



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: November 01, 2017.

**H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

In re

EPTMS, INC.,

Debtor.

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Case No. 17-31729-HCM-11

**ORDER GRANTING INTERIM PERMISSION
TO USE CASH COLLATERAL**

On October 31, 2017 in El Paso the Court considered the Motion of the Debtor-in-Possession EPTMS, INC., for Authority to Use Cash Collateral on an Interim basis (“the Motion”). Appearing before the Court were JAY HURST of the TEXAS ATTORNEY GENERAL’S OFFICE on behalf of the TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, who filed an Objection to the Motion; CHRISTOPHER MURRAY of Diamond-McCarthy, Houston, Texas, on behalf of PEARL DELTA FUNDING, LLC; KEVIN M. EPSTEIN of THE UNITED STATES TRUSTEE’S OFFICE; and E.P. BUD KIRK on behalf of the Debtor. Not appearing at the hearing, though notified of the time, place, and subject matter, were KABBAGE, INC. (hereinafter “KABBAGE”) and RAPID CAPITAL ADVANCE (hereinafter “RAPID ADVANCE”). The Court heard evidence and viewed security instruments and an interim operating budget supplied by the Debtor. The Court heard the position of the

COMPTRROLLER, that a significant portion of the funds currently in the Debtor's operating account at BANK OF AMERICA appear to be sales tax moneys collected by the Debtor for the COMPTRROLLER, but that the COMPTRROLLER is amenable to an interim use of cash collateral, provided that the extent of that collected sales tax can be determined and adequate protection measures can be fashioned for the COMPTRROLLER, at a later date near to hand.

Based on the foregoing and on the announcements of Mr. MURRAY for PEARL DELTA FUNDING, LLC, the Court finds that irreparable harm will befall the Debtor if it is not allowed the interim use of cash collateral. The identification, value, and extent of the Debtor's cash collateral, and the terms of adequate protection as stated herein, are without prejudice to any party-in-interest's right to contest the same in a later proceeding, for confirmation purposes or otherwise.

The Court, having made findings and seeing good cause for the Motion, hereby GRANTS the Motion, on an interim basis. Counsel for EPTMS, INC. shall be responsible for notices to all parties in interest, that the use of cash collateral is APPROVED on an interim basis, upon the terms set forth below, until this Court can hold a final hearing upon the use of cash collateral. Any parties in interest who wish to object to these terms for cash collateral use, should file their objections with the Clerk of this Court by the 8th day of December, 2017, and appear to be heard thereon in this Court in El Paso **December 12, 2017 at 11:00 a.m. (MT)**. The Objection of the COMPTRROLLER to cash collateral use (and to the Debtor's proposed adequate protection payments to RAPID ADVANCE, KABBAGE, and PEARL DELTA) will be taken up anew at that hearing, and all of the COMPTRROLLER's rights are reserved notwithstanding the interim relief here granted.

It is ORDERED on an interim basis that EPTMS, INC. may use cash collateral under these conditions:

- a) The Court hereby ORDERS that the automatic stay applies to all creditors holding interests in the cash equivalents including the Debtor's BANK OF AMERICA account #-4919. PEARL DELTA is ORDERED to remove

immediately all restraints (and any other impediments it has placed directly or indirectly) upon the Debtor's use of that account.

- b) The Court hereby awards replacement liens upon the cash equivalents identified in the Motion, to RAPID CAPITAL ADVANCE, to KABBAGE, INC. and to PEARL DELTA FUNDING, LLC in the order of priority that existed on petition date, October 25, 2017.
- c) The Court is measuring the extent of the replacement liens according to the value of the collateral that existed on petition date, including the sums on deposit in BANK OF AMERICA, subject to whatever interest the COMPTROLLER may have therein.
- d) The Court hereby ORDERS that EPTMS, INC. keep the inventory adequately insured against fire, theft, water damage, and other hazards.
- e) The Court hereby ORDERS EPTMS, INC. to make interim monthly adequate protection payments, as follows:
 - 1. to RAPID CAPITAL ADVANCE, \$13,995.00 each Friday, starting November 24, 2017.
 - 2. to KABBAGE, INC., \$10,228.00 each month, starting November 24, 2017.
 - 3. to PEARL DELTA FUNDING, LLC, \$7,000 each Friday starting November 24, 2017.
- f) The Court hereby ORDERS that EPTMS, INC. file Monthly Operating Reports according to the Guidelines for Debtors-in-Possession published by the United States Trustee's Office, and furnish email access information to RAPID CAPITAL ADVANCE, KABBAGE, INC., PEARL DELTA FUNDING, LLC, and the COMPTROLLER, so that they can review such Operating Reports.

- g) The Court hereby ORDERS that EPTMS, INC. shall open a special segregated Debtor-in-Possession account into which it must deposit all post-petition sales tax collected, as soon as the EPTMS, INC. has a feasible way to extract the sales tax from each sale. EPTMS, INC. shall file and pay fully all sales tax returns on time during the pendency of this case.
- h) The Court hereby ORDERS that the Debtor may use the cash equivalents only in the ordinary course of business and according to the proposed monthly budget hereto attached as Exhibit "A," allowing for a variation of up to 15% for each line item, or for a variation of up to 15% for all items combined if individual line items exceed 15% of the estimate.
- i) The Court hereby ORDERS that the cash collateral be maintained at the aggregate level on hand for each creditor as of petition date, less amounts paid to that creditor from sales and operations under this interim order.
- j) The Court hereby ORDERS that RAPID CAPITAL ADVANCE, KABBAGE, INC., PEARL DELTA FUNDING, LLC, and the COMPTROLLER shall each have rights to inspect its collateral and the Debtor's books and records on site during regular business hours for EPTMS, INC. upon reasonable advance notice of at least five business days. Debtor shall promptly furnish to the COMPTROLLER bank records showing daily balances from August 1, to petition date.
- k) The Court hereby ORDERS that if EPTMC, INC. defaults upon any of the above requirements, the creditor who did not receive the required performance, may, at its option, send 15 days' written notice identifying the default, to EPTMS, INC. at ricardo915449@live.com and to the Debtor's counsel E.P. BUD KIRK at budkirk@aol.com, to cure the default, failing which, authorization to use that creditor's cash collateral shall cease.

- l) The Court encourages RAPID CAPITAL ADVANCE, KABBAGE, INC., and PEARL DELTA FUNDING to confer with the COMPTROLLER and the Debtor, to determine a consensual means by which the COMPTROLLER may recover all funds in BANK OF AMERICA account #-4919 that were property of the COMPTROLLER. If no consensual basis is reached before the December 12, 2017 hearing, the Court intends to fashion adequate protection for the COMPTROLLER at the December 12, 2017 hearing. Whether any further adequate protection payments to RAPID CAPITAL ADVANCE, KABBAGE, INC., and PEARL DELTA will be ordered, from December 12, 2017 until the COMPTROLLER has received all of its sales tax money, is to be decided at the December 12, 2017 hearing. The Court will then take up the Motion for Adequate Protection payments which the COMPTROLLER filed on October 30, 2017 (doc. #14).
- m) EPTMS, INC. may include pre-petition wages from October 16 to 24 in the payroll that is due on November 1, 2017 up to the limit for priority prescribed in 11 U.S.C. § 507(a)(4).

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Submitted by:

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Attorney for Debtor-in-Possession

EXHIBIT "A"

The Witness Store

EXPENSES	1885 Joe Bettle	7955 N. Mesa	9580 Vizcount	9813 Dyer	6155 N. Mesa	TOTALS	315 S. Tethor	SUBTOTAL		
Advertising Sign Walkers	907.39	890.89	894.39	844.23	875.00	4,411.90	815.23	5,227.13		
OTHERS TUBES	88.38	88.38	88.38	88.38	88.38	441.91	88.38	530.29		
HORIZON PRINTING	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
MERCHANT FEE'S	938.91	1,139.05	845.82	2,757.05	1,000.00	6,730.82	1,077.41	7,808.23		
GE MONEY DISCOUNT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Bank Service Charges - Other	109.53	109.53	109.53	109.53	109.53	547.65	109.53	657.18		
COMPUTER	64.96	64.96	64.96	64.96	64.96	324.78	64.96	389.74		
Equipment Rental	436.36	436.36	436.36	436.36	436.36	2,181.82	436.36	2,618.18		
EXTERMINATOR	30.52	30.52	30.52	30.52	30.52	152.61	15.01	167.62		
FEDERAL TAXES	25.01	25.01	25.01	25.01	25.01	125.06	25.01	150.07		
FREIGHT	2,232.44	2,232.44	2,232.44	2,232.44	2,232.44	11,162.18	2,232.44	13,394.62		
GAS FOR TRUCK	337.38	337.38	337.38	337.38	337.38	1,686.91	337.38	2,024.29		
Insurance Expense	245.21	245.21	245.21	245.21	245.21	1,226.04	245.21	1,471.25		
Janitorial Expense	113.24	113.24	113.24	113.24	113.24	566.21	113.24	679.45		
LEGAL FEES	206.00	206.00	206.00	206.00	206.00	1,030.00	206.00	1,236.00		
Meets and Entertainment	58.83	58.83	58.83	58.83	58.83	294.14	58.83	352.97		
Miscellaneous Expense	57.42	57.42	57.42	57.42	57.42	287.09	57.42	344.51		
Office Supplies	220.24	220.24	220.24	220.24	220.24	1,101.19	220.24	1,321.43		
Permits	14.33	14.33	14.33	14.33	14.33	71.67	14.33	86.01		
Professional Fees	329.02	329.02	329.02	329.02	329.02	1,645.11	329.02	1,974.13		
Rent Expense	8,729.00	8,067.00	9,017.00	3,500.11	6,801.18	36,114.29	3,396.00	39,510.29		
WAREHOUSE	477.29	477.29	477.29	477.29	477.29	2,386.44	477.29	2,863.73		
TRUCK MAINT	117.90	117.90	117.90	117.90	117.90	589.50	117.90	707.41		
MAINTENANCE	324.42	324.42	324.42	324.42	324.42	1,622.10	324.42	1,946.52		
Taxes	292.54	292.54	292.54	292.54	292.54	1,462.70	292.54	1,755.24		
WAREHOUSE-UTILITIES	64.66	64.66	64.66	64.66	64.66	323.30	64.66	387.96		
ELECTRIC	839.03	730.54	739.23	474.17	0.00	2,782.96	1,115.97	3,898.93		
WATER	122.83	174.63	44.86	0.00	0.00	342.32	0.00	342.32		
GAS	56.69	59.16	51.03	0.00	0.00	166.88	123.26	290.15		
TRASH PICK UP	28.61	28.61	28.61	28.61	28.61	143.03	28.61	171.63		
Telephone Expense	276.13	241.97	226.87	0.00	279.74	1,024.71	340.06	1,364.76		
CELL RS/OAC/SHI	23.25	23.25	23.25	23.25	23.25	116.24	23.25	139.49		
Internet Expense	58.72	91.47	56.58	386.85	0.00	593.73	125.24	718.97		
TIME WARNER	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
Travel Expense	138.36	138.36	138.36	138.36	138.36	691.78	138.36	830.13		
OSCAR	266.05	266.05	266.05	266.05	266.05	1,330.24	266.05	1,596.28		
RICARDO	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00		
JONATHAN MITEZ/DEZ	543.56	543.56	543.56	543.56	543.56	2,717.82	543.56	3,261.38		
OFFICE	529.63	529.63	529.63	529.63	529.63	2,648.16	529.63	3,177.79		
STORE MANAGER	4,500.00	4,500.00	4,500.00	4,500.00	4,500.00	22,500.00	4,500.00	27,000.00		
ROVER DRAW	2,051.74	2,051.74	2,051.74	2,051.74	2,051.74	10,258.71	2,051.74	12,310.45		
OTHERS RS	2,192.98	2,192.98	2,192.98	2,192.98	2,192.98	10,964.91	2,192.98	13,157.89		
TOTAL EXPENSES	28,058.55	27,514.57	27,995.75	24,082.28	25,075.78	132,766.91	0.00	23,097.51	0.00	155,864.42

130,000.00	100,000.00	66,000.00	84,000.00	59,000.00	439,000.00	80,000.00	519,000.00		
43.00%	43.00%	43.00%	43.00%	43.00%	43.00%	43.00%			
55,900.00	43,000.00	28,380.00	36,120.00	25,370.00	0.00	188,770.00	0.00	34,400.00	223,170.00
28,058.55	27,514.57	27,995.75	24,082.28	25,075.78	0.00	132,766.91	0.00	23,097.51	155,864.42
27,801.45	15,485.43	384.25	12,037.74	294.22	0.00	56,003.09	0.00	11,302.49	67,305.58

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EXPENSES	2711 Corbise	3400 NM 528	ST FRANCIS	ORILLA	SUBTOTAL	TOTALS
Advertising Sign Walkers	982.83	962.42	958.33	958.33	3,861.92	9,089.04
OTHERS TUBES	88.38	88.38	88.38	88.38	353.53	883.62
HORIZON PRINTING	0.00	0.00	0.00	0.00	0.00	0.00
MERCHANT FEE'S	1,331.06	1,334.68	1,000.00	1,000.00	4,665.74	12,473.97
GE MONEY DISCOUNT	0.00	0.00	0.00	0.00	0.00	0.00
Bank Service Charges - Other	109.53	109.53	109.53	109.53	438.12	1,095.30
COMPUTER	67.02	67.02	67.02	67.02	268.08	657.82
Equipment Rental	279.82	279.82	279.82	279.82	1,119.26	3,737.45
EXTERMINATOR	65.04	65.04	65.04	65.04	260.17	427.78
FEDERAL TAXES	25.01	25.01	25.01	25.01	100.05	250.12
FREIGHT	1,678.47	1,678.47	1,678.47	1,678.47	6,713.86	20,109.48
GAS FOR TRUCK	224.05	224.05	224.05	224.05	896.19	2,920.48
Insurance Expense	245.21	245.21	245.21	245.21	980.83	2,452.06
Janitorial Expense	52.54	52.54	52.54	52.54	210.17	889.62
LEGAL FEES	10.50	10.50	10.50	10.50	41.98	1,277.68
Meets and Entertainment	33.97	33.97	33.97	33.97	135.88	488.83
Miscellaneous Expense	27.76	27.76	27.76	27.76	111.06	455.57
Office Supplies	156.93	156.93	156.93	156.93	627.73	1,949.10
Permits	6.57	6.57	6.57	6.57	26.27	112.27
Professional Fees	329.02	329.02	329.02	329.02	1,316.09	3,290.22
Rent Expense	7,708.15	11,304.00	8,274.00	8,274.00	35,560.15	75,070.43
WAREHOUSE	387.50	387.50	387.50	387.50	1,550.00	4,413.73
TRUCK MAINT	167.73	167.73	167.73	167.73	670.93	1,378.34
MAINTENANCE	43.71	43.71	43.71	43.71	174.84	2,121.37
Taxes	4.57	4.57	4.57	4.57	18.29	1,773.53
WAREHOUSE-UTILITIES	89.49	89.49	89.49	89.49	357.95	745.91
ELECTRIC	514.00	402.15	583.33	583.33	2,082.81	5,081.75
WATER	120.25	0.00	0.00	0.00	120.25	482.57
GAS	52.07	30.33	50.00	50.00	182.39	472.54
TRASH PICK UP	0.00	0.00	0.00	0.00	0.00	171.63
Telephone Expense	331.98	325.59	335.87	335.87	1,329.31	2,894.08
CELL RS/OAC/SHI	23.25	23.25	23.25	23.25	92.99	232.48
Internet Expense	69.96	0.00	0.00	0.00	69.96	788.93
TIME WARNER	0.00	0.00	0.00	0.00	0.00	0.00
Travel Expense	146.58	146.58	146.58	146.58	586.32	1,416.43
OSCAR	266.05	266.05	266.05	266.05	1,064.19	2,880.47
RICARDO	0.00	0.00	0.00	0.00	0.00	0.00
CHRIS/MIYCAH	1,000.72	1,000.72	1,000.72	1,000.72	4,002.89	7,284.27
OFFICE	529.63	529.63	529.63	529.63	2,118.53	5,298.31
STORE MANAGER	6,000.00	3,500.00	3,000.00	3,000.00	15,500.00	42,500.00
ROVER DRAW	1,353.91	1,353.91	1,353.91	1,353.91	5,415.63	17,728.08
OTHERS RS	2,192.98	2,192.98	2,192.98	2,192.98	8,771.93	21,920.62
TOTALS	26,716.22	27,465.11	23,807.48	23,207.47	101,796.28	237,660.71

120,000.00	98,000.00	65,500.00	65,500.00	349,000.00	868,000.00
43.00%	43.00%	43.00%	43.00%		
51,600.00	39,540.00	28,165.00	28,165.00	141,470.00	364,640.00
26,716.22	33,316.31	27,924.76	27,924.76	115,802.05	271,666.47
24,883.78	303.69	240.24	240.24	25,667.95	92,973.53

The Mattress Store

EL PASO

EXPENSES	5020 N. Desert	1860 Zaragoza	9100 Dyer	SUBTOTAL
Advertising Sign Walkers	890.89	901.56	840.64	2,633.09
OTHERS TUBES	88.38	88.38	88.38	265.15
MERCHANT FEE'S	1,139.05	1,145.76	787.32	3,072.13
GE MONEY DISCOUNT	0.00	0.00	0.00	0.00
Bank Service Charges - Other	109.53	109.53	109.53	328.59
COMPUTER	64.96	64.96	64.96	194.87
Equipment Rental	436.36	436.36	436.36	1,309.09
EXTERMINATOR	30.52	30.52	30.52	91.57
FEDERAL TAXES	25.01	25.01	25.01	75.04
FREIGHT	2,232.44	2,232.44	2,232.44	6,697.31
GAS FOR TRUCK	337.38	337.38	337.38	1,012.15
Insurance Expense	245.21	245.21	245.21	735.63
Janitorial Expense	113.24	113.24	113.24	339.73
LEGAL FEES	206.00	206.00	206.00	618.00
Meals and Entertainment	58.83	58.83	58.83	176.49
Miscellaneous Expense	57.42	57.42	57.42	172.25
Office Supplies	220.24	220.24	220.24	660.72
Permits	14.33	14.33	14.33	43.00
Professional Fees	329.02	329.02	329.02	987.07
Rent Expense	6,918.50	15,700.00	6,575.00	29,193.50
WAREHOUSE	477.29	477.29	477.29	1,431.86
TRUCK MAINT	117.90	117.90	117.90	353.70
MAINTENANCE	324.42	324.42	324.42	973.26
Taxes	292.54	292.54	292.54	877.62
WAREHOUSE-UTILITIES	64.66	64.66	64.66	193.98
ELECTRIC	730.54	1,015.11	424.64	2,170.29
WATER	174.63	418.39	0.00	593.02
GAS	59.16	46.20	55.52	160.88
TRASH PICK UP	28.61	115.31	28.61	172.52
Telephone Expense	241.97	279.38	204.11	725.46
CELL RS/OAC/SHI	23.25	23.25	23.25	69.74
Internet Expense	91.47	38.03	52.21	181.71
TIME WARNER	0.00	0.00	0.00	0.00
Travel Expense	138.36	138.36	138.36	415.07
OSCAR	266.05	266.05	266.05	798.14
JONATHAN MITEZ/HDEZ	543.56	543.56	543.56	1,630.69
OFFICE	529.63	529.63	529.63	1,588.89
STORE MANAGER	2,154.66	6,335.74	3,894.65	12,385.04
ROVER DRAW	2,051.74	2,051.74	2,051.74	6,155.22
OTHERS RS	2,192.98	2,192.98	2,192.98	6,578.95
				0.00
TOTAL EXPENSES	23,129.84	36,685.17	23,613.30	83,428.31

75,000.00	75,000.00	75,000.00	225,000.00
55.00%	55.00%	55.00%	
41,250.00	41,250.00	41,250.00	123,750.00
23,129.84	36,685.17	23,613.30	83,428.31
18,120.16	4,564.83	17,636.70	40,321.69

ALBUQUERQUE

EXPENSES	LA MONICA	SAN MATEO	SUBTOTAL
Advertising Sign Walkers	962.58	958.33	1,920.92
OTHERS TUBES	88.38	88.38	176.76
MERCHANT FEE'S	450.48	1,000.00	1,450.48
GE MONEY DISCOUNT	0.00	0.00	0.00
Bank Service Charges - Other	109.53	109.53	219.06
COMPUTER	67.02	67.02	134.04
Equipment Rental	279.82	279.82	559.63
EXTERMINATOR	65.04	65.04	130.08
FEDERAL TAXES	25.01	25.01	50.02
FREIGHT	1,678.47	1,678.47	3,356.93
GAS FOR TRUCK	224.05	224.05	448.10
Insurance Expense	245.21	245.21	490.42
Janitorial Expense	52.54	52.54	105.08
LEGAL FEES	10.50	10.50	20.99
Meals and Entertainment	33.97	33.97	67.94
Miscellaneous Expense	27.76	27.76	55.53
Office Supplies	156.93	156.93	313.87
Permits	6.57	6.57	13.13
Professional Fees	329.02	329.02	658.04
Rent Expense	11,242.67	6,939.91	18,182.58
WAREHOUSE	387.50	387.50	775.00
TRUCK MAINT	167.73	167.73	335.47
MAINTENANCE	43.71	43.71	87.42
Taxes	4.57	4.57	9.15
WAREHOUSE-UTILITIES	89.49	89.49	178.97
ELECTRIC	570.06	583.33	1,153.39
WATER	0.00	0.00	0.00
GAS	25.05	44.00	69.05
TRASH PICK UP	0.00	0.00	0.00
Telephone Expense	290.71	335.87	626.58
CELL RS/OAC/SHI	23.25	23.25	46.50
Internet Expense	0.00	0.00	0.00
TIME WARNER	0.00	0.00	0.00
Travel Expense	146.58	146.58	293.16
OSCAR	266.05	266.05	532.09
CHRIS/MYCAH	1,000.72	1,000.72	2,001.44
OFFICE	529.63	529.63	1,059.26
STORE MANAGER	2,102.54	0.00	2,102.54
ROVER DRAW	1,353.91	1,353.91	2,707.82
OTHERS RS	2,192.98	2,192.98	4,385.96
			0.00
TOTALS	25,250.04	19,467.39	44,717.43

75,000.00	75,000.00	150,000.00
55.00%	55.00%	
41,250.00	41,250.00	82,500.00
25,250.04	19,467.39	44,717.43
15,999.96	21,782.61	37,782.57

TOTALS
4,554.01
441.91
4,522.61
0.00
547.65
328.91
1,868.72
221.65
125.06
10,054.24
1,460.24
1,226.04
444.81
638.99
244.42
227.78
974.58
56.14
1,645.11
47,376.08
2,206.66
689.17
1,060.68
886.77
372.95
3,323.68
593.02
229.93
172.52
1,352.05
116.24
181.71
0.00
708.23
1,330.24
3,632.13
2,648.16
14,487.59
8,863.04
10,964.91
0.00
128,145.74