



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: November 16, 2016.

CRAIG A. GARGOTTA
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re:

SPECTACULARX, INC.,

Debtor.

)
) **Case No. 16-52383**
) **Honorable Craig A. Gargotta**
) **Chapter 11**
)

AGREED INTERIM ORDER FOR USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE AND PROVIDING ADEQUATE PROTECTION AND GRANTING LIENS AND SECURITY INTERESTS

This matter came to be heard upon the *Debtor's Motion for Interim and Final Orders pursuant to 11 U.S.C. §§ 105, 361, 363, and 507 and Federal Rules of Bankruptcy Procedure 4001 and 9014 (I) Authorizing the Use of Cash Collateral and (II) Granting Adequate Protection, including Replacement Security Interests and Superpriority Claims* (the "Motion") pursuant to Sections 105, 361, 363 and 364 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 4001, filed by SpectaculaRX, Inc. ("Debtor"). The Debtor, having provided proper notice under the circumstances and as required by the Federal Rules of Bankruptcy Procedure, and having

reached an agreement with Compass Bank (“Secured Lender”), seeks the use of the Secured Lender’s cash collateral (the “Cash Collateral”) during the pendency of this Bankruptcy Case. Having analyzed the agreement of the Debtor and Secured Lender, the Motion, the representations and acknowledgements of all pertinent parties, and the facts presented in this case,

THE COURT HEREBY FINDS:

A. On October 19, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business and managing its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No official committee has yet been appointed.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. An immediate and critical need exists for the Debtor to obtain funds in order to continue the operation of its business. Without such funds, the Debtor will not be able to pay its payroll and other direct operating expenses and obtain goods and services needed to carry on its business during this sensitive period in a manner that will avoid irreparable harm to the Debtor’s estate. At this time, the Debtor’s ability to use Cash Collateral is vital to the confidence of the Debtor’s vendors and suppliers of the goods and services, to the customers and to the preservation and maintenance of the going concern value of the Debtor’s estate.

D. As of the Petition Date, the Debtor was indebted to Secured Lender in the amount of at least \$177,101.21 (the “Pre-Petition Claim”). The Pre-Petition Claim constitutes a legal, valid and binding obligation of the Debtor that is enforceable in accordance with the terms of the Loan Documents¹ and applicable law. No portion of the Pre-Petition Claim, or any pre-Petition Date payments made to Secured Lender that were applied to the obligations owing under the Loan are subject to avoidance, subordination, recharacterization, recovery, offset, counterclaim, defense or any type of Claim (as defined in the Bankruptcy Code) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. Additionally, interest, fees, costs, expenses and attorney’s fees continue to accrue on the Debtor’s indebtedness to Secured Lender (collectively with the Pre-Petition Claim, the “Secured Lender's Claim”).

E. Secured Lender’s Claim is secured by, among other things, first priority, valid and perfected liens and security interests in substantially all of the Debtor’s assets, including, but not limited to, the inventory, accounts receivable and the Debtor’s related personal property, including any proceeds generated therefrom (collectively, the “Collateral”).

F. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to allow the Debtor to obtain the use of Cash Collateral financing is necessary to avoid immediate and irreparable harm to the Debtor. This Court concludes that entry of this Order is in the Debtor’s best interest and its estate and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtor’s business.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT

1. The Debtor is authorized to enter into all agreements pursuant to the terms of this Order necessary to allow the Debtor to use Cash Collateral subject to the protections and

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

consideration described in this Order in the amounts and for the expenses set forth on the monthly budget attached hereto.

2. The Debtor, without the prior written approval of the Secured Lender, shall not incur expenses for any line item for an amount that exceeds the lesser of the amount for such line item in the budget attached hereto as Exhibit A ("Budget") and the actual expenditure for such line item. The Debtor shall be entitled to a 5% variance for the monthly budget, but no line-item variance shall exceed 10%. The Debtor and the Secured Lender shall be permitted to modify the Budget upon written mutual consent without further order of the Court.

3. The Debtor is authorized to collect and receive all cash funds and credit card payments. The Debtor shall account each month to the Secured Lender for all funds received. For purposes of this Order, "Proceeds" of any of the Secured Lender's collateral shall mean Proceeds (as defined in the Uniform Commercial Code) of such collateral security for all Cash Collateral permitted to be used hereunder by the Debtor. Those Proceeds shall not, directly or indirectly, be used to pay expenses of the Debtor or otherwise disbursed except for those expenses and/or disbursements that are expressly permitted herein and as shown on the Debtor's Budget.

4. The Secured Lender is hereby granted valid, binding, enforceable, and perfected liens co-extensive with the Secured Lender's pre-petition liens in all currently owned or hereafter acquired property and assets of the Debtor, of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising, and all proceeds and products thereof, including, without limitation, all accounts receivable, general intangibles, inventory, and deposit accounts.

5. As adequate protection for the interests of the Secured Lender, the Secured Lender is hereby granted first priority replacement liens and security interests, in accordance with Bankruptcy Code Sections 361, 363, 364(c)(2), 364(e), 501(b)(1) and 552, having priority over all other creditors, against the Debtor's accounts receivable originating post-petition and any and all cash or other proceeds from those receivables on a dollar-for-dollar basis for each dollar of pre-petition cash or accounts receivable used by Debtor hereunder, to secure all of the Secured Lender's allowed claims, including post-petition interest and attorneys' fees. The replacement liens granted to the Secured Lender in this Order are automatically perfected without the need for filing of a UCC-1 financing statement with the Secretary of State's Office or any other such act of perfection.

6. As further adequate protection to the Secured Lender, the Secured Lender is hereby granted an allowed super-priority administrative expense claim as set forth under § 364(c)(1) of the Bankruptcy Code, with priority in payment over any and all administrative expenses arising under Sections 507(b) and 503(b) of the Bankruptcy Code, to the extent of any diminution in the value of Secured Lender's interest in the Collateral and Cash Collateral. Secured Lender is further granted all of the other benefits and protections allowable under Sections 503(b) and 507(b) of the Bankruptcy Code.

7. As further adequate protection to the Secured Lender, the Debtor shall pay to Secured Lender each monthly installment due and owing to the Secured Lender in accordance with the Secured Lender's applicable loan documents. The adequate protection payments shall be applied by the Secured Lender in accordance with the terms of the Loan Agreement.

8. Nothing herein shall grant a lien on, interest in or claim on Chapter 5 causes of action.

9. All cash accounts of Debtor and all accounts receivable collections by Debtor post-petition shall be deposited in a separate cash collateral account, being Debtor's debtor-in-possession account.

10. During the pendency of this order, the Debtor will maintain insurance on the Secured Lender's collateral and pay taxes when due.

11. The Debtor shall execute and deliver to the Secured Lender all such agreements, financing statements, instruments and other documents as the Secured Lender may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtor shall deliver a copy of its Monthly Operating Report and a copy of each DIP bank account statement to the Secured Lender's counsel by the 20th day of each month for the prior month.

12. If the Debtor defaults under the terms of this Order, the Secured Lender shall provide the Debtor with seven (7) days written notice of the default and opportunity to cure the default. If after the expiration of the 7-day notice period the Debtor has not cured its default, the automatic stay under Section 362 of the Bankruptcy Code shall be modified to allow the Secured Lender to enforce all of its rights, title, and interest in any pre or post-petition collateral securing its claim, in accordance with its loan documents, this Order, and applicable law, and including but not limited to repossession and foreclosure.

13. Pursuant to Bankruptcy Rule 4001(b)(2), a Final Hearing on the Motion is set for December 5, 2016 at 10:00 A.M. (the "Final Hearing") in Courtroom 3 of the United States Courthouse located at 615 E. Houston St., San Antonio, Texas 78205. Any party-in-interest objecting to the relief sought in the Motion shall file written objections with the Clerk of the United States Bankruptcy Court for the Western District of Texas, San Antonio Division no later than two (2) business days before the Final Hearing.

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AGREED:

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