

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: ) Chapter 11  
)  
AcuSport Corporation, ) Case No. 18-52736  
)  
Debtor. ) Honorable John E. Hoffman, Jr.

**MOTION FOR AUTHORITY TO CONTINUE USE OF  
EXISTING BANK ACCOUNTS, BUSINESS FORMS, AND CASH  
MANAGEMENT SYSTEM, AND FOR WAIVER OF INVESTMENT GUIDELINES**

AcuSport Corporation, the debtor and debtor in possession (“*Debtor*” or “*AcuSport*”) in this chapter 11 case (the “*Case*”), files this motion (the “*Motion*”) for entry of an order, pursuant to sections 105(a), 345(b), 363, 1107, and 1108 of title 11 of the United States Code (the “*Bankruptcy Code*”), authorizing (i) maintenance and continued use of Debtor’s existing bank accounts and business forms; (ii) the continued use of Debtor’s cash management system and procedures; and (iii) a waiver of the deposit and investment requirements under section 345(b) of the Bankruptcy Code. In support of this Motion, Debtor respectfully states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

2. On May 1, 2018 (the “*Petition Date*”), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Ohio (the “*Court*”). Debtor continues to manage and operate its business as a debtor in possession pursuant to 11 U.S.C. §§ 1107 and 1108.

3. No request has been made for the appointment of a trustee or examiner in the Case, and no official committee has been appointed in the Case.

4. A detailed description of Debtor's business, capital structure, and events leading to this Case is more fully set forth in the Declaration of John K. Flanagan (the "***Flanagan Declaration***") filed contemporaneously herewith, which is incorporated herein by reference.<sup>1</sup>

5. AcuSport is recognized nationwide as one of the leading distributors of outdoor and shooting sports products. The company is headquartered in Bellefontaine, Ohio and has regional sales offices in Pennsylvania, Georgia, Minnesota, Montana, California and Texas. To ensure and enable customer service to the West Coast, AcuSport also operates a warehouse and distribution facility located in Salt Lake City, Utah.

6. As part of its business, AcuSport provides consulting services to independent retailers, helping them to efficiently acquire products, utilize state-of-the-art business tools and provide value-added services that increase profitability and strengthen retailers' businesses. AcuSport's commitment to independent retailers is the cornerstone of its business.

7. AcuSport prospered for years following its inception in 1982, with substantial sales growth leading to the expansion of its facility in Bellefontaine. However, AcuSport began to experience financial difficulty in late 2016 and early 2017.

8. In the time leading up to the 2016 presidential election, consumers were concerned about the possibility of stricter gun control laws, which led to increased sales of firearms and accessories. As a result, AcuSport, along with other firearms businesses, prepared for a spike in demand by, among other things, purchasing substantial amounts of inventory.

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Flanagan Declaration.

Contrary to expectations, no spike in demand for firearms occurred following the 2016 election. Indeed, demand decreased. The reduction in sales directly impacted AcuSport's gross revenue, and, ultimately, its bottom line. The harm to AcuSport's financial position was further exacerbated because AcuSport had expected — and prepared for — an increase in sales. The reduction in sales negatively impacted AcuSport's operational performance, resulting in defaults under AcuSport's prepetition secured credit agreement, and ultimately, the company entered into a series of forbearance agreements with the Prepetition Lenders.

9. In connection with the forbearance agreements with the Prepetition Lenders, AcuSport retained Huron Consulting Services LLC as its financial advisor and Huron Transaction Advisory LLC as its investment banker. AcuSport also agreed to seek a refinancing process of its secured debt obligations. Huron Transaction Advisory LLC was retained for the purposes of preparing, marketing, and leading the consummation of one or more potential strategic alternatives, including a refinancing process, and eventually, a sale process. In that regard, AcuSport spent several months prior to the filing of this Case exploring potential sales and other strategic options.

10. AcuSport eventually obtained an offer from United Sporting Companies, Inc. ("*United*") to purchase (through an affiliate), among other things, AcuSport's inventory, real estate, equipment, technology, and certain other intangible assets. In order to effectuate a transaction to United (or another higher or better bidder or bidders), and to maximize the value of its assets for the benefit of all its constituents, AcuSport filed for bankruptcy relief and has sought the approval of bidding and sale procedures with United as the stalking horse.

#### **BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM**

11. Debtor seeks to maintain its six (6) existing bank accounts (the "*Bank Accounts*") at Wells Fargo Bank NA ("*Wells Fargo*") and at PNC Bank, NA ("*PNC Bank*") and to continue

its existing cash management system (the “*Cash Management System*”). A diagram showing Debtor’s Cash Management System and Bank Accounts is attached hereto as Exhibit A.

12. With respect to Wells Fargo, Debtor currently maintains five (5) separate accounts. These accounts are internally labeled and described as follows:

- (a) Master Operating Account, No. XXXXXX8529
- (b) Depository Account, No. XXXXXX8511
- (c) Payroll Account, No. XXXXXX8552
- (d) ACH/Wire Account, No. XXXXXX8560
- (e) Controlled Disbursement Account, No. XXXXXX1869

13. With respect to PNC Bank, Debtor currently maintains one (1) account known as its Local Depository Account, No. XX-XXXX-5627.

14. Each of these Bank Accounts is maintained for separate and distinct business purposes in support of Debtor’s Cash Management System. The depository account at Wells Fargo (the “*Depository Account*”) serves as the collection point for funds moving through the Cash Management System. No ACH originations or wire transfers are authorized from the Depository Account, and no checks or withdrawals are permitted therefrom. The local depository account at PNC Bank serves as a local depository account, from which funds are swept to the Wells Fargo Depository Account on a daily basis.

15. The master operating account at Wells Fargo serves as Debtor’s central operations account. The funds in this account are transferred to the payroll account, the ACH/Wire account, or the controlled disbursement account at Wells Fargo to facilitate orderly payments for payroll, to vendors, and for other operations expenses.

16. In addition, in connection with certain of the Bank Accounts and as a customary business practice, Debtor uses various checks and other business forms, including, without limitation, letterhead, purchase orders, and invoices (collectively, the “*Checks and Business Forms*”).

### **RELIEF REQUESTED**

17. By this Motion, Debtor seeks entry of an order substantially in the form attached hereto as Exhibit B, pursuant to sections 105(a), 345(b), 363, 1107, and 1108 of the Bankruptcy Code, authorizing (i) maintenance and continued use of Debtor’s existing Bank Accounts along with Debtor’s existing Checks and Business Forms; (ii) the continued use of Debtor’s existing Cash Management System and procedures; and (iii) a waiver of the deposit and investment requirements under section 345(b) of the Bankruptcy Code.

### **BASIS FOR RELIEF REQUESTED**

#### **A. The Court Should Approve Debtor’s Continued Use of Bank Accounts and Checks and Business Forms.**

18. The Office of the United States Trustee for Region 9, comprising the judicial districts of the states of Ohio and Michigan, has established certain operating instructions for debtors in possession to govern the administration of chapter 11 cases (the “*Operating Instructions*”). The Operating Instructions require chapter 11 debtors to, among other things: (a) close all existing bank accounts; (b) establish new debtor in possession bank accounts: a general operating account, a tax account, and, under certain conditions, a payroll account; (c) maintain a separate debtor in possession account for cash collateral; and (d) obtain checks for all debtor in possession accounts that bear the case name and number and clearly indicate that the accountholder is a “debtor in possession.”

19. The Operating Instructions are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, and to prevent inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. Strict enforcement of the Operating Instructions in this Case, however, would severely disrupt the ordinary financial operations of Debtor by reducing efficiencies and causing unnecessary expense.

20. Section 363(c)(1) of the Bankruptcy Code authorizes debtors in possession to “use property of the estate in the ordinary course of business.” *See* 11 U.S.C. § 363(c)(1). The purpose of this statute is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or a court. *See Medical Malpractice Ins. Ass’n v. Hirsh (In re Lavigne)*, 114 F.3d 379, 384 (2nd Cir. 1997). Included within the purview of section 363(c) is a debtor’s ability to continue the “routine transactions” involving its accounts as necessitated by a debtor’s cash management system. *See Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996).

21. Additionally, the Court may exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process or judgment that is necessary to carry out the provisions of this title.” 11 U.S.C. § 105(a). Continuing Debtor’s use of its Bank Accounts without interruption is critical to Debtor’s reorganization efforts.

22. Courts in this district have granted the same or similar relief on numerous occasions. *See e.g., In re Eden Cryogenics, LLC*, Case No. 2:14-bk-53294, Dkt. No. 37 (Bankr. S.D. Ohio May 15, 2014); *In re First Community Village*, Case No. 2:10-bk-54533, Dkt. No. 74

(Bankr. S.D. Ohio May 5, 2010); *In re Triad Resources, Inc.*, Case No. 2:08-bk-62733, Dkt. No. 51 (Bankr. S.D. Ohio Jan. 9, 2009); *In re The Antioch Company*, Case No. 3:08-bk-35741, Dkt. No. 73 (Bankr. S.D. Ohio Nov. 14, 2008); *In re The Wornick Company*, Case No. 1:08-bk-10654, Dkt. No. 63 (Bankr. S.D. Ohio Feb. 15, 2008).

23. Accordingly, Debtor seeks a waiver of the United States Trustee's requirements that Debtor close the Bank Accounts and open new accounts. Replacing the Bank Accounts in this Case would cause a disruption in Debtor's business and would divert resources away from Debtor's business operations and reorganization efforts. Debtor's accounts are part of an established cash management system that Debtor needs to maintain to ensure smooth collections and disbursements in the ordinary course of its business.

24. Both Wells Fargo and PNC Bank, where the Bank Accounts are maintained, are authorized depositories under the Operating Instructions.

25. Debtor seeks to maintain the Bank Accounts to avoid delays in payments to administrative creditors, to ensure uninterrupted collection of payments from its customers, to ensure as smooth a transition into chapter 11 as soon as possible with minimal disruption, and to aid in Debtor's efforts to successfully complete its sale process and maximize value for Debtor's creditors. The maintenance of the Bank Accounts provides stability, continuity, and convenience to Debtor, its customers, and its creditors at a time when mutual cooperation will assist in Debtor's ability to function effectively and preserve value in its Case. Debtor also seeks the authority to, if necessary, open new accounts (while giving the U.S. Trustee notice of such newly opened accounts), wherever they are needed.

26. Debtor acknowledges that it does not have the authority to pay any debts incurred before the Petition Date without prior approval from the Court. Debtor has the capability of

determining what, if any, checks are unpaid and outstanding as of the Petition Date. Debtor will direct each bank at which Debtor maintains the Bank Accounts not to pay any prepetition debts unless authorized by the Court.

27. Furthermore, to minimize expenses to its estate, Debtor requests that the Court authorize it to continue to use all existing Checks and Business Forms as they existed immediately prior to the Petition Date without reference to Debtor's status as debtor in possession.

28. Debtor will advise parties doing business with it of Debtor's status as a debtor in possession if they do not otherwise receive direct notice of the commencement of the Case.

29. Destruction of all of Debtor's existing Checks and Business Forms would be a waste of the estate's resources. Moreover, purchasing new correspondence, letterhead, checks, and other business forms would be expensive and burdensome to Debtor's estate and disruptive to Debtor's business operations, without conferring any benefit upon those dealing with Debtor or its estate. For these reasons, Debtor requests that the Court authorize it to use the existing Checks and Business Forms without being required to order new checks or business forms bearing the case name, case number, and identifying Debtor as a "debtor in possession" on each.

**B. The Court Should Approve Debtor's Continued Use of Debtor's Cash Management System.**

30. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to "use property of the estate in the ordinary course of business." *See* 11 U.S.C. § 363(c)(1). Consistent with this statute, bankruptcy courts may authorize the continued use of a routine cash management system in accordance with usual and customary practice. *See In re Charter Co.*, 778 F.2d 617, 621 (11th Cir. 1985).

31. The ability of Debtor to maintain its current Cash Management System will help to ensure uninterrupted business operations. Debtor's Cash Management System is ordinary, usual, and essential. A significant amount of Debtor's revenue is directly deposited into Debtor's depository accounts. The Cash Management System allows Debtor to control the flow of deposits into a centralized account and to distribute the funds to appropriate creditors when necessary.

32. Debtor requests the authority to maintain its current Cash Management System to avoid the expense of opening new accounts and creating new procedures for transferring funds and collecting deposits. Allowing Debtor to maintain its current Cash Management System would also allow Debtor to continue its business operations and focus on the Case and sale process, thereby benefiting the estate and creditors.

33. In sum, Debtor requests that the Court authorize Debtor to maintain its Cash Management System and authorize and direct the banks at which the Bank Accounts are maintained to continue to administer those accounts as they were maintained before the Petition Date, without interruption and in the usual and ordinary course, and to pay any and all checks, drafts, wires, or ACH (automated clearing house) transfers issued on the Bank Accounts on account of any claims arising on or after the Petition Date so long as sufficient funds are in said accounts.

**C. The Court Should Approve Debtor's Request for Waiver of Deposit and Investment Guidelines.**

34. Section 345(b) of the Bankruptcy Code requires the posting of a bond or other security by any entity with which money of the estate is deposited or invested unless such deposits or investments are federally insured or guaranteed, and unless "the court for cause orders otherwise." *See* 11 U.S.C. § 345(b). In determining whether cause exists to waive the

requirements of this statute, courts consider factors including the sophistication of the debtor's business and cash management system, the stability of the financial institutions, and the harm that would be imposed on an estate if a waiver were not granted. *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

35. Debtor seeks an order waiving the requirement of section 345(b) of the Bankruptcy Code. The waiver would permit Debtor to maintain all of its Bank Accounts without posting a bond or other security, as could otherwise be required under section 345(b).

36. Debtor is a sophisticated entity with large and complex business operations. To the extent that any funds are held by Wells Fargo or PNC Bank in excess of the amounts insured by the Federal Deposit Insurance Corporation, such institutions are stable and secure. Obtaining bonds to secure such funds would be unnecessary and detrimental to Debtor's estate.

37. Accordingly, cause exists to waive the requirement of section 345(b) of the Bankruptcy Code because (i) the Bank Accounts are maintained with reputable banking institutions; and (ii) the complexity and cost associated with satisfying the requirements of section 345(b) make satisfying such requirement impracticable.

#### **NOTICE**

38. Notice of this Motion has been provided to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the Southern District of Ohio; (b) Debtor's twenty (20) largest unsecured creditors; (c) the agent for Debtor's primary secured lender group, Wells Fargo Bank, National Association; and (d) PNC Bank. Debtor respectfully submits that such notice is appropriate and no other or further notice need be given.

**REQUEST FOR WAIVER OF MEMORANDUM IN SUPPORT**

39. Debtor requests that the Court deem the contents of this Motion to be sufficient for purposes of satisfying the memorandum in support of Local Rule 9013-1(a). The relief requested in the Motion raises no novel issues of law.

WHEREFORE Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit B, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: May 1, 2018

Respectfully submitted,

/s/ Thomas R. Allen

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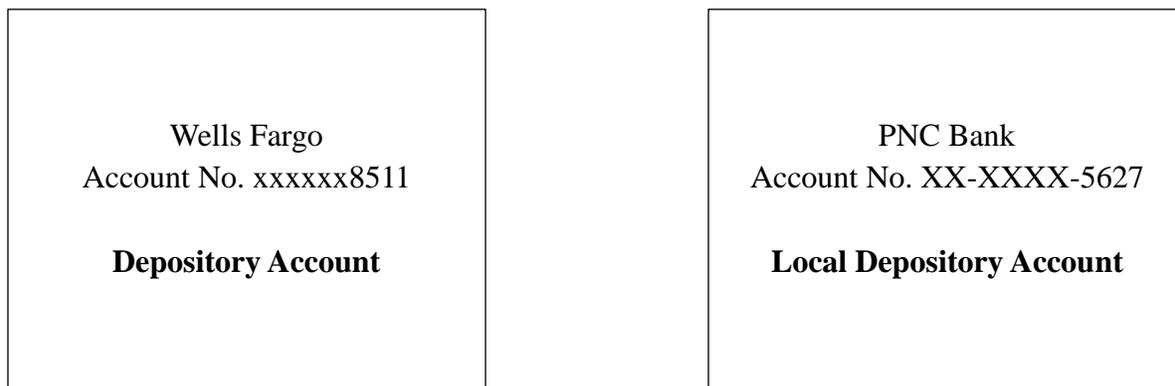
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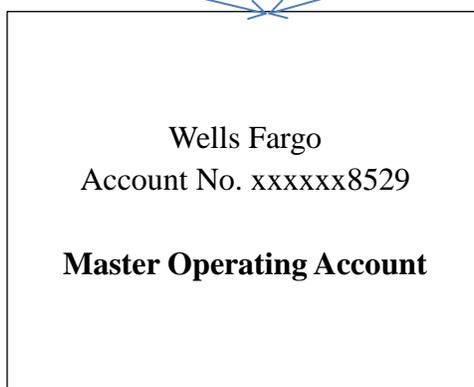
**EXHIBIT A**

**CASH MANAGEMENT SYSTEM**

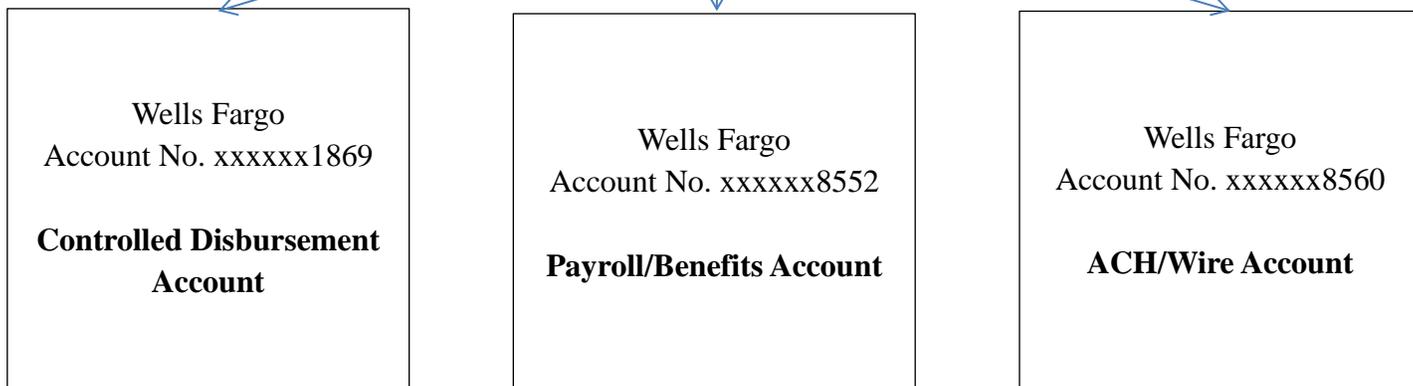
**Depository Accounts**



**Operating Account**



**Disbursement Accounts**



**EXHIBIT B**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re: ) Chapter 11  
 )  
AcuSport Corporation, ) Case No. 18-52736  
 )  
Debtor. ) Honorable John E. Hoffman, Jr.

**ORDER AUTHORIZING CONTINUED USE OF EXISTING BANK  
ACCOUNTS, BUSINESS FORMS, AND CASH MANAGEMENT SYSTEM,  
AND WAIVING INVESTMENT GUIDELINES [RELATED TO DOC. NO. \_\_\_]**

Upon the motion (the “*Motion*”)<sup>1</sup> of AcuSport Corporation, the debtor and debtor in possession (“*Debtor*”), in this chapter 11 case (the “*Case*”), for entry of an order (this “*Order*”), pursuant to sections 105(a), 345(b), 363, 1107, and 1108 of title 11 of the United States Code (the “*Bankruptcy Code*”), authorizing (i) maintenance and continued use of Debtor’s existing bank accounts and business forms; (ii) the continued use of Debtor’s cash management system and procedures; and (iii) a waiver of the deposit and investment requirements under section 345(b) of the Bankruptcy Code [Docket No. \_\_\_]; and upon consideration of the Flanagan

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Declaration and the entire record of this Case; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of Debtor's estate, its creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefore,

IT IS ORDERED that:

1. The Motion is granted as set forth herein.
2. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.
3. Debtor is authorized, but not directed, to continue in its discretion to use the Bank Accounts referenced in the Motion under their existing account numbers.
4. Debtor is authorized, but not directed, to continue in its discretion to use its existing Checks and Business Forms in their present form.
5. Debtor is authorized, but not directed, to continue in its discretion to use its existing Cash Management System and associated procedures.
6. Debtor is authorized, but not directed, to continue to deposit funds in the Bank Accounts in the ordinary course of business and consistent with prepetition practices, and the requirements of section 345(b) of the Bankruptcy Code are hereby waived with respect to such deposit practices.

7. Each of the banks at which Debtor maintains its Bank Accounts is authorized to continue to perform, postpetition, all banking services that it provided to Debtor to the same extent and manner as such services were provided prepetition, including, without limitation, ACH (automated clearing house) and wire transfer capabilities, unless otherwise modified by the Court, to the extent that sufficient funds are on deposit in such account.

8. The Banks are authorized to debit Debtor's accounts in the ordinary course of business without the need for further order of this Court for: (a) all checks drawn on Debtor's accounts that are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in any of Debtor's accounts with such Bank prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent Debtor was responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Bank Accounts and related cash management systems.

9. Those certain existing deposit agreements between Debtor and the Banks (including any Deposit Account Control Agreements) shall continue to govern the postpetition cash management relationship between Debtor and such Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect.

10. Either Debtor or the Banks may, without further Order of this Court, implement changes to the cash management systems and procedures in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts.

11. This Order is without prejudice to the substantive rights of Debtor with respect to the maintenance of Debtor's Bank Accounts, continued use of existing Checks and Business Forms, and maintenance of the Cash Management System, unless otherwise set forth herein.

12. Debtor is authorized to execute such documents and take such further action as may be necessary to effectuate the relief granted in this Order.

13. This Court shall retain jurisdiction and power with respect to all matters arising from or related to the implementation or interpretation of this Order.

IT IS SO ORDERED.

Submitted By:

/s/ Thomas R. Allen

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