

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:)
)
PHARMACOGENETICS DIAGNOSTIC)
LABORATORY, LLC)
)
Debtor) CASE NO. 16- 33404-thf
)

**SECOND AGREED ORDER GRANTING
MOTION FOR AUTHORITY TO USE CASH COLLATERAL,
AND TO PROVIDE ADEQUATE PROTECTION**

This matter comes before the Court on the Motion for Authority to Use Cash Collateral and to Provide Adequate Protection (the “Motion”) filed by Debtor, Pharmacogenetics Diagnostic Laboratory, LLC (“PGXL” or “Debtor”), seeking, inter alia, pursuant to Sections 105, 361, and 363(c) of Title 11 of the United States Code (the “Bankruptcy Code”), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the following:

- (i) use of the Cash Collateral¹ on the terms provided herein;
- (ii) granting of adequate protection to Stock Yards Bank & Trust Company (“SYB” or “Cash Collateral Creditor”) to the extent provided herein; and

In connection with this request, **IT IS HEREBY FOUND** that:

- (a) On November 8, 2016 (the “Petition Date”), Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107(a) and 1108² of the

¹ Capitalized terms used herein but not defined herein have the same meaning as given them in the Motion, or if not defined therein, in the Bankruptcy Code.

² All statutes cited herein refer to the Bankruptcy Code unless otherwise specified.

Bankruptcy Code, Debtor continues to operate its business and manage its property as a debtor in possession.

(b) The entry of this Order will minimize the disruption to Debtor's business that would otherwise result from the filing of the petition commencing Debtor's Chapter 11 case.

(c) Proposed Counsel to Debtor has certified that notice of the Motion was given to (1) all secured creditors who are not represented by counsel; (2) all counsel of record for parties in interest; (3) the U.S. Trustee; (4) the Debtor's 20 Largest Unsecured Creditors as designated in the Debtor's Petition; (5) all governmental units having claims; and (6) all persons who filed a request to receive such notices.

(d) Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001. The permission granted herein is necessary to avoid immediate and irreparable harm to Debtor pending a final hearing. Entry of this Order is in the best interests of Debtor and its estate and creditors.

Based upon the pleadings, evidence, and representations of counsel, the Court hereby grants the relief requested herein effective as of the Petition Date, *nunc pro tunc*, and the Court hereby finds:

Jurisdiction

1. This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. §§157(b)(2)(A), (D), (G), (K), (M) and (O).

Notice

2. Sufficient and adequate notice of the Motion and the hearing with respect thereto has been given to prevent immediate and irreparable harm pursuant to Bankruptcy Rules 2002,

4001(b), and 9006, and as required by Section 102, 361, and 363 of the Bankruptcy Code.

Authorization to Use Cash Collateral

3. For the purpose of the resolution of the issues, on an interim basis, of the Debtor's use of cash collateral, and only for this purpose, this court finds it necessary that the Cash Collateral Creditor be provided adequate protection of its claim of security, which adequate protection shall consist of the following:

- a. A continued security interest in and to all prepetition accounts receivable of the Debtor.
- b. A first priority security interest to the same extent, validity, and priority as its pre-petition security interest in and to all post-petition accounts receivable of the Debtor in possession and proceeds thereof, which shall be senior to any liens granted to Dr. Roland Valdes to secure debtor in possession financing, and which shall be deemed to be effective, valid, perfected and enforceable without the necessity of taking any other act or filing or recording any security agreements, financing statements or other instruments or documents.
- c. A first priority security interest to the same extent, validity, and priority as its pre-petition interest in the inventory of the Debtor and the Debtor in possession and the proceeds thereof, which shall be senior to any liens granted to Dr. Roland Valdes to secure debtor in possession financing, and which shall be deemed to be effective, valid, perfected and enforceable without the necessity of taking any other act or filing or recording any security agreements, financing statements or other instruments or documents.

4. The Cash Collateral Creditor be provided protection, as set forth above, for the debtor in possession's use of both prepetition and post-petition accounts receivable in its ordinary course of business.

5. The adequate protection, as set forth in paragraph 3 above, provided to Cash Collateral Creditor and the use of the pre-and post-petition accounts receivable by the debtor in possession, will not prejudice the Debtor, the Cash Collateral Creditor or any creditor or other party in interest in this chapter 11 case.

6. Therefore, it is ORDERED as follows:

- a. The debtor in possession, be and it is hereby authorized to continue to use, in its ordinary course of business, all of the prepetition accounts receivable of the Debtor and any post-petition accounts receivable generated by the debtor in possession in this proceeding, pending further order of this Court.
- b. The Cash Collateral Creditor shall have, as adequate protection for its claims of security for the use of the accounts receivable as cash collateral of the Debtor, a security interest in the following:
 - i. A continued security interest in and to all prepetition accounts receivable of the Debtor.
 - ii. A first priority security interest to the same extent, priority, and validity as its pre-petition security interest in and to all post-petition accounts receivable of the Debtor in possession and proceeds thereof, which shall be senior to any liens granted to Dr. Roland Valdes to secure debtor in possession financing, and which shall be deemed to be effective, valid, perfected and enforceable without the necessity of taking any other act or

filing or recording any security agreements, financing statements or other instruments or documents.

iii. A first priority security interest to the same extent, priority, and validity as its pre-petition security interest in the inventory of the Debtor and the Debtor in possession and the proceeds thereof, which shall be senior to any liens granted to Dr. Roland Valdes to secure debtor in possession financing, and which shall be deemed to be effective, valid, perfected and enforceable without the necessity of taking any other act or filing or recording any security agreements, financing statements or other instruments or documents.

7. The Debtor's use of the Cash Collateral is expressly conditioned upon the following:

- a. Cash Collateral may be used by the Debtor solely to pay normal trade payables, payroll, insurance premiums, taxes and utilities that are necessary to preserve and maintain the assets and business operations of the Debtor as set forth in the Budget, through January 16, 2016. The right is reserved to SYB to object to any item in the Budget following the expiration of this interim Order.
- b. The Debtor's use of Cash Collateral may not exceed the amount set forth in the Budget by greater than ten percent (10%) unless approved in writing by SYB.
- c. The Debtor is not authorized to use Cash Collateral for any other expenditures, such as the purchase of fixed or capital assets, or other expenses, without prior written approval by SYB.

- d. The Debtor shall timely make all adequate protection payments to SYB required under the terms of this Order.
- e. The Debtor shall provide SYB, on each Tuesday, beginning November 15, 2016, a report detailing the uses of cash by the Debtor for the prior week in a form acceptable to SYB and an aging of all accounts receivable by customer.
- f. The Debtor shall maintain adequate insurance on its assets including general liability coverage naming SYB as a lender's loss payee and the Debtor shall provide proof of such insurance to SYB within two (2) business days of entry of this Agreed Order.
- g. The Debtor shall not dispose of any SYB collateral outside of the ordinary course of business without SYB's prior, written consent.

8. SYB's consent to the Debtor's use of Cash Collateral and the Debtor's authorization to use the Cash Collateral shall terminate, unless waived by SYB or immediately cured by the Debtor:

- a. Upon five (5) business days' written notice to the Debtor, in the event that the Debtor shall fail to make any payment to SYB required hereunder; or
- b. Upon seven (7) business days' written notice to the Debtor, in the event that the Debtor breaches any non-payment term, condition or covenant set forth in this Order; or
- c. Upon the entry of a final order dismissing this Chapter 11 case, appointing a trustee in this Chapter 11 case, converting this case to a case under Chapter 7 of the Bankruptcy Code or transfer of venue of this case to another district.

9. In the event that the adequate protection granted to SYB hereunder fails to adequately protect SYB's interests in the Cash Collateral and/or the post-petition Collateral, SYB is hereby granted, without further order of the Court, an administrative expense claim which shall have priority of the kind specified in section 507(b) of the Bankruptcy Code over any and all other administrative expenses of the kind specified in section 507(a)(1) of the Bankruptcy Code, other than fees payable to the United States Trustee and counsel for Debtor, Proposed Accountant, and any Official Creditors' Committee in an amount not to exceed \$50,000.00, such amount including any retainer paid by Debtor to counsel for the Debtor (the "Carve Out") and as allowed by the Court for the interim period covered by this Order.

10. Nothing in this Order shall commit SYB to extend the maturity date of the Debtor's pre-petition indebtedness.

11. Except to the extent otherwise provided herein, nothing contained herein shall constitute a waiver by SYB of any rights, claims or privileges or interests under any agreements, documents, instruments or by virtue of any law, and nothing contained herein shall prejudice any right of SYB to seek additional adequate protection, relief from the automatic stay, appointment of a trustee or examiner, conversion of this case to a case under chapter 7 of the Bankruptcy Code or to exercise any other rights afforded SYB by the Bankruptcy Code or applicable non-bankruptcy law.

12. The Debtor and debtor in possession shall be and is hereby authorized to execute any documents necessary to perfect the Cash Collateral Creditor's security interest, as herein above recited.

13. This Order shall be an interim order providing for the use of Cash Collateral, which shall expire on January 16, 2016, and a final hearing on the use of Cash Collateral shall be

held at a place and time noticed by the Court. If any or all of the provisions of this Order hereafter are stayed, modified, or vacated, or a final order is not requested or granted with respect to the relief requested herein, such stay, modification, or vacation or lack of final order shall not affect (a) the validity of any indebtedness, obligation, or liability incurred by Debtor prior to the effective date of such stay, modification, or vacation, or (b) the validity and enforceability of any security interest, assignment, lien, or priority authorized or created hereby.

14. Debtor's counsel shall serve a copy of this Order on all of the following parties:

(1) all secured creditors who are not represented by counsel; (2) all counsel of record for parties in interest; (3) the U.S. Trustee; (4) the Debtor's 20 Largest Unsecured Creditors as designated in the Debtor's Petition; (5) all governmental units having claims; and (6) all persons who filed a request to receive such notices.

SO ORDERED

Agreed to by:

/s/ Charity B. Neukomm

CHARITY B. NEUKOMM
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Thomas H. Fulton
United States Bankruptcy Judge

Dated: December 5, 2016

Have Seen:

/s/ John R. Stonitsch

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