




CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed June 9, 2017


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

LUMENATE TECHNOLOGIES, LP

Debtor.

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§
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§
§

Case No. 17-32067-SGJ-11

Chapter 11

**INTERIM ORDER ON EMERGENCY MOTION TO DETERMINE EXTENT
OF CASH COLLATERAL AND FOR FINAL ORDER (I) AUTHORIZING THE USE
OF CASH COLLATERAL PURSUANT TO SECTIONS 105, 361, 362, 363 AND 364
OF THE BANKRUPTCY CODE AND FEDERAL RULE OF BANKRUPTCY
PROCEDURE 4001(B) AND (II) GRANTING ADEQUATE PROTECTION
TO THE PRE-PETITION SECURED LENDERS**

CAME ON FOR CONSIDERATION the Debtor's Emergency Motion to Determine Extent of Cash Collateral and For Final Order (I) Authorizing the Use of Cash Collateral Pursuant to Sections 105, 361, 362, 363, and 364 of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4001(B) and (II) Granting Adequate Protection to the Pre-Petition Secured Lenders (the "**Motion**") filed by Lumenate Technologies, LP (the "**Debtor**") in the above-referenced bankruptcy case and the objections to the Motion filed by MidCap Funding X

Trust, as agent (“**MidCap**”) and AVT Technology Solutions, LLC (“**AVT**”); and hearings having been conducted on the Motion on June 5 and 6, 2017 (collectively, the “**Hearing**”) and after hearing the testimony of the witnesses and arguments of counsel for (a) the Debtor, (b) MidCap, (c) AVT, and (d) the United States Trustee.

The Court finds that due and adequate notice of the Motion, in light of the exigent circumstances, was served via the Court’s electronic transmission facilities and/ or facsimile transmission and United States First Class Mail upon the alleged secured lender(s), the twenty largest unsecured creditors, all parties requesting notice, and the United States Trustee.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Court further finds that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court further finds that venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Nothing in this order is deemed a finding of whether 11 U.S.C. § 362 is even applicable.

The Court finds that the interim relief requested in the Motion is necessary to the Debtor’s reorganization efforts and to avoid immediate and irreparable harm, the limited use of Cash Collateral, as provided herein, for reasonable and necessary expenses in the Debtor’s business judgment is essential to the continuing business operations and the Debtor’s ability to reorganize. The Court further finds that to the extent MidCap and/or AVT have interests in the Debtor’s Cash Collateral to be used pursuant to this Order, such interests are adequately protected.

It is therefore

ORDERED¹ that the Motion is **GRANTED ON AN INTERIM BASIS**. It is further

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. See Fed. R. Bankr. P. 7052.

ORDERED that the Debtor is authorized to use alleged Cash Collateral for the payment of only the approved expenses (the “**Approved Expenses**”) set forth in the budget, which is attached hereto as **Exhibit A** (the “**Budget**”) and as set forth in the Motion and on the record at the Hearing. The Debtor’s right to use the alleged cash collateral shall terminate on June 16, 2017, unless the deadline is extended by agreement as provided in section 363 of the Bankruptcy Code or by order of the Court. It is further

ORDERED that an interim hearing on Debtor’s Motion shall be held on **June 13, 2017 at 1:30 p.m.** Counsel for Debtor shall provide notice of the final hearing via facsimile and other electronic means, if available, upon any known secured lenders, the 20 Largest Unsecured Creditors, the United States Trustee, and any parties requesting notice of pleadings. It is further

ORDERED that, as adequate protection for the use of Cash Collateral, and without in any way limiting the rights of MidCap and AVT (MidCap and AVT are collectively referred to herein as the “**Prepetition Lenders**”), under section 552 of the Bankruptcy Code, the Prepetition Lenders shall, pursuant to section 361 and 363(e), be granted automatically perfected replacement liens on and security interest in any property of the Debtor acquired or arising post-petition (except for Chapter 5 Assets (defined below)) to the extent of any postpetition diminution of value of any collateral, in which the Prepetition Lenders held valid, enforceable, perfected prepetition liens and security interests (the “**Replacement Liens**”); such Replacement Liens shall attach and become valid, perfected, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtor or the Prepetition Lenders, and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, guaranty agreements, security agreements, vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office, or other documents

or the taking of any other actions. The Replacement Liens *vis-à-vis* each of the Prepetition Lenders shall have the priorities provided in the prepetition subordination agreement by and amongst the Prepetition Lenders. For the avoidance of doubt, the Replacement Liens shall only be granted to the extent of any postpetition diminution in value of the Prepetition Lenders' collateral position. To the extent the Prepetition Lenders had valid properly perfected security interests as of May 26, 2017 (the "**Petition Date**"), and to the extent that the value of the collateral subject to those security interests diminishes in value from and after the Petition Date, the Prepetition Lenders shall be entitled to adequate protection as contemplated by, *inter alia*, section 363 of the Bankruptcy Code. Moreover, such Replacement Liens shall not, under any circumstances, attach to any cause of action, or recoveries from such cause of action, that may arise pursuant to Chapter 5 of the Bankruptcy Code (the "**Chapter 5 Assets**"). In addition, all adequate protection set forth in this order shall be binding on any subsequently appointed Chapter 7 Trustee. It is further

ORDERED that any cash collected by the Debtor postpetition shall be immediately deposited by the Debtor with Wells Fargo Bank, N.A., account no. 4123210486. It is further

ORDERED that nothing in this Order shall be construed as an admission by the Debtor of the validity of any liens asserted by MidCap, Avnet Inc., AVT Technology Solutions LLC, or any other alleged secured lender, and the Debtor shall have the right to assert or challenge the validity of any liens asserted or alleged by any of the Prepetition Lenders, and the rights of the Prepetition Lenders to assert the validity of such liens are reserved. In addition, the Prepetition Lenders reserve all rights pursuant to, *inter alia*, section 507(b) of the Bankruptcy Code and to assert that the retainer paid to counsel to the Debtor constitutes Cash Collateral. It is further

ORDERED that notwithstanding anything herein, the entry of this Order is (a) without prejudice to any secured lender's (including the Prepetition Lenders) subsequent request for relief from the automatic stay, conversion or dismissal of the Debtor's bankruptcy proceeding, or adequate protection of its interests at any further hearing on the Motion or (b) an acknowledgment or stipulation by either of the Prepetition Lenders (i) that such lenders have consented to the use of cash collateral or (ii) that such lenders' respective interests in any prepetition collateral are adequately protected pursuant to this Interim Order or otherwise. To the extent of any dispute regarding the entitlement to adequate protection, including adequate protection granted pursuant to this Interim Order, the Debtor shall retain the burden of proof. It is further

ORDERED that notwithstanding anything herein to the contrary, the relief granted under this Order is without prejudice to any rights of the Texas Comptroller of Public Accounts (the "**Comptroller**") to funds collected by Debtor that qualify as the State of Texas' trust funds. The Comptroller is not precluded from pursuing such funds by this Order. Any liens or claims granted to the Prepetition Lenders under this Order are not valid or enforceable in relation to any funds which do not constitute property of the Estate but which qualify as the State of Texas' trust funds. In addition, any pre-petition State of Texas trust fund taxes in the possession of the Debtor, wherever located, shall be turned over to the Comptroller within two (2) business days of entry of this Order. The Debtor shall file all required tax returns and make payment of post-petition taxes owed to Comptroller on a timely basis as required by state law and by 28 U.S.C. §§ 959(b) and 960. If the Debtor continues to operate and collect sales tax post-petition, then within five (5) business days of the entry of this Order: (a) Debtor shall establish a "Sales Tax Escrow Account" ("**Sales Tax Account**") at an approved depository institution into which all

sales taxes collected by Debtor shall be deposited; (b) once the Sales Tax Account is established, Debtor will deposit all sales tax collected by it directly into the Sales Tax Account; and (c) within 48 hours of Debtor's receipt of the monthly statement for the Sales Tax Account, Debtor will provide a copy via email to counsel for the Comptroller by email to Courtney.Hull@oag.texas.gov. It is further

ORDERED that notwithstanding the terms of any Deposit Account Control Agreement, the Debtor's banks and financial institutions, including, but not limited to Wells Fargo, N.A., is authorized and ordered to allow the Debtor to use such funds in conformance with this Order. It is further

ORDERED that the Debtor shall provide the Prepetition Lenders all financial reports, budgets, forecasts, evidence of insurance, balance sheets, income statements, and all other legal or financial documentation required to be provided under their respective loan agreements. The Debtor will (a) keep proper books, records and accounts in which entries fairly presented in all material respects in accordance with GAAP shall be made of all dealings and transactions in relation to their business and activities, and (b) permit, upon reasonable prior notice, during normal business hours, representatives of the Prepetition Lenders to visit and inspect any of their properties, make abstracts or copies from any of their books and records, and to discuss their affairs, finances, and condition with their respective officers, including the President and Comptroller. It is further

ORDERED that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

END OF ORDER

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