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 Debtor and Debtor-In-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF ARIZONA**

In Re:)	In Proceedings Under Chapter 11
)	
KODI DISTRIBUTING, LLC,)	Case No.: 2:17-bk-07048-EPB
)	
Debtor and)	
Debtor-In-Possession.)	
_____)	

EMERGENCY MOTION FOR INTERIM AND FINAL AUTHORITY TO: 1) USE CASH AND OTHER COLLATERAL; 2) PROVIDE ADEQUATE PROTECTION; AND 3) OBTAIN CREDIT

Kodi Distributing, LLC (“Debtor”), Debtor and Debtor-in-Possession, through the BANKRUPTCY LEGAL CENTER™, respectfully requests authority, on an interim and final basis, to use cash and other collateral (inventory), to provide adequate protection of the secured creditors’ interest in the collateral, and to obtain unsecured credit from vendors in the ordinary course of business. This Motion is accompanied by a Motion for Accelerated, Preliminary Hearing and to Shorten Notice for Objections to establish immediate authority to use cash collateral and inventory. This Motion is brought pursuant to 11 U.S.C. §§ 363 and 364, Fed. R. Bankr. P. 4001(b), Local Rules of Bankr. P. 4001-3 and 4001-4, and the Memorandum of Points and Authorities which follows.

DATED this 23rd day of June, 2017.

BANKRUPTCY LEGAL CENTER™
 LAW OFFICE OF JAMES F. KAHN, P.C.

/s/ Krystal M. Ahart, SBN029358 _____
 Attorney for Debtor and Debtor-in-Possession

MEMORANDUM OF POINTS AND AUTHORITIES

A. FIRST DAY MOTION INFORMATION; RELIEF REQUESTED

The following information is provided in compliance with Local Rule 4001-4(b):

1. Debtor does NOT propose to grant a pre-petition creditor a lien or security interest in post-petition assets in which the creditor would not otherwise have a security interest by virtue of its pre-petition security agreement and applicable law, other than replacement liens in the same kind of collateral as the creditor had pre-petition.

2. Debtor does NOT seek findings, conclusions, holdings or orders as to the amount of a secured debt or the validity, perfection and scope of the security interests securing such debt, other than to show that the respective Secured Creditors' interests, if any, are adequately protected or that their interest in collateral will not be adversely impacted.

3. Debtor does NOT propose a release, waiver or abandonment of claims, setoff rights, surcharge rights, avoidance actions or subordination actions, if any, against any secured creditor, nor findings or stipulations that no such rights exist.

4. Debtor does NOT propose to grant any liens or security interests against rights and actions arising under 11 U.S.C. §§ 544, 545, 547, 548, or 549.

5. Debtor does NOT propose to use funds derived from post-petition financing to pay all or part of a pre-petition secured debt, other than as permitted by 11 U.S.C. § 552(b).

6. Debtor DOES propose to grant surcharge or “carve-out” rights for Legal/Administrative Expenses. See page 7.

7. Debtor does NOT seek authority to pay any pre-petition wages, salary, or other compensation to any employee.

8. Debtor does NOT seek to prime any secured creditor under § 364(d).

9. Debtor DOES seek to confirm its authority under 11 U.S.C. § 364 to incur unsecured credit with trade vendors for the purchase of inventory, in the ordinary course of business. See page 7.

B. JURISDICTION AND VENUE

10. On June 21, 2017 (the “Petition Date”) the Debtor filed a Voluntary Petition for reorganization relief under Chapter 11 of Title 11 of the United States Code, commencing this Chapter 11 case (the “Chapter 11 Case”).

11. Debtor continues to operate its business and manage its assets as a Debtor-In-Possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

12. No trustee, examiner, or committee has been appointed.

13. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1403 and 1409.

14. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

C. FACTUAL BACKGROUND

15. Debtor is an Arizona Corporation with its principal place of business in the City of Phoenix, County of Maricopa, State of Arizona.

16. Debtor is an online retailer of merchandise.

17. Debtor was started in 2009. Throughout its years of operations, the company has realized substantial successes and periods of financial challenge.

18. In 2016, Debtor began struggling to meet ongoing obligations.

19. To facilitate its restructuring, Debtor's Managing Member searched for and found a new physical location for operations that was more economical; Debtor moved to the new location in February, 2017.

20. This move has substantially reduced overhead including rent, payroll, and utilities, which were among Debtor's greatest ongoing expenses.

21. Debtor anticipates that these positive changes in operations will continue to enhance profitability.

22. Due to pre-petition delinquencies and creditors' reluctance to accommodate payment plans, however, Debtor's management made the decision to seek relief under Chapter 11 to permit Debtor to, among other things, continue its business operations and allow it to manage, preserve and maximize the value of the assets of the Bankruptcy Estate for the benefit of its creditors.

23. It is the fervent hope of Debtor's management that all of its creditors will be supportive of the Debtor's reorganization and facilitate this Debtor returning to profitability.

D. USE OF COLLATERAL AND CASH COLLATERAL

The following information is provided in compliance with Rule 4001(b)(1)(B) Fed. R. Bankr. P., and Rule 4001-3 Local Rules of Bankruptcy Procedure:

24. Debtor brings this Motion seeking authority to use inventory and cash collateral generated by the ordinary-course-of-business sales of its inventory, so that it may continue its online retail sales business on a daily basis without interruption.

25. The inventory, cash, and accounts Debtor seeks to use may be collateral securing liens, loans or extensions of credit by the following creditors:

- a) Benita Turk, pursuant to a Promissory Note and Security Agreement, a copy of which is in possession of the Debtor and creditor. A copy of the UCC-1 Financing Statement may be found in the records of the Arizona Secretary of State under file number 2015-001-0000-5 (See Exhibit "A").
- b) TBF Financial, LLC, assignee of Celtic Bank, pursuant to a Business Loan Agreement, a copy of which is in possession of the Debtor and creditor. A copy of the Financing Statement may be found in the records of the Arizona Secretary of State under file number 2016-000-5921-2 (See Exhibit "B").

26. The above listed creditors are collectively referred to herein as the "Secured Creditors."

27. The Secured Creditors have, upon information and belief, perfected their security interests.

28. On the Petition Date, Debtor held the following "Collateral":

- a) Funds in Bank: \$4,573.75;
- b) Customer Deposits: \$267.15; and
- c) Pre-Petition Inventory: \$201,334.87.

Total Collateral Value: \$206,175.77

29. The Total Collateral Value substantially exceeds the total combined amount due to the Secured Creditors, which is \$119,646.10 (an equity cushion of greater than \$86,500); the Secured Creditors also have other collateral.

30. To the extent that the Secured Creditors assert a claim in “cash collateral” as that term is defined in 11 U.S.C. § 363(a), Debtor moves for authority to use the Collateral, and asserts that the interests of the Secured Creditors is adequately protected by a substantial cushion of equity.

31. Debtor needs to use the Collateral in order to: purchase replacement inventory, pay post-petition rent and vendors/suppliers in the ordinary course of business, pay administrative professionals, pay post-petition payroll and benefits to employees, and pay other expenses incurred in the ordinary course of business. See Debtor’s Forecasted Profit & Loss, attached as Exhibit “C.”

32. Debtor has insufficient unencumbered funds with which to pay the above expenses.

33. If such expenses are not paid, Debtor will be unable to continue its business operations and will be unable to reorganize; the resulting liquidation would not be in the best interest of the Bankruptcy Estate or its creditors.

34. Debtor proposes to protect the Secured Creditors’ interest in the Collateral it seeks to use by granting a post-petition security interest in inventory acquired post-petition, and the proceeds thereof.

35. The value of the post-petition secured interest shall not exceed the Total Collateral Value, as indicated in paragraph 28, above.

36. The priority of the post-petition security interests given to each Secured Creditor shall be the same priority as the pre-petition security interests.

37. If the value of Collateral is reduced below \$170,000, Debtor will pay Secured Creditors commensurate with the depleted values, as their priorities may appear; in other words, there will at all times be a substantial cushion of equity of no less than \$50,350.

38. Debtor proposes to create a reserve for Legal/Administrative Expenses, beginning in November, 2017, as indicated on line 38 of Exhibit "C."

39. Debtor intends to move forward with a Plan of Reorganization promptly, which will further provide for the payment of the amounts due to the Secured Creditors through continued business operations.

E. OBTAINING POST-PETITION CREDIT

40. Debtor seeks confirmation of its authority pursuant to 11 U.S.C. § 364(a) to obtain unsecured credit on ordinary trade terms, in the ordinary course of business, from trade vendors and suppliers who are willing to provide inventory, equipment, or services to the Debtor on credit.

F. LEGAL AUTHORITIES

41. This Motion is brought pursuant to 11 U.S.C. §§ 105, 363(a), (c)(1), (c)(2)(B), (c)(3), (c)(4) and (e); 364 (a), (b) and (c); Fed. R. Bankr. P. 4001(b), 6003 and 6004; and Local Rule 4001-3.

WHEREFORE, Debtor respectfully requests this Court's Interim Order:

- A. Authorizing the sale of inventory that is collateral for the Secured Creditors;
- B. Authorizing the use of Collateral, as described above;

- C. Granting a post-petition security interest in inventory acquired post-petition to the Secured Creditors;
- D. Authorizing the Debtor to obtain credit from vendors willing to sell on ordinary trade terms;
- E. Establishing deadlines for creditors and other parties in interest to object to the interim order, and providing that, in the absence of objections, the interim order may become a final order; and
- F. For such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 23rd day of June, 2017.

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