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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:	Chapter 11
J.MENDEL, INC.,	Case No. 18-43634 (NHL)
Debtor.	

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MOTION FOR ENTRY AND APPROVAL OF INTERIM AND FINAL ORDERS: (A) AUTHORIZING USE OF CASH COLLATERAL AND AFFORDING ADEQUATE PROTECTION; (B) MODIFYING AUTOMATIC STAY; AND (C) SCHEDULING FINAL HEARING, PURSUANT TO SECTIONS 105, 362, 363 AND 507 OF TITLE 11 OF THE UNITED STATES CODE, RULES 2002 AND 4001 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND RULE 4001-5 OF THE LOCAL RULES FOR THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NEW YORK

J. Mendel, Inc. (the "**Debtor**"), as and for its Motion (the "**Cash Collateral Motion**") for Entry and Approval of Interim and Final Orders: (A) Authorizing Use of Cash Collateral and Affording Adequate Protection; (B) Modifying Automatic Stay; and (C) Scheduling Final Hearing, Pursuant to Sections 105, 362, 363 and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 4001-5 of the Local Rules for the United States Bankruptcy Court for the Eastern District of New York (the "**Local Rules**"), respectfully sets forth and represents as follows:

PRELIMINARY STATEMENT

1. By this Cash Collateral Motion, the Debtor seeks entry of interim and final orders authorizing and approving the Debtor's use of the cash collateral (as such term is defined under Bankruptcy Code § 363(a) ("**Cash Collateral**"), in order to maintain its liquidity and use same to fund and continue its business operations and reorganization efforts including, but not limited to, funding the payroll and payroll tax obligations for their approximately thirty eight (38) employees in New York, New York and six (6) employees in London, England. Without the use of Cash Collateral, the Debtor will not have sufficient liquidity to continue its operations and reorganize its business during the pendency of this Chapter 11 case.

2. Unless this Court authorizes the use of Cash Collateral *nunc pro tunc* to the Petition Date[1], the Debtor will be unable to meet its ordinary course business expenditures, which are necessary to fund its on-going business operations. Accordingly, the Debtor respectfully requests that the Court approve this Cash Collateral Motion authorizing the use of Cash Collateral *nunc pro tunc* on the terms and conditions as set forth in the Interim Order and Final Order.

JURISDICTION

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this case is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. On June 22, 2018 (the "**Petition Date**"), the Debtor commenced a voluntary case under Chapter 11 of the Bankruptcy Code in this Court.

[1] Unless indicated otherwise, capitalized terms used herein but not immediately defined have the meanings ascribed to such terms later in this Cash Collateral Motion.

5. The Debtor is operating its business and managing its property as a debtor and debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. To date, no trustee, examiner or creditors' committee has been appointed.

THE DEBTOR'S BUSINESS

6. The Debtor is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business at 36-20 34th Street, Long Island City, New York 11106. The Debtor designs and manufactures apparel for women, and offers dresses, anniversary gowns, ready-to-wear apparel, knitwear, cuffs, hunter boots, and scarves, as well as provides handbags that are made from fur, luxury leathers, and alligators. The Debtor serves customers worldwide.

7. The Debtor's assets consist primarily of cash, inventory, accounts receivables, and intellectual property which secure the Debtor's obligations as a borrower, to repay indebtedness as of June 22, 2018 in the amount of $4,617,297.28 to Rosenthal & Rosenthal, Inc. ("**Rosenthal**").

8. The Debtor also executed a promissory note in the original principal amount of $7,000,000 in favor of Gores Clothing Holdings, LLC ("**Gores**"), in conjunction with a sale of the equity of the Debtor from Gores to JM Holding Group, LLC ("**JM Holding**"), which is now the sole shareholder of the Debtor. While, upon information and belief, Gores asserts it is owed the sum of approximately $5,154,000.00 from the Debtor, the Debtor disputes this amount. Gores asserts the Gores Indebtedness is guaranteed by JM Holding. JM Holding is a debtor and debtor in possession with a case pending before this Court, bearing Case No. 17-45647 (NHL). JM Holdings has commenced an adversary proceeding before this Court with respect to the same fraud claims against Gores.

9. As of April 30, 2018, the Debtor's books and records reflect assets totaling approximately $18,161,498 and liabilities of approximately $16,956,509 however the liquidation values of the Debtor's assets is significantly less.

10. The Debtor leased its prior retail premises located on Madison Avenue, New York, New York, which was previously surrendered to the landlord thereof (the "**Madison Landlord**"), resulting in a balance of rent owed under the lease therefor. The Debtor negotiated a settlement (the "**Settlement**") of the unpaid rent and agreed to pay the sum of approximately $1.1 Million to the Madison Landlord. In conjunction therewith, the Debtor executed and delivered a Confession of Judgment to be held in escrow until an event of default under the settlement agreement. The Debtor made payments to the Madison Landlord under and pursuant to the Settlement until, due to a slowdown in sales, it defaulted on payments under the Settlement. Thereafter, the Madison Landlord filed and had entered the Judgment by Confession on or around June 19, 2018.

11. Faced with the enforcement efforts of the Madison Landlord on account of the Judgment by Confession, the Debtor commenced its Chapter 11 case in order to safeguard its interests and ability to continue to operate its business, and to otherwise maintain, protect, and preserve its property with the intention of selling its business.

THE DEBTOR'S PRE-PETITION AGREEMENTS WITH ROSENTHAL

12. On August 31, 2011, the Debtor and Rosenthal entered into a factoring agreement (the "**Rosenthal Factoring Agreement**") and other documents executed or delivered in connection therewith (the "**Rosenthal Credit Documents**"), pursuant to which Rosenthal agreed to provide at its sole option certain advances and other extensions of credit to the Debtor (the "**Rosenthal Loan**"). As of June 22, 2018, a balance of approximately $4,617,297.28 (the "**Rosenthal Indebtedness**") was due on account of the Rosenthal Loan.

13. To secure the Debtor's obligation under the Rosenthal Factoring Agreement, the Debtor and Rosenthal entered into a certain Inventory Security Agreement dated August 31, 2011 and a certain Intellectual Property Security Agreement dated August 31, 2011 (the "**Rosenthal Security Agreements**"), pursuant to which, and the other Rosenthal Credit Documents, the Debtor granted to Rosenthal a first priority security interest in and lien upon substantially all of the Debtor's business assets (collectively, the "**Rosenthal Pre-Petition Collateral**").

14. Rosenthal asserts that it has perfected its first priority blanket lien on all assets of the Debtor by filing Financing Statements and/or Amendments, on September 1, 2011, bearing Filing No. 20113391391, on March 1, 2016, bearing Filing No. 20161233756, and on April 28, 2017, bearing Filing No. 20172784145. Copies of the Rosenthal Factoring Agreement, other Rosenthal Credit Documents, Rosenthal Security Agreements, and the UCC filings will be provided upon request.

THE DEBTOR'S PRE-PETITION AGREEMENTS WITH GORES

15. The Debtor executed a certain Second Amended and Restated Term Loan Agreement dated September 11, 2015 (the "**Gores Loan Agreement**"), and an Amended and Restated Secured Promissory Note dated September 11, 2015 (the "**Gores Note**") payable to Gores in the original principal amount of $7,000,000.00. As set forth above, Gores asserts it is owed approximately $5,154,000.00 (the "**Gores Indebtedness**") under the Gores Note, which the Debtor disputes.

16. To secure the Debtor's obligation under the Gores Note, the Debtor and Gores entered into a Second Amended and Restated Security Agreement dated as of September 11, 2015 and a Second Amended and Restated Trademark Security and Pledge Agreement dated as of September 11, 2015 (the "**Gores Security Agreements**"), pursuant to which the Debtor granted

to Gores a second priority security interest in and lien upon substantially all of the Debtor's business assets (collectively, the "**Gores Pre-Petition Collateral**" and together with the Rosenthal Pre-Petition Collateral, the "**Pre-Petition Collateral**"). An Intercreditor and Subordination Agreement dated as of August 31, 2011 (the "**Subordination Agreement**") was entered into by and among the Debtor, Rosenthal and Gores resulting in the amount owed on account of the Gores Loan Agreement and Gores Note being subordinated to the amount owed on account of the Rosenthal Factoring Agreement and Rosenthal Credit Documents.

17. Gores asserts that it has perfected its second priority blanket lien on all assets of the Debtor by filing Financing Statements and/or Amendments, on August 27, 2010, bearing Filing No. 20103024779, on September 15, 2011, bearing Filing No. 20113542274, and on August 18, 2015, bearing Filing No. 20153604617. Copies of the Gores Loan Agreement, Gores Note, Gores Security Agreements, the Intercreditor Agreement, and the UCC filings will be provided upon request.

18. As additional security for the repayment of the Gores Indebtedness, JM Holding executed: (a) a General Continuing Guaranty dated as of September 11, 2015, guaranteeing all of the Debtor's obligations under the Gores Note to Gores; and (b) a Stock Pledge Agreement dated as September 11, 2015, pursuant to which JM Holding pledged to Gores as security all of the capital stock of the Debtor.

NEED FOR USE OF CASH COLLATERAL

19. The Debtor requires the use of Cash Collateral in which Rosenthal, and potentially Gores, have an interest, for such purposes set forth in the Interim Budget attached hereto as **Exhibit "A"** (the "**Interim Budget**"), and to carry out its daily business operations until it can conduct a sale of substantially all of its assets, which is a condition Rosenthal has placed on the Debtor in

return for its consent to use cash collateral. In this regard, the Debtor has no alternative source of revenue to draw upon. The Debtor's ability to purchase inventory, pay rent and administrative expenses, maintain business relationships with vendors, suppliers, and customers, pay payroll and other direct operating expenses, and otherwise finance operations is essential to the Debtor's continued viability until it can conduct the sale. The Debtor's continued use of Cash Collateral is conditioned on the Debtor obtaining certain milestones in connection with said sale, including filing a Sale Motion for approval of a sale process, bidding and auction procedures and contract/lease assumption/assignment protocols by July 29, 2018, and subsequent orders concerning approval of said sale procedures and, ultimately, approval of a sale to a successful bidder.

20. Consequently, the Debtor has an immediate need to use such Cash Collateral to avoid irreparable harm. If the Debtor is unable to spend proceeds of Pre-Petition Collateral, the Debtor will not be able to continue the operation of its business.

ADEQUACY OF THE INTERIM BUDGET

21. The Debtor has prepared the Interim Budget, which it believes is adequate to maintain business operations and pay all administrative expenses due and payable during the period between the entry of this Interim Order and the entry of a Final Order. The Debtor estimates that in accordance with the Interim Budget they will require the use of approximately $258,512 for a 14 day period (through the end of the week of July 6, 2018) pending the entry of a Final Order.

CONCISE STATEMENT OF THE MATERIAL TERMS OF THE ORDER

22. In accordance with Bankruptcy Rule 4001(b) and Local Rule 4001-5, below is a concise statement of the relief requested with respect to the Debtors' proposed use of Cash Collateral:

Summary of Material Terms of the Order		**Location**
Entities with an asserted interest in Cash Collateral: Fed. R. Bankr. P. 4001(b)(1)(B)(i)	Rosenthal; and Gores	Order ¶ E
Amount of Cash Collateral Sought: Local Rule 4001-5	In accordance with the Interim Budget, the Debtor seeks to use approximately approximately $258,512 for a 14 day period (through the end of the week of July 6, 2018) pending the entry of a Final Order.	Order ¶ 2, 3
Purposes for Use of Cash Collateral: Fed. R. Bankr. P. 4001(b)(1)(B)(ii)	The Debtor seeks to use the Cash Collateral in accordance with the Interim Budget to continue its business operations in the ordinary course.	Order ¶ 3
Termination Date: Fed. R. Bankr. P. 4001(b)(1)(B)(iii)	Unless there is a default in the Interim Order, the Debtor is authorized to use the Cash Collateral through the entry of a Final Order (the "**Interim Cash Collateral Period**"), subject to the terms and conditions set forth in the Interim Order.	Order ¶ 4

<u>Adequate Protection</u>: Fed. R. Bankr. P. 4001(b)(1)(B)(iv)	Rosenthal to a Replacement Lien to the extent of any diminution in the value of its interest. To the extent the Replacement Lien and other relief granted to Rosenthal in the Interim Order does not provide Rosenthal with adequate protection of its interest in the Cash Collateral, Rosenthal will have a super-priority administrative expense claim (the "**Super-Priority Claim**") under Bankruptcy Code § 507(b). Gores shall receive as adequate protection a Replacement Lien to the extent of any diminution in the value of its interest. To the extent the Replacement Lien and other relief granted to Gores in the Interim Order do not provide Gores with adequate protection of its interest in the Cash Collateral, Gores will have a Super-Priority Claim under Bankruptcy Code § 507(b).	Order ¶ 6
<u>Carve-Out</u>:	The Replacement Lien(s) and the Super-Priority Claim shall be subordinate to the fees and expenses of the Clerk of the Court and the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) plus applicable interest on any such fees, the fees and expenses of professionals for the Debtor and the Official Committee of Unsecured Creditors, if any, as allowed by Order of the Court, and fees and expenses of a Chapter 7 Trustee of up to $5,000.00 as allowed by Order of the Court.	Order ¶ 5
<u>Effect on Existing Liens</u>:	No effect.	N/A
<u>Events of Default</u>: Financing Guidelines § I(A)(2)(e)	(i) the dismissal or conversion to a case under chapter 7; (ii) the appointment of a trustee or an examiner with expanded powers; (iii) the entry of an order that impairs in any way the security interests, liens, priority claims or rights granted to Rosenthal under Interim Order; (iv) any liens or claims created in favor of Rosenthal under the Interim Order shall cease to be enforceable and of the same effect and priority purported to be created hereby, or the Debtor shall so assert in writing; (v) the Debtor challenges or objects to the extent, validity, enforceability, priority, perfection and/or non-avoidability of the Rosenthal Indebtedness or Rosenthal's security interests in and liens upon the Collateral; (vi) the actual amount of the line items, "Total Disbursements," or "Total Inventory" in any Measurement Period is not within the Permitted	Order ¶ 4

	Variance of the amount of such line item projected in the Budget for such Measurement Period, without, in each instance, the prior consent of Rosenthal; (vii) any misrepresentation by the Debtor in the financial reporting or certifications to be provided by the Debtor to Rosenthal; (viii) the Debtor proposes or support any plan of reorganization or sale of all or substantially all of any Debtor's assets or entry of any order confirming any such confirmation plan or sale that is not conditioned on the payment in full in cash, on the effective date of such plan or sale, of all Obligations due Rosenthal unless otherwise consented to in writing; (ix) the Debtor fails to provide any additional adequate protection ordered by the Court and such failure shall continue unremedied for more than 3 business days after written notice thereof; (x) the Debtor fails to comply with the sale milestones in connection with a sale of substantially all of its assets; and (xi) the Debtor's failure to perform, in any respect, any of its obligations under this Interim Order.	

AUTHORITY TO USE CASH COLLATERAL ON AN INTERIM BASIS

23. Bankruptcy Rule 4001(b)(2) provides that a final hearing on a motion for the authority to use cash collateral may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, a bankruptcy court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

24. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtor requests that this Court, (a) conduct an interim hearing (the "**Interim Hearing**") to consider the entry of the Interim Order authorizing the Debtor, on an interim basis, to use approximately approximately $258,512 for a 14 day period (through the end of the week of July 6, 2018) pending the entry of a Final Order in accordance with the Interim Budget to avoid immediate and irreparable harm to its estate pending the Interim Hearing, and (b) approximately fourteen (14) days thereafter, schedule the Final

Hearing to consider entry of the Final Order authorizing the Debtor to use cash collateral on a final basis.

25. Such relief is necessary to maintain ongoing operations and avoid immediate and irreparable harm and prejudice to the Debtor's estate and all parties in interest in the Debtor's Chapter 11 case.

ADEQUATE PROTECTION

26. As adequate protection for the Debtor's use of Cash Collateral, Rosenthal will be granted a valid, perfected, and enforceable, post-petition lien (the "**Replacement Lien**") on and security interest in all of the assets of the Debtor that comprised the Pre-Petition Collateral (hereinafter collectively referred to as the "**Post-Petition Collateral**"); provided, however, the Replacement Lien shall not extend to the estate's avoidance claims under §§ 544, 547, 548, and 550 of the Bankruptcy Code or to any property of the Debtor as to which Rosenthal's security interest and lien was not perfected as of the Petition Date. The Replacement Lien will be subject to all other validly and properly perfected pre-petition liens and security interests in favor of third parties that were senior to and had priority over the liens and security interests of Rosenthal as of the Petition Date.

27. As adequate protection for the Debtor's use of Cash Collateral, Gores will be granted a valid, perfected, and enforceable, post-petition lien on and security interest in all of the assets of the Debtor that comprised the Gores Pre-Petition Collateral; provided, however, the Replacement Lien shall not extend to the estate's avoidance claims under §§ 544, 547, 548, and 550 of the Bankruptcy Code or to any property of the Debtor as to which Gores' security interest and lien was not perfected as of the Petition Date. The Replacement Lien will be subject to all other validly and properly perfected pre-petition liens and security interests in favor of third parties

that were senior to and had priority over the liens and security interests of Gores as of the Petition Date.

28. The Replacement Liens of Rosenthal and Gores will be deemed perfected as of the Petition Date, without the necessity of filing any documents or otherwise complying with non-bankruptcy law in order to perfect security interests and record liens, with such perfection being binding upon all parties including, but not limited to, any subsequently appointed trustee either under Chapter 11 or any other Chapter of the Bankruptcy Code.

29. To the extent the Replacement Lien and other relief granted to Rosenthal and Gores in the Interim Order does not provide these creditors with adequate protection with respect to possible diminution of their interest in the Cash Collateral, each will be given a super-priority administrative expense claim (the "**Super-Priority Claim**") under § 507(b) Bankruptcy Code.

30. The Replacement Lien(s) and the Super-Priority Claim will be subordinate only to the fees and expenses of the Clerk of the Court and the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a) plus applicable interest on any such fees, the fees and expenses of professionals for the Debtor and the Official Committee of Unsecured Creditors, if any, as allowed by Order of the Court as provided by the Budget, and the fees and expenses of up to $5,000.00 of a Chapter 7 trustee, if any, as allowed by Order of the Court.

CONCLUSION

31. The Debtor requires the use of cash collateral to continue to manage its property and operate its business. The continued use of the cash collateral will enable it to preserve and enhance the value of its assets and business for the benefit of all parties in interest.

WAIVER OF MEMORANDUM OF LAW

32. The Debtor respectfully requests that this Court waive the requirement that it file a memorandum of law in support of this Motion. No memorandum of law is necessary because no novel issues of law are presented herein.

NOTICE

33. Following entry of the Interim Order, in accordance with Bankruptcy Rules 4001(b)(3) and 4001(c)(3), the Local Rules, the Debtor will provide adequate notice of the Motion and the Final Hearing to: (a) counsel for Rosenthal, Otterbourg P.C., 230 Park Avenue, New York, New York 10169, Attn: Steven B. Soll, Esq., ssoll@otterbourg.com; (b) Gores, by its counsel, Forchelli, Deegan, Terrana, LLP, 333 Earle Ovington Blvd, Suite 1010, Uniondale, New York 11553, Attn: Gerard R. Luckman, Esq., gluckman@forchellilaw.com; (d) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014; (e) the Debtors' 20 largest unsecured creditors; (f) any official committee of unsecured creditors appointed in this case; and (g) all persons who have filed a request for notice and service of papers in this case.

34. Such notice shall be given by mailing to such parties a copy of the Interim Order and the Motion.

35. The Debtor respectfully submits that, except as described above, no other or further notice need be provided.

36. No previous application for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court: (i) enter the Interim Order in the form annexed hereto as **Exhibit "B"**; (ii) schedule the Final Hearing; (iii) enter, after the

Final Hearing, the Final Order; and (iv) grant it such other and further relief as to this Court deems just and proper.

Dated: New York, New York
June 22, 2018

Platzer, Swergold, Levine,
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Proposed Counsel for the Debtors and Debtors in Possession

By: */s/ Clifford A. Katz*
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EXHIBIT "A"

BUDGET

EXHIBIT "B"

INTERIM CASH COLLATERAL ORDER