

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

Sticky's Holdings LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10856

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS,
PURSUANT TO SECTIONS 105(a), 363, 541, 1107(a), AND 1108 OF THE
BANKRUPTCY CODE, (I) AUTHORIZING THE PAYMENT OF PREPETITION
CLAIMS ARISING UNDER (A) THE PERISHABLE AGRICULTURAL
COMMODITIES ACT AND (B) THE PACKERS AND STOCKYARDS ACT, AND
(II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND
ELECTRONIC TRANSFER REQUESTS RELATED TO THE FOREGOING**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned proposed counsel, hereby move this Court (the “Motion”) the United States Bankruptcy Court for the District of Delaware (the “Court”) for entry of interim and final orders pursuant to sections 105(a), 363, 541, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay, in the ordinary course of business as such claims come due, all prepetition claims arising under (i) the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. §§ 499a–499t (“PACA”) and (ii) the Packers and Stockyards Act of 1921, as amended, 7 U.S.C. §§ 181–231 (“PASA”), and (b) authorizing the Debtors’ banks

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number are as follows: Sticky’s Holdings LLC (3586); Sticky Fingers LLC (3212); Sticky Fingers II LLC (7125); Sticky Fingers III LLC (3914); Sticky Fingers IV LLC (9412); Sticky Fingers V LLC (1465); Sticky Fingers VI LLC (0578); Sticky’s BK 1 LLC (0423); Sticky’s NJ 1 LLC (5162); Sticky Fingers VII LLC (1491); Sticky’s NJ II LLC (6642); Sticky Fingers IX LLC (5036); Sticky’s NJ III LLC (7036); Sticky Fingers VIII LLC (0080); Sticky NJ IV LLC (6341); Sticky’s WC 1 LLC (0427); Sticky’s Franchise LLC (5232); Sticky’s PA GK I LLC (7496); Stickys Corporate LLC (5719); and Sticky’s IP LLC (4569). The Debtors’ mailing address is 24 E. 23rd Street, New York, NY 10010.



and financial institutions (collectively, the “Banks”) to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing. In addition, the Debtors are seeking to schedule a final hearing (the “Final Hearing”) on the Motion. In support of this Motion, the Debtors incorporate by reference the *Declaration of Jamie Greer in Support of First Day Relief* (the “First Day Declaration”)² filed contemporaneously herewith and respectfully represent as follows:

JURISDICTION

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105(a), 363, 541, 1107(a), and 1108 of the Bankruptcy Code, and rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

BACKGROUND

4. On April 25, 2024 (the “Petition Date”), the Debtors each commenced a voluntary case under chapter 11 of the Bankruptcy Code as a debtor defined in Bankruptcy Code section 1182(1) and the Debtors elected to proceed under Subchapter V of chapter 11 of the Bankruptcy Code pursuant to the Small Business Debtor Reorganization Act, as amended.

5. The Debtors are operating their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed in these cases.

6. Additional detail regarding the Debtors, their businesses, the events leading to commencement of these cases, and the facts and circumstances supporting the relief requested herein is set forth in the First Day Declaration and is incorporated herein by reference.

7. As described in detail below, third parties holding claims under PACA or PASA may be able to assert liens against the Debtors’ assets. Further justifying the relief requested herein, due to the nature of the Debtors’ businesses, certain vendors may possess claims under section 503(b)(9) of the Bankruptcy Code, which would have to be paid in connection with a confirmed chapter 11 plan. It is critical to the Debtors’ business operations that the Debtors continue to receive goods from these vendors. The Debtors believe that without the relief requested herein, many of the vendors may cease the delivery of goods, which could have devastating consequences for the Debtors’ business operations and their efforts in connection with the Chapter 11 Cases.

RELIEF REQUESTED

8. By this Motion, the Debtors request entry of the Proposed Interim Order and the Proposed Final Order, (a) authorizing, but not directing, the Debtors, in their sole

discretion, to pay all prepetition claims arising under PACA and PASA in the ordinary course of business, and (b) authorizing the Banks to honor and pay all checks and electronic transfer requests for payment of PACA/PASA Claims (as defined below).³

A. PACA Claims

9. To ensure that the Debtors continue to receive a constant supply of fresh fruits and vegetables postpetition, the Debtors seek authority, but not direction, in their sole discretion, to continue to pay in the ordinary course of business and consistent with their historical practices, certain claims (the “PACA Claims”) of those vendors that supply the Debtors with fruits and vegetables (the “PACA Vendors”).

10. Congress enacted PACA to regulate the sale of “perishable agricultural commodities.” 7 U.S.C. § 499a; *see also Endico Potatoes, Inc. v. CIT Grp./Factoring*, 67 F.3d 1063, 1067 (2d Cir. 1995). 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 (a “PACA Trust”), consisting of a purchaser’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* 7 U.S.C. § 499e(c)(2). PACA Trust Assets are preserved as a non-segregated floating trust and may be commingled with non-trust assets. However, courts in this district and other districts have held that PACA Trust

³ Some states have enacted statutes granting protection similar to that of PACA. *See, e.g.,* Minn. Stat. §§ 27.01–.19. Accordingly, references to PACA, PASA, and PACA/PASA Claims (as defined below) in this Motion are also intended to refer to those state statutes and the goods, claims, and claimants protected thereunder. The relief requested in the Motion with respect to PACA/PASA Claims is also requested with respect to the goods, claims, and claimants under those state statutes having an effect and purpose similar to PACA or PASA, as applicable.

Assets are not property of a debtor's estate if the vendor has complied with PACA. *See Stanziale v. Rite Way Meat Packers, Inc. (In re CFP Liquidating Estate)*, 405 B.R. 694, 697 (Bankr. D. Del. 2009); *In re Long John Silver's Rests., Inc.*, 230 B.R. 29, 32 (Bankr. D. Del. 1999); *accord Morris Okun, Inc. v. Harry Zimmerman, Inc.*, 814 F. Supp. 346, 348 (S.D.N.Y. 1993).

11. PACA requires that certain procedural steps be taken by a seller of perishable agricultural commodities in order to preserve its rights as a trust beneficiary. Specifically, a PACA Vendor must provide written notice to the purchaser of such goods of its intent to preserve the benefits of the PACA Trust. *See Merrill Farms Corp. v. H.R. Hindle & Co. (In re H.R. Hindle & Co.)*, 149 B.R. 775, 785 (Bankr. E.D. Pa. 1993); *Debruyn Produce Co. v. Richmond Produce Co. (In re Richmond Produce Co.)*, 112 B.R. 364 368–69 (Bankr. N.D. Cal. 1990). Written notice under PACA may be accomplished by either (a) including the statutorily mandated language on the face of the vendor's invoices or (b) providing written notice to the purchaser of the PACA goods within thirty (30) days after the time payment is due. Beneficiaries of a PACA Trust that adhere to the statutory notice requirements are entitled to prompt payment from the PACA Trust Assets ahead of secured and unsecured creditors of a debtor's estate. *See "R" Best Prod., Inc. v. 646 Corp.*, 2002 WL 31453909, at *1 (S.D.N.Y. Oct. 31, 2002). However, a PACA Vendor's failure to comply with the notice requirements renders its claim a general unsecured claim in a debtor's chapter 11 case. *See In re H.R. Hindle*, 149 B.R. at 786.

12. PACA's application is limited to sales to commission merchants, brokers, and dealers. 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." 7 U.S.C. § 499a(b).

13. The Debtors believe that a certain portion of the goods purchased from certain of the vendors may qualify as “perishable agricultural commodit[ies]” under PACA. As a result, insofar as those vendors abide by the notice requirements of PACA, such vendors will be eligible to assert PACA Claims granting them priority ahead of all other secured and unsecured creditors in the Debtors’ Chapter 11 Cases. Accordingly, payment of PACA Claims at this time will not prejudice or affect the amount available for distributions to other creditors of the Debtors. To ensure that the supply of fresh produce continues unimpeded, it is imperative that the Debtors be authorized to pay all prepetition and postpetition PACA Claims in the ordinary course of business and consistent with their historical practices.

B. PASA Claims

14. The Debtors also regularly purchase meat, poultry, and other similar products from vendors (the “PASA Vendors” and, together with the PACA Vendors, the “PACA/PASA Vendors”) that may be eligible to assert claims under PASA (the “PASA Claims” and, together with the PACA Claims, the “PACA/PASA Claims”). Much like PACA, PASA protects unpaid sellers of livestock or poultry by imposing a statutory trust (the “PASA Trust” and, together with the PACA Trust, the “PACA/PASA Trusts”) on a buyer’s entire inventory of livestock or poultry, as applicable, and any related proceeds (the “PASA Trust Assets” and, together with the PACA Trust Assets, the “PACA/PASA Trust Assets”). *See* 7 U.S.C. §§ 196, 197. This statutory trust scheme is virtually identical to that under PACA. Indeed, “PACA’s trust provision was modeled on that of [PASA]” in the first place. *In re Magic Rests., Inc.*, 205 F.3d 108, 115 n.8 (3d Cir. 2000); *see also 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 amendments to the Packers and Stockyards Act . . .”). PASA Trust Assets are not property of a

debtor's estate if the vendor has complied with PASA; thus, as with PACA Claims, claims based on a PASA Trust must be satisfied ahead of the claims of any secured creditors holding liens on a buyer's inventory or accounts receivable. *See Bast v. Orange Meat Packing Co. (In re G&L Packing Co.)*, 20 B.R. 789, 801 (Bankr. N.D. 1982) ("Congress intended unpaid cash sellers to satisfy their claims from the packer's assets (inventoried livestock delivered by the cash seller and accounts receivable and other proceeds from the sale of such livestock) before satisfying any (Uniform Commercial Code) Article 9 perfected security interest in those assets."); *First State Bank of Miami v. Gotham Provision Co. (In re Gotham Provision Co.)*, 669 F.2d 1000, 1010 (5th Cir. 1982) ("Where the packer has given a lender a security interest in inventories or receivables that are subject to the [PASA] trust, the unpaid cash sellers have priority over those assets and may recover the proceeds of those receivables to the extent of the outstanding balance on the cash sales.").

15. The Debtors believe that a certain portion of the goods purchased from vendors may qualify for treatment under PASA. As a result, insofar as those PASA Vendors abide by the notice requirements of PASA, such vendors will be eligible to assert PASA Claims granting them priority ahead of all other secured and unsecured creditors in the Debtors' Chapter 11 Cases. Accordingly, payment of PASA Claims at this time will not prejudice or affect the amount available for distributions to other creditors of the Debtors. To ensure that the supply of meat, poultry, and other similar products continues unimpeded, it is imperative that the Debtors be authorized to pay all prepetition and postpetition PASA Claims in the ordinary of business and consistent with their historical practices.

C. The Debtors' PACA and PASA Liability

16. As of the Petition Date, the Debtors estimate they owe holders of PACA/PASA Claims approximately \$341,000 in the aggregate for PACA and PASA goods delivered prior to the Petition Date. The Debtors expect to be invoiced for substantially all of this amount within twenty-one (21) days following the Petition Date.

17. Further, certain PACA/PASA Vendors may also be entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code to the extent the Debtors received goods in the ordinary course of business within the 20-day period immediately prior to the Petition Date. Specifically, the Debtors estimate that as of the Petition Date, of the \$341,000 in estimated PACA/PASA Claims, approximately \$250,000 of that amount is on account of goods delivered within 20 days of the Petition Date. Because the Debtors must pay such claims in full to confirm a plan of reorganization, the payment of PACA/PASA Claims that would also qualify as priority claims under section 503(b)(9) merely affects the timing of such payments, and not the amount.

18. In sum, pursuant to this Motion, the Debtors are requesting authority, but not direction, from the Court to pay PACA/PASA Claims, subject to an aggregate cap of \$345,000.

19. Any PACA/PASA Vendor who accepts payment from the Debtors in satisfaction of its valid PACA/PASA 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/PASA Trust Assets, but only to the extent that payment has been received by such PACA/PASA Vendor on account of its PACA/PASA Claim.

20. Subject to the terms set forth below, the Debtors propose to condition the payment of the PACA/PASA Claims on the agreement of individual PACA/PASA Vendor to

continue to provide goods to the Debtors during the pendency of the Chapter 11 Cases on the most favorable terms that existed prior to the Petition Date (the “Historical Trade Terms”), unless this requirement is waived by the Debtors, in their sole discretion.

21. In the event that any PACA/PASA Vendor that has received payment for its PACA/PASA Claim refuses to continue to provide goods on an uninterrupted basis to the Debtors in accordance with (a) the terms and provisions of any order granting the relief requested herein, (b) Historical Trade Terms, or (c) such other terms agreed upon by the Debtors and such PACA/PASA Vendor, the Debtors propose that, in their sole discretion, they be authorized, but not obligated to, to deem the payments made to any such PACA/PASA Vendor to have been in payment of any then-outstanding postpetition claims of such PACA/PASA Vendor. If this situation arises, the previously paid PACA/PASA Claims of the PACA/PASA Vendor shall be reinstated as PACA/PASA Claims in the amount deemed by the Debtors to have been in payment of any then-outstanding postpetition claims of such PACA/PASA Vendor. To the extent that the payments made to the PACA/PASA Vendor on account of the previously paid PACA/PASA Claims exceed the postpetition amounts then owed to such PACA/PASA Vendor, the Debtors and their estates reserve all rights to recover such payments.

BASIS FOR RELIEF

I. Payment of Allowed PACA/PASA Claims in the Ordinary Course of Business Is Warranted.

22. The prompt and full payment of PACA/PASA Claims should be authorized by this Court. As described above, assets governed by PACA and PASA do not constitute property of the Debtors’ estates. *See, e.g., In re CFP Liquidating Estate*, 405 B.R. at 697 (PASA trust assets are excluded from debtor’s estate); *Long John Silver’s*, 230 B.R. at 32 (PACA trusts are excluded from property of the estate). As a result, the distribution of assets to the holders of PACA/PASA

Claims falls outside the priority scheme set forth in the Bankruptcy Code, and such holders are entitled to payment from the PACA/PASA Trusts ahead of the Debtors' other creditors. *See, e.g., In re Magic Rests.*, 205 F.3d at 110; *Consumers Produce Co. v. Volante Wholesale Produce, Inc.*, 16 F.3d 1374, 1377–78 (3d Cir. 1994). The Debtors' requested relief thus affects only the timing of the PACA/PASA Claims payment, and will not prejudice the recovery of other creditors. Moreover, the disposition of the PACA/PASA Trust Assets is not 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). Accordingly, the relief requested herein does not prejudice the Debtors' creditors or any party in interest in the Chapter 11 Cases.

23. Even notwithstanding the substantial protections of PACA and PASA, a substantial majority of the PACA/PASA Claims would have priority in the Chapter 11 Cases over general unsecured creditors. Of the anticipated \$350,000 PACA/PASA Claims, approximately \$250,000 of that amount would be entitled to priority under section 503(b)(9) of the Bankruptcy Code. Such claims would have to be paid ahead of unsecured creditors in connection with any chapter 11 plan.

24. Further, payment of allowed PACA/PASA Claims will inure to the benefit of the Debtors' estates by preserving goodwill between the Debtors and the PACA/PASA Vendors. Any delays in satisfying amounts owed to PACA/PASA Vendors could adversely affect the Debtors' ability to obtain fresh produce, poultry, meat, and other similar goods, thereby undercutting the Debtors' efforts in connection with the Chapter 11 Cases. Failing to pay allowed PACA/PASA Claims in the ordinary course of business could subject the Debtors to numerous claims and adversary proceedings, including motions by PACA/PASA Vendors for relief from the

automatic stay or injunctive relief, which would result in the unnecessary expenditure of time, effort, and money by the Debtors, their management team, and their professional advisors.

25. Lastly, in certain circumstances, 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 and PASA. *See Sunkist Growers, Inc. v. Fisher*, 104 F.3d 280, 283 (9th Cir. 1997); *Morris Okun*, 814 F. Supp. at 349 (noting that PASA, like PACA, provides that “any failure to account for or preserve trust assets, for whatever reason and however innocent, creates a liability for those trust assets”); *see also Golman-Hayden Co., Inc. v. Fresh Source Produce, Inc.*, 217 F.3d 348, 350 (5th Cir. 2000) (noting that a court determining personal liability under PACA will inquire as to (a) whether the individual’s involvement with the corporation was sufficient to establish legal responsibility and (b) whether the individual, in failing to exercise any appreciable oversight of the corporation’s management, breached a fiduciary duty owed to the PACA creditors). Thus, to the extent that any valid obligations arising under PACA or PASA remain unsatisfied by the Debtors, the Debtors’ officers and directors may be subject to lawsuits during the pendency of the Chapter 11 Cases. Any such lawsuit (and the ensuing potential liability) would distract the Debtors and their officers and directors in their attempt to implement a successful reorganization 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 of the Debtors’ stakeholders.

II. Request for Authority for Banks to Honor and Pay Checks in Connection Herewith.

26. In addition, by this Motion, the Debtors request that their Banks be authorized, when requested by the Debtors, to receive, process, honor, and pay any and all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to

the prepetition obligations described herein, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments. The Debtors represent that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payment of obligations described herein. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently.

27. For the foregoing reasons, the Debtors believe that granting the relief requested herein is appropriate and in the best interests of their estates and creditors.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

28. In order for a debtor to obtain relief to make payments within 21 days of the petition date, it must establish that making such payments satisfies the requirements mandated by Bankruptcy Rule 6003—namely, the relief requested is necessary to avoid “immediate and irreparable harm.” If a debtor’s prospect of reorganizing is threatened, or swift diminution in value of the debtor’s estate is likely, absent the granting of the requested relief, immediate and irreparable harm likely exists. *See In re WorldSpace, Inc.*, No. 08-12412, 2008 WL 8153639, at *2 (Bankr. D. Del. Oct. 20, 2008) (granting emergency motions for post-petition financing, adequate protection, and modification of the stay where the court found that the relief was necessary to avoid irreparable harm to the debtors and their estates because such relief was essential for the continued operations of the debtors’ businesses); *In re New World Pasta Co.*, No. 04-02817, 2004 WL 5651052, at *5 (Bankr. M.D. Pa. July 9, 2004) (same); *see also In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (finding that “immediate and irreparable harm” exists where loss of the business threatens ability to reorganize).

29. As described above and in the First Day Declaration, the continuity and viability of the Debtors’ business operations relies heavily on the uninterrupted delivery of

essential food, products, and supplies. The failure of any PACA/PASA Vendor to deliver essential food, products, or supplies to the Debtors would have immediate and detrimental consequences to the Debtors' businesses and would decrease value to the detriment and prejudice of all of the Debtors' stakeholders. The Debtors cannot risk even the perception that their restaurants will offer anything but the highest level of food and beverage quality and quantity for the duration of the Chapter 11 Cases. Moreover, it is in the Debtors' business judgment that continuation of their positive relationship with the PACA/PASA Vendors is critical to their continued operations and greatly increases the likelihood of successfully prosecuting the Chapter 11 Cases.

30. Accordingly, the Debtors respectfully submit that the relief requested herein is necessary to avoid immediate and irreparable harm and that, therefore, Bankruptcy Rule 6003 is satisfied.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

31. Given the nature of the relief requested herein, the Debtors respectfully request a waiver of (i) the notice requirements under Bankruptcy Rule 6004(a) and (ii) the 14-day stay under Bankruptcy Rule 6004(h), to the extent that either rule is applicable.

DEBTORS' RESERVATION OF RIGHTS

32. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the Proposed Interim Order and the Proposed Final Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of any of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' right under the Bankruptcy Code or any other applicable law;

or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the 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 any Debtors' rights to subsequently dispute such claim.

NOTICE

33. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the Subchapter V trustee appointed in this case (the "Subchapter V Trustee"); (iii) the Internal Revenue Service; (iv) the Securities and Exchange Commission; (iv) the Delaware Secretary of State; (v) the Delaware Secretary of the Treasury; (vi) the Debtors' secured creditors; (vii) the Debtors' consolidated twenty (20) largest unsecured creditors; (viii) the PACA/PASA Vendors; and (ix) all parties requesting notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Proposed Interim Order substantially in the form annexed hereto as **Exhibit A** granting the relief requested in the Motion and such other and further relief as may be just and proper, and (b) schedule a Final Hearing on the Motion as soon as is otherwise practicable thereafter to consider entry of the Final Order substantially in the form annexed hereto as **Exhibit B**.

Dated: April 25, 2024
Wilmington, Delaware

**PASHMAN STEIN WALDER
HAYDEN, P.C.**

/s/ John W. Weiss

John W. Weiss (No. 4160)
Joseph C. Barsalona II (No. 6102)
1007 North Orange Street, 4th Floor, Suite 183
Wilmington, DE 19801-1242
Telephone: (302) 592-6496
Email: jweiss@pashmanstein.com
jbarsalona@pashmanstein.com

-and-

Richard C. Solow (*pro hac vice* pending)
Katherine R. Beilin (*pro hac vice* pending)
Court Plaza South, East Wing
21 Main Street, Suite 200
Hackensack, NJ 07601
Telephone: (201) 488-8200
Email: rsolow@pashmanstein.com
kbeilin@pashmanstein.com

*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Sticky's Holding LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10856

Joint Administration Requested

Re: D.I. __

**INTERIM ORDER, PURSUANT TO SECTIONS 105(a), 363,
507(a)(2), 541, 1107(a), AND 1108 OF THE BANKRUPTCY CODE,
(I) AUTHORIZING THE PAYMENT OF PREPETITION CLAIMS ARISING UNDER
(A) THE PERISHABLE AGRICULTURAL COMMODITIES ACT, (B) THE PACKERS
AND STOCKYARDS ACT, AND (C) SECTION 503(b)(9) OF THE BANKRUPTCY
CODE AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS
AND ELECTRONIC TRANSFER REQUESTS RELATED TO THE FOREGOING**

Upon the motion (the "Motion")² of the above captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an interim order (this "Interim Order") and a final order pursuant to sections 105(a), 363, 541, 1107(a), and 1108 of the Bankruptcy Code, and Local Rule 9013-1(m), (i) authorizing the payment of prepetition claims arising under (a) the Perishable Agricultural Commodities Act and (b) the Packers and Stockyards Act; and (ii) authorizing Banks to honor and process checks and electronic transfer requests related to the foregoing, all as more fully described in the Motion; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other further notice need be provided under the

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Sticky's Holdings LLC (3586); Sticky Fingers LLC (3212); Sticky Fingers II LLC (7125); Sticky Fingers III LLC (3914); Sticky Fingers IV LLC (9412); Sticky Fingers V LLC (1465); Sticky Fingers VI LLC (0578); Sticky's BK 1 LLC (0423); Sticky's NJ 1 LLC (5162); Sticky Fingers VII LLC (1491); Sticky's NJ II LLC (6642); Sticky Fingers IX LLC (5036); Sticky's NJ III LLC (7036); Sticky Fingers VIII LLC (0080); Sticky NJ IV LLC (6341); Sticky's WC 1 LLC (0427); Sticky's Franchise LLC (5232); Sticky's PA GK I LLC (7496); Stickys Corporate LLC (5719); and Sticky's IP LLC (4569). The Debtors' mailing address is 24 E. 23rd Street, New York, NY 10010.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; 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 herein.
2. The Debtors are authorized, in their sole discretion, to pay or otherwise satisfy all valid PACA/PASA Claims in the ordinary course of business in an aggregate amount not to exceed \$345,000.
3. Any PACA/PASA Vendor who accepts payment from the Debtors in satisfaction of its valid PACA/PASA Claim will be deemed to have waived any and all PACA/PASA claims of whatever type, kind, or priority against the Debtors, their property, their estates, and any PACA/PASA Trust Assets, but only to the extent that payment has been received by such PACA/PASA Vendor on account of its PACA/PASA Claim.
4. Nothing in this Interim Order impairs the rights of holders of PACA or PASA Claims to enforce their rights under PACA or PASA consistent with applicable law, including, but not limited to, section 362 of the Bankruptcy Code, or to seek redress from this Court with respect to their rights under PACA or PASA.
5. In the event that any PACA/PASA Vendor that has received payment for its PACA/PASA Claim refuses to continue to provide goods and services, as applicable, on an uninterrupted basis, to the Debtors in accordance with (i) the terms and provisions of this Interim Order, (ii) Historical Trade Terms, or (iii) such other terms agreed upon by the Debtors and such PACA/PASA Vendor, in their sole discretion, the Debtors shall be authorized, but not obligated, to deem the payments made to any such PACA/PASA Vendor to have been in payment of any

then-outstanding postpetition claims of such PACA/PASA Vendor. If this situation arises, the previously paid prepetition PACA/PASA Claims of the PACA/PASA Vendor shall be reinstated as prepetition PACA/PASA Claims. To the extent that the payments made to the PACA/PASA Vendor on account of the previously paid PACA/PASA Claims exceed the postpetition amounts then owed to such PACA/PASA Vendor, all rights of the Debtors and their estates to recover such payments shall be reserved. Notwithstanding the foregoing, the Debtors' exercise of remedies pursuant to this paragraph is subject to entry of a further order, which the Debtors may seek by filing a motion to enforce the terms of this Interim Order on not less than five (5) business days' notice to the affected counterparty.

6. The Banks are authorized to receive, process, honor, and pay all checks presented for payment of, and to honor all funds transfer requests made by the Debtors related to, the PACA/PASA Claims paid pursuant to this Order, regardless of whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and funds transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Interim Order.

7. Nothing in this Interim Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority, or amount of any claim against the Debtors or their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all

claims or causes of action against a PACA/PASA Vendor; or (iv) shall be construed as a promise to pay a claim.

8. Responses or objections to the Motion and entry of a final order with respect to the Motion must: (i) be made in writing; (ii) state with particularity the grounds therefor; (iii) conform to the Bankruptcy Rules and the Local Rules; and (iv) be served upon (a) proposed counsel to the Debtors, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Floor, Suite #183, Wilmington, Delaware, 19899-1347, Attn: John W. Weiss (jweiss@pashmanstein.com); Joseph C. Barsalona II (jbarsalona@pashmanstein.com), Richard C. Solow (rsolow@pashmanstein.com) and Katherine R. Beilin (kbeilin@pashmanstein.com), (b) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware, 19801, Attn: Joseph F. Cudia (joseph.cudia@usdoj.gov) and Jonathan W. Lipshie (Jon.Lipshie@usdoj.gov), and (c) the Subchapter V Trustee, [●] (the “Notice Parties”).

9. The deadline by which objections to the Motion and the final order must be filed and received by proposed counsel to the Debtors is _____, 2024 at 4:00 p.m. (Eastern Time). A final hearing, if required, on the Motion will be held on _____, 2024 at _____ (Eastern Time). If no objections are filed to the Motion and entry of this Interim Order on a final basis, the Court may enter a final order without further notice or a hearing.

10. The relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors, and timely entry of this Interim Order is not prohibited by Bankruptcy Rule 6003(b).

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

12. The Debtors are authorized to take all actions necessary to implement this Interim Order.

13. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Interim Order.

Dated: _____, 2024
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Sticky's Holding LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10856

Joint Administration Requested

Re. D.I. __

**FINAL ORDER, PURSUANT TO SECTIONS 105(a), 363, 507(a)(2), 541, 1107(a),
AND 1108 OF THE BANKRUPTCY CODE, (I) AUTHORIZING THE PAYMENT
OF PREPETITION CLAIMS ARISING UNDER (A) THE PERISHABLE
AGRICULTURAL COMMODITIES ACT, (B) THE PACKERS AND
STOCKYARDS ACT, AND (C) SECTION 503(b)(9) OF THE BANKRUPTCY
CODE AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS
AND ELECTRONIC TRANSFER REQUESTS RELATED TO THE FOREGOING**

Upon the motion (the "Motion")² of the above captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an interim order (the "Interim Order") and a final order (this "Final Order") pursuant to sections 105(a), 363, 541, 1107(a), and 1108 of the Bankruptcy Code, and Local Rule 9013-1(m),), (i) authorizing the payment of prepetition claims arising under (a) the Perishable Agricultural Commodities Act and (b) the Packers and Stockyards Act; and (ii) authorizing Banks to honor and process checks and electronic transfer requests related to the foregoing, all as more fully described in the Motion; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other further notice need be provided under the

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number are as follows: Sticky's Holdings LLC (3586); Sticky Fingers LLC (3212); Sticky Fingers II LLC (7125); Sticky Fingers III LLC (3914); Sticky Fingers IV LLC (9412); Sticky Fingers V LLC (1465); Sticky Fingers VI LLC (0578); Sticky's BK 1 LLC (0423); Sticky's NJ 1 LLC (5162); Sticky Fingers VII LLC (1491); Sticky's NJ II LLC (6642); Sticky Fingers IX LLC (5036); Sticky's NJ III LLC (7036); Sticky Fingers VIII LLC (0080); Sticky NJ IV LLC (6341); Sticky's WC 1 LLC (0427); Sticky's Franchise LLC (5232); Sticky's PA GK I LLC (7496); Stickys Corporate LLC (5719); and Sticky's IP LLC (4569). The Debtors' mailing address is 24 E. 23rd Street, New York, NY 10010.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, in their sole discretion, to pay or otherwise satisfy all valid PACA/PASA Claims in the ordinary course of business in an aggregate amount not to exceed \$345,000.
3. Any PACA/PASA Vendor who accepts payment from the Debtors in satisfaction of its valid PACA/PASA Claim will be deemed to have waived any and all PACA/PASA Claims of whatever type, kind, or priority against the Debtors, their property, their estates, and any PACA/PASA Trust Assets, but only to the extent that payment has been received by such PACA/PASA Vendor on account of its PACA/PASA Claim.
4. Nothing in this Final Order impairs the rights of holders of PACA or PASA Claims to enforce their rights under PACA or PASA consistent with applicable law, including, but not limited to, section 362 of the Bankruptcy Code, or to seek redress from this Court with respect to their rights under PACA or PASA.
5. If a PACA/PASA Vendor accepts payment pursuant to this Final Order after agreeing to provide services on Customary Trade Terms or Negotiated Trade Terms, and thereafter does not continue to provide goods and services on such terms (regardless of whether a Trade Agreement has been executed), then (i) any payment on account of a PACA/PASA Claim may be deemed, in the Debtors' reasonable business judgment, to be an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request, and (ii) upon recovery of the

payment by the Debtors, the PACA/PASA Claim shall be reinstated as if the payment had not been made. If there exists an outstanding postpetition balance due from the Debtors to a PACA/PASA Vendor, the Debtors may elect to recharacterize and apply any payment made pursuant to this Final Order to such outstanding postpetition balance, and the Debtors may then take any and all appropriate steps to cause such PACA/PASA Vendor to repay payments made to it on account of its prepetition claim to the extent that such payments exceed the postpetition amounts then owing to such PACA/PASA Vendor. Notwithstanding the foregoing, the Debtors' exercise of remedies pursuant to this paragraph is subject to entry of a further order, which the Debtors may seek by filing a motion to enforce the terms of this Final Order on not less than five (5) business days' notice to the affected counterparty.

6. The Banks are authorized to receive, process, honor, and pay all checks presented for payment of, and to honor all funds transfer requests made by the Debtors related to, the PACA/PASA Claims paid pursuant to this Final Order, regardless of whether such checks were presented or funds transfer requests were submitted prior to or after the Petition Date, provided that funds are available in the Debtors' accounts to cover such checks and funds transfers. The Banks are authorized to rely on the Debtors' designation of any particular check or funds transfer as approved by this Final Order.

7. Nothing in this Final Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors or their estates; (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority, or amount of any claim against the Debtors or their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors or their estates with respect to any and all claims or

causes of action against a PACA/PASA Vendor; or (iv) shall be construed as a promise to pay a claim.

8. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

9. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

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

11. All time periods referenced in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

12. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Final Order.

Dated: _____, 2024
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE