

Stephen R. Harris, Esq., Harris Law Practice LLC, 6151 Lakeside Drive, Suite 2100, Reno, NV 89511, 775-786-7600
Barbara L. Yong, Esq., Robert R. Benjamin, Esq., Caren A. Lederer, Esq., Beverly A. Berneman, Esq., Anthony J. D'Agostino, Esq., Golan Christie Taglia LLP, 70 W. Madison Street, Suite 1500, Chicago, IL 60602, 312-263-2300

1 BARBARA L. YONG, ESQ.
Illinois Bar No. 6184000
2 ROBERT R. BENJAMIN, ESQ.
Illinois Bar No. 0170429
3 CAREN A. LEDERER, ESQ.
Illinois Bar No. 6244631
4 BEVERLY A. BERNEMAN, ESQ.
Illinois Bar No. 6189418
5 ANTHONY J. D'AGOSTINO, ESQ.
6 Illinois Bar No. 6299589
7 GOLAN CHRISTIE TAGLIA LLP
70 West Madison Street, Suite 1500
8 Chicago, IL 60602
Telephone: (312) 263-2300
9 E-Mail: blyong@gct.law,
10 rrbenjamin@gct.law, calederer@gct.law,
baberneman@gct.law, ajdagostino@gct.law

STEPHEN R. HARRIS, ESQ.
Nevada Bar No. 001463
HARRIS LAW PRACTICE LLC
6151 Lakeside Drive, Suite 2100
Reno, NV 89511
Telephone: (775) 786-7600
E-Mail: steve@harrislawreno.com

11 Proposed Attorneys for Debtor

Proposed Local Counsel for Debtor

12 UNITED STATES BANKRUPTCY COURT
13 FOR THE DISTRICT OF NEVADA

14 * * * * *

15 IN RE:
16 SIERRA CHEMICAL CO., a Nevada
17 domestic corporation,

Case No. 17-51019-btb
(Chapter 11)

18 Debtor.

19 **EMERGENCY MOTION FOR ORDER**
20 **AUTHORIZING DEBTOR TO INCUR**
21 **UNSECURED DEBT FROM CARUS**
22 **CORPORATION (11 U.S.C. § 364(b)) AND**
23 **ALLOWING SAME AS AN**
24 **ADMINISTRATIVE EXPENSE**

Hearing Date: OST Pending
Hearing Time: OST Pending
Est. Time: 15 minutes
Set by: Judge Beesley

25 COMES NOW, Debtor and Debtor-In-Possession, SIERRA CHEMICAL CO., by and
26 through its attorneys, BARBARA L. YONG, ESQ., of GOLAN CHRISTIE TAGLIA LLP and
27 STEPHEN R. HARRIS, ESQ., of HARRIS LAW PRACTICE, and hereby files its MOTION
28

1 FOR ORDER AUTHORIZING DEBTOR TO INCUR UNSECURED DEBT FROM CARUS
2 CORPORATION (11 U.S.C. § 364(b)) AND ALLOWING SAME AS AN
3 ADMINISTRATIVE EXPENSE (11 U.S.C. § 503(b)) (“Motion”), requesting this Court enter
4 its Order authorizing the Debtor to obtain post-petition financing on an unsecured basis from
5 CARUS CORPORATION (“Carus” or “DIP Lender”) and provide the DIP Lender with an
6 administrative priority expense claim with respect to said financing, pursuant to 11 U.S.C.
7 §364(b) and 503(b)(1) and Rule 4001(c) under the Federal Rules of Bankruptcy Procedure, and
8 hereby states and alleges as follows.

9
10 **BACKGROUND**

11
12 1. Debtor is in the business of manufacturing and distributing environmental
13 chemicals for municipal, industrial and mining markets, supplying water treatment plants,
14 agricultural facilities and food processors with essential chemicals from its production bases in
15 Sparks, Nevada, and Stockton, California.

16 2. Since 2011, Debtor has maintained “zero-balance” accounts (“ZBA”) for its
17 daily operations, wherein all proceeds of daily deposits, less checks written for expenses, are
18 “swept” from the account and applied to pay down an existing revolving line of credit loan at
19 Bank of America. (Carus is a co-borrower on the line of credit, and likewise uses all excess
20 cash in its account to pay down the line of credit.) To the extent that daily expenses exceed the
21 available cash in the account, Debtor has drawn needed amounts against the line of credit.

22 3. Bank of America has declined to extend Debtor continuing access to the Bank of
23 America line of credit. Therefore, to fund Debtor’s operations post-petition, Carus will extend
24 a new revolving line of credit to the Debtor in an amount not to exceed \$1,200,000.00. Debtor
25 will take advances on the line only as needed to pay daily expenses. The term of the loan is six
26 months, and advances will bear interest at 4%. The Declaration of Susan Buchanan, Debtor’s
27 CFO, is attached hereto as Exhibit A.

28 4. Debtor recognizes that its post-petition revenue is Bank of America’s cash

1 collateral, and subject to the Cash Collateral Order entered by this Court. Bank of America has
2 consented to the Debtor's use of its cash collateral, to its borrowing from Carus to fund post-
3 petition operations, and to Carus having the administrative priority requested herein.

4 **JURISDICTION**

5 5. This Court has jurisdiction over this Chapter 11 proceeding pursuant to 28
6 U.S.C. § 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(3).
7 Venue is proper before this Court pursuant to 28 U.S.C. § 1408 and 1409.

8 **RELIEF REQUESTED**

9 6. By this Motion, Debtor seeks authorization under Section 364(b) of the
10 Bankruptcy Code for the Debtor to incur unsecured debt to fund its continued operations. To
11 the extent that the proposed line of credit is outside the ordinary course, Debtor seeks an order
12 that Carus be granted an administrative priority for amounts advanced on the revolving line of
13 credit under 11 U.S.C. § 503(b)(1). Pursuant to the terms of the proposed financing, Debtor will
14 receive a line of credit from CARUS in the amount of \$1,200,000.00, to allow Debtor to fund its
15 estate, continue its day to day operations, including paying vendors which are now demanding
16 COD terms for new orders, and to pay Debtor's counsel and other retained professionals for
17 services rendered on behalf of Debtor's estate and its creditors. Said line of credit would also
18 be used to allow Debtor to remain current in its debt service to its secured lender, Bank of
19 America.
20

21
22
23 7. The proposed DIP loan from Debtor's owner and co-borrower under the Bank of
24 America line of credit, under Section 503(b)(1) of the Bankruptcy Code, would be a
25 continuation of the prior and procedure, except that instead of drawing on a line of credit from
26 Bank of America, the Debtor will draw on a line of credit from Carus, with a cap placed at
27 \$1,200,000.00, and provide Carus with administrative expense status under Bankruptcy Code
28

1 §503(b)(1) for such distributions to the Debtor's estate.

2 **BASIS FOR RELIEF REQUESTED**

3 8. 11 U.S.C. § 364(b) allows the Court, after notice and hearing, to authorize the
4 Debtor-In-Possession to incur unsecured debt that is not in the ordinary course of the Debtor's
5 business, allowable under 11 U.S.C. § 503(b)(1) as an administrative expense. Sierra believes
6 that it is in the best interests of the estate and creditors to borrow funds from the DIP Lender on
7 an as needed basis, in order to continue its ability to operate and pay its allowed administrative
8 expenses, as well as Debtor's day-to-day operational costs and debt service necessary to
9 preserve the assets of the Debtor's estate.

10 9. In order to meet its monthly operating expenses and monthly debt service,
11 Debtor requires an estimated \$1,984,000.00 per month. **See Exhibit A.** Debtor's income is
12 estimated and averages \$2,000,000.00 per month. However, Debtor anticipates at times having
13 insufficient income in the short term to meet monthly operating expenses, debt service and to
14 pay professionals, so will draw on the Carus line of credit to meet these needs until Debtor's
15 assets can be sold and proceeds and other funds received. Debtor anticipates that sale proceeds
16 will be more than adequate to pay all secured creditors and make a substantial distribution to
17 unsecured creditors, but preparing for said sale will take time, necessitating the need for the DIP
18 Loan.

19 10. 11 U.S.C. § 364(b) provides in pertinent part as follows:

20 (b) the court, after notice and a hearing, may authorize the trustee
21 to obtain unsecured credit or to incur unsecured debt other than
22 under subsection (a) of this section, allowable under section
23 503(b)(1) of this title as an administrative expense.

24 11. An Order granting authority to borrow on an administrative expense priority
25 basis must be supported by a finding that the loan is an actual, necessary cost to preserving the
26
27
28

1 estate under 11 U.S.C. § 503(b)(1)(A). In Re Club Development and Management Corp., 27
2 B.R. 610, 611 (9th Cir. BAP 1982). An allowance pursuant to Section 503(b)(1) of the
3 Bankruptcy Code is two-fold: it is not only an allowance against the estate, but also an
4 administrative expense claim that enjoys a priority over other unsecured claims. Standard Oil
5 Company v. Kurtz, 330 F.2d 178, 180 (8th Cir. 1964); The Matter of Witt Dairy Co., 48 F. Supp.
6 964 (N.Dist.CA 1942).

7
8 12. In the instant case, the credit line is necessary to help protect and preserve
9 Debtor's estate. As set forth herein, Debtor would have more difficulty in the short-term
10 meeting and paying monthly operating expenses, monthly debt service, administrative costs and
11 expenses of preserving the estate without the credit line from Carus. This is particularly true at
12 the outset of this case, when certain vendors are requiring payment of cash in advance in order
13 to deliver product (chemicals) necessary to Debtor's daily operations. The DIP Loan is
14 necessary to pay these vendors, so the Debtor can fill its customers' orders.

15
16 13. Without the credit line as provided for herein, it would be impossible for the
17 Debtor to preserve the assets of the estate and pay for administrative costs. Bank of America
18 has declined to advance Debtor additional sums under the existing line of credit, so Debtor
19 would be forced to seek other alternative forms of financing, which would be more time
20 consuming to procure and more costly to the estate, and which would ultimately work to the
21 detriment of all the creditors of the estate.

22
23 14. Debtor believes that it is in the best interest of its estate and creditors to borrow
24 funds from Carus in order to pay its monthly operating expenses, allowed administrative
25 expenses, and debt service, as necessary.
26
27
28

Stephen R. Harris, Esq., Harris Law Practice LLC, 6151 Lakeside Drive, Suite 2100, Reno, NV 89511, 775-786-7600
Barbara L. Yong, Esq., Robert R. Benjamin, Esq., Caren A. Lederer, Esq., Beverly A. Berneman, Esq., Anthony J. D'Agostino, Esq., Golan Christie Taglia LLP, 70 W. Madison Street,
Suite 1500, Chicago, IL 60602, 312-263-2300

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT "A"

1	Revenue		2,000,000
2			
3	1. Freight	320,000	
4	2. Cost of Materials	1,025,000	
5	3 Leases (Sparks, Stockton, Forklifts, Compressors)	65,000	
6	4 Salary & Wages (Salaried and Hourly)	250,000	
7	5. Payroll Taxes	21,000	
8	6. Benefits (employees, medical, etc.)	50,000	
9	7. Miscellaneous	25,000	
10	8. Utilities (telephone, electric, water)	30,000	
11	9. Insurance	35,000	
12	10. Outside services (temporary help, enviornmental, etc)	50,000	
13	11. Repairs and Maintenace	65,000	
14	12. Real estate taxes	23,000	
15	13 Travel	10,000	
16	14. Professional Fees	15,000	
17			
18	Expenses		1,984,000
19			
20	Net Income		16,000
21			
22			
23			
24			
25			
26			
27			
28			