Docket #0012 Date Filed: 9/21/2026

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Yardbird Group LLC, *et al.*,[1]	Case No. 26-11479 (___)
Debtors.	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS, 503(b)(9) CLAIMANTS, AND PACA/PASA CLAIMANTS; (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH OBLIGATIONS; AND (III) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors") seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the "Proposed Interim Order" and "Proposed Final Order," respectively), (i) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, (a) prepetition amounts of certain vendors that are critical to the Debtors' ongoing business operations (the "Critical Vendors" and such claims, the "Critical Vendor Claims"), (b) claims that are entitled to administrative expense priority under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims"), and (c) claims that give rise to statutory constructive trusts under the Perishable Agricultural Commodities Act of 1930 ("PACA") or the Packers and Stockyards Act of 1921 ("PASA") (the "PACA/PASA Claims" and, together with the Critical Vendor Claims and the 503(b)(9) Claims, the "Trade Claims," and the holders of such Trade Claims, the "Trade

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number include: Yardbird Group LLC (7139); Southern Operations, LLC (5384); Yardbird Beverly Hills, LLC (9735); Yardbird DFW, LLC (2545); Yardbird DC, LLC (2651); Yardbird Chicago, LLC (6273); Yardbird Denver LLC (8819), YB Las Vegas, LLC (4071), Yardbird DFW Management LLC (8949), Yardbird DFW Concession LLC (1952), and The Bird Singapore LLC (8264). The location of the Debtors' service address in these Chapter 11 Cases is 3355 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

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Claimants"), (ii) authorizing banks and other financial institutions to honor and process checks and electronic transfer requests related to the foregoing, and (iii) granting related relief. In support of this motion (this "Motion"), the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this "Court") has jurisdiction over the above-captioned chapter 11 cases (these "Chapter 11 Cases"), the Debtors, property of the Debtors' estates, and these matters under 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).

2. Pursuant to rule 9013-1(f) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(b), 503(b), 1107(a), and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 9013-1(m).

GENERAL BACKGROUND

5. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtors have also filed a

motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their business and managing their properties, as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made, and no official committees have been appointed in these Chapter 11 Cases.

6. The Debtors own and operate "Yardbird Southern Table & Bar," an award-winning polished casual dining concept offering a modern take on traditional Southern American cuisine. Beyond its famed fried chicken, Yardbird is known for its weekend brunch, chef-curated bourbon dinners, and an award-winning mixology program and extensive wine list, all served in an inviting, open atmosphere anchored by signature floor-to-ceiling windows and open kitchens. Event dining and catering represent a significant portion of the Debtors' revenue, complementing the Debtors' three operating restaurant locations in Dallas, Texas; Washington, D.C.; and Chicago, Illinois, and its two licensed locations in Las Vegas, Nevada, and Singapore.

7. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these Chapter 11 Cases is set forth in detail in the *Declaration of Albert Altro in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), which is incorporated herein by reference.[2]

FACTS RELEVANT TO THIS MOTION

8. The continued operation of the Debtors' restaurant business depends on a network of vendors and suppliers that provide meats, vegetables, fruits, beverage products, restaurant

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

operating supplies, facilities and maintenance services, and other goods and services necessary to maintain uninterrupted operations and customer service. Certain of these vendors and suppliers are essential to the Debtors' business, which requires frequent deliveries and quick turnover of goods sold. In addition, certain vendors and suppliers may hold claims entitled to priority under section 503(b)(9) of the Bankruptcy Code or may be protected by a statutory trust for goods delivered to the Debtors under PACA or PASA. Thus, the Debtors' vendors are necessary to the effective operation of the Debtors' restaurant business and their ability to maximize value during the pendency of these Chapter 11 Cases.

I. Critical Vendor Claims and Analysis.

9. As set forth more fully in the First Day Declaration, the Debtors currently operate five (5) restaurants located in Chicago, Illinois; Dallas, Texas; Washington, D.C.; Las Vegas, Nevada; and Singapore, where they offer traditional Southern American cuisine in a polished casual dining concept. To operate these restaurants, the Debtors require a wide variety of fresh produce, meat, dairy, beverages, condiments, dry and canned goods, and restaurant accessories. Raw groceries are typically delivered directly to the Debtors' restaurant locations on an as-needed basis. If the delivery of products to the Debtors is stopped or delayed—even briefly—the Debtors could not operate their restaurants. Without a full supply of food and beverages, the Debtors would be extremely disadvantaged in a highly competitive market segment and would suffer swift attrition in customer patronage, which would be difficult, if not impossible, to restore. The Debtors' business depends on, among other things, the Debtors' ability to retain their vendors and maintain their reputation, food quality, and customer loyalty.

10. To identify the Critical Vendors, the Debtors reviewed their accounts payable and prepetition vendor lists to identify those vendors and suppliers most essential to the Debtors'

operations pursuant to the following criteria: (a) which vendors provide unique goods and/or services, without whom the Debtors could not continue operations without disruption; (b) the Debtors' ability to find timely alternative service providers or vendors, and the potential disruption while sourcing replacements; (c) which service providers, or vendors would be prohibitively expensive to replace; (d) whether a service provider or vendor meeting the foregoing criteria is able or likely to refuse to continue to do business with the Debtors postpetition if its prepetition balances are not paid; and (e) the loss of revenue if a Critical Vendor refuses to continue to provide goods or services.

11. Following this analysis, the Debtors designated certain vendors as Critical Vendors. Any material interruption in the provision of the products and services by the Critical Vendors, however brief, including, *e.g.*, the delivery of key ingredients and essential services, could cause irreparable harm to the Debtors' go-forward businesses, goodwill, employees, customer base, and market share. Such harm would likely outweigh the cost of payment of prepetition claims of Critical Vendors.[3] If the Debtors are unable to acquire goods from the Critical Vendors to meet customer demands, the Debtors will face a corresponding loss of revenues and the Debtors' customer relationships could suffer irreparable damage.

12. Accordingly, it is essential to the Debtors' restructuring efforts to pay the Critical Vendor Claims to maintain the supply of the food products and services critical to the Debtors' business operations during these Chapter 11 Cases.

a. ***Trade Terms Conditions***

13. The loss of trade terms with Critical Vendors (whether on account of demands for cash-in-advance, cash-on-delivery, or otherwise) would negatively impact the Debtors' liquidity.

[3] Notwithstanding the relief requested herein, the Debtors reserve all their rights and remedies under the Bankruptcy Code and other applicable law to pursue any cause of action against any Critical Vendor on account of, among other things, any violation of the automatic stay pursuant to section 362(a)(6) of the Bankruptcy Code.

The Debtors intend to pay prepetition Critical Vendor Claims only when, in their business judgment, the benefits to their estates from making such payments will exceed the costs to their estates.

14. To preserve working capital and liquidity during these Chapter 11 Cases and ensure that the Debtors continue to receive vital products and services, the Debtors seek authority, but not direction, to condition any payment on account of Critical Vendor Claims on such Critical Vendor's execution of a written agreement (the "Trade Agreements") pursuant to which payment shall be conditioned on the vendor: (a) agreeing to continue to provide products and/or services to the Debtors in accordance with trade terms no worse than those in place during the one hundred and eighty (180) days prior to the Petition Date (the "Customary Trade Terms") and/or (b) accepting some discount on its prepetition claim amount. The Debtors, however, reserve the right to negotiate different terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim, whether or not memorialized by a Trade Agreement, to the extent the Debtors determine that such trade terms are necessary to procure essential products and services or are otherwise in the best interests of the Debtors' estates.

15. The Debtors hereby request authority to enter into Trade Agreements with the Critical Vendors if the Debtors determine, in their discretion, that such an agreement is necessary for their postpetition operations. Maintaining normal trade credit terms will improve the Debtors' chances of successfully emerging from chapter 11 because purchasing goods on credit preserves working capital and liquidity, enabling the Debtors to maintain their competitiveness and to maximize the value of their business. This is particularly critical for the Debtors, who took the availability of their existing trade credit into account when sizing their postpetition liquidity needs.

16. If a Critical Vendor refuses to provide products or services to the Debtors on Customary Trade Terms (or such other terms that the parties agree upon as a condition to providing Critical Vendor status) following any postpetition payment toward its Critical Vendor Claim, or fails to comply with any Trade Agreement entered into with the Debtors, the Debtors request authority, in their discretion and without further order of the Court but with notice to the affected Critical Vendor (a) to declare such Trade Agreement immediately terminated (if applicable) and (b) to declare (i) that the payment of such Trade Claim is a voidable postpetition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover in cash from such Trade Claimant (including by setoff against postpetition obligations), or (ii) that the Trade Claimant shall immediately return the payment of its Trade Claim without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets or any type whatsoever.

II. 503(b)(9) Claims.

17. Some of the Trade Claimants may hold Section 503(b)(9) claims on account of goods received by the Debtors within the twenty (20) days immediately preceding the Petition Date. From time to time, the Debtors obtain raw materials, goods, or other supplies from the holder of Section 503(b)(9) Claims on an order-by-order basis. The Debtors' vendors typically invoice the Debtors for goods they are delivering on or about the day they deliver the goods and the Debtors' general practice is to pay vendors within thirty days of receiving an invoice from any vendor.

18. A vendor's refusal to fulfill new orders without payment of its Section 503(b)(9) Claims would negatively affect the Debtors' businesses and ability to satisfy customer demand. Accordingly, the Debtors seek authority, but not direction, to pay Section 503(b)(9) Claims during these Chapter 11 Cases.

III. PACA/PASA Claims

19. To ensure that the Debtors continue to receive a constant supply of fresh fruits and vegetables necessary to service their customers' needs postpetition, the Debtors request authority, but not direction, to continue to pay, in the ordinary course of business and consistent with their historical practices, claims, arising under PACA to those vendors who supply the Debtors with fresh and frozen fruits and vegetables. PACA addresses the regulation of the sale of "perishable agricultural commodities." 7 U.S.C. § 499a; *see Pac. Int'l Mktg., Inc. v. A & B Produce, Inc.*, 462 F.3d 279, 282 (3d Cir. 2006). Under PACA, the term "perishable agricultural commodity" is defined as "fruits and fresh vegetables of every kind and character." 7 U.S.C. § 499a(b)(4). The Debtors also regularly purchase meat and similar products from vendors that may be eligible to assert claims under PASA. *See* 7 U.S.C. § 181. Accordingly, the Debtors also request authority, but not direction, in their discretion, to continue to pay PACA/PASA Claims in the ordinary course of business and consistent with their historical practices.

20. PACA provides various protections to fresh fruit and vegetable sellers, including the establishment of a statutory constructive trust ("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 beneficiaries are entitled to receive payment ahead of other creditors of the buyer, including creditors that have liens or other security interest in the buyers' interests. *Bear Mountain Orchards v. Mich-Kim, Inc.*, 623 F.3d 163, 167 (3d Cir. 2010); *Pac. Int'l Mktg.*, 262 F.3d at 283 ("[T]he PACA statutory trust grants certain unpaid suppliers and sellers of produce and their agents an interest in the PACA trust assets superior to that of a buyer's perfected, secured creditor."); *see also Idahoan Fresh v.*

Advantage Produce, Inc., 157 F.3d 197, 199 (3d Cir. 1998). Similarly, PASA creates a statutory trust (the "PASA Trust," and together with the PACA Trust, the "Statutory Trusts") scheme which is virtually identical to PACA in respect of delivery of livestock, meat products and related products, products derived therefrom, and the proceeds related to the sale of such commodities or products (collectively, the "PASA Trust Assets," and together with the PACA Trust Assets, the "Trust Assets"). *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 [PASA].").

21. The Debtors believe that the fruits, vegetables, and meat products purchased from their vendors are covered by PACA and may be covered by PASA. As a result, insofar as those vendors abide by the statutory requirements of PACA and PASA, such vendors will be eligible to assert PACA/PASA Claims granting them priority ahead of all other secured and unsecured creditors in these Chapter 11 Cases. Accordingly, through this Motion, the Debtors seek authority, but not direction, to pay PACA/PASA Claims during these Chapter 11 Cases.

RELIEF REQUESTED

22. The Debtors seek entry of the Proposed Interim Order and the Proposed Final Order, pursuant to sections 105(a), 363(b), 503(b), 1107(a), and 1108 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1(m) (a) authorizing, but not directing, the Debtors, in their discretion, to pay Trade Claimants up to $290,000, all of which may come due during the Interim Period (as defined below); (b) authorizing banks and other financial institutions to honor and process checks and electronic transfer requests related thereto, and (c) granting related relief. By this Motion, the Debtors are only seeking to pay amount necessary to preserve the value of the Debtors' estates.

23. The Debtors further request that they be authorized, but not required, in their reasonable business judgment, to condition the payment of any Trade Claims, on the agreement of each Trade Claimant to continue supplying goods or services to the Debtors according to Customary Trade Terms.

24. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services pursuant to Customary Trade Terms, then the Debtors reserve the right to seek any appropriate remedy.

BASIS FOR RELIEF

I. THE COURT SHOULD AUTHORIZE, BUT NOT DIRECT, THE DEBTORS TO PAY THE TRADE CLAIMS IN THEIR DISCRETION.

A. Paying Trade Claims is in Furtherance of the Debtors' Duties Under Sections 1107(a) and 1108 of the Bankruptcy Code and Is Appropriate Under Section 105(a) of the Bankruptcy Code and the Doctrine of Necessity.

25. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. Indeed, a debtor in possession has a duty to protect and preserve the value of its estate and may pay prepetition claims if necessary for the debtor to fulfill that duty. *See, e.g.*, *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) ("There are occasions when this duty can only be fulfilled by the preplan satisfaction of a prepetition claim."). The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." *Id.*

26. The *CoServ* court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtors' fiduciary duty:

> First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the

> probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

27. Additionally, section 105(a) of the Bankruptcy Code authorizes the Court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business. *See In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999).

28. Moreover, the relief requested in this Motion is supported by the well-established "doctrine of necessity." The United States Court of Appeals for the Third Circuit recognized the doctrine in *In re Lehigh & New England Railway Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *See id.* (stating courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding necessity of payment doctrine permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid"); *Official Comm. of Unsecured Creditors of Motor Coach Indus. Int'l, Inc. v. Motor Coach Indus. Int'l, Inc. (In re Motor Coach Int'l, Inc.)*, No. 09-078, 2009 WL 330993, at *3 (D. Del. Feb. 10, 2009) (reaffirming viability of doctrine of necessity in Third Circuit with respect to payment of prepetition critical vendor claims); *PBGC v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 159

B.R. 730, 736-37 (Bankr. W.D. Pa. 1993) (embracing "necessity of payment" doctrine and citing *Leigh & New England Ry. Co.* with approval); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same). The rationale of these opinions and the necessity of payment doctrine support to the Debtors' efforts to continue their businesses and to maximize value for the benefit of their stakeholders through the payment of certain Trade Claims. Without the authority to pay the Trade Claims, the Debtors' ability to continue operations and maximize value would be significantly reduced.

29. The Debtors' request for authority to pay Trade Claims is appropriate, warranted under the circumstances, and satisfies the *CoServ* court's three-part test and the equitable standards under *Just for Feet* and the doctrine of necessity. First, the Debtors deal directly with their Trade Claimants, whether by procuring raw materials or finished products through a vendor's supply agreement or by transferring funds to a vendor who procures raw materials or finished products for the Debtors. As to the second and third *CoServ* factors, payment of the Trade Claims, as described above, is essential to the continued operation of the Debtors' business. Failure to pay such claims could harm the Debtors' ability to obtain necessary products and services, prevent the Debtors from preserving favorable trade terms, and increase the likelihood of significant disruptions to the Debtors' postpetition operations with no practical or legal alternative outside of payment of the Trade Claims.

30. The resulting harm to the Debtors' estates far outweighs the cost associated with paying a portion of the Debtors' prepetition obligations to the Trade Claimants. As stated above, the Trade Claimants provide goods and services that, in the Debtors' business judgment, are necessary to meet customer demand for the Debtors' food products and to ensure the continued functioning of the Debtors' business and preserve and maximize the going-concern value of their

business. If the Trade Claimants cease providing goods and services to the Debtors, the Debtors face a degradation in the value of their business due to interruption of the flow of necessary products and services to the Debtors and impairment of the Debtors' ability to provide food products to their customers. Thus, the Debtors submit that their other creditors will be no worse off from implementation of the relief sought herein, and in fact will likely fare better, if the Debtors are empowered to negotiate such payments to achieve a smooth transition into bankruptcy with minimal disruption to their operations.

31. Accordingly, in light of the potential for immediate and irreparable harm if the Trade Claimants do not continue to provide uninterrupted and timely deliveries of products and services, the Debtors have determined, in the exercise of their business judgment, that payment of Trade Claims necessary to the go-forward business is essential to avoid costly disruptions to their operations.

32. For these reasons, the Debtors submit that the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, preserves value for the benefit of all stakeholders in these Chapter 11 Cases, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code.

B. The Court May Authorize the Payment of Claims Entitled to Administrative Expense Priority Pursuant to Section 503(b)(9) of the Bankruptcy Code.

33. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the "value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9).

34. Debtors' ongoing ability to obtain products as provided herein is necessary to preserve the value of their estates. Absent the payment of necessary Section 503(b)(9) Claims at

the outset of these Chapter 11 Cases, the Debtors could be denied access to products necessary to maintain the Debtors' operations and maximize the value of the Debtors' estates. In addition, the Bankruptcy Code does not prohibit a debtor from paying Section 503(b)(9) Claims prior to confirmation of a chapter 11 plan. As administrative claims incurred in the ordinary course of business, the Debtors believe they may pay such claims in accordance with their business judgment pursuant to section 363(c)(1) of the Bankruptcy Code. *See, e.g.*, Hearing Transcript at 49:21–23, *In re Dura Auto. Sys. Inc.*, No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006) [Docket No. 153] ("I think arguably the [D]ebtor could pay its 503(b)(9) claimants without court approval."). The timing of such payments also lies squarely within the Court's discretion. *See In re Glob. Home Prods., LLC*, No. 06 10340 (KG), 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that "the timing of the payment of that administrative expense claim is left to the discretion of the Court"). Accordingly, the Debtors submit that the Court should permit the Debtors to pay the Section 503(b)(9) Claims in the ordinary course of business subject to the caps in the Proposed Orders.

C. The Court Should Authorize Payment of PACA/PASA Claims.

35. The prompt payment of PACA/PASA Claims should be authorized by the 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. 694, 697 (Bankr. D. Del. 2009) (PASA trust assets are excluded from debtor's estate); *In re Long John Silver's Rests., Inc.*, 230 B.R. 29, 32 (Bankr. D. Del. 1999) (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 108, 110-12 (3d Cir. 2000); *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. Accordingly, the relief requested herein does not prejudice the Debtors' creditors or any party in interest in the chapter 11 cases.

36. Further, payment of allowed PACA/PASA Claims will inure to the benefit of the Debtors' estates by preserving goodwill between the Debtors and the holders of PACA/PASA Claims. Any delays in satisfying amounts owed to PACA/PASA vendors could adversely affect the Debtors' ability to obtain fresh produce, meat, poultry, and other similar goods, thereby undercutting the Debtors' efforts in connection with these 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.

37. Lastly, in certain circumstances, officers or directors of a corporate entity who can 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, Inc. v. Harry Zimmerman, Inc.*, 814 F. Supp. 346, 349 (S.D.N.Y. 1993) (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. 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 these 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. THE COURT SHOULD AUTHORIZE THE BANKS TO HONOR AND PROCESS THE DEBTORS' PAYMENTS ON ACCOUNT OF THE TRADE CLAIMS.

38. The Debtors also request the Court to authorize the Debtors' banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors further request that all the Debtors' banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

RESERVATION OF RIGHTS

39. Nothing contained herein is or should be construed as: (i) an implication or admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any other party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (iv) a promise to pay any claim, (v) a concession by the Debtors that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Motion are valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are

expressly reserved), (vi) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease between the Debtors and any third party under section 365 of the Bankruptcy Code, (vii) a waiver of the obligation of any party in interest to file a proof of claim, or (viii) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Motion is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

IMMEDIATE RELIEF IS NECESSARY

40. The Court may grant the relief requested in this Motion immediately if the "relief is needed to avoid immediate and irreparable harm." Fed. R. Bank. P. 6003; *In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008). The Third Circuit has interpreted the language "immediate and irreparable harm" in the context of preliminary injunctions. In that context, the Third Circuit has instructed that irreparable harm is that which "cannot be redressed by a legal or an equitable remedy following a trial." *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). The Debtors submit that, for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

41. Accordingly, the Debtors request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[u]nless the court orders otherwise, an order authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after

the order is entered." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

42. Notice of this Motion will be provided to the following parties or their respective counsel: (a) the Office of the United States Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtors on a consolidated basis; (c) the DIP Secured Parties; (d) the Prepetition Secured Parties; (e) CNB; (f) the Internal Revenue Service; (g) the United States Attorney's Office for the District of Delaware; (h) the state attorneys general for all states in which the Debtors conduct business; (i) banks and financial institutions where the Debtors maintain accounts; (j) the Trade Claimants; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking "first day" relief, within forty-eight (48) hours of the entry of an order with respect to this Motion, the Debtors will serve copies of this Motion and any order entered with respect to this Motion as required by Local Rule 9013-1(m). The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice is necessary.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter the Proposed Interim Order and the Proposed Final Order, substantially in the forms annexed hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: September 21, 2026
Wilmington, Delaware

Respectfully submitted,

/s/ Katelin A. Morales

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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:	Chapter 11
Yardbird Group LLC, *et al.*,[1]	Case No. 26-11479 (___)
Debtors.	(Joint Administration Requested)
	Re: Docket No. __

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS, 503(b)(9) CLAIMS, AND PACA/PASA CLAIMANTS; (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO, AND (III) 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 (this "Interim Order"), (i) authorizing, but not directing, the Debtors, in their discretion, to pay certain Trade Claims in the ordinary course of business, (ii) authorizing banks and other financial institutions to honor and process check and electronic transfer requests related thereto, and (iii) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter in accordance with 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; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number include: Yardbird Group LLC (7139); Southern Operations, LLC (5384); Yardbird Beverly Hills, LLC (9735); Yardbird DFW, LLC (2545); Yardbird DC, LLC (2651); Yardbird Chicago, LLC (6273); Yardbird Denver LLC (8819), YB Las Vegas, LLC (4071), Yardbird DFW Management LLC (8949), Yardbird DFW Concession LLC (1952), and The Bird Singapore LLC (8264). The location of the Debtors' service address in these Chapter 11 Cases is 3355 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

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

Constitution; and this Court having found that venue of these Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates, their creditors, and all parties in interest; and upon all of the proceedings had before the Court 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 final hearing (the "Final Hearing") on the Motion shall be held on _____, 2026, at__:__ _.m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served so as to be **received** by the following parties, **by no later than 4:00 p.m., prevailing Eastern Time, on _____, 2026**: (i) proposed counsel to the Debtors, Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary (bcleary@potteranderson.com), Brett M. Haywood (bhaywood@potteranderson.com), and Katelin A. Morales (kmorales@potteranderson.com)); (ii) counsel for the DIP Secured Parties and the Prepetition Secured Parties, (a) Winston Taylor LLP, 200 Park Avenue, New York, New York 10166-4193 (Attn: Jon Levine (jon.levine@winstontaylor.com) and Tom Good (tom.good@winstontaylor.com)) and (b) Cole, Schotz, Meisel, Forman & Leonard, P.A., 1000 N. West Street, Suite 1200, Wilmington, Delaware 19801 (Attn: Patrick J. Reilley (preilley@coleschotz.com) and Daniel F. Geoghan (dgeoghan@coleschotz.com)); (iii) Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox

35, Wilmington, DE 19801 (Attn: Jonathan W. Lipshie (jon.lipshie@usdoj.gov)); and (iv) if any statutory committee has been appointed in these Chapter 11 Cases, counsel to such committee (collectively, the "Notice Parties").

3. The Debtors are hereby authorized, but not required, to pay, in their discretion and in consultation with the DIP Secured Parties, the Trade Claims up to $290,000 during the interim period, in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date. Nothing in this paragraph shall be construed as requiring the Debtors to make a payment to a particular creditor or claimant. For the avoidance of doubt, no payments will be made to professionals or insiders, as that term is defined in section 101(31) of the Bankruptcy Code. The Debtors shall provide a copy of this Interim Order or any final order entered in connection with the Motion to any Trade Claimant to whom a payment is made pursuant to the relief granted herein.

4. The Debtors are authorized, but not directed, in their reasonable business judgment and in consultation with the DIP Secured Parties, to condition payment of the Trade Claims upon such Trade Claimant's execution of a Trade Agreement, if the Debtors determine that such agreement is necessary to the Debtors' operations.

5. The Debtors shall provide a copy of this Interim Order to the applicable party prior to such party's acceptance of any payment hereunder. Any party that accepts payment from the Debtors on account of a Trade Claim shall be deemed to have agreed to the terms and provisions of this Interim Order, and if such party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with Customary Trade Terms after agreeing to do so, then the Debtors reserve the right to seek any appropriate remedy.

6. Nothing contained herein is or should be construed as: (i) an implication or admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any other party-in-interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (iv) a promise to pay any claim, (v) a concession by the Debtors that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Interim Order are valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved), (vi) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease between the Debtors and any third party under section 365 of the Bankruptcy Code, (vii) a waiver of the obligation of any party in interest to file a proof of claim, or (viii) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Interim Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

7. The banks on which checks are drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized 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.

8. The Debtors are authorized, but not directed, in their discretion and in consultation with the DIP Secured Parties, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests made in payment of the prepetition obligations approved herein that are dishonored as a consequence of these Chapter 11 Cases with

respect to prepetition amounts owed in connection with any prepetition claims of the Trade Claimants.

9. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Interim Order, including the following information: (a) the names of the payees; (b) the date, category, nature, and amount of payment; and (c) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to counsel to the DIP Secured Parties upon request.

10. This Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the interim relief requested is necessary to avoid immediate and irreparable harm.

11. The notice requirement of Bankruptcy Rule 6004(a) is waived.

12. This Interim Order shall be immediately effective and enforceable upon its entry. The fourteen-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

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

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

EXHIBIT B

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Yardbird Group LLC, *et al.*,[1]	Case No. 26-11479 (___)
	(Joint Administration Requested)
Debtors.	**Re: Docket Nos. __ & __**

FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS, 503(b)(9) CLAIMS, AND PACA/PASA CLAIMANTS; (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO, AND (III) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"), (i) authorizing, but not directing, the Debtors, in their discretion, to pay certain Trade Claims in the ordinary course of business, (ii) authorizing banks and other financial institutions to honor and process check and electronic transfer requests related thereto, and (iii) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter in accordance with 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; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may enter a final order consistent with Article III of the United States

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number include: Yardbird Group LLC (7139); Southern Operations, LLC (5384); Yardbird Beverly Hills, LLC (9735); Yardbird DFW, LLC (2545); Yardbird DC, LLC (2651); Yardbird Chicago, LLC (6273); Yardbird Denver LLC (8819), YB Las Vegas, LLC (4071), Yardbird DFW Management LLC (8949), Yardbird DFW Concession LLC (1952), and The Bird Singapore LLC (8264). The location of the Debtors' service address in these Chapter 11 Cases is 3355 Las Vegas Boulevard South, Las Vegas, Nevada 89109.

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

Constitution; and this Court having found that venue of these Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates, their creditors and all parties in interest; and upon all of the proceedings had before the Court 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 hereby authorized, but not required, to pay, in their discretion and in consultation with the DIP Secured Parties, the Trade Claims up to $290,000 in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date. Nothing in this paragraph shall be construed as requiring the Debtors to make a payment to a particular creditor or claimant. For the avoidance of doubt, no payments will be made to professionals or insiders, as that term is defined in section 101(31) of the Bankruptcy Code. The Debtors shall provide a copy of this Final Order to any Trade Claimant to whom a payment is made pursuant to the relief granted herein.

3. The Debtors are authorized, but not directed to, in their reasonable business judgment and in consultation with the DIP Secured Parties, condition payment of the Trade Claims, upon such Trade Claimant's execution of a Trade Agreement, if the Debtors determine that such agreement is necessary to the Debtors' operations.

4. The Debtors shall provide a copy of this Final Order to the applicable party prior to such party's acceptance of any payment hereunder. Any party that accepts payment from the

Debtors on account of a Trade Claim shall be deemed to have agreed to the terms and provisions of this Final Order, and if such party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with Customary Trade Terms after agreeing to do so, then the Debtors reserve the right to seek any appropriate remedy.

5. Nothing contained herein is or should be construed as: (i) an implication or admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any other party-in-interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action that may exist against any creditor or interest holder, (iv) a promise to pay any claim, (v) a concession by the Debtors that any liens (contractual, common law, statutory or otherwise) satisfied pursuant to this Final Order are valid (and all rights to contest the extent, validity or perfection or seek avoidance of all such liens are expressly reserved), (vi) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease between the Debtors and any third party under section 365 of the Bankruptcy Code, (vii) a waiver of the obligation of any party in interest to file a proof of claim, or (viii) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Final Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

6. The banks on which checks are drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized 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.

7. The Debtors are authorized, but not directed, in their discretion and in consultation with the DIP Secured Parties, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests made in payment of the prepetition obligations approved herein that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any prepetition claims of the Trade Claimant.

8. The Debtors shall maintain a matrix/schedule of payments made pursuant to this Final Order, including the following information: (a) the names of the payees; (b) the date, category, nature, and amount of payment; and (c) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to counsel to the DIP Secured Parties on a confidential basis upon request.

1. This Final Order shall be immediately effective and enforceable upon its entry. The fourteen-day stay imposed by Bankruptcy Rule 6004(h) is hereby waived.

9. All objections to entry of this Final Order, to the extent not withdrawn or settled, are overruled.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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