

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Gander Mountain Company,

Case No.: 17-30673

Chapter 11 Case

Debtor.

In re:

Overton's, Inc.

Case No.: 17-30675

Chapter 11 Case

Debtor.

**NOTICE OF HEARING AND JOINT MOTION FOR ENTRY OF AN ORDER
(I) GRANTING EXPEDITED RELIEF AND (II) AUTHORIZING THE DEBTORS TO
HONOR AND CONTINUE CERTAIN CUSTOMER PROGRAMS AND CUSTOMER
OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS**

TO: The parties in interest as specified in Local Rule 9013-3(a)(2).

1. The above-captioned debtors and debtors in possession (together, the "Debtors") hereby move this Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion at **1:30 p.m.** on **March 20, 2017**, in **Courtroom 8 West**, of the United States Courthouse at 300 South Fourth Street, Minnesota.

3. Local Rule 9006-1(c) provides deadlines for responses to this motion. However, given the expedited nature of the relief sought, the Debtors do not object to written responses being served and filed two hours prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 1070-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The petitions commencing these chapter 11 cases were filed on March 10, 2017 (the “Filing Date”). The cases are currently pending before this Court.

5. This motion arises under 11 U.S.C. §§ 105(a), 363, 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004, and is filed under Local Rules 9013-1, 9013-2, and 9013-3. Expedited relief is requested pursuant to Bankruptcy Rule 9006(c) and Local Rule 9006-1(e). Notice of the hearing on this motion is provided pursuant to Bankruptcy Rule 9013 and Local Rules 9013-2 and 9013-3. The Debtors request entry of an order granting expedited relief and authorizing the Debtors to honor certain prepetition obligations to customers and certain third parties and to continue their prepetition customer programs and practices in the ordinary course of business.

BACKGROUND

6. On the Filing Date, the Debtors filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtors’ chapter 11 cases. No creditors’ or other official committee has yet been appointed pursuant to section 1102 of the Bankruptcy Code.

7. Further general background information about the Debtors and this case is set forth in the Declaration of Timothy G. Becker in Support of Chapter 11 Petitions and Initial

Motions. The additional facts relevant to this motion set forth below are verified by Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, as evidenced by the attached verification.

8. Prior to the Filing Date, in the ordinary course of the Debtors' business, the Debtors offered and engaged in certain customer and other programs and practices (collectively, the "Customer Programs") to develop and sustain a positive reputation with their customers and to facilitate customers' receipt of the Debtors' products and services on a regular basis. The Customer Programs are typical for the Debtors' industry and have been a part of the Debtors' normal business operations, in one form or another, for many years.

9. While the Customer Programs vary, they are generally designed to encourage sales, increase customer satisfaction, and increase efficiency and continuity in delivery of products and services to customers. As such, the Debtors believe that the Customer Programs play an important role in enabling the Debtors to retain existing customers, attract new customers, and ultimately enhance the Debtors' overall profitability. The Debtors further believe that, in order to effectuate a smooth transition into chapter 11, the Debtors must maintain customer loyalty and goodwill by maintaining and honoring the Customer Programs.

10. The following is an overview of the primary Customer Programs the Debtors maintain:

I. THE GANDER MOUNTAIN REWARDS PROGRAM.

11. In the ordinary course of business, the Debtors offer promotional points (the "Points") in a loyalty program called The Gander Mountain Rewards Program (the "Rewards Program"). The Rewards Program is directly connected to credit cards issued by Comenity Bank ("Comenity") – the Gander Mountain Mastercard and the Gander Mountain Credit Card. Upon

approval for either credit card, the customer is automatically enrolled in the Rewards Program. As of the Filing Date, there were several hundred thousand members enrolled in the Rewards Program.

12. The Debtors do not believe that the members of the Rewards Program are creditors. Therefore, the Debtors will not be mailing the members notices during the pendency of these bankruptcy cases except as deemed appropriate or as ordered by the Court.

13. The Debtors own and operate the Rewards Program, but Comenity provides system support and functionality, including accumulating, tracking, reporting, and redemption of loyalty points. The Debtors financially benefit from this relationship with Comenity by receiving a percentage of all Gander Mountain Mastercard purchases (in store and out of store) and a percentage of all Gander Mountain Credit Card purchases (in store only). The Debtors also receive a fee for every Gander Mountain Mastercard that the Debtors activate and avoid paying fees on purchases by Gander Mountain Mastercard or Gander Mountain Credit Card.

14. Generally, Members of the Rewards Program receive three points for every \$1 spent at the Debtors' retail stores or online on the Debtor's website. If a Member owns a Gander Mountain Mastercard, the Member will additionally receive two points for every \$1 spent on gas and groceries and one point for every \$1 spent on all other purchases. However, the Debtors will occasionally run promotional programs that provide additional point options. For instance, the Debtors currently provide an activation incentive. Once a customer receives 1,000 points, the customer will receive a \$10 rewards certificate (a "Rewards Certificate"), which may be used in the retail stores or online and expires after six months. Points expire after 36 months. While the Debtors are responsible for the costs of the Rewards Program, either Comenity or the card

association that processes the credit cards pay a portion, or all, of any promotional programs, including the current activation incentive.

15. The Debtors estimate that approximately 280,000,000 points have accrued and remain outstanding. The Debtors estimate, based on historical redemption rates, that they may be liable for approximately \$2,000,000 on account of such points.

16. In addition, the Debtor estimates that approximately \$3,700,000 in Rewards Certificates were outstanding under the Rewards Program, based on historical redemption rates, the Debtors estimate that they will likely be liable for \$2,600,000. For the avoidance of doubt, Rewards Certificates are not transferable and are not redeemable for cash.

17. The Debtors believe that continuing the Rewards Program and continuing to award and honor the Reward Certificates are both essential to maintaining customer relationships and driving sales. Moreover, potential purchasers of the Debtors' business as a going concern have expressed interest in purchasing the credit card business and the Rewards Program provides added value to that business. Consequently, the Debtor seeks authorization to continue the Rewards Program.

II. GIFT CARDS.

18. In the ordinary course of business, the Debtors sell prepaid gift cards (the "Gift Cards") to their customers. The Gift Cards may be purchased at the Debtors' retail stores and online on the Debtors' websites. Certain third parties also sell Gift Cards – Blackhawk Network, Inc., Gift Certificates Center, Inc. d/b/a Hallmark, CashStar, Inc., and Interactive Communications International, Inc. These third parties retain a percentage of the face value of the Gift Card (generally 10%), but otherwise pay the remaining face value of the Gift Card to the Debtors. Additionally, the Debtors participate in some business-to-business Gift Card sales used

in promotions for product sales (i.e., buy product “X” and receive a Gift Card in the amount of “Y”).

19. Once purchased, a Gift Card may be used like cash for purchases at the Debtors’ retail stores and online on the Debtors’ websites, but may not be redeemed for cash or monetary credit except under limited circumstances as required by law.

20. The minimum dollar amount that may be loaded on an individual Gift Card is \$10 and the maximum is \$2,000. There is no limit on the number of Gift Cards that can be purchased, except a limit of \$10,000 per order of Gift Cards.

21. The Debtors contract with ValueLink, LLC (“Valuelink”) for the Gift Card production and processing pursuant to a certain Stored Value Gift Card Processing Agreement. Nevertheless, the Debtors directly maintain records associated with Gift Card activity, including records of all redemptions of Gift Cards. The Debtors and ValueLink do not track, and have no information about, the holders of the Gift Cards.

22. As of the Filing Date, the Debtors believe that approximately \$46,500,000 in Gift Cards have been purchased but not yet redeemed. Based on historical redemption rates, the Debtors estimate that they will likely be liable for \$22,000,000. By this motion, the Debtors seek the authority to continue to honor all outstanding Gift Cards in the ordinary course of business, whether purchased before or after the Filing Date, consistent with past practice.

23. To the extent the Debtors issue Gift Cards postpetition, the Debtors propose to implement a procedure that will enable them to distinguish between Gift Cards that were purchased and issued before the Filing Date and the Gift Cards that were purchased and issued after the Filing Date.

III. RETURNS, EXCHANGES, AND REFUNDS.

24. In the ordinary course of business, the Debtors offer a lifetime guarantee for all “Gander Mountain” branded clothing and footwear and a one-year guarantee for all other “Gander Mountain” branded products. In addition, the Debtors provide, subject to certain restrictions and requirements, free returns and exchanges for all products within 90 days of the date of purchase. The Debtors also maintain store credit and price adjustment policies. Consequently, under these policies, certain customers may hold contingent claims against the Debtors for refunds, returns, exchanges, substitutions, issuance of store credit, price adjustment, and other credit balance (collectively, the “Refunds”).

25. The Debtors’ customers rely on the existence of the Refunds when they shop at the Debtors’ stores and online at the Debtors’ websites. As of the Filing Date, the current monthly Refund reserve is approximately \$472,000. The ability to continue to provide the Refunds is vital to the Debtors’ ongoing relationship with their customers. The Debtors believe that, in their business judgment, the increase in customer loyalty grossly exceeds the costs of the Refunds and that the Debtors’ business would be substantially harmed if the Debtors are not permitted to continue the Refunds. Accordingly, the Debtors seek authorization, but not direction, to continue to issue Refunds in the ordinary course of business, whether related to purchases made before or after the Filing Date. If a customer paid for a returned product with a check, the Refund issued by the Debtors before the Filing Date may not have been fully processed by the Debtors’ bank – Bank of America. Consequently, the Debtors also seek an order authorizing Bank of America to continue to process these check Refunds.

IV. CREDIT CARD AGREEMENTS.

26. Many of the Debtors' customers use credit or debit cards to purchase products and services from the Debtors. In order to facilitate these transactions, the Debtors entered into certain agreements with credit card companies and processors (collectively, the "Credit Card Agreements"), including agreements with Bank of America Merchant Services, American Express, Chase Paymentech, and ADS (collectively, the "Credit Card Companies").

27. If a customer uses a credit card to purchase a product and later either returns the product or disputes the charge with the credit card issuer, the Debtors may be required to refund the purchase price (a "Chargeback"). The Credit Card Agreements provide that Chargebacks will be satisfied by netting the amount charged back against pending payments owed by a Credit Card Company to the Debtors. Certain of the Credit Card Companies now require a reserve deposit for chargebacks, which the Debtors provided.

28. Due to the nature of the Debtors' business and the timing of the filing of these bankruptcy cases, it is likely that the Debtors incurred certain Chargebacks shortly before the Filing Date that may not yet have been netted out against payments received by the Debtors prior to the Filing Date. While the Debtors believe that the Chargebacks arising after the Filing Date would be postpetition obligations, it could be argued that the Chargebacks are actually pre-petition obligations because the original sale of the product occurred before the Filing Date.

29. In order to maintain their relationship with the Credit Card Companies, the Debtors seek the Court's approval to allow the Credit Card Companies to setoff Chargebacks against payments or the reserve deposits pursuant to section 362(d) of the Bankruptcy Code. In addition, the Debtors request authority to continue to pay the Credit Card Companies the fees charged by the Credit Card Companies under the Credit Card Agreements, whether the fees

arose prior to the Filing Date or after. It is essential to the Debtors' business for the Debtors to have the ability to facilitate credit card transactions at its stores and, especially, online.

V. EXTENDED WARRANTY AND SERVICE PLANS.

30. In the ordinary course of business, the Debtors sell extended warranty plans, including the Summit Protection Plan (the "Summit Plan") and the Firearms Pro-Plan (the "Pro Plan" and, collectively with the Summit Plan and any and all other warranty plans, the "Warranty Plans").

31. The Summit Plan is administered by Warrantech Consumer Product Services, Inc. (WCPS of Florida, Inc. in Florida) and is provided by a third-party – AMT Warranty Corp. in all states except for Florida and Technology Insurance Company, Inc. in Florida (the "Summit Plan Provider"). The Summit Plan expands the limited manufacturer's warranty and covers failure due to normal wear and tear, electrical, mechanical, and defects in material and workmanship. The Summit Plan provides for a one-time replacement during the coverage period. The Summit Provider is obligated to pay for any expenses under the Summit Plan. The Debtors make monthly payments to the Summit Provider. The Debtors are current on these monthly payments.

32. The Pro Plan is administered and provided by the Debtors. The Pro Plan is a firearm extended warranty program in which the Debtors agree to repair the firearms. The Debtors are responsible for the cost of these repairs, but defer revenue from the sale of the Pro Plans to offset the future expenses.

33. The Debtor also offers service plans for qualifying products (the "Service Plans"), which provide unlimited service during the coverage period until the product is unrepairable.

34. The Debtors believe that maintaining the Warranty and Service Plans is necessary to maintain customer goodwill, ensure the Debtors are competitive in the market, and protect confidence in the Debtors' business and products.

VI. PRICE MATCH POLICY.

35. In the ordinary course of the Debtors' business, the Debtors offer a price match policy for both retail store purchases and online purchases (the "Price Match Policy"). The Price Match Policy requires the Debtors to match the price of any outdoor retail competitor, with certain restrictions applying. In stores, the Debtors will provide an additional discount on top of the price match. The Debtors' continued ability to honor the Price Match Policy is critical to the satisfaction of their customers, the maintenance of their customer relationships, and the Debtors' ability to compete in the marketplace. Thus, the Debtors seek authorization to continue to honor their obligations under the Price Match Policy.

VII. LAYAWAY POLICY.

36. In the ordinary course of the Debtors' business, the Debtors offer a layaway policy (the "Layaway Policy"). The Layaway Policy is only available in stores and only applies to firearms, vaults, and bows with a minimum purchase price of \$250. The Debtors require 20% of the purchase price as a down payment and hold items on layaway for up to 60 days. Payments must be made at the same store location where the products are being held. The Debtors charge a \$50 cancellation fee on all canceled or delinquent layaways.

37. As of the Filing Date, the Debtors have received approximately \$1.4 million in layaway deposits for layaway products for which the customers have not completed payment. The Debtors believe that the Layaway Policy is a valuable resource for the customers that participate in it and allows customers to purchase products that they would otherwise not

purchase. Moreover, the deposits held by the Debtors' under the Layaway Policy may qualify as a priority claim under 11 U.S.C. § 507(a)(7).

38. Thus, the Debtors seek authority to continue to honor the Debtors' obligations under the Layaway Policy in the ordinary course of business, whether such obligations have arisen before or after the Filing Date, consistent with past practices.

IX. EXPRESS SAFE DELIVERY PROGRAM.

39. The Debtors sell safes and offer free delivery of certain safes to their customers (the "Express Safe Delivery Program"). The Debtors contract with In The Nick of Time Moving, LLC (the "Delivery Provider") to provide the Express Safe Delivery Program. The Delivery Provider bills the Debtors on a per-safe basis. The Debtors are current on any payments owed to the Delivery Provider.

40. The continuation of the Express Safe Delivery Program is critical to encourage customers to continue to purchase safes from the Debtors. Consequently, the Debtors seek authority to continue the Express Safe Delivery Program in the ordinary course of their business.

X. USED GUN PURCHASE PROGRAM.

41. In the ordinary course of the Debtors' business, the Debtors maintain a program where customers may sell used guns to the Debtors, which the Debtors subsequently sell as "used" products in their stores. The Debtors realize direct benefits from this program – the Debtors are able to offer a wider variety of gun products at a wider variety of prices and the customers selling guns back the Debtors normally then subsequently buy other products offered by the Debtors.

42. Due to these benefits to the Debtors' business, the Debtors seek authority to continue their used gun purchase program. The Debtors pay for the used guns by check. The

Debtors maintain a specific checking account at Wells Fargo for the used gun purchases. On the Filing Date, there may be outstanding checks issued by the Debtors for payment of used guns currently in the Debtors' possession. The Debtors seek an order authorizing Wells Fargo to honor these prepetition checks in order to maintain the Debtors' used gun purchase program.

XI. REBATES.

43. In the ordinary course of business, the Debtors provide customers with rebates (the "Rebates") for certain products purchased at the Debtors' stores (the "Rebate Program"). In order to receive a Rebate, customers complete Rebate forms and send the completed forms for processing to a third-party processor, Innovative Processing, Inc. (the "Rebate Processor"). The Rebate Processor informs the Debtors of the amount for the Rebate checks and the Debtors fund an account held by Lake Central a/k/a Annandale Bank (the "Rebate Account"). The Rebate Processor then issues the checks from the account. Funds sit in the Rebate Account until checks clear. As of the Filing Date, there is a balance of \$187,000 in the Rebate Account.

44. The Debtors' ability to provide Rebates is critical to the satisfaction of their customers and maintenance of their customer relationships. Moreover, the increased product sales due to the offer of the Rebates exceeds the cost of providing the Rebates. Thus, the Debtors seek authorization to continue to honor their obligations under the Rebate Program. The Debtors also seek authorization for Lake Central a/k/a Annandale Bank to honor prepetition Rebate checks in order to continue the Rebate Program.

XII. PROMOTIONS AND OTHER CUSTOMER PROGRAMS.

45. In the ordinary course of their business, the Debtors offer their customers a variety of discounts and other pricing incentives. This includes incentives offered as part of

promotional efforts, as well as incentives offered to specific customers, or groups of customers, in connection with a particular sale (the “Promotions”).

46. The Promotions typically have strategic goals, such as promoting certain products or increasing sales in particular markets or at certain times of the year. Thus, they are typically developed and implemented by the Debtors’ marketing departments in consultation with business leaders or other key individuals at the company.

47. The Promotions are a normal part of the Debtors’ marketing and sales efforts and are common in the industry. The Promotions play an important role in maintaining the Debtors’ competitive position in the markets in which they operate. As such, by this Motion, the Debtors request the authority to honor all the Promotions, whether the Debtors’ obligations arose before or after the Filing Date, and to continue to offer and honor such Promotions during the pendency of these cases.

RELIEF REQUESTED

48. By this motion, the Debtors request entry of an order granting the Debtors authority to: (i) honor their prepetition obligations relating to their existing Customer Programs, (ii) continue, renew, replace, modify, and/or terminate any of the Customer Programs in the ordinary course of business without the need for a further court order, and (iii) perform and pay obligations related to their Customer Programs.

49. Notwithstanding anything to the contrary in the Motion or Proposed Order, nothing herein constitutes, or shall be deemed to constitute, a request to assume any executory contract under any customer program. The Debtors expressly reserve all rights with respect to the continuation or termination of any contract with any customer, and expressly reserve the

right to contest, in the ordinary course of business, any amounts claimed to be due, if any, by any customer.

50. The Debtors also seek authority for banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of the debtors as to which checks are issued and authorized to pay in accordance with this motion.

51. Notwithstanding anything to the contrary contained in the Motion and in the Proposed Order, the relief sought in this motion shall be subject to any orders of this Court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors, and any documents providing for such debtor in possession financing and the Budget governing such debtor in possession financing and use of cash collateral.

52. The Court should grant the relief requested because: (i) the continuation of and performance under the Customer Programs is in the ordinary course of business and, therefore, authorized by section 363(c) of the Bankruptcy Code, and (ii) with respect to any payment or obligation incurred in connection with the Customer Programs prior to the Petition Date, such payment and performance are authorized under sections 105(a) and 363(b) of the Bankruptcy Code and the necessity of payment doctrine.

EXPEDITED RELIEF

53. The Debtors request expedited relief on this motion pursuant to Bankruptcy Rule 9006(c). The granting of this motion on an expedited basis is necessary to ensure that there is no disruption to the Customer Programs. If such a disruption were to occur, the Debtors would lose existing customers, fail to attract new customers, and ultimately hurt the Debtors' overall

profitability. Thus, the granting of this motion on an expedited basis is necessary to effectuate a smooth transition into chapter 11 and maintain customer loyalty and goodwill.

54. To the extent that Bankruptcy Rule 6003(b) may apply, the Debtors request relief from the requirements of Bankruptcy Rule 6003(b) because relief is necessary to avoid immediate and irreparable harm. If the Debtors' prepetition obligations under the Customer Programs are not honored without delay, customer confidence in the Debtors will erode, customer satisfaction will decrease, and the Debtors' business will be adversely affected.

55. For the same reasons, to the extent that Bankruptcy Rule 6004(h) may apply, the Debtors seek a waiver of any stay of the effectiveness of the order on this Motion.

56. Pursuant to Local Rule 9013-2, this motion is verified and is accompanied by a Memorandum of Law, proposed order, and proof of service.

57. Pursuant to Local Rule 9013-2(c), the Debtors give notice that they may, if necessary, call one or more of the following to testify regarding the facts set forth in this Motion: (a) Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota 55112; (b) James A. Bartholomew, the President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, whose business address is 900 Long Lake Road, Suite 180, New Brighton, Minnesota 55112; or (c) Eric R. Jacobsen, the Chief Administrative Officer and Chief Legal Officer for Gander Mountain Company and the Director and Secretary of Overton's, Inc., whose business address is 180 East Fifth Street, Suite 1300, St. Paul, Minnesota 55101.

WHEREFORE, the Debtors move the Court for an order:

A. Granting expedited relief under Bankruptcy Rules 9006(c) and 6003(b);

- B. Authorizing the Debtors to honor their prepetition obligations relating to the existing Customer Programs;
- C. Authorizing the Debtors to maintain, renew, replace, modify, or otherwise continue their Customer Programs;
- D. Authorizing the Debtors to perform and pay obligations related to their Customer Programs;
- E. Authorizing banks and other financial institutions to receive, process, honor and pay checks or electronic transfers used by the Debtor to pay the Customer Obligations;
- F. Waiving any stay created by Bankruptcy Rule 6004(h); and
- G. Granting such other and further relief as is just and proper.

Dated: March 10, 2017

/e/ Steven R. Kinsella

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PROPOSED ATTORNEYS FOR DEBTORS

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VERIFICATION

I, Timothy G. Becker, the Executive Vice President of Lighthouse Management Group, Inc., the Chief Restructuring Officer of the Debtors, declare under penalty of perjury that the facts set forth in the preceding motion are true and correct according to the best of my knowledge, information, and belief.

Dated: March 10, 2017

Signed: 
Timothy G. Becker

**UNITED STATES BANKRUPTCY COURT
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Chapter 11 Case

Debtor.

In re:

Overton's, Inc.,

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Chapter 11 Case

Debtor.

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR ENTRY OF AN ORDER
(I) GRANTING EXPEDITED RELIEF AND (II) AUTHORIZING THE DEBTORS TO
HONOR AND CONTINUE CERTAIN CUSTOMER PROGRAMS AND CUSTOMER
OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS**

The above-captioned debtors (the "Debtors") submit this memorandum of law in support of the Joint Motion for Entry of an Order (I) Granting Expedited Relief and (II) Authorizing the Debtors to Honor and Continue Certain Customer Programs and Customer Obligations in the Ordinary Course of Business (the "Motion"), in accordance with Local Rule 9013-2(a).

BACKGROUND

The supporting facts are set forth in the Motion. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

ANALYSIS

I. THE DEBTORS' REQUEST FOR EXPEDITED RELIEF SHOULD BE GRANTED.

The Debtors request expedited relief on the Motion. Bankruptcy Rule 9006(c) provides that the Court may reduce the notice period for a Motion “for cause shown.” Fed. R. Bankr. P. 9006(c). Cause exists here to grant the Motion on an expedited basis. As described in the Motion, the Customer Programs play an integral role in the Debtors’ ability to retain existing customers, attract new customers, and ultimately enhance the Debtors’ overall profitability. If the Debtors are not permitted to continue to maintain and honor the Customer Programs, the Debtors will likely lose their customer loyalty and goodwill, which will have an adverse effect on the Debtors’ business and the Debtor’s overall value as a going concern. Accordingly, the expedited relief requested is necessary to avoid immediate and irreparable harm.

II. CONTINUATION OF THE CUSTOMER PROGRAMS IS WITHIN THE ORDINARY COURSE OF THE DEBTORS' BUSINESS.

Section 363(c) of the Bankruptcy Code authorizes a debtor in possession to “enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). Section 363 is designed to serve the ““overriding goal of maximizing the value of the estate’ by striking the optimal balance between the interests of the debtor and the creditors.” *Habinger, Inc. v. Metro. Cosmetic and Reconstructive Surgical Clinic, P.A.*, 124 B.R. 784, 786 (D. Minn. 1990) (quoting *United States ex rel. Harrison v. Estate of Deutscher*, 115 B.R. 592, 599 (Bankr. M.D. Tenn. 1990)).

“The ‘ordinary course of business’ standard is intended to allow a debtor ‘the flexibility it needs to run its business and respond quickly to changes in the business climate.’” *Id.* (quoting

United States ex rel. Harrison v. Estate of Deutscher, 115 B.R. at 599). With these policies in mind, the courts have formulated two tests to determine the ordinary course of business: (1) the vertical test and (2) the horizontal test. *Id.*; see also *Johnston v. First Street Cos. (In re Waterfront Cos., Inc.)*, 56 B.R. 31, 34-35 (Bankr. D. Minn. 1985).

The vertical test asks whether the proposed transaction subjects a creditor to economic risks of a nature different from those accepted when it decided to extend credit to the debtor. *Habinger*, 124 B.R. at 786; *Johnston*, 56 B.R. at 34-35. This test compares the debtor-in-possession's prepetition business activities with its post-petition activities. *Habinger*, 124 B.R. at 786. Here, the Debtors have maintained the Customer Programs for a substantial amount of time prior to the Filing Date. Consequently, continuing and maintaining the Customer Programs does not subject the Debtors' creditors to different risks from those accepted when the creditors extended credit prepetition. Moreover, the creditors benefit from the continuation of the Customer Programs because it allows the Debtors to maintain customer loyalty and goodwill, which are both vital to the value of the Debtors' business as a going concern and the Debtors' ability to continue to realize revenue from ongoing operations.

The horizontal test involves determining whether the proposed transaction is one that would be entered into by a business similar to a debtor's business. *Habinger*, 124 B.R. at 786; *Johnston*, 56 B.R. at 34-35. The Customer Programs are typical for the Debtors' industry – the majority, if not all, of the Debtors competitors maintain similar customer programs that compete directly with the Customer Programs of the Debtors. Thus, the horizontal test is also satisfied.

The continuation and maintenance of the Customer Programs satisfies both the vertical and horizontal tests and are in the ordinary course of the Debtors' business. Therefore, the Debtor is permitted to continue and maintain the Customer Programs pursuant to 11 U.S.C. § 363(c).

II. CONTINUATION OF THE CUSTOMER PROGRAMS IS APPROPRIATE AND AUTHORIZED BY 11 U.S.C. §§ 363(b) AND 105(a).

While the Debtors believe that the continuation and maintenance of the Customer Programs is within the ordinary course of the Debtors' business, the continuation and maintenance of the Customer Programs also meets the standard for approval for the use of property of the estate outside the ordinary course of business under 11 U.S.C. § 363(b). The use or sale of property of the estate, other than in the ordinary course of business, is authorized "when a sound business purpose dictates such action." *Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *see also In re Channel One Communications, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990).

Courts generally approve transactions involving property of the estate that are outside of the ordinary course of business as long as the Debtor's decision is supported by some articulated business justification. *Four B v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 567 (8th Cir. 1997); *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991). When applying the business judgment rule, the courts give deference to the debtor's decision making. *In re GSC, Inc.*, 453 B.R. 132, 174 (Bankr. S.D.N.Y. 2011); *see also In re LeBlanc*, 299 B.R. 546, 552 (Bankr. N.D. Iowa 2003).

In the Debtors' business judgment, the Debtors believe that the continuation and maintenance of the Customer Programs is necessary to maintain loyalty and goodwill from the Debtors' current and future customers. The Debtors believe that failing to honor the Customer Programs will cause a loss in customers that will result in a severe and negative impact on the Debtors' business both in terms of revenue and in terms of the value of the Debtors' business as a going concern. The Debtors' Customer Programs are marketing tools that the Debtors use to procure new business as well, so the cancelling of these Customer Programs will also impact the

Debtors' ability to attract new customers. Consequently, there is a clear and articulated business justification to maintain and honor the Customer Programs.

III. CONTINUATION OF THE CUSTOMER PROGRAMS IS APPROPRIATE AND AUTHORIZED BY THE NECESSARY PAYMENT DOCTRINE.

Section 105(a) of the Bankruptcy Code provides an additional basis to grant the requested relief. Section 105(a) allows a bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11].” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). “Under [section] 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Ba. 1992); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825 (Bankr. D. Del. 1999) (“To invoke the necessity of payment doctrine, a debtor must show that the payment of the prepetition claims is ‘critical to the debtor’s reorganization.’”).

The well-settled necessity of payment doctrine authorizes postpetition payment of prepetition obligations when necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286 (1882) (articulating a legal theory later termed the “doctrine of necessity” or “necessity of payment doctrine,” and allowing receiver to pay pre-receivership claim to prevent disruption of critical business relations); *In re Lehigh & New England Ry. Co.*, 657 F.2d 570 (3d Cir. 1981) (approving and applying the necessity of payment doctrine); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 192 (Bankr. D. Del. 1994) (reiterating applicability of the necessity of payment

doctrine, and noting that such doctrine provides for payment of prepetition claims if such payment is essential to a debtor's continued business operations).

Bankruptcy courts routinely invoke their equitable powers under section 105(a) to authorize a debtor to pay certain critical prepetition claims; indeed, substantial precedent exists for authorizing payment of prepetition obligations to customers where, as here, customer retention is critical to a debtor's successful chapter 11 case. *See, e.g., In re School Specialty, Inc.*, No. 13-10125 (Bankr. D. Del. Jan. 30, 2013) (authorizing the debtors to honor certain prepetition obligations to customers); *In re Buffets Restaurants Holdings, Inc.*, No. 12-10237 (Bankr. D. Del. Jan. 19, 2012); *In re Perkins & Marie Callender's Inc.*, No. 11-11795 (Bankr. D. Del. June 14, 2011); *In re Allen Family Foods, Inc.*, No. 11-11764 (Bankr. D. Del. June 10, 2011).

Similar relief is warranted here, as payment and performance of prepetition obligations owed pursuant to the Customer Programs meets the requirements of section 105(a) and the necessity of payment doctrine because such payment is critical to preserving the value of the Debtors' estates. As noted above, the Customer Programs are an important part of the Debtors' business and strategy for retaining customers and increasing profitability. The Debtors operate in a competitive and fluctuating market, and their business depends on their ability to retain a stable and loyal customer base while also attracting new customers. The Debtors' ability to perform under the Customer Programs — including paying prepetition amounts owed under such programs — is critical to maintaining customer support and loyalty and easing any apprehension felt by existing or potential customers regarding doing business with the Debtors following the commencement of these chapter 11 cases. Furthermore, the Debtors believe that a failure to honor their prepetition obligations under the various Customer Programs would undermine the

Debtors' relationships with their customers and impair the Debtors' ongoing ability to compete in the marketplace. Thus, any prepetition claims arising from, or related to, the Customer Programs meet the requirements for postpetition payment because if they are not satisfied, the Debtors' goodwill and going concern value will be adversely impacted.

In sum, the authorization to continue performing under the Customer Programs is a critical element of the Debtors' continued business operations and is necessary for the maximization of value in the chapter 11 cases. Accordingly, the Debtors request the authority to honor all obligations under their Customer Programs, whether the Debtors' obligations under such programs arose before or after the Filing Date and to continue the Customer Programs in the ordinary course of business during the chapter 11 cases.

IV. IMMEDIATE RELIEF IS JUSTIFIED.

As noted above, the Debtors believe that circumstances warrant expedited granting of the relief requested in this Motion. Pursuant to Bankruptcy Rule 6003(b), the Court cannot grant "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" within twenty-one days of the filing of the petition unless the relief is "necessary to avoid immediate and irreparable harm." Thus, to the extent that the requirements of Bankruptcy Rule 6003 are applicable to the relief requested in the Motion, the Debtors submit that, for the reasons set forth above, the relief requested is necessary to avoid immediate and irreparable harm. Specifically, if the prepetition obligations under the Customer Programs are not honored without delay, customer confidence in the Debtors will erode, customer satisfaction will decrease, and the Debtors could lose customers, which would have an immediate and substantial negative impact on the Debtors' business operations and going concern value. Accordingly, the Debtors submit

that the requirements of Bankruptcy Rule 6003 for expedited relief are met under the circumstances.

To the extent that Bankruptcy Rule 6004(h) applies, the Debtors seek a waiver of any stay of the effectiveness of the order on this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The relief requested herein is essential to prevent immediate and irreparable harm to the Debtors’ business operations and prospects for reorganization. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

CONCLUSION

For the foregoing reasons, the Debtor respectfully requests that this Court grant the relief requested in the Motion.

Dated: March 10, 2017

/s/ Steven R. Kinsella

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PROPOSED ATTORNEYS FOR DEBTORS

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re:

Gander Mountain Company,

Case No.: 17-30673

Chapter 11 Case

Debtor.

In re:

Overton's, Inc.

Case No.: 17-30675

Chapter 11 Case

Debtor.

**ORDER GRANTING EXPEDITED RELIEF AND AUTHORIZING THE DEBTORS TO
HONOR AND CONTINUE CERTAIN CUSTOMER PROGRAMS AND CUSTOMER
OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS**

This case is before the court on the Joint Motion for Entry of an Order (I) Granting Expedited Relief and (II) Authorizing the Debtors to Honor and Continue Certain Customer Programs and Customer Obligations in the Ordinary Course of Business filed by the above-captioned debtors.

Based on the motion and the file,

IT IS ORDERED:

1. The motion is granted, including expedited relief.
2. The debtors are authorized, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practices, the customer programs and practices identified in the motion and to honor obligations arising from the customer programs in the ordinary course of business as set forth in the motion.

3. The debtors are authorized, but not directed, to (a) maintain The Gander Mountain Rewards Program and (b) continue to award and honor rewards certificates.

4. The debtors are authorized, but not directed, to continue to sell, issue, and honor gift cards, both prepetition and postpetition. To the extent the debtors issue gift cards postpetition, the debtors shall implement a procedure that will enable the debtors to distinguish between gift cards purchased before and after March 10, 2017.

5. The debtors are authorized, but not directed, to continue to (a) honor the lifetime guarantee for all “Gander Mountain” branded clothing and footwear, (b) honor the one-year guarantee for all other “Gander Mountain” branded products, (c) provide free returns and exchanges for all products within 90 days of the date of purchase, (d) maintain store credit and price adjustment policies, and (e) issue all other refunds in the ordinary course of the debtors’ business. To the extent a customer paid for a returned product with a check and the debtors’ refund of that check is not fully processed by the debtors’ banks by March 10, 2017, the debtors’ banks, including Bank of America, are authorized to continue to process the refund checks.

6. The credit card companies and processors that provide services to the debtors are authorized to setoff refunds against payments or reserve deposits pursuant to 11 U.S.C. § 362(d). The debtors are authorized, but not directed, to continue to pay any fees charged by the debtors’ credit card companies and processors, whether the fees arose prior to March 10, 2017, or after.

7. The debtors are authorized, but not directed, to continue to honor their obligations under the warranty and service plans sold by the debtors, including without limitation, the Summit Protection Plan and the Firearms Pro-Plan.

8. The debtors are authorized, but not directed, to continue to honor their obligations under the price match policy for both retail store purchases and online purchases.

9. The debtors are authorized, but not directed, to continue to honor the debtors' obligations under the debtors' layaway policy in the ordinary course of business, whether such obligations have arisen before or after March 10, 2017, consistent with past practices.

10. The debtors are authorized, but not directed, to continue to offer free delivery of certain safes to their customers consistent with past practices.

11. The debtors are authorized, but not directed, to continue the debtors' used gun purchase program and to honor all obligations arising under this program, whether such obligations have arisen before or after March 10, 2017, consistent with past practice. To the extent there are outstanding checks on March 10, 2017, for used guns purchased by the Debtors, the debtors' banks, including Wells Fargo Bank, are authorized to honor those prepetition checks.

12. The debtors are authorized, but not directed, to continue to honor their obligations under the debtors' rebate program and all other promotions, discounts, and other pricing incentives, consistent with past practices.

13. The debtors' banks are authorized to honor checks presented for payment and all fund transfer requests made by the debtors, to the extent that sufficient funds are on deposit in the applicable accounts, in accordance with this order and any other order of this court.

14. The debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in connection with the customer programs that are dishonored or rejected.

15. Notwithstanding the relief granted in this order and any actions taken pursuant to such relief, nothing in this order shall be deemed (a) an admission as to the validity or priority of any claim against the debtors or their estates, (b) a waiver of the debtors' right to dispute any

claim on any grounds, (c) a promise or requirement to pay any claim, (d) an implication or admission that any particular claim is of a type specified or defined in this order or the motion. (e) a request or authorization to assume any agreement, contract, or lease pursuant to 11 U.S.C. § 365, or (f) a waiver of the debtors' rights under the Bankruptcy Code or any other applicable law.

16. Notwithstanding anything to the contrary contained in this order, any payment made or to be made under this order, any authorization contained in this order, or any claim for which payment is authorized in this order, shall be subject to any orders of this court approving any debtor in possession financing for, or any use of cash collateral by, the debtors, and any documents providing for such debtor in possession financing and the budget governing such debtor in possession financing and use of cash collateral.

17. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

Dated:

United States Bankruptcy Judge