

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

In re

Smallhold, Inc.

Debtor.¹

Chapter 11

Case No. 24-10267 (CTG)

**DEBTOR’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE
PAYMENT OF CERTAIN PREPETITION SHIPPERS
CLAIMS AND GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “Debtor”), by and through its undersigned proposed counsel, hereby moves this Court (the “Motion”) for entry of interim and final orders pursuant to sections 105(a) and 363(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”): (i) authorizing, but not directing, the Debtor to pay certain prepetition claims of shippers, (ii) authorizing banks and financial institutions (the “Banks”) to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (iii) granting related relief. In support of the Motion, the Debtor incorporates by reference the *Declaration of James Dunn in Support of First Day Relief* (the “Initial First Day Declaration”) and the *Supplemental Declaration of James Dunn in Support of First Day Relief* (the “Supplemental First Day Declaration,” together with the Initial First Day Declaration, the “First Day Declaration”)² filed concurrently herewith and respectfully represents as follows:

¹ The last four digits of the Debtor’s federal tax identification number are 8880. The Debtor’s mailing is 285 Nostrand Avenue #1066, Brooklyn, NY 11216.

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

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, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004(h), 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 Debtor consents 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.

BACKGROUND

4. On February 18, 2024 (the “Petition Date”), the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code as a debtor defined in Bankruptcy Code section 1182(1) and the Debtor elected to proceed under Subchapter V of chapter 11 of the Bankruptcy Code pursuant to the Small Business Debtor Reorganization Act, as amended (the “SBRA”).

5. The Debtor is operating its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. On February 20, 2024, the United States Trustee appointed Jami Nimeroff of Brown McGarry Nimeroff LLC to serve as the Subchapter V trustee (the “Subchapter V”).

Trustee”) in this case pursuant to Bankruptcy Code section 1183(a). No other trustee, examiner, or official committee has been appointed in this case.

7. Additional detail regarding the Debtor, its business, the events leading to commencement of this case, and the facts and circumstances supporting the relief requested herein is set forth in the First Day Declaration and is incorporated herein by reference.

SHIPPERS

A. Shippers

8. The Debtor is a specialty mushroom farming company based in Brooklyn, New York. Smallhold currently operates indoor mushroom farms in New York City, Austin, and Los Angeles and sells its products in over 500 locations across ten states. To accomplish this and ensure timely distribution, the Debtor depends on third-party shipping vendors in the ordinary course of business to transport product from the Debtor’s indoor mushroom farms to its retail customers, including grocery chains across the country. The Debtor accordingly uses the services of reputable common carriers, dedicated carriers, consolidators and parcel carriers (collectively, the “Shippers”) in the ordinary course of business.

9. Failing to pay the Shippers could result in costly delays and disruption to the Debtor’s business and otherwise diminish the value of the Debtor’s estate. If the Debtor fails to pay the Shippers on a timely basis, the Shippers may refuse to deliver or release goods, packaging and supplies that are in their possession until their invoices are paid. Indeed, since the Petition Date, the Debtor has encountered such pushback from some of its key service suppliers, including some Shippers. Failure to deliver or release product has the potential to severely disrupt the Debtor’s business to the detriment of the Debtor, its estate and its stakeholders. Specifically, the Debtor will be unable to meet the expectations of its retailers which could lead to irreparable harm to the Debtor’s goodwill, business, and revenue. Accordingly, the Debtor seeks authority to

pay Shippers for claims as set forth below.

10. As of the Petition Date, the Debtor estimates that no more than \$150,000.00 is owed in the aggregate on account of prepetition claims for shipping and related services. Paying these amounts will avoid disruption to the Debtor's business and prevent the Shippers from negatively impacting the Debtor's business relations by refusing to deliver product.

11. The Debtor will only pay those amounts that it believes, in its business judgment, are necessary or appropriate to preserve and maximize the value of the Debtor's assets. The Debtor submits that the total amount to be paid to the Shippers on account of their prepetition claims is minimal compared to the direct and indirect losses the Debtor would suffer if the Shippers refused to deliver product.

12. Accordingly, the Debtor requests authority to pay up to \$150,000.00 on an interim basis in prepetition claims of Shippers, all of which the Debtor believes will come due in the first 21 days of this case.

B. Historical Trade Terms Required

13. Subject to the terms set forth in this Motion, the Debtor proposes to condition the payment of prepetition claims set out in this Motion on (a) the agreement of individual claimants to continue to provide services to the Debtor during the pendency of this case on the most favorable terms that existed prior to the Petition Date (the "Historical Trade Terms"), unless this requirement is waived by the Debtor, (b) the waiver and release of any offset, recoupment, counterclaim, discount or other deduction of any kind, reclamation rights, rights under Bankruptcy Code section 503(b)(9), liens and security interests, and adequate protection rights of any type whatsoever that the applicable claimant may now or hereafter have with respect to the claim (collectively, "Released Rights and Interests"), unless this requirement is waived by the Debtor, and (c) at the Debtor's discretion, the execution of a letter agreement, substantially in

the form attached hereto as **Exhibit C** (a “Claimant Letter”), with modifications as appropriate under the circumstances.

14. If any party accepts payment from the Debtor on account of its prepetition claim and thereafter does not continue to provide services to the Debtor on the Historical Trade Terms, then the Debtor hereby requests authority, in its sole discretion and without further order of the Court, (i) to declare that any payments made on account of such prepetition claim be deemed to have been in payment of any then-outstanding (or subsequently accruing) undisputed postpetition claims of such party and (ii) to recover any payment made to such party on account of its respective prepetition claim to the extent such payment exceeded the undisputed postpetition claims of such party, without giving effect to any Released Rights and Interests; *provided, however*, that upon recovery of any such payments by the Debtor, the applicable portion of the prepetition claim shall be reinstated as a prepetition claim in the amount recovered by the Debtor, subject to the terms, releases and waivers set forth in the Claimant Letter.

C. Authorization for Banks

15. The Debtor further requests that the Banks be authorized to receive, process, honor, and pay all checks presented for payment and to honor all electronic payment requests made by the Debtor related to the prepetition obligations described herein, whether such checks were presented, or electronic requests were submitted prior to or after the Petition Date. The Debtor further requests that all Banks be authorized to rely on the Debtor’s designation of any particular check or electronic payment request as approved pursuant to this Motion.

RELIEF REQUESTED

16. By this Motion, the Debtor seeks entry of interim and final orders pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004: (i) authorizing, but not directing, the Debtor to pay the prepetition claims of Shippers in an amount

not to exceed \$150,000.00 upon entry of an interim order (the “Interim Shipping Claims Cap”); (ii) authorizing, but not directing, the Debtor to pay the prepetition claims of Shippers on a final basis upon entry of a final order; (iii) authorizing the Historical Trade Terms process described in this Motion, including the Claimant Letter; (iv) authorizing the Banks to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (v) granting related relief.

BASIS FOR RELIEF REQUESTED

A. Section 363(b) of the Bankruptcy Code supports payment of Shippers claim[s].

17. The Court may authorize the Debtor to pay certain prepetition claims under section 363(b) of the Bankruptcy Code. That section provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); *In re UAL Corp.*, Case No 02-48191, 2002 WL 34344254, at *1 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out of ordinary course transaction). In order to do so, “the debtor must articulate some business justification, other than mere appeasement of major creditors” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175. The Debtor’s request to pay certain prepetition claims of Shippers meets this standard because the consequences of failing to pay such claims could have a material adverse effect on the day-to-day operations of the Debtor’s business and may lead to irreparable harm to the Debtor’s goodwill, business and estate.

B. Section 105 of the Bankruptcy Code supports payment of the claim[s].

18. In addition, to supplement this explicit statutory power, section 105(a) of the Bankruptcy Code grants the Court broad authority to enforce the Bankruptcy Code’s provisions

under equitable common law doctrines. *See* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”); *In re Just For Feet, Inc.*, 242 B.R. 821, 824 (Bankr. D. Del. 1999) (acknowledging that “[c]ertain prepetition claims . . . may need to be paid to facilitate a successful reorganization” and that “[s]ection 105(a) of the [Bankruptcy] Code provides a statutory basis for the payment of prepetition claims”); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (“The ability of a Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”).

19. Paying the Shippers claim[s] is imperative to the Debtor’s continued operations and ability to maximize the value of its estate for the benefit of its creditors. Moreover, paying the Shippers claims would also permit the Debtor to maintain the value of the business, its customer relations, and its revenue. Therefore, the Court should exercise its equitable power to grant the relief requested in this Motion.

C. The doctrine of necessity supports payment of the Shippers claim[s].

20. The “doctrine of necessity” further supports the relief requested in this Motion. In a long line of case law, federal courts have consistently permitted under the “doctrine of necessity” the post-petition payment of prepetition obligations when necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors when essential to the continued operation of the debtor. *See, e.g., Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286, 311 (1882) (articulating legal theory later termed “doctrine of necessity” or “necessity of payment rule” and holding that payment of pre-receivership claim prior to reorganization was permitted to prevent stoppage of crucial business relations); *In re Lehigh & N.E. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (interpreting “necessity of payment” doctrine to mean that “if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during

reorganization, payment may be authorized even if it is made out of corpus”); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors’ continued operation); *S. Ry. Co. v. Flournoy*, 301 F.2d 847, 852 (4th Circ. 1962) (“The principle of necessity of payment [espoused in Miltenberger] has since been carried into different factual surroundings as the basis for granting superiority to business operating accounts.”); *Just for Feet*, 242 B.R. at 826 (granting approval to pay prepetition claims of certain trade vendors which were critical to debtors’ reorganization); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (noting that debtors may pay prepetition claims that are essential to continued operation of business); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176 (stating that “necessity of payment” doctrine “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor”).

21. The doctrine of necessity is frequently invoked early in bankruptcy cases when preservation of the estate is most critical and often extremely difficult. For that reason, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay certain critical prepetition claims under the doctrine of necessity where failure to make such payments threatens to disrupt a debtor’s efforts to reorganize. *See, e.g., In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (stating that “to justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process”). In fact, the Third Circuit stated that “the *sine qua non* for the application of the ‘necessity of payment’ doctrine is the possibility that the creditor will employ an immediate economic sanction failing such payment.” *In re Lehigh & N.E. Ry. Co.*, 657 F.2d at 581.

22. The Debtor submits that paying the prepetition Shippers claims upon entry of an interim order in an amount not to exceed the Interim Shipping Claims Cap is critical to its efforts to maximize the value of its estate for the benefit of its creditors. Based on the foregoing, the Debtor submits that the relief requested is necessary and appropriate, is in the best interests of its estate and creditors, and should be granted.

D. Cause exists to authorize the Debtor's financial institutions to honor checks and electronic fund transfers.

23. The Debtor represents that it will have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves and expected cash flows from ongoing business operations. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable banks should be authorized, when requested by the Debtor, to receive, process, honor and pay any and all checks or wire transfer requests with respect to the Shippers claims.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

24. 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).

25. Here, immediate and irreparable harm would result if the relief requested herein is not granted. Failure to pay the Shippers has the potential to severely disrupt the Debtor's business to the detriment of the Debtor, its estate and its stakeholders, especially given that the Shippers may have the Debtor's property in their possession. Accordingly, the Debtor respectfully submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 for the prepetition amount of the Shippers claim[s] that the Debtor seeks authority to pay pursuant to the Interim Order.

WAIVER OF BANKRUPTCY RULE 6004(h)

26. Given the nature of the relief requested herein, the Debtor respectfully requests 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.

DEBTOR'S RESERVATION OF RIGHTS

27. Nothing contained in this Motion or any actions taken by the Debtor 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 Debtor; (b) a waiver of any of the Debtor's 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 Debtor's rights under the Bankruptcy Code or any other applicable law;

or (g) a concession by the Debtor that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtor expressly reserves its right 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 the Debtor's rights to subsequently dispute such claim.

NOTICE

28. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) 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) each of the Debtor's twenty (20) largest unsecured creditors; (vii) the Shippers; 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 Debtor submits that no other or further notice is necessary.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests 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 proposed final order substantially in the form annexed hereto as **Exhibit B**.

Dated: February 26, 2024
Wilmington, Delaware

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

/s/ Joseph C. Barsalona II
Joseph C. Barsalona II (No. 6102)
1007 North Orange Street, 4th Floor, Suite 183
Wilmington, DE 19801-1242
Telephone: (302) 592-6496
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-and-

Amy M. Oden (admitted *pro hac vice*)
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*Proposed Counsel to the Debtor and
Debtor in Possession*

EXHIBIT A

Proposed Interim Order

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

In re

Smallhold, Inc.

Debtor.¹

Chapter 11

Case No. 24-10267 (CTG)

Re: D.I. ____

**INTERIM ORDER AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION
SHIPPERS CLAIM[S] AND GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an interim order (this “Interim Order”) and final order pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004 and Local Rule 9013-1(m): (i) authorizing, but not directing, the Debtor to pay certain prepetition claims of shippers, (ii) authorizing banks and financial institutions to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (iii) granting related relief, 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 or further notice need be provided under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

¹ The last four digits of the Debtor’s federal tax identification number are 8880. The Debtor’s mailing is 285 Nostrand Avenue #1066, Brooklyn, NY 11216.

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

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. Until such time as a final order is entered, the Debtor is authorized, but not directed, to pay as it deems in its business judgment to be necessary and appropriate up to \$150,000.00 in prepetition claims of Shippers.
3. If any entity accepts payment from the Debtor on account of a prepetition claim authorized under this Interim Order and thereafter does not continue to provide services to the Debtor on the Historical Trade Terms, then the Debtor is authorized, in its discretion and without further order of the Court, (i) to declare that any payments made on account of such prepetition claim be deemed to have been in payment of any then-outstanding (or subsequently accruing) undisputed postpetition claims of such party and (ii) to recover any payment made to such party on account of its prepetition claim to the extent such payment exceeded the undisputed postpetition claims of such party, without giving effect to any Released Rights and Interests; *provided, however*, that upon recovery of any such payments by the Debtor, the applicable portion of the prepetition claim shall be reinstated as a prepetition claim in the amount recovered by the Debtor, subject to the terms, releases and waivers set forth in the Claimant Letter.
4. The Banks are authorized and directed to receive, process, honor and pay any prepetition and postpetition check and fund transfers on account of prepetition claims of Shippers that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtor shall be and hereby is authorized to issue new postpetition checks or effect new postpetition fund transfers on account of such claims to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

5. The Debtor is authorized to issue in its sole discretion new postpetition checks or effect new postpetition fund transfers to pay the prepetition claims of Shippers to replace any prepetition check or fund transfer requests that may be dishonored or rejected.

6. Nothing in the Motion or in this Interim Order is intended or should be construed as (a) an admission as to the validity or priority of any claim against the Debtor, (b) a waiver of the Debtor's rights to dispute any claim, including the validity or priority thereof, or (c) an approval or assumption of any agreement, contract or lease whether under section 365(a) of the Bankruptcy Code or otherwise. Likewise, any payment made pursuant to this Interim Order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtor's right to subsequently dispute such claim.

7. The Debtor is authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Interim Order.

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 Debtor, Pashman Stein Walder Hayden, P.C., 1007 North Orange Street, 4th Floor, Suite #183, Wilmington, Delaware, 19899-1347, Attn: Joseph C. Barsalona II (jbarsalona@pashmanstein.com), Amy M. Oden (aoden@pashmanstein.com), and Edward A. Cho-O'Leary (echo-oleary@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 (c) the Subchapter V Trustee, Jami Nimeroff, Esq., Brown McGarry Nimeroff LLC, 919 Market Street, Suite 420, Wilmington, Delaware, 19801 (jnimeroff@bmnlawyers.com) (the "Notice Parties").

9. The deadline by which objections to the Motion and the final order must be filed and received by the Notice Parties is March 12, 2024 at 4:00 p.m. (prevailing Eastern Time). A final hearing, if required, on the Motion will be held on March 19, 2024 at 3:30 p.m. (prevailing 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 requirements of Bankruptcy Rule 6003 are satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm.

11. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon entry hereof.

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

EXHIBIT B

Proposed Final Order

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

In re

Smallhold, Inc.

Debtor.¹

Chapter 11

Case No. 24-10267 (CTG)

Re: D.I. ____

**FINAL ORDER AUTHORIZING THE PAYMENT OF CERTAIN PREPETITION
SHIPPER CLAIM[S] AND GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an interim order (the “Interim Order”) and a final order (this “Final Order”) pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004 and Local Rule 9013-1(m): (i) authorizing, but not directing, the Debtor to pay certain prepetition claims of Shippers, (ii) authorizing banks and financial institutions to receive, process, honor, and pay all checks and electronic funds transfers related thereto, and (iii) granting related relief, 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 or further notice need be provided under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

¹ The last four digits of the Debtor’s federal tax identification number are 8880. The Debtor’s mailing is 285 Nostrand Avenue #1066, Brooklyn, NY 11216.

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

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtor is authorized, but not directed, to pay as it deems in its business judgment to be necessary and appropriate the prepetition claims of Shippers.
3. If any entity accepts payment from the Debtor on account of a prepetition claim authorized under the Interim Order or this Final Order and thereafter does not continue to provide services to the Debtor on the Historical Trade Terms, then the Debtor is authorized, in its discretion and without further order of the Court, (i) to declare that any payments made on account of such prepetition claim be deemed to have been in payment of any then-outstanding (or subsequently accruing) undisputed postpetition claims of such party and (ii) to recover any payment made to such party on account of its prepetition claim to the extent such payment exceeded the undisputed postpetition claims of such party, without giving effect to any Released Rights and Interests; *provided, however*, that upon recovery of any such payments by the Debtor, the applicable portion of the prepetition claim shall be reinstated as a prepetition claim in the amount recovered by the Debtor, subject to the terms, releases and waivers set forth in the Claimant Letter.
4. The Banks are authorized and directed to receive, process, honor and pay any prepetition and postpetition check and fund transfers on account of prepetition claims of Shippers that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtor shall be and hereby is authorized to issue new postpetition checks or effect new postpetition fund transfers on account of such claims to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

5. The Debtor is authorized to issue in its sole discretion new postpetition checks or effect new postpetition fund transfers to pay the prepetition claims of Shippers to replace any prepetition check or fund transfer requests that may be dishonored or rejected.

6. Nothing in the Motion or in this Final Order is intended or should be construed as (a) an admission as to the validity or priority of any claim against the Debtor, (b) a waiver of the Debtor's rights to dispute any claim, including the validity or priority thereof, or (c) an approval or assumption of any agreement, contract or lease whether under section 365(a) of the Bankruptcy Code or otherwise. Likewise, any payment made pursuant to this Final Order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

7. The Debtor is authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Final Order.

8. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry hereof.

9. This Court shall retain jurisdiction with respect to all matters related to the interpretation or implementation of this Final Order.

EXHIBIT C

Form of Claimant Letter

[Date]

TO: [Shipper]

[Name]

[Address]

Dear Valued Service Provider:

As you are aware, Smallhold, Inc. (the “Company”) filed a voluntary petition for relief (the “Bankruptcy Case”) under chapter 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on February 18, 2024 (the “Petition Date”). On February 26, 2024, the Company requested the Bankruptcy Court’s authority to pay certain prepetition claims of certain shippers and in recognition of the importance of the Company’s relationship with such service providers and its desire that the Bankruptcy Case have as little effect on the Company’s ongoing business operations as possible. On [•], 2024, the Bankruptcy Court entered an order (the “Order”) authorizing the Company, under certain conditions, to pay the prepetition claims of such shippers that agree to the terms set forth below and to be bound by the terms of the Order. A copy of the Order is enclosed.

Under the Order, to receive payment on account of your prepetition claim, you must agree to continue to supply services to the Company based on “Historical Trade Terms.” In the Order (by reference to the related motion papers), Historical Trade Terms are defined as the most favorable terms to the Company that existed prior to the Petition Date, unless this requirement is waived by the Company.

For purposes of administration of this trade program, as authorized by the Bankruptcy Court and in accordance with the terms of the Order, you and the Company both agree that:

1. The estimated balance of your prepetition claim (without regard to any Offsets, as defined below) (the “Claim”) is \$_____. The Claim does not constitute a claim allowed by the Bankruptcy Court in the Bankruptcy Case, and signing this letter agreement does not excuse you from any requirement of filing a proof of claim in the Bankruptcy Case.

2. The Company shall pay you \$_____ towards the Claim on or about _____ days following the Company’s receipt of a fully-executed copy of this letter agreement without any offset, recoupment, counterclaim, discount or other deduction of any kind (including in respect of any obligations owed to you or any of your affiliates, “Offset”).

3. Your execution of this letter agreement and acceptance of the aforementioned payment towards the Claim constitutes an irrevocable release and waiver of any Offsets, reclamation rights, rights under Bankruptcy Code section 503(b)(9), liens and security interests, and adequate protection rights of any type whatsoever that you may now or hereafter have with respect to the Claim (collectively, the “Released Rights and Interests”).

4. You will provide an open trade balance or credit line to the Company for provision of services in the amount of \$_____ (which shall not be less than the greater of the open balance outstanding, either (a) on _____, or (b) on normal and customary terms on an historical basis before and up to the Petition Date).

5. During the pendency of the Bankruptcy Case you will continue to extend to the Company all Historical Trade Terms.

6. The undersigned, a duly authorized representative of [Claimant] has reviewed the terms and provisions of the Order and agrees that [Claimant] is bound by such terms.

7. You agree not to file or otherwise assert against the Company, the estate, or any other person or entity or any of its assets or property (real or personal) any of the Released Rights and Interests (regardless of the statute or other legal authority upon which such right or interest is asserted) related in any way to any remaining prepetition amounts allegedly owed to you by the Company arising from agreements entered into prior to the Petition Date. Furthermore, you agree to take (at your own expense) all necessary steps to discharge any such lien or security interest as soon as possible.

8. If either the payment program authorized by the Order (the “Payment Program”) or your participation therein terminates as provided in the Order, or if you later refuse to continue to supply services to the Company on Historical Trade Terms during the pendency of the Bankruptcy Cases, any payments you receive on account of your Claim will be deemed voidable postpetition transfers pursuant to Bankruptcy Code section 549(a). You will thereafter immediately repay to the Company any payments made to you on account of your Claim to the extent that the aggregate amount of such payments exceeds the postpetition obligations then outstanding without giving effect to any Released Rights and Interests. Your Claim shall thereafter be reinstated in such an amount so as to restore the Company and you to the same positions as would have existed if payment of the Claim had not been made, subject to the terms, releases, and waivers set forth herein.

9. The terms, releases, and waivers set forth herein will survive the execution and delivery of this agreement and any termination of the Payment Program or your participation therein.

10. Any dispute with respect to this letter agreement, the Order, and your participation in the Payment Program shall be determined by the Bankruptcy Court.

[Remainder of page intentionally blank]

If you have any questions about this agreement or our financial restructuring, please do not hesitate to call.

Sincerely,

Smallhold, Inc.

By: _____
[NAME]

Agreed and accepted by:

[Claimant]

By: _____
Its: _____

Dated: _____, 2024