

1 Stuart Komrower (*pro hac vice*)  
2 Ryan T. Jareck (*pro hac vice*)  
3 COLE SCHOTZ P.C.  
4 25 Main Street  
5 Hackensack, NJ 07601  
6 Tel: (201) 489-3000  
7 Fax: (201) 678.6331  
8 Email: skomrower@coleschotz.com  
9 rjareck@coleschotz.com

7 Jeffrey N. Pomerantz (CA Bar No. 143717)  
8 Jeffrey W. Dulberg (CA Bar No. 181200)  
9 PACHULSKI STANG ZIEHL & JONES LLP  
10 10100 Santa Monica Blvd., 13th Floor  
11 Los Angeles, Ca 90067  
12 Tel: 310.277.6910  
13 Fax: 310.201.0760  
14 Email: jpomerantz@pszjlaw.com  
15 jdulberg@pszjlaw.com

16 *Attorneys for Hercules Capital, Inc.*

17 **UNITED STATES BANKRUPTCY COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 **LOS ANGELES DIVISION**

20 In re:

21 NASTY GAL INC.,

22 Debtor.

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

Chapter 11

**LIMITED OBJECTION OF HERCULES  
CAPITAL, INC. TO 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**

Date: March 8, 2017

Time: 11:00 a. m.

Place: United States Bankruptcy Court  
Courtroom 1539  
255 East Temple Street  
Los Angeles, CA 90012

Judge: Honorable Sheri Bluebond

1 Hercules Capital, Inc. f/k/a Hercules Technology Growth Capital, Inc., in its capacity as  
2 administrative agent for itself and certain lenders (collectively, "Hercules"), by and through its  
3 undersigned co-counsel, files this limited objection (the "Limited Objection") to the motion (the  
4 "Motion") of Nasty Gal, Inc. (the "Debtor") for entry of an Order: (1) authorizing the Debtor to use  
5 property of the estate in the liquidation of its business and the administration of the estate, outside  
6 the ordinary course of business, pursuant to Section 363(b) of the Bankruptcy Code and consistent  
7 with the budget attached as Exhibit "1" to the proposed Order granting the Motion; and (2)  
8 authorizing the Debtor to use the cash collateral of Hercules pursuant to Section 363(c) of the  
9 Bankruptcy Code. In support of the Limited Objection, Hercules respectfully states as follows:  
10

11 **LIMITED OBJECTION**

12 Hercules objects to the Motion to the extent it seeks authority to use cash collateral outside  
13 the ordinary course of business in advance of the Debtor closing on the sale of its intellectual  
14 property assets to Boohoo F I Limited ("Boohoo") pursuant to a stalking horse agreement dated  
15 December 27, 2016 on two grounds.  
16

17 First, the relief requested in the Motion should be subject to a closing of the sale to Boohoo.  
18 In the event such sale does not close, the authority to use cash collateral terminates pursuant to  
19 *Final Order Authorizing Use of Cash Collateral and Granting Adequate Protection* [Docket No.  
20 366]. Additionally, the Budget specifically envisions liquidation expenditures only in the event of a  
21 closing and the Debtor's proposal of adequate protection will be mooted and fail if the closing does  
22 not occur.  
23

24 Second, the Motion is ambiguous with respect to the escrow that the Debtor proposes as  
25 adequate protection. The Sale Order granting the Motion to approve the sale to Boohoo (the "Sale  
26 Order") provides that the sale is free and clear of liens with Hercules' liens to attach to proceeds of  
27 sale. [Docket No. 364, at para. 7]. The Sale Order does not place a limitation on the proceeds to  
28

1 which the liens attach. Through the Motion, the Debtor seeks to set up a segregated, interest-  
2 bearing account, as directed by the Court at the sale hearing, in the amount equal the interest, fees  
3 and charges disputed by the Committee, plus additional \$1,000,000 ( the “Segregated Funds”),  
4 pending resolution of the Committee’s Complaint, as adequate protection for the continued use of  
5 cash collateral.  
6

7 Counsel for the Debtor has confirmed in writing that the Motion does not request, and the  
8 Debtor does not seek at this time, to strip or remove Hercules’ liens from any assets. Counsel for  
9 the Debtor has further agreed to clarify on the record, if necessary, that Hercules’ liens are not being  
10 released on any assets (except, for example, on section 363(f) sales with liens attaching to all  
11 proceeds thereof). In an abundance of caution, however, Hercules submits there is no basis in law  
12 or in fact to reduce the collateral pool securing Hercules’ remaining unpaid claim after the partial  
13 payment to be made to Hercules on closing of the sale.  
14

15 The \$1 million cushion can quickly evaporate based on the continuing accrual of interest on  
16 approximately \$2.5 million, the allowance and amount of which is to be determined at a later date  
17 by the Court, and the expenses of litigation and possible appeals that could take years. Also, other  
18 than the expenditures in the Budget annexed to the Motion, the debtor cannot, nor does it propose  
19 to, use any other cash collateral pending a further cash collateral Order or confirmation of a Plan.  
20 Moreover, no authority has been cited by any party for the novel concept of lien stripping outside of  
21 a plan or liquidation.  
22

23 Accordingly, Hercules respectfully submits that any Order granting the Motion should: (1)  
24 be contingent on the Debtor closing on the sale of its intellectual property assets to Boohoo; and (2)  
25 make clear that Hercules’ liens, claims, and interests on the proceeds of the sale other than the  
26 Segregated Funds is not impacted or impaired at this time.  
27  
28



## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
**10100 Santa Monica Boulevard, 13<sup>th</sup> Floor, Los Angeles, California 90067**

A true and correct copy of the foregoing document entitled (*specify*): **LIMITED OBJECTION OF HERCULES CAPITAL, INC. TO 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** 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 foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) = **February 22, 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:

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) \_\_\_\_\_, 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.

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 (*date*) **February 22, 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.

**VIA PERSONAL DELIVERY**

U.S. Bankruptcy Court  
Honorable Sheri Bluebond  
255 E. Temple Street, Suite 1534/Courtroom 1539  
Los Angeles, CA 90067

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 22, 2017

*Date*

Rolanda Mori

*Printed Name*

*/s/ Rolanda Mori*

*Signature*

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

- Todd M Arnold tma@lnbyb.com
- Wesley H Avery wavery@thebankruptcylawcenter.com, lucy@averytrustee.com
- Lorie A Ball LBall@robinskaplan.com
- Peter Bonfante pbonfante@celsinc.com
- Diana K Carey dcarey@karrtuttle.com, mherandez@karrtuttle.com;mmunhall@karrtuttle.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.borrer@dbr.com;docketgeneral@dbr.com
- Jerome Bennett Friedman jfriedman@flg-law.com, msobkowiak@flg-law.com;jmartinez@flg-  
law.com;sbiegenzahn@flg-law.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;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
- Eric P Israel eisrael@dgdk.com, danninggill@gmail.com;eisrael@ecf.inforuptcy.com
- Kevin H Jang khjlawcorp@gmail.com, info.Khjlawcorp@gmail.com
- Nathan E Jones info@usdrllc.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
- Alan I Nahmias anahmias@mbnlawyers.com, jdale@mirmanbubman.com
- Penelope Parmes penelope.parmes@troutmansanders.com, Vanessa.hudak@troutmansanders.com
- Jeffrey N Pomerantz jpomerantz@pszjlaw.com
- Uzzi O Raanan uor@dgdk.com, DanningGill@gmail.com;uraanan@ecf.inforuptcy.com
- Kurt Ramlo kr@lnbyb.com, kr@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@  
ecf.inforuptcy.com
- Allan D Sarver ADSarver@aol.com
- Benjamin Seigel bseigel@greenbass.com, rholland@greenbass.com;ecfnotification@greenbass.com
- Martina A Slocomb rockymountainlaw@yahoo.com
- Howard Steinberg steinbergh@gtlaw.com, pearsallt@gtlaw.com;laik@gtlaw.com
- Ovsanna Takvoryan ot@tlgapc.com

---

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

- United States Trustee (LA) [ustpreion16.la.ecf@usdoj.gov](mailto:ustpreion16.la.ecf@usdoj.gov)
- Dennis J Wickham [wickham@scmv.com](mailto:wickham@scmv.com), [nazari@scmv.com](mailto:nazari@scmv.com)
- Hatty K Yip [hatty.yip@usdoj.gov](mailto:hatty.yip@usdoj.gov)

---

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