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6 *Attorneys for Debtor and Debtor in Possession*

7  
8 **UNITED STATES BANKRUPTCY COURT**

9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **LOS ANGELES DIVISION**

11  
12 In re:  
13 NASTY GAL INC., a California  
corporation,  
14 Debtor and Debtor in Possession.

Case No. 2:16-bk-24862-BB

Chapter 11

**DEBTOR'S THIRD AMENDMENT TO  
MOTION FOR FINAL ORDER  
AUTHORIZING AND APPROVING (A)  
USE OF CASH COLLATERAL AND (B)  
GRANT OF ADEQUATE PROTECTION  
TO SECURED CREDITOR;  
SUPPLEMENTAL DECLARATION OF  
JOE SCIROCCO IN SUPPORT THEREOF**

**Hearing:**

Date: February 8, 2017  
Time: 1:00 p.m.  
Place: Courtroom 1539  
255 East Temple Street  
Los Angeles, CA 90012

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LOS ANGELES

1 Nasty Gal Inc. (the “Company” or the “Debtor”), the debtor and debtor in possession in  
2 the above-captioned chapter 11 case, hereby amends the relief sought in its *Motion for Order*  
3 *Authorizing and Approving: (a) Use of Cash Collateral; and (b) Grant of Adequate Protection to*  
4 *Secured Creditor*, filed by the Debtor on November 10, 2016 (the “Cash Collateral Motion”)  
5 [Docket No. 6],<sup>1</sup> and seeks the entry of an order approving the use of the cash collateral of  
6 Hercules Capital, Inc. f/k/a Hercules Technology Growth Capital, Inc., in its capacity as  
7 administrative agent for itself and several banks and other financial entities from time to time  
8 parties thereto (the “Prepetition Lender”) on a final basis.

9 In support of the requested relief, the Debtor states as follows:

10 1. On January 5, 2017, a fourth interim hearing was held on the Cash Collateral  
11 Motion. Pursuant to the *Order Approving Fourth Interim Stipulation Authorizing Use of Cash*  
12 *Collateral and Granting Adequate Protection* entered by the Court on January 5, 2017 (the  
13 “Fourth Interim Cash Collateral Order”) [Docket No. 229], the Court authorized, on a fourth  
14 interim basis, the use of Cash Collateral of the Prepetition Lender through February 8, 2017.

15 2. Pursuant to the Fourth Interim Cash Collateral Order, a hearing is set on February  
16 8, 2017, regarding the Debtor’s use of cash collateral on a final basis (the “Cash Collateral  
17 Hearing”).

18 3. On December 27, 2016, the Debtor signed a stalking horse purchase agreement  
19 with BooHoo F I, Ltd. (the “Stalking Horse APA”) which provides for the sale of substantially all  
20 of the Debtor’s intellectual property assets for twenty million dollars (\$20,000,000) after the  
21 opportunity for an auction and competitive bids (the “Stalking Horse Sale”) [See Docket No. 193,  
22 Exhibit B.]

23 4. On or about January 6, 2017, the Court entered its *Order (A) Approving Stalking*  
24 *Horse Asset Purchase Agreement (B) Approving Bid Protections; (C) Approving Procedures In*  
25 *Connection With The Sale Of Assets; (D) Scheduling The Related Auction And Hearing To*  
26 *Consider Approval Of Sale; (E) Approving Procedures Related To The Assumption Of Certain*  
27

28 <sup>1</sup> Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Motion.

1 *Executory Contracts And Unexpired Leases; (F) Approving The Form And Manner Of Notice*  
2 *Thereof; And (G) Granting Related Relief*, approving the Stalking Horse APA and bidding  
3 procedures for the sale of substantially all of the Debtor’s assets (the “Sale Procedures Order”)  
4 [See Docket No. 235].

5 5. The Sale Procedures Order sets forth a bid deadline of February 2, 2017 (the “Bid  
6 Deadline”), an auction for the Debtor’s assets on February 7, 2017 (the “Auction”) and a hearing  
7 to approve a sale to the winning bidder on February 8, 2017 (the “Sale Hearing”), at the same  
8 date and time as the Cash Collateral Hearing.

9 6. As of the Bid Deadline, no qualified bid was received by the Debtor other than the  
10 Stalking Horse APA. Since no other qualified bid was received, no Auction will take place [See  
11 Sale Procedures Order, Exhibit 1, Section F].

12 7. The Debtor will move forward with the sale of the Debtor’s intellectual property  
13 assets to Boohoo F I Limited for a total consideration of \$20 million, pursuant to the Stalking  
14 Horse APA, and will be liquidating its assets between now and the anticipated February 28, 2017  
15 closing date of the sale.

16 8. The Debtor needs to continue to utilize cash collateral through and beyond the  
17 closing of the sale of the Stalking Horse Bidder, in order to continue business operations in  
18 accordance with the requirements of the Stalking Horse APA, and to fully administer the Estate.

19 9. The Debtor asserts that in the absence of such use, immediate and irreparable harm  
20 will result to the Debtor, its estate, and its creditors and the inability to use such Cash Collateral  
21 will render impossible an effective and orderly case that will maximize the value that may be  
22 returned to creditors and interest holders.

23 10. The ability of the Debtor to continue to finance its operations through and beyond  
24 a closing of the sale to the Stalking Horse Bidder requires the continued and immediate use of  
25 Cash Collateral to pay the expenditures, subject to the variances authorized herein, as set forth in  
26 the budget (the “Final Budget”), a copy of which is attached as Exhibit A to the Supplemental  
27 Declaration of Joe Scirocco.

1 11. Given, among other things, the binding purchase agreement and the commitment  
2 of the Stalking Horse Bidder, the value of the Debtor's assets that constitute the Prepetition  
3 Lender's collateral exceeds the value of the Debtor's obligations to the Prepetition Lender. The  
4 use of the Cash Collateral will preserve the value of the Debtor's assets pending the sale of the  
5 Debtor's assets at a price that will exceed the value of the Debtor's obligations to the Prepetition  
6 Lender. Accordingly, the Prepetition Lender is adequately protected for the use of Cash  
7 Collateral as set forth in the Budget.

8 12. At the time of the filing of this Third Amendment, the Debtor was engaged in  
9 discussions with the Prepetition Lender regarding a proposed final stipulation authorizing the use  
10 of cash collateral. To the extent that the Debtor and Prepetition Lender cannot agree to the terms  
11 of a final stipulation, a copy of the Debtor's *[Proposed] Final Order Authorizing Use of Cash*  
12 *Collateral and Granting Adequate Protection* (the "Proposed Final Order") is attached as Exhibit  
13 "1" hereto. The Debtor believes that the terms of the Proposed Final Order are fair and  
14 reasonable and that use of the Prepetition Lender's cash collateral as set forth in the Final Budget  
15 is necessary and in the best interests of the Estate.

16 **WHEREFORE**, the Debtor requests that the Bankruptcy Court enter the Proposed Final  
17 Order substantially in the form attached as Exhibit "1" to this Third Amendment. The Debtor  
18 prays for such other and further relief as may be appropriate under the circumstances.

19 Dated: February 3, 2017

ROBINS KAPLAN LLP

21 By: /s/ Kevin D. Meek  
22 Scott F. Gautier  
23 Kevin D. Meek

24 Attorneys For Debtor and Debtor In Possession

**SUPPLEMENTAL DECLARATION OF JOE SCIROCCO**

I, Joe Scirocco, declare as follows:

1. I am the President and Chief Restructuring Officer of Nasty Gal Inc. (“Nasty Gal” or the “Debtor”), a California corporation, and I am authorized to submit and I make this supplemental declaration (“Declaration”) on behalf of the Debtor in connection with the Debtor’s *Third Amendment To Motion For Final Order Authorizing And Approving (A) Use Of Cash Collateral And (B) Grant Of Adequate Protection To Secured Creditor* (the “Amendment”).

2. Except as otherwise noted herein, I have personal knowledge of the facts presented in this Declaration, or have reviewed the Debtor’s books, records and information referred to herein that were prepared and maintained by the advisors and employees engaged by the Debtor at my direction. If called as a witness to do so, I could competently testify thereto.

3. As of the February 2, 2017 bid deadline, no qualified bid was received by the Debtor other than the Stalking Horse APA.

4. The Debtor will move forward with the sale of the Debtor’s intellectual property assets to Boohoo F I Limited for a total consideration of \$20 million, pursuant to the Stalking Horse APA, and will be liquidating its assets between now and the anticipated February 28, 2017 closing date of the sale. The Debtor needs to continue to utilize cash collateral through and beyond the anticipated closing date of February 28, 2017, in order to continue business operations in accordance with the requirements of the Stalking Horse APA, and to fully administer the Estate.

5. I have prepared a projection of the Debtor’s use of cash collateral and results of operations (the “Final Budget”) that covers the period from January 29, 2017 through and including March 26, 2017. A true and correct copy of Final Budget is attached as Exhibit “A” hereto.

6. I have reviewed a copy of the Debtor’s *[Proposed] Final Order Authorizing Use of Cash Collateral and Granting Adequate Protection* (the “Proposed Final Order”), attached to the Amendment as Exhibit “1”. I believe that the terms of the Proposed Final Order are fair and

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1 reasonable and that use of the Prepetition Lender's cash collateral as set forth in the Final Budget  
2 is necessary and in the best interests of the Estate.

3 I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd  
4 day of February, 2017 at Los Angeles, California.



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7 Joe Scirocco

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**Exhibit A**

**Nasty Gal, Inc. - Cash Forecast**

	1	2	3	4	5	6	7	8
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
	29-Jan-17	5-Feb-17	9-Feb-17	12-Feb-17	19-Feb-17	26-Feb-17	5-Mar-17	12-Mar-17
	4-Feb-17	8-Feb-17	11-Feb-17	18-Feb-17	25-Feb-17	4-Mar-17	11-Mar-17	18-Mar-17
								25-Mar-17
<i>(\$ in 000s)</i>								
<b>Operating Cash Receipts</b>								
Wholesale Receipts	-	-	-	-	-	-	-	-
Retail / eCommerce (net of Returns)	1,074	1,186	890	1,483	741	-	-	-
Other Receipts								
Credit Card Fees, Chargebacks	3.0%	(32)	(36)	(27)	(44)	(22)	-	-
Reserves - reversal	-	-	-	-	-	-	-	-
<b>Total Operating Receipts</b>	<b>1,042</b>	<b>1,151</b>	<b>863</b>	<b>1,438</b>	<b>719</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Operating Cash Disbursements</b>								
Merchandise	463	-	-	-	-	-	-	-
Critical Vendor Payments	-	-	-	-	-	-	-	-
Freight / Customs	11.0%	118	131	98	163	82	123	-
Payroll, including Employee Benefits, Taxes	534	-	6	316	52	246	6	127
Chief Restructuring Officer	13	-	13	13	13	13	13	13
Independent Contractor	11	-	11	11	11	11	11	11
Net Rent	445	-	-	-	-	320	-	-
Utilities	-	-	-	-	20	-	-	25
Taxes (Sales, RE, etc)	2.6%	-	-	-	291	-	-	-
Insurance	36	-	-	-	-	-	-	-
Technology / Engineering	-	-	-	-	119	-	1	119
Digital Marketing	334	-	-	-	4	220	-	-
Other / Misc (PTO, KERP)	-	-	125	-	57	-	323	-
<b>Total Operating Disbursements</b>	<b>1,954</b>	<b>131</b>	<b>253</b>	<b>502</b>	<b>648</b>	<b>810</b>	<b>476</b>	<b>150</b>
<b>Operating Cash Flow</b>	<b>(911)</b>	<b>1,020</b>	<b>610</b>	<b>936</b>	<b>71</b>	<b>(810)</b>	<b>(476)</b>	<b>(150)</b>
<b>Non-Operating Cash Disbursements (Receipts)</b>								
IP Sale proceeds	-	-	-	-	(20,000)	-	-	-
Hercules' adequate protection / principal pmts	-	-	-	-	15,047	-	-	-
Return of __% of cash collateralized L/C's	-	-	-	-	-	-	-	-
PJSC Transaction fee	-	-	-	-	1,500	-	-	-
Section 503(b)(9) claims	-	-	-	-	1,596	-	-	-
<b>Total Non-Operating Disbursements</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(1,857)</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Bankruptcy Expenditures</b>								
Professional Fees *	-	-	-	-	-	722	-	-
<b>Total Bankruptcy Disbursements</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>722</b>	<b>-</b>	<b>-</b>
<b>Net Cash Flow</b>	<b>(911)</b>	<b>1,020</b>	<b>610</b>	<b>936</b>	<b>1,927</b>	<b>(1,532)</b>	<b>(476)</b>	<b>(150)</b>
Beginning Book Cash	1,446	534	1,555	2,165	3,101	5,028	3,497	3,021
Net Cash Flow	(911)	1,020	610	936	1,927	(1,532)	(476)	(150)
<b>Ending Book Cash Balance</b>	<b>534</b>	<b>1,555</b>	<b>2,165</b>	<b>3,101</b>	<b>5,028</b>	<b>3,497</b>	<b>3,021</b>	<b>2,871</b>



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**Exhibit 1**  
**Proposed Final Order**

**ROBINS KAPLAN LLP**  
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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **LOS ANGELES DIVISION**

11  
12 In re:  
13 NASTY GAL INC., a California  
corporation,  
14 Debtor and Debtor in Possession.

Case No. 2:16-bk-24682-BB

Chapter 11

**[Proposed] FINAL ORDER PURSUANT TO  
11 U.S.C. §§ 105, 361, 362, AND 363, (I)  
AUTHORIZING USE OF CASH  
COLLATERAL, (II) GRANTING  
ADEQUATE PROTECTION AND (III)  
GRANTING RELATED RELIEF**

Hearing:

Date: February 8, 2017  
Time: 1:00 p.m.  
Place: Courtroom 1539  
255 East Temple Street  
Los Angeles, CA 90012

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22 Upon the continued motion (the “**Motion**”) of Nasty Gal Inc. (the “**Debtor**”) pursuant to  
23 Sections 105, 361, 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as  
24 amended, the “**Bankruptcy Code**”) and Rules 2002, 4001 and 9014 of the Federal Rules of  
25 Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local  
26 Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California  
27 (the “**Local Rules**”), for entry of an Order (i) authorizing the Debtor to use Cash Collateral, (ii)  
28 granting adequate protection to Hercules Capital, Inc. f/k/a Hercules Technology Growth Capital

1 Inc. (the “**Agent**”), in its capacity as administrative agent for itself and the several banks and  
2 other financial institutions or entities from time to time parties thereto (collectively, the  
3 “**Prepetition Lender**”),<sup>1</sup> (iii) scheduling a final hearing on the Motion pursuant to Bankruptcy  
4 Rule 4001(b), and (iv) granting related relief; as amended by the Debtor’s Third Amendment to  
5 Motion For Order Authorizing and Approving (A) Use Of Cash Collateral And (B) Grant of  
6 Adequate Protections To Secured Creditor (the “**Third Amendment**”) and the Supplemental  
7 Declaration of Joe Scirocco in support thereof and submitted therewith; and the Court having  
8 determined that the relief requested in the Motion, as modified by the Third Amendment, is in the  
9 best interests of the Debtor, its estate, its creditors, and other parties-in-interest; and it appearing  
10 that proper and adequate notice of the Motion has been given and that no other or further notice is  
11 necessary; and good and sufficient cause appearing therefore, **THE COURT FINDS:**

12 1. On November 9, 2016 (the “**Petition Date**”), the Debtor filed a voluntary petition  
13 for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107 and 1108 of the  
14 Bankruptcy Code, the Debtor has retained possession of its assets and is authorized, as debtor-in-  
15 possession, to continue the operation and management of its business.

16 2. Prior to the Petition Date, the Debtor executed and entered into that certain Loan  
17 and Security Agreement, dated as of November 6, 2015, by and between the Debtor, the  
18 Prepetition Lender, the Agent, in its capacity as administrative agent for itself and the Prepetition  
19 Lender (the Loan and Security Agreement, as amended, restated, amended and restated,  
20 supplemented, or otherwise modified, the “**LSA**”), which provides for a term loan in an aggregate  
21 principal amount of up to \$20,000,000, as more specifically described therein. The LSA and the  
22 various other loan and security and related documents and agreements, including, but not limited  
23 to, that certain Intellectual Property Security Agreement, dated as of November 6, 2015 (as the  
24 same may be amended, restated, amended and restated, supplemented, or otherwise modified, the  
25 “**IP Security Agreement**”), are referred to herein as the “**Prepetition Agreements.**”  
26

27 \_\_\_\_\_  
28 <sup>1</sup> For simplicity, the Agent and the Prepetition Lender shall be referred to herein collectively as, the  
“Prepetition Lender.”

1           3. Pursuant to the Prepetition Agreements, the Prepetition Lender has made various  
2 loans, and, as of the Petition Date, the Prepetition Lender asserts, and the Debtor has stipulated  
3 (subject to the right of parties in interest other than the Debtor), that the Debtor was indebted to  
4 the Prepetition Lender as a result of such loans in the aggregate amount of not less than  
5 \$15,288,855.04 (the “**Prepetition Indebtedness**”). The pre-payment by the Debtor of the  
6 amounts that would have been due on December 1, 2016 for interest at the default rate, as well as  
7 any other unapplied payments or cash seizures by the Prepetition Lender shall be applied to the  
8 accrual of any interest in accordance with the LSA.

9           4. On December 6 and 20, 2016, the Debtor made adequate protection payments on  
10 account of the principal portion of the Prepetition Indebtedness in the amounts of \$1,250,000 and  
11 \$250,000, respectively.

12           5. In addition, pursuant to the Prepetition Agreements, to secure payment of the  
13 Prepetition Indebtedness, the Prepetition Lender asserts, and the Debtor has stipulated (subject to  
14 the right of parties in interest other than the Debtor), that the Debtor granted to the Prepetition  
15 Lender valid, perfected, first priority, non-avoidable security interests in all of the Debtor’s right,  
16 title, and interest in and to the following personal property whether now owned or hereafter  
17 acquired:<sup>2</sup> (a) Receivables; (b) Equipment; (c) Fixtures; (d) General Intangibles; (e) Inventory; (f)  
18 Investment Property; (g) Deposit Accounts; (h) Cash; (i) Goods; and all other tangible and  
19 intangible personal property of the Debtor whether now or hereafter owned or existing, leased,  
20 consigned by or to, or acquired by, the Debtor and wherever located, and any of the Debtor’s  
21 property in the possession or under the control of the Prepetition Lender; and, to the extent not  
22 otherwise included, all Proceeds of each of the foregoing and all accessions to, substitutions and  
23 replacements for, and rents, profits and products of each of the foregoing. Furthermore, the  
24 Prepetition Lender asserts, and the Debtor has stipulated (subject to the right of parties in interest  
25 other than the Debtor), that pursuant to the IP Security Agreement, the Debtor granted to the  
26 Prepetition Lender valid, perfected, first priority, non-avoidable security interests in all of its

27 \_\_\_\_\_  
28 <sup>2</sup> The defined terms set forth in paragraph 5 of this Order shall have the same meanings ascribed to them in  
the LSA.

1 right, title and interest in, to and under its intellectual property (the collateral set forth in this  
2 paragraph shall be referred to herein collectively as, the “**Prepetition Collateral**”). The  
3 Prepetition Collateral secures the Prepetition Indebtedness.

4 6. On November 10, 2016, the Debtor filed its *Emergency Motion for Order*  
5 *Authorizing and Approving (A) Use of Cash Collateral and (B) Grant of Adequate Protection to*  
6 *Secured Creditor* (the “**Cash Collateral Motion**”). On November 11, 2016, the Prepetition  
7 Lender filed an objection to the Cash Collateral Motion.

8 7. On November 14, 2016, a hearing was held on the Cash Collateral Motion.  
9 Pursuant to the *Amended Interim Order Pursuant to 11 U.S.C. §§ 105, 36, 362, and 363, (I)*  
10 *Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Final*  
11 *Hearing, and (IV) Granting Related Relief* entered by the Court on November 15, 2016 (Dkt. 52)  
12 (the “**Interim Cash Collateral Order**”), the Court authorized, on an interim basis, the use of  
13 Cash Collateral of the Prepetition Lender.

14 8. On December 6, 2016 a second interim hearing was held on the Cash Collateral  
15 Motion. Pursuant to the *Order Approving Second Interim Stipulation Authorizing Use of Cash*  
16 *Collateral and Granting Adequate Protection* entered by the Court on December 6, 2016 (Dkt.  
17 149) (the “**Second Interim Cash Collateral Order**”), the Court authorized, on a second interim  
18 basis, the use of Cash Collateral of the Prepetition Lender through December 20, 2016.

19 9. On December 20, 2016 a third interim hearing was held on the Cash Collateral  
20 Motion. Pursuant to the *Order Approving Third Interim Stipulation Authorizing Use of Cash*  
21 *Collateral and Granting Adequate Protection* entered by the Court on December 6, 2016 (Dkt.  
22 176) (the “**Third Interim Cash Collateral Order**”), the Court authorized, on a third interim  
23 basis, the use of Cash Collateral of the Prepetition Lender through January 5, 2017.

24 10. On January 5, 2017 a fourth interim hearing was held on the Cash Collateral  
25 Motion. Pursuant to the *Order Approving Fourth Interim Stipulation Authorizing Use of Cash*  
26 *Collateral and Granting Adequate Protection* entered by the Court on January 5, 2017 (Dkt. 229)  
27 (the “**Fourth Interim Cash Collateral Order**”), the Court authorized, on a fourth interim basis,  
28 the use of Cash Collateral of the Prepetition Lender through February 8, 2017.

1           11. Pursuant to the Interim Cash Collateral Order, the Second Interim Cash Collateral  
2 Order, the Third Interim Cash Collateral Order and the Fourth Interim Cash Collateral Order, the  
3 Debtor, for itself and on behalf of the Debtor's estate, stipulated to the validity, perfection, first  
4 priority, enforceability and non-avoidability of the Prepetition Indebtedness in the principal  
5 amount of \$ 13,788,855.04 (net of the payments referenced in paragraph 4 above) and the  
6 security interests in and against the Prepetition Collateral and waived any and all challenge rights  
7 with respect thereto. The Debtor further stipulated that the Prepetition Lender's security interests  
8 in and liens upon the Prepetition Collateral, have been properly perfected by, among other things,  
9 filing financing statements and by possession of instruments, certificates, or other property.  
10 Notwithstanding the foregoing stipulations and waivers by the Debtor, any other estate  
11 representative, including the Official Committee of Unsecured Creditors of the Debtor (the  
12 "**Committee**"), that has or obtains standing to challenge the Prepetition Lender's liens, claims  
13 and interests, was permitted to file an adversary proceeding or contested matter, on or before  
14 January 31, 2017 (the "**Committee Challenge Period**").

15           12. On January 31, 2017, the Committee filed a complaint and commenced an  
16 adversary proceeding challenging the Prepetition Lenders' claims and interests (the "**Committee**  
17 **Challenge**"). The Committee Challenge is pending as of the date hereof.

18           13. On December 28, 2017, the Court entered the Order (A) Approving Stalking Horse  
19 Asset Purchase Agreement (B) Approving Bid Protections; (C) Approving Procedures In  
20 Connection With The Sale Of Assets; (D) Scheduling The Related Auction And Hearing To  
21 Consider Approval Of Sale; (E) Approving Procedures Related To The Assumption Of Certain  
22 Executory Contracts And Unexpired Leases; (F) Approving The Form And Manner Of Notice  
23 Thereof; And (G) Granting Related Relief (the "**Sale Procedures Order**") (Docket No. 193).

24           14. No other "Qualified Bids" were received by the Debtor pursuant to the procedures  
25 set forth in the Sale Procedures Order and the Court has granted the Debtor's motion seeking to  
26 proceed with a sale to BooHoo F I Ltd. (the "**Stalking Horse Bidder**") of substantially all of the  
27 Debtor's intellectual property assets on or before February 28, 2017 for a cash consideration of  
28 \$20 million.

1           15.     The ability of the Debtor to continue to finance its operations through and beyond  
2 a closing of the sale to the Stalking Horse Bidder requires the continued and immediate use of  
3 Cash Collateral to pay the expenditures, subject to the variances authorized herein, as set forth in  
4 the budget (the “**Budget**”), a copy of which is attached hereto as Exhibit A.

5           16.     The Debtor asserts that in the absence of such use, immediate and irreparable  
6 harm will result to the Debtor, its estate, and its creditors and the inability to use such Cash  
7 Collateral will render impossible an effective and orderly case that will maximize the value that  
8 may be returned to creditors and interest holders.

9           17.     Given, among other things, the binding purchase agreement and the commitment  
10 of the Stalking Horse Bidder, the value of the Debtor’s assets that constitute the Prepetition  
11 Lender’s collateral exceeds the value of the Debtor’s obligations to the Prepetition Lender. The  
12 use of the Cash Collateral will preserve the value of the Debtor’s assets pending the sale of the  
13 Debtor’s assets at a price that will exceed the value of the Debtor’s obligations to the Prepetition  
14 Lender. Accordingly, the Prepetition Lender is adequately protected for the use of Cash  
15 Collateral as set forth in the Budget.

16           18.     The terms and conditions of this Final Order are a fair and reasonable response to  
17 the Debtor’s request for use of Cash Collateral and the entry of this Final Order is in the best  
18 interests of the Debtor’s estate and creditors.

19           **WHEREFORE, IT IS HEREBY ORDERED THAT:**

20           1.     The Motion is GRANTED on a final basis.

21           2.     Authorization; Use of Proceeds. The Debtor is authorized to use Cash Collateral  
22 of the Petition Lender: (a) solely in accordance with and pursuant to the terms and provisions of  
23 this Final Order; and (b) only to the extent required to pay those expenses enumerated in the  
24 Budget, a copy of which is attached hereto as Exhibit A, as and when such expenses become due  
25 and payable.<sup>3</sup> Notwithstanding the foregoing, the Debtor may exceed the Budget for any line  
26 item by up to 7% in any week, but by no more than 15% in the aggregate amount.

27 \_\_\_\_\_  
28 <sup>3</sup> The professional fees indicated on the Budget may be accrued and reserved by the Debtor for payment to the  
Debtor’s and Committee’s professionals if and when payable in accordance with 11 U.S.C. §§ 330 and 331.

1           3.     Adequate Protection Liens. As adequate protection, the Debtor shall grant  
2 replacement liens to the Prepetition Lender on all property and assets of the Debtor, and all  
3 proceeds, rents, or profits thereof, that were subject to the Prepetition Lender’s liens and security  
4 interests and, to the extent permissible under existing contracts, on all of the Debtor’s intellectual  
5 property (the “**Adequate Protection Liens**”), to secure an amount of the Prepetition Indebtedness  
6 equal to the aggregate diminution in the value of the Prepetition Lender’s interests in the  
7 Prepetition Collateral occurring from and after the Petition Date, including, without limitation,  
8 such diminution resulting from use of Cash Collateral or other Prepetition Collateral (whether as  
9 a result of physical deterioration, consumption, use, sale, lease, disposition, imposition of the  
10 automatic stay, shrinkage, decline in market value or otherwise). The Adequate Protection Liens  
11 granted herein shall be junior to any pre-existing liens, and are not granted against any pre-  
12 existing real property leasehold interest. The Adequate Protection Liens granted herein are  
13 automatically deemed perfected upon entry of this Order without the necessity of the Prepetition  
14 Lender taking possession, filing financing statements, or other documents.

15           4.     Superpriority Claim. As additional adequate protection, to the extent that the  
16 aggregate diminution in value of the Prepetition Lender’s interests in the Prepetition Collateral  
17 from and after the Petition Date resulting from the use of Cash Collateral or other Prepetition  
18 Collateral reduces the value of the Adequate Protection Liens below the outstanding balance of  
19 the Prepetition Indebtedness, then the Prepetition Lender will be granted, to the extent of the net  
20 decrease, superpriority claims under Section 507(b) of the Bankruptcy Code (the “**Superpriority**  
21 **Claim**”), and the Superpriority Claim shall have priority in payment over any and all  
22 administrative expense claims of any kind under the Bankruptcy Code; provided however, except  
23 as may be provided in a final cash collateral order, such Superpriority Claim shall be equal in  
24 priority to all other administrative claims as to the proceeds of Avoidance Actions.

25           5.     Reporting. Not later than Tuesday of each week, the Debtor shall continue to  
26 provide the Prepetition Lender, the Office of the United States Trustee (the “**Trustee**”), and the  
27 Committee of Unsecured Creditors, with (i) an updated cash flow statement which shall include a  
28 variance report comparing actual cash flow results for all applicable prior periods to the



1 forecasted cash flow results for such periods, and a statement of any weekly or cumulative  
2 variances in each line item for receipts or disbursements in the Budget; (ii) a weekly inventory  
3 report that is typically utilized by the Debtor's management; and (iii) any financial reports  
4 required to be provided under the Prepetition Agreements on the dates when due thereunder or  
5 such other reports or information as the Prepetition Lender might reasonably request. In addition,  
6 on each day commencing upon the day following the entry of this Order, the Debtor shall provide  
7 a report on sales volume in the form that is currently prepared by the Debtor for internal use.

8         6.     No Modification of Rights. Except as modified herein and subject to the other  
9 provisions of this Final Order and the Bankruptcy Code, the Prepetition Agreements, and the  
10 terms and provisions thereof, shall remain in full force and effect with respect to the Prepetition  
11 Indebtedness. To the extent there exists any conflict between the Motion, the Prepetition  
12 Agreements and the terms of this Final Order, this Final Order shall govern and control. Nothing  
13 contained in this Final Order shall be deemed or construed to (a) limit the Prepetition Lender to  
14 the relief granted herein; (ii) impair, prejudice, limit or otherwise affect the right of the  
15 Prepetition Lender to object to any issue in connection with any further request for the use of  
16 Cash Collateral, including the Budget; (iii) restrict the Prepetition Lender from asserting that the  
17 adequate protection provided by this Final Order is insufficient; (iv) bar the Prepetition Lender  
18 from seeking other and further relief (including relief from this Final Order) on appropriate notice  
19 to the Debtors and other parties in interest entitled to notice of same; or (v) require the Prepetition  
20 Lender to make any further loan or advance to the Debtor.

21         7.     Enforcement Remedies. In the event of an event of default under the Budget or  
22 violation of this Final Order, there shall be an expedited hearing before this Court on no later than  
23 the third business day after the date on which the Prepetition Lender shall have given written  
24 notice (by facsimile or otherwise) to the Debtor and their counsel, counsel for the Committee, and  
25 the United States Trustee of such event of default under the Budget or violation of this Final  
26 Order.

27         8.     Reliance by Prepetition Lender. If any or all of the provisions of this Final Order  
28 are hereafter modified, vacated, or stayed by subsequent order of this or any other Court, such

1 stay, modification, or vacation shall not affect the validity of any debt to the Prepetition Lender  
2 (including the adequate protection obligations) incurred pursuant to this Final Order, or otherwise  
3 affect the validity and enforceability of any lien, security interest, or priority authorized hereby.

4 9. No Prejudice. The entry of this Final Order is without prejudice to, and does not  
5 constitute a waiver of, expressly or implicitly, or otherwise impair, any of the rights, claims or  
6 privileges of the Prepetition Lender in the Debtor's bankruptcy proceedings, any subsequent  
7 proceedings under the Bankruptcy Code, or otherwise, including, without limitation, the right of  
8 the Prepetition Lender to request additional adequate protection of its interests in the Prepetition  
9 Collateral or relief from or modification of the automatic stay under Section 362 of the  
10 Bankruptcy Code.

11 10. Proofs of Claim. The Prepetition Lender shall not be required to file a proof of  
12 claim in this or any successor case with respect to the Prepetition Indebtedness notwithstanding  
13 the establishment of any bar date with respect to claims against the Debtor.

14 11. Immediate Binding Effect. The subject of this Final Order is a "core" proceeding  
15 as defined in 28 U.S.C. § 157(b)(2)(D). This Final Order shall be valid and fully effective  
16 immediately upon its entry and, upon such entry, shall be binding upon and inure to the benefit of  
17 the Prepetition Lender, the Debtor, its estate, and their respective successors and assigns  
18 (including, without limitation, any trustee, examiner, or responsible person hereinafter appointed  
19 as a representative of the estate in these or any subsequent proceedings under the Bankruptcy  
20 Code), and the terms and provisions of this Final Order shall continue in these proceedings and  
21 any superseding proceedings under the Bankruptcy Code, and such liens and security interests  
22 shall maintain their priority as provided by this Final Order, until satisfied and discharged.

23 12. The Debtor is authorized and empowered to take all actions necessary to  
24 implement the relief granted in this Final Order.

25 13. The terms and conditions of this Final Order shall be immediately effective and  
26 enforceable upon its entry.

27 14. This Court retains jurisdiction with respect to all matters arising from or related to  
28 the implementation of this Final Order.



## PROOF OF SERVICE OF DOCUMENT(S)

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

ROBINS KAPLAN LLP  
2049 Century Park East, Suite 3400  
Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S THIRD AMENDMENT TO MOTION FOR FINAL ORDER AUTHORIZING AND APPROVING (A) USE OF CASH COLLATERAL AND (B) GRANT OF ADEQUATE PROTECTION TO SECURED CREDITOR; SUPPLEMENTAL DECLARATION OF JOE SCIROCCO IN SUPPORT THEREOF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

### 1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the aforementioned documents was served by the court via NEF and hyperlink to the documents. On (*date*) **February 3, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Todd M Arnold tma@lnbyb.com
- Lorie A Ball LBall@robinskaplan.com
- Peter Bonfante pbonfante@celsinc.com
- Diana K Carey dcarey@karrtuttle.com, mherandez@karrtuttle.com;mmunhall@karrtuttle.com
- Jeffrey W Dulberg jdulberg@pszjlaw.com
- Joseph A Eisenberg jae@jmbm.com,  
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- Scott Ewing contact@omnimgt.com, sewing@omnimgt.com;katie@omnimgt.com
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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

- Penelope Parmes penelope.parmes@troutmansanders.com, Vanessa.hudak@troutmansanders.com
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- Dennis J Wickham wickham@scmv.com, nazari@scmv.com
- Hatty K Yip hatty.yip@usdoj.gov

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (date) **February 3, 2017** I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**Judge**

United States Bankruptcy Court  
Central District of California  
Edward R. Roybal Federal Building and Courthouse  
Hon. Sheri Bluebond  
255 E. Temple Street, Suite 1534 / Courtroom 1539  
Los Angeles, CA 90012

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on \_\_\_\_\_ I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 3, 2017

*Date*

Kevin D. Meek

*Printed Name*

/s/ Kevin D. Meek

*Signature*