

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

In re:

PUMPKIN PATCH LLC,¹

Debtor.

)
) Chapter 11

)
) Case No. 09-12200 (BLS)

**DEBTOR’S MOTION FOR INTERIM ORDER UNDER
11 U.S.C. §§ 105(a), 345, 363, 364, AND 503(b)(1) AUTHORIZING
(A) CONTINUED MAINTENANCE OF EXISTING BANK ACCOUNTS,
(B) CONTINUED USE OF EXISTING BUSINESS FORMS,
(C) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM
(D) WAIVER OF CERTAIN GUIDELINES RELATING TO BANK ACCOUNTS; (E)
AUTHORIZING INTERCOMPANY TRANSACTIONS; AND (F) SCHEDULING A
FINAL HEARING**

Pumpkin Patch LLC (the “Debtor”) files this motion (the “Motion”) for entry of an interim order and a final order, under sections 105(a), 345, 363, 364, and 503(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”) authorizing, but not directing (a) continued maintenance of existing bank accounts, (b) continued use of existing business forms, (c) continued use of existing cash management system, (d) a waiver of certain operating guidelines relating to bank accounts, (e) authorizing intercompany transfers, and (f) scheduling a final hearing, to be held on or before the day that is thirty (30) days after the filing of the Debtor’s chapter 11 petition. In support of the Motion, the Debtor relies upon and incorporates by reference the declaration filed in support of the Debtor’s chapter 11 petition and various first day applications and motions (the “Declaration”), filed with the Court concurrently herewith. In

¹ The last four digits of Pumpkin Patch LLC’s federal tax identification number are 4007. The mailing address for Pumpkin Patch LLC is 951 Mariners Island Boulevard, Suite 650, San Mateo, CA 94404.

further support of the Motion, the Debtor, by and through its undersigned counsel, respectfully represent:

JURISDICTION

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 345, 363, 364, and 503(b)(1).

BACKGROUND

2. On the date of this Motion (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The factual background regarding the Debtor, including its business operations, its capital and debt structure, and the events leading to the filing of this bankruptcy case, is set forth in detail in the Declaration, filed concurrently herewith and fully incorporated herein by reference.²

3. The Debtor continues to operate its business and manages its properties as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108.

RELIEF REQUESTED

4. By this Motion, the Debtor seeks an order, under Bankruptcy Code sections 105(a), 345, 363, 364, and 503(b)(1), authorizing, but not directing, (a) continued maintenance of existing bank accounts, (b) continued use of existing business forms, (c) continued use of existing cash management system, (d) waiving certain operating guidelines relating to bank accounts set forth in the U.S. Department of Justice, Office of the United States Trustee: Operating Guidelines for Chapter 11 Cases (the "U.S. Trustee Guidelines"), adopted by

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

the United States Trustee for the District of Delaware (the “U.S. Trustee”), (e) authorizing intercompany transfers, and (f) scheduling a final hearing on the relief requested by this Motion.

BASIS FOR RELIEF

A. The Debtor Should Be Granted Authority To Maintain Its Existing Bank Accounts

5. The U.S. Trustee has established the U.S. Trustee Guidelines for debtors in possession in order to supervise the administration of chapter 11 cases. These U.S. Trustee Guidelines require chapter 11 debtors to, among other obligations, (a) close all existing bank accounts and open new debtor in possession bank accounts; (b) establish one debtor in possession account for all estate monies required for the payment of taxes including payroll taxes; (c) maintain a separate debtor in possession account for cash collateral; and (d) obtain checks for all debtor in possession accounts which bear the designation “Debtor-in-Possession.” The last requirement is designed to draw a clear line of demarcation between prepetition and postpetition transactions and operations and prevent the inadvertent postpetition payment of prepetition claims. Under Bankruptcy Code sections 105(a) and 363, the Debtor seeks a waiver of these requirements and authorization to continue using its existing bank accounts.

6. Prior to the commencement of this chapter 11 case, in the ordinary course of its business, the Debtor maintained approximately three (3) accounts out of which it manages cash receipts and disbursements (the “Bank Accounts”). The Bank Accounts are set forth on Exhibit A.

7. The Debtor believes that all of the Bank Accounts are in financially stable banking institutions insured by the Federal Deposit Insurance Corporation (“FDIC”) or the Federal Savings and Loan Insurance Corporation (“FSLIC”), up to an applicable limit per financial institution.

8. The Debtor seeks a waiver of the requirement in the U.S. Trustee Guidelines that the prepetition Bank Accounts be closed and that new postpetition bank accounts be opened. If enforced in this case, such requirements would cause enormous disruption to the Debtor's business and would impair the Debtor's efforts to reorganize and pursue other alternatives to maximize the value of its estate. Indeed, as explained in more detail below, the Bank Accounts comprise an established cash management system that the Debtor needs to maintain in order to ensure smooth collections and disbursements in the ordinary course.

9. Accordingly, in order to avoid delays in payments to administrative creditors, to ensure as smooth a transition into chapter 11 as possible with minimal disruption, and to aid in the Debtor's efforts to complete these cases successfully and rapidly, the Debtor must be permitted to (a) continue to maintain its existing Bank Accounts, (b) if necessary, open new accounts (and give the U.S. Trustee notice of such newly opened accounts), wherever they are needed, whether or not such banks are designated depositories in the District of Delaware; provided, however, that any new bank account shall be with a bank that is insured by the FDIC or the FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective bank and (c) treat the Bank Accounts and any such newly opened accounts for all purposes as accounts of the Debtor in its capacity as debtor-in-possession.

10. Courts have recognized that a bankruptcy court has the discretion to allow the continued use of existing pre-petition bank accounts and that the strict enforcement of bank account closing requirements does not serve the rehabilitative purposes of chapter 11 in cases of this size and nature. See In re Grant Broad., Inc., 75 B.R. 819, 820 (E.D. Pa. 1987) (referring to order authorizing use of cash collateral and pre-petition bank accounts); In re New York City

Shoes, Inc., 78 B.R. 426, 427 (Bankr. E.D. Pa. 1987) (debtor depositing post-petition funds into pre-petition bank accounts). Because of the severe disruption to the Debtor's cash management system and, by extension, the Debtor's business, that would result if the Debtor was forced to open new accounts, the Debtor believes it is important that this Court grant its request for maintaining the Bank Accounts.

11. In sum, subject to a prohibition against honoring prepetition checks without specific authorization from this Court, the Debtor requests that the Bank Accounts be deemed to be debtor-in-possession accounts and that their maintenance and continued use, in the same manner and with the same account numbers, styles and document forms as those employed during the prepetition period, be authorized.

12. The Debtor also seeks a waiver of the requirement to establish specific bank accounts for tax payments. The Debtor believes that it can pay its tax obligations most efficiently out of its existing Bank Accounts, that the U.S. Trustee can adequately monitor the flow of funds into, among, and out of such accounts, and that the creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessary and inefficient.

13. The Debtor represents that if the relief requested in this Motion is granted, it will not pay, and each of the banks (the "Banks") at which the Bank Accounts are maintained will be directed not to pay, any debts incurred before the Petition Date, other than as authorized by this Court.

B. The Debtor Should Be Granted Authority To Continue To Use Existing Business Forms And Checks

14. In order to minimize expenses to its estate, the Debtor also seeks authorization to continue using all correspondence, business forms (including, but not limited to, letterhead,

purchase orders and invoices) and checks existing immediately prior to the Petition Date, without reference to the Debtor's status as debtor in possession.

15. Most parties doing business with the Debtor undoubtedly will be aware of the Debtor's status as debtor in possession as each of the Debtor's vendors and creditors will receive direct notice of the commencement of this case.

16. Changing correspondence and business forms would be expensive, unnecessary and burdensome to the Debtor's estate and disruptive to the Debtor's business operations and would not confer any benefit upon those dealing with the Debtor. For these reasons, the Debtor requests that it be authorized to use existing checks and business forms without being required to place the label "Debtor-In-Possession" on each. However, in the event that the Debtor needs to purchase new check stock or any other business forms during the pendency of these chapter 11 cases, such check stock or other business forms will include a legend referring to the Debtor as "Debtor in Possession" or "DIP".

C. The Debtor Should Be Authorized To Continue To Use The Existing Cash Management System

17. The cash management procedures utilized by the Debtor constitutes ordinary, usual and essential business practices and are similar to those used by other major corporate retail enterprises. The cash management system facilitates cash forecasting and reporting, monitors collection and disbursement of funds, reduces administrative expenses by facilitating the movement of funds and the development of more timely and accurate balance and presentment information and administers the various bank accounts required to effect the collection, disbursement and movement of cash. The movement of funds through the Debtor's cash management system is described further below.

18. Twice each week, the store cash receipts from the Debtor's retail stores are collected and deposited into a Wells Fargo Bank, N.A. (the "Wells Fargo Account") held in the name of "Pumpkin Patch LLC". With respect to credit card sales receipts, the respective credit card services transfer the store receipts directly into the Wells Fargo Account. The Wells Fargo Account exclusively is used for the deposit of retail store receipts. No disbursements are made from the Wells Fargo Account.

19. Each week, an electronic wire transfer is approved by the Debtor which transfers fund from the Wells Fargo Account to a Wachovia Bank, N.A. (the "Wachovia Account"). All local disbursements for regional creditors of the Debtor's retail stores are made from the Wachovia Account. Disbursements to trade creditors are made on a weekly basis from the Wachovia Account and effectuated through either electronic wire transfer or company check. Employee payroll is disbursed on a bi-weekly basis from the Wachovia Account.

20. The Debtor generally maintains approximately \$21,000.00 in petty cash throughout its organization (the "Petty Cash"). This Petty Cash consists of cash boxes held at the Debtor's store locations. Receipts are retained when purchases are made with cash from the Petty Cash, and such receipts are then sent to the Debtor's corporate offices when replenishment is required. The Debtor's corporate-level employees review the receipts for proper authorization and issue a check to the applicable store location for replenishment of the applicable Petty Cash Account.

21. The Debtor also maintains a purchase card issued by American Express (the "Purchase Card"). The Purchase Card does not have a credit limit, but is unsecured and only used for small purchases from vendors that do not extend credit. The Debtor's accounts payable manager controls the Purchase Card and any use of the Purchase Card requires pre-approval.

22. Employees are reimbursed for business expenses by submitting a monthly expense report, which is reviewed to ensure all expenses are authorized and then processed through the accounts payable Disbursement Account.

23. The Debtor's cash management system is highly automated and computerized. This allows the Debtor to manage centrally all of its cash flow needs and includes the necessary accounting controls to enable the Debtor, as well as creditors and the Court, to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable. The Debtor will continue to maintain detailed records reflecting all transfers of funds.

24. The cash management procedures that the Debtor uses constitute ordinary, usual and essential business practices and are similar to those used by other major corporate enterprises. The cash management system benefits the Debtor in significant ways, including the ability to (a) control corporate funds centrally, (b) ensure availability of funds when necessary, and (c) reduce administrative expenses by facilitating the movement of funds and the development of more timely and accurate balance and presentment information.

25. In furtherance of this goal, the Debtor requests that all Banks at which the Bank Accounts are maintained be authorized and directed to continue to administer the Bank Accounts as such accounts were maintained prepetition, without interruption and in the usual and ordinary course, and to pay any and all checks, drafts, wires or automated clearing house transfers ("ACH Transfers") issued or drawn on the Bank Accounts on account of a claim arising on or after the Petition Date, so long as sufficient funds are in the Bank Accounts.

26. The Debtor further requests that the Banks be restrained from honoring any check, draft, wire or ACH Transfer presented, issued or drawn on the Bank Accounts on account

of a prepetition claim unless (a) authorized by an order of this Court, (b) not otherwise prohibited by a “stop payment” request received by the Banks from the Debtor and (c) supported by sufficient funds in the Bank Account in question.

27. Concurrently with the filing of this Motion, the Debtor has filed motions requesting authority to pay, in its sole discretion and in the ordinary course of its business, certain prepetition obligations to customers, employees, essential shippers and warehousemen, taxing authorities and other entities. With respect to some of this debt, prior to the Petition Date, the Debtor issued checks that have yet to clear the banking system. In other cases, the Debtor would issue the relevant checks postpetition on account of such prepetition debt once the Court entered an order permitting the Debtor to do so. The Debtor intends to inform the Banks which prepetition checks should be honored pursuant to orders of the Court authorizing such payment.

28. Therefore, the Debtor requests that the Banks be authorized to accept and honor all representations from the Debtor as to which checks, drafts, wires or ACH transfers should be honored or dishonored consistent with any order(s) of this Court and governing law, whether such checks, drafts, wires or ACH transfers are dated prior to, on or subsequent to the Petition Date. To the extent that the Debtor directs that any prepetition checks, drafts, wires or ACH Transfers be dishonored, the Debtor may issue replacement checks, drafts, wires or ACH Transfers to pay the amounts related to such dishonored checks, drafts, wires or ACH Transfers consistent with the orders of this Court.

29. To effectuate the foregoing, the Debtor requests that each Bank that maintains a Disbursement Account shall implement reasonable handling procedures designed to effectuate the terms of any order granting this motion. Pursuant to the relief requested in this Motion, no Bank that implements such handling procedures and then honors a prepetition check, draft, wire,

ACH transfer (excluding any ACH Transfer that the Banks are obligated to settle) or other item presented, issued or drawn on any Bank Account that is the subject of this Order (a) at the direction of the Debtor to honor such prepetition check, draft, ACH transfer or other item, (b) in good-faith belief that the Court has authorized such prepetition check, draft, wire, ACH transfer or other item to be honored or (c) as a result of an innocent mistake made despite implementation of such handling procedures, shall be deemed to be liable to the Debtor or its estate or otherwise in violation of this Order. Such relief is reasonable and appropriate because the Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with the Court's order or otherwise.

30. In addition, the Debtor requests that it be authorized, but not directed, to implement reasonable changes to the Debtor's cash management system, including, but not limited to, the opening of any additional bank accounts or closing of any Bank Account(s) as it may deem necessary and appropriate, and the Banks are authorized to honor the Debtor's request to open or close, as the case may be, such bank accounts; provided, however, that any new account shall be with a Bank that is insured by the FDIC or the FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective Bank.

31. Although not strictly part of its cash management system, the Debtor is a party to certain agreements with credit card companies and processors (collectively, the "Credit Card Companies"), under which the Debtor is able to accept credit card payments, subject to certain adjustments, returns, promotional fees and refunds. As noted above, approximately 55% of the Debtor's sales are purchased with credit cards and the Debtor's continued ability to honor and process credit card transactions is essential to the Debtor's reorganization efforts. Without the

ability to accept credit cards, the Debtor would lose a major avenue for conducting sales transactions in the ordinary course of its operations. Under the terms of its agreements with the Credit Card Companies, the Debtor is required to pay the Credit Card Companies fees for their services, certain amounts of which may have accrued but remain unpaid as of the Petition Date.

32. Finally, the Debtor requests authority for the Banks and Credit Card Companies to charge, and the Debtor to pay or honor, both prepetition and postpetition service and other fees, costs, charges and expenses to which the Banks and the Credit Card Companies may be entitled under the terms of and in accordance with their contractual arrangements with the Debtor (collectively, the “Financial Fees”), including, without limitation, charge backs and amounts related to promotional fees, returns and exchanges (whether such items are dated prior to, on or subsequent to the Petition Date).³

33. The operation of the Debtor’s business requires that the cash management system continue during the pendency of this chapter 11 case. Requiring the Debtor to adopt new, segmented cash management systems at this early and critical stage of this case would be expensive, would create unnecessary administrative problems and would likely be much more disruptive than productive. Any such disruption could have an adverse impact upon the Debtor’s ability to reorganize. Consequently, maintenance of the existing cash management system, as it may be modified under the proposed postpetition financing, during this chapter 11 case is in the best interests of all creditors and other parties in interest.

34. Bankruptcy courts routinely grant chapter 11 debtors authority to continue using their existing cash management systems and treat such requests for such authority as a relatively

³ Any amounts owed to Credit Card Companies for Financial Fees would arguably be secured by the receivable that is owed to the Debtors, and therefore such Credit Card Companies would likely attempt to recoup their claims from, or offset their claims against, the amounts owed to the Debtor.

“simple matter.” In re Baldwin United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). This is particularly true where, as here, the Chapter 11 case involves complex financial affairs. In fact, some courts have specifically held that a debtor’s use of its pre-petition “routine cash management system” is “entirely consistent” with the provisions of the Bankruptcy Code. See In re Charter Co., 778 F.2d 617, 621 (11th Cir. 1985). Likewise, in another context, this Court has explained that a centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for many different purposes that require cash.” In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1993), aff’d in part and rev’d in part, 997 F.2d 1039 (3d Cir. 1993), cert denied sub nom. Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp., 510 U.S. 110 (1994) . The Third Circuit agreed, emphasizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” In re Columbia Gas Sys., Inc., 997 F.2d 1039, 1061 (3d Cir. 1993). See also In re Southmark Corp., 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor to “administer more efficiently and effectively its financial operations and assets”); In re UNR Indus., Inc., 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984).

D. The Debtor Should Be Authorized To Comply with Investment Guidelines

35. Consistent with the objectives of section 345(b) of the Bankruptcy Code, the Debtor respectfully requests authority to deposit any excess funds in domestic bank accounts insured by the United States (through the FDIC or the FSLIC), including the Bank Accounts (the “Investment Guidelines”), notwithstanding that such Investment Guidelines may not strictly

comply in all respects with those set forth in section 345 of the Bankruptcy Code.⁴ The Debtor further requests that the applicable institutions be authorized and directed to accept and hold or invest such funds, at the Debtor's direction, in accordance with the Investment Guidelines. The Debtor also seeks a waiver of the deposit guidelines set forth in section 345(b) of the Bankruptcy Code to the extent necessary to allow the Debtor to maintain its Bank Accounts and its existing cash management procedures.

36. Under section 345(b) of the Bankruptcy Code, any deposit or other investment made by a debtor, except those insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, must be secured by either a bond in favor of the United States that is secured by the undertaking of a corporate surety approved by the U.S. Trustee or the deposit of securities of the kind specified in 31 U.S.C. § 9303. Section 345(b) provides further, however, that a bankruptcy court may allow the use of alternatives to these approved investment guidelines "for cause." See 11 U.S.C. § 345(b); see also In re Serv. Merch. Co., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

37. In the Service Merchandise case, the court identified the following factors as a guide for determining whether cause exists to waive the requirements of section 345(b) of the Bankruptcy Code:

- (a) the sophistication of the debtor's business;
- (b) the size of the debtor's business operations;
- (c) the amount of investments involved;

⁴ The Debtor requests authority to follow the Investment Guidelines as they may be modified by the requirements of any order of the Court approving the proposed postpetition financing.

- (d) the bank ratings of the financial institutions where the debtor's funds are held;
- (e) the complexity of the case;
- (f) the safeguards in place within the debtor's own business for insuring the safety of the funds;
- (g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) the benefit to the debtor of current practices;
- (i) the harm, if any, to the estate; and
- (j) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case.

Serv. Merch., 240 B.R. at 896. Examining these factors, the Service Merchandise court concluded that "cause" existed in that case because the debtors were "large, sophisticated [companies] with a complex cash management system" who had the ability to shift money as needed to insure the safety of their funds. Id. Moreover, the benefits to the debtor of waiving the section 345(b) requirements far outweighed any potential harm to the estate, and the failure to waive the requirements "would 'needlessly handcuff these debtors' reorganization efforts." Id. at 896-97.

38. Although the Investment Guidelines may not strictly comply with the guidelines identified in section 345 of the Bankruptcy Code in all respects, the Debtor's deposits nevertheless are safe, prudent and designed to yield the maximum reasonable net return on the funds invested, taking into account the safety of such deposits and investments.

39. As in Service Merchandise, and in the other chapter 11 cases in which courts have approved the use of investment and deposit guidelines that did not strictly comply with section 345 of the Bankruptcy Code, the Debtor is a large, sophisticated enterprise with a

complex cash management system that provides the Debtor with the ability to transfer funds rapidly to ensure their safety. The Debtor submits that the Investment Guidelines generally conform with the intent of section 345(b) to protect and maximize the value of its estate. In light of these factors and the safety of the bank accounts that the Debtor proposes to utilize to invest any excess funds, the Debtor believes that sufficient cause exists under section 345(b) of the Bankruptcy Code to allow the Debtor to deviate from the investment guidelines set forth therein.

40. Courts have routinely granted the same relief as, or relief substantially similar to, the relief requested in this Motion. See, e.g., In re PLVTZ, Inc., Case No. 07013532 (REG) (Bankr. S.D.N.Y. Nov. 9, 2007); In re Dana Corp., No. 06-10354 (BRL) (Bankr. S.D.N.Y. Mar. 3, 2006); In re Calpine Corp., No. 05-60200 (BRL) (Bankr. S.D.N.Y. Dec. 21, 2006); In re Delphi Corp., Case No. 05-44481 (RDD) (Bankr. S.D.N.Y. Oct. 14, 2005); In re Winn-Dixie Stores, Inc., Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. Feb. 22, 2005); In re Tweeter Home Entm't Group, Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 12, 2007).

41. Moreover, the Debtor believes that the deposits at issue are safe because of the relative strength of the Banks where the Bank Accounts are maintained. Requiring the Debtor to open multiple accounts at different banks so that the deposits in each such bank would be insured by the FDIC or the FSLIC would be unnecessarily burdensome and would lead to the same delays and disruption to the Debtor's business that this Motion seeks to avoid.

E. The Debtor Should be Authorized to Continue Intercompany Transactions

42. As described above, the Debtor's Cash Management System streamlines operations, creates efficiencies, enhances corporate controls, and saves the expense associated with running a separate cash management system for each member of the corporate enterprise. In the ordinary course of the Debtor's business, the Debtor and its non-debtor parent, Pumpkin

Patch Limited (the “Parent”), have provided a number of services to and engaged in intercompany transaction with each other (collectively, the “Intercompany Transactions”). The Intercompany Transactions covers a variety of items, including periodic infusions of cash provided to the Debtor by the Parent. The Intercompany Transactions are reflected in the Debtor’s books and records.

43. The Intercompany Transactions reduce the Debtor’s administrative costs and facilitate the performance of the Debtor’s contracts. Accordingly, the Debtor requests authority to continue the Intercompany Transactions postpetition⁵ and submit that continuation of the Intercompany Transactions is in the best interests of the Debtor’s estate and its creditors. The relief requested herein is necessary because Intercompany Transactions among the Debtor and Parent are integral to the Debtor’s daily operations.

44. Courts frequently have authorized debtors to continue their prepetition intercompany funding practices after the commencement of a chapter 11 case. See, e.g., In re Radnor Holdings Corp., Case No. 06-10894 (PJW) (Bankr. D. Del. Aug. 23, 2006); In re Birch Telecom, Inc., et al., Case No. 05-12237 (PJW) (Bankr. D. Del. July 13, 2005); In re Chart Indus., Inc., Case No. 03-12114 (JWV) (Bankr. D. Del. July 10, 2003); In re GenTek Inc., Case No. 02-12986 (MFW) (Bankr. D. Del. Oct. 17, 2002); In re SLI, Inc., Case No. 02-12608 (MFW) (Bankr. D. Del. Sept. 12, 2002); In re The IT Group, Inc., Case No. 02-10118 (MFW) (Bankr. D. Del. Jan. 30, 2002); In re Polaroid Corp., Case No. 01-10864 (PJW) (Bankr. D. Del. Oct. 15, 2001).

⁵ Because the Debtor engaged in the Intercompany Transactions on a regular basis prior to the Petition Date and such transactions are common for enterprises such as the Debtor, the Debtor believes that such transactions are ordinary course within the meaning of section 363(c)(1) of the Bankruptcy Code, and thus do not require the Court’s approval. Nonetheless, out of an abundance of caution, the Debtor is seeking express authority to engage in such transactions.

45. For the foregoing reasons, the Debtor believes that granting the relief requested herein is appropriate and in the best interest of the Debtor and its estate, creditors and other parties-in-interest.

46. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” As described above, the relief that the Debtor seeks in this Motion is immediately necessary in order for the Debtor to be able to continue to operate its business and preserve value for its estate. The Debtor respectfully requests that the Court waive the ten-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

47. Any objection to the relief requested in the Motion on a permanent basis must (a) be filed in writing with the Court, at 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 by 4:00 p.m. (Eastern time) on the date that is 15 days after the entry of this Order (the “Objection Deadline”) and (b) served so as to be actually received by the following parties by the Objection Deadline: (i) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: David Buchbinder, Esq.), (ii) proposed counsel to the Debtor, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022 (Attn: Joseph M. Gitto, Esq.), (iii) proposed local counsel to the Debtor, Womble Carlyle Sandridge & Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Thomas M. Horan), and (iv) the official committee of unsecured creditors, if one has been appointed in this chapter 11 case.

48. If any timely objections are received, a hearing shall be held to consider such objections at the first regularly-scheduled omnibus hearing in this case. The interim order shall remain in effect until such hearing.

49. If no objections are timely filed and served as set forth herein, the proposed order shall be deemed a final order with no further notice or opportunity to be heard afforded to any party.

NOTICE

50. Notice of this Motion has been provided by facsimile, electronic transmission, overnight delivery, or hand delivery to: (i) the United States Trustee for the District of Delaware; (ii) the parties included on the Debtor's list of twenty (20) largest unsecured creditors and (iii) the Banks identified in Exhibit A.

NO PRIOR REQUEST

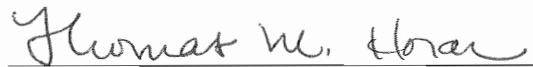
51. No prior request for the relief requested herein has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests this Court enter an order, substantially in the form annexed hereto, granting the relief requested in this Motion and such other and further relief as may be just and proper.

Dated: June 29, 2009

**WOMBLE CARLYLE SANDRIDGE
& RICE, PLLC**



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*Proposed Counsel for the Debtor and
Debtor-in-Possession*

Exhibit A

Debtor's Bank Accounts

Wells Fargo Bank, N.A.

Account Number: 4121161467

Wachovia Bank, N.A.

Account Number: 2000032589238

Wachovia Bank, N.A.

Account Number: 2000028310466

1. The Motion is GRANTED as set forth in this Order.

A. Maintenance of Bank Accounts.

2. Under sections 105 and 363 of the Bankruptcy Code, the Debtor, in its discretion, is authorized, but not directed, to (a) designate, maintain and continue to use any and all of its respective Bank Accounts in existence as of the Petition Date, with the same account numbers, including, without limitation, the accounts identified in Exhibit A annexed hereto; (b) if necessary, open new accounts and give the U.S. Trustee prompt notice of each such newly opened account, wherever they are needed, whether or not such banks are designated depositories in the District of Delaware; provided, however, that any new bank account shall be with a bank that is insured by the FDIC or FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a “debtor-in-possession” or “DIP” account by the respective bank; (c) treat the Bank Accounts and any such newly opened accounts for all purposes as accounts of the Debtor in its capacity as debtor-in-possession and (d) to pay its tax obligations out of its existing Bank Accounts rather than opening new Bank Accounts solely for tax payments.

B. Use of Business Forms.

3. The Debtor is authorized to continue to use its existing business forms and checks without alteration or change and without the designation “Debtor In Possession” or a “debtor in possession case number” imprinted upon them provided, however, in the event that the Debtor needs to purchase new check stock or any other business forms during the pendency of this chapter 11 case, such check stock or other business forms will include a legend referring to the Debtor as “Debtor-in-Possession” or “DIP”.

C. Cash Management System.

4. The Debtor is authorized to continue to use its existing cash management system (including Bank Products services), and shall maintain through the use thereof detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Debtor's cash management system, except as modified by this Order. In connection with the ongoing utilization of its cash management system, the Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced and recorded properly on the applicable accounts.

5. After the Petition Date, and subject to the terms of this Order, all Banks at which the Bank Accounts are maintained are authorized and directed to continue to administer the Bank Accounts as such accounts were maintained prepetition, without interruption and in the usual and ordinary course, and to pay any and all checks, wire transfers, ACH transfers, electronic fund transfers or other items presented, issued or drawn on the Bank Accounts on account of a claim arising on or after the Petition Date, so long as sufficient funds are in the Bank Accounts.

6. The Banks shall be restrained from honoring any check, draft, wire or ACH Transfer presented, issued or drawn on the Bank Accounts on account of a prepetition claim unless (a) authorized by an order of this Court, (b) not otherwise prohibited by a "stop payment" request received by the Banks from the Debtor and (c) supported by sufficient funds in the Bank Account in question.

7. Subject to the provisions of this Order, the Banks are authorized to accept and honor all representations from the Debtor as to which checks, drafts, wires or ACH transfers should be honored or dishonored consistent with any order(s) of this Court and governing law, whether such checks, drafts, wires or ACH transfers are dated prior to, on or subsequent to the

Petition Date. To the extent that the Debtor directs that any prepetition checks, drafts, wires or ACH Transfers be dishonored, the Debtor may issue replacement checks, drafts, wires or ACH Transfers to pay the amounts related to such dishonored checks, drafts, wires or ACH Transfers consistent with the orders of this Court.

8. Each Bank that maintains a Disbursement Account shall implement reasonable handling procedures designed to effectuate the terms of this Order. No Bank that implements such handling procedures and then honors a prepetition check, draft, wire, ACH transfer (excluding any ACH Transfer that the Banks are obligated to settle) or other item presented, issued or drawn on any Bank Account that is the subject of this Order (a) at the direction of the Debtor to honor such prepetition check, draft, ACH transfer or other item, (b) in good-faith belief that the Court has authorized such prepetition check, draft, wire, ACH transfer or other item to be honored or (c) as a result of an innocent mistake made despite implementation of such handling procedures shall be deemed to be liable to the Debtor or its estate or otherwise in violation of this Order.

9. Nothing contained in this Order shall prevent the Debtor and the Banks from implementing reasonable changes to the Debtor's cash management system, including, but not limited to, the opening of any additional bank accounts or closing of any Bank Account(s) as they may deem necessary and appropriate, and the Banks are authorized to honor the Debtor's requests to open or close, as the case may be, such bank accounts; provided, however, that any new account shall be with a Bank that is insured by the FDIC or the FSLIC and organized under the laws of the United States of America or any state therein and shall be designated a "debtor-in-possession" or "DIP" account by the respective Bank.

10. The Banks and the Credit Card Companies are authorized to charge and the Debtor is authorized to pay or honor, in its sole discretion, the Financial Fees, including, without limitation, charge backs and amounts related to promotional fees, returns and exchanges (whether such items are dated prior to, on or subsequent to the Petition Date).

D. Investment Guidelines.

11. The Debtor is authorized to deposit and invest funds in accordance with the Investment Guidelines (as they may be modified by the requirements of any order of the Court approving the proposed postpetition financing), notwithstanding that the Investment Guidelines may not strictly comply in all respects with the investment guidelines expressly set forth in section 345 of the Bankruptcy Code. The Debtor's Banks are authorized and directed to accept and hold funds, at the Debtor's direction, in accordance with the Investment Guidelines.

E. Intercompany Transactions.

12. The Debtor is authorized to continue the Intercompany Transactions.

13. The Debtor is hereby authorized to take such actions and execute such documents as may be required to carry out the intent and purpose of this Order.

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

15. Any objection to the relief requested in the Motion on a permanent basis must (a) be filed in writing with the Court, at 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 by 4:00 p.m. (Eastern time) on the date that is 15 days after the entry of this Order (the "Objection Deadline") and (b) served so as to be actually received by the following parties by the Objection Deadline: (i) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: David Buchbinder, Esq.), (ii) proposed counsel to the Debtor, Nixon Peabody LLP, 437 Madison Avenue, New York, New York 10022 (Attn: Joseph

M. Gitto, Esq.), (iii) proposed local counsel to the Debtor, Womble Carlyle Sandridge & Rice, PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Thomas M. Horan), and (iv) the official committee of unsecured creditors, if one has been appointed in this chapter 11 case.

16. If any timely objections are received, a hearing shall be held to consider such objections at the first regularly-scheduled omnibus hearing in this case. This order shall remain in effect until such hearing.

17. If no objections are timely filed and served as set forth herein, the proposed order shall be deemed a final order with no further notice or opportunity to be heard afforded to any party.

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

Dated: Wilmington, Delaware

_____, 2009

The Honorable Brendan Linehan Shannon
United States Bankruptcy Judge