

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In Re:  Vanity Shop of Grand Forks, Inc.,  Debtor.	Case No.: 17-30112  Chapter 11
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**SECOND ORDER: (I) AUTHORIZING CONTINUED USE OF CASH MANAGEMENT SYSTEM; (II) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS, ACCOUNT CONTROL AGREEMENTS, AND CERTAIN PAYMENT METHODS; AND (III) GRANTING ADDITIONAL TIME TO COMPLY WITH THE REQUIREMENTS OF 11 U.S.C. § 345(B)**

Debtor filed a Motion for entry of an order, pursuant to Sections 105, 345, 363, 364(b), and 503(b) of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004: (i) authorizing Debtor's continued use of the Cash Management System; (ii) authorizing Debtor to continue using prepetition Bank Accounts and account control agreements and using debit, wire, and ACH payments; and (iii) waiving the requirements of 11 U.S.C. § 345(b) on an interim basis. Debtor requested an expedited hearing on the Motion, which the Court granted. Debtor served the motion and the notice of hearing. The Court entered an Interim Order on March 3, 2017 [Doc. 74].

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b) and venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b) and the Court finds that it has authority to enter a final order consistent with Article III of the Constitution.



A final hearing on the motion was held on March 23, 2017 at 9:00 a.m. in the United States Bankruptcy Court, Quentin N. Burdick Courthouse, 655 1st Avenue North, Suite 210, Fargo, ND 58102.

After considering the First Day Declaration, the Supplemental Declaration, and other evidence offered at the hearings, reviewing other pleadings filed in this case and hearing arguments from counsel, the Court finds cause for granting the relief provided in this Order.<sup>1</sup> Specifically, the Court finds that the relief outlined in this Order is in the best interest of the Debtor, the bankruptcy estate, creditors and other parties in interest.

**IT IS ORDERED:**

1. The Motion is GRANTED as provided below.
2. Debtor is authorized, in its sole discretion, to: (i) continue operating the Cash Management System and honor any prepetition obligations related thereto; (ii) maintain existing Bank Accounts and business forms; (iii) maintain the ability to use debit, wire and ACH payments; and (iv) continue to deposit and invest funds in accordance with their current practices to the extent provided in this Order.
3. Debtor shall maintain records in the ordinary course of business reflecting transfers of cash, if any, so as to permit all such transactions to be ascertainable.
4. Debtor is further authorized, in its sole discretion, to: (i) continue to use, with the same account numbers, all of the Bank Accounts in existence as of the Petition Date,

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<sup>1</sup> The findings and conclusions set forth in this Order constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

including those accounts identified on **Exhibit B** to the Motion; (ii) use, in its present form, all checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to Debtor's status as debtor in possession; (iii) treat the Bank Accounts for all purposes as accounts of Debtor as debtor-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 in the ordinary course both prepetition or postpetition bank fees incurred in connection with the Bank Accounts, and to otherwise perform its obligations under the documents governing the Bank Accounts.

5. All Banks at which the Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of debtor in possession, without interruption and in the ordinary course of business. 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 by holders, makers or other parties entitled to issue instructions with respect thereto on account of any claim arising (i) on or after the Petition Date or (ii) prior to the Petition Date and otherwise authorized by this Court.

6. The Processing Agreements shall be maintained and shall continue to govern the postpetition cash management relationship between the Debtors and the Processing Companies, provided, however, that nothing contained herein shall constitute an assumption of the Processing Agreements pursuant to Section 365 of the Bankruptcy Code.

7. The Debtor is authorized to use the commercial card program under the WellsOne Commercial Card Express Agreement, dated on or around April 20, 2006 (as amended, restated, supplemented or otherwise modified from time to time, the "Card

Agreement”), between Debtor and Wells Fargo Bank, N.A. (“Wells Fargo”) subject to the terms and conditions thereof. Wells Fargo is authorized to make advances from time to time to Debtor with a maximum exposure at any time up to \$15,000. All prepetition charges and fees are authorized and required to be paid. Wells Fargo may rely on representations of Debtor with respect to its use of the commercial card program pursuant to the Card Agreement, and Wells Fargo shall not have any liability to any party for relying on such representations by Debtor as described in this Order.

8. In the course of providing cash management services to Debtor, any Bank, without further order of this Court, is authorized to (i) charge, and Debtor is 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 its prepetition contractual arrangements with Debtor, and (ii) charge-back returned items to the Bank Accounts, whether such items are dated before, on or subsequent to the Petition Date, in the ordinary course.

9. For Banks with existing deposit agreements and/or deposit account control agreements with the Debtor, these deposit agreements shall continue to govern the postpetition cash management relationship between the Debtor and the Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. Either the 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 and deposit account control agreements, including, without limitation, the opening and closing of bank accounts.

10. Notwithstanding any other provisions of this Order, any Bank may rely on the representations of Debtor with respect to whether any check, draft, wire, or other transfer drawn or issued by Debtor prior to the Petition Date should be honored pursuant to this or to any order of this Court, and any Bank that honors a prepetition check or other item drawn on any account that is the subject of this Order: (i) at the direction of Debtor, (ii) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (iii) as a result of an innocent mistake made despite the above-described protective measures, shall neither be deemed to be in violation of this Order nor be liable to Debtor or its estate on their account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Order.

11. Any Banks are further authorized to (i) honor Debtor's directions with respect to the opening and closing of any Bank Account, and (ii) accept and hold, or invest, Debtor's funds in accordance with Debtor's instructions; provided, in each case, that the Banks shall not have any liability to any party for relying on the representations described in this paragraph.

12. For Banks at which Debtor holds Bank Accounts that are party to a Uniform Depository agreement with the U.S. Trustee, within fifteen (15) days of the date of entry of this Order, Debtor shall (i) contact each Bank, (ii) provide the Bank with the Debtor's employer identification number, and (iii) identify each of the Bank Accounts held at such Banks as being held by a debtor in possession in a bankruptcy case.

13. For Banks at which Debtor holds accounts that are not a party to a Uniform Depository agreement with the U.S. Trustee, Debtor shall have thirty (30) days to comply with Section 345 of the Bankruptcy Code unless further extended by order of this Court, and Debtor

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 thirty (30) days of the date of this Order.

14. Debtor is authorized to use its existing check stock; provided, however, that once Debtor's existing checks have been used, Debtor shall, when reordering checks, require the designation "Debtor in Possession" or "DIP" and the corresponding bankruptcy case number on all checks; provided, further, within fifteen days of entry of this Order, any electronically produced checks shall reflect the designation "Debtor in Possession" or "DIP" and the corresponding bankruptcy case number.

15. Notwithstanding anything contained herein, despite Debtor's use of the consolidated Cash Management System, Debtor shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of the Debtor.

16. Each of the Banks is authorized to debit Debtor's accounts in the ordinary course of business without need for further order of this Court for: (i) all checks, items, and other payment orders drawn on Debtor's accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Bank's receipt of notice of filing of the petition; (ii) all checks, automated clearing house entries, and other items deposited or credited to one of Debtor's accounts with such Bank prior to filing of the petition which have been dishonored, reversed, 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 filing of the Petition; and (iii) 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.

17. Nothing contained herein shall prevent Debtor from closing any Bank Account(s) or opening any additional bank accounts, as it may deem necessary and appropriate, and any relevant bank is authorized to honor Debtor's requests to close or open such Bank Accounts or additional bank accounts, as the case may be; provided that notice of the opening or closure of any account shall be given to the U.S. Trustee and any statutory committee as soon as practicable; and provided, further, that any new bank accounts shall be opened at a bank that is party to a Uniform Depository agreement with the U.S. Trustee, or at a bank that is willing to immediately execute a Uniform Depository agreement.

18. Debtor shall maintain accurate and detailed records of all transfers and intercompany transactions, if any, within the Cash Management System so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

19. Debtor shall perform sweeps of the Store Deposit Accounts in the ordinary course of business.

20. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against Debtor or a waiver of Debtor's rights to dispute any claim or lien.

21. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to Debtor. The requirements of Bankruptcy Rule 6004(a) are waived under the circumstances.

22. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (i) this Order shall be effective immediately and enforceable upon its entry; (ii) Debtor is not subject

to any stay in the implementation, enforcement, or realization of the relief granted in this order; and (iii) Debtor is authorized and empowered, and may in its discretion and without further delay, take any action necessary or appropriate to implement this Order.

23. Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order from March 1 to April 19, 2017, when the Court will consider granting further relief.

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

Dated this 23rd day of March, 2017.

A handwritten signature in black ink that reads "Shon Hastings". The signature is written in a cursive, flowing style.

SHON HASTINGS, JUDGE  
UNITED STATES BANKRUPTCY COURT