

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
)	
OTB HOLDING LLC, <i>et al.</i> , ¹)	Case No. 25-52415 (SMS)
)	
)	
Debtors.)	(Joint Administration Requested)
<hr style="width: 50%; margin-left: 0;"/>		

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS
ARISING UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT AND
(II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this *Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims Arising Under the Perishable Agricultural Commodities Act and (II) Granting Related Relief* (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over these cases and this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.



2. The bases for the relief requested herein are sections 105(a), 363, 507, 541, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 9006-2, 9013-1 and 9013-2 of the Local Rules of Practice for the United States Bankruptcy Court for the Northern District of Georgia (the “Local Rules”) and the *Second Amended and Restated General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 6, 2023 (the “Complex Case Procedures”).

BACKGROUND

3. On March 4, 2025 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the “Court”). The Debtors have continued in possession of their properties and have continued to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in these cases.

4. The factual background relating to the Debtors’ commencement of these cases is set forth in detail in the *Declaration of Jonathan M. Tibus in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) filed on or about the date hereof and incorporated herein by reference.²

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration.

PACA CLAIMS

5. The Debtors believe that a certain portion of the products they have purchased but not yet paid for may qualify as “perishable agricultural commodit[ies]” under the Perishable Agricultural Commodities Act of 1930 (as amended, modified, or supplemented from time to time, “PACA”). Under PACA, the term perishable agricultural commodity is generally defined as “fruits and fresh vegetables of every kind and character [whether or not frozen or packed in ice].” 7 U.S.C. § 499a(b)(4). PACA provides various protections to fresh fruit and vegetable sellers, including the establishment of a statutory constructive trust (the “PACA Trust”) consisting of a buyer’s entire inventory of food or other derivatives of perishable agricultural commodities, the products derived therefrom and the proceeds related to any sale of the commodities or products (collectively, the “PACA Trust Assets”). *See id.* § 499e(c)(2). Assets subject to a PACA Trust are preserved as a non-segregated floating trust and may be commingled with non-trust assets. Funds held in a PACA Trust are not property of a debtor’s estate. *See In re CFP Liquidating Estate*, 405 B.R. 694 (Bankr. D. Del. 2009); *In re Long John Silver’s Rests., Inc.*, 230 B.R. 29, 32 (Bankr. D. Del. 1999); *Morris Okun, Inc. v. Harry Zimmerman, Inc.*, 814 F. Supp. 346, 348 (S.D.N.Y. 1993).

6. PACA’s application is limited to sales to commission merchants, brokers, and dealers. *See* 7 U.S.C. §499e(c). “Dealer,” as such term is defined in PACA, is “any person engaged in the business of buying or selling in wholesale or jobbing quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce.” *Id.* § 499a(b).

7. As a result, all holders of prepetition claims arising under PACA and any state statutes of similar effect³ of PACA suppliers (collectively, the “PACA Claimants” and whose claims shall be collectively referred to herein as “PACA Claims”) may assert such PACA Claims and seek to recover from the PACA Trust Assets, and the Debtors believe that a portion of the goods purchased from vendors are PACA Claims, affording those claims priority over other secured and other unsecured claims in these chapter 11 cases.⁴ Accordingly, payment of PACA Claims at this time will not prejudice or affect the amount available for distributions to other creditors of the Debtors. Further, to ensure that the Debtors’ supply of fresh produce continues uninterrupted, it is imperative that the Debtors are authorized to pay all prepetition and postpetition PACA Claims in the ordinary course of business and consistent with the Debtors’ historical practices.

8. As of the Petition Date, the Debtors estimate that they owe holders of PACA Claims approximately \$950,000, in the aggregate, for goods subject to PACA that were delivered prior to the Petition Date, and the Debtors expect to be invoiced for substantially all of that amount within twenty-one (21) days of the Petition Date.

³ Some states have enacted statutes granting protection similar to that of PACA. *See, e.g.*, Minn. Stat. §§ 27.01, *et seq.* Accordingly, the relief requested in the Motion with respect to PACA Claims is also requested with respect to the goods, claims and claimants under those state statutes having an effect and purpose similar to PACA.

⁴ The Debtors do not believe that their vendors have sold them “livestock,” “poultry” or any other eligible goods covered by the Packers and Stockyards Act of 1921 as amended, 7 U.S.C. §§ 181, *et seq.* (“PASA”), which prescribes the conditions of operations for businesses dealing in livestock. In the unlikely event, however, that any supplier claims fall under PASA, the Debtors submit that it is in the best interests of the Debtors’ estates, creditors and parties in interest to treat such claims in a manner identical to the PACA Claims. PASA creates a statutory trust scheme that is virtually identical to PACA in respect of delivery of livestock and other eligible goods. *See In re W.L. Bradley Co.*, 75 B.R. 505, 509 (Bankr. E.D. Pa. 1987) (“The legislative history expressly notes that the [PACA Trust] was modeled on the trust amendment to the Packers and Stockyards Act.”). Accordingly, for the purposes of this Motion and any related orders, the PACA Procedures and the term “PACA Claims” shall also incorporate any claims arising under PASA.

9. Any PACA Claimant who accepts payment from the Debtors in satisfaction of its valid PACA Claim will be deemed to have waived any and all claims of whatever type, kind, or priority, against the Debtors, their property, their estates, and any PACA Trust Assets for such PACA Claims, but only the extent that payment has been received by such PACA Claimant on account of its PACA Claims.

RELIEF REQUESTED

10. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”) authorizing, but not directing, the Debtors, in their sole discretion, to pay in the ordinary course of business PACA Claims as such claims come due in an aggregate amount not to exceed \$950,000.

11. The Debtors further request that the Court enter an order directing all banks to honor the Debtors’ prepetition checks or electronic transfers for payment for the foregoing, and prohibiting banks from placing any holds on, or attempting to reverse, any automatic transfers on account of the foregoing.

BASIS FOR RELIEF REQUESTED

A. Payment of the PACA Claims is Warranted.

12. The payment of allowed PACA Claims is warranted under sections 105(a), 363, 507, and 541 of the Bankruptcy Code because assets governed by PACA do not constitute property of the Debtors’ estates. *See In re Kornblum & Co.*, 81 F.3d 280, 284 (2d Cir. 1995); *Morris Okun*, 814 F. Supp. at 348. As a result, the distribution of assets to the PACA Claimants falls outside the priority scheme of the Bankruptcy Code, and the PACA Claimants holding allowed PACA Claims are, thus, entitled to payment from the PACA Trust ahead of the Debtors’ other creditors. *See*,

e.g., In re Magic Rests., Inc., 205 F.3d 108, 110 (3d Cir. 2000); *Tom Lange Co. v. Lombardo Fruit & Produce Co. (In re Lombardo Fruit & Produce Co.)*, 12 F.3d 806, 808-09 (8th Cir. 1994). In addition, the disposition of PACA Trust Assets is subject to the jurisdiction of the bankruptcy court. *See Monterey Mushrooms, Inc. v. Carolina Produce Distribs., Inc.*, 110 B.R. 207, 209 (W.D.N.C. 1990); *Allied Growers Co-Op, Inc. v. United Fruit & Produce Co.*, 86 B.R. 14, 16 (Bankr. D. Conn. 1988).

13. As the funds held in a PACA Trust are not property of the Debtors' estates, the relief requested herein does not prejudice the Debtors' creditors. In fact, payment made to PACA Claimants on account of allowed PACA Claims is consistent with the intent of PACA and, moreover, will inure to the benefit of the Debtors and all parties in interest by (i) facilitating the continued purchase and receipt of fresh produce and other products and (ii) avoiding potential disruption of the Debtors' business operations.

14. Further, in certain circumstances, shareholders, officers, or directors of a corporate entity who are in a position to control trust assets but breach the fiduciary duty to preserve those assets may be held personally liable under PACA. *See Sunkist Growers, Inc. v. Fisher*, 104 F.3d 280, 283 (9th Cir. 1997); *see also Golman-Hayden Co., Inc. v. Fresh Source Produce, Inc.*, 217 F.3d 348, 350 (5th Cir. 2000) (noting that a court will inquire (i) whether the individual's involvement with the corporation was sufficient to establish legal responsibility and (ii) whether the individual, in failing to exercise any appreciable oversight of the corporation's management, breached a fiduciary duty owed to the PACA creditors, to determine personal liability). Thus, to the extent that any valid obligations arising under PACA remain unsatisfied by the Debtors, the Debtors' shareholders, officers, and directors may be subject to lawsuits during the pendency of

these chapter 11 cases. Any such lawsuit (and the ensuing potential liability) would distract the Debtors and their shareholders, officers, and directors in their attempt to implement successful sale or restructuring strategy and, moreover, could lead to the assertion of substantial indemnification claims under the Debtors' governing documents, employment agreements, and applicable laws to the detriment of all parties in interest.

15. Finally, payment of allowed PACA Claims will inure to the benefit of the Debtors' estates by preserving goodwill between the Debtors and certain of the vendors of fresh produce. Without implementation of these procedures, the Debtors could be subject to numerous claims and adversary proceedings, including motions by PACA Claimants for relief from the automatic stay and/or injunctive relief, which would result in the unnecessary expenditure of time, effort, and money by the Debtors.

16. In light of the foregoing, the Debtors respectfully submit that the payment of allowed PACA Claims is: (i) necessary and essential to the Debtors' operations; (ii) in the best interest of the Debtors, their estates and their creditors; and (iii) necessary to prevent immediate and irreparable harm to the Debtors and their estates.

B. The Court Should Authorize the Debtors' Banks to Honor Payments in Respect of the PACA Claims.

17. The Debtors also request that the Court authorize the Debtors' banks and financial institutions, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all prepetition obligations described herein, whether such checks or other requests were submitted prior to or after the Petition Date. The Debtors further request that the Debtors' banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic

payment request as approved pursuant to any order of the Court granting the relief requested in this Motion.

EMERGENCY CONSIDERATION

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

WAIVER OF ANY APPLICABLE STAY

19. The Debtors seek a waiver of any stay of the effectiveness of the order granting this Motion. Pursuant to Bankruptcy Rule 6004(h), any “order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein.

Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

NOTICE

20. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Northern District of Georgia; (b) the Debtors' thirty (30) largest unsecured creditors; (c) counsel to the Debtors' prepetition lenders; (d) the Debtors' debtor-in-possession lender; (e) the Internal Revenue Service; (f) the Georgia Department of Revenue; (g) the Attorney General for the State of Georgia; (h) the United States Attorney for the Northern District of Georgia; (i) the state attorneys general for states in which the Debtors conduct business; (j) the PACA Claimants; (k) the Debtors' banks; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

NO PRIOR REQUEST

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

RESERVATION OF RIGHTS

22. Nothing contained herein shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim

or other obligation; or (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

CONCLUSION

WHEREFORE, the Debtors request this Court enter an order, substantially in the form of **Exhibit A**, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

[Remainder of Page Intentionally Blank]

Date: March 5, 2025
Atlanta, Georgia

Respectfully submitted,

KING & SPALDING LLP

/s/ Jeffrey R. Dutson

Jeffrey R. Dutson

Georgia Bar No. 637106

Brooke L. Bean

Georgia Bar No. 764552

Alice Kyung Won Song

Georgia Bar No. 692753

KING & SPALDING LLP

1180 Peachtree Street NE

Atlanta, Georgia 30309

Telephone: (404) 572-4600

Email: jdutson@kslaw.com

Email: bbean@kslaw.com

Email: asong@kslaw.com

Proposed Counsel for the Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:)	Chapter 11
)	
OTB HOLDING LLC, <i>et al.</i> , ¹)	Case No. 25-52415 (SMS)
)	
)	
Debtors.)	(Joint Administration Requested)
_____)	

**ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION
CLAIMS ARISING UNDER THE PERISHABLE AGRICULTURAL COMMODITIES
ACT AND (II) GRANTING RELATED RELIEF**

This matter is before the Court on the *Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims Arising Under the Perishable Agricultural Commodities Act and (II) Granting Related Relief* (the “Motion”) [Docket No. ____] of the above-captioned debtors and debtors in possession (collectively, the “Debtors”). All

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC’s service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

capitalized terms used but not defined herein shall have the meanings given to them in the Motion.

The Court has considered the Motion, the First Day Declaration, and the matters reflected in the record of the hearing held on the Motion on [_____], 2025. It appears that the Court has jurisdiction over this proceeding; that this is a core proceeding; that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; that the relief sought in the Motion is in the best interests of the Debtors, their estates, and their creditors; and that good and sufficient cause exists for such relief.

Accordingly, it is hereby ORDERED as follows:

1. The Motion is granted to the extent set forth herein.
2. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
3. The Debtors are authorized, but not directed, in their sole discretion, to pay or otherwise satisfy all valid PACA Claims in the ordinary course of business in an aggregate amount not to exceed \$950,000.
4. Any PACA Vendor who accepts payment from the Debtors in satisfaction of its valid PACA Claim will be deemed to have waived any and all claims of whatever type, kind, or priority against the Debtors, their property, their estates, and any PACA Trust Assets, but only to the extent that payment has been received by such PACA Vendor on account of its PACA Claim.
5. The Debtors' banks shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all PACA Claims, whether those checks

were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

6. Banks and other financial institutions that process, honor, and pay any and all checks on account of any valid PACA Claim may rely on the representation of the Debtors as to which checks are issued and authorized to be paid in accordance with this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. Nothing in the Motion or this Order, nor as a result of any payment made pursuant to this Order, shall be deemed or construed as (a) an admission as to the validity, priority or amount of any claim or lien against the Debtors or their estates or an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code, or (b) a waiver of the rights of the Debtors and their estates, or shall impair the ability of the Debtors and their estates, to contest the validity, priority and amount of any claims or any payment made pursuant to this Order.

8. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

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) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; (V) Scheduling a*

Final Hearing; and 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 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 Budget.

10. 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), the Bankruptcy Local Rules for the Northern District of Georgia and the Complex Case Procedures are satisfied by such notice.

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

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

13. Proposed counsel for the Debtors, through Kurtzman Carson Consultants, LLC d/b/a Verita Global (“Verita”) shall, within three (3) days of the entry of this Order, cause a copy of this Order to be served by electronic mail or first class mail, as applicable, on all parties served with the Motion, and Verita shall file promptly thereafter a certificate of service confirming such service.

[END OF ORDER]

Prepared and presented by:

/s/ Jeffrey R. Dutson

Jeffrey R. Dutson

Georgia Bar No. 637106

Brooke L. Bean

Georgia Bar No. 764552

Alice Kyung Won Song

Georgia Bar No. 692753

KING & SPALDING LLP

1180 Peachtree Street NE

Atlanta, Georgia 30309

Telephone: (404) 572-4600

Email: jdutson@kslaw.com

Email: bbean@kslaw.com

Email: asong@kslaw.com

Proposed Counsel for the Debtors in Possession