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

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	:	
In re	:	Chapter 11
	:	
QUIRKY, INC., et al.¹	:	Case No. 15-_____ (___)
	:	
Debtors.	:	
	:	
-----	X	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION, (III) SCHEDULING A
FINAL HEARING, AND (IV) GRANTING CERTAIN RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") submit this motion (this "Motion"), for entry of an order interim order (the "Interim Order"),

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Quirky, Inc. (2873); Wink, Inc. (8826); and Undercurrent Acquisition, LLC (9692). The Debtors' principal offices are located at 606 West 28th Street, Seventh Floor, New York, NY 10001.

substantially in the form attached hereto as **Exhibit A**, and a final order (the "Final Order," and together with the Interim Order, the "Cash Collateral Orders") (i) authorizing the Debtors to use cash collateral, (ii) granting adequate protection to the Debtors' prepetition secured lender, (iii) scheduling a final hearing, and (iv) granting related relief. In support of the Motion, the Debtors rely upon and incorporate by reference the *Declaration of Charles Kwalwasser in Support of Debtors' First Day Pleadings*, filed concurrently herewith (the "Kwalwasser Declaration"). In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

I. General

2. On the date hereof (the "Petition Date"), the Debtors commenced voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory creditors' committee has been appointed in these chapter 11 cases.

II. The Debtors' Business

3. Since its inception in 2009, Quirky, Inc.'s ("Quirky") revolutionary online idea factory and marketplace has made invention accessible by bringing real people's product ideas to life. From its headquarters in New York City -- and with contributions from its vibrant web-based community of inventors, collaborators and contributors -- Quirky identifies and cultivates

products. Last year, Quirky sold over 150 different products and a total of 4 million units, generating over \$50 million in revenue from its retail and consulting businesses.

4. Quirky also works directly with large companies to develop new products through its “Powered by Quirky” initiative. In exchange for service fees, Quirky provides third parties with access to its engineering and design staff, community of inventors and exclusivity to certain product ideas. Through partnerships with General Electric, Quirky serves as a major driving force for the innovations behind new products. In 2015, the Company began to wind-down its product development and distribution business and focused heavily on establishing new strategic partnerships through the Powered by Quirky initiative. In order to bolster the Powered by Quirky infrastructure, on or about March 25, 2015 the Company acquired the assets of Undercurrent LLC, a leading boutique management consulting services provider.

5. Through Wink, Inc. (“Wink”), a wholly-owned subsidiary of Quirky that was incorporated in November 2013, the Company has developed a platform for wireless-enabled products that allows consumers to control a host of household appliances and services through their connected devices and the internet. Through partnerships with General Electric, Honeywell, Nest, Phillips and others, over 60 Wink-enabled products are available in the marketplace with many more in development. Wink enables homeowners to wirelessly connect lighting, power and security systems through a single app. The Wink app allows users to customize the way products talk to each other. For example, a Kwikset SmartCode Deadbolt® can be programmed to tell a user’s lights and air conditioning to turn on every time a home’s front door is unlocked. The Wink app also allows multiple users to control multiple appliances with a single swipe of their smart phone. While Wink maintains its own management, distribution, and sales channels, it shares certain general administrative services with Quirky, its corporate parent.

6. Over the past six years, Quirky shepherded hundreds of new products to the marketplace. While the Company’s early efforts focused on manufacturing relatively simple items, Quirky quickly shifted focus towards a greater number of more complex offerings in both

hardware and software. By 2014, the number of products manufactured and sold by Quirky had increased from 34 to over 150. The Company faced a number of operational challenges as the volume of more complicated products that Quirky brought to market increased and the product categories in which Quirky was involved became more diverse. The Company expanded to accommodate the development of these new products by opening offices in San Francisco, CA and Schenectady, NY, increasing the overhead expenses and working capital needs of the enterprise. At the same time, the Quirky platform generated a large number of products with an enthusiastic base of support from within the Quirky community. In short, Quirky was unable to attain manufacturing and distribution scale, and sustained significant losses on many of these products.

7. These expenses could not be sustained by the revenue generated by the sale of products and the strategic partnerships entered into by Quirky and Wink. Accordingly, beginning in late 2014, the Debtors commenced efforts to reduce costs by transitioning away from the manufacture of new products and towards a model more focused on product design process and process management services. These initiatives required more time and capital than had been initially projected, resulting in a liquidity crisis in mid-2015. Efforts to obtain additional debt or equity capital to bridge the Debtors' operations through this transitional phase were unsuccessful.

8. Accordingly, beginning in July 2015, the Debtors began to market Wink's assets for sale through a chapter 11 proceeding pursuant to section 363 of the Bankruptcy Code. In addition, and in order to stem the operating losses associated with the Quirky business and more efficiently allocate the Debtors' remaining cash toward the Wink business and the marketing of Wink's assets, the Debtors elected to temporarily discontinue Quirky's operations.

9. As of the date hereof, the Debtors possess three categories of assets (i) assets associated with the continuation of the Wink business as a going concern (which are proposed to be acquired by Flextronics International USA Inc.); (ii) the Quirky online community and the agreements between Quirky and third parties that constitute the Powered By Quirky Initiative;

and (iii) miscellaneous inventory, machinery, furniture, fixtures, equipment, and intellectual property associated with Quirky's design and manufacturing business model. The Debtors have commenced these cases to sell the Wink business as a going concern and to maximize the value of Quirky's assets for the benefit of creditors.

RELIEF REQUESTED

10. The Debtors seek entry of the Cash Collateral Orders granting the following relief:

- a. authorizing the Debtors to use Cash Collateral (as defined herein) in accordance with the Budget;
- b. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the Cash Collateral Orders;
- c. scheduling a hearing (the "Final Hearing"), pursuant to Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to consider entry of the Final Order, inter alia, approving and authorizing the Debtors' use of Cash Collateral on a final basis pursuant to the Final Order.

A. THE DEBTORS' PREPETITION CAPITAL STRUCTURE AND SECURED DEBT.

(a) Secured Debt.

11. The Debtor Quirky, Inc. ("Quirky") and Comerica Bank ("Comerica" or the "Prepetition Lender") entered into a Loan and Security Agreement (the "LSA") dated September 25, 2013, pursuant to which Comerica provided Quirky with a \$20 million revolving line of credit (the "Revolver"). Aggregate borrowings under the Revolver are limited to an amount determined by a formula based on various percentages of eligible inventory and accounts receivable, which bear interest at variable rates. Under the LSA, Quirky granted liens and security interests in certain of its assets to the Prepetition Lender, as described in the LSA. The maturity date of the Revolver is October 22, 2015. As of the Petition Date, the outstanding balance under the Revolver is not less than \$20,000,000 exclusive of accrued and unpaid interest, fees and expenses (the "Revolver Debt").

12. On April 22, 2014, Quirky and the Prepetition Lender entered into that certain First Amendment to Loan and Security Agreement ("First Amendment") dated April 22, 2014, pursuant to which Comerica provided Quirky with a term loan in the face amount of \$10 million (the "Term Loan"). By the First Amendment, Quirky granted liens and security interests to the Prepetition Lender in certain additional assets of Quirky, as described in the First Amendment. Concurrently with the execution of the First Amendment, Quirky also executed an Intellectual Property Security Agreement, pursuant to which Quirky granted liens and security interests to the Prepetition Lender in certain intellectual property assets of Quirky. The maturity date of the Term Loan is October 22, 2017. As of the Petition Date, the outstanding balance under the Term Loan is not less than \$9,667,000 exclusive of accrued and unpaid interest, fees and expenses (the "Term Loan Debt," and together with the Revolver Debt, the "Prepetition Debt")². In addition to the LSA and the First Amendment, Quirky and the Prepetition Lender entered certain other agreements in connection with the Revolver and Term Loan, which, with the LSA and First Amendment are collectively referred to herein as the "Prepetition Loan Documents".

(b) Unsecured Debt.

13. *Subordinated Convertible Notes.* On November 28, 2014, Quirky authorized the issuance of \$50 million of subordinated convertible notes due December 31, 2015 (the "Subordinated Convertible Notes"), unsecured debt instruments pursuant to which the holder shall have the right (at its option) to convert all or any portion of the unpaid principal and accrued and unpaid interest due thereunder into fully-paid and non-assessable shares of Series D Convertible Preferred Stock of the Company at a conversion price equal to \$6.022681 per share, subject to adjustment in certain events.

14. As of the Petition Date, Quirky has issued and sold nine Subordinated Convertible Notes to certain purchasers for the total principal amount of \$36,800,000.

² The debtors Wink and Undercurrent Acquisition, LLC ("Undercurrent") are not parties to the LSA or the First Amendment, or any other of the Prepetition Loan Documents (as defined below). Neither Wink nor Undercurrent guaranteed the Prepetition Debt.

15. Pursuant to a Subordination Agreement dated April 30, 2015, the claims of the holders of the Subordinated Convertible Notes are subordinate to, among other things, any security interest, lien, and right of payment of Comerica.

16. *Trade Debt.* The Debtors also owe trade vendors, landlords, service providers and other general unsecured creditors approximately \$30 million in the aggregate as of the Petition Date.

B. NEED FOR USE OF CASH COLLATERAL.

17. Certain assets of the Debtors' estates constitute cash collateral within the meaning of section 363 of the Bankruptcy Code (the "Cash Collateral"). The Debtors have an immediate and critical need to use Cash Collateral to pay, in accordance with the Budget, which is attached to the proposed Interim Order as Exhibit 1, various parties in the ordinary course of business and as authorized by the Court. These include employees, landlords, third party vendors, utilities, insurance companies, and taxing authorities, among others, who in the judgment of the Debtors' management, provide the essential services needed to operate, maintain and insure the Debtors' assets. In addition, the Debtors require funds to retain and pay costs of professionals, consultants and advisors who will enable the Debtors to conduct sales of their assets in a manner that maximizes value for the Debtors' estates and their creditors. Taken together, the services provided by all of the foregoing parties and other entities are absolutely critical to the preservation of the Debtors' business and asset value.

18. The Debtors reasonably believe that the Budget will be adequate, considering all available assets, to pay all administrative expenses due or accruing during the period covered by the Budget. Without the use of Cash Collateral, the Debtors would suffer immediate and irreparable harm and the entire bankruptcy proceedings will be jeopardized to the significant detriment of the Debtors' estates and their creditors.

19. Comerica has indicated a willingness to authorize the use of Cash Collateral, but only on the terms and conditions set forth in the Interim Order and in accordance with the

Budget. After considering all of their alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that the use of Cash Collateral on the terms and conditions set forth in the Interim Order and in accordance with the Budget represents the best means to available to the Debtors to maintain liquidity during an orderly sale process.

20. The Debtors have negotiated the Interim Order in good faith and at arm's length with Comerica. The Debtors believe that the terms of the Interim Order are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

C. SUMMARY OF PRINCIPAL TERMS OF THE CASH COLLATERAL ORDERS

21. Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, the following is a concise statement and summary of the material terms of the proposed Cash Collateral Orders:

Amount of Cash Collateral to be Used	The Debtors are authorized, subject to the terms and conditions of the Interim Order, and in accordance with the Budget, to use all of the Debtors' cash generated from the operation of the Debtors businesses or disposition of their property, wherever located, whether as original collateral or proceeds of the Prepetition Collateral. <u>See</u> Interim Order ¶ 3.
Material Conditions	Debtors have stipulated to validity, perfection and priority of Prepetition Liens and Prepetition Debt, subject to certain Challenge rights of creditors. <u>See</u> Interim Order ¶ E. 506(c) Claims are waived by the Debtors and their estates in exchange for consensual use of Cash Collateral in accordance with the Interim Order. <u>See</u> Interim Order ¶ 19.
Effect of Adequate Protection on Existing Liens	None. Pre-Petition Permitted Liens are superior to Adequate Protection Liens and Adequate Protection Superpriority Claim. <u>See</u> Interim Order ¶ 4(a).
Professional Fees and Expenses	Professional Fees and Expenses to be escrowed by Debtors' counsel and paid in accordance with Budget and Order approving interim compensation (prior to any Carve-Out Trigger Notice). <u>See</u> Interim Order ¶ 15.
Carve-Outs	Standard carve-outs for fees due to Clerk of the Bankruptcy Court and fees of the Office of the United States Trustee pursuant to 28 U.S.C. § 1930 and 31 U.S.C. § 3717. Carve-out for Professional Fees and Expenses of Professional Persons up to \$500,000 after Carve-Out Trigger Notice. Carve-out not to exceed \$25,000 in the aggregate for any Chapter 7 trustee and any Chapter 7 professionals. <u>See</u> Interim Order ¶ 16(a).
Challenge Periods	The Proposed Interim Order provides that with respect to any party in-

	interest the Challenge Period is the period from the date of entry of a Final Order to the date that is 60 calendar days after the entry of a Final Order. <u>See</u> Interim Order ¶ 18.
Limitation on Court's Power or Discretion; Committee Rights	No limitation on Court's power or discretion. Committee and third parties have rights to commence a Challenge within Challenge Period. <u>See</u> Interim Order ¶ 18. Limit on use of Cash Collateral to take certain actions against Prepetition Lender. <u>See</u> Interim Order ¶ 17. For purposes of the Interim Order, the proceeds of Avoidance Actions are not subject to the Adequate Protection Liens or Adequate Protection Superpriority Claims. <u>See</u> Interim Order ¶ 14.
Termination and Default Provisions	Prepetition Lender has option of terminating use of Cash Collateral or reserving rights. Automatic stay is modified such that ten (10) days after notice of termination of Cash Collateral is given by Prepetition Lender and following an Event of Default, the Prepetition Lender may exercise available remedies. <u>See</u> Interim Order ¶ 10.

APPLICABLE AUTHORITY

A. THE DEBTORS SHOULD BE AUTHORIZED TO USE CASH COLLATERAL.

22. Section 363(c)(2) of the Bankruptcy Code restricts a debtor's use of a secured creditor's cash collateral. Specifically, that provision provides, in pertinent part, that:

The trustee may not use, sell, or lease cash collateral . . . unless-

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section [363].

11 U.S.C. § 363(c)(2). Further, section 363(e) provides that "on request of an entity that has an interest in property . . . proposed to be used, sold or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

23. The Debtors have satisfied the requirements of section 363(c)(2) and 363(e) of the Bankruptcy Code and should be authorized to use the cash collateral. First, pursuant to the proposed Cash Collateral Orders, the Prepetition Lender has consented to the Debtors' use of Cash Collateral. Second, the interests of the Prepetition Lender in the cash collateral are

adequately protected from diminution in value, including by the Debtors' use of the cash collateral pursuant to the terms of the proposed Cash Collateral Orders. Accordingly, the Court should authorize the Debtors to use the cash collateral under section 363(c)(2) of the Bankruptcy Code.

24. Finally, pursuant to Local Rule 4001-2, the Debtors have agreed to certain provisions that are or may be considered material in the Interim Order. Specifically, the Debtors have agreed to the following provisions set forth above: (a) Debtors' stipulations as to perfection, priority and validity of Prepetition Liens and Prepetition Claims of Prepetition Lender with limitations placed on the Challenge rights of creditors; (b) Carve-Out provisions established with certain uses of Cash Collateral limited in relation to Challenge of Prepetition Lender, and (c) 506(c) waiver by Debtors' estates.

25. The terms of the proposed Cash Collateral Orders, including the material provisions described above, constitute, on the whole, the most favorable terms on which the Debtors could obtain the needed authorization to use Cash Collateral.

B. MODIFICATION OF THE AUTOMATIC STAY IS WARRANTED.

26. The terms of the proposed Cash Collateral Orders contemplate that the automatic stay under section 362 of the Bankruptcy Code shall be vacated or modified to the extent necessary to permit the Prepetition Lender to exercise, upon the occurrence and during the continuation of any event of default as set forth in the proposed Cash Collateral Orders, all rights and remedies provided for in the Cash Collateral Orders, and to take various other actions without further order of or application to the Court.

27. Stay modification provisions of this sort are ordinary features of Cash Collateral Orders and, in the Debtors' business judgment, are reasonable under the circumstances. See, e.g., In re Gen. Growth Prop. Inc., Case No. 09-11977 (Bankr. S.D.N.Y. May 14, 2009); In re Tronox Inc., Case No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009); In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y. Apr. 23, 2009).

C. THE DEBTORS REQUIRE IMMEDIATE USE OF CASH COLLATERAL.

28. The Court may grant interim relief with respect to a motion filed pursuant to section 363(c) of the Bankruptcy Code, where, as here, interim relief is “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2) and (c)(2). In examining requests for interim relief under this rule, courts in this jurisdiction generally apply the same business judgment standard applicable to other business decisions. See, e.g., Ames Dep’t Stores, 115 B.R. at 36.

29. The Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein, including authorizing the Debtors to use the cash collateral is not granted promptly after the Petition Date. The commencement of these chapter 11 cases and the sale process will significantly and immediately increase the demands on their free cash as a result of, among other things, the costs of administering these chapter 11 cases and conducting sales of the Debtors’ assets in a manner that maximizes value for the Debtors’ estates and their creditors. Accordingly, the Debtors have an immediate need for access to liquidity to, among other things, continue the operation of their business, maintain their relationships with customers, meet payroll, pay capital expenditures, procure goods and services from vendors and suppliers and otherwise satisfy their working capital and operational needs, all of which is required to preserve and maintain the value of the Debtors’ assets for the benefit of all parties in interest.

NOTICE

30. Notice of this Motion will be given to: (a) the Office of the U.S. Trustee, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Paul K. Schwartzberg, Esq.); (b) all required governmental entities; (c) Sheppard Mullin, counsel to Comerica Bank, 30 Rockefeller Plaza, New York, NY 10112 (Attn: William R. Wyatt, Esq.); and (d) the parties included on the Debtors’ list of thirty (30) largest unsecured creditors (collectively, the “Notice Parties”). The Debtors submit that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

31. No previous request for the relief sought herein has been made to this Court or any other court.

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CONCLUSION

WHEREFORE, for the reasons set forth above, the Debtors respectfully request that the Court (a) enter the Interim Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and, after the final Hearing, the Final Order, substantially in the form that shall be filed with the Court, and (b) such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 22, 2015

/s/ Sean C. Southard
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*Proposed Conflicts Counsel for the Debtors
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EXHIBIT A

Proposed Interim Order

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

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	:	
In re:	:	Chapter 11
	:	
QUIRKY, INC., et al.¹	:	
	:	
Debtors.	:	Case No. 15-_____ (___)
	:	
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**INTERIM ORDER (I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION, (III) SCHEDULING A FINAL HEARING,
AND (IV) GRANTING CERTAIN RELATED RELIEF**

THIS MATTER having come before the Court upon the motion (the "Motion") by Quirky, Inc., Wink, Inc. and Undercurrent Acquisition, LLC, each as a debtor and debtor in possession (collectively the "Debtors") in the above-captioned Chapter 11 cases (collectively, the "Cases"), pursuant to sections 105, 361, 362, 363, and 507 of title 11 of the United States Code, (11 U.S.C. §§ 101, *et seq.*, as amended, the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and S.D.N.Y. Bankr. L.R. 4001-2, seeking entry of an interim order (this "Interim Order") *inter alia*:

(i) authorizing the Debtors to use in accordance with the Budget (as defined below) "Cash Collateral," as defined in section 363(a) of the Bankruptcy Code, that the Debtors are holding or may obtain, pursuant to the Bankruptcy Code Section 361 and 363 and Bankruptcy Rules 4001(b) and 6004; and

(ii) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of this Interim Order; and

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Quirky, Inc. (2873); Wink, Inc. (8826); and Undercurrent Acquisition, LLC (9692). The Debtors' principal offices are located at 606 West 28th Street, Seventh Floor, New York, NY 10012.

(iii) scheduling a final hearing (the "Final Hearing") to consider the relief requested in the Motion and approving the form of notice with respect to the Final Hearing.

The Court having considered the Motion, the *Declaration of Charles Kwalwasser Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), including the Motion, the exhibits attached thereto, and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on the Motion (the "Interim Hearing"); and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, and Local Bankruptcy Rule 2002-1; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that, pursuant to Bankruptcy Rule 4001(c)(2), granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors' businesses; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING BY THE DEBTORS, INCLUDING THE SUBMISSION OF DECLARATIONS AND THE REPRESENTATIONS OF COUNSEL, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition Date. On September 22, 2015 (the "Petition Date"), each of the Debtors filed a separate voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "Court") commencing these Cases.

B. Debtors in Possession. The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Cases.

C. Jurisdiction and Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over these proceedings, and over the persons and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Committee Formation. As of the date hereof, the Office of the United States Trustee (the "U.S. Trustee") has not yet appointed any official committee in these Cases pursuant to section 1102 of the Bankruptcy Code (each, a "Statutory Committee").

E. Debtors' Stipulations. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 18 herein, the Debtors (on behalf of and for themselves) admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(iii) below are referred to herein as the "Debtors' Stipulations"):

(i) Prepetition Loan Documents. As of the Petition Date, the Debtor Quirky, Inc. ("Quirky") had outstanding debt to the Comerica Bank ("Comerica" or the "Prepetition Lender"), pursuant to (a) that certain Loan and Security Agreement dated September 25, 2013, as amended from time to time (collectively, the "Prepetition Loan Documents"), pursuant to which Comerica provided Quirky with a \$20 million revolving line of credit (the "Revolver") and (b) that certain First Amendment to Loan and Security Agreement dated April 22, 2014, pursuant to which Comerica provided Quirky with a \$10 million term loan (the "Term Loan").

(ii) Prepetition Debt. As of the Petition Date, the outstanding balance under the Revolver is not less than \$20,000,000 and the outstanding balance under the Term Loan is not less than \$9,667,000 exclusive of accrued and unpaid interest, fees and expenses (collectively, the "Prepetition Debt"). As more fully set forth in the Prepetition Loan Documents, prior to the Petition Date, Quirky granted first-priority security interests in and liens (collectively, the "Prepetition Liens") on certain assets of Quirky, including, without limitation, accounts, chattel paper, deposit accounts, documents, equipment, general intangibles, goods,

instruments, inventory, investment property, letter of credit rights, money and certain intellectual property (collectively, the "Prepetition Collateral") to Comerica to secure repayment of the Prepetition Debt.

(iii) *Validity, Perfection and Priority of Prepetition Liens and Debt.* The Debtors (for themselves only, and without limiting the rights of other parties in interest under paragraph 18 of this Interim Order), and Comerica acknowledge and agree that: (a) as of the Petition Date, the Prepetition Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable and properly perfected, (b) as of the Petition Date, the Prepetition Liens have priority over any and all other liens, if any, on the Prepetition Collateral, subject only to certain other liens otherwise permitted by the Prepetition Loan Documents (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date, the "Prepetition Permitted Liens") and otherwise had priority over any and all other liens on the Prepetition Collateral;² (d) the Prepetition Debt constitutes the legal, valid, binding, and non-avoidable obligations of Quirky; (e) no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or the Prepetition Debt exist, and no portion of the Prepetition Liens or the Prepetition Debt is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (f) the Debtors and their estates have no claims, objections, challenges, causes of actions, and/or choses in action, including without limitation, avoidance claims under Chapter 5 of the Bankruptcy Code, against Comerica or any of its affiliates, agents, attorneys, advisors,

² For purposes of this Interim Order, Prepetition Permitted Liens shall include all liens that were valid, senior, enforceable, nonavoidable, and perfected under applicable law as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such Prepetition Permitted Liens are valid, senior, enforceable, perfected or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest including, but not limited, to the Debtors, Comerica, and any Statutory Committee to challenge the validity, priority, enforceability, seniority, avoidability, perfection or extent of any such Prepetition Permitted Lien and/or security interest.

professionals, officers, directors or employees arising out of, based upon or related to the Prepetition Loan Documents.

F. Findings Regarding the Use of Cash Collateral.

(i) *Request for Authority to Use.* The Debtors seek authority to use Cash Collateral on the terms described herein to administer their Cases and fund their operations. At the Final Hearing, the Debtors will seek final approval of the use of Cash Collateral arrangements pursuant to a proposed final order (the "Final Order"). Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) *Need for Use of Cash Collateral.* The Debtors' need to use Cash Collateral is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to sustain their operations, maintain business relationships, to pay their employees, and protect the value of their assets requires the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, their creditors and equity holders, and the possibility for a successful administration of these Cases. The Debtors do not have sufficient available sources of working capital and financing to operate their businesses or to maintain their properties in the ordinary course of business without the authorized use of Cash Collateral.

(iv) *Use of Cash Collateral.* As a condition to the authorization to use Cash Collateral, the Prepetition Lender requires, and the Debtors have agreed, that Cash Collateral shall be used substantially in accordance with the budget (a copy of which is attached as Exhibit 1 hereto, as the same may be modified from time to time, and subject to such variances as may be permitted thereby, the "Budget"), to fund (i) post-petition operating expenses and other working capital, (ii) certain transaction fees and expenses, and (iii) permitted payment of costs of administration of the Cases, including professional fees.

G. Adequate Protection. The Prepetition Lender shall receive, subject to the priorities set forth in paragraphs 4(a), 15 and 16 below, the Adequate Protection Liens (as

defined herein) to secure the Prepetition Obligations and Adequate Protection Superpriority Claims (as defined herein) with respect to the Prepetition Obligations.

H. Sections 506(c) and 552(b). In light of the Prepetition Lender's agreement to subordinate its liens and superpriority claims, as applicable, to the Carve-Out (as defined herein) upon entry of the Final Order, the Prepetition Lender is entitled to a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code, and (b) any "equities of the case" claims under section 552(b) of the Bankruptcy Code.

J. *Notice*. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee for the Southern District of New York; (ii) the Internal Revenue Service; (iii) the parties included on the Debtors' consolidated list of thirty (30) largest unsecured creditors; (iv) counsel to Prepetition Lender; (v) the United States Attorney for the Southern District of New York; and (vi) those parties who have filed a notice of appearance and request for service of pleadings in these cases pursuant to Bankruptcy Rule 2002. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances and such notice is good and sufficient to permit the interim relief set forth in this Interim Order, and no other or further notice is or shall be required.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Motion Granted. The Motion is granted on an interim basis, and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order and in accordance with the Budget.

2. Objections Overruled. All objections to the Motion to the extent not withdrawn or resolved are hereby overruled.

Authorization to Use Cash Collateral

3. Authorization to Use Cash Collateral. Subject to the terms and conditions of this Interim Order, and in accordance with the Budget, the Debtors are authorized to use Cash Collateral until the earlier to occur of (a) the Termination Date (defined hereinafter), or (b) the earlier of (i) the date on which a Final Order is entered; or (ii) October 31, 2015.

4. Adequate Protection Liens.

(a) *Adequate Protection Liens.* The Prepetition Lender is hereby granted valid and perfected replacement and additional security interests in, and liens on all of the Debtors' right, title and interest in, to and under all Prepetition Collateral (the "Adequate Protection Liens"). The Adequate Protection Liens granted to the Prepetition Lender shall secure only the Prepetition Obligations. The Adequate Protection Liens are and shall be valid, binding enforceable and fully perfected as of the date hereof and subordinate and subject only to (i) the valid and enforceable liens against the Prepetition Collateral existing as of the Petition Date, and (iii) the Carve-Out.

(b) *Treatment of Adequate Protection Liens.* Other than as set forth herein or as further ordered by the Court, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or with any lien or security interest heretofore or hereinafter granted in the Cases or any subsequent conversion of these Cases to chapter 7 ("Successor Case(s)"). The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Cases, upon the conversion of any of the Cases to cases under Chapter 7 of the Bankruptcy Code (or in any other Successor Cases), and/or upon the dismissal of any of the Cases or Successor Cases.

5. Adequate Protection Superpriority Claims.

(a) *Superpriority Claim of Prepetition Lender.* As further adequate protection of the interests of the Prepetition Lender with respect to the Prepetition Debt, the Prepetition Lender is hereby granted an allowed administrative claim against the Debtors' estates under sections 503 and 507(b) of the Bankruptcy Code (the "Adequate Protection Superpriority

Claims") to the extent that the Adequate Protection Liens do not adequately protect against any diminution in the value of the Prepetition Lender's interests in the Prepetition Collateral.

(b) *Priority of Adequate Protection Superpriority Claims.* The Adequate Protection Superpriority Claims shall be junior to the Carve-Out and the Adequate Protection Liens and shall otherwise have priority over administrative expenses of the kinds specified in or ordered pursuant to sections 503(b) and 507(b) of the Bankruptcy Code.

Provisions Common to Use of Cash Collateral Authorizations

6. Budget Maintenance. The Debtors shall be entitled to use Cash Collateral substantially in accordance with the Budget and on an interim basis through the earlier to occur of (a) the Termination Date (defined hereinafter), or (b) the date on which a Final Order is entered (the "Interim Period"); provided that the cumulative aggregate disbursements shall not exceed the Budget by greater than: (i) twenty-five percent (25%) as tested during weeks four (4) and five (5) of the Budget; (ii) eighteen percent (18%) as tested during weeks six (6) and seven (7) of the Budget; and (iii) ten percent (10%) as tested during week eight (8) of the Budget and beyond. The Debtors shall provide weekly reporting to the Prepetition Lender and any Statutory Committee setting forth actual performance as compared to the Budget.

7. Budget Approval. The Budget and any modification to, or amendment or update of, the Budget shall be in form and substance reasonably acceptable to the Prepetition Lender and approved by the Prepetition Lender in its reasonable discretion. The Debtors shall comply with and update the Budget from time to time, but in any event not more than once weekly.

8. Modification of Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to permit the Debtors to grant the Adequate Protection Liens and the Adequate Protection Superpriority Claims.

9. Perfection of Adequate Protection Liens. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens,

without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, collateral access agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the Adequate Protection Liens, or to entitle the Prepetition Lender to the priorities granted herein.

10. Events of Default. The occurrence of any of the following events prior to the Termination Date shall constitute an "Event of Default" unless the Prepetition Lender elects to waive such Event of Default:

(a) Debtors' failure to materially perform any of their obligations in accordance with the terms and provisions of this Interim Order;

(b) Entry of an Order by this Court authorizing the incurrence of indebtedness by the Debtors that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the Prepetition Collateral and/or is entitled to priority status that is senior to or *pari passu* with the priority of the Prepetition Liens or the Adequate Protection Liens or (ii) granted priority status that is senior to or *pari passu* with the priority of the Adequate Protection Superpriority Claim;

(c) Entry of an Order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code to allow any creditor to execute upon or enforce a lien on or security interest in the Prepetition Collateral, or any portion thereof, where such execution or enforcement would have a material adverse effect on the business, operations, property, assets, or condition, financial or otherwise, of the Debtors;

(d) reversal, vacatur or modification (without the express prior written consent of the Prepetition Lender) of this Order, whether by reconsideration, appeal or otherwise; or

(e) dismissal of any of the Cases, transfer of the Cases to another venue without the Prepetition Lender's consent in its sole discretion, conversion of the Cases to

chapter 7, or appointment of a chapter 11 trustee or examiner with enlarged powers or other responsible person.

11. Rights and Remedies Upon Event of Default.

(a) Immediately upon the occurrence and during the continuance of an Event of Default, the Prepetition Lender may in its discretion (i) declare its authorization to use Cash Collateral is terminated (such declaration, a "Termination Declaration") or (ii) send a reservation of rights notice to the Debtors. Upon the issuance of a Termination Declaration, and after expiration of the Remedies Notice Period (defined below), any right or ability of the Debtors to use any Cash Collateral may be terminated, reduced or restricted by the Prepetition Lender, provided that, during the Remedies Notice Period, the Debtors may use Cash Collateral.

(b) *Notice of Termination.* Any Termination Declaration shall be given by facsimile (or other electronic means, including electronic mail) to counsel to the Debtors, counsel to any Statutory Committee, and the U.S. Trustee (the earliest date any such Termination Declaration is made shall be referred to herein as the "Termination Declaration Date"). Any automatic stay otherwise applicable to the Prepetition Lender is hereby modified so that ten (10) days after the Termination Declaration Date (the "Remedies Notice Period"), the Prepetition Agent shall be entitled to exercise all rights and remedies against the Prepetition Collateral in accordance with the Prepetition Loan Documents. During the Remedies Notice Period, the Debtors shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred and/or is continuing; provided, that in the event the Debtors seek such an emergency hearing and the Court is unable to schedule such a hearing during the three (3) business day period described above, the Remedies Notice Period shall be tolled until the date on which the Court enters an order with respect to whether an Event of Default has occurred and/or is continuing. Unless the Court determines during the Remedies Notice Period that an Event of Default has not occurred and/or is not continuing, the automatic stay shall automatically be terminated at the end of the Remedies Notice Period (the "Termination Date") without further notice or order and the

Prepetition Agent shall be permitted to exercise all remedies set forth herein, the Prepetition Loan Documents and as otherwise available at law against the Prepetition Collateral, without further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code, or otherwise.

12. Prepetition Lender's Expenses. The Debtors are authorized and directed to pay all reasonable and documented out-of-pocket expenses of the Prepetition Lender (including, without limitation, expenses incurred prior to the Petition Date) as provided in the Prepetition Loan Documents, whether or not the transactions contemplated hereby are consummated, including, without limitation, reasonable legal, accounting, collateral examination, monitoring and appraisal fees, financial advisory fees, fees and expenses of other consultants, and indemnification and reimbursement of fees and expenses, upon the Debtors' receipt of invoices for the payment thereof. Payment of all such fees and expenses shall not be subject to allowance by the Court and professionals for the Prepetition Lender shall not be required to comply with the U.S. Trustee fee guidelines. Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtors, the professionals for the Prepetition Lender shall deliver a copy of their respective invoices to counsel for any Statutory Committee and the U.S. Trustee, redacted as necessary with respect to any privileged or confidential information contained therein. Any objections raised by the Debtors, the U.S. Trustee or any Statutory Committee with respect to such invoices within ten (10) days of the receipt thereof will be resolved by the Court. In the event of any objection, the provisions of section 107 of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure shall apply. Pending such resolution, the undisputed portion of any such invoice will be paid promptly by the Debtors.

13. Proofs of Claim. Any order entered by the Court in relation to the establishment of a bar date for any claims (including without limitation administrative claims) in any of the Cases or Successor Cases shall not apply to the Prepetition Lender. The Prepetition Lender shall not be required to file proofs of claim or requests for approval of administrative expenses in

any of the Cases or Successor Cases, and the provisions of this Interim Order relating to the amount of the Prepetition Obligations and the Adequate Protection Superpriority Claim shall constitute timely filed proofs of claim and/or administrative expense requests.

14. Rights of Access and Information. Without limiting the rights of access and information afforded the Prepetition Lender, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the Prepetition Lender reasonable access to the Debtors' premises and their books and records in accordance with the Prepetition Loan Documents, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. In addition, the Debtors authorize their independent certified public accountants, financial advisors, investment bankers and consultants to cooperate, consult with, and provide to the Prepetition Lender all such information as may be reasonably requested with respect to the business, results of operations and financial condition of any Debtor.

15. Professional Fees and Expenses.

(a) The Debtors are authorized, for so long as no Carve-Out Trigger Notice (as defined below) has been given and has not been rescinded, to use Cash Collateral solely for purposes authorized by this Interim Order, including to pay such compensation and expense reimbursement (collectively, the "Professional Fees and Expenses") in the amounts set forth in the Budget, of (i) professionals (including, without limitation, attorneys, accountants, appraisers, consultants and investment bankers) retained by Debtors with Court approval (the "Debtor Professionals"); (ii) professionals (including, without limitation, attorneys, accountants, appraisers, consultants and investment bankers) retained by any Committee with Court approval (the "Committee Professionals"; together with Debtor Professionals, "Professional Persons"), and (iii) members of a Committee, in each case only to the extent that such compensation and expense reimbursement is authorized to be paid on an interim basis pursuant to an interim professional compensation Order (an "Interim Professional Compensation Order") or approved by other Court order and, with respect to members of a

Committee, otherwise comply with Section 503(b)(3)(F) of the Bankruptcy Code. In accordance with any procedures set forth in any Interim Professional Compensation Order, all Professional Persons shall submit to Debtors on or before the last calendar day of each month, with copies concurrently sent to counsel for Prepetition Lender, summary statements for compensation for services rendered and reimbursement of expenses incurred by them during the preceding month.

(b) Debtors are directed, for so long as no Carve-Out Trigger Notice has been given and has not been rescinded, to deposit, when provided by the Budget, into an escrow account (the "Professional Expense Escrow") maintained by counsel for Debtors, the amounts set forth in the Budget for Professional Fees and Expenses, with such amounts to remain in escrow pending payment to the Professional Persons in accordance with an Interim Professional Compensation Order or other order of the Court allowing and/or authorizing to be paid such Professional Fees and Expenses. Notwithstanding anything to the contrary in this or any other order, the Professional Expense Escrow shall not be subject to the control of the Prepetition Lender. So long as the Prepetition Lender has not delivered a Carve-Out Trigger Notice, the Debtors shall be authorized to fund the Professional Expense Escrow in accordance with the Budget. Debtors' counsel shall be authorized to remit payment from the Professional Expense Escrow to Professional Persons from time to time (whether or not a notice of termination has been delivered) pursuant to the Interim Professional Compensation Order, without further Order of the Court.

(c) Notwithstanding anything to the contrary contained in this Interim Order, the Adequate Protection Liens and the Adequate Protection Superpriority Claims conferred upon the Prepetition Lender shall be subject and subordinate to the rights of Professional Persons with respect to the Professional Expense Escrow. Accordingly, neither Debtors nor any of their creditors shall have any claim to or interest in the escrowed Professional Fees and Expenses, provided, however, that to the extent any Professional Fees and Expenses or other amounts that are escrowed subsequently become disallowed or ordered to be disgorged by final

order of the Court, or remain in escrow following full payment of all allowed Professional Fees and Expenses (the "Excess Escrow Funds"), such Excess Escrow Funds shall be paid over and delivered to Prepetition Lender until indefeasibly paid in full and thereafter to Debtors. Any deposits made to the Professional Expense Escrow pursuant to the foregoing authority during the pendency of the Chapter 11 Cases shall not reduce the Carve-Out.

(d) Nothing in this Interim Order shall preclude any party, including the Prepetition Lender, from asserting any objections to professional fees and expenses sought to be paid under the provisions of sections 330, 331 and 503 of the Bankruptcy Code.

16. Carve-Out.

(a) Notwithstanding anything to the contrary contained in this Interim Order, the Adequate Protection Liens, the Adequate Protection Superpriority Claim, and all liens in favor of the Prepetition Lender (whether granted prior to the Petition Date or pursuant to this Interim Order), shall be subject and subordinate to the payment, after Carve-Out Trigger Notice, of the following: (i) Professional Fees and Expenses of Professional Persons, in an aggregate amount up to, but not to exceed \$500,000; (ii) fees and expenses of any chapter 7 trustee and any chapter 7 professionals in an aggregate amount not to exceed \$25,000; (iii) fees required to be paid to the Clerk of the Court; and (iv) statutory fees and interest, if any, required to be paid pursuant to 28 U.S.C. § 1930(a)(6) and 31 U.S.C. § 3717 (the amounts described in the preceding clauses (i), (ii), (iii) and (iv) are collectively referred to herein as, the "Carve-Out").

(b) No portion of the Carve-Out, nor any Cash Collateral may be used in violation of this Interim Order.

(c) *No Direct Obligation to Pay Professional Fees and Expenses.* The Prepetition Lender shall not be responsible for the funding, direct payment or reimbursement of any fees or disbursements of any Professionals Persons or any expenses of the Statutory Committee incurred in connection with the Cases or any Successor Cases. Nothing in this Interim Order or otherwise shall be construed to obligate the Prepetition Lender in any way to

pay compensation to or to reimburse expenses of any Professional Persons, or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(d) *Adequate Protection Priority.* Upon the occurrence of the Termination Date, the Adequate Protection Liens and the Adequate Protection Superpriority Claims shall be subject to the payment of the unfunded amount of the (i) Carve-Out and (ii) the proceeds of claims and causes of action arising under chapter 5 of the Bankruptcy Code (the "Avoidance Actions").

(e) As used herein, "Carve-Out Trigger Notice" means a written notice delivered by the Prepetition Lender to the (i) counsel for the Debtors, Cooley, LLP and Klestadt Winters Jureller Southard & Stevens LLP, and (ii) counsel to any Statutory Committee, declaring that an Event of Default has occurred under this Order and further declaring that such notice also constitutes a Carve-Out Trigger Notice.

(f) Lender has consented to the break-up fee and expense reimbursement proposed by the Debtors in favor of Flextronics International USA Inc. in connection with its stalking horse bid as set forth in recent filings with the Court and to payment of such proposed fee and expense reimbursement, as may be approved by this Court, from the proceeds of sale derived from a qualified competing bid accepted by the Debtors and approved by this Court.

17. Limitations on the use of Cash Collateral by Professional Persons. Unless otherwise ordered by the Court or consented to by the Prepetition Lender, and subject to entry of a Final Order, the Cash Collateral and the Carve-Out may not be used: (a) in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type (i) adverse to or against the interests of the Prepetition Lender, or its rights and remedies under the Prepetition Loan Documents, or this Interim Order or the Final Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment

determination, declaration or similar relief, (ii) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Prepetition Debt, (iii) for monetary, injunctive or other affirmative relief against the Prepetition Lender, or its collateral, (iv) preventing, hindering or otherwise delaying the exercise by the Prepetition Lender of any rights and remedies under this Interim Order or the Final Order, the Prepetition Loan Documents, or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the Prepetition Lender with respect to its Adequate Protection Liens, or (iv) to pursue litigation against the Prepetition Lender; (b) to make any distribution under a plan of reorganization in any of the Cases; (c) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body; (d) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests in any of the Debtors; (e) objecting to, contesting, or interfering with, in any way, the Prepetition Lender's enforcement or realization upon any of the Prepetition Collateral once an Event of Default has occurred, except as provided for in this Interim Order or Final Order (f) using or seeking to use any insurance proceeds constituting Prepetition Collateral without the consent of the Prepetition Lender; (g) incurring indebtedness outside the ordinary course of business; (h) objecting to or challenging in any way the claims, liens, or interests held by or on behalf of the Prepetition Lender; (i) asserting, commencing or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions, against the Prepetition Lender; or (j) prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Obligations, the Prepetition Liens or any other rights or interests of the Prepetition Lender.

18. Reservation of Certain Third Party Rights and Bar of Challenges and Claims.

(a) The stipulations, findings, representations and releases contained in this Interim Order with respect to the Prepetition Lender and the Prepetition Debt shall be binding upon all parties-in-interest, any trustee appointed in these cases and any Statutory Committee (each, a "Challenge Party"), unless and solely to the extent that (i) the Debtors received from a

Challenge Party notice of a potential Challenge (defined below) during the Challenge Period (defined below) and (ii) the Court rules in favor of the plaintiff in any such timely and properly filed Challenge. For purposes of this paragraph 18: (a) "Challenge" means any claim or cause of action against any of the Prepetition Lender on behalf of the Debtors or the Debtors' creditors and interest holders, or to object to or to challenge the stipulations, findings or Debtors' Stipulations set forth herein, including, but not limited to those in relation to: (i) the validity, extent, priority, or perfection of the security interests and liens of the Prepetition Lender; (ii) the validity, allowability, priority, or amount of the Prepetition Debt (including any fees included therein); or (iii) the secured status of the Prepetition Debt; (iv) any liability of the Prepetition Lender with respect to anything arising from any of the respective Prepetition Loan Documents; and (b) "Challenge Period" means the period from the Petition Date through and including the date that is sixty (60) calendar days after entry of a Final Order.

(b) Upon the expiration of the Challenge Period without the filing of a Challenge (the "Challenge Period Termination Date"): (A) any and all such Challenges and objections by any party (including, without limitation, any Statutory Committee, any Chapter 11 trustee, and/or any examiner or other estate representative appointed in these Cases, and any Chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred, (B) all matters not subject to the Challenge, and all findings, Debtors' Stipulations, waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to each Prepetition Lender's claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors' bankruptcy estates and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases; and (C) any and all claims or causes of action against any of the Debtors or the Prepetition Lender relating in any way to the Debtors or the Prepetition Loan Documents shall be forever waived and released by the Debtors' estates, all creditors, interest holders and other parties in interest in these Cases and any Successor Cases.

19. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

20. Section 506(c) Claims. Upon entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the Prepetition Lender pursuant to sections 105 or 506(c) of the Bankruptcy Code, or otherwise.

21. No Marshaling/Applications of Proceeds. Upon entry of the Final Order, the Prepetition Lender shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral.

22. Section 552(b). Subject to the entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Lenders with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral.

23. Rights Preserved. Notwithstanding anything herein to the contrary, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly: (a) the Prepetition Lender’s right to seek any other or supplemental relief in respect of the Debtors (including the right to seek additional adequate protection, including, without limitation, in the form of reimbursement of fees and expenses of counsel to the Prepetition Lender); (b) the rights of the Prepetition Lender to seek the payment by the Debtors of post-petition interest or fees pursuant to section 506(b) of the Bankruptcy Code; or (c) any of the rights of the Prepetition Lender under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to (i) request modification of the automatic stay of section 362 of the Bankruptcy Code, (ii) request dismissal of any of the Cases or Successor Cases, conversion of any of the Cases to cases under Chapter 7, or appointment of a Chapter 11 trustee or examiner with expanded powers, or (iii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a Chapter 11 plan or plans. Other than as expressly set forth in

this Interim Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the Prepetition Lender are preserved.

24. No Waiver by Failure to Seek Relief. The failure of the Prepetition Lender to seek relief or otherwise exercise rights and remedies under this Interim Order, the Prepetition Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the Prepetition Lender.

25. Binding Effect of Interim Order. Immediately upon entry by this Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the Prepetition Lender, all other creditors of any of the Debtors, any Statutory Committee or any other court appointed committee, appointed in the Cases, and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Cases, any Successor Cases, or upon dismissal of any Case or Successor Case.

26. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Cases; (b) converting any of the Cases to a case under Chapter 7 of the Bankruptcy Code; (c) dismissing any of the Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Cases or Successor Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests and other protections granted to the Prepetition Lender pursuant to this Interim Order and/or the Prepetition Loan Documents, notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Cases, or following dismissal of the Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until all of the Prepetition Debt has been paid in full.

27. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the use of Cash Collateral is scheduled for [_____] [___], 2015 at [__]:[___] [__].m.

(ET) before the Honorable [_____], United States Bankruptcy Judge, Courtroom [____], at the United States Bankruptcy Court for the Southern District of New York located at One Bowling Green, New York, New York 10004.

28. Notice of Final Hearing: On or before [_____] [___], 2015, the Debtors shall serve, by United States mail, first-class postage prepaid, a copy of the Motion and this Interim Order upon: (a) the Office of the United States Trustee for the Southern District of New York; (b) the Internal Revenue Service; (c) the thirty (30) largest unsecured creditors of the Debtors at their last known addresses; (d) Sheppard, Mullin, Richter & Hampton LLP, attorneys for the Prepetition Lender; (e) any party which has filed prior to such date a request for notices under Bankruptcy Rule 2002 with this Court; and (f) counsel for any Statutory Committee.

29. Objection Deadline: Objections, if any, to the relief sought in the Motion shall be in writing, shall set forth with particularity the grounds for such objections or other statement of position, shall be filed with the clerk of the Bankruptcy Court (with a copy to Chambers), and personally served upon (a) Cooley LLP (Attn: Jeffrey L. Cohen), counsel to the Debtors; (b) Klestadt Winters Jureller Southard & Stevens, LLP (Attn: Sean C. Southard), conflicts counsel to the Debtors; (c) the Office of the United States Trustee for the Southern District of New York; (d) counsel to any Statutory Committee; and (e) Sheppard, Mullin, Richter & Hampton LLP, attorneys for the Prepetition Lender, so that such objections are filed with the Court and received by said parties on or before [__:__] p.m. Eastern Time on [_____] [___], 2015 with respect to entry of the Final Order.

30. Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect immediately, notwithstanding anything to the contrary proscribed by applicable law.

[Remainder of page intentionally left blank.]

31. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

Dated: September [], 2015
New York, New York

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Budget

Total Cash Receipts	\$	517	\$	133	\$	161	\$	53	\$	42	\$
CASH DISBURSEMENTS											
<i>Operating Disbursements:</i>											
Payroll & Fringes		(12)		(601)		(12)		(467)		(12)	
Severance		-		(14)		-		-		-	
Temporary Staffing		-		-		(23)		(23)		(23)	
Rent & Facilities		-		(44)		-		-		-	
Utilities & Telecom		-		-		-		(4)		-	
Community Payment		-		-		-		-		-	
Taxes & Insurance		(5)		(37)		(5)		(5)		(5)	
Other AP		-		(307)		(241)		(253)		(303)	
Travel & Credit Card Charges		(9)		(50)		(9)		(49)		(9)	
Contingency		(40)		(40)		(40)		(40)		(20)	
Total Operating Disbursements	\$	(66)	\$	(1,093)	\$	(330)	\$	(840)	\$	(372)	\$
Total Financing Disbursements	\$	-	\$	-	\$	-	\$	-	\$	-	\$
<i>Restructuring Disbursements:</i>											
Professional Fees / Retainers		-		-		-		(50)		-	
Critical Vendor Payments		-		(100)		-		-		(304)	
Shippers / Warehousemen Payments		-		(100)		-		-		(200)	
Adequate Assurance		-		-		(5)		-		-	
Key Employee Retention Plan		-		-		-		-		-	
Total Restructuring Disburs.	\$	-	\$	(200)	\$	(5)	\$	(50)	\$	(504)	\$
Total Cash Disbursements	\$	(66)	\$	(1,293)	\$	(334)	\$	(890)	\$	(875)	\$
Net Change in Cash		451		(1,160)		(173)		(837)		(833)	
Ending Cash incl. Restricted	\$	7,274	\$	6,113	\$	5,940	\$	5,103	\$	4,270	\$
Accrual Roll											
Cumulative Gross Accruals	\$	601	\$	1,708	\$	2,403	\$	3,193	\$	3,891	\$
Cumulative Accruals, net of Disbursement		530		537		897		811		1,131	