

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY DIVISION

IN RE:

DAYMARK SOLUTIONS, INC.,
Debtor.

Case No. 18-22116
Chapter 11

**MOTION FOR ENTRY OF INTERIM ORDER
PURSUANT TO 11 U.S.C. § 363 AND FED. R. BANKR. PROC. 4001
CONCERNING THE USE OF CASH COLLATERAL AND
PROVIDING FOR ADEQUATE PROTECTION**

Daymark Solutions, Inc., Debtor-in-Possession, by and through counsel, Joanne B. Stutz of Evans & Mullinix, P.A., submits this emergency motion (“**the Motion**”) for entry of interim (“**the Interim Order**”) and final (“**the Final Order**”) orders and requests entry of a preliminary order authorizing Debtor’s use of cash collateral. In support of this Motion, Debtor represents the following:

Factual and Procedural Background

1. On the 12th day of October, 2018, (“**the Petition Date**”) Daymark Solutions, Inc., a Kansas corporation, located at 7800 Shawnee Mission Parkway, Ste 14, Overland Park, KS 66202, from which it operates a sales and service company that creates photo identification systems, filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the Bankruptcy Code). Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor remains as Debtor-in-Possession.

2. Daymark is indebted to the Internal Revenue Service, (“**the IRS**”) for unpaid 940, 941, and 1120S taxes in the approximate aggregate amount of \$376,000.00. The IRS has filed tax liens to secure repayment of the taxes.

3. The Kansas Department of Revenue (“**the KDOR**”) also holds a lien in the approximate amount of \$292.70, and the Kansas Department of Labor (“**the KDOL**”) holds a

lien in the approximate amount of \$10,830.19. The liens held by the KDOR and the KDOL are junior to that of the IRS and therefore, unsecured.

4. On the Petition Date, Daymark had cash, inventory, bank balances, and account receivables (“**the Cash Assets**”) of approximately \$78,183.00, as detailed in Schedule B of the Bankruptcy Petition.

5. As a result of the liens filed by the IRS, the KDOR and the KDOL these three taxing authorities hold claims against the Cash Assets., which constitute Cash Collateral as defined in 11 U.S.C. § 363(a).

6. At the present time, it is imperative that Daymark obtain authority from this Court, in accordance with 11 U.S.C. § 363(c)(2), to use cash collateral in order to maintain its business operations and protect its ability to reorganize in accordance with Chapter 11 of the Code.

Relief Requested

7. Daymark has no source of income other than from the operation of its business. If Daymark is not permitted to use Cash Collateral in the ordinary course of its business, it will be unable to pay its operating and business expenses, thus effectively precluding reorganization and causing imminent and irreparable harm to its Bankruptcy Estate.

8. In accordance with Section 363(c)(2) of the Bankruptcy Code, Debtor requests that this Court authorize and approve Debtor’s use of cash collateral to pay its Chapter 11 and operating expenses and to tender monthly adequate protection payments to the IRS in the amount of \$1,000.00 until confirmation of a Plan. A proposed budget is attached to this Motion as Exhibit A.

9. Daymark proposes granting the IRS a replacement lien in Postpetition Collateral in an amount equal to but not to exceed the Cash Collateral used and to the extent that use of the Cash Collateral results in any decrease in the aggregate value of the IRS liens on Debtor's property on the Petition Date.

10. In the event this Court does not authorize Daymark's use of Cash Collateral for the purposes stated herein, Daymark believes it will be unable to maintain its current business operations and propose a plan of reorganization as contemplated by the Bankruptcy Code. Without the use of Cash Collateral, Daymark will be seriously and irreparably harmed, resulting in significant losses to Daymark's estate and its creditors.

11. Daymark has attached as Exhibit B a proposed Interim Order granting this Motion.

WHEREFORE, Daymark prays that the Court enter its Interim Order authorizing the use of Cash Collateral as set forth in this Motion, granting the IRS, a post-petition replacement lien in an amount equal to the cash collateral used, and granting such other and further relief as the Court deems just and proper in the premises.

Respectfully Submitted:

EVANS & MULLINIX, P.A.

/s/ Joanne B. Stutz

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EXHIBIT A

BUDGET

Monthly Cash Budget

	10/15-10/31/18	11/30/2018	12/31/2018	1/31/2019	2/2/2019	3/31/2019	4/30/2019	12/31/2018	Total
Total Cash Income	\$ 30,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 40,000	\$ 45,000	\$ 270,000
Less Cash Cost of Goods Sold	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 22,500	\$ 135,000
Cash Profit Received	\$ 15,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 22,500	\$ 135,000
Cash Expenses									
Automobile Expense	\$ 183	\$ 367	\$ 367	\$ 367	\$ 367	\$ 367	\$ 367	\$ 367	\$ -
Credit Card Fees	\$ 208	\$ 417	\$ 417	\$ 417	\$ 417	\$ 417	\$ 417	\$ 417	\$ 2,383
Insurance Expense	\$ 283	\$ 567	\$ 567	\$ 567	\$ 1,604	\$ 567	\$ 567	\$ 567	\$ 2,708
Janitorial Expense	\$ 50	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 4,720
Miscellaneous Expense	\$ 50	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 100	\$ 650
Shredding	\$ -	\$ 70	\$ 70	\$ 70	\$ -	\$ 70	\$ -	\$ -	\$ 650
Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000	\$ 280
Payroll Expenses - Other	\$ 3,465	\$ 6,929	\$ 6,929	\$ 6,929	\$ 6,929	\$ 6,929	\$ 6,929	\$ 6,929	\$ -
Postage and Delivery	\$ 675	\$ 1,350	\$ 1,350	\$ 1,350	\$ 1,350	\$ 1,350	\$ 1,350	\$ 1,350	\$ 45,039
Rent Expense	\$ -	\$ 1,850	\$ 1,850	\$ 1,850	\$ 1,850	\$ 1,850	\$ 1,850	\$ 1,850	\$ 8,775
Software and Hardware	\$ -	\$ -	\$ 150	\$ 150	\$ -	\$ -	\$ -	\$ -	\$ 11,100
Taxes - Property	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 600	\$ 300
Telephone Expense	\$ 370	\$ 740	\$ 740	\$ 740	\$ 740	\$ 740	\$ 740	\$ 740	\$ -
Travel Expense	\$ 638	\$ 1,275	\$ 1,275	\$ 1,275	\$ 1,275	\$ 1,275	\$ 1,275	\$ 1,275	\$ 4,810
Utilities	\$ 167	\$ 333	\$ 333	\$ 333	\$ 333	\$ 333	\$ 333	\$ 333	\$ 8,288
Total Expense	\$ 6,089	\$ 14,097	\$ 14,247	\$ 14,247	\$ 15,064	\$ 14,097	\$ 14,027	\$ 15,627	\$ 91,870
Cash Flow from Operations	\$ 8,911	\$ 5,903	\$ 5,753	\$ 5,753	\$ 4,936	\$ 5,903	\$ 5,973	\$ 6,873	\$ 43,130
Beginning Cash	\$ 1,000	\$ 1,911	\$ 1,314	\$ 1,314	\$ 917	\$ 352	\$ 755	\$ 578	\$ 1,000
Attorney Fees	\$ (7,000)	\$ (5,000)	\$ (4,000)	\$ (4,000)	\$ (4,000)	\$ (4,000)	\$ (4,000)	\$ (2,500)	\$ (32,000)
Accountant Fees	\$ (1,000)	\$ (500)	\$ (500)	\$ (500)	\$ (500)	\$ (500)	\$ (500)	\$ (500)	\$ (4,000)
Trustee Fees	\$ -	\$ -	\$ (650)	\$ (650)	\$ -	\$ -	\$ (650)	\$ -	\$ (1,300)
IRS Collateral Payments	\$ -	\$ (1,000)	\$ (1,000)	\$ (1,000)	\$ (1,000)	\$ (1,000)	\$ (1,000)	\$ (2,000)	\$ (6,000)
Ending Cash	\$ 1,911	\$ 1,314	\$ 1,567	\$ 917	\$ 352	\$ 755	\$ 578	\$ 2,450	\$ 830

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EXHIBIT B

INTERIM ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY DIVISION

IN RE:)
)
DAYMARK SOLUTIONS, INC.,) Case No. 18-22116
Daymark.) Chapter 11
_____)

**INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL,
GRANTING ADEQUATE PROTECTION, AND SCHEDULING
A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)**

On _____, 2018, the Court conducted a hearing on Daymark’s Motion to Use Cash Collateral. Joanne B. Stutz of Evans & Mullinix, P.A. appeared on behalf of Daymark. Christopher Allman, Assistant United States Attorney, appeared on behalf of the Internal Revenue Service and _____ appeared on behalf of the United States Trustee.

WHEREUPON, having considered the pleadings, testimony, statements of counsel, the file and evidence before it, the court finds that good cause exists for entry of an order approving Debtor’s use of cash collateral. The court further finds as follows:

1. On October 12, 2018, Daymark Solutions, Inc. (“**Daymark**”) filed a voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Bankruptcy Code (“**the Bankruptcy Code**”). Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, Daymark remains as Daymark-in-Possession.

2. Debtor has complied with the notice requirements of Bankruptcy Rule 4001(b) and (d).

3. Daymark is indebted to the Internal Revenue Service, (“**the IRS**”) for unpaid 940, 941, and 1120S taxes in the approximate aggregate amount of \$376,000.00. The IRS has filed tax liens to secure repayment of the taxes.

4. The Kansas Department of Revenue (“**the KDOR**”) also holds a lien in the approximate amount of \$292.70, and the Kansas Department of Labor (“**the KDOL**”) holds a lien in the approximate amount of \$10,830.19. The liens held by the KDOR and the KDOL are junior to that of the IRS and therefore, unsecured.

5. On the Petition Date, Daymark had cash, inventory, bank balances, and account receivables (“**the Cash Assets**”) of approximately \$78,183.00, as detailed in Schedule B of the Bankruptcy Petition.

6. As a result of the liens filed by the IRS, the KDOR and the KDOL these three taxing authorities hold claims against the Cash Assets., which constitute Cash Collateral as defined in 11 U.S.C. § 363(a).

7. Daymark has no source of income other than from the operation of its business. If Daymark is not permitted to use Cash Collateral in the ordinary course of its business, it will be unable to pay its operating and business expenses, thus effectively precluding reorganization and causing imminent and irreparable harm to its Bankruptcy Estate.

8. Daymark shall pay monthly adequate protection payments to the IRS in the amount of \$1,000.00 until confirmation of a Plan.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Daymark shall be, and hereby is, granted the use of Cash Collateral on an interim basis.

IT IS FURTHER ORDERED that the use of Cash Collateral shall be limited to the expenditures detailed in the Budget attached to this Interim Order.

IT IS FURTHER ORDERED that the provisions of this Interim Order shall be binding upon, and inure to the benefit of the Creditors, Daymark, and their respective successors and

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SCHEDULING A FINAL HEARING PURSUANT TO BANKRUPTCY RULE 4001(b)

assigns (including without limitation any Chapter 11 or Chapter 7 trustee, examiner or other fiduciary hereafter appointed for Daymark or with respect to any of Daymark's property).

IT IS FURTHER ORDERED that this Interim Order shall become effective and enforceable upon approval and entry as an Order of the Bankruptcy Court. If any provision of this Interim Order is modified, vacated or stayed by a subsequent Order of the Court, such modification, vacation or stay shall not affect the validity of any obligation or liability incurred pursuant to this Interim Order and prior to the effective date of such modification, vacation or stay.

IT IS FURTHER ORDERED that a final hearing on Daymark's Motion shall be conducted on _____, **2018**.

IT IS FURTHER ORDERED that Daymark shall, within two (2) business days after entry of this Interim Order, provide notice of entry of this Interim Order and mail copies of this Interim Order to the twenty (20) largest unsecured creditors and any party who has requested notice and does not receive such notice electronically. Said Notice shall state that objections to the relief granted by the Interim Order shall be in writing and shall be filed with the United States Bankruptcy Clerk for the District of Kansas on or before _____, **2018**, ("**the Objection Deadline**"). Any objections which are not filed by the Objection Deadline shall be deemed waived. Any party who has filed an objection but fails to appear at the hearing shall be deemed to have withdrawn its objection.

SUBMITTED BY:

EVANS & MULLINIX, P.A.

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