

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

<p>In re</p> <p>Eastern Outfitters, LLC, <i>et al.</i>,¹</p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No.: 17-10243 (LSS)</p> <p>(Joint Administration Requested)</p>
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**DEBTORS’ MOTION FOR ORDER
CONFIRMING ADMINISTRATIVE EXPENSE
PRIORITY STATUS OF DEBTORS’ UNDISPUTED OBLIGATIONS
FOR POSTPETITION DELIVERY OF GOODS ORDERED PREPETITION**

Eastern Outfitters, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”), hereby move the Court (the “Motion”) for entry of an order, in substantially similar form as attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to sections 105(a), 363(c) and 503(b)(1)(A) and 503(b)(9) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1 of the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), confirming administrative expense priority status and authorizing payment of the Debtors’ undisputed obligations for the postpetition delivery of goods that were ordered prepetition and that the Debtors have not canceled, declined, returned, or contested. In support of the Motion, the Debtors rely on the *Declaration of Mark T. Walsh in Support of First Day Motions* (the “First Day Declaration”)²

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob’s Stores, LLC (4389); and Bob’s/EMS Gift Card, LLC (9618). The Debtors’ executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.



concurrently filed herewith. In further support of the Motion, the Debtors respectfully represent as follows:

Jurisdiction

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these Cases and the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the District Court for the District of Delaware dated as of February 19, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory and legal predicates for the relief requested herein are Bankruptcy Code sections 105(a), 363(c), and 503(b)(1)(A) and 503(b)(9), Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1.

Background

4. The Debtors’ operating business consists of Bob’s Stores and Eastern Mountain Sports (“EMS”), each of which is a regional multi-channel retailer engaged in the apparel, footwear, and sporting goods lines of business. Prior to the Petition Date, each of the two retailers was comprised of two primary units: (a) a retail store business; and (b) an e-commerce business. Collectively, the Debtors currently manage 86 retail stores in the Northeast. The Debtors employ approximately 2600 full, part-time and temporary employees across their operations.

5. The Debtors, like other retail companies, have faced various obstacles in the challenging retail environment. Since the Debtors acquired their primary assets out of bankruptcy in July 2016, the Debtors' vendors have imposed very restrictive credit terms thereby depressing inventories. Significantly, unit inventories in some categories are down as much as 30% since the prior sale closed. Largely as a result of inventory pressure, the Debtors have been unable to meet their sales plan. Facing these operational challenges along with tightening liquidity, since September 2016, the Debtors, along with their advisors, have been engaged in a robust prepetition process to explore and solicit interest in a number of potential alternatives including, without limitation, the sale of all or a material business unit of the Debtors, equity investments in all or a portion of the business, the sale of a brand, a licensing transaction, potential liquidity enhancing acquisitions, and liquidation sales.

6. After extensive negotiations with two parties and on the eve of proceeding with a liquidation alternative, the Debtors were able to secure an offer from Sportsdirect.com Retail Ltd. ("Sportsdirect"), the United Kingdom's largest sporting goods retailer, to purchase substantially all of the Debtors' assets. The Debtors commenced these Cases to consummate the sale transaction which will save nearly 1900 employee jobs, close the Debtors' stores not being sold to Sportsdirect and facilitate an orderly liquidation and wind-down.

7. On February 5, 2017 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or statutory committee has been appointed in these Cases by the Office of the United States Trustee for the District of Delaware.

8. A full description of the Debtors' acquisition of their primary assets and their business, corporate structure, prepetition indebtedness, and events leading to these Cases is set forth in the First Day Declaration.

Relief Requested

9. As is typical for the Debtors' retail businesses, as of the Petition Date, the Debtors had received merchandise and had numerous prepetition purchase orders (collectively, the "Outstanding Orders") with several suppliers (collectively, the "Suppliers") for ordinary course goods that had not yet been delivered as of the Petition Date, but which the Debtors believe are integral to the Debtors' ongoing business operations. The Debtors estimate that they have over 400 open purchase orders with 25 different Suppliers for merchandise critical to their operations and store inventory. To provide protection for these Suppliers so that deliveries are not disrupted or withheld, the Debtors request entry of the Proposed Order confirming administrative expense priority status as against the Debtor liable for any Outstanding Order, and authorizing payment of the Debtors' undisputed obligations for the postpetition delivery of goods that were ordered prepetition and that the Debtors have not canceled, declined, returned, or contested.

10. The Debtors further request that the Court confirm that, notwithstanding the relief sought in this Motion, the Debtors shall retain the right to (a) cancel a purchase order (including any Outstanding Order), (b) decline the acceptance of goods, (c) return any defective, nonconforming, or unacceptable good, and (d) contest the amount of any invoice or claims, or liens related thereto, on any grounds, as they would do in the ordinary course of their business operations.

11. In addition, the Debtors request that the Court authorize and direct the Debtors' banks and financial institutions (the "Banks") to receive, process, honor, and pay all checks and fund transfers on account of obligations owed to the Suppliers on account of the Outstanding

Orders, and authorize the Banks to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid in respect of such obligations, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

Basis for Relief Requested

12. As a result of the commencement of these Cases, the Debtors believe that the Suppliers may perceive a risk that they will be treated as prepetition general unsecured creditors with respect to orders placed within 20 days of the filing for shipments made after the Petition Date pursuant to the Outstanding Orders. As a result, the Suppliers may refuse to deliver critical goods to the Debtors unless the Debtors assure payment. The Debtors' business depends on the ability to quickly obtain necessary merchandise from their Suppliers in order to stock their stores and fulfill online orders. The inability to maintain sufficient inventory due to the Suppliers' refusal to deliver goods could have a significant detrimental impact on the Debtors' businesses.

13. Under these circumstances, the Debtors believe that the requested relief is necessary to permit the Debtors to obtain the timely delivery of goods they need from the Suppliers pursuant to the Outstanding Orders. Further, the Debtors submit that the relief sought herein is noncontroversial and entirely consistent with the applicable provisions of the Bankruptcy Code. Obligations arising out of the postpetition delivery of necessary goods to the Debtors generally are expenses incurred for the benefit of the Debtors' estates and assist in preserving the value of the Debtors' business. As such, these costs generally are accorded administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code. The requested relief merely confirms the treatment of such postpetition obligations under the Bankruptcy Code, providing necessary assurance of payment to the Suppliers and ensuring the Debtors' ongoing and uninterrupted receipt of necessary merchandise.

14. In addition, section 105 of the Bankruptcy Code gives the Court broad discretion to issue orders necessary to “carry out the provisions of this title.” 11 U.S.C. § 105(a). For the reasons described above, the Debtors submit that the relief sought herein will facilitate the Debtors’ ability to successfully reorganize and, therefore, is appropriate under section 105 of the Bankruptcy Code.

15. Similar relief to that requested herein has been granted in other chapter 11 cases in this jurisdiction. *See, e.g., In re The Wet Seal, Inc.*, Case No. 15-10081 (CSS) (Bankr. D. Del. Jan. 20, 2015) (Docket No. 100); *In re Natrol, Inc.*, Case No. 14-11446 (BLS) (Bankr D. Del. July 16, 2014) (Docket No. 264).

16. The Debtors also request that the Court authorize all applicable financial institutions to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the Outstanding Orders, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Debtors request that the Banks be authorized to rely on the Debtors’ designation of any particular check or electronic payment request as approved pursuant to this Motion.

Immediate Relief is Necessary

17. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. The failure of any Supplier to deliver necessary Outstanding Orders to the Debtors would have immediate and detrimental consequences to the Debtors’ business and would jeopardize the Debtors’ efforts to preserve and maximize the value of their estates, to the detriment and prejudice of all of the Debtors’ stakeholders. As the Debtors operate in a highly competitive industry, the Debtors cannot afford any material disruptions of their businesses operations or present anything less than a “business as usual” appearance to the public. It is the

Debtors' business judgment that continuation of their positive relationship with the Suppliers is critical to avoid any unexpected or inopportune interruption to the Debtors' operations and increases the likelihood of successfully prosecuting these Cases. Any failure to grant the relief requested herein would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts.

18. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

Waiver of Any Applicable Stay

19. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Reservation of Rights

20. Except as otherwise provided herein, nothing in the Proposed Order or this Motion (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

Notice

21. The Debtors will provide notice of this Motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 40 largest unsecured claims, excluding insiders, against the Debtors (on a consolidated basis); (c) counsel to PNC Bank, National Association, as prepetition first lien agent and lender; (d) the Internal Revenue Service; (e) the Office of the United States Attorney for the District of Delaware; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; and (h) Sportsdirect.com Retail Ltd. as prepetition second lien lender, proposed postpetition lender, and proposed purchaser of certain of the Debtors' assets. As this Motion is seeking "first day" relief on an expedited basis, the Debtors will serve copies of this Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

No Prior Request

22. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and granting such other relief as is just and proper.

Dated: February 6, 2017
Wilmington, Delaware

COLE SCHOTZ P.C.



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*Proposed Counsel for Debtors
and Debtors in Possession*

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re Eastern Outfitters, LLC, <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No.: 17-10243 (LSS) (Joint Administration Requested) Related to Docket No. ____
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**ORDER CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY
STATUS OF DEBTORS' UNDISPUTED OBLIGATIONS FOR
POSTPETITION DELIVERY OF GOODS ORDERED PREPETITION**

Upon the motion (the "Motion")² of Eastern Outfitters, LLC and its chapter 11 affiliates, the debtors and debtors in possession (the "Debtors") in the above-captioned jointly administered chapter 11 cases (the "Cases"), for entry of an order (this "Order"), pursuant to sections 105(a), 363(c) and 503(b)(1)(A) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9013-1 of the Local Rules of Bankruptcy Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") confirming administrative expense priority status and authorizing payment of the Debtors' undisputed obligations for the postpetition delivery of goods that were ordered prepetition and that the Debtors have not canceled, declined, returned, or contested; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and it

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers, where applicable, are as follows: Eastern Outfitters, LLC (9164); Subortis Retail Financing, LLC (9065); Eastern Mountain Sports, LLC (9553); Subortis IP Holdings, LLC; Bob's Stores, LLC (4389); and Bob's/EMS Gift Card, LLC (9618). The Debtors' executive headquarters are located at 160 Corporate Court, Meriden, CT 06450.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Cases and of the Motion 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 after a hearing on the Motion, it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Debtors' undisputed obligations to the Suppliers under Outstanding Orders arising from shipments of goods delivered to and accepted by the Debtors on and after the Petition Date, and not subsequently canceled, declined, returned, or contested, are hereby granted administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code as against the Debtor liable for any such Outstanding Order, and the Debtors are authorized, but not directed, to pay such obligations in the ordinary course of business and consistent with the parties' customary practices in effect prior to the Petition Date.
3. Notwithstanding anything in the Motion or this Order to the contrary, the Debtors shall have the right to (a) cancel a purchase order (including any Outstanding Order), (b) decline the acceptance of goods, (c) return any defective, nonconforming, or unacceptable good, or (d) contest the amount of any invoice or claims, or liens related thereto, on any grounds.
4. Subject to the terms of this Court's Order approving Debtors' continued use of their cash management system, the Banks are authorized, when requested by the Debtors, in the

Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and Banks shall not be liable to any party on account of: (a) following the Debtors' instructions or representations as to any order of this Court; (b) the honoring of any prepetition check or other item drawn on any account that is the subject of this Interim Order in a good faith belief that the Court has authorized such prepetition check or item to be honored; and (c) an innocent mistake made despite implementation of reasonable item handling procedures.

5. Except as otherwise provided herein, nothing in this Order, nor as a result of any payment made pursuant to this Order, (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, or (c) shall be construed as a promise to pay a claim.

6. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

7. Bankruptcy Rule 6003(b) has been satisfied.

8. Notwithstanding anything to the contrary contained herein, any payment made or to be made, and authorization contained in this Order shall be subject to the requirements

imposed on the Debtors under any approved debtor in possession financing facility, any order regarding the Debtors' postpetition financing or use of cash collateral, and any budget in connection therewith.

9. Sportsdirect, as lender on the proposed DIP Facility, shall have the right to consent to payments to Suppliers under Outstanding Orders made pursuant to this Order that would exceed \$_____ per transaction or \$_____ in the aggregate.

10. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (a) this Order shall be effective immediately and enforceable upon its entry; (b) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order; and (c) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Order.

11. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
February __, 2017

THE HONORABLE LAURIE SELBER SILVERSTEIN