

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

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In re: :

QUIRKY, INC., *et al.*¹ :

Debtors. :

Chapter 11

Case No. 15-12596 (MG)

(Jointly Administered)
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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, professionals,

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.

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. *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. The issues whether cash transferred from the debtor Wink, Inc. to the debtor Quirky, Inc. is part of Cash Collateral and whether the Adequate Protection Liens (defined hereinafter) extend to any cash

transferred from Wink, Inc. to Quirky, Inc. shall be reserved for the Final Hearing. The Court makes no findings on these issues at this time.

4. Adequate Protection Liens.

(a) *Adequate Protection Liens.* To the extent of any diminution of the Prepetition Collateral as a result of the use of Cash Collateral, 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 ten (10) 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 and subordinate 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”). For the avoidance of doubt, the Adequate Protection Liens and the Adequate Protection Superpriority Claims shall not attach to Avoidance Actions and the Proceeds thereof pursuant to this Interim Order.

(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. Notwithstanding anything in this Interim Order to the contrary, Committee Professionals shall be entitled to incur and be paid, in accordance with the Budget, an amount not to exceed \$25,000 in connection with an investigation under paragraph 18 hereof.

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. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. Final Hearing. The Final Hearing to consider entry of the Final Order and final approval of the use of Cash Collateral is scheduled for October 23, 2015 at 9:00 a.m. (ET) before the Honorable Martin Glenn, United States Bankruptcy Judge, Courtroom 501, at the United States Bankruptcy Court for the Southern District of New York located at One Bowling Green, New York, New York 10004.

26. Notice of Final Hearing. On or before September 30, 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.

27. 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 (Attn: William R. Wyatt), attorneys for the Prepetition Lender, so that such objections are filed with the Court and received by said parties on or before 4:00 p.m. Eastern Time on October 16, 2015 with respect to entry of the Final Order.

28. 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.

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

IT IS SO ORDERED.

Dated: September 25, 2015
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge

EXHIBIT 1

Budget

Total Cash Receipts	\$	517	\$	133	\$	161	\$	53	\$	42	\$
<u>CASH DISBURSEMENTS</u>											
<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	