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6 *Attorneys for Debtor and Debtor in Possession*

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11
12 In re:
13 NASTY GAL INC., a California
corporation,
14 Debtor and Debtor in Possession.

Case No. 2:16-bk-24862-BB

Chapter 11

**DEBTOR'S NOTICE OF MOTION AND
MOTION: (1) FOR AUTHORITY TO USE
ESTATE PROPERTY OUTSIDE THE
ORDINARY COURSE OF BUSINESS
UNDER 11 U.S.C. § 363(B); (2)
APPROVING THE USE OF CASH
COLLATERAL; MEMORANDUM OF
POINTS AND AUTHORITIES; AND
DECLARATION OF JOE SCIROCCO IN
SUPPORT THEREOF**

Hearing:

Date: March 8, 2017
Time: 11:00 a.m.
Place: Courtroom 1539
255 East Temple Street
Los Angeles, CA 90012

ROBINS KAPLAN LLP
ATTORNEYS AT LAW
LOS ANGELES

1 **TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY**
2 **JUDGE, HERCULES CAPITAL, INC., AND ALL OTHER PARTIES IN INTEREST:**

3 **PLEASE TAKE NOTICE** that, on March 8, 2017, at 11:00 a.m., before the Honorable
4 Sheri Bluebond, United States Bankruptcy Judge, Nasty Gal Inc. (the “Debtor” or “Nasty Gal”),
5 the debtor and debtor in possession in the above-captioned chapter 11 case, will and hereby does
6 move (the “Motion”) the Court for entry of an Order substantially in the form attached as Exhibit
7 A hereto (the “Proposed Order”): (1) authorizing the Debtor to use property of the estate in the
8 liquidation of its business and the administration of the estate, outside the ordinary course of
9 business, pursuant to Bankruptcy Code section 363(b) and consistent with the budget attached as
10 Exhibit “1” to the Proposed Order; and (2) authorizing the Debtor to use the cash collateral of
11 Hercules Capital, Inc. (the “Prepetition Lender”) pursuant to Bankruptcy Code section 363(c).
12 Attached as Exhibit B to the Motion is the *Debtor’s Statement Regarding Cash Collateral* as
13 required by Local Bankruptcy Rule 4001-2.

14 The Motion is based upon the facts set forth herein, the attached memorandum of points
15 and authorities and declaration of Joe Scirocco, the records in the case, and any other evidence
16 that may be presented to the Court.

17 **PLEASE TAKE FURTHER NOTICE** that the Motion is on file with the Bankruptcy
18 Court and is available for inspection and copying at the office of the Clerk of the Court, located at
19 255 E. Temple Street, Room 940, Los Angeles, CA 90012. In addition, a copy of the Motion may
20 be obtained by delivering a written request to: Robins Kaplan LLP, Attn: Kevin D. Meek, 2049
21 Century Park East, Suite 3400, Los Angeles, CA 90067, Email: kmeek@robinskaplan.com.

22 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 9013-
23 1(f), any response to the Motion shall be in writing, filed with the Court and served upon counsel
24 for the Debtor named in the upper left-hand corner of this notice and the United States Trustee at
25 915 Wilshire Blvd., Suite 1850, Los Angeles, California 90017, no later than 14 days prior to the
26 hearing. Failure to do so may be deemed as consent to the granting of the Motion.

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DATED: February 15, 2017

ROBINS KAPLAN LLP

By: /s/ Kevin D. Meek
Scott F. Gautier
Kevin D. Meek

Attorneys For Debtor and Debtor In Possession

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**DEBTOR'S MOTION: (1) FOR
AUTHORITY TO USE ESTATE
PROPERTY OUTSIDE THE ORDINARY
COURSE OF BUSINESS UNDER 11 U.S.C.
§ 363(B); (2) APPROVING THE USE OF
CASH COLLATERAL; MEMORANDUM
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I.

INTRODUCTION

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3 On February 8, 2017, the Court entered its Order (the “Sale Order”) approving the sale
4 (the “Sale”) of the Debtor’s intellectual property assets to Boohoo F I Limited (“Boohoo”)
5 pursuant to a stalking horse agreement dated December 27, 2016 (the “Sale Agreement”).
6 Pursuant to the Sale Agreement, the Debtor will cease business operations on February 28, 2017
7 (the “Closing Date”). On and after the Closing Date, the Debtor will liquidate its remaining
8 assets and administer the estate. The Debtor seeks to use cash outside the ordinary course of
9 business in the process of liquidation and administration consistent with the budget attached as
10 Exhibit “1” to the Proposed Order (the “Budget”). Given that the Debtor will no longer continue
11 its retail operations after the Closing Date, the Debtor seeks authority to utilize property of the
12 estate, in the exercise of its sound business judgment under section 363(b)(1), to maximize
13 returns to creditors.

14 To the extent that any cash used by the Debtor is collateral of the Debtor’s prepetition
15 lender, Hercules Capital, Inc. (the “Prepetition Lender”), and the Prepetition Lender does not
16 consent, the Debtor requests authority to use the Prepetition Lender’s cash collateral under
17 section 363(e). Pursuant to the Sale Order, the Prepetition Lender’s secured claim will be
18 substantially, but not fully, paid in connection with the Sale Closing. However, on and after the
19 Closing Date, the Prepetition Lender will still have a claim for at least \$1,802,000 plus attorney’s
20 fees and costs (the “Disputed Claim Amount”), pending resolution of a dispute with the Official
21 Committee of Unsecured Creditors. The Debtor will create a segregated account to hold cash
22 equal to the value of the Disputed Claim Amount, plus an additional \$1,000,000 to account for
23 any potential costs, fees or expenses that may be incurred and claimed by the Prepetition Lender
24 in connection with the resolution of such dispute. The Prepetition Lender will enjoy a significant
25 equity cushion—approximately 50% over its Disputed Claim Amount—in the segregated account
26 alone. Accordingly, the Prepetition Lender will be adequately protected by the existence of the
27 segregated account and the Court may authorize the Debtor to utilize any other cash collateral of
28 the Prepetition Lender.

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II.

JURISDICTION AND VENUE

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtor’s bankruptcy estate and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue of the Case is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 361, and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 4001 of the Federal Rules of Bankruptcy Procedure (“FRBP”) and Rule 4001-2 of the Local Bankruptcy Rules for the Central District of California (the “Local Bankruptcy Rules”).

III.

STATEMENT OF FACTS

Background:

1. On November 9, 2017 (the “Petition Date”), the Debtor commenced in this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Not trustee or examiner has been appointed in this chapter 11 case.

2. Prior to the Petition Date, the Debtor executed and entered into that certain Loan and Security Agreement, dated as of November 6, 2015, by and between the Debtor, the Prepetition Lender, the Agent, in its capacity as administrative agent for itself and the Prepetition Lender (the Loan and Security Agreement, as amended, restated, amended and restated, supplemented, or otherwise modified, the “LSA”), pursuant to which the Debtor borrowed \$15,000,000.

3. The LSA and the various other loan and security and related documents and agreements, including that certain Intellectual Property Security Agreement, dated as of November 6, 2015 (as the same may be amended, restated, amended and restated, supplemented, or otherwise modified, the “IP Security Agreement”), are referred to herein as the “Prepetition Agreements.”

1 4. On November 10, 2016, the Debtor filed its *Emergency Motion for Order*
2 *Authorizing and Approving (A) Use of Cash Collateral and (B) Grant of Adequate Protection to*
3 *Secured Creditor* (the “Cash Collateral Motion”).

4 5. On or about November 14, 2016, a hearing was held on the Cash Collateral
5 Motion. Pursuant to the *Amended Interim Order Pursuant to 11 U.S.C. §§ 105, 36, 362, and 363,*
6 *(I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a*
7 *Final Hearing, and (IV) Granting Related Relief* (the “Interim Cash Collateral Order”), the Court
8 authorized, on an interim basis, the use of Cash Collateral of the Prepetition Lender through
9 December 6, 2016, and the Debtor stipulated that it was indebted to the Prepetition Lender as a
10 result of the Prepetition Loans in the aggregate amount of not less than \$15,288,855.04 (the
11 “Prepetition Indebtedness”).

12 6. On December 6 and 20, 2016, the Debtor made adequate protection payments on
13 account of the principal portion of the Prepetition Indebtedness in the amounts of \$1,250,000.00
14 and \$250,000, respectively.

15 7. On or about December 6, 2016 (Docket No. 149), December 20, 2016 (Docket No.
16 176), and January 5, 2017 (Docket No. 235), the Court entered Orders approving separate
17 stipulations between the Debtor and Prepetition Lender authorizing the interim use of cash
18 collateral.

19 8. On or about January 31, 2017, the Official Committee of Unsecured Creditors
20 filed a complaint against the Prepetition Lender seeking avoidance of some of the Prepetition
21 Lender’s claim, entitled *Official Committee of Unsecured Creditors of Nasty Gal, Inc. v. Hercules*
22 *Capital, Inc. et al.*, Adv. No. 2:17-ap-01120-BB (the “Committee Lawsuit”). The Committee
23 Lawsuit alleges claims for: (1) Disallowance of Claims, (2) Equitable Subordination of Claims,
24 and (3) Disgorgement and Turnover.

25 **The Sale to Boohoo:**

26 9. On December 27, 2016, the Debtor signed a stalking horse purchase agreement
27 (the “Sale Agreement”) with Boohoo F I Limited (“Boohoo”), which provides for the sale of
28

1 substantially all of the Debtor's intellectual property assets for cash consideration in the amount
2 of \$20,000,000 (Docket No. 193).

3 10. On February 8, 2017, the Court entered its *Order (A) Authorizing The Sale Of The*
4 *Debtor's Assets Pursuant To The Buyer's Asset Purchase Agreement Free And Clear Of Liens,*
5 *Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of*
6 *Certain Executory Contracts And Unexpired Leases Related Thereto; And (C) Granting Related*
7 *Relief*, approving the Sale to Boohoo under the terms of the Sale Agreement (the "Sale Order")
8 (Docket No. 364).

9 11. Pursuant to paragraph 9 of the Sale Order, the Debtor is authorized and directed to
10 wire payment directly to the Prepetition Lender, from the closing proceeds, in the amount set
11 forth in a payoff letter to be provided to, and verified by, the Debtor (the "Lender Payoff").¹
12 However, the Debtor is instructed to withhold the following amounts from the Lender Payoff,
13 and cause such amounts to be deposited into an interest bearing account, subject to the Prepetition
14 Lender's liens, and held until further order from the Court (the "Holdback Funds"):

- 15 a. \$625,000, representing an estimate of default interest;
- 16 b. \$135,000, representing a prepayment charge;
- 17 c. \$1,042,000, representing an end of term fee; and
- 18 d. The amount of any attorney's fees and expenses included in the payoff letter.

19 12. In addition to the \$1,802,000 plus attorney's fees and costs required to be
20 segregated under the Sale Order, the Debtor proposes to segregate an additional \$1,000,000 to
21 account for any additional fees, costs, or expenses incurred by the Prepetition Lender pending
22 resolution of the Committee Lawsuit.

23 **The Debtor's Need to Use Cash:**

24 13. On or about February 8, 2017, a final hearing was held on the Cash Collateral
25 Motion. Pursuant to the *Final Order Pursuant To 11 U.S.C. §§ 105, 361, 362, And 363, (I)*
26 *Authorizing Use Of Cash Collateral, (II) Granting Adequate Protection And (III) Granting*

27 _____
28 ¹ Pursuant to the Sale Order, the Committee may challenge the Prepetition Lender's payoff demand.

1 *Related Relief* (the “February 8 Order”) (Docket No. 366), the Court authorized the use of Cash
2 Collateral of the Prepetition Lender until the earlier of March 8, 2017, and certain occurrences
3 that the Debtor does not believe are applicable under the current circumstances.

4 14. The Debtor requires the use of cash beyond March 8, 2017, to wind down its
5 business, liquidate its remaining assets, and fulfill its ongoing obligations in administering the
6 Estate, including the following categories of expenses:

- 7 a. Completing a wind-down of the Debtor’s business and liquidation of its remaining
8 assets.
9 b. Reviewing and administering claims filed in the case.
10 c. Filing, confirming, and administering a plan of liquidation in this case.
11 d. Paying administrative costs and fees, including the fees of the United States
12 Trustee and Court-approved professionals.
13 e. Resolving pending litigation against the Estate.

14 15. Accordingly, the Debtor requests entry of an Order: (1) authorizing the Debtor to
15 use property of the estate, outside of the ordinary course of business consistent with the Budget;
16 and (2) to the extent necessary, approving the Debtor’s use of the Prepetition Lender’s cash
17 collateral. The Debtor requests that such relief be effective until the earlier of: (i) the effective
18 date of a plan, or (ii) payment in full of the Prepetition Lender’s claim.

19 **IV.**

20 **LEGAL ARGUMENT**

21 **The Use of Estate Property Outside the Ordinary Course of Business is a Sound**
22 **Exercise of the Debtor’s Business Judgment.**

23 The requested relief is a sound exercise of the Debtor’s business judgment and should be
24 approved. Section 363 of the Bankruptcy Code provides that “[t]he [debtor], after notice and a
25 hearing, may use, sell, or lease other than in the ordinary course of business, property of the
26 estate.” 11 U.S.C. § 363(b)(1). Under section 363(b), courts require only that the debtor “show
27 that a sound business purpose justifies such actions.” *See In re Fitzgerald*, 428 B.R. 872, 884
28 (B.A.P. 9th Cir. 2010); *In re Lahijani*, 325 B.R. 282, 289 (B.A.P. 9th Cir. 2005); *In re Am. Dev.*

1 Corp., 95 B.R. 735, 737 (Bankr. C.D. Cal. 1989) (authorizing business transactions outside the
2 ordinary course of business if the debtor has exercised sound business judgment). On and after
3 February 28, 2017, the Debtor will continue to utilize property of the estate to efficiently wind
4 down and administer the estate for the benefit of creditors and parties in interest. The Debtor’s
5 use of property of the Estate in this manner outside the ordinary course of business, and consistent
6 with the Budget, will maximize remaining Estate assets and should be approved pursuant to
7 section 363(b)(1).

8 **The Debtor Should be Permitted to Use Cash Collateral**

9 Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use cash
10 collateral without either the consent of the secured party or an order of the court.² Section 363(e)
11 provides that a court may condition the debtor’s use of cash collateral on the debtor providing
12 “adequate protection” of the secured party’s interest in the collateral being used. The protection
13 for the secured creditor is against diminution in the value of the cash collateral used by the debtor.

14 The Ninth Circuit has long held that a “value cushion,” a positive difference between the
15 value of the Lender’s collateral and the Debtor’s obligations, standing alone, constitutes adequate
16 protection of a secured lender. *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). In *Mellor*, the
17 Ninth Circuit indicated that a 20% cushion suffices as adequate protection for a secured creditor.
18 *Id.* at 1401, 1402.

19 To the extent that the cash used by the Debtor to wind down its business is collateral of
20 the Prepetition Lender, there is no question that the Prepetition Lender will be adequately
21 protected by the segregated account created for the Prepetition Lender. The Debtor proposes to
22 place the entire Holdback Amount in a segregated account, plus an additional \$1,000,000 to cover
23 any future fees, costs, or expenses to which the Prepetition Lender may be entitled. The Debtor
24 will not utilize any funds in the segregated account except and until it satisfies any remaining
25 allowed claim of the Prepetition Lender. Accordingly, the Prepetition Lender will enjoy an
26

27 ² The Debtor hopes that it can reach a consensual resolution with the Prepetition Lender prior to the hearing on this
28 Motion.

1 equity cushion of approximately 50% on the segregated account alone, which is well beyond the
2 20% cushion approved by the Ninth Circuit in *Mellor*. Given that the Prepetition Lender is
3 adequately protected by the segregation of funds well in excess of its claim, the Debtor should be
4 permitted to use cash collateral to efficiently wind down and administer the Estate.

5 **V.**

6 **CONCLUSION**

7 WHEREFORE, the Debtor requests that the Bankruptcy Court enter an order,
8 substantially in the form attached as Exhibit A, for authority to use property of the estate in the
9 liquidation of the Debtor's business and administration of the estate and for authority to use the
10 Prepetition Lender's cash collateral. The Debtor prays for all other and further relief as may be
11 appropriate under the circumstances.

12 Dated: February 15, 2017

13 ROBINS KAPLAN LLP

14 By: /s/ Kevin D. Meek
15 Scott F. Gautier
16 Kevin D. Meek

17 Attorneys For Debtor and Debtor In Possession
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ROBINS KAPLAN LLP
ATTORNEYS AT LAW
LOS ANGELES

Exhibit A – Proposed Order

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Case No. 2:16-bk-24862-BB

Chapter 11

**[Proposed] ORDER GRANTING
DEBTOR'S MOTION (1) FOR
AUTHORITY TO USE ESTATE
PROPERTY OUTSIDE THE ORDINARY
COURSE OF BUSINESS UNDER 11 U.S.C.
§ 363(B); (2) APPROVING THE USE OF
CASH COLLATERAL**

Hearing:

Date: March 8, 2017
Time: 11:00 a.m.
Place: Courtroom 1539
255 East Temple Street
Los Angeles, CA 90012

ROBINS KAPLAN LLP
ATTORNEYS AT LAW
LOS ANGELES

1 Upon the motion (the “Motion”) of Nasty Gal Inc. (the “Debtor”) pursuant to Sections
2 361, 362 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the
3 “Bankruptcy Code”) and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy
4 Procedure (as amended, the “Bankruptcy Rules”), and Rule 4001-2 of the Local Bankruptcy
5 Rules of the United States Bankruptcy Court for the Central District of California (the “Local
6 Rules”), for entry of an Order¹ (1) authorizing the Debtor to use property of the estate outside the
7 ordinary course of business pursuant to 11 U.S.C. § 363(b) consistent with the Budget attached as
8 Exhibit “1” to the Proposed Order; and (2) authorizing the Debtor to use the cash collateral of
9 Hercules Capital, Inc. (the “Prepetition Lender”) on a final basis under U.S.C. § 363(e), and the
10 Court having determined that the relief requested in the Motion, is in the best interests of the
11 Debtor, its estate, its creditors, and other parties-in-interest; and it appearing that proper and
12 adequate notice of the Motion has been given and that no other or further notice is necessary; and
13 good and sufficient cause appearing therefore,

14 **THE COURT FINDS:**

15 1. Prior to the Petition Date, the Debtor executed and entered into that certain Loan
16 and Security Agreement, dated as of November 6, 2015, by and between the Debtor, the
17 Prepetition Lender, the Agent, in its capacity as administrative agent for itself and the Prepetition
18 Lender (the Loan and Security Agreement, as amended, restated, amended and restated,
19 supplemented, or otherwise modified, the “LSA”), pursuant to which, as of the date hereof, there
20 may be additional amounts due and owing to the Prepetition Lender which obligations may be
21 secured by liens on substantially all of the Debtor’s assets.

22 2. On January 31, 2017, the Committee filed a Complaint and commenced an
23 adversary proceeding challenging the Prepetition Lenders’ claims and interests (the “Committee
24 Challenge”) and, as of the date hereof, no other entity has filed a Complaint or challenge to the
25 Prepetition Lender’s claims. The Committee Challenge is pending as of the date hereof.

26
27 _____
28 ¹ Unless otherwise provided, capitalized terms shall have the same meanings as set forth in the Motion.

1 3. On February 8, 2017, the Court entered its *Order (A) Authorizing The Sale Of The*
2 *Debtor's Assets Pursuant To The Buyer's Asset Purchase Agreement Free And Clear Of Liens,*
3 *Claims, Encumbrances, And Other Interests; (B) Approving The Assumption And Assignment Of*
4 *Certain Executory Contracts And Unexpired Leases Related Thereto; And (C) Granting Related*
5 *Relief*, approving the Sale to Boohoo F I Limited ("Boohoo") under the terms of the Sale
6 Agreement (the "Sale Order") (Docket No. 364).

7 4. Pursuant to paragraph 9 of the Sale Order, the Debtor was authorized and directed
8 to wire, from the closing proceeds, payment directly to the Prepetition Lender the full amount of
9 its secured claim, less the following amounts, which amounts shall be deposited into a segregated
10 interest bearing account, subject to the Prepetition Lender's liens, and held until further order
11 from the Court (the "Holdback Funds"):

- 12 (a) \$625,000, representing an estimate of default interest;
- 13 (b) \$135,000, representing a prepayment charge;
- 14 (c) \$1,042,000, representing an end of term fee; and
- 15 (d) The amount of any attorney's fees and expenses included in the payoff
16 letter.

17 5. The ability of the Debtor to continue liquidate and administer the estate beyond a
18 closing of the sale to Boohoo requires the continued and immediate use of property of the estate,
19 some of which may constitute the cash collateral of the Prepetition Lender.

20 6. Given, among other things, the Debtor's commitment to reserve the Holdback
21 Funds plus an additional \$1,000,000 in a segregated account, the value of the Debtor's assets that
22 constitute the Prepetition Lender's collateral exceeds the value of the Debtor's obligations to the
23 Prepetition Lender. Accordingly, the Prepetition Lender is adequately protected for the use of
24 any cash collateral.

25 7. The terms and conditions of this Order are a fair and reasonable response to the
26 Debtor's request for use of cash collateral and the entry of this Order is in the best interests of the
27 Debtor's estate and creditors.
28

1 **WHEREFORE, IT IS HEREBY ORDERED THAT:**

2 1. The Motion is GRANTED.

3 2. The Debtor is authorized to use Cash Collateral of the Prepetition Lender in
4 accordance with and pursuant to the terms and provisions of the Motion and this Order.

5 3. The Debtor is authorized and directed to reserve the Holdback Funds, plus an
6 additional \$1,000,000 in a segregated, interest bearing account pending the payment of all
7 allowed claims of the Prepetition Lender.

8 4. The Prepetition Lender shall have whatever rights and claims are afforded
9 pursuant to Bankruptcy Code section 507(b).

10 5. Nothing contained in this Order shall be deemed or construed to (a) limit the
11 Prepetition Lender to the relief granted herein; (ii) impair, prejudice, limit or otherwise affect the
12 right of the Prepetition Lender to object to any issue in connection with any further request for the
13 use of cash collateral; (iii) restrict the Prepetition Lender from asserting that the adequate
14 protection provided by this Order is insufficient; (iv) bar the Prepetition Lender from seeking
15 other and further relief (including relief from this Order) on appropriate notice to the Debtors and
16 other parties in interest entitled to notice of same; or (v) require the Prepetition Lender to make
17 any further loan or advance to the Debtor.

18 6. If any or all of the provisions of this Order are hereafter modified, vacated, or
19 stayed by subsequent order of this or any other Court, such stay, modification, or vacation shall
20 not affect the validity of any debt to the Prepetition Lender (including the adequate protection
21 obligations) incurred pursuant to this Order, or otherwise affect the validity and enforceability of
22 any lien, security interest, or priority authorized hereby.

23 7. The entry of this Order is without prejudice to, and does not constitute a waiver of,
24 expressly or implicitly, or otherwise impair, any of the rights, claims or privileges of the
25 Prepetition Lender in the Debtor's bankruptcy proceedings, any subsequent proceedings under the
26 Bankruptcy Code, or otherwise, including, without limitation, the right of the Prepetition Lender
27 to request additional adequate protection of its interests in the Prepetition Collateral or relief from
28 or modification of the automatic stay under Section 362 of the Bankruptcy Code.

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LOS ANGELES

1 8. The Prepetition Lender shall not be required to file a proof of claim in this or any
2 successor case with respect to the Prepetition Indebtedness notwithstanding the establishment of
3 any bar date with respect to claims against the Debtor.

4 9. The subject of this Order is a “core” proceeding as defined in 28 U.S.C. §
5 157(b)(2)(D). This Order shall be valid and fully effective immediately upon its entry and, upon
6 such entry, shall be binding upon and inure to the benefit of the Prepetition Lender, the Debtor, its
7 estate, and their respective successors and assigns (including, without limitation, any trustee,
8 examiner, or responsible person hereinafter appointed as a representative of the estate in these or
9 any subsequent proceedings under the Bankruptcy Code), and the terms and provisions of this
10 Order shall continue in these proceedings and any superseding proceedings under the Bankruptcy
11 Code, and such liens and security interests shall maintain their priority as provided by this Order,
12 until satisfied and discharged.

13 10. Nothing in this Order shall be construed or used in any way to limit, impair or
14 prejudice the rights of the Committee to challenge the claims of the Prepetition Lender including,
15 but not limited to, in connection with the claims and causes of action set forth in the Committee's
16 Complaint against the Prepetition Lender filed on January 31, 2017.

17 11. The Debtor is authorized and empowered to take all actions necessary to
18 implement the relief granted in this Order.

19 12. This Court retains jurisdiction with respect to all matters arising from or related to
20 the implementation of this Order.

21 13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order
22 shall be effective and enforceable immediately upon entry hereof.

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Exhibit 1 to Order – Budget

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ROBINS KAPLAN LLP
ATTORNEYS AT LAW
LOS ANGELES

Nasty Gal, Inc. - Cash Forecast												IP
	1	2	3	4	5	6	7	8	9	10	11	
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
	12-Feb-17	19-Feb-17	26-Feb-17	5-Mar-17	12-Mar-17	19-Mar-17	26-Mar-17	2-Apr-17	9-Apr-17	16-Apr-17	23-Apr-17	
	18-Feb-17	25-Feb-17	4-Mar-17	11-Mar-17	18-Mar-17	25-Mar-17	1-Apr-17	8-Apr-17	15-Apr-17	22-Apr-17	29-Apr-17	
Operating Cash Receipts												
Wholesale Receipts	-	-	-	-	-	-	-	-	-	-	-	
Retail / eCommerce (net of Returns)	1,752	1,336	423	100	-	-	-	-	713	-	-	
Other Receipts	(53)	(40)	(13)	150	-	-	-	-	-	-	-	
Credit Card Fees, Chargebacks	-	-	-	(3)	-	-	-	-	-	-	-	
Reserves / Reversal	-	-	-	-	-	-	954	-	-	-	-	
Total Operating Receipts	1,700	1,296	410	247	-	-	954	-	713	-	-	
Operating Cash Disbursements												
Merchandise	78	62	-	-	-	-	-	-	-	-	-	
Freight / Customs	384	207	158	50	12	(94)	-	-	-	-	-	
Payroll, including Employee Benefits, Taxes	461	101	316	43	176	17	212	-	45	-	93	
Chief Restructuring Officer	27	-	27	-	27	-	27	-	27	-	27	
Independent Contractor	11	11	6	6	6	6	6	5	5	5	5	
Net Rent	-	16	320	(60)	-	-	320	135	-	-	-	
Utilities	-	20	-	-	-	25	-	-	-	20	-	
Taxes (Sales, RE, etc)	-	151	-	-	-	160	-	-	-	-	-	
Insurance	-	10	-	-	-	-	-	-	-	-	-	
Technology / Engineering	28	119	-	1	-	119	-	40	-	-	-	
Digital Marketing	41	4	260	-	-	-	-	-	-	-	-	
Other / Misc (PTO, KERP)	25	89	17	330	3	3	368	-	50	-	-	
Total Operating Disbursements	1,055	790	1,105	369	224	236	933	180	127	25	125	
Operating Cash Flow	645	506	(695)	(122)	(224)	(236)	21	(180)	586	(25)	(125)	
Non-Operating Cash Disbursements (Receipts)												
IP Sale proceeds		(20,000)					(150)					
Gordon Bros net proceeds FF&E	20	-	-	-	-	-	-	-	-	-	-	
Hercules' adequate protection / principal pmts		15,047	-	-	-	-	-	-	-	-	-	
Return of ___% of cash collateralized LCs		-	-	-	-	-	-	-	-	-	-	
PJSC Transaction fee		1,500	-	-	-	-	-	-	-	-	-	
Section 503(b)(9) claims		1,780	-	-	-	-	-	-	-	-	-	
Total Non-Operating Disbursements	20	(1,673)	-	-	-	-	(150)	-	-	-	-	
Bankruptcy Expenditures												
Professional Fees	-	-	722	-	-	-	-	-	-	600	-	
Total Bankruptcy Disbursements	-	-	722	-	-	-	-	-	-	600	-	
Net Cash Flow	625	2,179	(1,416)	(122)	(224)	(236)	171	(180)	586	(625)	(125)	
Beginning Book Cash	1,668	2,293	4,473	3,056	2,934	2,710	2,474	2,644	2,464	3,050	2,425	
Net Cash Flow	625	2,179	(1,416)	(122)	(224)	(236)	171	(180)	586	(625)	(125)	
Ending Book Cash Balance	2,293	4,473	3,056	2,934	2,710	2,474	2,644	2,464	3,050	2,425	2,300	

Exhibit B – Cash Collateral Statement

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ROBINS KAPLAN LLP
ATTORNEYS AT LAW
LOS ANGELES

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Kevin D. Meek (State Bar No. 280562) KMeek@robinskaplan.com ROBINS KAPLAN LLP 2049 Century Park East, Suite 3400 Los Angeles, CA 90067 Ph: 310 552-0130 Fax: 310 229-5800	FOR COURT USE ONLY
<input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Debtor	

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re: NASTY GAL INC.	CASE NO.: 2:16-bk-24862-BB CHAPTER: 11
STATEMENT REGARDING CASH COLLATERAL OR DEBTOR IN POSSESSION FINANCING [FRBP 4001; LBR 4001-2]	
Debtor(s).	DATE: 03/08/2017 TIME: 11:00 a.m. COURTROOM: 1539 ADDRESS: 255 East Temple Street Los Angeles, CA 90012

Secured party(ies): Hercules Technology Growth Capital, Inc.

The Debtor has requested the approval of either (1) a motion for use of cash collateral, or postpetition financing, or both, or (2) through a separately-filed motion, a stipulation providing for the use of cash collateral, or postpetition financing, or both. The proposed form of order on the motion or the stipulation contains the following provisions or findings of fact:

Disclosures Tracking FRBP 4001(c)(1)(B)(i) through (xi) and (d)(1)(B)	Page No.:	Line No. (if applicable)
<input type="checkbox"/> (i): “[A] grant of priority or a lien on property of the estate under § 364(c) or (d)”		
<input type="checkbox"/> (ii): “[T]he providing of adequate protection or priority for a claim that arose before the commencement of the case, including the granting of a lien on property of the estate to secure the claim, or the use of property of the estate or credit obtained under § 364 to make cash payments on account of the claim” <ul style="list-style-type: none"> <input type="checkbox"/> Cross-collateralization, <i>i.e.</i>, clauses that secure prepetition debt by postpetition assets in which the secured party would not otherwise have a security interest by virtue of its prepetition security agreement or applicable law <input type="checkbox"/> Roll-up, <i>i.e.</i>, provisions deeming prepetition debt to be postpetition debt or using postpetition loans from a prepetition secured party to pay part or all of that secured party’s prepetition debt, other than as provided in § 552(b) 		

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

<i>Continued from page 1</i>		
<input type="checkbox"/> Grant a replacement lien in an amount in excess of the dollar amount of the lien on cash collateral as of the petition date		
<input type="checkbox"/> (iii): “[A] determination of the validity, enforceability, priority, or amount of a claim that arose before the commencement of the case, or of any lien securing the claim”		
<input type="checkbox"/> (iv): “[A] waiver or modification of Code provisions or applicable rules relating to the automatic stay” <input type="checkbox"/> Automatic relief from the automatic stay upon occurrence of certain events.		
<input type="checkbox"/> (v): “[A] waiver or modification of any entity’s authority or right to file a plan, seek an extension of time in which the debtor has the exclusive right to file a plan, request the use of cash collateral under § 363(c), or request authority to obtain credit under § 364”		
<input type="checkbox"/> (vi): “[T]he establishment of deadlines for filing a plan of reorganization, for approval of a disclosure statement, for a hearing on confirmation, or for entry of a confirmation order”		
<input type="checkbox"/> (vii): “[A] waiver or modification of the applicability of nonbankruptcy law relating to the perfection of a lien on property of the estate, or on the foreclosure or other enforcement of the lien”		
<input type="checkbox"/> (viii): “[A] release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to commence an action”		
<input type="checkbox"/> (ix): “[T]he indemnification of any entity”		
<input type="checkbox"/> (x): “[A] release, waiver, or limitation of any right under § 506(c)” <input type="checkbox"/> The granting of any lien on any claim or cause of action arising under § 506(c)		
<input type="checkbox"/> (xi): “The granting of any lien on any claim or cause of action arising under §§ 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a)”		
Additional Disclosures Required by LBR 4001-2	Page No.:	Line No. (if applicable)
<input type="checkbox"/> With respect to a professional fee carve out, disparate treatment for professionals retained by a creditors’ committee from that provided for the professionals retained by the debtor		
<input type="checkbox"/> Pay down prepetition principal owed to a creditor		
<input type="checkbox"/> Findings of fact on matters extraneous to the approval process		

02/15/2017
Date

Kevin D. Meek
Printed Name

/s/ Kevin D. Meek
Signature

DECLARATION OF JOE SCIROCCO

I, Joe Scirocco, declare as follows:

1. I am the President and Chief Restructuring Officer of Nasty Gal Inc. (“Nasty Gal” or the “Debtor”), a California corporation, and I am authorized to submit and I make this declaration (“Declaration”) on behalf of the Debtor in connection with the Debtor’s *Motion: (1) For Authority To Use Cash Outside The Ordinary Course Of Business Under 11 U.S.C. § 363(b); (2) Approving The Use Of Cash Collateral* (the “Motion”).²

2. Except as otherwise noted herein, I have personal knowledge of the facts presented in this Declaration, or have reviewed the Debtor’s books, records and information referred to herein that were prepared and maintained by the advisors and employees engaged by the Debtor at my direction. If called as a witness to do so, I could competently testify thereto.

3. In addition to the funds required to be segregated under the Sale Order, the Debtor proposes to segregate an additional \$1,000,000 to account for any additional fees, costs, or expenses incurred by the Prepetition Lender pending resolution of the Committee Lawsuit.

4. The Debtor requires the use of cash beyond March 8, 2017, to wind down its business, liquidate its remaining assets, and fulfill its ongoing obligations in administering the Estate, including the following categories of expenses:

- a. Completing a wind-down of the Debtor’s business and liquidation of its remaining assets.
- b. Reviewing and administering claims filed in the case.
- c. Filing, confirming, and administering a plan of liquidation in this case.
- d. Paying administrative costs and fees, including the fees of the United States Trustee and Court-approved professionals.
- e. Resolving pending litigation against the Estate.

² Unless otherwise provided, capitalized terms shall have the same meanings as set forth in the Motion.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed this
2 15th day of February, 2017 at Los Angeles, California.



5 Joe Scirocco

ROBINS KAPLAN LLP
ATTORNEYS AT LAW
LOS ANGELES

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PROOF OF SERVICE OF DOCUMENT(S)

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

ROBINS KAPLAN LLP
2049 Century Park East, Suite 3400
Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR'S NOTICE OF MOTION AND MOTION: (1) FOR AUTHORITY TO USE ESTATE PROPERTY OUTSIDE THE ORDINARY COURSE OF BUSINESS UNDER 11 U.S.C. § 363(B); (2) APPROVING THE USE OF CASH COLLATERAL; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF JOE SCIROCCO IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the aforementioned documents was served by the court via NEF and hyperlink to the documents. On (*date*) **February 15, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Todd M Arnold tma@lnbyb.com
- Lorie A Ball LBall@robinskaplan.com
- Peter Bonfante pbonfante@celsinc.com
- Diana K Carey dcarey@karrtuttle.com, mherandez@karrtuttle.com;mmunhall@karrtuttle.com
- Jeffrey W Dulberg jdulberg@pszjlaw.com
- Joseph A Eisenberg jae@jmbm.com, vr@jmbm.com;tgeher@jmbm.com;bt@jmbm.com;jae@ecf.inforuptcy.com
- Scott Ewing contact@omnimgt.com, sewing@omnimgt.com;katie@omnimgt.com
- Ryan S Fife ryan.fife@dbr.com, betty.borror@dbr.com;docketgeneral@dbr.com
- Scott F Gautier sgautier@robinskaplan.com
- Thomas M Geher tmg@jmbm.com, bt@jmbm.com;fc3@jmbm.com;tmg@ecf.inforuptcy.com
- Eliza Ghanooni eliza@ghanoonilaw.com, jennifer@ghanoonilaw.com
- Fredric Glass fglass@fairharborcapital.com
- Matthew A Gold courts@argopartners.net
- Michael I Gottfried mgottfried@lgbfirm.com, kalandy@lgbfirm.com;cboyias@lgbfirm.com;srichmond@lgbfirm.com;sdeiches@lgbfirm.com;mmocciaro@lgbfirm.com
- Michael S Greger mgreger@allenmatkins.com
- Steven T Gubner sgubner@brutzkusgubner.com, ecf@brutzkusgubner.com
- Brian L Holman b.holman@mpglaw.com
- Kevin H Jang khjlawcorp@gmail.com, info.Khjlawcorp@gmail.com
- Gerald P Kennedy gerald.kennedy@procopio.com, kristina.terlaga@procopio.com;calendaring@procopio.com;efile-bank@procopio.com
- Gary E Klausner gek@lnbyb.com
- Kenneth T Law ken@bbslaw.com
- Malcolm Leader-Picone mlp@leader-picone.com
- Ron Maroko ron.maroko@usdoj.gov
- Kevin Meek kmeek@robinskaplan.com, kevinmeek32@gmail.com;kmeek@ecf.inforuptcy.com

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

- Penelope Parmes penelope.parmes@troutmansanders.com, Vanessa.hudak@troutmansanders.com
- Jeffrey N Pomerantz jpomerantz@pszjlaw.com
- Eric P. Israel eisrael@dgdk.com
- Uzzi O Raanan uor@dgdk.com, DanningGill@gmail.com;uraanan@ecf.inforuptcy.com
- J. Alexandra Rhim arhim@hemar-rousso.com
- Victor A Sahn vsahn@sulmeyerlaw.com,
agonzalez@sulmeyerlaw.com,agonzalez@ecf.inforuptcy.com;asokolowski@sulmeyerlaw.com;vsahn@
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- Martina A Slocomb rockymountainlaw@yahoo.com
- Howard Steinberg steinbergh@gtlaw.com, pearsallt@gtlaw.com;laik@gtlaw.com
- Ovsanna Takvoryan ot@tlgipc.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Dennis J Wickham wickham@scmv.com, nazari@scmv.com
- Hatty K Yip hatty.yip@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) **February 15, 2017** I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Special Notice Parties:

Mert Beraze
1420 Paloma Street
Los Angeles, CA 90021

Equal Opportunity Clothiers, Inc.
Eliza Ghanooni, Esq.
1901 Avenue of the Stars, Suite 450
Los Angeles, CA 90067

Shoemagoo, LLC
Dennis J. Wickham, Esq.
SELTZER CAPLAN McMAHON VITEK
A Law Corporation
750 B Street, Suite 2100
San Diego, California 92101
Telephone: (619) 685-3003
Fax: (619) 702-6812
Email: wickham@scmv.com

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **February 15, 2017** I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Judge

United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building and Courthouse
Hon. Sheri Bluebond
255 E. Temple Street, Suite 1534 / Courtroom 1539
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 15, 2017

Date

Kevin D. Meek

Printed Name

/s/ Kevin D. Meek

Signature