

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

ENSEQUENCE, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-10182 (KG)

Re: Docket No. 5

ORIGINAL

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR'S USE OF CASH  
COLLATERAL, (II) APPROVING ADEQUATE PROTECTION TO  
PREPETITION LENDER, (III) MODIFYING THE AUTOMATIC STAY,  
AND (IV) SCHEDULING A FINAL HEARING**

Upon the motion (the "**Motion**")<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the "**Debtor**") for the entry of an order (a) authorizing the Debtor's interim and final use of cash collateral, (b) approving adequate protection for the Prepetition Lender, (c) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement the terms and provisions of this Interim Order, and (d) scheduling a final hearing; and it appearing that the Court has jurisdiction over this matter; and upon consideration of the Motion, the First Day Declaration and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on the Motion (the "**Interim Hearing**"); and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of

<sup>1</sup> The Debtor's last four digits of its U.S. federal tax identification number are 6904. The address for the Debtor's headquarters is 420 Lexington Ave., Suite 408, New York, NY 10170.

<sup>2</sup> All capitalized terms used herein but not defined shall have the meanings given them in the Motion.

the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; 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having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtor, its estate, and creditors and equity holders, and is essential for the continued operation of the Debtor's business; 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 DEBTOR, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. On January 30, 2018 (the "**Petition Date**"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Court**") commencing this case. The Debtor is continuing in the management and operation of its business and properties as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been appointed in this case.

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

C. As of the date hereof, the Office of the United States Trustee (the “**U.S. Trustee**”) has not yet appointed any official committee in the case pursuant to Bankruptcy Code section 1102 (each, a “**Committee**”).

D. Subject to paragraph 13 below, the Debtor stipulates that as of the Petition Date, (1) it is truly and justly indebted and liable to the Prepetition Lender pursuant to the Prepetition Loan Documents, (2) as of the Petition Date, there is approximately \$36,700,000 in Prepetition Debt outstanding under the Prepetition Loan Documents due and owing absolutely with no portion subject to avoidance, recharacterization, recovery, attack, offset, counterclaim, defense, or claim of any kind pursuant to the Bankruptcy Code or other applicable law, and (3) the Prepetition Debt is validly secured with a first priority lien on substantially all of the Prepetition Collateral.

E. Subject to paragraph 13 below, the Debtor further stipulates that all cash and cash equivalents of the Debtor are Prepetition collateral (or proceeds thereof) of the Prepetition Lender. The Debtor acknowledges that these funds constitute the “cash collateral” of the Prepetition Lender within the meaning of 11 U.S.C. § 363(a) (the “**Cash Collateral**”).

F. The Prepetition Lender is entitled to adequate protection as set forth herein pursuant to Bankruptcy Code sections 361 and 363 for any decrease in the value of its interests in the Prepetition Collateral from and after the Petition Date resulting from the subordination to the Carve Out (as defined herein), the Debtor’s use, sale or lease of such Prepetition Collateral, and the imposition of the automatic stay.

G. The Debtor has requested that the Prepetition Lender consent to the Debtor’s use of the Cash Collateral to provide funds to administer this case and effect a going-concern sale.

The Prepetition Lender affirmatively consents to the use of Cash Collateral pursuant to the terms of this Interim Order and in accordance with the Budget.

H. Subject to the terms and conditions set forth in this Interim Order, the Prepetition Lender agrees to consent to the entry of this Interim Order. No finding of fact contained in this Interim Order shall or shall be construed to waive, impair, limit, or prejudice in any way the Prepetition Lender's right to contest or object to any further or other use of the Cash Collateral by the Debtor.

I. The terms of this Order and the use of Cash Collateral have been negotiated extensively at arm's length and in good faith between the Debtor and the Prepetition Lender.

J. Under the circumstances of this case, this Interim Order is a fair and reasonable response to the Debtor's request for the Prepetition Lender's consent to the use of Cash Collateral, and the entry of this Interim Order is in the best interest of Debtor's estate and its creditors. The Debtor has an immediate and critical need to use the Cash Collateral on the terms set forth herein in order for the Debtor to continue its efforts to preserve assets in anticipation of a sale and maximize value for its estate and creditors.

K. The Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). Unless the interim relief set forth in this Interim Order is granted immediately, the Debtor's estate and business will be immediately and irreparably harmed. In particular, the Debtor requires immediate use of the Cash Collateral to, among other things, preserve assets in preparation of a sale and pay basic expenses, such as payroll, professionals, and utilities. The use of the Cash Collateral, in accordance with this Interim Order, is therefore in the best interest of the Debtor's estate, its creditors, and all parties in interest.

L. Notice of this Motion has been given to the following parties (collectively, the “**Notice Parties**”): (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtor’s prepetition lender; (c) the parties included on the Debtor’s list of twenty (20) largest unsecured creditors; (d) the Internal Revenue Service; (e) the Taxing Authorities; (f) the United States Attorney for the District of Delaware; (g) the Attorney General for the State of Delaware; (h) the Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. Thus, notice of the Motion was provided by the Debtor under Bankruptcy Rules 2002, 4001(b) and (d), and 9014, Local Rule 9013-1(m), and Bankruptcy Code sections 102(1) and 363.

M. This Interim Order constitutes findings of fact and conclusions of law under Bankruptcy Rule 7052 and will take effect and be fully enforceable as of the Petition Date.

**IT IS HEREBY ORDERED THAT:**

1. Motion Granted. The Motion is GRANTED on an interim basis to the extent set forth herein. Any objection to the Motion, to the extent not withdrawn, waived or resolved, is hereby overruled.

2. Authorization to Use Cash Collateral.

- a. Pursuant to Bankruptcy Code sections 105(a), 363(b), and 363(c)(2), the Debtor is authorized to use Cash Collateral on an interim basis in the amounts and for the purposes identified in the cash collateral budget attached hereto as Exhibit 1 (as may be amended, the “**Budget**”) through and including February 20, 2018 (the “**Interim Period**”); *provided, however*, that the aggregate amount of such payments made during the interim period shall not exceed \$137,000.
- b. All cash collateral use must be in accordance with the terms of the Budget, subject to cumulative variances of no more than 10% each per week for disbursements and collections (the “**Permitted Variance**”).
- c. Through the earlier to occur of (i) five (5) business days following receipt (via email, facsimile, or courier) by the Debtor, the Debtor’s counsel, the

U.S. Trustee, and counsel to any Committee of a notice of the occurrence of a Termination Event (as defined below) and such Termination Event remains uncured and the Prepetition Lender terminates the use of Cash Collateral; and (ii) on June 13, 2018 (the "**Termination Date**"), the Debtor is authorized to use Cash Collateral in accordance with the Budget. Following (i) or (ii), or as otherwise ordered by the Court or subsequently extended by written agreement of the Debtor and the Prepetition Lender, the Debtor's authority to use Cash Collateral shall automatically terminate.

3. Milestones. The Debtor shall meet all of the following milestones (the "**Milestones**"), each of which may be modified by mutual consent of the Debtor and the Prepetition Lender:

- a. February 20, 2018 - Approval of bid procedures and a Final Order on Cash Collateral, in forms acceptable to the Prepetition Lender.
- b. March 1, 2018 - Filing a joint plan and disclosure statement, in a form acceptable to the Prepetition Lender.
- c. April 19, 2018 - Approval of a sale order, in a form acceptable to the Prepetition Lender.
- d. April 23, 2018 - Entry of an order granting interim approval of the disclosure statement, approval of solicitation procedures, and scheduling a hearing on confirmation of the plan, each in a form acceptable to the Prepetition Lender.
- e. April 25, 2018 - Commencement of solicitation of votes on confirmation of the plan.
- f. June 7, 2018 - Entry of an order granting final approval of the disclosure statement and confirmation of the plan, in a form acceptable to the Prepetition Lender.
- g. June 13, 2018 - Effective date of the plan.

4. For purposes of this Order, a "**Termination Event**" shall mean:

- a. the entry of an order of this Court terminating the right of the Debtor to use Cash Collateral;
- b. the dismissal or the conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code;
- c. the appointment of a trustee or an examiner in this Chapter 11 Case;

- d. the entry of any order of this Court that impairs in any way the security interests, liens, priority claims or rights granted to the Prepetition Lender under the terms of this Interim Order;
- e. this Interim Order shall cease, for any reason, to be in full force and effect, or the Debtor shall so assert in writing, or any liens or claims created in favor of the Prepetition lender under this Interim Order shall cease to be enforceable and of the same effect and priority purported to be created hereby, or the Debtor shall so assert in writing;
- f. the Debtor challenges or objects to the extent, validity, enforceability, priority, perfection and/or non-avoidability of the Prepetition Loan Documents and Obligations (as defined in the Prepetition Loan Documents) or the Prepetition Lender's security interest in and liens upon the Collateral;
- g. an order of this Court shall be entered reversing, staying, vacating or otherwise modifying this Interim Order or any provision contained therein without the prior written consent of the Prepetition Lender;
- h. the Debtor's failure to comply with the Budget, including any Permitted Variances;
- i. the Debtor proposes a plan to which the Prepetition Lender does not consent;
- j. any Milestone is not satisfied;
- k. the Debtor's failure to provide any additional adequate protection to the Prepetition Lender or any party order by the Court and such failure shall continue unremedied for more than three (3) business days after written notice thereof; or
- l. either the Debtor or the Prepetition Lender, each in its sole discretion, does not agree to a revised Budget for the period of time that extends beyond the initial 13-week Budget attached hereto as Exhibit 1;
- m. the Debtor's failure to perform, in any respect, any of its material obligations under the Interim Order.

5. Adequate Protection.

- a. In consideration for the use of the Cash Collateral, the Debtor shall provide the following adequate protection to the Prepetition Lender, to the extent there is a diminution in value of the interests of the Prepetition

Lender in the Collateral from and after the Petition Date, which is a result of, or arises from, or is attributable to, the imposition of the automatic stay, the Carve Out, the use of such Cash Collateral, or the grant of a lien under Bankruptcy Code section 364:

- i. Replacement Lien. Pursuant to Bankruptcy Code sections 361, 363(e), and 364, and except as to otherwise validly perfected and unavoidable liens existing as of the Petition Date, a replacement security interest and lien in the assets of the Debtor to the same extent and priority granted to the Prepetition Lender pursuant to the Prepetition Loan Documents (the “**Adequate Protection Replacement Lien**”). For the avoidance of doubt, nothing in this Interim Order shall encumber any causes of action available under Chapter 5 of the Bankruptcy Code.
- ii. Superpriority Claim. As and to the extent provided by Bankruptcy Code sections 503 and 507(b), an allowed superpriority administrative expense claim in the case and any successor bankruptcy case (the “**Adequate Protection Superpriority Claim**”). The Adequate Protection Superpriority Claim shall be subordinate to the Carve Out solely to the extent set forth in this Interim Order, but otherwise shall have priority over all administrative expense claims, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 503(b) and 507(b), and unsecured claims against the Debtor and its estate now existing or hereafter arising, of any kind or nature whatsoever.
- iii. Reporting Requirements. The Debtor shall provide the Prepetition Lender with the following (the “**Reporting Requirements**”):
  1. On or before the end of business on Wednesday of each calendar week commencing February 7, 2018, an updated Budget;
  2. On or before the end of business on Wednesday of each calendar week commencing February 7, 2018: (x) a weekly cash flow comparison that compares the Debtor’s actual receipts and expenses for the prior week to the Budget with respect to such week and (y) a compliance certificate in the form attached as **Exhibit 2** hereto, certified on behalf of the Debtor by an officer of the Debtor, relating to liquidity,

cumulative disbursements, minimum collections, and other matters for the prior week; and

3. Other periodic reports as the Prepetition Lender may request from time to time regarding efforts by the Debtor to improve revenue cycle management processes and procedures, accounting and finance information systems, and other matters.
  - iv. Books and Records. The Prepetition Lender shall have the right to inspect the Prepetition Collateral and the Debtor's books and records relating thereto.
  - v. Cash Management. The Debtor shall maintain in its name the bank account at Silicon Valley Bank with an account number ending in 0461 (the "**Deposit Account**"). The Debtor shall use the Deposit Account as the Debtor's only operating account, including depositing all funds from collection of receivables into the Deposit Account. The Debtor shall not maintain any cash in any bank account other than the Deposit Account.
- b. In consideration, and as a requirement, for obtaining the consent of the Prepetition Lender to the entry of this interim Order and as further adequate protection for the Debtor's consensual use of Cash Collateral as provided herein, the Debtor shall pay or reimburse in cash the Prepetition Lender for reasonable and documented fees and any and all reasonable and documented out-of-pocket costs, expenses, and charges (including the reasonable and documented out-of-pocket and documented fees, costs, and expenses of counsel for the Prepetition Lender), on a regular monthly basis during this case, without further notice, motion, application, hearing or order of this Court. The Prepetition Lender shall provide copies of invoices (which may be redacted to preserve confidentiality, attorney-client privilege, and all other similar rules and privileges) to (i) counsel for the Debtor; (ii) the Office of the United States Trustee (the "U.S.

**Trustee**"); and (iii) counsel to any Committee (as defined below, and together with (i) and (ii), the "**Notice Parties**"), for any such fees and expenses sought under this paragraph. The Notice Parties shall have ten (10) days to object to the fees and expenses sought under this paragraph.

- c. As further adequate protection for any use or diminution in the value of the Prepetition Lender's interest in the Prepetition Collateral (including, without limitation, the Cash Collateral), the Debtor will comply with the Budget and shall not make any disbursements other than those set forth in the Budget, subject to the Permitted Variance. The Budget may be modified with the Prepetition Lender's prior written consent, without further order of the Court, or upon order of the Court as necessary. Each modified budget shall be filed with the Court.
- d. As further adequate protection of the Prepetition Secured Lender's interest, the Debtor will not grant a lien on any of its assets, except as may otherwise be agreed to in writing by the Prepetition Lender.
- e. The Prepetition Lender reserves the right to file with the Court a motion to seek additional adequate protection of its interest.

6. Credit Bid. In connection with the sale or other disposition, whether under Bankruptcy Code sections 363 or 1129 or otherwise, of all or any portion of the Prepetition Collateral in which the Prepetition Lender has an interest, pursuant to Bankruptcy Code section 363(k), the Prepetition Lender shall have the right to use the Prepetition Debt or any part thereof to credit bid with respect to any bulk or piecemeal sale of all or any portion of the Prepetition Collateral.

7. Carve Out.

- a. Notwithstanding anything to the contrary, the liens on the Prepetition Collateral will be subject to the right of payment of the following expenses (collectively, the “**Carve Out**”):
- i. all allowed administrative expenses pursuant to 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Bankruptcy Court and pursuant to 28 U.S.C. § 1930(a)(6) for fees payable to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, plus interest at the statutory rate;
  - ii. all reasonable fees and expenses up to \$5,000 incurred by a Trustee under Bankruptcy Code section 726(b); and
  - iii. subject to the terms and conditions of this Interim Order, (x) all allowed Professional Fees of attorneys, accountants and other professionals retained by the Debtor and any Committee, under Sections 327 or 1103(a) of the Bankruptcy Code (each a “**Professional**” and collectively the “**Professionals**”) incurred prior to a Termination Event in an aggregate amount not to exceed at any time the budgeted amounts, plus (y) all allowed Professional Fees of Professionals incurred after a Termination Event in the aggregate amount not to exceed at any time \$15,000.
- b. Carve Out Usage. No portion of the Carve Out and no Prepetition Collateral (or proceeds thereof) may be used to pay any fees or expenses incurred by any entity, including the Debtor, any Committee or the Professionals, in connection with claims or causes of action adverse to the Prepetition Lender’s interest in the Prepetition Collateral, including (1) preventing, hindering, or delaying the Prepetition Lender’s enforcement or realization upon any of the Prepetition Collateral once notice of a Termination Event has been received; (2) using or seeking to use Cash Collateral or incurring indebtedness in violation of the terms hereof, or selling any Prepetition Collateral without the consent of the Prepetition

Lender; or (3) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of the Prepetition Debt or any liens or security interests with respect thereto or any other rights or interest of the Prepetition Lender, or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the Prepetition Lender (any such claim, a “**Challenge**”); *provided, however*, that up to \$10,000 of the Carve Out may be used to pay fees and expenses incurred by the Committee Professionals in connection with the investigation of the Prepetition Debt and the liens on and security interests in the Prepetition Collateral and in connection with negotiation, preparation, and entry of this Order or any amendment hereto consented to by the Prepetition Lender.

- c. Each of the provisions in this Paragraph 7, to the extent it allows for the use of Cash Collateral to make payment to Professionals, shall expire upon the Termination Date, but the accrued and unpaid fees and amounts subject to the Carve Out shall be permitted to be paid from Cash Collateral to the extent approved by the Court and consistent with the Budget, and the Prepetition Lender reserves the right to object to any provisions related to the payment of administrative expenses that may be sought for any period after the Termination Date.

8. Proof of Claim. The Prepetition Lender will not be required to file proofs of claim or requests for approval of administrative expenses in this case. The acknowledgement by the

Debtor of the Prepetition Debt and the liens, rights, priorities and protections granted to or in favor of the Prepetition Lender in respect of the Prepetition Collateral as set forth herein and in the Prepetition Loan Documents shall be deemed a timely filed proof of claim on behalf of the Prepetition Lender.

9. Relief from the Automatic Stay.

- a. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to permit (i) the Debtor to implement and perform the terms of this Interim Order, and (ii) the Debtor to create, and the Prepetition Lender to perfect, the Adequate Protection Replacement Lien and any other liens granted hereunder. The Prepetition Lender shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the Adequate Protection Replacement Lien and any other liens granted by this Interim Order or to take any other actions to perfect such liens (including the Adequate Protection Replacement Lien), which shall be deemed automatically perfected by the docketing of the Interim Order by the Clerk of the Court, and deemed to be effective as of the Petition Date. If, however, the Prepetition Lender shall elect for any reason to file, record or serve any such financing statements or other documents with respect to such liens (including the Adequate Protection Replacement Lien), then the Debtor shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time of the commencement of this case on the Petition Date.

- b. In addition, and without limiting the foregoing, upon the occurrence of the Termination Date or a Termination Event, and after receiving a Termination Notice, the Debtor may seek relief from the Court during the period of five (5) business days after receiving the Termination Notice for the sole purpose of determining whether a termination Event has occurred and is continuing.
- c. The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application or order of the Court to the extent necessary to permit the Prepetition Lender to perform any act authorized or permitted under or by virtue of this Interim Order and the Prepetition Loan Documents, as applicable, including, without limitation, (i) to implement the arrangements authorized by this Interim Order, (ii) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the Collateral, (iii) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Loan Documents, including, without limitation, all interests, fees, costs and expenses permitted under the Prepetition Loan Documents and apply such payments to the Obligations, and (iv) following the five (5) day period referenced in paragraph 9(b), to take any action and exercise all rights and remedies provided to it by this Interim Order, the Prepetition Loan Documents or applicable law that the Prepetition Lender may deem appropriate in its discretion to proceed against and realize upon the

Collateral or any other assets or properties of Debtor's estate upon which the Prepetition Lender, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all Obligations.

10. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Interim Order (other than in accordance with the Final Order) shall not affect the validity or enforceability of the Adequate Protection Replacement Lien, the Adequate Protection Superpriority Claim or any claim, lien, security interest, or priority authorized or created hereby with respect to the Adequate Protection Replacement Lien or the Adequate Protection Superpriority Claim, incurred prior to the effective date of such reversal, modification, vacatur or stay. Notwithstanding any reversal, modification, vacatur, or stay (other than in accordance with the Final Order), (a) this Interim Order shall govern, in all respects, any use of Cash Collateral or Adequate Protection Replacement Lien or Adequate Protection Superpriority Claim incurred by the Debtor prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the Prepetition Lender shall be entitled to all the benefits and protections granted by this Interim Order with respect to any such use of Cash Collateral or such Adequate Protection Replacement Lien or Adequate Protection Superpriority Claim incurred by the Debtor.

11. No Waiver for Failure to Seek Relief. The failure or delay of the Prepetition Lender to seek relief or otherwise exercise any of its 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 rights hereunder, thereunder, or otherwise, by the Prepetition Lender.

12. Marshalling. In no event shall the Prepetition Lender be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the Collateral. Subject to the entry of a Final Order granting such relief, the Prepetition Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Lender with respect to proceeds, products, offspring or profits of any of the Collateral, as applicable.

13. Binding Effect. This Interim Order is binding on all parties in interest in the case and their respective successors and assigns, including, without limitation, any subsequently appointed chapter 11 or chapter 7 trustee of the Debtor (“**Trustee**”), except that (i) any Trustee will have the right to terminate this Interim Order after notice and a hearing, subject to the terms and conditions of this Interim Order and (ii) a party in interest (other than the Debtor, but including the Committee and a Trustee, if any) may commence a Challenge (x) no later than 60 days after formation of the Committee or (y) in the case of any other party in interest other than the Committee, no later than 75 days after the entry of this Interim Order ((x) and (y) together, the “**Challenge Period**”) and, in either (x) or (y), this Court rules in favor of the Challenge. If a Trustee is appointed prior to the expiration of the Challenge Period, the Trustee may move for an extension of the Challenge Period, but the Prepetition Lender and all other parties in interest reserve the right to object to such requested extension. If this Interim Order does not become a final nonappealable order, if a Trustee terminates this Interim Order, or if any of the provisions of this Interim Order are hereafter modified, amended, vacated, or stayed by any subsequent order of this Court or any other court, such termination or subsequent order shall not affect the priority, validity, enforceability, or effectiveness of any lien, security interest, or other benefit or claim authorized hereby with respect to Cash Collateral used prior to the effective date of such

termination or subsequent order. All such liens, security interests, claims, and other benefits will be governed in all respects by the original provisions of this Interim Order.

14. Validity of Adequate Protection Replacement Lien. This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, and perfection, of the Adequate Protection Replacement Lien without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document that may otherwise be required under the law of any jurisdiction, (b) obtaining "control" (as defined in any applicable Uniform Commercial Code or other law) over any applicable collateral or (c) taking any other action to validate or perfect the Adequate Protection Liens.

15. Section 506(c) Claims. Subject to entry of the Final Order granting such relief, no costs or expenses of administration which have been or may be incurred in the case shall be charged against the Prepetition Lender, its claims or the Collateral pursuant to section 506(c) of the Bankruptcy Code without the prior written consent of the Prepetition Lender, and no such consent shall be implied from any other action, inaction or acquiescence by the Prepetition Lender.

16. Releases. Upon the earlier of (a) the entry of the Final Order, or (b) the entry of an order extending the Debtor's use of the Cash Collateral, in consideration of the Prepetition Lender permitting the Debtor to use the Pre-Petition Collateral (including Cash Collateral) pursuant to the provisions of this Interim Order, the Debtor, on behalf of itself and its successors and assigns (collectively, the "**Releasors**"), shall forever release, discharge and acquit the Prepetition Lender and its successors and assigns, and present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees and other representatives in their respective capacities as such (collectively, the "**Pre-Petition Releasees**"),

of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called "lender liability" claims or defenses, that Releasors had, have or hereafter can or may have against Pre-Petition Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof in connection with the Debtor, the Prepetition Loan Documents or the Obligations.

17. Discharge Waiver. Subject to the entry of the Final Order, the Debtor expressly stipulates, and the Court finds and adjudicates that, neither the Adequate Protection Replacement Lien or the Adequate Protection Superpriority Claim shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding section 1142(d) of the Bankruptcy Code, unless (i) the order is entered with the prior written consent of the Prepetition Lender or (ii) the Adequate Protection Superpriority Claim has been paid in full in cash on or before the effective date of such plan.

18. Other Actions. The Debtor is hereby authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Interim Order.

19. Final Hearing. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on FEB. 23, 2018 at 9:00 a.m. (ET) (the "**Final Hearing Date**"); and any objections to entry of such order shall be in writing, filed with this Court, and served upon (i) counsel to the Debtor, (ii) the Prepetition Lender, (iii) the U.S. Trustee, and (iv) counsel for any statutory committee appointed in these Chapter 11 Cases, in each case so as to be received no later than 4:00 p.m. (ET) on FEB. 16, 2018.

20. Notice. The Debtor shall promptly serve a notice of the entry of this Interim Order, by regular mail upon (i) the U.S. Trustee, (ii) the creditors holding the 20 largest unsecured claims against the Debtor, (iii) counsel to the Prepetition Lender, and (iv) any other party which has filed a request with this Court for notice in the Debtor's case and served such request upon the Debtor's counsel.

21. Immediate Effectiveness. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Interim Order.

22. Retention of Jurisdiction. The Court shall retain jurisdiction over any matters arising from or relating to the implementation and interpretation of this interim Order.

Dated: February 2, 2018  
Wilmington, Delaware

  
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THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE