

Entered: November 4th, 2016  
Signed: November 4th, 2016

**SO ORDERED**



*David E. Rice*  
**DAVID E. RICE**  
U. S. BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)

IN RE: \* Chapter 11  
\* Case No: 16-17913  
Langermann's of Baltimore, LLC \*  
Debtor \*  
\* \* \* \* \*

AGREED ORDER: (I) AUTHORIZING DEBTOR'S  
USE OF CASH COLLATERAL AND (II) GRANTING  
POST PETITION REPLACEMENT LIENS AND ADEQUATE PROTECTION

This matter came before the court pursuant to the Motion for an Agreed Order (1) to Authorize Debtor's Use of Cash Collateral and (II) Grant Post-Petition Replacement Liens and Adequate Protection (the "Motion") filed by LANGERMANN'S OF BALTIMORE, LLC (the "Debtor). In the Motion, and pursuant to Bankruptcy Code §363, the Debtor requests authority to use certain cash and cash equivalents which are "cash collateral" and security for repayment of certain obligations owing to REWARDS NETWORK ESTABLISHMENT SERVICES INC. ("Rewards Network"). Based upon the Motion, the agreement of the

parties as indicated by the signatures of counsel below, and good and sufficient cause appearing therefor,

THE COURT FINDS AND CONCLUDES as follows:

A. On June 10, 2016 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11, thereby commencing this Bankruptcy Case.

B. This Court has jurisdiction over this Bankruptcy Case and the Motion pursuant to 28 U.S.C. §157(b) and §1334. The Motion presents a core proceeding as defined in 28 U.S.C. §157(b)(2).

C. The Debtor is in the business of owning, managing and operating a restaurant named Langermann's located at 2400 Boston Street, Baltimore, MD 21224 (the "Restaurant").

D. The Debtor continues to operate the Restaurant post-petition as Debtor-In-Possession pursuant to Bankruptcy Code §1107 and §1108.

E. Rewards Network is a company that provides incentives and rewards to its members through its loyalty programs based upon member purchases or "dines" at participating restaurants. Rewards Network pre-purchases future accounts receivable at a discount which are then generated by Rewards Network's "members" when they dine at the participating restaurant with a register credit card. Rewards Network then pays the members their benefit or reward (*e.g.*, cash back, airline miles, hotel points, etc.) based upon the amount of dining credits redeemed for their dining transaction. At the same time, Rewards Network provides marketing and advertising of its participating restaurants to its member base in order to encourage members to dine at the participating restaurants.

F. On November 1, 2010, the Debtor executed and delivered to Rewards Network a Dining Credits Program Agreement (as amended, replaced, renewed, or

supplemented from time to time, the "Agreement"), whereby Rewards Network purchase accounts receivables generated when Rewards Network's members dine at the Restaurant and agreed to provide marketing, and other services. A true and correct copy of the Agreement (together with all amendments thereto) is attached as Exhibit "A" to the Motion.

G. In connection with the Agreement, the Debtor executed and delivered to Rewards Network a Security Agreement dated November 1, 2010, pursuant to which the Debtor granted Rewards Network a security interest in all of Debtor's personal property, tangible and intangible, wherever located, including but not limited to the following (the "Collateral"):

[A]ll . . . equipment, furniture, artwork, inventory, instruments, investment property, documents, general intangible, deposits, contract rights, trade names, trademarks, patents, supporting obligations, payment intangibles, chattel paper, commercial tort claims, licenses, liquor licenses, permits, franchise agreements, payments due from credit card and hank card companies or processors, accounts receivable, accounts, leases, deposit accounts, refunds of bonds, monies due or to become due from the State Liquor Authority and/or State Division of Alcoholic Beverage Control and, to the extent not listed above as original collateral, all products and proceeds of all of the Collateral in whatever form. . .

A true and correct copy of the Security Agreement is attached as Exhibit "B" to the Motion.

H. The Collateral includes all accounts receivable, cash on hand, inventory, all proceeds and all other cash collateral of the Debtor, as defined in 11 U.S.C. §363(a).

I. To perfect its interest in the Collateral (including all cash collateral), on November 8, 2010, Rewards Network filed a UCC Financing Statement with the Office of the Maryland state Department of Assessments and Taxation at File No. 0000000181407685 (the "UCC Financing Statement"). On October 9, 2015, Rewards Network filed a continuation of the UCC Financing Statement (the "Continuation Statement"). True and

correct copies of the UCC Financing Statement and the Continuation Statement are attached as Exhibit "C" to the Motion. The Agreement, the Security Agreement and the UCC Financing Statement, and any and all amendments or modifications to any of the foregoing, as well as all other documents evidencing, securing or relating to the Agreement, may be referred to collectively hereinafter as the "RN Documents."

J. Accordingly, Debtor believes and Rewards Network asserts that Rewards Network holds a valid and perfected lien and security interest in all of the Collateral, including all assets and proceeds which are "cash collateral" within the meaning of Bankruptcy Code §363(a). The Rewards Network Collateral that constitutes cash collateral will be referred to herein as the "Cash Collateral." The Cash Collateral also secures repayment of the obligations owing from the Debtor to Rewards Network.

K. Pursuant to the Agreement, upon a default, the Debtor owes a liquidated sum (based on the then outstanding dining credits under the Agreement) plus a ten (10%) percent fee to Reward Network.

L. As of the Petition Date, under the §IX(B) of the Agreement, Rewards Network holds a liquidated secured claim against the Debtor in the amount of at least \$11,440.77 (calculated as dining credits of 20,801.40x 0.5 x 1.1), plus attorney's fees and costs allowable under Bankruptcy Code §506(b) (the "indebtedness").

M. The Agreement constitutes an executory contract which may be assumed under Bankruptcy Code §365.

N. The Collateral is subject to wear and tear and is declining in value by the Debtor's continued use post-petition.

O. The Debtor has requested that Reward Network consent to the Debtor's use of cash Collateral, and the Debtor has undertaken arm's-length negotiations with Rewards

Network, regarding its use of Cash Collateral, Rewards Network is willing to allow the Debtor the use of Cash Collateral pursuant to the terms and conditions set forth in this Order.

P. The terms and conditions of this Order were negotiated by the parties in good faith at arm's-length, and the parties otherwise acted in good faith.

Q. The Debtor provided notice of the Motion and the hearing to the Office of the United States Trustee, to Rewards Network, to all other creditors known to the Debtor who may have or assert liens, security interests or other charges or interests against the Debtor's estate, to each of the Debtor's twenty (20) largest creditors, The Can Company, LLC ("**Landlord**") and to any other party or counsel that has filed a request for notices with the Court (the "Rule 4001 Recipients"). As a result, notice that is proper and sufficient under the exigent circumstances of the Motion and the relief granted in this Order has been given pursuant to Bankruptcy Code § 102(1) and §363(c), and Bankruptcy Rule 2002 and 4001(h).

R. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(d)(2). This Court concludes that approval under this Order is in the best interests of the Debtor's estate and creditors.

WHEREAS, based on the foregoing, and the entire record before the Court and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. Preamble, Findings and Conclusions. The paragraphs contained in the foregoing preamble and findings and conclusions are incorporated by reference in this Order and approved as part of the Court's ruling and decree, and the Debtor and Rewards Network consent and stipulate to the facts contained in such preamble and findings and to the entry of this Order.

2. Authority to Use Cash Collateral. Subject to the conditions set forth in this

Order, the Debtor is authorized *nunc pro tunc* to the Petition Date to use the Cash Collateral only to pay the ordinary and necessary operating expenses of the Debtor listed in the budget (the "Budget") attached hereto as Exhibit "A". (still needed) With the exception of insider compensation and rent which shall be fixed per the Budget, the Debtor may use Cash Collateral in amounts up to ten (10%) percent in excess of any line item in the Budget without the prior written consent of Rewards Network, or further order of Court. Any further or additional agreements for the use of the Cash Collateral, at the sole discretion of Rewards Network, shall be memorialized in a separate Cash Collateral Agreement.

3. Post-Petition Performance Under §365. As adequate protection to Rewards Network, the Debtor shall perform under the Agreement pursuant to §365 of the Bankruptcy Code effective *nunc pro tunc* to the Petition Date, until such time that the Agreement is either assumed or rejected in accordance with Bankruptcy Code §365, except that for purposes of this Order only, Rewards Network will work in good faith to manage the program to an estimated weekly amount of \$375-\$550. The Debtors acknowledge and agree that the amounts to be paid to Rewards Network under the RN Documents will fluctuate depending on the dining frequency of Rewards Network's members, and that the estimated \$375-\$550 amount is only an estimate and the actual amount due be more or less than that amount. The Debtor and Rewards Network are authorized and directed to perform, and shall continue to perform all of their respective obligations under the Agreement post-petition unless and until a Termination Event (defined below) occurs, except as limited in this ¶3. Any amounts paid by the Debtor to Rewards Network shall be applied to reduce the outstanding dining credits owing under the Agreement (and thus the secured claim of Rewards Network in accordance with the terms thereof). All the rights of the Debtor and Rewards Network under Bankruptcy Code §365 regarding the assumption or rejection of the Agreement are fully reserved.

4. Authorized Withdrawals/Payments. Pursuant to the Agreement and this Order, Rewards Network is authorized to process automated clearing house ("ACH") debits from the Debtor's bank account (debtor-in-possession account or otherwise) for any and all amounts which come due and owing under the Agreement (including the Post-Petition Cure Amounts) based on any obligations which arise post-petition thereunder, until such time that the obligations owing by the Debtor under the Agreement are extinguished or the Agreement is rejected in accordance with Bankruptcy Code §365. To the extent applicable, all applicable stays and injunctions, including but not limited to the automatic stay under Bankruptcy Code §362(a), shall be terminated to permit the ACH debits or withdrawals. The Debtor is required to provide to Rewards Network all information required to permit Rewards Network to make the withdrawals or debits from its designated account within one business days of the entry this Order.

5. Replacement Liens. Notwithstanding anything in Bankruptcy Code §552 to the contrary, and in addition to its liens and security interests under the existing RN Documents, as additional adequate protection, Rewards Network shall have and is hereby granted *nunc pro tunc* to the Petition Date (effective and continuing without the necessity of the execution, filing and/or recordation of mortgages, deeds of trust, security agreements, control agreements, pledge agreements, financing statements or otherwise), a valid and perfected security interest and lien (the "RN Replacement Liens") in all of the Debtor's now owned or after acquired personal property of the types described in the RN Documents, including without limitation the following types of property (whether owned or existing as of the Petition Date or thereafter acquired): profits and other revenues arising out of the operations of the Restaurant; all cash; accounts; chattel paper; deposit accounts; documents; equipment; fixtures; general intangibles, including all trademarks, trade names, good will,

and other intellectual property, goods, including accessions and goods with which such goods are commingled; instruments; inventory; investment property; letter-of-credit rights, payment intangibles, promissory notes, software; and all replacements, supporting obligations, offspring, products, and proceeds of the foregoing (collectively, the "RN Replacement Collateral"). The RN Replacement Liens will be evidenced by the existing RN Documents and this Order and be to the same extent, validity and priority as Reward Network's pre-petition liens. The RN Replacement Liens will secure all obligations owing to Rewards Network under the RN Documents. In addition, Rewards Network will retain, to the same extent, validity and priority, all of its existing liens and security interests in all of the Collateral, including, without limitation, the liens and security interests described above and any rights of setoff and/or recoupment. Notwithstanding the foregoing, the RN Replacement Liens shall at all times be subordinate to the compensation and expense reimbursement (excluding professional fees) allowed to any trustee hereafter appointed in this case.

6. Perfection of Replacement Liens. The RN Replacement Liens in the RN Replacement Collateral granted hereby shall be valid, perfected, enforceable and effective against the Debtor and its successors and assigns, including any trustee or receiver in these or any superseding Chapter 7 cases, without any further action by the Debtor or Rewards Network and without the execution, delivery, filing or recordation of any control agreements, financing statements, mortgages, security agreements or other documents. The Debtor acknowledges that Rewards Network may, but is not required to, file any financing statement to perfect the RN Replacement Liens granted by this Order.

7. Termination Events. Unless extended further with the written consent of Rewards Network (confirmed by the execution of another cash collateral agreement and entry of a further order of the Court approving such further cash collateral agreement), the



authorization granted to the Debtor to use Cash Collateral under this Order will terminate automatically and without further notice upon the earliest of:

- (a) the date upon which the Debtor is no longer Debtor-In-Possession in the Bankruptcy Case or is otherwise limited or excluded from the management and operation of its business (through the appointment of a trustee or an examiner under the Bankruptcy Code, or through the appointment of some other type of fiduciary or custodian under federal or state law);
- (b) the granting of stay relief to any party that claims an interest in the RN Collateral or in the RN Replacement Collateral;
- (c) the filing by the Debtor or any other party in interest of any motion which seeks to grant to a party other than Rewards Network a lien or security interest equal or senior to the liens and security interests held by Rewards Network in the RN Collateral and the RN Replacement Collateral, provided that such motion is not withdrawn or otherwise resolved to the satisfaction of Rewards Network within five (5) business days of its filing;
- (d) the Debtor ceases to operate its business without the prior written consent of Reward Network;
- (e) an order is entered by the Court rejecting a non-residential real property lease of the Debtor relating to the Restaurant (without the prior written consent of Rewards Network );
- (f) the filing of any motion or stipulation to which the Debtor is a party requesting dismissal or conversation of the Debtor's Bankruptcy Case;
- (g) an Order is entered by the Court or a stipulation is entered into the Debtor providing for modification of the automatic stay for any party with an interest in the non-residential real property lease (including the lessor, the sub-lessor, or any fee ownership

interest); or

(h) the Debtor fails to comply with the provisions of this Order, including any breach of the Agreement by the Debtor or use of Cash Collateral not authorized by the Budget (which is not cured within three (3) business days of written notice from Rewards Network).

(Any of the forgoing (a)-(h) shall be referred to as a "Termination Event"). Notwithstanding any such Termination Event, the rights, claims, security interests, liens and priorities of Rewards Network with respect to all transactions that occur prior to the occurrence of such termination, including, without limitation, all liens and priority claims provided for in this Order, will remain unimpaired and unaffected by any such termination, will survive any such termination, and will be binding upon any and all successors-in-interest to the Debtor.

8. Reports. The Debtor will respond promptly to any request for accountings or other financial information from Rewards Network and shall permit inspection of its books and records, or the Restaurant or other Collateral by Rewards Network (or its representatives) upon three (3) business day's notice.

9. Survival of Reporting Obligations. Notwithstanding the occurrence of a Termination Event, the requirement of the Debtor to provide Rewards Network all information in ¶8 above, and any other financial information reasonably requested by Rewards Network or its attorneys or other representatives, including all such information which was required to be provided by the Debtor to Rewards Network under the RN Documents, will continue so long as the Debtor remains as Debtor-In-Possession in this case.

10. Rights Reserved. Nothing in this Order will be deemed or construed as an admission or waiver by Rewards Network as to adequate protection, or any other issue in the

case, and this Order will not constitute consent by Rewards Network to the use of its Cash Collateral other than for the limited purpose expressly provided herein. To the extent that Rewards Network's interest in the Collateral or Cash Collateral is not adequately protected by the terms of this Agreed Order, Rewards Network shall be entitled to an allowed super priority administrative expense pursuant to Bankruptcy Code §507(b), provided, however, that, in the event of the conversion of this case to Chapter 7, this provision shall not be construed as a modification of the priorities established by 11 U.S.C. §726(b). In addition, nothing contained in this Order will prejudice the rights of Rewards Network to (i) seek further relief from the automatic stay of §362(a) of the Bankruptcy Code; (ii) oppose confirmation of any plan of reorganization filed by the Debtor or any other party in interest; (iii) oppose approval of any postpetition financing; (iv) seek a dismissal of the Debtor's Bankruptcy Case; (v) seek allowance of an administrative claim or additional adequate protection in connection with the use of Rewards Network's Cash Collateral; or (vi) seek any other relief that Rewards Network may deem necessary and appropriate under the circumstances. Moreover, nothing contained in this Order will be deemed to waive or diminish any rights of Rewards Network under the RN Documents.

11. Terms Binding. The provisions of this Order will be binding upon and inure to the benefit of Rewards Network and the Debtor and its respective successors and assigns, including, but not limited to, any trustee in bankruptcy hereinafter appointed as a representative of the Debtor's estate.

12. Modifications. Any of the requirements of this Order may be waived or modified by Rewards Network and the Debtor jointly in writing. Any motion or request by the Debtor or any other party to authorize the use of Cash Collateral, to modify the terms of this Order, or to obtain any other relief that would impair, adversely affect or alter the rights

of Rewards Network under this Order shall only be heard upon at least two (2) business days actual notice to Rewards Network's counsel of record. No subsequent stay, modification, termination, failure to extend the term of or vacation of this Order shall affect, limit or modify the validity, enforceability or perfection of the RN Replacement Liens granted to Rewards Network.

13. Notice. Within two (2) business days after the entry of this Order, the Debtor will transmit by regular mail copies of this Order (as entered by the Court) to the Rule 4001 Recipients.

14. Effective Date. This Order shall be effective immediately notwithstanding the provisions of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

15. Enforcement. The Court has and will retain jurisdiction to enforce this Order according to its terms.

Dated: October 10, 2016.

Respectfully submitted,

/s/ Stephen L. Prevas  
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Counsel for Rewards Network  
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CERTIFICATE PURSUANT TO EXHIBIT "A"  
TO ADMINISTRATION ORDER NO. 03-02

I HEREBY CERTIFY that the terms of the copy of the consent submitted to the Court are identical to the original Consent Order; and the signatures represented by the /s/ on this copy reference the signatures of the consenting parties on the original Consent Order.

Dated: October 10, 2016

Signed: /s/ *Stephen L. Prevas*

**--- END OF ORDER ---**

cc: Debtor  
Debtor's Attorney  
U.S. Trustee  
Interested Parties