

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

In re:)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i>,	)	Case No. 20-11662 (KBO)
Debtors. ¹	)	(Jointly Administered)
	)	Objection Deadline: July 15, 2020 at 4:00 p.m. (ET)
	)	Hearing Date: July 22, 2020 at 1:00 p.m. (ET)
	)	Re: Docket Nos. 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,
	)	18, 116, 121, 122, 123, 124, 126, 127, 128, 130, 131,
	)	132 & 134

OMNIBUS NOTICE OF FIRST DAY PLEADINGS AND FINAL HEARING THEREON

PLEASE TAKE NOTICE that, on June 24, 2020, the debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) filed, among others, the following first day pleadings with the Court (collectively, the “*First Day Pleadings*”):²

1. Motion of Debtors for an Order Establishing Certain Notice and Hearing Procedures for Transfers of, or Worthlessness Deductions with Respect to, Common Stock and Convertible Preferred Stock of GNC Holdings, Inc. [D.I. 4]
2. Motion of Debtors for Orders Authorizing the Debtors to (A) Pay Prepetition Insurance Obligations and Prepetition Bonding Obligations, and (B) Maintain Their Postpetition Insurance Coverage and Bonding Program [D.I. 8]
3. Motion of Debtors for Orders Authorizing Payment of Prepetition Taxes and Fees [D.I. 9]
4. Motion of Debtors for Orders (A) Prohibiting Utility Companies from Altering or Discontinuing Service on Account of Prepetition Invoices, (B) Approving Deposit as Adequate Assurance of Payment, (C) Establishing Procedures for Resolving

¹ The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

² The Debtors filed certain pleadings that were approved on a final basis at the hearing conducted on June 25, 2020, which are not listed herein.

Requests by Utility Companies for Additional Assurance of Payment, and (D) Authorizing Payment of Any Prepetition Service Fees [D.I. 10]

5. Motion of Debtors for Orders Authorizing (A) Payment of Certain Prepetition Franchise Claims and (B) Continued Performance Under Franchise Agreements in the Ordinary Course of Business [D.I. 11]
6. Motion of Debtors for Orders Authorizing the Debtors to (I) Maintain and Administer Prepetition Customer Programs and (II) Pay Prepetition Obligations Related Thereto [D.I. 12]
7. Motion of Debtors for Orders (A) Authorizing Payment of Prepetition Lien Claims and Import Claims and (B) Confirming Administrative Expense Priority of Outstanding Orders [D.I. 13]
8. Motion of Debtors for Orders Authorizing Payment of Certain Prepetition Critical Vendor Claims [D.I. 14]
9. Motion of Debtors for Orders (A) Authorizing Payment of Certain Prepetition Workforce Obligations, (B) Authorizing Continuance of Workforce Programs, (C) Authorizing Payment of Withholding and Payroll-Related Taxes, and (D) Authorizing Payment of Prepetition Claims Owing to Workforce Program Administrators [D.I. 15]
10. Motion of Debtors for Orders (A) Approving Procedures for Store Closing Sales, (B) Authorizing Customary Bonuses to Managers of Stores, (C) Authorizing Assumption of the Consulting Agreements and (D) Granting Related Relief [D.I. 16]
11. Motion of Debtors for Orders (A) Authorizing Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, (B) Authorizing Continuation of Existing Deposit Practices, (C) Authorizing Continuation of Intercompany Transactions, and (D) Granting Administrative Claim Status to Postpetition Intercompany Claims [D.I. 17]
12. Motion of Debtors for Orders (I) Authorizing the Debtors to (A) Obtain Senior Secured Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief [D.I. 18]

PLEASE TAKE FURTHER NOTICE that a hearing on the First Day Pleadings, and certain other pleadings, was held on June 25, 2020 (the “*First Day Hearing*”), at which time the Court approved the First Day Pleadings identified above on an interim basis. *See* Docket Nos. 116, 121, 122, 123, 124, 126, 127, 128, 130, 131, 132 & 134.

PLEASE TAKE FURTHER NOTICE that copies of the First Day Pleadings, any of the related interim orders, and all other pleadings filed in these chapter 11 cases are available, free of charge, from the website of the Court-appointed claims agent, Prime Clerk LLC: <https://www.primeclerk.com/GNC>.

PLEASE TAKE FURTHER NOTICE that any responses or objections to final approval of the First Day Pleadings must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon the following parties on or before **July 15, 2020 at 4:00 p.m. (ET)** (the "***Objection Deadline***"): (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (jane.leafy@usdoj.gov); (c) counsel to the Ad Hoc Committee of Term Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-134, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis, Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); and (e) counsel to any committee appointed in these cases.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER FINAL APPROVAL OF THE FIRST DAY PLEADINGS WILL BE HELD ON JULY 22, 2020 AT 1:00 P.M. (ET) BEFORE THE HONORABLE KAREN B. OWENS, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT, IF NO OBJECTIONS TO ANY OF THE FIRST DAY PLEADINGS ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN CONNECTION WITH SUCH FIRST DAY PLEADINGS WITHOUT FURTHER NOTICE OR HEARING.

[Signature Page Follows]

Dated: June 26, 2020
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
Andrew L. Magaziner (No. 5426)
Joseph M. Mulvihill (No. 6061)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: mnestor@ycst.com
kcoyle@ycst.com
amagaziner@ycst.com
jmulvihill@ycst.com

LATHAM & WATKINS LLP

Richard A. Levy (admitted *pro hac vice*)
Caroline A. Reckler (admitted *pro hac vice*)
Asif Attarwala (admitted *pro hac vice*)
Brett V. Newman (admitted *pro hac vice*)
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Telephone: (312) 876-7700
Facsimile: (312) 993-9767
Email: richard.levy@lw.com
caroline.reckler@lw.com
asif.attarwala@lw.com
brett.newman@lw.com

- and -

George A. Davis (admitted *pro hac vice*)
Andrew C. Ambruoso (admitted *pro hac vice*)
Jeffrey T. Mispagel (admitted *pro hac vice*)
885 Third Avenue
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
Email: george.davis@lw.com
andrew.ambruoso@lw.com
jeffrey.mispagel@lw.com

Proposed Counsel for Debtors and Debtors in Possession

SRF 43504

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

In re:)	
GNC HOLDINGS, INC., <i>et al.</i>,	)	Chapter 11
Debtors. ¹	)	Case No. 20-11662 (___)
	)	(Joint Administration Requested)
)	
)	

**MOTION OF DEBTORS FOR ORDERS
AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

The debtors in possession in the above-captioned cases (collectively, the “*Debtors*”) hereby move (this “*Motion*”) and respectfully state as follows:

RELIEF REQUESTED

1. By this Motion, the Debtors seek entry of interim and final orders, substantially in the form attached hereto as **Exhibit A** (the “*Proposed Interim Order*”) and **Exhibit B** (the “*Proposed Final Order*,” and together with the Proposed Interim Order, the “*Proposed Orders*”), respectively: authorizing, but not directing, them to remit and pay any prepetition sales and use taxes, income taxes, franchise taxes, other business or regulatory taxes or fees, real and personal property taxes, rent taxes, and any other taxes and fees for which the Debtors’ directors and officers may be liable or which may not constitute property of the Debtors’ estates and other types of taxes, fees, assessments or similar charges and any penalty, interest or similar charges in

¹ The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

respect of such taxes and fees (collectively, the “*Taxes and Fees*”) owing to international, federal, state and local governmental or quasi-governmental entities (the “*Taxing Authorities*”).²

2. Unless further authorization is obtained from this Court, the Debtors propose to limit the aggregate amount of payments to be made on account of prepetition Taxes and Fees under this Motion to (i) \$5,799,000 on an interim basis and (ii) \$10,280,000 in an aggregate final amount, inclusive of amounts paid pursuant to the Interim Order, or such higher amount as may be set forth in any budget governing postpetition financing or the use of cash collateral.

3. For the avoidance of doubt, the requested authorization would be discretionary. In addition, the requested authorization would be without prejudice to the Debtors’ rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate and would extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

4. In addition, the Debtors request that the Court authorize all banks and financial institutions to receive, process, honor, pay, and, if necessary, reissue all prepetition and postpetition checks, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the bank accounts used by the Debtors to satisfy their obligations in connection with the Taxes and Fees approved herein, upon receipt by each bank or financial institution of notice of such authorization, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Debtors additionally request that the Court authorize them to issue new postpetition checks to replace any checks that may nevertheless be dishonored and to reimburse any expenses that holders of claims

² It is possible that Taxes and Fees owed to additional entities may be uncovered by the Debtors subsequent to the filing of this Motion. The Debtors will serve on any of the subsequently identified entities a copy of this Motion and the Interim and Final Orders entered with respect to the Motion.

in connection with the Taxes and Fees may incur as a result of any bank's failure to honor a prepetition check.

5. As set forth below, the Taxes and Fees at issue are appropriate for payment to the extent that they are priority or secured claims that are payable in full or, alternatively, under the personal liability theory or the doctrine of necessity. By paying the Taxes and Fees in the ordinary course of business, as and when due, the Debtors will avoid unnecessary disputes with the Taxing Authorities—and expenditures of time and money resulting from such disputes—over myriad issues that are typically raised by the Taxing Authorities as they attempt to enforce their rights to collect Taxes and Fees.

JURISDICTION

6. This Court has jurisdiction to consider this Motion 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and, under Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later 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. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), 506(a), 507(a)(8) and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “*Bankruptcy Code*”) and rule 6003 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

BACKGROUND

7. On June 23, 2020 (the “*Petition Date*”), the Debtors filed voluntary petitions for relief in this Court, commencing cases (the “*Chapter 11 Cases*”) under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested in the Chapter 11 Cases, and no committees have been appointed.

8. The Debtors anticipate commencing an ancillary proceeding under Part IV of the Companies’ Creditors Arrangement Act (Canada) in Toronto, Ontario, Canada before the Ontario Superior Court of Justice (Commercial List).

9. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Tricia Tolivar, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* (the “*First Day Declaration*”)³ filed contemporaneously herewith. In support of the Motion, the Debtors rely upon and incorporate by reference the First Day Declaration.⁴

THE TAXES AND FEES

10. Prior to the Petition Date, the Debtors incurred obligations related to the Taxes and Fees, which include:⁵

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

⁴ The First Day Declaration and other relevant case information is available from (a) the Court’s website, www.deb.uscourts.gov, and (b) the website maintained by the Debtors’ proposed claims and noticing agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

⁵ The Debtors incur various taxes related to their employees which are separately addressed in the *Motion of Debtors for Interim and Final Orders (A) Authorizing Payment of Certain Prepetition Workforce Obligations, (B) Authorizing Continuance of Workforce Programs, (C) Authorizing Payment of Withholding and Payroll-Related Taxes, and (D) Authorizing Payment of Prepetition Claims Owing to Workforce Program Administrators or Providers*, filed contemporaneously herewith.

- (a) **Sales and Use Taxes.** The Debtors incur, collect, and remit sales taxes to the Taxing Authorities, in connection with the sale and distribution of products in their stores and through online orders. Additionally, the Debtors purchase a variety of products and materials necessary for the operation of their business from vendors who may not operate in the state where the property is to be delivered and, therefore, do not charge the Debtors sales tax in connection with such purchases. In these cases, applicable law generally requires the Debtors to subsequently pay use taxes on such purchases to the applicable Taxing Authorities. Accordingly, the Debtors seek authority to pay and remit any such prepetition sales and use taxes to the relevant Taxing Authorities.
- (b) **Income Taxes.** In the ordinary course of operating their businesses, the Debtors incur international, federal, state and local income taxes. The Debtors believe they are current with respect to payment of income taxes, but out of an abundance of caution seek authority to pay any prepetition income taxes.
- (c) **Franchise Taxes / Business Fees.** The Debtors are required to pay various franchise taxes, business licensing and related fees required to conduct business in jurisdictions in which the Debtors operate.
- (d) **Property Taxes.** State and local laws in the jurisdictions where the Debtors operate generally grant Taxing Authorities the power to levy property taxes against the Debtors' real and personal property. To avoid the imposition of statutory liens on their real and personal property, the Debtors typically pay property taxes in the ordinary course of business.
- (e) **Rent Taxes.** The Debtors incur commercial rent taxes related to their store locations in the borough of Manhattan, New York, NY.
- (g) **Other Taxes.** The Debtors incur additional taxes and fees including bag taxes, sugar taxes, and miscellaneous taxes not accounted for in the above categories which the Debtors are required to pay to Taxing Authorities.

11. Although, as of the Petition Date, the Debtors are substantially current in the payment of assessed and undisputed Taxes and Fees, certain Taxes and Fees attributable to the prepetition period may not yet have become due and owing or may be or become subject to audit by the applicable Taxing Authority. The Debtors' estimate of Taxes and Fees accrued prior to the Petition Date is as follows:⁶

⁶ Due to the COVID-19 pandemic, certain jurisdictions where the Debtors operate have granted extensions on tax obligations including income tax payments. As a result, it is unclear when and in what amount certain Taxes

Category	Approximate Amount Accrued as of Petition Date	Approximate Amount Due Within 21 Days
Sales and Use Taxes	\$ 7,080,000	\$ 3,981,000
Income Taxes	\$ 1,190,000	\$ 969,000
Franchise Taxes / Business Fees	\$ 700,000	\$ 494,000
Property Taxes	\$ 1,170,000	\$ 302,000
Rent Taxes	\$ 30,000	\$ 22,000
Other Taxes	\$ 110,000	\$ 31,000
Total	\$ 10,280,000	\$ 5,799,000

12. Continuing to pay the Taxes and Fees as they come due will preserve the resources of the Debtors' estates and advance the Debtors' goal of a successful restructuring. If the Taxes and Fees are not timely paid, the Debtors may be required to spend time and incur attorneys' fees and other costs to resolve a multitude of related issues, each turning on the particular terms of applicable laws, including whether (a) the obligations are priority, secured, or unsecured in nature, (b) the obligations are proratable or fully prepetition or postpetition, and (c) penalties, interest, attorneys' fees, and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys' fees, and costs are priority, secured, or unsecured in nature.

13. These Chapter 11 Cases are complicated due to the nature of the Debtors' business and the particulars of the Debtors' capital structure, and the Debtors' focus should be on addressing their operational and financial issues in a manner that will maximize recoveries. In

and Fees payable by the Debtors may come due. The Debtors request authorization to pay all Taxes and Fees as they come due in the ordinary course of business.

this context, paying the Taxes and Fees carries relatively insignificant costs and will have no meaningful effect on the recoveries of creditors in the Chapter 11 Cases, particularly in view of the priority or secured status associated with such obligations. Moreover, the payment amount will likely be offset in no small part by the amount of postpetition resources that the Debtors will conserve by obviating the need to spend time and money to address disputes with the Taxing Authorities.

14. Nonpayment or delayed payment of the Taxes and Fees may also subject the Debtors to efforts by certain Taxing Authorities, whether or not permissible under the Bankruptcy Code, to revoke the Debtors' licenses and other privileges either on a postpetition or postconfirmation basis. Moreover, certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and directors may be held directly or personally liable in the event of nonpayment. These collection efforts by the Taxing Authorities would create obvious distractions for the Debtors and their officers and directors in their efforts to bring the Chapter 11 Cases to a successful conclusion. Accordingly, the Debtors believe the relief requested herein is both essential to continue ongoing operations without disruption and in the best interests of the Debtors, their estates, and all interested parties.

15. Certain of the Taxing Authorities may not have been paid or may have been sent checks and/or fund transfers for Taxes and Fees that may or may not have been presented or cleared as of the Petition Date. Similarly, in other cases, Taxes and Fees have accrued or are accruing, but have not yet become due and payable and, thus, any checks or fund transfers will be issued on a postpetition basis. Accordingly, the Debtors request entry of the Interim and Final Orders authorizing their banks and other financial institutions to receive, process, honor pay and, if necessary, reissue all prepetition and postpetition checks and fund transfers, including

prepetition checks and electronic payment and transfer requests that the Debtors reissue or rerequest postpetition, issued by the Debtors in payment of Taxes and Fees that had not been honored and paid as of the Petition Date and authorizing the Debtors' banks and financial institutions to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid in respect of Taxes and Fees, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

BASIS FOR RELIEF

I. CERTAIN OF THE TAXES AND FEES MAY BE SECURED OR PRIORITY CLAIMS UNDER THE BANKRUPTCY CODE.

16. To the extent that the Taxes and Fees are priority claims pursuant to section 507(a)(8) of the Bankruptcy Code, or secured claims pursuant to section 506(a) of the Bankruptcy Code, their payment should be authorized on the basis that they are required to be paid in full as a condition to satisfying the plan confirmation requirements under section 1129 of the Bankruptcy Code or, in any event, that they would be entitled to payment before any prepetition non-priority unsecured claim. And in fact, the Debtors believe that the vast majority of the Taxes and Fees constitute either priority claims under section 507(a)(8) or secured claims under section 506(a) of the Bankruptcy Code. Therefore, the Debtors' payment of the Taxes and Fees now, will likely affect only the timing of the payments and not the amounts to be received by the Taxing Authorities. Moreover, by paying legitimate tax claims now, the Debtors will avoid any unnecessary fees, interest, or penalties that might otherwise be asserted. Other creditors and parties in interest, therefore, will not be prejudiced—and, indeed, will ultimately benefit—if the relief sought herein is granted by this Court.

II. PAYING THE TAXES AND FEES IS A SOUND EXERCISE OF BUSINESS JUDGMENT AND SHOULD BE APPROVED.

17. This Court may also authorize the Debtors to pay the Taxes and Fees under sections 363(b) of the Bankruptcy Code. Section 363(b) of the Bankruptcy Code provides, in relevant part, that a debtor “may use, sell, or lease, other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. § 363(b)(1). Generally, the debtor is only required to “show that a sound business purpose” justifies the proposed use of property. *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use under section 363(b) of the Bankruptcy Code). This standard prohibits other parties from second-guessing the debtor’s business judgment if the debtor has shown that the proposed use will benefit the debtor’s estate. *See In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

18. Failure to pay the Taxes and Fees to the Taxing Authorities in full and on time, thereby risking the cessation of normal relations between the Taxing Authorities and the Debtors, would harm the Debtors’ estates to a far greater extent than the amount of the prepetition Taxes and Fees owing. Foremost, the Taxing Authorities could determine to take precipitous action, including a marked increase in audits, a flurry of lien filings, and significant administrative maneuvering at the expense of the Debtors’ time and resources. Prompt and regular payment of

the Taxes and Fees will avoid this unnecessary governmental action. Thus, paying the Taxes and Fees reflects a sound exercise of the Debtors' business judgment.

III. PAYING THE TAXES AND FEES IS NECESSARY TO THE SUCCESS OF THESE CHAPTER 11 CASES AND SHOULD BE APPROVED

19. In addition, the Debtors should be authorized to pay the Taxes and Fees because doing so is necessary to the success of these chapter 11 cases. Section 105(a) of the Bankruptcy Code provides that a bankruptcy court "may 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). Courts have interpreted this provision to authorize payments on prepetition claims where the payments are essential to the success of the debtor's chapter 11 process under what is known as the "necessity of payment doctrine." *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581 (3d Cir. 1981) ("Thus, the 'necessity of payment' doctrine...teaches no more than, if a payment of a claim which arose prior to reorganization is essential to the continued operation of the [debtor's business] during reorganization, payment may be authorized..."); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) "provides a statutory basis for payment of pre-petition claims" under necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) ("The appropriate standard...is commonly referred to as 'the necessity of payment doctrine.'").

20. Because of the adverse consequences that could follow if the Taxes and Fees are not paid, doing so is necessary to the Debtors' reorganization efforts. The Debtors' very ability to continue operations in jurisdictions where the Taxes and Fees are not paid could be jeopardized. Even where the consequences are not so severe, the potential for disruption, distraction, and incurring unnecessary costs is very real and could thwart the Debtors'

restructuring efforts. Accordingly, the Debtors should be authorized to pay the Taxes and Fees under section 105(a) of the Bankruptcy Code and the necessity of payment doctrine.

IV. CERTAIN “TRUST FUND” TAXES ARE NOT PROPERTY OF THE DEBTORS’ ESTATES AND SHOULD BE AUTHORIZED TO BE PAID

21. Certain of the Taxes and Fees may constitute so-called “trust fund” taxes, which are required to be collected from third parties and held in trust for payment to the Taxing Authorities. Such taxes are not considered property of the estates under section 541(d) of the Bankruptcy Code. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 59 (1990); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 97 (3d Cir. 1994) (holding that income required to be withheld by city ordinance and state law is held “in trust” for the taxing authority); *DeChiaro v. N.Y. State Tax Comm’n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (holding that a sales tax that is required by state law to be collected by sellers from their customers is a “trust fund” tax). The Debtors, therefore, arguably have no equitable interest in the applicable Taxes and Fees that are trust fund taxes, are obligated to pay over the collected amounts, and should be authorized to do so.

V. ABSENT THE REQUESTED RELIEF, THE DEBTORS’ OFFICERS AND DIRECTORS MAY BE PERSONALLY LIABLE FOR NON-PAYMENT OF CERTAIN TAXES AND FEES

22. Additionally, under the laws of many states, officers and directors may be held directly or personally liable for the nonpayment of certain of these taxes. It is in the best interest of the Debtors’ estates to eliminate the possibility that officers and directors will become subject to time-consuming and potentially damaging distractions.

23. These Chapter 11 Cases are complicated due to, among other things, the nature and geographic scope of the Debtors’ businesses, and the Debtors’ focus should be on addressing their operational and financial issues in a manner that will maximize recoveries. In this context,

the payment of the Taxes and Fees is insignificant and will have no meaningful effect on the recoveries of creditors in these Chapter 11 Cases, particularly in view of the priority or secured status of a significant portion of such obligations. Moreover, the payment amount will likely be offset in no small part by the amount of postpetition resources that the Debtors will conserve by obviating the need to spend time and money to address disputes with the Taxing Authorities that are unnecessary and wasteful of the resources of the Debtors and this Court.

VI. PRECEDENT CASES SUPPORT THE GRANTING OF THE REQUESTED RELIEF

24. The relief requested in this Motion is similar to relief granted by numerous courts, including this court in other chapter 11 cases in this district. *See, e.g., In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. Apr. 2, 2019) (authorizing debtors to pay prepetition taxes and fees in the ordinary course of business); *In re Imerys Talc America Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. Feb. 13, 2019) (same); *In re J & M Sales Inc.*, Case No. 18-11801 (LLS); (Bankr. D. Del. Aug. 27, 2018) (same); *In re Samuels Jewelers, Inc.*, Case No. 18-11818(KJC) (Aug. 8, 2018) (same); *In re Enduro Res. Partners LLC*, Case No. 18-11174 (KG) (Bankr. D. Del. Jun. 8, 2018) (same); *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Apr. 17, 2018) (same).

PROCESSING OF CHECKS AND ELECTRONIC FUND TRANSFERS SHOULD BE AUTHORIZED

25. The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing and cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Taxes and Fees. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer

requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED AND
BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

26. Certain aspects of the relief requested herein are subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant this relief on an expedited basis if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

27. Additionally, with respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

28. Nothing in this Motion shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other

applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law. If the Court enters any order granting the relief sought herein, any payment made pursuant to such order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

NOTICE

29. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to the agent for the Debtors' DIP Term Facility; (c) counsel to the agent for the Debtors' DIP ABL FILO Facility; (d) counsel to the Ad Hoc Group of Crossover Lenders; (e) counsel to the Ad Hoc FILO Term Lender Group; (f) counsel to the agent under the Debtors' secured term and asset-based financing facilities; (g) the indenture trustee for the Debtors' prepetition convertible notes; (h) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (i) the United States Attorney's Office for the District of Delaware; (j) the attorneys general for all 50 states and the District of Columbia; (k) the United States Department of Justice; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Drug Enforcement Agency; (o) the United States Food and Drug Administration; (p) the Taxing Authorities and (q) 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). The Debtors submit that, under the circumstances, no other or further notice is required.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders, granting the relief requested in this Motion and such other relief as may be just and proper.

Dated: June 24, 2020
Wilmington, Delaware

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Joseph M. Mulvihill

Michael R. Nestor (No. 3526)
Kara Hammond Coyle (No. 4410)
Andrew L. Magaziner (No. 5426)
Joseph M. Mulvihill (No. 6061)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: mnestor@ycst.com
kcoyle@ycst.com
amagaziner@ycst.com
jmulvihill@ycst.com

LATHAM & WATKINS LLP

Richard A. Levy (*pro hac vice* pending)
Caroline A. Reckler (*pro hac vice* pending)
Asif Attarwala (*pro hac vice* pending)
Brett V. Newman (*pro hac vice* pending)
330 North Wabash Avenue, Suite 2800
Chicago, Illinois 60611
Telephone: (312) 876-7700
Facsimile: (312) 993-9767
Email: richard.levy@lw.com
caroline.reckler@lw.com
asif.attarwala@lw.com
brett.newman@lw.com

- and -

George A. Davis (*pro hac vice* pending)
Jeffrey T. Mispagel (*pro hac vice* pending)
885 Third Avenue
New York, New York 10022
Telephone: (212) 906-1200
Facsimile: (212) 751-4864
Email: george.davis@lw.com
jeffrey.mispagel@lw.com

Proposed Counsel for 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
GNC HOLDINGS, INC., <i>et al.</i>,	)	Case No. 20-11662 (___)
Debtors. ¹	)	(Jointly Administered)
	)	Re: Docket No. ___

INTERIM ORDER
AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES

Upon the motion (the "*Motion*")² of the Debtors for an interim order authorizing the Debtors to pay any prepetition Taxes and Fees owing to the Taxing Authorities (this "*Interim Order*" and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein 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 as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to 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 United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors' mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

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

Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to pay all Taxes and Fees owing to the Taxing Authorities in the ordinary course of their business, as and when due, up to an aggregate amount of \$5,799,000 on account of prepetition Taxes and Fees without further order of this Court. Such Taxes and Fees are summarized in further detail in the chart below.

Category	Estimated Interim Amount
Sales and Use Taxes	\$ 3,981,000
Income Taxes	\$ 969,000
Franchise Taxes / Business Fees	\$ 494,000
Property Taxes	\$ 302,000
Rent Taxes	\$ 22,000
Other Taxes	\$ 31,000
Total	\$ 5,799,000

3. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.

4. The Debtors' rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

5. Nothing in the Motion or this Interim Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities, or any claim or lien against the Debtors and all of the Debtors' rights with respect thereto are hereby reserved.

6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

8. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

9. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a "**DIP Order**"), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order shall be deemed an admission as to the validity of any

underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

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

12. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

13. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

14. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

15. A hearing to consider entry of an order granting the Motion on a final basis (the "***Final Hearing***") shall be held on _____, 2020, at __:___ .m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on _____, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los

Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52nd Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

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

Dated: _____, 2020
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

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

In re: GNC HOLDINGS, INC., <i>et al.</i> , Debtors. ¹))))))))	Chapter 11 Case No. 20-11662 (___) (Jointly Administered) Re: Docket Nos. ___ & ___
--	--------------------------------------	--

**FINAL ORDER
AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

Upon the motion (the “*Motion*”)² of the Debtors for a final order authorizing the Debtors, to pay any prepetition Taxes and Fees owing to the Taxing Authorities (this “*Final Order*”); and this Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on [___], 2020; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein 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 as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with

¹ The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); Lucky Oldco Corporation (7141); General Nutrition Investment Company (3878); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Government Services, LLC (2295); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Puerto Rico Holdings, Inc. (4559); GNC Puerto Rico, LLC (7234); and GNC China Holdco LLC (0004). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

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

Article III of the United States Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the "*Hearing*"); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to pay all Taxes and Fees owing to the Taxing Authorities in the ordinary course of their business, as and when due, up to an aggregate amount of \$10,280,000, inclusive of amounts paid pursuant to the Interim Order, or such higher amount as may be set forth in any budget governing postpetition financing or the use of cash collateral, on account of prepetition Taxes and Fees without further order of this Court.
3. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.
4. The Debtors rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.
5. Nothing in the Motion or this Final Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities, or any claim or lien against the Debtors and all of the Debtors' rights with respect thereto are hereby reserved.

6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

8. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained in this Final Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

9. Notwithstanding anything contained in the Motion or this Interim Order, any payment made, and any authorization of the Debtors contained herein shall be subject to the terms and conditions contained in any interim or final orders entered by this Court authorizing the Debtors to obtain debtor-in-possession financing and/or authorizing the use of cash collateral (each such order, a “*DIP Order*”), the documentation in respect of any such debtor-in-possession financing or use of cash collateral, and any budget in connection with any such debtor-in-possession financing and/or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

11. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Final Order shall be effective and enforceable immediately upon entry hereof.

12. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

13. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: _____, 2020
Wilmington, Delaware

United States Bankruptcy Judge

SRF 43504

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

In re:)	
	)	Chapter 11
GNC HOLDINGS, INC., <i>et al.</i>,	)	Case No. 20-11662 (KBO)
Debtors. ¹	)	(Jointly Administered)
)	
	)	Re: Docket No. 9

**INTERIM ORDER
AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES**

Upon the motion (the “*Motion*”)² of the Debtors for an interim order authorizing the Debtors to pay any prepetition Taxes and Fees owing to the Taxing Authorities (this “*Interim Order*” and this Court having reviewed the Motion and the First Day Declaration; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and this Court having jurisdiction to consider the Motion and the relief requested therein 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 as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding under 28 U.S.C. § 157(b)(2); and this Court having authority to 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 United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

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

Constitution; and venue being proper before this Court under 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion (the “*Hearing*”); and upon the First Day Declaration and the record of the Hearing and all the proceedings before this Court; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to pay all Taxes and Fees owing to the Taxing Authorities in the ordinary course of their business, as and when due, up to an aggregate amount of \$5,799,000 on account of prepetition Taxes and Fees without further order of this Court. Such Taxes and Fees are summarized in further detail in the chart below.

Category	Estimated Interim Amount
Sales and Use Taxes	\$ 3,981,000
Income Taxes	\$ 969,000
Franchise Taxes / Business Fees	\$ 494,000
Property Taxes	\$ 302,000
Rent Taxes	\$ 22,000
Other Taxes	\$ 31,000
Total	\$ 5,799,000

3. The Debtors may seek additional relief from this Court in the future in the event that the Debtors subsequently determine that additional prepetition Taxes and Fees are owed by the Debtors.

4. The Debtors' rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

5. Nothing in the Motion or this Interim Order shall be construed as impairing the Debtors' right to contest the validity, amount, or priority of any Taxes and Fees allegedly due or owing to any Taxing Authorities, or any claim or lien against the Debtors and all of the Debtors' rights with respect thereto are hereby reserved.

6. The Debtors' banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, pay, and, if necessary, reissue any and all checks and electronic fund transfers, including prepetition checks and electronic payment and transfer requests that the Debtors reissue or re-request postpetition, drawn on the Debtors' bank accounts relating to the Taxes and Fees, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

7. The Debtors' banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

8. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtors' properties; (ii) a waiver of the Debtors' rights to Dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained in this Interim Order shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

9. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order shall be deemed an admission as to the validity of any underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

10. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable this Interim Order shall be effective and enforceable immediately upon entry hereof.

11. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

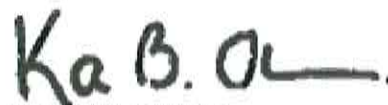
13. The Debtors are authorized and empowered to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

14. A hearing to consider entry of an order granting the Motion on a final basis (the "***Final Hearing***") shall be held on July 22, 2020, at 1:00 p.m. (prevailing Eastern time). Any objections or responses to the entry of such an order must be filed on or before 4:00 p.m. (prevailing Eastern time) on July 15, 2020, and served on (a) proposed counsel to the Debtors, (i) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Caroline Reckler, Asif Attarwala, and Brett Newman (email: caroline.reckler@lw.com; asif.attarwala@lw.com; brett.newman@lw.com), and 885 Third Avenue, New York, New York 10022, Attn: Jeffrey T. Mispagel (jeffrey.mispagel@lw.com); and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Kara Hammond Coyle, and Joseph M. Mulvihill (mnestor@ycst.com; kcoyle@ycst.com; and jmulvihill@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); (c) counsel to the Ad Hoc Group of Crossover Lenders (i) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (ii) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (d) counsel to the Ad Hoc FILO Term Lender Group (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb

(cobb@lrclaw.com); (e) counsel to the administrative agent under the DIP ABL FILO Facility, Simpson Thacher & Bartlett LLP, 425 Lexington Ave. New York, New York 10017, Attn: Sandy Qusba, Daniel L. Biller, and Jamie Fell (email: squsba@stblaw.com, daniel.biller@stblaw.com, and jamie.fell@stblaw.com); and (f) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52nd Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com). In the event that no objections to entry of the Proposed Final Order on the Motion are timely received, this Court may enter such Proposed Final Order without need for the Final Hearing.

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

Dated: June 25th, 2020
Wilmington, Delaware



KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE