar. 17, 2020); *In re Gymboree Grp., Inc.*, No. 19-30258 (KLP), [Docket No. 63] (Bankr. E.D. Va. Jan. 17, 2019); *In re Toys “R” Us, Inc.*, No. 17-34665 (KLP), [Docket No. 710] (Bankr. E.D. Va. Oct. 24, 2017).

C. Cause Exists to Authorize the Financial Institutions to Honor Checks and Electronic Fund Transfers.

51. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, consensual use of cash collateral, and funds from debtor in possession financing. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Customer Programs. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that this Court authorize, but not direct, all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

The Requirements of Bankruptcy Rule 6003 Are Satisfied

52. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003.

53. For the reasons discussed above, authorizing the Debtors to maintain and administer their Customer Programs and honor certain prepetition obligations related to the Customer Programs, as well as granting all other relief requested in this Motion, is integral to the Debtors’ ability to transition their operations into these cases. The relief requested is necessary in order for the Debtors to preserve their operations and assets and to ultimately maximize the value

of their estates for the benefit of all stakeholders. Failure to receive the relief requested in this Motion during the first twenty-one (21) days of these cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and that the relief requested in this Motion should be granted immediately.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

54. To implement the foregoing successfully, the Debtors seek a waiver 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 set forth above, the relief requested in this Motion is essential to prevent immediate and irreparable damage to the Debtors' operations, going concern value, and their efforts to pursue a resolution to these cases.

Waiver of Memorandum of Points and Authorities

55. The Debtors respectfully request that this Court treat this Motion as a written memorandum of points and authorities or waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as described in Local Bankruptcy Rule 9013-1(G).

Reservation of Rights

56. Nothing contained in this Motion is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an admission that any particular claim is of a type described in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection

of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If this Court grants the relief sought in this Motion, any payment made pursuant to this Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

57. The Debtors will provide notice of this Motion to: (A) the Office of the United States Trustee, Attn: Kathryn R. Montgomery, Esq.; (B) the Debtors' thirty (30) largest unsecured creditors on a consolidated basis; (C) counsel to (i) the ABL DIP Agent and (ii) the Term DIP Agent; (D) counsel to the Ad Hoc Group of Noteholders and the Term DIP Lenders; (E) counsel to the Prepetition ABL Agent; (F) counsel to the Sponsor Support Party; (G) counsel to (i) the Brigade Co-Investor and (ii) the Carlyle Co-Investor; (H) counsel to the Trustee under each of (i) the Superpriority Secured Notes Indenture, (ii) the Secured Notes Indenture, (iii) the 2018 Cash/PIK Notes Indenture, and (iv) the 2020 Cash/PIK Notes Indenture; (I) the Securities and Exchange Commission; (J) the Internal Revenue Service; (K) the United States Attorney's Office for the Eastern District of Virginia; and (L) the office of the attorneys general for the states in which the Debtors operate; (M) the National Association of Attorneys General; and (N) all other parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

58. No prior request for the relief sought in this Motion has been made to this or any other court.

60. WHEREFORE, the Debtors respectfully request that this Court enter the interim and final orders, substantially in the forms annexed to this Motion as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested in this Motion and such other relief as this Court deems appropriate under the circumstances.

Dated: November 21, 2020
Richmond, Virginia

/s/ Jennifer E. Wuebker

Tyler P. Brown, Esq. (VSB No. 28072)

Justin F. Paget, Esq. (VSB No. 77949)

Jennifer E. Wuebker, Esq. (VSB No. 91184)

HUNTON ANDREWS KURTH LLP

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, Virginia 23219

Telephone: (804) 788-8200

Facsimile: (804) 788-8218

Email: tpbrown@huntonak.com

jpaget@huntonak.com

jwuebker@huntonak.com

-and-

Dennis F. Dunne, Esq. (*pro hac vice* pending)

Andrew M. Leblanc, Esq. (*pro hac vice* pending)

Michael W. Price, Esq. (*pro hac vice* pending)

Lauren C. Doyle, Esq. (*pro hac vice* pending)

MILBANK LLP

55 Hudson Yards

New York, New York 10001

Telephone: (212) 530-5000

Facsimile: (212) 530-5219

Email: ddunne@milbank.com

aleblanc@milbank.com

mprice@milbank.com

ldoyle@milbank.com

Thomas R. Kreller, Esq. (*pro hac vice* pending)

MILBANK LLP

2029 Century Park East

33rd Floor

Los Angeles, California 90067

Telephone: (424) 386-4000

Facsimile: (213) 629-5063

Email: tkreller@milbank.com

Proposed Co-Counsel for Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

Dennis F. Dunne, Esq. (*pro hac vice* pending)
 Andrew M. Leblanc, Esq. (*pro hac vice* pending)
 Michael W. Price, Esq. (*pro hac vice* pending)
 Lauren C. Doyle, Esq. (*pro hac vice* pending)

MILBANK LLP
 55 Hudson Yards
 New York, New York 10001
 Telephone: (212) 530-5000
 Facsimile: (212) 530-5219

Tyler P. Brown, Esq. (VSB No. 28072)
 Justin F. Paget, Esq. (VSB No. 77949)
 Jennifer E. Wuebker, Esq. (VSB No. 91184)

HUNTON ANDREWS KURTH LLP
 Riverfront Plaza, East Tower
 951 East Byrd Street
 Richmond, Virginia 23219
 Telephone: (804) 788-8200
 Facsimile: (804) 788-8218

Thomas R. Kreller, Esq. (*pro hac vice* pending)

MILBANK LLP
 2029 Century Park East
 33rd Floor
 Los Angeles, California 90067
 Telephone: (424) 386-4000
 Facsimile: (213) 629-5063

Proposed Co-Counsel for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION**

In re:)	
)	Chapter 11
GUITAR CENTER, INC. <i>et al.</i> , ¹)	
Debtors.)	Case No. 20-34656 (KRH)
)	
)	(Joint Administration Requested)
)	
)	

**INTERIM ORDER: (I) AUTHORIZING THE
 DEBTORS TO MAINTAIN AND ADMINISTER THEIR
 EXISTING CUSTOMER PROGRAMS AND HONOR CERTAIN RELATED
 PREPETITION OBLIGATIONS; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order: (a) authorizing the Debtors to continue

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Guitar Center Holdings, Inc. (3262); Guitar Center, Inc. (0862); Guitar Center Stores, Inc. (4340); GTRC Services, Inc. (9503); GC Business Solutions, Inc. (3928); Guitar Center Gift Card Company, LLC (3370); Music & Arts Instructor Services, LLC (7811); and AVDG, LLC (4440). The Debtors’ service address is 5795 Lindero Canyon Rd., Westlake Village, CA 91362.

² Capitalized terms used but not otherwise defined in this Interim Order shall have the meanings given to them in the Motion.

to maintain and administer certain Customer Programs and to honor certain prepetition obligations related to the Customer Programs; and (b) granting certain related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the relief sought in the Motion were appropriate under the circumstances and that no other or further notice need be provided; and this Court having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted in this interim order (the "Interim Order"); and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis as set forth in this Interim Order.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2020, at ___: ___.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time on _____, 2020 (the "Objection Deadline"), and served on the Core Group, as defined in the *Order: (I) Establishing Certain Notice, Case Management, and Administrative Procedures; and (II) Granting Related Relief* [Docket No. ___].

3. If no objections or responses are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to this Court the final order, substantially in the form annexed to the Motion as **Exhibit B**, which final order may be entered with no further notice or need for the Final Hearing.

4. The Debtors are authorized, but not directed, to continue to administer their Customer Programs as described in the Motion and to honor any prepetition obligations related to such Customer Programs, including, without limitation, obligations under the Payment Processing Agreements, on an interim basis in the ordinary course of business and consistent with past practice solely with respect to all such obligations that become performable during this interim period.

5. The Payment Processing Companies are authorized to continue to set off the Processing Obligations against amounts remitted to the Debtors, whether arising before or after the Petition Date, in a manner consistent with past practices solely with respect to all such obligations that become performable during this interim period.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved in this Interim Order are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized, but not directed, to issue postpetition checks, and to issue postpetition fund transfer requests, in replacement of any checks or fund transfer requests

that are dishonored as a consequence of the filing of these cases with respect to prepetition amounts owed in connection with the relief granted in this Interim Order.

8. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any prepetition claim against any Debtor; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an admission that any particular claim is of a type described in the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

9. Nothing in this Interim Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Customer Programs and related obligations.

10. If the Debtors at any time during these bankruptcy cases cease to honor the Gift Cards, the Rewards Program, or the Refund and Exchange Program, the Debtors, within a reasonably commercial time period, shall file a notice of the same with the Court, and serve such notice on the Core Group.

11. Notwithstanding anything to the contrary in this Interim Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this Interim Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "DIP Order");

and (ii) the documentation (including the budget) in respect of any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this Interim Order, the terms of the DIP Order shall control.

12. The Motion satisfies the requirements of Bankruptcy Rule 6003(b).

13. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

15. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of points and authorities in connection with the Motion is waived.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order.

17. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2020
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Tyler P. Brown, Esq. (VSB No. 28072)
Justin F. Paget, Esq. (VSB No. 77949)
Jennifer E. Wuebker, Esq. (VSB No. 91184)
HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

- and -

Dennis F. Dunne, Esq. (*pro hac vice* pending)
Andrew M. Leblanc, Esq. (*pro hac vice* pending)
Michael W. Price, Esq. (*pro hac vice* pending)
Lauren C. Doyle, Esq. (*pro hac vice* pending)
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Thomas R. Kreller, Esq. (*pro hac vice* pending)
MILBANK LLP
2029 Century Park East
33rd Floor
Los Angeles, California 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063

Proposed Co-Counsel for Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

Exhibit B

Proposed Final Order

Dennis F. Dunne, Esq. (*pro hac vice* pending)
 Andrew M. Leblanc, Esq. (*pro hac vice* pending)
 Michael W. Price, Esq. (*pro hac vice* pending)
 Lauren C. Doyle, Esq. (*pro hac vice* pending)
MILBANK LLP
 55 Hudson Yards
 New York, New York 10001
 Telephone: (212) 530-5000
 Facsimile: (212) 530-5219

Tyler P. Brown, Esq. (VSB No. 28072)
 Justin F. Paget, Esq. (VSB No. 77949)
 Jennifer E. Wuebker, Esq. (VSB No. 91184)
HUNTON ANDREWS KURTH LLP
 Riverfront Plaza, East Tower
 951 East Byrd Street
 Richmond, Virginia 23219
 Telephone: (804) 788-8200
 Facsimile: (804) 788-8218

Thomas R. Kreller, Esq. (*pro hac vice* pending)
MILBANK LLP
 2029 Century Park East
 33rd Floor
 Los Angeles, California 90067
 Telephone: (424) 386-4000
 Facsimile: (213) 629-5063

Proposed Co-Counsel for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION**

In re:)	
)	Chapter 11
GUITAR CENTER, INC. <i>et al.</i> , ⁸)	
)	Case No. 20-34656 (KRH)
Debtors.)	(Joint Administration Requested)
)	
)	

**FINAL ORDER: (I) AUTHORIZING THE
 DEBTORS TO MAINTAIN AND ADMINISTER THEIR
 EXISTING CUSTOMER PROGRAMS AND HONOR CERTAIN RELATED
 PREPETITION OBLIGATIONS; AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)⁹ of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order: (a) authorizing the Debtors to continue to

⁸ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Guitar Center Holdings, Inc. (3262); Guitar Center, Inc. (0862); Guitar Center Stores, Inc. (4340); GTRC Services, Inc. (9503); GC Business Solutions, Inc. (3928); Guitar Center Gift Card Company, LLC (3370); Music & Arts Instructor Services, LLC (7811); and AVDG, LLC (4440). The Debtors’ service address is 5795 Lindero Canyon Rd., Westlake Village, CA 91362.

⁹ Capitalized terms used but not otherwise defined in this Final Order shall have the meanings given to them in the Motion.

maintain and administer certain Customer Programs and to honor certain prepetition obligations related to the Customer Programs; and (b) granting certain related relief, all as more fully set forth in the Motion; and this Court having reviewed the Motion and the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and this Court having found that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the relief sought in the Motion were appropriate under the circumstances and that no other or further notice need be provided; and this Court having heard the statements in support of the Motion at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted in this final order (the "Final Order"); and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is granted as set forth in this Final Order.
2. The Debtors are authorized, but not directed, to continue to administer their Customer Programs as described in the Motion and to honor any prepetition obligations related to such Customer Programs, including, without limitation, obligations under the Payment Processing Agreements.
3. The Payment Processing Companies are authorized to continue to set off the Processing Obligations against amounts remitted to the Debtors, whether arising before or after the Petition Date, in a manner consistent with past practices.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved in this Final Order are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

5. The Debtors are authorized, but not directed, to issue postpetition checks, and to issue postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the filing of these cases with respect to prepetition amounts owed in connection with the relief granted in this Final Order.

6. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any prepetition claim against any Debtor; (b) a waiver of the Debtors' or any other party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an admission that any particular claim is of a type described in the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

7. Nothing in this Final Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims against the Debtors in connection with or relating to the Customer Programs and related obligations.

8. If the Debtors at any time during these bankruptcy cases cease to honor the Gift Cards, the Rewards Program, or the Refund and Exchange Program, the Debtors, within a reasonably commercial time period, shall file a notice of the same with the Court, and serve such notice on the Core Group.

9. Notwithstanding anything to the contrary in this Final Order, any payment made or action taken by any of the Debtors pursuant to the authority granted in this Final Order must be in compliance with, and shall be subject to: (i) any interim or final order approving the Debtors' use of cash collateral and/or any postpetition financing facility (in either case, the "DIP Order"); and (ii) the documentation (including the budget) in respect of any such use of cash collateral and/or postpetition financing. To the extent there is any inconsistency between the terms of the DIP Order and this Final Order, the terms of the DIP Order shall control.

10. The Motion satisfies the requirements of Bankruptcy Rule 6003(b).

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

13. The requirement under Local Bankruptcy Rule 9013-1(G) to file a memorandum of points and authorities in connection with the Motion is waived.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

15. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2020
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Tyler P. Brown, Esq. (VSB No. 28072)
Justin F. Paget, Esq. (VSB No. 77949)
Jennifer E. Wuebker, Esq. (VSB No. 91184)
HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218

- and -

Dennis F. Dunne, Esq. (*pro hac vice* pending)
Andrew M. Leblanc, Esq. (*pro hac vice* pending)
Michael W. Price, Esq. (*pro hac vice* pending)
Lauren C. Doyle, Esq. (*pro hac vice* pending)
MILBANK LLP
55 Hudson Yards
New York, New York 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Thomas R. Kreller, Esq. (*pro hac vice* pending)
MILBANK LLP
2029 Century Park East
33rd Floor
Los Angeles, California 90067
Telephone: (424) 386-4000
Facsimile: (213) 629-5063

Proposed Co-Counsel for Debtors and Debtors in Possession

CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.
