

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:	:
	: Chapter 11
THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., et al.,	:
	: Case No. 15-23007 (RDD)
	:
Debtors.¹	: (Jointly Administered)
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**STIPULATION, AGREEMENT, AND ORDER BETWEEN
THE DEBTORS AND THE NEW YORK STATE WORKERS’ COMPENSATION
BOARD RESOLVING CLAIM DISPUTE AND ESTABLISHING CLAIM AMOUNT**

This stipulation, agreement, and order (the “**Stipulation, Agreement, and Order**”) is entered into by and among Pathmark Stores, Inc. (“**Pathmark**”), Shopwell, Inc. (“**Shopwell**”), Waldbaum, Inc. (“**Waldbaum**”) and The Great Atlantic & Pacific Tea Company, Inc. (“**A&P**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (**Pathmark, Shopwell, Waldbaum and A&P** are collectively referred to herein as the “**Debtors**”), and the New York State Workers’ Compensation Board (the “**Claimant**” and, collectively with the Debtors, the “**Parties**”). The Parties hereby stipulate and agree as follows:

RECITALS

A. On July 19, 2015, the Debtors commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). The

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: 2008 Broadway, Inc. (0986); The Great Atlantic & Pacific Tea Company, Inc. (0974); A&P Live Better, LLC (0799); A&P Real Property, LLC (0973); APW Supermarket Corporation (7132); APW Supermarkets, Inc. (9509); Borman’s, Inc. (9761); Delaware County Dairies, Inc. (7090); Food Basics, Inc. (1210); Kwik Save Inc. (8636); McLean Avenue Plaza Corp. (5227); Montvale Holdings, Inc. (6664); Montvale-Para Holdings, Inc. (2947); Onpoint, Inc. (6589); Pathmark Stores, Inc. (9612); Plainbridge LLC (5965); Shopwell, Inc. (3304); Super Fresh Food Markets, Inc. (2491); The Old Wine Emporium of Westport, Inc. (0724); Tradewell Foods of Conn., Inc. (5748); and Waldbaum, Inc. (8599). The international subsidiaries of The Great Atlantic & Pacific Tea Company, Inc. are not debtors in these chapter 11 cases. The location of the Debtors’ corporate headquarters is 800 D Lake Street, Ramsay, New Jersey 07446.

Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Prior to the filing of the instant action, the Debtors were self-insured, pursuant New York State Workers' Compensation Law § 50(3), in New York State relative to their respective obligations to provide workers' compensation coverage for their employees. More specifically, Pathmark was self-insured from October 26, 1993 through April 30, 2000 (as Supermarkets General Holdings Corporation) and again from February 1, 2015 through October 5, 2015; Shopwell as self-insured from January 1, 1978 through October 5, 2015; Waldbaum's was self-insured from April 30, 1978 through April 30, 1981 and again from February 1, 1989 through October 5, 2015, on a consolidated basis with A&P; and A&P was self-insured from January 15, 1978 through October 5, 2015. The periods of self-insurance for Shopwell, Pathmark, Waldbaum and A&P are collectively referred to as the "**Self Insurance Periods**".

C. On January 19, 2016, the Claimant filed the following administrative expense claims (collectively, the "**Administrative Claims**") based upon alleged postpetition obligations of the Debtors arising under their workers' compensation programs in New York:

(i) proof of claim number 8782 in the amount of \$1,659,883.00 against Pathmark Stores, Inc.;

(ii) proof of claim number 8787 in the amount of \$1,959,204.00 against The Great Atlantic & Pacific Tea Company, Inc.; and

(iii) proof of claim number 8789 in the amount of \$290,935.00 against Shopwell, Inc.

D. On January 19, 2016, the Claimant also filed the following prepetition claims (the "**Prepetition Claims**" and together with the Administrative Claims, the "**Claims**") based upon alleged prepetition obligations of the Debtors arising under their workers' compensation programs in New York:

(i) proof of claim number 8626 in the amount of \$13,971,164.00 against Waldbaum, Inc.;

(ii) proof of claim number 8634 in the amount of \$113,941,389.00 against The Great Atlantic & Pacific Tea Company, Inc., which claim included a \$60,192,645.00 portion asserted on a priority basis pursuant to section 507(a)(8) of the Bankruptcy Code;

(iii) proof of claim number 8796 in the amount of \$21,523,770.00 against Shopwell, Inc., which claim included a \$12,689,804.00 portion asserted on a priority basis pursuant to section 507(a)(8) of the Bankruptcy Code; and

(iv) proof of claim number 8806 in the amount of \$72,760,278.00 against Pathmark Stores, Inc, which claim included a \$39,020,589.00 portion asserted on a priority basis pursuant to section 507(a)(8) of the Bankruptcy Code (such portion, together with the priority portions of proofs of claim numbers 8634 and 8796, the “**Priority Claims**”).

E. On March 22, 2016, the Court entered the *Order Pursuant to 11 U.S.C. §105(a), Fed. R. Bankr. P. 3007, 9014, and 9019(b) Approving (I) Claims Objection Procedures, (II) Claims Settlement Procedures, and (III) Claims Hearing Procedures* [ECF No. 2613].

F. The Parties have consensually resolved the Claims on the terms and conditions set forth herein.

NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY STIPULATED AND AGREED, BY AND BETWEEN THE PARTIES, AND UPON BANKRUPTCY COURT APPROVAL, SHALL BE ORDERED THAT:

AGREEMENT

1. Upon approval this Stipulation, Agreement, and Order by the Bankruptcy Court (the “**Effective Date**”), (a) the Administrative Claims shall be allowed as administrative expense claims pursuant to section 503(b)(1) of the Bankruptcy Code in the total aggregate amount of \$400,000.00 against A&P, (b) all Priority Claims shall be reclassified as prepetition, general unsecured, non-priority claims, and each of the Prepetition Claims shall be allowed as a

prepetition, general unsecured, non-priority claim in its filed amount (inclusive of any reclassified amounts).

2. Within one (1) business day following the Effective Date, A&P shall make a payment of \$400,000 to the Claimant on account of the Administrative Claims in full and final satisfaction of the Administrative Claims (the date of such payment, the “**Payment Date**”).

3. Upon the Payment Date, Claimant shall assume sole responsibility for the administration, payment and settlement of all workers’ compensation claims relating to the Debtors which arise in New York State and are attributable to the Self Insurance Periods for Pathmark, Shopwell, Waldbaum and A&P, respectively, whether or not currently filed and/or established.

4. Upon the Payment Date, the Claimant, on behalf of itself and any person or entity claiming under or through the Claimant (the “**Claimant Releasing Parties**”), fully and forever releases, discharges, and acquits the Debtors and their respective present and past estates, predecessors, successors, assigns, parents, subsidiaries, affiliates, members, officers, directors, employees, investors, representatives, attorneys, advisors, and agents (collectively, the “**Debtor Released Parties**”) from all manners of action, claims, causes of action, suits, debts, liabilities, damages, losses, expenses, demands, and rights of every nature and description, whether known or unknown, matured or unmatured, liquidated or unliquidated, certain or contingent, whether direct, derivative, individual, or representative, or in any other capacity, arising under federal, state, local, or foreign statutory or common law, including the New York Workers Compensation Law (“**WCL**”) or any other law, rule, or regulation, that the Claimant Releasing Parties ever had or claimed to have, now has or claims to have, or could have against the Debtor Released Parties, whether known or unknown, from the beginning of time to the Effective Date; provided that the

foregoing release, discharge and acquittal is expressly limited to claims which were or could have been asserted in the Debtors' instant bankruptcy case and further provided that the foregoing release, discharge and acquittal expressly does not release (i) the Prepetition Claims; (ii) the obligations of the Debtors arising under this Stipulation, Agreement, and Order, including the payment obligation set forth in Paragraph 2; or (iii) the rights to enforce this Stipulation, Agreement, and Order.

5. Upon the occurrence of the Payment Date, each of the Debtors, on behalf of itself and any person or entity claiming under or through the Debtors (the "**Debtor Releasing Parties**"), fully and forever releases, discharges, and acquits the Claimant and its present and past officers, directors, employees, representatives, attorneys, advisors, and agents (collectively, the "**Claimant Released Parties**") from all manners of action, claims, causes of action, suits, debts, liabilities, damages, losses, expenses, demands, and rights of every nature and description, whether known or unknown, matured or unmatured, liquidated or unliquidated, certain or contingent, whether direct, derivative, individual, or representative, or in any other capacity, arising under federal, state, local, or foreign statutory or common law, including under the WCL or any other law, rule, or regulation, that each of the Debtor Releasing Parties ever had or claimed to have, now has or claims to have, or could have against the Claimant Released Parties, whether known or unknown, from the beginning of time to the Effective Date; provided that the foregoing releases do not release the obligations of the Claimant arising under this Stipulation, Agreement, and Order and the rights to enforce this Stipulation, Agreement, and Order.

6. This Stipulation, Agreement, and Order may not be modified, amended, or vacated other than by a signed writing executed by the Parties.

7. Each person who executes the Stipulation, Agreement, and Order on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation, Agreement, and Order on behalf of such Party.

8. This Stipulation, Agreement, and Order may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Evidence of execution of this Stipulation, Agreement, and Order may be exchanged by facsimile or by electronic transmission of a scanned copy of the signature pages or by exchange of originally signed document, each of which shall be as fully binding on the party as a signed original.

9. This Stipulation, Agreement, and Order shall be effective upon approval by the Bankruptcy Court. In the event this Stipulation, Agreement, and Order is not approved by the Bankruptcy Court, the terms of this Stipulation, Agreement, and Order, other than this paragraph, shall be null and void and shall not be binding on any of the Parties, and nothing contained herein is or shall be deemed an admission of any kind.

10. The Parties irrevocably and unconditionally agree that the Bankruptcy Court shall retain exclusive jurisdiction to interpret, implement, and enforce the provisions of this Stipulation, Agreement, and Order.

Dated: April 24, 2017

Dated: April 24, 2017

By: /s/ Michael Papa
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*Attorneys for Debtors
and Debtors in Possession*

SO ORDERED THIS
2nd DAY OF MAY, 2017

/s/Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE