

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re:**

**YOGA SMOGA, INC.,**

**Debtor<sup>1</sup>.**

**Chapter 11**

**Case No. 16- 13538 (MEW)**

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**FINAL ORDER (I) AUTHORIZING DEBTOR TO OBTAIN POSTPETITION  
FINANCING AND (II) GRANTING CERTAIN RELATED RELIEF**

This matter came before the Court upon the motion by Yoga Smoga, Inc. (the “**Debtor**”), dated December 28, 2016 (the “**Original DIP Financing Motion**”), seeking entry of an interim order and a final order (this “**Final Order**”):

- (a) authorizing the Debtor to obtain up to \$350,000 of secured postpetition superpriority financing on an interim and final basis pursuant to the terms and conditions of that certain “Debtor-in-Possession Promissory Note” dated as of December 28, 2016 (the “**Original DIP Note**”), by and among the Debtor and Tapasya Bali and Rishi Bali (collectively, the “**Tranche One DIP Lender**”);<sup>2</sup>
- (b) authorizing the Debtor to execute the Original DIP Note, and to perform such other acts as may be necessary or desirable in connection therewith;
- (c) granting, to the Tranche One DIP Lender, first priority security interests in and liens on all of the DIP Collateral (as defined below) to secure the Original DIP Note and the obligations owing and outstanding thereunder (the “**DIP Loan Obligations**”);

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<sup>1</sup> The last four digits of the Debtor’s federal employer identification number are 3584.

<sup>2</sup> Unless otherwise defined, capitalized terms shall have the meanings ascribed to them in the Amended DIP Note attached to the Supplemental DIP Financing Motion (each as defined below).

- (d) granting allowed superpriority administrative expense claims to the Tranche One DIP Lender; and
- (e) scheduling a hearing (the “**Final Hearing**”), pursuant to Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), to consider entry of a final order (the “**Final Order**”), *inter alia*, approving and authorizing full borrowings under the Original DIP Note on a final basis.

The Court reviewed the Original DIP Note and the materials submitted in support of the Original DIP Financing Motion and conducted an interim hearing by telephone on January 4, 2017, and on that date entered an Interim Order (I) Authorizing Debtor To Obtain Postpetition Financing and Use Cash Collateral, (II) Scheduling Final Hearing, and (III) Granting Certain Related Relief (the “**Interim Order**”).

#### **Modifications to the Original DIP Note**

The Interim Order approved certain interim financing (the “**Interim Financing**”) pursuant to the Original DIP Note as deemed modified by the Interim Order, without prejudice to the Debtor or the Tranche One DIP Lender seeking to include or modify in the Final Order certain provisions eliminated or modified in the Original DIP Note by the Bankruptcy Court in the Interim Order.

The official committee of unsecured creditors in the Chapter 11 Case (the “**Committee**”) and the Debtor have been negotiating the terms of an order approving the Original DIP Financing Motion on a final basis, and at the same time the Debtor and the Committee have been negotiating a \$200,000 supplemental tranche of debtor in possession financing (the “**Tranche Two Financing**”) with certain pre-petition investors listed on Schedule A (the “**Tranche Two DIP Lenders**”) and, together with the Tranche One DIP Lender, the “**DIP Lenders**”) to an Amended and Restated Debtor-In-Possession Promissory Note (as the same may be amended, modified,

renewed, restated or supplemented from time to time, the “**Amended DIP Note**”), to supplement the \$350,000 financing contemplated by the Original DIP Financing Motion (as increased by \$12,000 in negotiations among the Committee, the Debtor and the Tranche Two DIP Lender) (“**Tranche One Financing**”), for an aggregate Tranche One Financing and Tranche Two Financing of \$562,000 (the “**Financing**”).

To permit such negotiations to proceed and afford the parties sufficient time to document the Financing and to request Court approval of the Financing, the Debtor and the Committee requested adjournments of the final hearing on the Original DIP Financing Motion (the “**Final Hearing**”) and the Court has issued three further interim orders approving certain of the financing on an interim basis. On January 19, 2017, the Court entered the Second Interim Order (I) Authorizing Debtor To Obtain Postpetition Financing, (II) Scheduling Adjourned Final Hearing, and (III) Granting Related Relief [Dkt No. 51] (the “**Second Interim Financing Order**”), which increased the authorized amount of Interim Financing to \$100,000. On February 10, 2017, the Court entered the Third Interim Order (I) Authorizing Debtor To Obtain Postpetition Financing, (II) Scheduling Adjourned Final Hearing, and (III) Granting Related Relief [Dkt. No. 74] (the “**Third Interim Financing Order**”). On February 28, 2017, the Court entered the Fourth Interim Order (I) Authorizing Debtor To Obtain Postpetition Financing, (II) Scheduling Adjourned Final Hearing, and (III) Granting Related Relief [Dkt. No. 94] (the “**Fourth Interim Order**”, and, with the Interim Financing Order, the Second Interim Financing Order and the Third Interim Financing Order, the “**Interim Financing Orders**”), which continued the Debtor’s authorization to obtain the Interim Financing and adjourned the Final Hearing on the Original DIP Financing Motion to March 28, 2017 at 10:00 a.m. (Eastern).

On March 10, 2017, the Debtor filed its Supplemental Motion for Entry of Final Order Authorizing Debtor to Obtain Post-Petition Secured, Superpriority Financing Pursuant to 11 USC §§ 105, 361, 362, 363, and 364 (the “**Supplemental DIP Financing Motion**”), to provide the Court and parties in interest with an explanation of the Financing contemplated by the Amended DIP Note, including the Tranche Two Financing and how it is meant to supplement to the Tranche One Financing, and of the rights of the Tranche One DIP Lender relative to the rights of the Tranche Two DIP Lenders.

After entry of the Interim Order, the Debtor, the Committee and the DIP Lenders negotiated modifications to the Original DIP Note in the form of the Amended DIP Note, a copy of which is attached to the Supplemental DIP Financing Motion. The Amended DIP Note reflects the deemed modifications made to the Original DIP Note by the Court in the Interim Order, as well as the additional modifications negotiated by and among the Debtor, Committee and the DIP Lenders.

### **Findings and Conclusions**<sup>3</sup>

A. **Petition Date.** On December 19, 2016 (the “**Petition Date**”), the Debtor commenced its chapter 11 case (the “**Chapter 11 Case**”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in this Court. The Debtor is managing its affairs as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. **Jurisdiction; Venue.** The Court has jurisdiction over this Chapter 11 Case, the parties, and the Debtor’s property pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as applicable, pursuant to Bankruptcy Rule 7052.

to 28 U.S.C. §157(b)(2)(D). The Court is a proper venue of this Chapter 11 Case and the Motion under 28 U.S.C. §§ 1408 and 1409.

C. Notice. Notices of the Original DIP Financing Motion and of the Supplemental DIP Financing Motion (collectively, the “**Motion**”), the relief requested therein and the Interim Hearing and Final Hearing have been served pursuant to Federal Rule of Bankruptcy Procedure 4001(c)(3) and was served by the Debtor on (i) United States Trustee; (ii) the holders of the Debtor’s twenty-five (25) largest unsecured claims; (iii) all known holders of liens upon the Debtor’s assets; (iv) the following taxing and regulatory authorities: (1) the United States Attorney for the Southern District of New York, (2) the Attorney General of the State of New York, (3) the Internal Revenue Service, and (4) the New York State Department of Taxation and Finance; and (v) all other parties requesting notice pursuant to Bankruptcy Rule 2002 (the “**Notice**”). Under the circumstances, the Notice constitutes good and sufficient notice of the relief requested at the Final Hearing, and no further notice of the relief sought at the Interim Hearing and the Final Hearing and the relief granted by this Final Order is necessary or shall be required.

D. Debtor’s Acknowledgments and Stipulations. In requesting the Amended DIP Note, and in exchange for and as a material inducement to the DIP Lenders to agree to provide the Amended DIP Note, the Debtor acknowledges, represents, stipulates, and agrees that upon approval of this Final Order by the Court, the Debtor has obtained all authorizations, consents and approvals required in connection with the execution, delivery, validity and enforceability of the Amended DIP Note.

E. Purpose and Necessity of Financing. As discussed in the Motion, the Debtor requires the Amended DIP Note to satisfy payroll obligations and for other working capital and general purposes. The Debtor is unable to obtain adequate and immediately available unsecured

credit allowable as an administrative expense under section 503 of the Bankruptcy Code, or other sufficient financing under sections 364(c) or (d) of the Bankruptcy Code, on equal or more favorable terms than those set forth in the Amended DIP Note, based on the totality of the circumstances. A loan facility in the amount provided by the Amended DIP Note is not available to the Debtor without granting the DIP Lender superpriority claims, liens, and security interests, pursuant to sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code, as provided in this Final Order and the Amended DIP Note.

F. Good Cause Shown. Good cause has been shown for entry of this Final Order. The ability of the Debtor to obtain sufficient working capital and liquidity under the Amended DIP Note is vital to the Debtor's estate and creditors. The liquidity to be provided under the Amended DIP Note will enable the Debtor to preserve the value of the Debtor's assets.

G. Good Faith. Based upon the record before the Court, the Amended DIP Note has been negotiated in good faith and between and among the Debtor, the Committee and the DIP Lenders. Any loan under the Amended DIP Note and other financial accommodations made to the Debtor by the DIP Lenders pursuant to the Amended DIP Note and this Final Order shall be deemed to have been extended by the DIP Lenders in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and the DIP Lenders shall be entitled to all protections and benefits afforded thereby.

H. Fair Consideration and Reasonably Equivalent Value. The Debtor has received and will receive fair consideration and reasonable value in exchange for access to the Amended DIP Note and all other financial accommodations provided under the Amended DIP Note and this Final Order. The terms of the Amended DIP Note are fair and reasonable, reflect the Debtor's exercise

of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

**Order**

Based upon the foregoing findings, acknowledgements, and conclusions, and upon the record made before this Court at the Interim Hearing and the Final Hearing, and for the reasons stated on the record at the Interim Hearing and the Final Hearing, and good and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED:**

1. Disposition. The Motion is granted on a final basis on the terms set forth in this Final Order. Any objection to the relief sought in the Motion that has not previously been withdrawn or resolved, and all reservations of rights contained therein, are hereby overruled.

2. Authorization for DIP Financing. On a final basis the Debtor is hereby authorized to borrow up to the maximum amount of \$562,000 (the “**Maximum Borrowing**”) subject to the terms of the Amended DIP Note and this Final Order. All funds advanced by the DIP Lender after entry of the Interim Order up to \$100,000, including the \$12,000 advanced by the DIP Lender on December 29, 2016 to enable the Debtor to meet its payroll obligations, and all funds advanced after entry of this Final Order up to the Maximum Borrowing shall be considered Loans under the Amended DIP Note and the DIP Lenders shall have the benefits of their respective rights under the Amended DIP Note and the terms of this Final Order with respect to all such Loans.

3. Authority to Execute and Deliver Necessary Documents. The Debtor is authorized to enter into and deliver the Amended DIP Note, and without limitation, UCC financing statements and other typical documentation relating to encumbering all of the DIP Collateral and securing all of the Debtor’s obligations under the Amended DIP Note, each as may be reasonably requested by the DIP Lenders with respect to the financing authorized in this Final Order. The Debtor is further

authorized to perform all of its obligations and acts required under the Amended DIP Note and such other documentation to give effect to the terms of the financing provided for herein.

4. Valid and Binding Obligations. The obligations under the Amended DIP Note with respect to the financing shall constitute valid and binding obligations of the Debtor, enforceable against it and its successors and assigns, in accordance with the terms of the Amended DIP Note and this Final Order, and no obligation, payment, transfer, or grant of a lien or security interest under the Amended DIP Note or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law or subject to any avoidance, reduction, recharacterization, or subordination (whether equitable, contractual, or otherwise).

5. Amendments, Consents, Waivers, and Modifications. The Debtor may enter into any non-material amendments, consents, waivers or modifications to the Amended DIP Note without the need for further notice and hearing or any order of this Court, provided that a notice of the amendment, consent, waiver or modification is filed promptly with the Court and notice thereof, except to the extent they are ministerial or technical or do not adversely affect the Debtor, is provided in advance to counsel for the Committee, any party requesting notice and the U.S. Trustee.

6. DIP Lenders' Lien Priority. To secure the DIP Loan Obligations, the DIP Lenders are hereby granted, on a pari passu basis among each other, valid, enforceable and fully perfected, first priority liens on and senior security interests in (collectively, the "**DIP Liens**") all of the property, assets or interests in property or assets of the Debtor, of any kind or nature whatsoever, real or personal, now existing or hereafter acquired or created, including, without limitation, all property of the "estate" within the meaning of the Bankruptcy Code (excluding avoidance actions under chapter 5 of the Bankruptcy Code ("**Avoidance Actions**") and the proceeds thereof), and all

cash and non-cash proceeds, rents, products, substitutions, accessions, offspring and profits of any of the collateral described above (collectively, the “**DIP Collateral**”), subject to (A) Permitted Encumbrances and (B) the Carve-Out. The DIP Liens shall be effective immediately upon the entry of this Final Order. The DIP Liens shall be and hereby are deemed fully perfected liens and security interests, effective and perfected upon the date of this Final Order, without the necessity of execution by the Debtor of security agreements, pledge agreements, financing agreements, financing statements or any other agreements or instruments, such that no additional actions need be taken by the DIP Lenders, or any other person or entity to perfect such interests.

7. **DIP Lenders’ Superpriority Claim.** The DIP Lenders are hereby granted, on a pari passu basis among each other, an allowed superpriority administrative expense claim (the “**DIP Superpriority Claim**”) pursuant to section 364(c)(1) of the Bankruptcy Code in the Debtor’s Chapter 11 Case and in any successor cases under the Bankruptcy Code (including any case or cases under chapter 7 of the Bankruptcy Code, the “**Successor Cases**”) for all DIP Loan Obligations, having priority over administrative expenses of the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(a), 503(b), 507(a), 507(b), 726, 1113 and 1114 of the Bankruptcy Code, which allowed DIP Superpriority Claim shall be payable from and have recourse to all pre- and postpetition property of the Debtor and all proceeds thereof, excluding any proceeds or property recovered in connection with the pursuit of Avoidance Actions; provided, however, that any such priority shall not be with respect to any administrative expense or unsecured claim now existing or subsequently arising under Sections 506(c), 546(c), 546(d) or 552 of the Bankruptcy Code. The DIP Superpriority Claim granted in this paragraph shall be subject and subordinate in priority of payment to payment of the Carve-Out.

8. Survival of DIP Liens and DIP Superpriority Claim. The DIP Liens, DIP Superpriority Claim, and other rights and remedies granted under this Final Order to the DIP Lenders, shall continue in this Chapter 11 Case and any Successor Cases and shall be valid and enforceable against any trustee appointed in the Debtor's Chapter 11 Case and/or upon the dismissal of the Debtor's Chapter 11 Case or any Successor Cases and such liens and security interests shall maintain their first priority as provided in this Final Order until all the DIP Loan Obligations have been indefeasibly paid in full in cash and the DIP Lenders' commitments have been terminated in accordance with the Amended DIP Note.

9. Carve-Out. The DIP Liens and the DIP Superpriority Claim, shall be subject, in accordance with the priority as set forth herein, and subordinate only to: (i) fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) or to the Clerk of the Bankruptcy Court (the "**Case Administration Fees**"), plus (ii) unpaid professional fees and expenses ("**Professional Fees**") payable to each legal or financial advisor retained by the Debtor and the Committee that are incurred or accrued prior to the date of the occurrence of a Termination Event (as defined below); plus (iii) all unpaid Professional Fees payable to each legal or financial advisor retained by the Debtor and the Committee that are incurred or accrued after the date of the occurrence of a Termination Event, but solely for this clause (iii) an amount not to exceed the following aggregate amounts \$65,000 for the Debtor's professionals and \$35,000 for the Committee's professionals, and ultimately allowed by the Court pursuant to sections 330, 331 and 503 of the Bankruptcy Code or any order of the Court, plus (iv) \$5,000 (earmarked for use by a chapter 7 Trustee) (items (i) through (iv), collectively, the "**Carve-Out**").

10. Remedies. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified without the need for further Court order to: (a) permit the DIP Lenders,

upon the occurrence of a Termination Event, and without any interference from the Debtor or any other party interest (i) upon written notice (which may be delivered by electronic mail) to the Debtor, its counsel, counsel to the Committee, and counsel to the U.S. Trustee (the “**Notice Parties**”), to cease making loans under the Amended DIP Note and/or suspend, reduce or terminate the commitments under the Amended DIP Note; and (ii) upon seven (7) business days’ (the “**Remedies Notice Period**”) prior written notice (which may be delivered by electronic mail) to the Notice Parties, declare all DIP Loan Obligations immediately due and payable. However, the exercise of any further remedies shall be subject to the automatic stay and will therefore require prior court approval. Immediately upon the occurrence of a Termination Event, the DIP Lender may charge interest at the default rate set forth in the Amended DIP Note without being subject to the Remedies Notice Period. For the avoidance of doubt, nothing in this paragraph shall be deemed to modify or otherwise affect the Carve-Out. This Court shall retain exclusive jurisdiction to hear and resolve any disputes and enter any orders required by the provisions of this Final Order and relating to the application, reimposition or continuance of the automatic stay of section 362(a) of the Bankruptcy Code or other injunctive relief requested.

11. Additional Perfection Measures. The DIP Liens shall be perfected by operation of law immediately upon entry of this Final Order. The DIP Lenders shall not be required to enter into or obtain landlord waivers, mortgagee waivers, bailee waivers, warehouseman waivers or other waiver or consent, or to file or record financing statements, leasehold mortgages, notices of lien or similar instruments in any jurisdiction (including, trademark, copyright, trade name or patent assignment filings with the United States Patent and Trademark Office, Copyright Office or any similar agency with respect to intellectual property, or filings with any other federal agencies/authorities), or obtain consents from any licensor or similarly situated party-in-interest,

or take any other action in order to validate and to perfect the DIP Liens. If the DIP Lenders, in their sole discretion, choose to take any action to obtain consents from any landlord, licensor or other party in interest, to file financing statements, notices of lien or similar instruments, or to otherwise record or perfect such security interests and liens, the DIP Lenders are hereby authorized, but not directed to, take such action or to request that Debtor take such action on their behalf (and Debtor is hereby authorized and directed to take such action). In lieu of obtaining such consents or filing any such financing statements, notices of lien or similar instruments, the DIP Lenders may, in their sole discretion, choose to file a true and complete copy of this Final Order in any place at which any such instruments would or could be filed, together with a description of collateral, and such filing by the DIP Lenders shall have the same effect as if such financing statements, notices of lien or similar instruments had been filed or recorded at the time and on the date of entry of this Final Order.

12. Sale/Conversion/Dismissal. If an order dismissing or converting this Chapter 11 Case under sections 305 or 1112 of the Bankruptcy Code or otherwise is at any time entered, the DIP Liens and the DIP Superpriority Claim, granted hereunder and/or in the Amended DIP Note shall continue in full force and effect, remain binding on all parties-in-interest, and maintain their priorities as provided in this Final Order and the Amended DIP Note until the DIP Loan Obligations approved in this Final Order are indefeasibly paid in full in cash and completely satisfied. This Court shall retain jurisdiction, notwithstanding such dismissal, for purposes of enforcing the DIP Lien and the DIP Superpriority Claim.

13. 90 Day Cash Flow Projection and Budget. Prior to entry of this this Final Order, the Debtor has provided the Committee with a 90-day “Cash Flow Projection” that sets forth the anticipated sources and uses of cash on a weekly basis for the period January 9, 2017 through April

9, 2017. Every two weeks the Debtor shall provide the Committee with a report that compares the actual and projected sources and uses of cash for the immediately preceding fourteen day period. The Debtor may modify or amend the Cash Flow Projection as necessary and appropriate.

14. Priority of Terms. To the extent of any conflict between or among (a) the express terms or provisions of any of the Amended DIP Note, the Motion, any other order of this Court, or any other agreements, on the one hand, and (b) the terms and provisions of this Final Order, on the other hand, the terms and provisions of this Final Order shall govern.

15. No Third Party Beneficiary. Except as explicitly set forth herein, no rights are created hereunder for the benefit of any third party, any creditor or any direct, indirect or incidental beneficiary.

16. Survival. Except as otherwise provided herein, (a) the protections afforded under this Final Order, and any actions taken pursuant thereto, shall survive the entry of an order (i) dismissing this Chapter 11 Case or (ii) converting this Chapter 11 Case into a case pursuant to chapter 7 of the Bankruptcy Code, and (b) the DIP Liens, shall continue in this Chapter 11 Case, in any such successor case or after any such dismissal.

17. Adequate Notice of Scheduling of Final Hearing. The notice given by the Debtor of the Final Hearing was given in accordance with Bankruptcy Rules 2002 and 4001(c) and the local rules of this Court and, under the circumstances, was adequate and sufficient. No further notice of the request for the relief granted at the Final Hearing is required.

18. Immediate Binding Effect; Entry of Final Order. This Final Order shall not be stayed and shall be valid and fully effective immediately upon entry, notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and 9014, or otherwise.

19. Retention of Jurisdiction. This Court shall retain exclusive jurisdiction over all matters pertaining to the implementation, interpretation, and enforcement of this Final Order.

20. Setoff Rights. No provision of this Final Order or of the Amended DIP Note shall impair any valid and enforceable right of setoff or other right pursuant to Section 553 of the Bankruptcy Code that 99Degrees Custom, Inc. or any other creditor may have, and any rights granted to the DIP Lenders hereunder shall be subject to such rights. In addition, the valid and perfected pre-Petition Date liens of 99Degrees Custom, Inc. ("99Degrees") in certain inventory and fabric of the Debtor were acknowledged and allowed in the Court-approved Stipulation Between Yoga Smoga, Inc. and 99Degrees Custom, Inc. Providing Adequate Protection to 99Degrees Custom, Inc. (the "Stipulation") [Dkt. Nos. 58 and 72], and therefore such liens are Permitted Encumbrances under this Final Order and the Amended DIP Note.

Dated: New York, New York  
April 18, 2017

s/Michael E. Wiles  
**HONORABLE MICHAEL E. WILES**  
**UNITED STATES BANKRUPTCY JUDGE**