

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

In re:	:	Chapter 11
	:	
FRESH & EASY, LLC, ¹	:	Case No. 15-12220 (BLS)
	:	
Debtor.	:	Hearing Date: September 29, 2016 at 9:30 a.m. (ET)
	:	Objection Deadline: September 22, 2016 at 4:00 p.m. (ET)

**DEBTOR’S MOTION FOR AN ORDER, PURSUANT TO SECTIONS
105 AND 363 OF THE BANKRUPTCY CODE, (I) AUTHORIZING THE
SALE OF LIQUOR LICENSES TO 99 CENTS ONLY STORES, LLC;
(II) APPROVING THE TERMS OF THE PURCHASE AGREEMENT;
AND (III) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “Debtor”) hereby submits this motion (this “Motion”) for entry of an order, pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) authorizing the sale to 99 Cents Only Stores, LLC (“99 Cents” or “Purchaser”) of certain liquor licenses held by Debtor at former operating locations in the State of California as identified on Exhibit 1 to the Purchase Agreement (as defined below) (the “18 Liquor Licenses”); (ii) approving the terms of the purchase agreement (the “Purchase Agreement”) in substantially the form attached Exhibit A to the proposed order (the “Proposed Order”) annexed hereto; and (iii) granting related relief. In support of the Motion, the Debtor relies upon the Declaration of Amir Agam, Chief Restructuring Officer (the

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8906. The Debtor’s mailing address is Howard Hughes Center, 6080 Center Drive, 6th Floor, Los Angeles, CA 90045.

“Agam Declaration”), filed concurrently herewith. In further support of this Motion, the Debtor respectfully represents as follows:

Jurisdiction And Venue

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rules 2002-1 and 6004-1.

Background

A. *Introduction*

2. On October 30, 2015 (the “Petition Date”), the Debtor commenced the above-captioned chapter 11 case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor has continued to manage its affairs as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On November 10, 2015, the United States Trustee for Region 3 (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this Chapter 11 Case.

4. Additional information about the Debtor’s business and the events leading up to the Petition Date can be found in the *Declaration of Amir Agam in Support of Chapter 11 Petition and First Day Motions* [Docket No. 10] (the “First Day Declaration”), which is incorporated herein by reference.

B. The Wind-down of Debtor's Business

5. As further detailed in the First Day Declaration, the Debtor commenced this proceeding because it concluded that it is unable to reorganize on a standalone basis. Accordingly, the Debtor determined that the best way to maximize value for the benefit of all interested parties was a prompt and orderly wind-down of its business. As more fully discussed in the First Day Declaration, the conclusion to liquidate was reached following a lengthy process in which the Debtor considered and explored reasonable strategic alternatives.

6. Toward that end, on the Petition Date, the Debtor filed the Debtor's Emergency Motion for Interim and Final Orders (I) Authorizing the Continuation of Store Closing Sales in Accordance with the Disposition Agreement and Sale Guidelines, With Such Sales to be Free and Clear of All Liens, Claims, and Encumbrances; (II) Authorizing the Assumption of the Disposition Agreement; and (III) Granting Related Relief [Docket No. 19] (the "GOB Motion"). The Court subsequently approved the GOB Motion, and the Debtor conducted store closing sales at its retail locations. These store closing sales, which included sales of furniture, fixtures, and equipment, concluded no later than November 30, 2015.

7. The Debtor also engaged real estate consultants to market and pursue the disposition of various leasehold interests and initiated a sales process through which it assumed and assigned certain leases and terminated additional leases with landlord consent, resulting in the successful disposition (through lease assignment, lease termination agreement, or rejection) of more than 100 of its leased locations.

8. In furtherance of its liquidation efforts, the Debtor also obtained Court-approved procedures for the sale or abandonment of miscellaneous assets free and clear of liens, claims, interests and encumbrances and certain related relief [Docket No. 288] (the "Miscellaneous

Assets Sale Order”), which provide, among other things, that the Debtor is authorized to consummate sales for Miscellaneous Assets (as defined in the Miscellaneous Assets Sale Order), subject to certain limitations and notice requirements, without further order of the Court. To date, the Debtor has utilized such procedures to sell various Miscellaneous Assets, including ambient goods, furniture, fixtures and equipment, liquor licenses and other items.

C. The Sale of Liquor Licenses

9. As of the commencement of the Chapter 11 Cases, the Debtor had more than 100 separate liquor licenses (each a “Liquor License” and, collectively, the “Liquor Licenses”) issued by the State of California Department of Alcoholic Beverage Control (the “ABC” or “Liquor License Department”). The Liquor Licenses may be transferrable and, as a result, may have value. The Debtor’s professionals have obtained informal valuation estimates for the Liquor Licenses from several professionals in the field and have been diligently marketing the Liquor Licenses with the intent of selling the licenses for the best price.

10. As noted above, to date, the Debtor has sold several Liquor Licenses. The Debtor continues to market the remaining Liquor Licenses and intends to sell them pursuant to the Miscellaneous Asset Sale Order or, in those instances in which a proposed sale does not meet the criteria for a sale pursuant to the Miscellaneous Assets Sale Order; the Debtor will file a motion to sell the Liquor License.

Relief Requested

11. By this Motion, the Debtor seeks entry of an order, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002 and 6004, and Local Rules 2002-1 and 6004-1, (i) authorizing the sale of the 18 Liquor Licenses to 99 Cents; (ii) approving the terms of the Purchase Agreement; and (iii) granting related relief.

The Purchase Agreement²

12. Following arm's-length negotiations overseen by its professional advisors, the Debtor and 99 Cents entered into the Purchase Agreement, substantially in the form attached to the Proposed Order. The salient terms of the Purchase Agreement are listed herein:

- In consideration of the sum of One Hundred Twenty-Five Thousand Five Hundred Dollars and No Cents (\$125,500) (the "Purchase Price"), to be delivered to the Liquor License Escrow Holder (defined below) in an initial deposit of Ninety Thousand Dollars and No Cents (\$90,000) within two (2) business days following the Court's entry of an Order approving the sale, and with the final balance of Thirty-Five Thousand Five Hundred Dollars and No Cents (\$35,500) due 45 business days following the Court's entry of the Order approving the sale.
- Following execution of the Purchase Agreement and the Court's entry of an Order approving the sale, Seller shall place the Liquor Licenses into escrow with a liquor license escrow holder (the "Liquor License Escrow Holder") to be mutually agreed upon by the Seller and Purchaser, which escrow may be evidenced by an escrow agreement executed by the Seller, Purchaser, and such Liquor License Escrow Holder. Promptly following the opening of escrow with the Liquor License Escrow Holder, Purchaser shall arrange for Liquor License Escrow Holder to record notice of the proposed transfers with the applicable county recorder's office and, following the expiration of the requisite notice period(s), complete the applications for the transfer of the Liquor Licenses and provide all application documents necessary to effectuate the transfers to Seller for execution.
- In addition to the Purchase Price, the Purchaser shall be responsible for all aspects of the transfer of the Liquor License, including preparation and submission of any and all applications and documentation, satisfaction of any and all regulatory requirements, including obtaining all applicable governmental authority consents or approvals to the sale and transfer of the Liquor License, payment of all filing fees, application fees (including application, transfer, annual renewal and similar fees imposed by the ABC), publication fees, Purchaser's attorney fees, broker fees, regulatory fees and other fees and costs associated with the transfer of the Liquor License. For the avoidance

² The summary of the Purchase Agreement is qualified in its entirety by the Purchase Agreement. If there are any inconsistencies between the summary contained herein and the Purchase Agreement, the Purchase Agreement shall control. Capitalized terms used but not defined in the following summary of the Purchase Agreement shall have the definitions ascribed to them in the Purchase Agreement.

of doubt, any fees or costs paid to or for the benefit of the Liquor License Escrow Holder by Seller under the escrow agreement executed by the Parties shall be reimbursed to Seller by Purchaser, notwithstanding any provision of such escrow agreement.

- Upon approval of each transfer of a Liquor License by the Liquor License Department, that portion of the Purchase Price attributable to such Liquor License (as set forth in Exhibit 1 to the Purchase Agreement) shall be paid by the Liquor License Escrow Holder to Seller or its designated assignee via wire transfer of immediately available funds to an account designated by Seller and Seller shall convey the applicable Liquor License to Purchaser as of such date. Upon disapproval of the transfer of a Liquor License by the Liquor License Department, that portion of the Purchase Price attributable to the individual Liquor License (as set forth on Exhibit 1 to the Purchase Agreement) shall be refunded by the Liquor License Escrow Holder to Purchaser via wire transfer of immediately available funds to an account designated by Purchaser, but Seller shall retain all applicable remedies at law and in equity against Purchaser in the event the transfer was not approved because of the fault of Purchaser.
- The 18 Liquor Licenses shall be delivered on an “AS IS,” “WHERE IS,” and “WITH ALL FAULTS”.
- The Purchase Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, legal representatives, and permitted successors and assigns, including any liquidating trust created or trustees appointed in any proceedings under chapter 7 or chapter 11 of the Bankruptcy Code relating to the Seller.

13. Pursuant to Local Rule 6004-1, the following provisions of the Purchase Agreement are to be highlighted:

Private Sale: As set forth herein, the Debtor intends to sell the 18 Liquor Licenses through a private transaction rather than conducting a public sale or auction process.

Relief from Bankruptcy Rule 6004(h): The Debtor requests that the Court waive the 14-day stay period under Bankruptcy Rule 6004(h).

Basis for Relief

A. The Debtor Has Satisfied Section 363(b) of the Bankruptcy Code.

14. Section 363(b)(1) of the Bankruptcy Code provides: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In pertinent part, Bankruptcy Rule 6004 states that, “all sales not in the ordinary course of business may be by private sale or by public auction.” Fed. R. Bankr. P. 6004(f)(1). With respect to the notice required in connection with a private sale, Bankruptcy Rule 2002(c)(1) states, in pertinent part, that,

. . . the notice of a proposed use, sale or lease of property . . . shall include . . . the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

Fed. R. Bankr. P. 2002(c)(1).

15. To approve the use, sale, or lease of property outside the ordinary course of business, this Court must find “some articulated business justification” for the proposed action. See In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 145-47 (3d Cir. 1986) (implicitly adopting the “articulated business justification” and good faith tests of Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983)); see also In re Delaware & Hudson Ry. Co., 124 B.R. 169, 175-76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in Abbotts Dairies); Titusville Country Club v. PennBank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); In re Indus. Valley Refrigeration & Air Conditioning Supplies, Inc., 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

B. Entry into the Purchase Agreement Is Within the Sound Business Judgment of the Debtor, and the Transactions Provided Therein Should Be Approved.

16. Generally, courts have applied four (4) factors in determining whether a sale of a debtor's assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. See Lionel, 722 F.2d at 1071 (setting forth the "sound business purpose" test); Abbotts Dairies, 788 F.2d at 145-57 (implicitly adopting the articulated business justification test and adding the "good faith" requirement); Delaware & Hudson Ry., 124 B.R. at 176 ("Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.").

17. This fundamental analysis does not change if the proposed sale is private, rather than public. See, e.g., In re Ancor Exploration Co., 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) ("[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b)."). The bankruptcy court "has ample discretion to administer the estate, including authority to conduct public or private sales of estate property." In re WPRV-TV, Inc., 143 B.R. 315, 319 (D.P.R. 1991), vacated on other grounds, 165 B.R. 1 (D.P.R. 1992); accord, In re Canyon Partnership, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985). Here, the sale of the 18 Liquor Licenses to 99 Cents Only Stores, LLC, pursuant to terms of the Purchase Agreement, meets these requirements and should be approved.

i. Proceeding by Private Sale Reflects Sound Exercise of the Debtor's Business Judgment

18. There is more than ample business justification to sell the 18 Liquor Licenses through a private transaction rather than conducting a public sale or auction process. The Debtor submits that an order granting the relief requested herein is a matter within the discretion of the Court and would be consistent with the provisions of the Bankruptcy Code. See 11 U.S.C. § 105(a). The negotiated purchase price is in the midpoint of the valuation for the 18 Liquor Licenses. Further, the Debtor's advisors worked diligently to obtain alternative bids, but no other offers have been received. Consequently, the Debtor believes that proceeding as proposed is in the best interest of its estate and creditors.

19. Moreover, the surrounding circumstances underscore that the added costs associated with a public auction or extended bid process are both unjustified and unlikely to generate additional value. Simply put, the Debtor believes it has identified the highest and best offer for the 18 Liquor Licenses, and it is in the Debtor's best interest to pursue this opportunity.

ii. The Purchase Price is Fair and Reasonable

20. As noted above, the Debtor has not received any other offer for the 18 Liquor Licenses. The Debtor has reviewed the informal valuations of the 18 Liquor Licenses received from liquor license professionals and the proposed Purchase Price is within the range of the valuation. In light of the totality of the circumstances, the Debtor believes that the proposed sale provides fair and reasonable value for the 18 Liquor Licenses. In the event 99 Cents did not express a willingness to purchase the 18 Liquor Licenses, the Debtor would likely be forced to wait and see if it could sell for a lesser purchase price or abandon the licenses, resulting in less of or no benefit to the estate. Accordingly, the Debtor submits that the proposed sale is in the best

interest of the estate and represents a fair, reasonable, and, indeed, advantageous disposition of the 18 Liquor Licenses.

iii. The Transfer is Proposed in Good Faith

21. The sale of the 18 Liquor Licenses has been proposed in good faith as the Purchase Agreement was the product of good-faith, arms'-length negotiations between the Debtor and 99 Cents, and was negotiated with the active involvement of the Debtor's management and professional advisors. The Debtor believes that the sale of the 18 Liquor Licenses to 99 Cents pursuant to the terms and conditions of the Purchase Agreement are not the product of collusion or bad faith. No evidence exists to suggest that the Purchase Agreement is anything but the product of arms'-length negotiations between the Debtor and 99 Cents and their respective professional advisors.

iv. Adequate and Reasonable Notice of the Transfer Will Be Provided

22. The Debtor will provide adequate notice of the Motion to parties in interest, as required by the applicable procedural rules. See Fed. R. Bankr. P. 2002(c)(1) (notice must contain "the terms and conditions of any private sale and the time fixed for filing objections."); see also Delaware & Hudson Ry., 124 B.R. at 180 (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement).

23. To summarize, in the Debtor's informed business judgment, there is very little, if anything, to be gained by conducting a formal auction process for the 18 Liquor Licenses because the delay, uncertainty, and added administrative expenses attendant to the auction process would be unfavorable to the Debtor, its estate, and creditors. Accordingly, the Debtor

submits that it should not be required to conduct a public sale or to establish bidding procedures for the 18 Liquor Licenses, but instead should approve the private transfer of the Licenses to 99 Cents.

C. The Buyer Should Be Deemed a Good Faith Purchaser Entitled to the Protections of Section 363(m) of the Bankruptcy Code.

24. Section 363(m) of the Bankruptcy Code protects the sale of a debtor's property to a good faith purchaser. Section 363(m) provides that:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

25. Here, the Purchase Agreement is being proposed by the Debtor in good faith. There is no evidence of fraud or collusion. To the contrary, as discussed throughout this Motion, the Purchase Agreement is the culmination of a solicitation and negotiation process. All negotiations have been conducted on an arms'-length, good-faith basis. Under the circumstances, 99 Cents should be afforded the protections that section 363(m) of the Bankruptcy Code provides to a good-faith purchaser. See generally Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) ("Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale includes fraud, collusion between the purchaser's and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.") (quoting In re Rock Indus. Mach Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)).

D. The Sale Should Be Free and Clear of Liens, Claims, and Interests.

26. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property of the estate “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

(1) applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in *bona fide* dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)-(5); see In re Elliot, 94 B.R. 343, 354 (E.D. Pa. 1988) (sale “free and clear” may be approved provided the requirements of at least one subsection are met).

27. Considering that any objections to this Motion must be resolved by consent of the objecting party or by the Court, the Debtor expects that it can satisfy at least the second and fifth subsections of section 363(f) of the Bankruptcy Code. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). See, e.g., In re Trans World Airlines, Inc., 2001 WL 1820325, at *3, 6 (Bankr. D. Del. Mar. 27, 2001); Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). Accordingly, the Debtor requests that the transactions contemplated by the Purchase Agreement be approved “free and clear.”

E. Waiver of 14-Day Waiting Period Under Bankruptcy Rule 6004(h) Is Appropriate.

28. Bankruptcy Rule 6004(h) provides that “[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.” Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Collier on Bankruptcy ¶ 6004.11 (Alan N. Resnick & Hemy J.

Sommer eds., 16th ed.) (citing Advisory Committee on the Federal Rules of Bankruptcy Procedure, Committee Notes on Rules - 1999 Amendment at subdivision (g) (1999)). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day period, the leading treatise on bankruptcy suggests that the stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” Id. The treatise further provides that if an objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to seek such a stay. See id.

29. The Debtor submits that under the circumstances, ample cause exists to justify the waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h). Any delay in the Debtor’s ability to sell the 18 Liquor Licenses would be detrimental to the Debtor and its estate and creditors. Accordingly, the Debtor requests that the Court waive the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

30. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) the Debtor’s prepetition secured lenders; (iv) the Debtor’s postpetition secured lenders; (v) 99 Cents Only Stores, LLC; (vi) the landlord for each location; (vii) California Department of Alcoholic Beverage Control Headquarters; (viii) California State Board of Equalization; (ix) State of California Franchise Tax Board; and (x) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtor respectfully submits that, in light of the nature of the relief requested, no other notice need be given.

CONCLUSION

WHEREFORE, the Debtor respectfully requests entry of the Proposed Order, substantially in the form attached hereto, (i) authorizing the sale of the 18 Liquor Licenses; (ii) approving the terms of the Purchase Agreement; and (iii) granting such other and further relief as the Court deems just and proper.

Dated: August 19, 2016

COLE SCHOTZ P.C.

/s/ Patrick J. Reilley
Norman L. Pernick (No. 2290)
J. Kate Stickle (No. 2917)
Patrick J. Reilley (No. 4451)
David W. Giattino (No. 5614)
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
Telephone: 302-652-3131
Facsimile: 302-652-3117

*Counsel to the Debtor
and Debtor in Possession*

PROPOSED ORDER

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

	:	
In re:	:	Chapter 11
	:	
FRESH & EASY, LLC, ¹	:	Case No. 15-12220 (BLS)
	:	
Debtor.	:	Related to Docket No. ____
	:	

**ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE,
(I) AUTHORIZING THE SALE OF LIQUOR LICENSES TO 99 CENTS ONLY
STORES, LLC; (II) APPROVING THE TERMS OF THE PURCHASE AGREEMENT;
AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an order, pursuant to 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (i) authorizing the sale of Liquor Licenses to 99 Cents Only Stores, LLC; (ii) approving the terms of the Purchase Agreement attached hereto as Exhibit A; and (iii) granting related relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that venue of this Chapter 11 Case and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8906. The Debtor’s mailing address is 20101 Hamilton Avenue, Suite 350, Torrance, CA 90502.

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

Motion is in the best interests of the Debtor, its estate, creditors and other parties in interest; and this Court having found that the relief requested in the Motion is justified by the facts and circumstances; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Debtor has demonstrated good, sufficient, and sound business purposes and justifications for the relief requested in the Motion. The Debtor's entry into the Purchase Agreement (i) is the result of due deliberation and constitutes a sound and reasonable exercise of the Debtor's business judgment consistent with fiduciary duties, (ii) provides a value to and is beneficial to the Debtor's estate, and is in the best interest of the Debtor, its estate and creditors, and (iii) is reasonable and appropriate under the circumstances.

B. Under the facts and circumstances of this Chapter 11 Case, the Purchase Price is fair and reasonable, and represents the highest and best offer for the 18 Liquor Licenses. The Purchase Price constitutes reasonably equivalent value.

C. The Debtor is authorized to sell the 18 Liquor Licenses free and clear of all liens, claims, interests, and encumbrances of any kind or nature whatsoever, because one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of liens, claims, interests, and encumbrances who did not object to the Motion or the relief requested therein, or who interposed and then withdrew their objections, are deemed to have consented to the Purchase Agreement pursuant to section 363(f)(2) of the Bankruptcy Code.

NOW THEREFOR, IT IS HEREBY ORDERED THAT:

1. The Motion is granted to the extent set forth herein.

2. The Purchase Agreement and all terms and conditions thereof are hereby approved.

3. Pursuant to section 363 of the Bankruptcy Code, the Debtor is authorized to sell assign, transfer, convey and deliver to 99 Cents Only Stores, LLC all of the Debtor's interest in the 18 Liquor Licenses (as defined in Exhibit 1 to the Purchase Agreement) for the sum of One Hundred Twenty-Five Thousand Five Hundred Dollars and No Cents (\$125,500).

4. The 18 Liquor Licenses are sold free and clear of all liens, claims, encumbrances and other interests, pursuant to section 363(f) of the Bankruptcy Code.

5. The sale of the 18 Liquor Licenses by private sale to the Purchaser is hereby authorized pursuant to Bankruptcy Rule 6004(f)(1) and no other or further marketing process for the 18 Liquor Licenses is required.

6. The Court finds that Purchaser is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code and the sale of the property is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

7. The transfer of the Debtor's interest in the 18 Liquor Licenses as provided in the Purchase Agreement is "AS IS," "WHERE IS," and "WITH ALL FAULTS," and without any representations or warranties of any kind from the Debtor.

8. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006 or 7062 or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14-day stay provided in Bankruptcy Rule 6004(h) is hereby expressly waived and shall not apply.

9. This Order shall be binding upon, and inure to the benefit of, the Debtor and Purchaser and their respective heirs, legal representatives, and permitted successors and assigns,

including any liquidating trust created or trustees appointed in any proceedings under chapter 7 or chapter 11 of the Bankruptcy Code relating to the Debtor.

10. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the transaction or this Order.

Dated: _____, 2016

Brendan Linehan Shannon
Chief United States Bankruptcy Judge

Exhibit A

Purchase Agreement

PURCHASE AGREEMENT

This PURCHASE AGREEMENT, dated as of _____, 2016, is executed and delivered by the undersigned Fresh & Easy, LLC (the "Seller"), in favor of 99 Cents Only Stores, LLC (the "Purchaser"), and together with the Seller, the "Parties").

WHEREAS, on October 30, 2015, Seller filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

WHEREAS, Seller holds the rights to liquor licenses issued by the State of California Department of Alcoholic Beverage Control (the "Liquor License Department" or "ABC") as described on Exhibit 1 hereto (the "Purchased Assets" or "Liquor Licenses").

WHEREAS, Seller desires to sell and transfer, and the Purchaser desires to purchase and acquire, the Liquor Licenses upon the terms and conditions hereinafter set forth.

WHEREAS, it is the Purchaser's intent to make application to obtain the requisite approvals from the Liquor License Department and any applicable local authorities in order to effectuate a transfer of the Liquor Licenses.

WHEREAS, Seller and Purchaser agree that the proposed transaction is the product of a good faith arm's-length negotiations between Seller and Purchaser.

WHEREAS, Purchaser shall take title to the Purchased Assets free and clear of all liens, claims, encumbrances and other interests, pursuant to section 363(f) of the United States Bankruptcy Code.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Description of Assets. The assets included in this Purchase Agreement consist only of the Purchased Assets.
2. Sale and Assignment of Assets. In consideration of the sum of One Hundred Twenty-Five Thousand Five Hundred Dollars and No Cents (\$125,500) (the "Purchase Price"), to be delivered to the Liquor License Escrow Holder (defined below) in an initial deposit of Ninety Thousand Dollars and No Cents (\$90,000) within two (2) business days following the Court's entry of an Order approving the sale, and with the final balance of Thirty-Five Thousand Five Hundred Dollars and No Cents (\$35,500) due 45 business days following the Court's entry of the Order approving the sale. Within ten (10) business days following the Court's entry of an Order approving the sale, Seller hereby sells, assigns, transfers, conveys and delivers to Purchaser all of Seller's rights, title and interests in and to the Purchased Assets.
3. Liquor License Escrow. Following execution of this Purchase Agreement and the Court's entry of an Order approving the sale, Seller shall place the Liquor Licenses into escrow with a liquor license escrow holder (the "Liquor License Escrow Holder") to be mutually agreed upon by the Seller and Purchaser, which escrow may be evidenced by an escrow agreement

executed by the Seller, Purchaser, and such Liquor License Escrow Holder. Promptly following the opening of escrow with the Liquor License Escrow Holder, Purchaser shall arrange for Liquor License Escrow Holder to record notice of the proposed transfers with the applicable county recorder's office and, following the expiration of the requisite notice period(s), complete the applications for the transfer of the Liquor Licenses and provide all application documents necessary to effectuate the transfers to Seller for execution. The Parties anticipate that such applications shall be submitted to the Liquor License Department(s) within thirty (30) days following the opening of escrow with the Liquor License Escrow Holder, and agree to take all commercially reasonable steps required of them to insure such applications are made before such time. The Seller and Purchaser both agree that "time is of the essence" with respect to the taking of all of the foregoing actions. As noted below, Seller shall not be responsible for any of Purchaser's costs relating to or arising out of the license transfers, applications, management agreements or issuance of new Liquor Licenses and temporary or interim licenses or permits by the Liquor License Department. Upon approval of each transfer of a Liquor License by the Liquor License Department, that portion of the Purchase Price attributable to such Liquor License (as set forth in Exhibit 1 hereto) shall be paid by the Liquor License Escrow Holder to Seller or its designated assignee via wire transfer of immediately available funds to an account designated by Seller and Seller shall convey the applicable Liquor License to Purchaser as of such date. Upon disapproval of the transfer of a Liquor License by the Liquor License Department, that portion of the Purchase Price attributable to the individual Liquor License (as set forth on Exhibit 1 hereto) shall be refunded by the Liquor License Escrow Holder to Purchaser via wire transfer of immediately available funds to an account designated by Purchaser.

4. Fees and Costs. In addition to the Purchase Price, the Purchaser shall be responsible for all aspects of the transfer of the Liquor License, including preparation and submission of any and all applications and documentation, satisfaction of any and all regulatory requirements, including obtaining all applicable governmental authority consents or approvals to the sale and transfer of the Liquor License, payment of all filing fees, application fees (including application, transfer, annual renewal and similar fees imposed by the ABC), publication fees, Purchaser's attorney fees, broker fees, regulatory fees and other fees and costs associated with the transfer of the Liquor License. For the avoidance of doubt, any fees or costs paid to or for the benefit of the Liquor License Escrow Holder by Seller under the escrow agreement executed by the Parties shall be reimbursed to Seller by Purchaser, notwithstanding any provision of such escrow agreement.

5. Terms of Transaction. Seller makes no representations or warranties whatsoever express or implied, with respect to any matter relating to the Purchased Assets or whether such assets are currently in good standing, including income to be derived or expenses to be incurred in connection with the Purchased Assets, the condition of any tangible Purchased Assets, the value of the Purchased Assets (or any portion thereof), the transferability of the Purchased Assets (or any portion thereof), the merchantability or fitness of the Purchased Assets (or any portion thereof) for any particular purpose, the location or existences of the Purchased Assets, or any other matter or thing relating to the Purchased Assets. Without in any way limiting the forgoing, SELLER HEREBY DISCLAIMS ANY WARRANTY (EXPRESS OR IMPLIED) OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO THE PURCHASED ASSETS. On or prior to the date of the transfer of the Purchased Assets, the

Purchaser has conducted an independent inspection and investigation of the good standing of the Purchased Assets under applicable law and whether such Purchased Assets may be assigned or transferred by Seller to Purchaser and all such other matters relating to or affecting or comprising the Purchased Assets and all such other matters relating to or affecting or comprising the Purchased Assets as Purchaser deemed necessary or appropriate and that in proceeding with the contemplated sale of the Purchased Assets, Purchaser is doing so based solely upon such independent investigations. Accordingly, Purchaser accepts the Purchased Assets "AS IS," "WHERE IS," and "WITH ALL FAULTS" and without representation, warranty or guarantee that such Purchased Assets are in good standing under applicable law or may be assigned or transferred pursuant to applicable law.

6. Failure of Transaction. Nothing contained in this Purchase Agreement shall be deemed to be a representation on the part of Seller that the ABC will approve the transfers of the Liquor Licenses to Purchaser, or that new, interim or temporary licenses or permits will be issued to Purchaser or that Purchaser is qualified to hold a liquor license(s) in the State of California or any applicable licensing jurisdiction therein, or that Purchaser's applications will be approved by the ABC. In the event the Purchaser fails to obtain approval of the transfers by the ABC, for any Liquor License identified on Exhibit 1 hereto, the Liquor License Escrow Holder shall return that portion of the Purchase Price attributable to such Liquor License for which transfer was not approved (such amount as set forth on Exhibit 1 hereto), to Purchaser as set forth herein, but Seller shall retain all applicable remedies at law and in equity against Purchaser in the event the transfer was not approved because of the fault of Purchaser.

7. Binding on Successors and Assigns. This Purchase Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective heirs, legal representatives, and permitted successors and assigns, including any liquidating trust created or trustees appointed in any proceedings under chapter 7 or chapter 11 of the Bankruptcy Code relating to the Seller.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Seller and Purchaser have caused this Purchase Agreement to be executed as of the date first written above.

SELLER:

Fresh & Easy, LLC

By: _____
Amir Agam
Chief Restructuring Officer

PURCHASER:

99 Cents Only Store, LLC

By: _____
Name:
Title:

EXHIBIT 1

Description of the Purchased Assets

Fresh & Easy, LLC
 Asset Listing - Type 20 California Beer & Wine Liquor Licenses

Store #	Address 1	Address 2	City	State	Zip	License #	County	Asset Description	Purchase Price
1254	2047 W SHAW AVE		FRESNO	CA	93711	539614	Fresno	Type 20 Beer & Wine Liquor License	\$ 7,500
1268	1725 HERNDON AVE		CLOVIS	CA	93611	539707	Fresno	Type 20 Beer & Wine Liquor License	7,500
1157	8059 N CEDAR AVE		FRESNO	CA	93720	539618	Fresno	Type 20 Beer & Wine Liquor License	7,500
1098	11100 OLIVE DR	STE A	BAKERSFIELD	CA	93312	539647	Kern	Type 20 Beer & Wine Liquor License	12,000
1287	5190 STOCKDALE HWY		BAKERSFIELD	CA	93309	539656	Kern	Type 20 Beer & Wine Liquor License	12,000
1343	22475 EL TORO ROAD		LAKE FOREST	CA	92630	539668	Orange	Type 20 Beer & Wine Liquor License	4,000
1116	44060 MARGARITA RD		TEMECULA	CA	92592	539754	Riverside	Type 20 Beer & Wine Liquor License	5,000
1038	2211 W ESPLANADE AVE		SAN JACINTO	CA	92583	539731	Riverside	Type 20 Beer & Wine Liquor License	5,000
1167	1215 E ONTARIO AVE		CORONA	CA	92881	539714	Riverside	Type 20 Beer & Wine Liquor License	5,000
1149	30025 DATE PALM DR		CATHEDRAL CITY	CA	92234	539690	Riverside	Type 20 Beer & Wine Liquor License	5,000
1238	1126 CALIMESA BLVD		CALIMESA	CA	92320	539681	Riverside	Type 20 Beer & Wine Liquor License	5,000
1155	8082 LIMONITE AVE		JURUPA VALLEY	CA	92509	539652	Riverside	Type 20 Beer & Wine Liquor License	5,000
1065	33441 YUCAIPA BLVD		YUCAIPA	CA	92399	539778	San Bernardino	Type 20 Beer & Wine Liquor License	5,000
1396	12188 FOOTHILL BLVD		RANCHO CUCAMONGA	CA	91730	539683	San Bernardino	Type 20 Beer & Wine Liquor License	5,000
1449	2238 BROAD ST		SAN LUIS OBISPO	CA	93401	539737	San Luis Obispo	Type 20 Beer & Wine Liquor License	15,000
1265	4869 S BRADLEY RD	#126	ORCUTT	CA	93455	539644	Santa Barbara	Type 20 Beer & Wine Liquor License	14,000
1364	4150 N 1ST ST		SAN JOSE	CA	95134	539734	Santa Clara	Type 20 Beer & Wine Liquor License	4,000
1387	2249 LAS POSAS RD		CAMARILLO	CA	93010	539686	Ventura	Type 20 Beer & Wine Liquor License	2,000
Total									\$ 125,500