

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

<p>In Re:</p> <p>Vanity Shop of Grand Forks, Inc.,</p> <p>Debtor.</p>	<p>Case No.: 17-30112</p> <p>Chapter 11</p>
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**AMENDED FINAL ORDER (I) AUTHORIZING THE DEBTOR TO PAY AND HONOR CERTAIN PREPETITION WAGES, BENEFITS AND OTHER COMPENSATION OBLIGATIONS, (II) HONOR MANAGEMENT SERVICES AGREEMENT AND PAY RELATED PREPETITION OBLIGATIONS AND (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATING TO SUCH OBLIGATIONS**

Debtor filed a motion for the entry of an order (i) authorizing Debtor, in accordance with its stated policies and in its discretion, to pay, honor, or otherwise satisfy certain of the Employee Obligations, including amounts and obligations related to the period prior to the Petition Date, (ii) authorizing Debtor to continue performing and exercising rights and obligations under the Management Agreement, and (iii) authorizing Banks to honor and process related checks and electronic transfers.<sup>1</sup> Debtor served the motion and notice of hearing. Hearings were held on March 3 and 23, 2017.

The Official Committee of Unsecured Creditors filed a limited objection to the entry of a final order. The Committee’s concerns relate to Debtor’s cash transfers to shareholders or affiliates of Debtor for rent, reimbursement of expenses, credit card payments and the like. The Committee seeks additional time to review these issues. A subsequent final hearing was

<sup>1</sup> Capitalized terms used but not otherwise defined in this Order shall have the meaning ascribed to them in the Motion or the First Day Declaration, as applicable.



held on April 3, 2017, to address the Committee's limited objection and Debtor's request for relief.

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 United States Constitution.

After considering the First Day Declaration [Doc. 26] and other evidence offered at the hearing, 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>2</sup> Specifically, the Court finds that paying the prepetition and postpetition obligations described in this Order are necessary to protect and preserve the estate, critical to the operation of Debtor's business during the short term of its liquidation and in the best interests of Debtor's estate, its creditors and other parties in interest.

IT IS ORDERED:

1. The Motion is GRANTED as provided below.
2. Upon entry of this Order, Debtor is authorized to pay and/or honor (including to any third parties that provide or aid in the monitoring, processing, or administration of the Employee Obligations), in its sole discretion, the Employee Obligations listed in the Motion and this Order; provided, however, notwithstanding any other provision of this Order, no

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<sup>2</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.

payments to any Employee shall exceed the \$12,850 statutory cap provided for under section 507(a)(4) and 507 (a)(5) of the Bankruptcy Code.

3. Debtor is authorized, but not directed, in its sole discretion, in amounts not to exceed the limits set forth in the Motion and this Order to honor and continue the Employee Benefits that were in effect as of the Petition Date; provided, however, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefits under section 365(a) of the Bankruptcy Code.

4. Subject to Paragraph 5 below, Debtor is authorized, but not directed, to continue performing and exercising rights and obligations under the Management Agreement with Vanity, Inc. including the reimbursement of 100% of direct management costs in accordance with its prepetition ordinary course of business; provided however, that absent further Order of this Court, the Debtor is prohibited from making any direct, indirect, or pass-through payments or transfers to any and all statutory or non-statutory insiders of the Debtor, including payments to shareholders of Shazzam! Inc. or any other shareholders or affiliates with the exception of payments to officers and the rent payment in accordance with the budget in Paragraph 5. No other directors or other statutory or non-statutory insiders will be paid any retention incentive. Debtor will not pay any profitability bonus to Vanity, Inc. under the Management Agreement and Vanity Inc. has waived its right to assert an administrative priority claim for any “profitability bonus.”

5. Amounts authorized to be paid on account of Management Service Obligations under the Management Agreement are limited as follows; provided, however, that such amounts may be increased either upon written consent of the Committee or further Order of this Court:

Payroll & Payroll Tax (3/1/17–4/30/17)	\$ 281,000
PTO (3/1/17–4/30/17) (ND law requires payout at termination)	\$ 186,000
Retention Incentives & Payroll Tax (3/1/17-4/30/17)	\$ 125,000
BCBS/Dental (3/1/17-4/30/17)	\$ 255,000
401k match (3/1/17-4/30/17)	\$ 22,000
Rent plus RE taxes (3/1/17-4/30/17 for corp. headquarters)	\$ 42,000
Phone (3/1/17-4/30/17)	\$ 9,000
Utilities/Building Services (3/1/17-4/30/17)	\$ 10,000
Copiers (3/1/17-4/30/17)	\$ 10,000
Bank charges	\$ 3,000
Postage (3/1/17-4/30/17)	\$ 8,000
Supplies/Travel (3/1/17-4/30/17)	\$ 35,000
ADP payroll processor (3/1/17-4/30/17)	\$ 14,000
Total:	\$1,002,000

6. Vanity Inc. shall not interfere with or restrict the Debtor’s access to its books and records, and it shall not destroy any of the Debtor’s books and records in its possession without further Court order.

7. Prepetition amounts authorized to be paid by this Order are limited as follows:

Category <sup>3</sup>	Amount
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<sup>3</sup> Each category includes amounts for related Employee Administrator Obligations.

Employee Claims <sup>4</sup> (2/19/17 – 3/1/17)	\$499,000
Paid Time Off (only at separation and where required by state law)	\$180,400
Health Plan	\$260,000
Dental Plan	\$20,000
Vision Plan	\$1,500
COBRA	\$9,000
Flex Benefits	\$800
Life, Disability, and Related Coverage	\$4,500
Additional Medical Administration Costs	\$1,000
Voluntary Life	\$300
Voluntary Other	\$4,500
Retirement Plan	\$15,000 <sup>5</sup>
Employee Expenses	\$15,000
Administrative Employee Obligations Under the Management Agreement with	\$315,000
Sick Leave	\$400

8. In addition, Debtor is authorized to make payments in an amount not to exceed \$10,000 in the aggregate to reimburse certain Employees for out-of-pocket expenses associated with prepetition payroll payments that were unintentionally omitted and/or

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<sup>4</sup> No Employee will be paid more than \$12,850 in the aggregate with respect to Employee Claims.

<sup>5</sup> The Court does not grant authority for Debtor to pay auditors or tax return preparers to charge fees for professional services until and unless authority is granted under 11 U.S.C. 327.

prepetition checks for payroll that did not clear. For the avoidance of doubt, the payment of these amounts shall not result in any single Employee being paid more than the Statutory Cap.

9. The Banks are authorized to receive, process, honor, and pay all prepetition and postpetition checks and fund transfers on account of the Employee Obligations that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Banks are prohibited from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Employee Obligations. Debtor is authorized to issue new postpetition checks or effect new postpetition fund transfers on account of the Employee Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

10. Notwithstanding any other provision 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 the Debtor prior to the Petition Date should be honored pursuant 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 not be liable to Debtor or its estate on account of such prepetition check or other item being honored postpetition.

11. Debtor may pay and remit any and all withholding, including social security, FICA, federal and state income taxes, garnishments, health care payments, retirement fund withholding, and other types of withholding, whether these relate to the period prior to or after the Petition Date.

12. Any party receiving payment from Debtor is authorized to rely upon the representation of Debtor as to which payments are authorized by this Order.

13. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by Debtor pursuant to the relief) shall: (i) be construed as a request for authority to assume any executory contract under section 365 of the Bankruptcy Code; (ii) waive, affect, or impair any of Debtor's rights, claims, or defenses, including, but not limited to, those arising from section 365 of the Bankruptcy Code, other applicable law, and any agreement; (iii) grant third-party beneficiary status or bestow any additional rights on any third party; or (iv) be otherwise enforceable by any third party.

14. Nothing in this Order shall be construed as waiving or otherwise limiting the rights of the estate or the Committee with respect to the Management Agreement or Vanity, Inc. including without limitation the Committee's right to seek to challenge any prepetition payments or transfers previously made under or in connection with the Management Agreement as fraudulent transfers or preferences and to seek to avoid and recover any such payments or transfers. This reservation of rights does not allow challenge of any transfers or transactions previously approved by the Court.

15. Nothing in this Order shall be construed as binding on this Court or any other party-in-interest, or to establish the law of the case, with respect to whether an individual is or is not an insider within the meaning of section 101(31) of the Bankruptcy Code.

16. Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

17. Nothing in this Order shall be deemed to: (i) authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code, (ii) authorize or approve any bonus

plan or severance plan that is subject to section 503(c) of the Bankruptcy Code, or (iii) authorize Debtor to cash out unpaid vacation or sick leave time upon termination of an employee unless applicable state law requires such payment.

18. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to Debtor.

19. 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.

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

Dated this 3rd day of April, 2017.



SHON HASTINGS, JUDGE  
UNITED STATES BANKRUPTCY COURT