



ENTERED
05/24/2017

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: §
§
US DATAWORKS, INC., § **CASE NO. 17-32765**
§
DEBTOR. § **(CHAPTER 11)**

FINAL ORDER PURSUANT TO BANKRUPTCY CODE SECTIONS 105, 107(B), 361, 362, 363, 364 AND 507 (1) APPROVING POSTPETITION FINANCING, (2) AUTHORIZING USE OF CASH COLLATERAL, (3) GRANTING LIENS, (4) GRANTING ADEQUATE PROTECTION, AND (5) MODIFYING THE AUTOMATIC STAY
(Relates to Docket No. 8)

The Court considered the *Debtor's Emergency Motion for Entry of Interim and Final Orders Pursuant to Bankruptcy Code Sections 105, 107(B), 361, 362, 363, 364, and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens, (4) Granting Adequate Protection, (5) Modifying the Automatic Stay, and (6) Scheduling a Final Hearing* (the "**Motion**"), filed by US Dataworks, Inc. ("**Dataworks**" or the "**Debtor**")¹ on May 12, 2017. After further due consideration of the Motion, the *Declaration of John Penrod in Support of First Day Motion(s)*, the evidence presented, the arguments of counsel, and the record established at the interim hearing, the Court makes the following findings fact and conclusions of law:

A. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334;

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the *Debtor's Emergency Motion for Entry of Interim and Final Orders Pursuant to Bankruptcy Code Sections 105, 107(B), 361, 362, 363, 364, and 507 (1) Approving Postpetition Financing, (2) Authorizing Use of Cash Collateral, (3) Granting Liens, (4) Granting Adequate Protection, (5) Modifying the Automatic Stay, and (6) Scheduling a Final Hearing*.

B. Venue of the Debtor's chapter 11 case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

C. The Motion is a core proceeding under 28 U.S.C. § 157(b) and therefore the Court has constitutional authority to enter both an interim and final order on the Motion.

D. On May 1, 2017 (the "**Petition Date**"), the Debtor filed a voluntary petition under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 – 1532 (as amended, the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Court**") thereby commencing the above-styled chapter 11 bankruptcy case (the "**Case**");

E. The Debtor is continuing in the management and operation of its business and bankruptcy estate (the "**Estate**"), as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Case;

F. As of the date of this Final Order, the United States Trustee (the "**UST**") has not appointed an official committee of unsecured creditors in the Case, pursuant to section 1102 of the Bankruptcy Code;

G. The relief requested in the Motion is in the best interests of US Dataworks, its creditors, and other parties-in-interest;

H. Proper and adequate notice of the Motion has been given and, under the circumstances, no other or further notice is necessary;

I. All objections to the Motion have been resolved by this Final Order or are overruled in their entirety;

J. Dataworks is in the business of developing, licensing, and servicing software that is utilized for the automation of the processing of incoming accounts receivable payments. The

Debtor has twelve (12) full-time and one (1) part-time employees. The Debtor's employees are essential to the Debtor's ability to continue its operations;

K. Prior to the Petition Date, Dataworks' had certain unperfected secured obligations due to (i) Ivan and Jackie Carlson in the amount of \$157,000.00, (ii) Richard A. Reck in the amount of \$52,333.36, (iii) John L. Nicholson in the amount of \$2,057,000.00, and (iv) Frances F. Ramey in the amount of \$795,200.00 (collectively the "**Prepetition Unperfected Secured Creditors**" and the "**Subordinated Debt**," respectively);

L. Also prior to the Petition Date, Dataworks entered into negotiations to sell its assets to The Bankers Bank ("**TBB**") and in late November of 2016, entered into that certain asset purchase agreement which contemplates such a sale occurring through a chapter 11 bankruptcy proceeding that was to be filed by the Debtor;

M. On January 26, 2007, the Dataworks and TBB entered into a promissory note (the "**TBB Note**") and security agreement (the "**TBB Security Agreement**"), pursuant to which TBB agreed to advance Dataworks up to \$550,000.00 to be utilized for working capital. The TBB Note bears interest at rate of six percent (6%) per annum and is secured by a first lien (the "**TBB Prepetition Liens**") on all assets of Dataworks (the "**Prepetition Collateral**"), which includes the Debtor's cash (the "**Cash Collateral**"). Each of the Prepetition Unperfected Secured Creditors executed subordination agreements whereby they each consented to TBB taking a first lien position on the Prepetition Collateral;

N. In order to facilitate Dataworks' ability to maintain its business operations during the period leading up to the Petition Date, TBB advanced \$549,743.38 to Dataworks. As of the Petition Date, the outstanding balance on the TBB Note was \$549,743.38 plus accrued interest (the "**Prepetition Obligations**");

O. Without immediate access to debtor-in-possession financing and the interim relief sought through the Motion, the Debtor would be unable to continue support of its existing customer contracts or complete existing projects, which would result in immediate and irreparable harm to the Debtor and its going concern value;

P. The Debtor has determined that it requires additional sources of cash or capital over the next thirty (30) to sixty (60) days in order to continue the operation of its business during the pendency of the Case and to effectuate the proposed sale of its assets to TBB. The Debtor has identified certain critical post-petition expenditures necessary to preserve the Estate and for which it must obtain financing. The Debtor's projected expenses are set forth by category in its budget (the "**Budget**") attached hereto as **Exhibit "1"**. The Budget contains those expenditures necessary to preserve the value of the Estate for the benefit of the Debtor's creditors, interest holders, and parties-in-interest;

Q. Based upon the projected revenues and expenses in the Budget, the Debtor has established that it requires additional financing on a post-petition basis, through August 25, 2017, in the amount of approximately \$150,000.00. TBB (the "**DIP Lender**") has advanced the Debtor \$150,000.00 (*i.e.*, the remaining availability under the TBB Note) (the "**DIP Facility**") at an interest rate of six percent (6%) per annum, on a post-petition secured basis on terms and conditions substantially similar to the TBB Note and other final documentation (the "**DIP Documents**"), with all obligations owing to the DIP Lender on account of the DIP Facility (the "**DIP Obligations**") secured by an allowed and perfected post-petition first priority priming lien on all now owned or after acquired assets of the Debtor and the Estate (the "**DIP Collateral**");

R. The terms and conditions of the DIP Facility were negotiated by the parties in good faith and at arms' length. Dataworks has exercised sound business judgment in

determining that the DIP Facility is appropriate and has satisfied the legal prerequisites to incur debt on the terms and conditions set forth herein. The terms of the DIP Facility are in the Estate's best interest. Accordingly, good and sufficient cause exists for granting the relief requested in the Motion.

Based on the foregoing findings of fact and conclusions of law, it is hereby:

ORDERED that the Motion is GRANTED as set forth herein; it is further

ORDERED that the Debtor is authorized to enter into the DIP Facility from the DIP Lender on the terms and conditions set forth in this Interim Order and the DIP Documents; it is further

ORDERED that the proceeds of the DIP Facility shall generally be used (i) to finance working capital needs and general corporate purposes of the Debtor, all in accordance with the applicable Budget, subject to certain conditions and expenditure variances and (ii) to pay the fees, costs, and expenses incurred by the Debtor in connection with the Case; it is further

ORDERED that the term "**Carve-Out**" in this Final Order shall mean (i) all fees required to be paid pursuant to 28 U.S.C. § 1930 and (ii) in the event of the occurrence and during the continuance of an Event of Default (defined below), the payment of allowed and unpaid professional fees and disbursements (collectively, "**Professional Fees**") incurred by the Debtor and any statutory committee (other than any such fees and disbursements incurred in connection with the investigation, initiation, or prosecution of any claims, causes of action, adversary proceedings or other litigation against the lender under the DIP Facility) during the pendency of the Case. The Carve-Out shall not exceed \$100,000 unless the DIP Lender consents in writing to an increased amount; it is further

ORDERED that the DIP Lender shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any case professionals incurred in connection with the Case or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed (i) to obligate the DIP Lender in any way to pay compensation to or to reimburse expenses of any case professional, (ii) to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement, (iii) as consent to the allowance of any Professional Fees or expenses of any case professionals, or (iv) to affect the right of the DIP Lender to object to the allowance and payment of such fees and expenses; it is further

ORDERED that pursuant to section 364(d)(1) of the Bankruptcy Code, the DIP Lender is hereby granted an automatically perfected security interests in and priming liens (the “**DIP Liens**”) on all of the DIP Collateral, which shall be shall be senior in priority and superior to any security, mortgage, collateral interest, lien, or claim on or to any of the DIP Collateral, *provided*, however, such liens are subordinate to the Carve-Out; it is further;

ORDERED that the Debtor is hereby authorized to use the Cash Collateral of TBB and the Prepetition Unperfected Secured Creditors, to the extent the Prepetition Unperfected Secured Creditors hold liens on the Cash Collateral, in accordance with the terms of the Budget. For each four month period, the aggregate actual expense of the Debtor shall not in any even exceed the aggregate amount budgeted therefore in the Budget for such period by more than ten percent (10%) and the actual expenditures by the Debtor shall not, for each line item in the Budget, exceed the amount budgeted for such line item in the Budget by more than twenty percent (20%) (the “**Authorized Variance**”), it is further

ORDERED that the Debtor shall update the Budget from time to time, in accordance with the DIP Documents. Any such modification of the Budget shall be subject to the approval of the DIP Lender and shall be filed with the Court; it is further

ORDERED that pursuant to sections 361, 363(e), and 364(d) of the Bankruptcy Code and as adequate protection for the use of its Cash Collateral, TBB is hereby granted automatically and properly perfected postposition security interests in and liens on the DIP Collateral (the "**TBB Adequate Protection Liens**") adequate protection, solely to the extent of diminution in the value, if any, to the Prepetition Collateral, which shall only be junior in priority to (i) the Carve-Out and (ii) the DIP Liens and otherwise senior to all other security interests in, liens on, or claims against any of the DIP Collateral; it is further

ORDERED that the following shall be considered "**Events of Default**" (i) the dismissal of the Case or conversion of the Case to a chapter 7 case, (ii) the appointment of a Chapter 11 trustee, a responsible officer or an examiner with enlarged powers (beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) relating to the operation of the business of the Debtor in the Case, (iii) the granting of any superpriority claim or lien which is *pari passu* with or senior to the claims or liens of the DIP lender in the Case, (iv) the commencement by the Debtor of actions adverse to the DIP Lender or its rights and remedies under the DIP Facility in the Case, (v) the failure of this Final Order be in full force and effect, including by the entry of an order reversing, amending, supplementing, staying for a period in excess of fourteen (14) days, vacating or otherwise modifying, in a manner that is adverse to the DIP Lender, this the Final Order, (vi) the failure of the Debtor to comply with the terms of this Final Order; (vii) the entry of an order by the Court terminating the use of Cash Collateral, (viii) the payment by the Debtor (by way of adequate protection or otherwise) of any principal or interest or other amount

on account of any prepetition indebtedness or payables (other than certain exceptions to be agreed upon by the DIP Lender), (ix) the entry of an order or orders granting relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party or third parties to proceed against any assets of the Debtor or to permit other actions that would have a material adverse effect on the Debtor or the Estate, (x) the rendering of any postpetition judgment(s) or order(s), excluding orders related to the Carve-Out, against the Debtor, the enforcement of which is not stayed or the rendering of any non-monetary judgment against the Debtor which causes or would reasonably be expected to cause a material adverse effect, (xi) the filing of a plan of reorganization that does not provide for the indefeasible payment in full upon confirmation in cash of all obligations owed to the DIP Lender, (xii) the failure to on or before 180 days after the commencement of the Case, to obtain an order of the Court approving a sale of the assets of the Debtor; (xiii) the termination of the Debtor's exclusivity period, (xiv) the cessation of work otherwise contemplated by the DIP Budget adversely affecting material current or planned business operations, (xv) the Debtor's violation of the covenants of the DIP Facility, (xvi) the incorrectness of representations and warranties in any material respect, and (xvii) the filing of any application or pleading by the Debtor seeking, or otherwise consenting to, any matters set forth above that would constitute an Event of Default; it is further

ORDERED that immediately upon the occurrence and during the continuation of an Event of Default, the DIP Lender, may declare (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction, or restriction of any further commitment to extend credit to the Debtor to the extent any such commitment remains, (iii) the termination of any DIP Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens or the DIP Obligations; and/or (iv)

terminate, reduce, or restrict the Debtor's ability to use any Cash Collateral, except for the payment of amounts contemplated by the Carve-Out (any such declaration, shall be referred to herein as a "**DIP Termination Declaration**"). The DIP Termination Declaration shall be given by facsimile (or other electronic means) to counsel to the Debtor, counsel to the Statutory Committee, if any, and the U.S. Trustee (and the earliest date any such DIP Termination Declaration is made shall be referred to herein as the "**DIP Termination Declaration Date**"). Any automatic stay otherwise applicable to the DIP Lender will be modified so that five (5) days after the DIP Termination Declaration Date (the "**DIP Remedies Notice Period**"), the DIP Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Documents and this Interim Order and shall be permitted to satisfy all DIP Obligations, subject only to the Carve-Out. During the DIP Remedies Notice Period, the Debtor and/or the statutory committee, if any, shall be entitled to seek an emergency hearing with the Court for the sole purpose of contesting whether an Event of Default has occurred. Unless the Court determines that an Event of Default has not occurred, the automatic stay, as to the DIP Lender, shall automatically be terminated at the end of the DIP Remedies Notice Period without further notice or order. Upon the expiration of the DIP Remedies Notice Period, the DIP Lender shall be permitted to exercise all remedies set forth herein, in the DIP Documents, and as otherwise available at law without any further order of or application or motion to the Court, and without restriction or restraint by any stay under sections 362 or 105 of the Bankruptcy Code, or otherwise, against the enforcement of the liens and security interest or any other rights and remedies granted to the DIP Lender pursuant to the DIP Documents, this Interim Order, or the Final Order; it is further

ORDERED that the DIP Lender has acted in good faith in connection with this Interim Order and its reliance on this Interim Order is in good faith. Based on the findings set forth in this Interim Order and the record made during the hearing to consider the relief requested in the Motion on an interim basis, and in accordance with section 364(e) of the Bankruptcy Code, in the event that any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any modification, amendment, or vacatur shall not affect the validity and enforceability of any advances made or made hereunder, or lien, claim, or priority authorized or created hereby. Any liens or claims granted to the DIP Lender arising prior to the effective date of such modification, amendment, or vacatur of this Interim Order shall be governed in all respects by the original provisions of this Interim Order, including entitlement to all rights, remedies, privileges, and benefits granted herein; it is further

ORDERED that nothing in this Final Order or the DIP Documents shall prejudice the rights of any statutory committee hereafter appointed, if granted standing by the Court, or any other party-in-interest, if granted standing by the Court, to seek, solely in accordance with the provisions of this paragraph, to initiate an adversary proceeding or contested matter asserting to challenge the amount, validity, enforceability, perfection, or priority of the Prepetition Obligations or the TBB Prepetition Liens or to otherwise assert any claims or causes of action against TBB; it is further

ORDERED that immediately upon the execution by this Court, the terms and provisions of this Final Order shall become valid and binding upon and inure to the benefit of the Debtor, the DIP Lender, all other creditors of the Debtor, and statutory committee or other committee

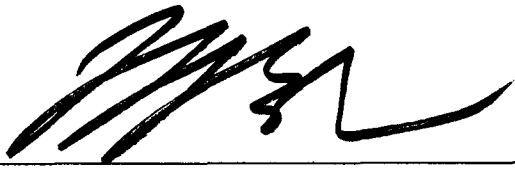
appointed by the Court, and all parties-in-interest and their respective successors and assigns, including any trustee or fiduciary hereafter appointed in the Case, or upon dismissal of the Case or any successor case(s); it is further

ORDERED that the automatic stay imposed by section 362 of the Bankruptcy Code is hereby vacated and modified to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Final Order; it is further;

ORDERED that in the event of any inconsistency between the terms of this Final Order and the DIP Documents, the provisions of this Final Order shall control; it is further

ORDERED that the Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

SIGNED this 24th day of May, 2017.



THE HONORABLE JEFF BOHM
UNITED STATES BANKRUPTCY JUDGE

Cash Forecast	Pre-petition												
	-1	0	1	2	3	4	5	6					
	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT
	21-Apr	28-Apr	5-May	12-May	19-May	26-May	2-Jun	9-Jun					
For week ending on Friday													
Opening balance	34,836												
DIP Financing		55,250		50,000									
AMEX					61,375								
Cash Receipts	10,868	21,846	31,246	-	30,295	25,966	-	-	-	-	-	-	25,000
Total Cash Receipts	45,704	77,096	31,246	50,000	91,670	25,966							25,000
Cash Disbursements:													
Operating:													
Salaries, Wages & Benefits		69,000		70,000		69,000							
Sales Commission													
Insurance Auto & D&O					7,706								
Accounts Payable payoff pre filing/ AP		24,873	6,745	-	-	2,396	6,750						
Hosting Cost Expense													
Audit Fee expense advance (two years)				1,500		55,000							1,500
Employee Expenses						1,500							
Sales Taxes			905		1,450								
Other- monthly debits										905			
Restructuring Costs:													
Trustee Fees													
Legal Fees													
Total Disbursements	93,873	7,650	71,500	9,156	127,896	7,655	1,500						
Net Cash Flow change	45,704	(16,777)	23,595	(21,500)	82,514	(101,930)	(7,655)	23,500					
Cash balances	45,704	28,927	52,522	31,022	113,536	11,606	3,951	27,451					

		Post-Petition													
		7	8	9	10	11	12	13	14	15	16	17			
		ICI	ICI	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT	FCT
		16-Jun	23-Jun	30-Jun	7-Jul	14-Jul	21-Jul	28-Jul	4-Aug	11-Aug	18-Aug	25-Aug			
				100,000											
		61,375	-	-	-	61,375	-	-	-	-	-	-	61,375	-	-
		30,295	25,966	-	-	18,567	30,295	25,966	-	18,567	30,295	25,966	30,295	25,966	25,966
		91,670	25,966	100,000		18,567	91,670	25,966		18,567	91,670	25,966	91,670	25,966	25,966
		70,000		69,000		70,000		69,000					70,000		
		-	4,517	-	-	-	-	4,517	14,082	-	-	-	-	4,517	4,517
		-	2,396	-	6,750	-	-	2,396	6,750	-	-	-	-	-	-
		-	11,000	-	-	-	11,000	-	-	-	-	-	-	-	11,000
		1,450	1,500	1,450	1,500	1,500	1,500	1,500	905	1,500	1,450	1,500	1,500	1,500	1,500
				905									905		
				69,905	8,250	76,450	12,500	88,412	21,737	7,950	70,000	22,017			
		71,450	19,412	69,905	8,250	76,450	12,500	88,412	21,737	7,950	70,000	22,017			
		20,220	6,554	30,095	(8,250)	(57,883)	79,170	(62,446)	(21,737)	10,617	21,670	3,950			
		47,671	54,225	84,320	76,070	18,187	97,357	34,911	13,174	23,791	45,461	49,411			