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9 UNITED STATES BANKRUPTCY COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 In re  
12 i2a Technologies, Inc.,

16 Debtor.

Case No. 14-44239 CN

Chapter 11

**MOTION FOR APPROVAL OF  
SECOND INTERIM CASH  
COLLATERAL STIPULATION  
BETWEEN i2a TECHNOLOGIES,  
INC. AND HERITAGE BANK OF  
COMMERCE**

17 Date: January 15, 2015

18 Time: 10:30 a.m.

19 Ctrm: 215

20 U.S. Bankruptcy Court  
1300 Clay Street  
Oakland, California

21 i2a Technologies, Inc., the debtor and debtor-in-possession in the above-captioned Chapter  
22 11 case (the “Debtor”), hereby moves the court for entry of an order approving a second  
23 stipulation which has been entered into between the Debtor and secured creditor Heritage Bank of  
24 Commerce (“HBC”) for the use of cash collateral. The motion of the Debtor respectfully  
25 represents as follows:

26 **I. RELIEF SOUGHT**

27 The Debtor submits this motion for an order approving an agreement between the Debtor  
28 and HBC entitled Second Interim Stipulation for Use of Cash Collateral and for Adequate

1 Protection Secured By Liens on Property of the Estate (the “Second Cash Collateral Stipulation”).  
2 Pursuant to which HBC authorizes the Debtor to use HBC’s cash collateral in accordance with the  
3 terms and conditions set forth in the Second Cash Collateral Stipulation.

4 Pursuant to the Second Cash Collateral Stipulation, the Debtor is authorized to use the cash  
5 collateral of HBC pursuant to the initial budget attached to the Second Cash Collateral Stipulation  
6 through December 31, 2014 and thereafter through February 28, 2015 pursuant to budgets to be  
7 provided to HBC for the months of January and February. During the initial month of the Second  
8 Cash Collateral Stipulation, the Debtor will use approximately \$111,760 of cash collateral. As a  
9 condition of the use of the cash collateral pursuant to the Second Cash Collateral Stipulation, HBC  
10 will be granted a post-petition replacement lien solely to the extent there is any diminution in the  
11 value of HBC’s pre-petition collateral. In addition, Wells Fargo Bank will also be given a  
12 replacement lien on the same terms as HBC and to the same extent, validity and priority of any  
13 pre-petition lien. Pursuant to the Second Cash Collateral Stipulation, the Debtor is not authorizing  
14 any releases, is not providing any waivers of claims under Bankruptcy Code § 506(c), and is not  
15 granting automatic relief from stay upon default. Accordingly, the Debtor and HBC believe that  
16 the Second Cash Collateral Stipulation complies with the Court’s Guidelines for Cash Collateral  
17 and Financing Stipulations.

18 However, it should be noted that concurrently with the Second Cash Collateral Stipulation,  
19 the Debtor and HBC are entering into a Stipulation for Relief from Stay in favor of HBC if by  
20 February 28, 2015, certain events in the case have not taken place.

21 Finally, under the Second Cash Collateral Stipulation, HBC will be paid an adequate  
22 protection payment of \$3,500 in December, \$8,000 in January and \$8,000 in February. Wells  
23 Fargo will be paid adequate protection payments of \$1,500 in December, January and February.

## 24 II. BACKGROUND

25 The Debtor is engaged principally in the development and assembly activities related to the  
26 design, manufacturer, assembly, and packaging of a variety of semiconductors and semiconductor  
27 related products.

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1 The Debtor, on October 20, 2014, commenced its Chapter 11 case by filing a Voluntary  
2 Chapter 11 petition. The Debtor has remained in possession of its assets and is operating its  
3 business as a debtor-in-possession pursuant to the Bankruptcy Code §§ 1107 and 1108.

4 Before the filing of the Debtor's bankruptcy petition, and as part of its ongoing business  
5 operations, the Debtor obtained financing from HBC (the "Loan"), as set forth in certain financing  
6 instruments, documents and agreements (collectively the "Loan Documents"), including the  
7 following:

8 1. That certain Promissory Note (the "i2a Note"), dated December 23, 2010 in the  
9 principal amount of \$1,830,000, and the accompanying Business Loan Agreement, also dated  
10 December 23, 2010 (the "Business Loan Agreement");

11 2. That certain Commercial Security Agreement dated December 23, 2010, (the  
12 "Security Agreement"), executed by the Debtor granting HBC a security interest in, among other  
13 personal property of the Debtor, all machinery, equipment and fixtures, inventory, accounts,  
14 instruments, general intangibles, chattel paper, all accessions, additions, replacements, and  
15 substitutions relating to any of the foregoing, and all records of any kind relating to the foregoing  
16 (including insurance, general intangibles, and other accounts proceeds);

17 3. That certain Change In Terms Agreement dated July 15, 2011, changing certain  
18 terms of the Loan; and

19 4. That certain Change In Terms Agreement dated March 13, 2012, changing certain  
20 terms of the Loan.

21 True and correct copies of the Loan Documents are attached as Exhibit A to the Second  
22 Cash Collateral Stipulation which is attached as Exhibit 1 to the Declaration of Victor Batinovich  
23 in support of Motion for Approval of Second Interim Cash Collateral Stipulation Between i2a  
24 Technologies, Inc. and Heritage Bank of Commerce.

25 The loan obligations of the Debtor to HBC as well as the security interests granted  
26 pursuant to the Security Agreement were perfected by HBC filing various UCC-1 Financing  
27 Statements with the California Secretary of State. True and correct copies of the UCC-1  
28 Financing Statements are attached as Exhibit B to the Second Cash Collateral Stipulation which is

1 attached as Exhibit 2 to the Declaration of Victor Batinovich submitted herewith.

2 The Debtor is not presently aware of the existence of any liens or encumbrances on the  
3 assets of the Debtor which are the subject of the Second Cash Collateral Stipulation which are  
4 senior to those of HBC. Wells Fargo Bank has a junior lien, but proceeded to sue the Debtor and  
5 it obtained a judgment against the Debtor on September 17, 2014.

6 The Debtor requires the continued use of HBC's pre-petition collateral in order to continue  
7 to operate its business. The Debtor and HBC have executed the Second Cash Collateral  
8 Stipulation whereby the Debtor will be authorized to use the cash collateral of HBC through  
9 February 28, 2015 pursuant to an initial budget for December 2014 attached to and made part of  
10 the Second Cash Collateral Stipulation and subsequent budgets to be provided to HBC for January  
11 and February 2015.

12 On November 12, 2014, the Court entered an Order Approving Cash Collateral Stipulation  
13 Between the Debtor and HBC [Docket No. 36]. This Order approved the first cash collateral  
14 stipulation between the parties.

15 The Debtor will not be able to operate and keep its doors open without the use of HBC's  
16 cash collateral. The Debtor believes that if the Debtor is forced to cease operations for any period  
17 of time, the value of the Debtor will be severely diminished.

18 **III. THE ESSENTIAL TERMS OF THE SECOND CASH COLLATERAL STIPULATION**

19 The essential terms of the Second Cash Collateral Stipulation are as follows:

20 A. The Debtor will be authorized to use the cash collateral of HBC from December 1,  
21 2014 through February 28, 2015 pursuant to approved budgets;

22 B. As adequate protection for the use of HBC's cash collateral, the Debtor will grant  
23 HBC and Wells Fargo Bank post-petition liens, solely as adequate protection for any diminution in  
24 value of HBC and Wells Fargo Bank's pre-petition collateral;

25 C. The Debtor will provide HBC with weekly accountings of its receipts and  
26 expenditures pursuant to the budget;

27 D. The Debtor has agreed to provide HBC with copies of its federal and state tax  
28 returns and sales tax returns when such documents are filed with the relevant taxing authorities;

1 E. The replacement liens granted pursuant to the Stipulation will be subject and  
2 subordinate to a carve-out for the following: the payment of compensation and expense  
3 reimbursement to any trustee hereinafter appointed in this action. Further such carve-out shall  
4 include quarterly fees required to be paid, pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable  
5 to the clerk of the Bankruptcy Court.

6 F. HBC will be paid and adequate protection payment of \$3,500 in December 2014  
7 and \$8,000 in January and February. Wells Fargo will be paid adequate protection payments of  
8 \$1,500 in December 2014 and January and February 2015.

#### 9 IV. ARGUMENT

##### 10 A. The Second Cash Collateral Stipulation Should Be Approved.

11 The Debtor's use of cash collateral is governed by § 363 of the Bankruptcy Code. §  
12 363(c)(1) provides in pertinent part that:

13 "If the business of the debtor is authorized to be operated under  
14 Sections. . .1108...of this title and unless the court orders otherwise,  
15 the trustee may enter into transactions, including the sale or lease of  
16 property of the estate, in the ordinary course of business, without  
17 notice or hearing and may use property of the estate in the ordinary  
18 course of business without notice or hearing." 11 U.S.C. §  
19 363(c)(1).

20 A debtor-in-possession has all the rights and powers of a trustee with respect of property of  
21 the estate, including the right to use property of the estate in compliance with § 363. See 11  
22 U.S.C. § 1107(a).

23 Section 363(c)(2) establishes a special requirement with respect to "cash collateral" by  
24 providing that the trustee or debtor-in-possession may not use, sell or lease "cash collateral" under  
25 sub-section (c)(1) unless:

26 "(a) each entity that has an interest in such collateral consents; or

27 (b) the court after notice and hearing, authorizes as such use, sale or  
28 lease in accordance with the provisions of this section."

"Cash Collateral" is defined as, "cash, negotiable instruments, documents of title,  
securities, deposit accounts or cash equivalents whenever acquired in which the estate and an

1 entity other than the estate have an interest.....” 11 U.S.C. § 363(a).

2 It is universally acknowledged that the debtor’s cash “is the life’s blood of business,” and  
3 the Bankruptcy Court must assure that such “life’s blood is available for use, even if to a limited  
4 extent.” *In re Mickler*, 9 B.R. 121, 123 (Bankr. N.D. Fla. 1981).

5 **B. The Adequate Protection Lien Provided in the Second Cash Collateral Stipulation is**  
6 **Appropriate and Necessary to Adequately Protect Secured Creditors Collateral.**

7 HBC is entitled to protection from the Debtor’s use of cash collateral to the extent  
8 provided in the proposed stipulation. Although adequate protection is not defined in the  
9 Bankruptcy Code, § 361 provides the following 3 non-exclusive examples of what may constitute  
10 adequate protection:

- 11 (1) Requiring the trustee to make a cash payment or periodic cash payment to such  
12 entity, to the extent that the ... use ... under Section 363 of this title ... results in a  
decrease in the value of such entities interest in such property;
- 13 (2) Providing to such entity an additional or replacement lien to the extent that such ...  
14 use ... results in a decrease in the value of such entities interest in such property; or
- 15 (3) Granting such relief ... as will result in the realization by such entity of the  
16 indubitable equivalent of such entities interest in such property.

17 Neither § 361 nor any other provision of the Bankruptcy Code defines the nature and extent of the  
18 “interest in property” to which a secured creditor to protection under § 363. The statute plainly  
19 provides, however, that a qualifying interest demands protection only to the extent that the use of  
20 the creditors collateral will result in a decrease in “the value of such entities interest in such  
21 property.” 11 U.S.C. §§ 361 and 363(e). *United States Ass’n of Texas vs. Timbers of Inwood*  
22 *Forest Assocs., Ltd.*, 484 U.S. 365 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988).

23 HBC in this case is entitled to adequate protection from the Debtor’s use of its cash  
24 collateral to the extent that such use results in a diminution in the value of HBC’s existing  
25 collateral. The payment to HBC pursuant to the Second Cash Collateral Stipulation and budget is  
26 less than the full contractual payment to HBC. Accordingly, HBC is entitled to a replacement lien  
27 to the extent that there is an actual diminution in the value of its pre-petition lien. The post-  
28 petition lien granted pursuant to the Second Cash Collateral Stipulation is appropriate and

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1 necessary to adequately protect an existing security interest and will allow the Debtor to use the  
2 cash collateral of HBC. The same is true with regard to Wells Fargo Bank.

3 The bankruptcy court, where possible, should resolve issues presented in favor of  
4 reorganization rather than the forced liquidation because the business cannot use cash or other  
5 property to operate for a short period of time. *In re Hoffman*, 51 B.R. 42, 47 (Bankr. W.D. Ark.  
6 1985) (relief from stay); *In re A&B Heating and Air Conditioning, Inc.* 48 B.R. 401, 403-04  
7 (Bankr. N.D. Fla. 1985) (injunction); *In re Heatron, Inc.*, 6 B.R. 493, 496 (Bankr. W.D. Mo.  
8 1980) (cash collateral motion).

9 Here, the Debtor's continued use of cash collateral to conduct the operation of its business  
10 will preserve, and indeed, maximize the value of the secured creditors collateral and enhance the  
11 potential recovery for all creditors of this estate.

12 **C. The Second Cash Collateral Stipulation Complies with the Court Guidelines.**

13 The Debtor believes that the Second Cash Collateral Stipulation not only complies with the  
14 Bankruptcy Code Sections 361 and 363, as mentioned above, it is also consistent with the Court's  
15 Cash Collateral Guidelines.

16 **V. CONCLUSION**

17 Based on the foregoing, the Debtor respectfully requests that the Court enter an order  
18 approving the Second Cash Collateral Stipulation between HBC and the Debtor to allow the  
19 Debtor to use HBC's cash collateral pursuant to the terms of the second stipulation.

20 Dated: December 8, 2014

KORNFIELD, NYBERG, BENDES & KUHNER, P.C.

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By: /s/ Eric A. Nyberg  
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