



Order Filed on September 11, 2015
by Clerk
U.S. Bankruptcy Court
District of New Jersey

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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In Re:

**ZUCKER GOLDBERG & ACKERMAN,
LLC**

Debtor.

Chapter 11

Case No. 15-24585

Hearing Date:

Honorable Christine M. Gravelle

**FINAL ORDER PURSUANT TO SECTIONS 361, 362, 363, AND 507 OF THE
BANKRUPTCY CODE AND RULE 4001 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE AUTHORIZING USE OF CASH COLLATERAL**

The relief set forth on the following pages, numbered two (2) through twenty-four (24) is hereby **ORDERED**.

DATED: September 11, 2015

A handwritten signature in cursive script, reading "Christine M. Gravelle".

Honorable Christine M. Gravelle
United States Bankruptcy Judge

Debtor: Zucker Goldberg & Ackerman, LLC

Case No.: 15-24585

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THIS MATTER, having come before the Court upon the Application of the Debtor, Zucker, Goldberg & Ackerman, LLC (the “Debtor”) by and through its counsel, seeking the entry of a Final Order authorizing the use of Cash Collateral, pursuant to sections 361, 362, 363, and 507 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of the Bankruptcy Procedure (the “Motion”); and the Court having entered an interim order (the “Interim Order”) concerning the Motion on August 5, 2015 (ECF Doc. # 31); and it appearing that JP Morgan Chase, N.A. (“Chase”), the Official Committee of Unsecured Creditors (the “Committee”), ServiceLink NLS, LLC, and Fortune Title Agency, Inc. have consented to the entry of the within Order, granting the Motion on a final basis; and the Court having considered all objections raised and finding good cause for the entry of the within Order,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Petition Date. On August 3, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of New Jersey (the “Court”). The Debtor has continued with the management and operation of its business and properties as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the case. The Committee was formed on August 12, 2015, and finalized the retention of its counsel on August 14, 2015, pending approval by the Court.

B. Jurisdiction and Venue. The Bankruptcy Court has core jurisdiction over the case, the Motion and the parties affected by the Motion, and the Debtor’s property pursuant to 28

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U.S.C. §§ 157(a)-(b) and 1334(b). Venue is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Prepetition Indebtedness. Prior to the Petition Date, the Debtor entered into certain agreements with Chase for the extension of credit. These agreements, documents, and instruments (collectively, the “Loan Documents”), include, without limitation, (i) an Amended Advised Line of Credit Note, dated as of December 31, 2014 (the “Amended LOC Note”) in the principal amount of \$3.2 million, plus interest, fees, and costs; (ii) an Amended Continuing Security Agreement with Chase, dated as of December 23, 2014 (the “Security Agreement”), which secured in part the Debtor’s obligations under the Amended LOC Note by granting Chase a security interest in substantially all of the Debtor’s property, defined therein as the “Collateral”; (iii) guaranties by the Debtor’s individual members and by 4S Technologies Inc. (“4S”), which unconditionally guaranteed the Debtor’s obligations under the Loan Documents; and (iv) a forbearance agreement (the “Forbearance Agreement”), for a term ending on December 31, 2015 (absent a default thereunder), whereby Chase agreed to forbear from exercising its rights, claims, and remedies against the Debtor, its individual members, and 4S;

D. Acknowledgments as to Prepetition Obligations. Subject to paragraph 10(b), and without limiting the rights of the Committee (or any other party in interest with standing) as provided in this Order, the Debtor permanently, immediately, and irrevocably acknowledges, represents, stipulates, and agrees to the following:

(i) As of the Petition Date, the Debtor was unconditionally indebted to Chase

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pursuant to the Loan Documents in the aggregate principal amount of \$2,850,000.00, plus accrued and unpaid interest thereon, and all fees, expenses, and other obligations including any attorneys' and other advisors' fees that are chargeable or reimbursable thereunder;

(ii) The Debtor's obligations to Chase under the Loan Documents (collectively, the "Obligations") are secured in part by valid, enforceable, and perfected liens against and security interests in the Collateral (collectively, the "Prepetition Liens"); and

(iii) As of the date of this Order, the Debtor is not aware of any claims or causes of action against Chase, with respect to, in connection with, related to, or arising from the Loan Documents that may be asserted by the Debtor or its successors, with the sole exception of amounts subject to offset for the Debtor's accrued legal services performed in the ordinary course of business that are due and owing to the Debtor;

E. Payment of Pre-Petition Financing Fee. Prior to the Petition Date, in accordance with the Loan Documents, the Debtor paid Chase: (i) a financing fee of \$57,000 (the "Financing Fee"), based on negotiated liquidated damages due under the Loan Documents of 2% of the outstanding principal balance of \$2,850,000; and (ii) certain attorneys' fees and costs in the amount of \$26,000, paid to Chase's outside counsel for professional services pursuant to the Loan Documents;

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F. Payment. The Debtor is obligated pay to Chase all accrued interest and unpaid arrears of principal due as of the Petition Date under the Fo rbearance Agreement and the Amended LOC Note, respectively; the Debtor is also obligated to pay to the Law Office of William S. Katchen, LLC, as outside counsel to Chase, Chase's unpaid legal fees accrued through July 10, 2015;

G. Guaranties. All guarantees and other security interests by the Debtor's individual members, affiliates, and equity holders, including 4S (collectively, the "Guarantors"), are hereby ratified, enforceable, and incorporated by reference to further secure the Debtor's Obligations under the Loan Documents to Chase whether now existing or hereinafter arising;

H. Consent to use of Cash Collateral. Subject to the terms of this Final Order authorizing use of Cash Collateral and the performance by the Debtor of all of its obligations and undertakings under the Loan Documents in favor and to the satisfaction of Chase,, Chase has agreed to consent to the Debtor's use of the Cash Collateral in accordance with the terms of the cash flow projections and budget annexed as Exhibit "A" to the Motion (the "Budget");

I. Good Faith. Chase has negotiated in good faith regarding the Debtor's use of the Collateral (including Cash Collateral), in accordance with the terms hereof. Chase has agreed to permit the Debtor to use the Cash Collateral, in accordance with the Budget, subject to the terms and conditions set forth herein. Chase is entitled to adequate protection as and to the extent set forth herein pursuant to sections 361, 362 and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court at the interim hearing, and a final hearing on the

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Motion, the terms of the proposed adequate protection arrangements and of the use of the Collateral (including the Cash Collateral) are fair and reasonable, reflect the Debtor's prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for Chase's consent thereto;

IT IS THEREFORE HEREBY ORDERED that:

1. **Authorization to Use Cash Collateral.** Subject to the terms and conditions of this Order and the adequate protection granted to or for the benefit of Chase as set forth in this Order, the Debtor is authorized to use the Cash Collateral in accordance with the terms, scope, and duration of the Budget. Nothing in this Order shall authorize disposition of any assets of the Debtor or its estate or other proceeds resulting therefrom outside the ordinary course of business, except as permitted herein (subject to any required Court approval).

2. **Permitted Use.** The Debtor shall pay to Chase proceeds from its use of Cash Collateral in accordance with the Budget until all outstanding Obligations to Chase are indefeasibly paid in full.

3. **Debtor's Waiver and Reservation of Rights.** Subject to paragraph 10(b), and without limiting the rights of the Committee (or any other party in interest with standing) as provided in this Order, the Debtor hereby waives any and all rights to (i) challenge the validity, enforceability, priority, and extent of the Prepetition Liens; (ii) surcharge the Collateral under section 506(c); (iii) limit Chase's security interests in proceeds under section 552(b), or (iv) all claims, defenses, and any counterclaims against the validity,

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enforceability, priority, and extent of the Prepetition Liens (collectively, the “Debtor’s Stipulations”).

4. **Carve-Out.** In exchange for the Debtor’s waiver under section 506(c) of the Bankruptcy Code, Chase hereby consents to a carve-out from its Prepetition Liens in the Collateral in an amount not to exceed \$150,000.00 (the “Carve-Out”) for (a) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and 28 U.S.C. § 156(b); and (b) for all reasonable fees and costs incurred by the Debtor’s and the Committee’s respective court-approved counsel, financial advisors, and other professionals, after the application of any prepetition retainers to such fees and costs,

5. **Challenge Cap.** Inclusive in the Carve-Out, there shall be \$35,000 (the “Challenge Cap”) reserved for the Committee for its reasonable fees and costs incurred by conducting any Challenge (as defined below), related investigations, and any attendant legal challenge to the Prepetition Liens or Loan Documents.

6. **Adequate Protection for Chase.** As adequate protection for the interests of Chase (including Cash Collateral), Chase shall receive adequate protection as follows:

- (a) **Adequate Protection Liens.** Solely to the extent of, and in an aggregate amount equal to, protecting against and preserving the value of Chase’s interests in the Collateral, from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code, whether or not resulting from, among other

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things, the use, sale or lease by the Debtor, or other decline in value of the Collateral, and the imposition or enforcement of the automatic stay of Section 362(a) of the Bankruptcy Code, or otherwise (collectively, "Diminution in Value"), Chase shall have pursuant to sections 361, 362 and 363(e) of the Bankruptcy Code, replacement security interest in and liens upon the Collateral, including all collateral and proceeds acquired after the Petition Date (except as to any avoidance actions or proceeds thereof under chapter 5 of the Bankruptcy Code (the "Replacement Liens" or "Adequate Protection Liens")). The Replacement Liens hereby granted (effective and perfected upon the date of this Order and without necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or other agreements) shall be subject and subordinate only to (x) the Prepetition Liens of Chase; (y) the liens of Chase on unencumbered property granted pursuant to this Order; and (z) any valid liens in existence on the Petition Date to which the Prepetition Liens of Chase are junior as of the Petition Date; provided further, that Chase's liens and claims are expressly senior to any liens and claims of any landlord which may assert a lien or prior claim over any personal property of the Debtor which constitutes Chase's Collateral.

- (b) **Replacement Perfected Security Interest.** Subject to the terms of this Order, and only insofar as to protect the Diminution in Value, Chase is granted a

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replacement perfected security interest under section 361(2) of the Bankruptcy Code to the extent the Cash Collateral is used by the Debtor, to such extent and with the same priority in the Debtor's post-petition collateral, and proceeds thereof, that Chase held in the Collateral.

(c) **Adequate Protection Superpriority Claim.** To the extent that the Adequate Protection Liens do not make Chase whole for any Diminution in Value as a result of the automatic stay or the use, sale, or lease of its Collateral, by further Court Order after Notice and a Hearing, Chase shall have, subject in each case to the payment of the Carve-Out Cap, an allowed superpriority administrative expense claim against Debtor's estate ("the Adequate Protection Superpriority Claim") as provided for in section 507(b) of the Bankruptcy Code including the Collateral under the Loan Documents, but excluding any avoidance actions under chapter 5 of the Bankruptcy Code or any proceeds therefrom (the "Avoidance Actions"). The Office of the United States Trustee, the Committee, and any party in interest, shall retain their respective rights, claims and defenses to opposing Chase's request, solely as to the allowed amount of the Adequate Protection Superpriority Claim, pursuant to this Order.

(d) **Adequate Protection Payments.** Subject only to the Carve-Out Cap, Chase shall receive from the Debtor, when due, indefeasible payment of: (i) all accrued and unpaid interest on the Debtor's Obligations under the Loan Documents and as set

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forth in the Budget to the fullest extent permitted by law; (ii) all other accrued and unpaid fees and disbursements (including all reasonable and documented out-of-pocket legal and advisory fees and expenses) owing under the Loan Documents; and (iii) repayment of the Debtor's Obligations under the Loan Documents pursuant to the Budget.

(e) **Professional and Advisory Fees.** The Debtor shall pay reasonable and documented professional and advisory fees, costs and expenses of Chase incurred in connection with the administration and monitoring of the Loan Documents, including the reasonable and documented post-petition fees and expenses of any legal, financial and other advisory professional, within ten (10) days after receipt of invoices therefor. The forms of invoices for professional and advisory services that are provided to the Debtor shall simultaneously be provided to counsel to the Committee and the Office of the United States Trustee, who shall also have the same 10-day period to raise any issue or objection thereto.

(f) **Credit Bid Protection.** Subject to the terms and conditions set forth in the Loan Documents, Chase shall have the unqualified right to credit bid up to the amount of the Obligations, respectively, in connection with any sale of the Debtor's assets and property, including, without limitation, any sale occurring pursuant to section 363 of the Bankruptcy Code, included as part of any chapter 11 plan, or conducted by a chapter 7 trustee under section 725 of the Bankruptcy Code.

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(g) **Perfection of Adequate Protection Liens.** Subject to the provisions of this Order, this Order shall constitute a security agreement that may be recorded and Chase is hereby authorized, but not required, to file or record this Order or such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction or take any other action in order to validate and perfect the liens and security interests granted to it hereunder. Whether or not Chase shall, in its sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments or otherwise confirm perfection of the liens and security interests granted to it hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of this Order. A certified copy of this Order may, in the discretion of Chase, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Order for filing and recording

7. **Other Provisions Relating to the Prepetition Liens.** The Prepetition Liens shall secure all of the Debtor's Obligations to Chase under the Loan Documents. The Prepetition Liens shall not, without the consent of Chase, be made subject to, or *pari passu* with, any other

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lien or security interests, other than to the extent expressly provided herein and to the Carve-Out, by any court order heretofore or hereafter entered in the case, and shall be valid and enforceable against any Trustee appointed in the case or in a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (such case or proceedings “Successor Case”), and/or upon the dismissal of any of the case. Except as otherwise reserved in this Order, the Obligations, the Prepetition Liens and the Adequate Protection Liens shall not be subject to sections 510, 549, 550 or 551 of the Bankruptcy Code or, upon entry of this Final Order, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552 of the Bankruptcy Code.

8. **Use of Carve-Out.** Notwithstanding anything in this Order, or any other order by this Court to the contrary, no proceeds of the Cash Collateral, and no portion of the Carve-Out, except for the Challenge Cap, may be used in the bankruptcy case or any other proceeding of any kind, or in any jurisdiction, directly or indirectly by any Committee, or any other person or entity, to (i) object to, contest, or raise any defense to, or assert any challenge to the validity, perfection, priority, extent, or enforceability of the Prepetition Liens, any amounts due Chase under the Loan Documents, or the Adequate Protection Liens granted under this Order, (ii) investigate, assert, or prosecute any claims, defenses, or causes of action (including, without limitation, any Avoidance Actions) against Chase, or their respective agents, affiliates, representatives, attorneys or advisors, except to contest whether an Event of Default has occurred or is continuing in accordance with this Order, (iii) prevent, hinder, or otherwise delay Chase’s

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assertion, enforcement, or realization against or upon the Cash Collateral in accordance with this Order or the Loan Documents, except to contest whether an Event of Default has occurred or is continuing, or (iv) without the prior written consent of Chase as applicable, seek to modify any of the rights granted hereunder or under the Loan Documents.

9. Monitoring of Collateral. Chase, the Committee, and their respective consultants and advisors, shall be given reasonable access to the Debtor's books, records, assets and properties for purposes of monitoring Debtor's business and the value of the Cash Collateral, and shall be permitted to conduct field audits, collateral examinations and appraisals upon reasonable notice and at reasonable times in respect to the Collateral.

10. Effect of Orders on Third Parties

(a) Subject to Paragraph 10(b), the Debtor's Stipulations, shall be binding upon the Debtor, its respective estate and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtor under all circumstances and for all purposes), and the Debtor is deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date.

(b) The Debtor's Stipulations shall be irrevocably binding on all other parties in interest and the Debtor's estates, including, without limitation, the Committee and any subsequently appointed trustee or other estate representative, unless, and solely to the extent that: (x) the Committee, any subsequent chapter 7

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trustee or any other party in interest that is granted standing and requisite authority by the Bankruptcy Court (it being understood that nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy Code), any such standing or authority) has timely commenced and properly filed an appropriate contested matter or adversary proceeding (a "Challenge") challenging any of the Debtor's Stipulations, including, without limitation, those related to the amount, validity, enforceability, perfection or priority of all or any portion of the Obligations and the Prepetition Liens no later than the date (the "Challenge Period Termination Date") that is latest to occur of (A) sixty (60) days after the date of the entry of this Final Order and (B) such date as ordered by the Bankruptcy Court for cause shown (provided that the request for extension is made before the expiration of the period set forth in clause (A) above); and (y) a court of competent jurisdiction rules in a Final Court Order (as defined below) in favor of the plaintiff in any such timely filed Challenge (a "Successful Challenge"); provided, that, the Challenge Period Termination Date shall be tolled, solely as to any Challenge identified in a motion filed by the Committee with this Court within the initial 60-day challenge period seeking standing to commence a Challenge, until such time as (and to the extent that) such standing motion is granted or denied by this Court. If and to the extent that no such Challenge is timely commenced or if

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such a challenge is timely commenced but is not ultimately a Successful Challenge, then, without further order of the Bankruptcy Court, (i) any and all such Challenges by any party (including, without limitation, the Committee, any chapter 11 trustee, any examiner or any other estate representative appointed in the Debtor's Chapter 11 Cases, or any chapter 7 trustee appointed in any Successor Cases) shall be deemed to be forever waived and barred, (ii) all of the Debtor's Stipulations shall be binding upon the Debtor's estate, the Committee, all creditors, interest holders and parties in interest, any chapter 11 trustee, any examiner or any other estate representative appointed in the Debtor's Case, or any chapter 7 trustee appointed in any Successor Case, and (iii) the Obligations and the Prepetition Liens shall be deemed to be finally allowed for all purposes in this case and any subsequent chapter 7 cases and shall not be subject to challenge by any party in interest as to validity, priority or otherwise: provided, that nothing in this Final Order fixes the allowed amount of any secured claim of Chase under section 506(a) of the Bankruptcy Code based on the value of its collateral at any given date or any rights of such parties under section 506(b) of the Bankruptcy Code.

- (c) Nothing in this Order shall impair the right of any party to assert (within the Challenge Period Termination Period as to Chase) that funds that are or were in the Debtor's possession, or which have been or may be received by the

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Debtor in the future are held in trust by the Debtor and are not the Debtor's property, nor property of the Bankruptcy Estate or collateral subject to a security interest or claim of Chase or any third party and subject to the rights of the Debtor and Chase to oppose such claims under applicable law.

11. **Limitations in Respect of Subsequent Court Orders.** Without limiting any other provisions of this Order, there shall not be entered in these proceedings, or in any Successor Case, any order which authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage or collateral interest or other lien on or all or any portion of the Collateral and/or entitled to priority administrative status which is superior to, or pari passu with those granted pursuant to this Order for the benefit of Chase unless, in either case Chase has provided prior written consent, or all accrued and outstanding Obligations to Chase have been or would be paid indefeasibly in full in cash pursuant to the terms of such order.

12. **Events of Default; Rights and Remedies Upon Event of Default.**

(a) Upon seven (7) days written notice to the Debtor, Office of the United States Trustee, counsel for the Committee (the "Default Notice Period"), the occurrence of an event of default under this Order or under the Loan Documents (as defined therein) (each, an "Event of Default"), the automatic stay provisions of section 362(a) of the Bankruptcy Code shall be automatically vacated and modified to the extent necessary to permit Chase as its sole election, to exercise all rights and

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remedies provided in this Order and the Loan Documents, as applicable, to take any or all of the following actions without further authority by the Court: (i) immediately terminate the Debtor's use of Cash Collateral (ii) immediately declare all Obligations to be immediately due and payable; (iii) immediately suspend or place an administrative hold against the payment or use of proceeds in accounts maintained by Debtor with (or subject to a security interest in favor of) Chase against the obligations, or otherwise enforce subject to further Order of the Court, rights against the Cash Collateral in the possession of, or subject to a lien in favor of Chase for application against the Obligations; and (iv) take any other actions or exercise any other rights or remedies permitted under this Order. The Court shall retain exclusive jurisdiction with respect to all matters relating to the exercise of the rights and remedies hereunder with respect to the Debtor, and under this Order, and with respect to the Cash Collateral, including the judicial enforcement of the Adequate Protection Liens created hereunder.

(b) During the Default Notice Period: (i) the Debtor shall have no right to request or use any proceeds of any Cash Collateral, other than towards the satisfaction of the Carve-Out; (ii) any party in interest's sole recourse with respect to opposing the aforementioned modification of the automatic stay under section 362(a) of the Bankruptcy Code shall be to contest the occurrence and/or continuance of an Event of Default; and (iii) the Debtor or the Committee, upon notice to Chase,

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shall be entitled to seek an emergency hearing before this Court, solely for the purpose of contesting whether an Event of Default has occurred and/or is continuing, and/or whether adequate protection to Chase can be provided under applicable law.

- (c) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of the Loan Documents and this Order as necessary to (i) permit the Debtor to grant the Adequate Protection Liens and to incur all obligations and all liabilities to Chase hereunder and under the Loan Documents, as the case may be; (ii) authorize Chase to retain and apply payments, and otherwise enforce its respective rights and remedies hereunder and the Loan Documents; and (iii) to require the Debtor to segregate all Cash Collateral for the benefit of Chase pending entry of any further Order by this Court.
- (d) Notwithstanding anything in this Order to the contrary, Chase shall be permitted to exercise all rights or remedies upon an Event of Default, subject to the Debtor or the Committee seeking to re-impose the automatic stay by further Order and after Notice and Hearing determining adequate protection of Chase's security interests in the Collateral, upon the occurrence of any of the following:
- (i) Any negative variance in excess of 15% on a non-cumulative weekly basis as set forth in the Budget, measured as of the Petition Date;

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- (ii) The appointment of an examiner or trustee in the case, or any Material Adverse Change, as defined in the Loan Documents and incorporated by reference;
 - (iii) The conversion to chapter 7 of the case;
 - (iv) The reversal of this Order, including any material modification thereof over the objection of Chase;
 - (v) The breach by the Debtor of any term, covenant, or non-monetary obligation under this Order or under the Loan Documents;
 - (vi) The occurrence of any event that materially impairs the timely payment of proceeds of the Chase Collateral, contrary to the Budget.
- (e) Nothing contained hereinabove shall limit the rights of Chase to forbear in its sole business judgment, upon the further breach by Debtor of any provision of the Order, including the Budget, or any modification thereof submitted by Debtor herein, or upon an Event of Default, and shall be without prejudice to the exercise of all of its rights under this Order and the respective Loan Documents, without waiving any such rights and remedies against the Debtor or the Guarantors, nor prejudice its rights to enforce its superpriority Claims pursuant to section 507(b); to recover adequate protection in full from all property of the estate, subject to any existing valid liens, including any property and proceeds acquired after the commencement of this case, for any diminution to which it is

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entitled pursuant to sections 361, 362, 363, (c)(2), (B), (e) and the terms of this Order; and to enforce all of its perfected and senior rights and remedies under applicable law pursuant to the Loan Documents.

13. **Finding of Good Faith.** Chase has acted in good faith in respect of all actions taken in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the use of Cash Collateral, including in respect of the granting of the Adequate Protection Liens, any challenges or Objections to the use of Cash Collateral, and all documents related to any and all transactions contemplated by the forgoing.

14. **Proofs of Claim.** Chase shall not be required to file a proof of claim.

15. **No Marshaling.** Chase shall not be subject to the equitable doctrine of ‘marshalling’ or any other similar doctrine with respect to any of the Collateral or rights against any Guarantor, as applicable.

16. **Release.** Without limiting the rights of the Committee (or any other party in interest with standing) as provided in this Order, the Debtor forever releases, waives, and discharges Chase, its affiliates, subsidiaries, assigns, and successors, together with each of the foregoing parties’ respective officers, directors, employees, agents, attorneys and professionals (collectively, the “Released Parties”), from any and all claims and causes of action arising out of, based upon, or related to, in whole or in part, any of the Loan Documents, the Collateral (including Cash Collateral), the Prepetition Liens, the Adequate Protection Superpriority Claims, the Loan Documents, any aspect of the prepetition relationship among the Debtor relating to any

Debtor: Zucker Goldberg & Ackerman, LLC

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Caption of Order: Final Order pursuant to Sections 361, 362, 363, and 507 of the Bankruptcy Code and Rule 4001 of the Federal Rules of the Bankruptcy Procedure Authorizing Use of Cash Collateral

of the Loan Documents, or any transaction contemplated by the Loan Documents, including, without limitation, any claims or defenses as to the extent, validity, priority, or perfection of the Loan Documents, the Cash Collateral, the Prepetition Liens, the Adequate Protection Superpriority Claims, the Obligations, or the Collateral (including the Cash Collateral), along with any “lender liability” claims, but excluding any Avoidance Actions. For the sake of clarity, this release does not include any claims against any Released Party that is or was a client of the Debtor and for which the Debtor has not been paid in full by such party for legal services rendered.

17. **Limitation of Liability.** Subject to paragraph 10(b), and without limiting the rights of the Committee (or any other party in interest with standing) as provided in this Order, in exercising any rights or remedies pursuant to this Order and the other Loan Documents, Chase shall not be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar federal or state statute), or otherwise.

18. **Debtor’s Waivers.** Subject to paragraph 10(b), and without limiting the rights of the Committee (or any other party in interest with standing) as provided in this Order, at all times during the case, and whether or not an Event of

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Default has occurred, the Debtor irrevocably waives any right that it may have (a) to challenge the application of any payments authorized by this Order pursuant to section 506(b) of the Bankruptcy Code, (b) to seek authority to grant liens on the Collateral any portion thereof to any other entities, pursuant to section 364(d) of the Bankruptcy Code or otherwise, which are senior to, or pari passu with, Chase, unless the Obligations to Chase are first indefeasibly repaid in full in cash, or (c) to seek authority to obtain postpetition loans or other financial accommodations pursuant to section 364(c) or 364 (d) of the Bankruptcy Code, other than from Chase, or as may be otherwise expressly permitted under the Loan Documents, unless the Debtor uses the proceeds of such postpetition loans or other financial accommodations to pay in full in cash all Obligations. In addition, subject to paragraph 10(b), and without limiting the rights of the Committee (or any other party in interest with standing) as provided in this Order, in any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtor hereby waives its right to seek relief, subject to the terms of this Order, including without limitation, under section 105 of the Bankruptcy Code, to the extent such relief would in any way impair or restrict the rights and remedies of Chase as set forth in this Order or the other Loan Documents, other than to contest whether an Event of Default has occurred or is continuing.

19. **363 Sales**. No sale, use or lease or transfer of any interest of the Collateral or

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proceeds of the Collateral under section 363 of the Bankruptcy Code, outside of the ordinary course of business, will be authorized without Chase's consent, or an Order under section 363 which becomes final after Notice and a Hearing.

20. **No Third Party Rights.** Subject to paragraph 10(b), and without limiting the rights of the Committee (or any other party in interest with standing) as provided in this Order, except as explicitly provided for herein, this Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, third party or incidental beneficiary.

21. **Section 552(b).** Subject to paragraph 10(b), and without limiting the rights of the Committee (or any other party in interest with standing) as provided in this Order, Chase is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under Section 552(b) of the Bankruptcy Code shall not apply to proceeds, product, offspring, or profits of any of the Collateral.

22. **Priority of Order.** In the event of any inconsistency or conflict between any of the terms and provisions of this Order and the other Loan Documents, the terms and provisions of this Order shall govern.

23. **Survival of Order.** The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any chapter 11 plan in the case, (ii) converting the case to a case under chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law dismissing the case (iv) withdrawing of the reference of the

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case from this Court or (v) providing for abstention from handling or retaining of jurisdiction of the case in this Court. The terms and provisions of this Order, including the Adequate Protection Liens and the Adequate Protection Superpriority Claim granted pursuant to this Order, and any protections granted to or for the benefit of Chase, shall continue in full force and effect notwithstanding the entry of such order, and such Adequate Protection Liens and the Adequate Protection Superpriority Claim and protections for Chase shall maintain their priority as provided by this Order and the Loan Documents, or agreements in respect thereof, until all of the Obligations have been indefeasibly paid and satisfied in full and discharged.

24. **Enforceability.** This Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

25. **Waiver of Applicable Stay.** Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Order.

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