

**SO ORDERED**



  
**ROBERT A. GORDON**  
U.S. BANKRUPTCY JUDGE

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

In re: \*  
CAPITAL TEAS, INC. \* Case No: 17-19426-RAG  
Debtor \* (Chapter 11)  
\* \* \* \* \*

**EMERGENCY ORDER (A) AUTHORIZING THE DEBTOR TO OBTAIN  
POSTPETITION FINANCING, (B) AUTHORIZING THE DEBTOR’S USE OF  
CASH COLLATERAL, (C) GRANTING LIENS AND PROVIDING  
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (D) GRANTING  
ADEQUATE PROTECTION, AND (E) SCHEDULING A FINAL HEARING**

Upon consideration of the Debtor’s Motion for Entry of Interim and Final Orders (A) Authorizing the Debtor to Obtain Postpetition Financing, (B) Authorizing the Debtor’s Use of Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection, and (E) Scheduling a Final Hearing (the “Motion”)<sup>1</sup> and the Affidavit of Peter Martino in Support of the Motion, and the Court’s having held an emergency hearing on two days’ notice; this Court finds that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (D) and (M); and (iii) notice of the Motion was sufficient in light of the emergency nature of the circumstances and that no other or further notice is required; the Court having conducted an emergency hearing on July 14, 2017 (the “Emergency Hearing”) and determined, without prejudice, that the interim relief sought in the Motion is in the best interests of Debtor and its creditors, estate and other parties-in-interest; all objections to the entry of this

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

Interim Order, if any, having been withdrawn or overruled, after due deliberation and sufficient cause appearing therefore, this Court makes the following findings and enters this Interim Order, all as set forth below:

Findings

A. The Debtor filed its petition under Chapter 11 of the Bankruptcy Code on July 11, 2017 (the “Petition Date”), and is presently operating as a debtor in possession pursuant to 11 U.S.C. §§1107 and 1108.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (D) and (M).

C. Notice of the Motion and of the Emergency Hearing has been served in accordance with Section 102(1) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 4001(b) and 4001(c), which notice is appropriate in the particular circumstances and sufficient for all purposes under the Bankruptcy Code and the applicable Federal and Local Rules of Bankruptcy Procedure with respect to the relief requested.

D. It appears that the current value of the Debtor’s assets do not exceed the value of the debts held by Willard Umphrey, USB Focus Fund XXIX, LLC, and USB Focus Fund Capital Teas 2, LLC (collectively, the “Secured Parties”). Nevertheless, and for purposes of the Motion and this Interim Order, Strategic Funding Source, Inc., WebBank, Edward Don & Co., Crestview Financial, LLC, and Ace Funding Source, LLC. will also be treated as a Secured Party and entitled to the adequate protection provided herein, provided that neither these parties nor the Secured Parties shall seek a remedy relating to the protected interest until and unless it establishes that it held claims as of the Petition Date that were secured by value in the Debtor’s collateral.

E. The Secured Parties assert that their interests are secured by liens on substantially all of the Debtor’s assets, including cash collateral, as defined in Section 363(a) of the Bankruptcy Code (“Cash Collateral”).

F. “Cash Collateral” as defined by 11 U.S.C. §363(a) includes postpetition proceeds subject to a security interest as provided in Section 552(b) of the Bankruptcy Code.

G. The Debtor seeks authority to (a) enter into the DIP Financing on the terms described herein and in the promissory note, and (b) use Cash Collateral on the terms described herein to administer its case and fund its operations.

H. The ability of the Debtor to finance its operations and the availability of sufficient working capital and liquidity are vital to the Debtor’s ability to preserve its assets, maintain its operations and secure counsel to represent it in this bankruptcy case. The Debtor has an immediate and critical need to use Cash Collateral on an interim basis and to obtain credit on an interim basis in order to, among other things, enable the orderly continuation of its operations and to administer and preserve the value of its estate. The ability of the Debtor to maintain business relationships with its vendors, suppliers and customers, to pay their employees and otherwise finance its operations requires the availability of working capital from the DIP Financing and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtor, its estate, and parties-in-interest.

I. If the Debtor is unable to use its cash, including Cash Collateral for such purposes, the recoveries for all creditors, including the Secured Parties, will be greatly reduced, since under a “shut-down” scenario the value of the Debtor’s estate would decline dramatically. Authorization to obtain postpetition financing and used Cash Collateral is (i) critical to the Debtor’s ability to maximize value for its creditors, (ii) in the best interests of the Debtor and its estate, and (iii) necessary to avoid immediate and irreparable harm to the Debtor, its creditors, assets, businesses, goodwill and reputation.

J. The Debtor does not have sufficient available sources of working capital and unencumbered cash with which to continue to operate its business in Chapter 11. The Debtor requires immediate authority to obtain postpetition financing and use Cash Collateral to continue its business operations without interruption and to pay counsel to successfully guide it through Chapter 11 reorganization. On an interim basis, the Debtor’s ability to obtain postpetition

financing and use Cash Collateral to the extent and on the terms and conditions set forth herein is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

K. The DIP Financing is the best source of debtor in possession financing available to the Debtor under the current circumstances. The Debtor solicited proposals for debtor in possession financing from a variety of potential lenders and continues to do so, however the Debtor has not yet obtained any other alternative financing to date. Accordingly, the Debtor has been unable to obtain financing from sources other than the Lender on terms more favorable than the DIP Financing. Financing on a postpetition basis is not otherwise available without granting the Lender a perfected security interests in and lien on all of the Debtor's existing and after-acquired assets and a superpriority claim and other protections set forth in this Interim Order.

L. As a condition to entry into the DIP Financing, the extension of credit and the authorization to use Cash Collateral, the Lender requires that the proceeds shall be used consistent with the terms and conditions of this Interim Order and in accordance with the Interim Budget.

M. The terms and conditions of the DIP Financing are fair, reasonable, and the best available to the Debtor under the circumstances, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtor's exercise of prudent business judgment and are supported by reasonably equivalent value and consideration. The terms and conditions of the DIP Financing and the use of Cash Collateral were negotiated in good faith and at arms' length among the Debtor, Lender and Secured Parties. Use of Cash Collateral and credit to be extended under the DIP Financing shall be deemed to have been allowed, advanced, made, or extended in good faith by the Lender within the meaning of Section 364(e) of the Bankruptcy Code.

N. The Debtor must be authorized to obtain postpetition financing and use the Secured Parties' Cash Collateral to meet its ordinary course of business cash needs for the payment of its approved prepetition payroll, its retainer for counsel and actual postpetition expenses including, but not limited to, ordinary and necessary overhead expenses, taxes,

insurance, utilities, and other routine and necessary vendors and other expenses as reflected in the Interim Budget through the date of the final hearing. The Court has determined that there is a reasonable likelihood that the Debtor will prevail upon the merits at the final hearing of the Motion as required by 11 U.S.C. §363(c)(3); and that the Debtor has shown good cause for granting the relief requested in the Motion.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED on an interim basis as follows:

1. The Motion is hereby GRANTED.
2. The DIP Financing is hereby approved on an interim basis. The Debtor is expressly and immediately authorized to incur and to perform the DIP Financing obligations in accordance with, and subject to, the terms of this Interim Order, and to deliver all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtor under the DIP Financing and the creation and perfection of the liens described in and provided for by this Interim Order. The Debtor is hereby authorized and directed to pay, in accordance with this Interim Order, the principal, interest, and other amounts comprising the DIP Financing as such become due and without need to obtain further Court approval.
3. In order to prevent immediate and irreparable harm to the Debtor's estate, the Debtor is hereby authorized to request from Lender up to an aggregate outstanding principal amount of not greater than \$175,000.00 to be repaid at an 18% per annum interest rate with a maturity of the earliest of (i) December 31, 2018, (ii) the occurrence of a Final Sale, (iii) entry of an order confirming any plan of reorganization under Section 1129 of the Bankruptcy Code or an order authorizing the sale of all or substantially all of the Debtor's assets under Section 363 of the Bankruptcy Code; (iv) entry of an order appointing a Chapter 11 Trustee or an examiner under Sections 1104 or 1112 of the Bankruptcy Code, converting this case to one under Chapter 7, or dismissing this case; (v) the Debtor ceasing operations at more than 50% of its currently open stores; (vi) closing on Court-approved refinancing; or (vii) an Event of Default under the Credit Agreement.

4. In order to secure the DIP Financing, effective immediately upon entry of this Interim Order, pursuant to Section 364(d) of the Bankruptcy Code, the Lender is hereby granted, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected liens, senior in priority to any other security interest, on all assets, whether now existing or hereafter arising, to secure the Debtor's obligations under the DIP Financing, subject to paragraph 5 below. The Lender shall also have a superpriority administrative expense claim under Section 503(b) of the Bankruptcy Code. The Lender is hereby authorized and allowed to file any financing statements it deems necessary to perfect its liens and security interests, provided, however, that the liens and security interests granted herein are automatically deemed perfected upon entry of this Interim Order without the necessity of the Lenders taking possession of their collateral or filing financing statements or other documents.

5. Notwithstanding anything to the contrary contained herein, with respect to non-residential real property leases, no liens or encumbrances shall be granted or extended to such leases under this Order, except as permitted by the applicable lease or pursuant to applicable law, but rather liens shall be granted on the economic value of, proceeds of sale or other disposition of, and any other proceeds or products of such leasehold interests, including any proceeds realized on the assumption and/or assignment of such leases.

6. The amount of the Secured Parties' Cash Collateral authorized to be used pending a final hearing or entry of a final Order is not to exceed the gross amounts reflected in the Debtor's Interim Budget attached as Exhibit 2 to its Motion, for the Interim Period, though the Debtor may exceed any single line item in the Interim Budget by an amount not exceeding ten percent (10%) so long as there are corresponding reductions in other line items. The Debtor is authorized to use the Secured Parties' Cash Collateral for this Interim Period in accordance with the Interim Budget for the following purposes:

- (a) maintenance and preservation of its assets;
- (b) the continued operation of its business by payment of its actual expenses including but not limited to: ordinary and necessary overhead expenses, taxes,

insurance, utilities, and other routine and necessary vendors and other expenses as reflected in the Interim Budget;

- (c) approved prepetition payroll; and
- (d) counsel for the Debtor's retainer.

7. As adequate protection for the use of Cash Collateral, the Secured Parties are GRANTED:

(a) A replacement lien under 11 U.S.C. § 361(2), junior only to the lien of Lender: (i) to the extent the Secured Parties' Cash Collateral is used by the Debtor and such use results in a diminution of the value of their Cash Collateral; (ii) to the extent such prepetition liens are valid; and (iii) a superpriority claim pursuant to 11 U.S.C. § 507(b) limited to the extent of the diminution of the Secured Parties' interest in Cash Collateral such that the Secured Party is placed in an undersecured position.

(b) The replacement lien and security interest granted herein is automatically deemed perfected upon entry of this Interim Order without the necessity of the Secured Parties taking possession of their collateral or filing financing statements or other documents.

(c) Nothing herein shall constitute a finding that the Secured Parties have valid liens on the Cash Collateral or any of the other assets of the Debtor. The Debtor, for the Debtor's estate and any later appointed unsecured creditors committee and any later appointed trustee, reserves all rights and defenses concerning the validity, extent, and priority of any of the alleged liens of the Secured Parties and the validity of any loan documents, however, neither the DIP Financing for the Cash Collateral may be used to investigate, prosecute, litigate or challenges the extent, priority or validity of the Secured Parties asserted liens or security interests. In the event the Secured Parties' alleged liens on Cash Collateral are determined to be invalid, then the adequate protection provided hereunder to the Secured Parties shall be null and void.

(d) During the term of this Interim Order, the Debtor shall provide the Lender and the Secured Parties with periodic cash flow reports, showing cash receipts and

disbursements made by the Debtor during the prior week. In addition, during the term of this Interim Order, upon reasonable notice by the Lender or the Secured Parties, the Debtor shall permit the Lender or Secured Parties and any of their advisors reasonable access to the Debtor's management and financial advisors to discuss and to review the Debtor's cash flows, operating and financial performance, the Debtor's budgets, forecasts, projections and documents related thereto, including, without limitation, to review matters related to the existence, condition, location and amount of the Secured Parties' collateral. After an Event of Default, the rights of the Lender or the Secured Parties to enter onto the Debtor's leased premises shall be limited to (a) any such rights agreed in writing by the applicable landlord pursuant to any separate agreement by and between such landlord and the Lender or the Secured Parties, (b) the rights the Lender or the Secured Parties has under applicable non-bankruptcy law, if any, and (c) such rights as may be granted by the Court on a separate motion with notice to the applicable landlords of the leased premises and an opportunity for such landlords to respond and be heard.

8. Nothing contained herein shall be deemed or construed to: (a) limit the Debtor, Lender or the Secured Parties to the relief granted herein; (b) bar the Debtor, Lender or the Secured Parties from seeking other and further relief (including without limitation relief from the terms of this Order) for cause shown on appropriate notice from the Debtor and other parties-in-interest entitled to notice of same; or (c) require the Lender or Secured Parties to make any loans or advances to the Debtor, not otherwise set forth herein. The Order may be modified for cause shown by the Debtor, Lender or the Secured Parties or any other party-in-interest on due notice.

9. The term of this Interim Order shall terminate at 11:59 pm on July 31, 2017.

10. Any creditor or other interested party having any objection to the Debtor obtaining postpetition financing or use of Cash Collateral shall file with the Clerk of this Court and serve upon counsel for the Debtor, Lender, the Secured Parties and their counsel, if known, and the Office of the United States Trustee by or before Thursday, July 20, 2017 at 5:00 p.m., a written objection.



11. The hearing to consider the Debtor's request for approval of the Motion in accordance therewith shall be held at 10:00 a.m. on Monday the 24th day of July, 2017 in Courtroom 1-B of the United States Bankruptcy Court, 101 West Lombard Street, Baltimore, Maryland.

12. The Debtor shall serve a copy of this Interim Order and Notice within three (3) business days from the date hereof, on: (a) the Office of the United States Trustee; (b) the Lender and its respective counsel; (c) the Secured Parties, all other known secured creditors and their respective counsel, if known; (d) the Undersecured Creditors; and (e) each of the Debtor's twenty (20) largest unsecured creditors set forth on the lists filed pursuant to Fed.R.Bankr.P. 1007(d). The Debtor shall thereafter file with the Clerk a Certificate of Service of said mailing.

cc: Lawrence J. Yumkas, Esquire  
Lisa Yonka Stevens, Esquire  
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10211 Wincopin Circle, Suite 500  
Columbia, Maryland 21044

Office of the U.S. Trustee  
101 West Lombard Street, Suite 2650  
Baltimore, Maryland 21201

Attached Service List

**END OF ORDER**

CareFirst BlueCross BlueShield  
P. O. Box 79749  
Baltimore, MD 21279-0749

Dethlefsen & Balk, Inc.  
1005 North Commons Drive  
Aurora, IL 60504

Eskridge (E&A), LLC  
Dept. 2356  
P. O. Box 822315  
Philadelphia, PA 19182-2315

Haelssen & Lyon North America Corp.  
39 West 38th Street, Suite 11E  
New York, NY 10018

Historic Annapolis  
c/o Hyatt Commercial  
200 Westgate Circle, Suite 502  
Annapolis, MD 21401

K&J Woodworks  
86 South Old Spanish Trail  
Uhlend, TX 78640

Kain Family Limited Partnership, LLC  
1601 Connecticut Avenue, Suite 501  
Washington, DC 20009

Mall at Miami International LLC  
P. O. Box 643171  
Pittsburgh, PA 15264-3171

Penn Ross Joint Venture  
1326 Paysphere Circle  
Chicago, IL 60674

Regal Dynamic  
107 Snowy Egret Way  
Sebastian, FL 32958

Royston LLC  
P. O. Box 742380  
Atlanta, GA 30374-2380

Staples & Charles  
731 8th Street SE, Suite 302  
Washington, DC 20003

ACE Funding Source, LLC  
366 North Broadway, Suite 410  
Jericho, NY 11753

Corporation Service Company, as rep.  
P. O. Box 2576  
Springfield, IL 62708

Crestview Financial LLC  
1430 Broadway, Suite 402  
New York, NY 10018-3308

Edward Don & Company  
2562 Paysphere Circle  
Chicago, IL 60674

Express Capital Funding  
640 South San Vicente Boulevard  
Los Angeles, CA 90048

Tax Guard, Inc.  
1750 14th Street, Suite 201  
Boulder, CO 80302

WebBank  
c/o CAN Capital Asset Servicing, Inc.  
155 North 400 West, Suite 315  
Salt Lake City, UT 84103

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The following parties received  
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