

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

Eastern Outfitters, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 17-10243 (LSS)

(Joint Administration Requested)

Related to Docket No. 19

**INTERIM ORDER UNDER 11 U.S.C. §§ 105(a) and 363(b)  
AUTHORIZING PAYMENT OF  
PRE-PETITION CLAIMS OF CERTAIN CRITICAL VENDORS**

Upon the motion (the "Motion")<sup>2</sup> of the Debtors for an order, under Bankruptcy Code sections 105(a), 363(b), 1107(a) and 1108 and Bankruptcy Rules 6003 and 6004, authorizing, but not directing, the Debtors to pay, in the ordinary course, the prepetition fixed, liquidated and undisputed claims of certain critical vendors; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein 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 February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, in their discretion and in the reasonable exercise of their business judgment, to pay all or a portion of the Critical Vendor Claims, in an amount not to exceed the Interim Critical Vendor Cap of \$1.5 million, subject to the terms and conditions set forth in this Order, and pending entry of a Final Order.
3. After the date hereof, the Debtors shall determine who is a Critical Vendor by considering, among other things, whether failure to pay such creditor's prepetition claims will have a material impact on the Debtors' operations.
4. The Debtors are authorized, but not directed, to undertake appropriate efforts to cause Critical Vendors to enter into Trade Agreements with the Debtors substantially in the form of the agreement that is annexed as Exhibit A to the Motion, as a condition of payment of its Critical Vendor Claims.
5. Except as set forth herein, the Debtors are authorized, in their discretion, to make payments on account of a Critical Vendor Claim, after the Debtors have used best efforts to cause the Critical Vendor to execute a Trade Agreement, if the Debtors determine, in their business judgment, that failure to pay such Critical Vendor Claim presents a material risk of irreparable harm to the Debtors' businesses.
6. The Debtors shall provide to the Office of the United States Trustee and any official committee appointed in these Cases reports, on a monthly basis, listing the payments made on account of Critical Vendor Claims.

7. If a Critical Vendor under a Trade Agreement refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Minimum Credit Terms following receipt of payment on its Critical Vendor Claim or otherwise fails to comply with any Trade Agreement entered into between such Critical Vendor and the Debtors, then the Debtors may (a) declare that any Trade Agreement is immediately terminated without further order of this Court and return the parties to the positions they held immediately prior to entry of this Order with respect to all prepetition claims including, but not limited to, seeking recovery or disgorgement of any payment made to such Critical Vendor on account of its Critical Vendor Claims to the extent that such payments exceeded the postpetition claims of such Critical Vendor, without giving effect to any rights of setoff, claims, provision for payment of reclamation or trust fund claims, or other defense, and (b) declare that payments made to the Critical Vendor on account of its Critical Vendor Claim be deemed to have been in payment of then-outstanding (or subsequently accruing) postpetition claims of such Critical Vendor without further order of this Court or action by any person or entity. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor. For the avoidance of doubt, the Debtors may not exercise the remedies provided for herein without further approval by the Court.

8. Notwithstanding the foregoing, the Debtors may, in their sole discretion, reinstate a Trade Agreement if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five business days following the Debtors' notification to the Critical Vendor of such default had occurred; or the Debtors, in their discretion, reach a favorable alternative agreement with the Critical Vendor.

9. The final hearing (the “Final Hearing”) on the Motion shall be held on March 6, 2017, at 2:00 p.m. (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m. (prevailing Eastern Time), on February 27, 2017, and shall be served on: (a) the Debtors, 160 Corporate Court, Meriden, CT 06450, Attn: Spencer M. Ware, Chief Restructuring Officer; (b) proposed counsel to the Debtors, Bracewell LLP, 1251 Avenue of Americas, New York, New York 10020-1104, Fax: (212) 508-6101; Attn: Jennifer Feldsher (Jennifer.Feldsher@bracewelllaw.com) and Robert G. Burns (Robert.Burns@bracewelllaw.com) and CityPlace I, 34th Floor, 185 Asylum Street, Hartford Connecticut, 06103, Fax: (800) 404-3970; Attn: Mark E. Dendinger (Mark.Dendinger@bracewelllaw.com) and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Fax: (302) 652-3117; Attn: Norman L. Pernick (NPernick@coleschotz.com), Marion M. Quirk (MQuirk@coleschotz.com), Katharina Earle (KEarle@coleschotz.com) (iii) counsel to the anticipated DIP Lenders, Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166, Fax: (212) 801-6400; Attn: Nancy Mitchell (mitchelln@gtlaw.com) (iv) counsel to the prepetition first lien lender, PNC Bank, National Association, Blank Rome LLP, 130 N. 18th St., Philadelphia, PA 19103, fax: (215) 832-5507, Attn: Regina S. Kelbon (Kelbon@BlankRome.com) and Gregory F. Vizza (Vizza@BlankRome.com); (v) counsel to any statutory committee appointed in these Cases; and (vi) counsel to the United States Trustee for the District of Delaware, 844 North King Street Room 2207, Lockbox 35, Wilmington, DE 19801, Attn: Jane Leamy (collectively, the “Notice Parties”). If no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without further notice or hearing.

10. Nothing herein shall be construed to limit, or in any way affect, the Debtors' ability to dispute any Critical Vendor Claim.

11. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors' right to dispute any claim or lien; (c) an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (d) an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

12. The amount of each Critical Vendor's Critical Vendor Claims set forth in connection with a Trade Agreement shall be used only for purposes of determining such Critical Vendor's claim under this Order and shall not be deemed a claim allowed by the Court, and the rights of all interested persons to object to such claim shall be fully preserved until further order of the Court. Further, signing a Trade Agreement containing a claim amount for purposes of this Order shall not excuse such Critical Vendor from filing a proof of claim in these cases.

13. No claimant who receives payment on account of a Critical Vendor Claim (whether or not such claimant signs a Trade Agreement) is permitted to file or perfect a Lien on account of such claim, and any such claimant shall take all necessary action to remove any existing Lien relating to such claim, even if the Lien is against property of a non-Debtor. Additionally, no claimant who receives payment on account of a Critical Vendor Claim (whether or not such claimant signs a Trade Agreement) is permitted to file a claim for reclamation or a claim under Bankruptcy Code section 503(b)(9), regardless of the statute or other legal authority

upon which such claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors.

14. Nothing contained in this Order shall be deemed to constitute an assumption or rejection of any executory contract or prepetition or postpetition agreement between the Debtors and a Critical Vendor. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by any person.

15. The authorization granted hereby to pay Critical Vendor Claims shall not create any obligation on the part of the Debtors or their officers, directors, attorneys or agents to pay the Critical Vendor Claims, none of the foregoing persons shall have any liability on account of any decision by the Debtors not to pay a Critical Vendor Claim, and nothing contained in this order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Critical Vendor Claims to the extent they are not paid.

16. 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 the 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.

17. The requirement set forth in Bankruptcy Rule 6003(b) are satisfied or otherwise deemed waived.

18. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

19. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

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

Dated: February 8, 2017  
Wilmington, Delaware

  
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THE HONORABLE LAURIE SELBER SILVERSTEIN