

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

In re
Eastern Outfitters, LLC, *et al.*,¹
Debtors.

Chapter 11
Case No.: 17-10243 (LSS)
(Joint Administration Requested)
Related to Docket No. 25

ORDER (I) AUTHORIZING CONTINUED USE OF CASH MANAGEMENT SYSTEM, (II) AUTHORIZING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS, (III) GRANTING ADMINISTRATIVE PRIORITY STATUS TO POSTPETITION INTERCOMPANY TRANSACTIONS, (IV) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS, ACCOUNT CONTROL AGREEMENTS, AND CERTAIN PAYMENT METHODS, AND (V) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(B) ON AN INTERIM BASIS

Upon the motion (the "Motion")² of Eastern Outfitters, LLC and its chapter 11 affiliates, as debtors and debtors in possession herein (collectively, the "Debtors") in the above-captioned jointly administered chapter 11 cases (the "Cases"), for entry of an order, pursuant to sections 105, 345, 363, 364(b), and 503(b) 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 Rules 2015-2 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (i) authorizing the Debtors' continued use of their existing cash management system, (ii) authorizing the continuation of intercompany transactions, (iii) granting administrative priority status to postpetition intercompany transactions, (iv) authorizing the

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.



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Debtors to continue using prepetition bank accounts and account control agreements and using debit, wire, P-Card, and ACH payments and (v) waiving the requirements of 11 U.S.C. § 345(b); on an interim basis and (vi) scheduling a Final Hearing to consider entry of a Final Order, only to the extent necessary; and upon consideration of the First Day Declaration and the record of these Cases; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it 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; and 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 are authorized to: (a) continue operating the Cash Management System and honor any prepetition obligations related thereto; (b) continue making Intercompany Transactions in the ordinary course of business; (c) maintain existing Bank Accounts and business forms; (d) maintain the ability to use debit, wire and ACH payments; and (e) continue to deposit and invest funds in accordance with their current practices, notwithstanding section 345(b) of the Bankruptcy Code.

3. The Debtors shall maintain accurate and detailed records in the ordinary course of business reflecting transfers of cash, if any, including Intercompany Transactions, so as to permit all such transactions to be traceable and ascertainable. The Debtors shall maintain accurate and detailed records of all transfers, including intercompany transfers, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and postpetition transactions. Unless otherwise ordered by the Court, and subject only to claims with a higher priority pursuant to any interim or final order approving the Debtors' proposed debtor in possession credit facility and authorizing use of cash collateral, all intercompany claims between Debtors arising after the Petition Date shall be accorded administrative expense priority in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code.

4. The Debtors are further authorized to: (a) continue to use, with the same account numbers, all of the Bank Accounts in existence as of the Petition Date, including those accounts identified on **Exhibit B** attached to the Motion and **Exhibit C** attached hereto; (b) use, in their present form, all checks and other documents related to the Bank Accounts, as well as all other business forms existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; (c) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (d) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, ACH payments, and other debits; and (e) pay any ordinary course prepetition and postpetition service and other fees, costs, charges and expenses to which the Banks are entitled under the terms and in accordance with their contractual arrangements with the Debtors, and to otherwise perform their obligations under the documents governing the Bank Accounts.

5. No liens on any of the Bank Accounts granted to any creditors shall take priority over the prepetition and postpetition service and other fees, costs, charges and expenses to which the Banks are entitled under the terms and in accordance with their contractual arrangements with the Debtors.

6. Subject to the protections provided to the Banks in Paragraph 10 of this Order, all Banks at which the Bank Accounts are maintained are authorized, but not directed, to continue to maintain, service, and administer the Bank Accounts as accounts of debtors in possession, without interruption and in the ordinary course of business and in accordance with the account agreements governing the Bank Accounts. In this regard, the Banks are authorized to receive, process, honor and pay any and all checks, ACH payments and other instructions, and drafts payable through, drawn or directed on the Bank Accounts after the Petition Date by holders, makers or other parties entitled to issue instructions with respect thereto.

7. Subject to the protections provided to the Banks in Paragraph 10 of this Order, all Banks provided with notice of this Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date except as authorized by an order of this Court and directed by the Debtors in writing.

8. The existing Deposit Account Control Agreements between the Debtors and the Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Banks. All of the provisions of such Deposit Account Control Agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. Either the Debtors or the Banks may, without further Order of this Court, implement changes to the Cash Management System and procedures in the ordinary course of business

pursuant to terms of those certain existing Deposit Account Control Agreements, including, without limitation, the opening and closing of bank accounts, subject to the consent of the DIP Agent over opening and closing bank accounts (which consent will not be unreasonably withheld, conditioned or delayed); provided, however, that nothing contained herein shall constitute an assumption of the Deposit Account Control Agreements pursuant to section 365 of the Bankruptcy Code.

9. In the course of providing cash management services to the Debtors, any Bank, without further order of this Court, is authorized to (a) charge, and the Debtors are authorized to pay or honor, both prepetition and postpetition service and other fees, costs, charges and expenses to which the Banks are entitled under the terms and in accordance with their contractual arrangements with the Debtors, and (b) charge-back returned items to the Bank Accounts, whether such items are dated before, on, or after the Petition Date, in the ordinary course of business during the pendency of these Cases.

10. Notwithstanding any other provision of this Order, any Bank is authorized, but not directed, to accept and honor all representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to, on or after the Petition Date should be honored pursuant to this or any other order of this Court. 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 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. Any Banks are further authorized to (a) honor the Debtors' directions with respect to the opening, re-opening, and

closing of any Bank Account, and (b) accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; provided, in each case, the Debtors' Banks shall not have any liability to any party for relying on such representations.

11. For banks at which the Debtors hold bank accounts that are party to a Uniform Depository agreement with the U.S. Trustee, within 15 days of the date of entry of this Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors' employer identification numbers, (c) identify each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and (d) provide the bankruptcy jointly administered case number.

12. For banks at which the Debtors hold accounts that are not party to a Uniform Depository agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the U.S. Trustee within 30 days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

13. The Debtors are authorized to: (a) continue to use, with the same account numbers, the Bank Accounts in existence on the Petition Date, including, without limitation, those accounts identified on **Exhibit C** attached to this Order, (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; and (c) use, in their present form, all correspondence and business forms (including letterhead, purchase orders and invoices) and other documents related to the Bank Accounts, without reference to their status as debtors in possession.

14. Nonetheless, as soon as practicable after the Petition Date, the Debtors will include "debtor in possession" and the respective debtor in possession case number on the checks they print electronically. Further, upon depletion of the Debtors' business forms stock, the Debtors will obtain new business forms stock reflecting their status as debtors in possession.

15. The requirements of section 345 of the Bankruptcy Code, to the extent applicable, are waived on an interim basis for a period of 30 days from the Petition Date, which period may be further extended without notice or hearing by order of the Court upon request by the Debtors. If a party in interest objects to this interim waiver, the interim waiver period will automatically be extended to through the resolution of such objection. If no party in interest objects to this waiver within 30 days from the Petition Date, this waiver shall become permanent without any further notice or hearing.

16. Notwithstanding anything contained herein, despite the Debtors' use of consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which Debtor pays those disbursements.

17. Each of the Debtors' Banks is authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for: (a) all checks drawn on the Debtor's accounts which 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 one of Debtor's accounts with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the 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 Cash Management System. For avoidance of doubt, a deposit bank under a Deposit Account Control Agreement may exercise its rights under such Deposit Account Control Agreement to debit accounts for returned items, settlement items, and bank fees.

18. The Debtors are authorized to open any new Bank Accounts or re-open or close any existing Bank Accounts, subject to the consent of the DIP Agent over opening and closing bank accounts (which consent will not be unreasonably withheld, conditioned or delayed), including any Bank Account that may be opened in connection with the DIP Credit Facility and the adequate protection account required by section 366 of the Bankruptcy Code, as they may deem necessary and appropriate in their sole discretion; subject to the terms and conditions of the agreements governing the DIP Credit Facility, provided, however, the Debtors shall give notice within 15 days thereafter to any agent on the debtor in possession credit facility, the Office of the United States Trustee for the District of Delaware and any statutory committees appointed in these Cases; provided, further, however the Debtors shall open any such new Bank Account or re-open any such existing Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

19. Notwithstanding anything contained herein, the Banks are authorized to require the Debtors to close any or all Bank Accounts maintained at such Bank in accordance with the terms of the account agreements governing the relevant Bank Accounts.

20. 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.

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

22. 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.

23. Within five days from the date of the entry of this Order, the Debtors will serve a copy of this Order to the Banks at which the Bank Accounts are maintained and will request that each Bank internally code each of the Bank Accounts as "debtor in possession" accounts.

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

Dated: February 8, 2017
Wilmington, Delaware



THE HONORABLE LAURIE SELBER SILVERSTEIN