

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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FILED

CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

GOTTSCHALKS INC., a Delaware
corporation,¹

Debtor.

Chapter 11

Case No. 09-_____ ()

**MOTION OF THE DEBTOR AND THE DEBTOR IN POSSESSION FOR
AN ORDER (A) AUTHORIZING THE CONTINUED USE OF THE
DEBTOR'S CASH MANAGEMENT SYSTEM, (B) AUTHORIZING
MAINTENANCE OF THE DEBTOR'S EXISTING BANK ACCOUNTS AND
BUSINESS FORMS, AND (C) EXTENDING THE DEBTOR'S TIME TO
COMPLY WITH SECTION 345 OF THE BANKRUPTCY CODE**

Gottschalks Inc., a Delaware corporation, as a debtor and debtor-in-possession (the "Debtor"), by and through its undersigned counsel, hereby files this motion (the "Motion") for the entry of an order (a) authorizing the continued use of the Debtor's existing cash management system, (b) authorizing maintenance of the Debtor's existing bank accounts and business forms and (c) granting the Debtor an extension of time to comply with section 345 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). In support of this Motion, the Debtor respectfully represents as follows:²

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. § 157 and 1134. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding as defined in 28 U.S.C. § 157(b).

2. The statutory predicates for the relief requested herein are sections 105(a) and 345(b) of the Bankruptcy Code.

¹ The Debtor in this case, along with the last four digits of the federal tax identification number for the Debtor, is Gottschalks Inc. (9791). The Debtor's corporate offices are located at 7 River Park Place East, Fresno, California 93720.

² The facts and circumstances supporting this Motion are set forth in the *Declaration of J. Gregory Ambro in Support of Chapter 11 Petition and Request for First Day Relief*, filed contemporaneously herewith.

BACKGROUND

3. The Debtor is a diversified retailer operating fifty-nine (59) full-line department stores and three (3) specialty stores in six western states: California, Washington, Alaska, Oregon, Idaho and Nevada. It was founded in 1904 in Fresno, California, and expanded within California and the western states. The Debtor's stores operate under the "Gottschalks" and "Village East" names and are generally large, free-standing and mall-based outlets of between 30,000 and 200,000 square feet, primarily located in mid-sized cities that are otherwise underserved by the larger national chains. The Debtor carries a broad line of brand name and private label merchandise, including fashion clothing, shoes, cosmetics, jewelry, home furnishings and other products. Brands carried by the Debtor include Estee Lauder, Lancome, Clinique, Chanel, Dooney & Bourke, Nine West, Liz Claiborne, Calvin Klein, Nautica, Karen Kane, Ralph Lauren, Columbia, Fossil, Levi Strauss, Southpole, Izod, Quiksilver, Roxy, Woolrich and Carters.

4. The Debtor employs more than 5,282 full time and part time employees. Like other retailers, the Debtor's retail sales are subject to seasonal fluctuations – approximately 33% of the Debtor's annual sales occur in the fourth fiscal quarter (November 1 through January 31).³ Of its 62 retail locations, the Debtor owns 5 stores and leases the balance. The Debtor is publicly owned. One of its largest investors is The Harris Company ("Harris"), which sold certain stores to the Debtor in 1998 and is an affiliate of Spanish retailer El Corte Ingles.

5. The Debtor as borrower, the lenders party thereto and General Electric Capital Corporation, as administrative agent and collateral agent ("GECC"), are parties to that certain Second Amended and Restated Credit Agreement dated as of September 26, 2007 (as amended, the "GECC Facility"). The current amount outstanding under the GECC Facility is approximately \$73 million. The obligations under the GECC Facility are secured by a lien in most of the Debtor's assets including inventory, accounts receivable, equipment, most (but not

³ The Debtor's fiscal year ends on the Saturday nearest to January 31.

all) of its real property, and intellectual property (among other things). The Debtor's principal unsecured obligations consist of, among others, a note in favor of Harris with an outstanding principal amount of approximately \$16 million and approximately \$29 million owed to its trade vendors.

6. In November 2008, the Debtor signed an agreement with Everbright Development Overseas Securities, Ltd., a British Virgin Islands corporation ("Everbright"). Everbright agreed to invest up to \$30 million in exchange for common stock of the Debtor. The Everbright transaction was subject to a diligence condition through December 15, 2008.

7. Shortly after the Everbright agreement was signed, the Debtor was advised that (a) new, lower appraisals conducted by independent appraisers of the value of the Debtor's inventory and other assets that comprise the "borrowing base" and control the Debtor's asset-based credit facility agented by General Electric Capital Corporation ("GECC") and (b) reserves due to a decline in the Debtor's same-store sales trends in the current retail environment would lead to a reduction in the Debtor's liquidity compared to budget under its credit line ranging from approximately \$18 million in December 2008 to a projected \$12 million in January, 2009. The Debtor had not anticipated the adjustments at the time it entered the proposed transactions with Everbright. GECC agreed to delay certain of the adjustments in availability under the credit facility for a period of time.

8. Everbright subsequently advised the Debtor that it was unable to go forward with its proposed investments, at least as it was previously structured. The Debtor attempted to modify the amount of the proposed investment from Everbright or raise additional capital from third parties (principally its existing investor, Harris). However, the Debtor's efforts to secure such infusion of funds outside of a chapter 11 proceeding were ultimately unsuccessful, and its sales (like those of virtually all retailers) continued to be impacted by the very weak retail and credit environment. The combination of these factors (and the resulting impact on its access to cash and its line of credit) resulted in the filing of this case.

9. The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on January 14, 2009 (the "Petition Date"). The Debtor intends to use this chapter 11 case to (i) gain access to liquidity, and (ii) execute on one or more options to create value for stakeholders (including a sale of assets or other transaction with a third party investor). The Debtor is considering all possible options for maximizing stakeholder value. Among other things, it will focus on the sale of certain portions or all of its business as well as other third party investments and asset disposition options.

10. GECC has agreed to provide postpetition financing to the Debtor and consented to the use of cash collateral. The proposed postpetition financing arrangement (the "DIP Loan Facility") will provide the Debtor with cash advances and other extensions of credit in an aggregate principal amount not to exceed \$125 million. The proposed DIP Loan Facility contemplates a sale of the Debtor's business within approximately 60 days of the Petition Date.

11. The Debtor plans to seek approval for a sale process using the following timetable (which is incorporated into the DIP Loan Facility): the acceptance of a stalking horse bid on or about March 2, 2009 and an auction on or about March 17, 2009. The sale would close on an agreed schedule. To further its sale efforts, the Debtor has retained FTI Consulting, Inc. as its financial advisor and Financo, Inc. ("Financo") to act as its investment banker. Financo served as the Debtor's investment banker prior to the Petition Date and is very familiar with the Debtor. It is already working with interested investors and potential buyers. The Debtor believes that the DIP Loan Facility gives it the liquidity to execute on its sale effort.

RELIEF REQUESTED

12. By this Motion, the Debtor seeks, inter alia, entry of an order, pursuant to sections 105(a) and 345(b) of the Bankruptcy Code, (a) waiving the U.S. Trustee Guidelines to the extent necessary in order to continue its use of its existing cash management system, (b) authorizing the Debtor to continue using its prepetition bank accounts and business forms, including a waiver of the requirement that the legend "debtor in possession" be imprinted on any

existing checks and business forms, and (c) authorizing the Debtor to continue the use of its existing cash management system. Finally, the Debtor seeks an extension of time to comply with the investment guidelines provided for in section 345(b) of the Bankruptcy Code. The Debtor seeks this authorization to insure its orderly entry into bankruptcy and to help efficiently administer its business and avoid the disruptions and distractions that would inevitably divert the Debtor's attention from urgent matters during the initial stages of its bankruptcy case.

BASES FOR RELIEF REQUESTED

A. Maintenance of the Debtor's Existing Bank Accounts is in the Best Interests of the Estate

13. The Debtor maintains a number of bank accounts in the ordinary course of business. The bank accounts include without limitation depository, operating, payroll and distribution accounts (collectively, the "Bank Accounts"). Currently the Debtor has accounts with Wells Fargo Bank, National Association ("Wells Fargo"). A true and correct list of the Bank Account names and account numbers is attached hereto as Exhibit A.

14. The United States Trustee for the District of Delaware has established certain operating guidelines for debtors in possession. One such provision requires a chapter 11 debtor in possession to open new bank accounts and close all existing accounts. The United States Trustee Guidelines also require that new bank accounts be opened in certain financial institutions designated as authorized depositories by the United States Trustee.

15. Rule 2015-2(a) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Bankruptcy Rules") provides that in a chapter 11 case where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation "Debtors in Possession" and to use its existing bank accounts.⁴

⁴ The Debtor will, however, use the designation "Debtor in Possession" on new check stock and in connection with electronic checks and wire transfers.

16. Pursuant to Local Bankruptcy Rule 2015-2(a), the Debtor seeks a waiver of the United States Trustee requirements relating to the closing and re-opening of new bank accounts. Such a requirement would unnecessarily disrupt the Debtor's business, impair its efforts to successfully reorganize and would not provide any significant benefit to the Debtor's estate, its creditors or parties in interest. For example, the Debtor's employees would suffer significant hardship if the Debtor were required to substitute new debtor in possession payroll accounts for the existing payroll account and would face attendant delays, confusion and disruption that would necessarily result. It is critical to the continued operation of the Debtor's business and the preservation of the value of its assets that the existing cash management system and Bank Accounts continue to be utilized without disruption.

17. In addition, the filing of the Debtor's bankruptcy petition will undoubtedly be publicized and place a strain on the Debtor's relationships with its customers, vendors and other creditors that are essential to the Debtor's continued operations. If the Debtor is required to substitute new debtor in possession bank accounts for its existing Bank Accounts, these relationships will be further strained by the payment delays and confusion that would result from opening the new accounts. Moreover, the terms of the Debtor's proposed DIP Loan Facility require the Debtor to maintain its network of collection and concentration accounts. Consequently, the Debtor believes that it is imperative that it be permitted to continue using the existing Bank Accounts to avoid such unnecessary disruption of its business, efficiently administer its bankruptcy case and devote its efforts to a successful reorganization.

18. In other cases of this size, this Court has waived the strict enforcement of bank account closing requirements and replaced them with alternative procedures that provide the same protection. See, e.g., In re Special Devices, Incorporated, Case No. 08-13312 (MFW) (Bankr. D. Del. Jan. 6, 2009); In re Wickes Holdings, LLC, No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Delta Fin. Corp., No. 07-11880 (CSS) (Bankr. D. Del. Dec. 19, 2007); In re Pope & Talbot, Inc., No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Tweeter Home Entm't Group, Inc., No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); In re Exide

Technologies, et al., Case No. 02-11125 (Bankr. D. Del. April 17, 2002); In re W.R. Grace & Co., et al., Case No. 01-01139 (Bankr. D. Del. April 2, 2001); In re Fruehauf Trailer Corp., Case No. 96-01563 (Bankr. D. Del. Oct. 8, 1996); In re Seven-Up/RC Bottling Co. of S. California, Case No. 96-00738, slip op. (Bankr. D. Del. May 13, 1996); In re Morrison Knudsen Corp., Case No. 96-01006 (Bankr. D. Del. June 25, 1996); In re Simmons Upholstered Furniture, Inc., Case No. 94-00635 (Bankr. D. Del. June 28, 1994); In Re Abrasive Indus., Inc., Case No. 94-00135 (Bankr. D. Del. Feb. 22, 1994); In re Trans World Airlines, Inc., et al., Case No. 92-00115 (Bankr. D. Del. Jan. 31, 1992).

B. Maintenance of the Debtor's Existing Business Forms is in the Best Interests of the Estate

19. The Debtor also requests authority to continue to use all existing correspondence and business forms (including, but not limited to letterhead, purchase orders, invoices, etc.), as well as checks, without reference to its "debtor in possession" status, in order to minimize expenses to the estate.

20. In the ordinary course of its business, the Debtor uses many pre-printed correspondence and business forms. The nature and scope of the Debtor's business and the numerous suppliers of goods and services require that the Debtor be permitted to continue using its existing pre-printed correspondence and business forms without alteration or modification. Changing correspondence and business forms would be unnecessary and burdensome to the estate, as well as expensive and disruptive to the Debtor's business operations. Parties doing business with the Debtor undoubtedly will be aware, as a result of the size of this case and the integrated nature of the industry in which the Debtor operates, of the Debtor's status as a debtor in possession. Further, opening new debtor in possession accounts would be a significant burden due to the number of accounts that the Debtor maintains. Accordingly, the Debtor also requests authority to use its correspondence and business forms without placing the label "debtor in possession" on each such correspondence or form.

21. Other courts have allowed debtors to use their prepetition forms without the “debtor in possession” label. See, e.g., In re Special Devices, Incorporated, Case No. 08-13312 (MFW) (Bankr. D. Del. Jan. 6, 2009); In re Wickes Holdings, LLC, No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Delta Fin. Corp., No. 07-11880 (CSS) (Bankr. D. Del. Dec. 19, 2007); In re Pope & Talbot, Inc., No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Tweeter Home Entm’t Group, Inc., No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); In re Young, 205 B.R. 894, 897 (Bankr. W.D. Tenn. 1997) (finding that the United States Trustee had no authority to require the “debtor in possession” imprint on the debtor’s checks); In re Gold-Standard Banking, Inc., 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995) (holding United States Trustee’s requirements prohibiting issuance of checks without “debtor in possession” designation to be unenforceable; see also In re Harnischfeger Indus., Inc. et al., Case No. 99-02171 (Bankr. D. Del. June 8, 1999) (waiving U.S. Trustee’s requirement for debtors to issue only checks containing “debtor in possession” label).

C. **Maintenance of the Debtor’s Existing Cash Management System is in the Best Interests of the Estate**

22. The Debtor maintains a cash management system (“Cash Management System”) in the operation of its business, as described further below and in the chart attached hereto as Exhibit B. Daily cash receipts from the Debtor’s individual stores, and all other proceeds of the collateral pledged to GECC, are initially deposited into depository accounts at Wells Fargo under the control, and subject to liens held by, GECC, as agent, for the benefit of itself and the lenders party to the GECC Facility.

23. Because the Debtor has pledged its cash and accounts receivable as security under the GECC Facility, all funds from the Debtor’s depository accounts as well as certain other accounts are automatically swept daily into a collection account maintained by GECC at Deutsche Bank Trust Company Americas (the “GECC Collection Account”) as described further in Exhibit C attached hereto. The money that is swept into the GECC Collection Account is then used to reduce the Debtor’s obligations under the GECC Facility. On

a daily basis, the Debtor's treasury personnel evaluate the Debtor's cash needs. Based on that analysis, the Debtor draws against funds available under the GECC Facility. Funds drawn are transmitted to an operating account at Wells Fargo, which is then utilized to directly pay the Debtor's purchasing and operating expenses by wire transfer or to transfer funds to various accounts that are then used by the Debtor to issue checks to pay its purchases and operating expenses. The Wells Fargo operating account is also utilized to fund a payroll account at Wells Fargo for the payment of the Debtor's employee wages, benefits and related costs and expenses. The Debtor's proposed DIP Loan Facility requires the Debtor to maintain this system of accounts postpetition.

24. For credit card purchases, the Debtor has entered into a Merchant Transaction Processing Agreement (the "Merchant Processing Agreement") with First National Bank of Omaha, N.A. ("FNBO"). Pursuant to the terms of this agreement, FNBO processes all customer payments using Visa, Mastercard and other financial service credit cards and ATM/debit cards and deposits the funds from such purchases into a specially designated Wells Fargo account. In exchange, the Debtor pays certain transaction and processing fees to FNBO. In addition, the amounts transferred to the Debtor pursuant to the Merchant Processing Agreement are subject to various charge-backs and credits relating to customer returns.

25. For the extension of credit to its customers, the Debtor has entered into a Credit Card Program Agreement (the "Credit Card Program Agreement") with HSBC Bank Nevada, N.A. ("HSBC"). Pursuant to this agreement, HSBC extends a revolving credit card account to qualifying customers of the Debtor in order to finance the purchase of goods from the Debtor. This program is limited to goods purchased from the Debtor and cannot be used at any other merchant.

26. Given the size and complexity of the Debtor's operations, as well as the need to preserve and enhance its going concern value, a successful reorganization of the Debtor's business simply cannot be accomplished if there is substantial disruption in the Debtor's Cash Management System. It is essential, therefore, that the Debtor be permitted to continue to use

the Cash Management System currently in place. Moreover, the proposed DIP Loan Facility requires the Debtor to maintain such an inter-locking account system.

27. The Cash Management System described herein constitutes the Debtor's ordinary, usual and essential business practice. The Cash Management System is similar to those commonly employed by corporate enterprises comparable to the Debtor in size and complexity. The widespread use of such systems is attributable to the numerous benefits they provide, including the ability to: (a) tightly control corporate funds; (b) insure cash availability; and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. These controls are particularly important here given the significant amount of cash that flows through the Debtor's Cash Management System on an annual basis.

28. In addition, given the financial structure of the Debtor, it would be difficult, if not impossible, for the Debtor to establish an entirely new system of accounts and a new cash management system. Thus, under the circumstances, maintenance of the Debtor's Cash Management System is not only essential to the Debtor, it is also in the best interests of its estate and creditors.

29. If the Debtor is not permitted to continue to use its Cash Management System in its current form (modified to the extent necessary by the proposed DIP Loan Facility, including, without limitation, (a) to allow for the application of amounts received in the GECC Collection Account to be applied in accordance with the debtor in possession financing arrangements (including use of cash collateral) pursuant to the terms of the documents and orders evidencing the DIP Loan Facility, (b) in addition to any liens in favor of GECC, in its capacity as agent under the GECC Facility, the granting of a lien in favor of GECC, as agent under the DIP Loan Facility, on all Bank Accounts in accordance with the documents and orders evidencing the DIP Loan Facility, and (c) directing that any and all prepetition blocked account agreements and similar control agreements entered into by any bank, GECC (in its capacity as agent under the GECC Facility) and Debtor, shall continue in effect in favor of GECC (in its capacity as agent

under the GECC Facility), and all rights of GECC (in its capacity as agent under the GECC Facility) under such agreements shall also inure to GECC (in its capacity as agent under the DIP Loan Facility)), its operations will be severely and perhaps irreparably impaired. Accordingly, the Court should authorize the Debtor's continued use of its existing Cash Management System.

30. In other cases of this size with similar factual circumstances, it has been recognized that strict enforcement of the bank account closing requirements does not serve the rehabilitative purposes of chapter 11. Accordingly, cases in this District have waived such requirements and replaced them with alternative procedures that provide the same protections. See, e.g., In re Special Devices, Incorporated, Case No. 08-13312 (MFW) (Bankr. D. Del. Jan. 6, 2009); In re Wickes Holdings, LLC, No. 08-10212 (KJC) (Bankr. D. Del. Feb. 5, 2008); In re Delta Fin. Corp., No. 07-11880 (CSS) (Bankr. D. Del. Dec. 19, 2007); In re Pope & Talbot, Inc., No. 07-11738 (CSS) (Bankr. D. Del. Nov. 21, 2007); In re Tweeter Home Entm't Group, Inc., No. 07-10787 (PJW) (Bankr. D. Del. June 13, 2007); In re Exide Technologies, Case No. 02-11125 (Bankr. D. Del. April 17, 2002) (permitting debtors to maintain existing bank accounts and cash management system); In re W.R. Grace & Co., Case No. 01-01139 (Bankr. D. Del. April 2, 2001) (same); In re USG Corp., Case No. 01-02094 (Bankr. D. Del. June 27, 2001) (same); In re Waccamaw's HomePlace, Case No. 01-00181 (Bankr. D. Del. Jan. 17, 2001) (same); In re Trans World Airlines, Inc., Case No. 01-00056 (Bankr. D. Del. Jan. 10, 2001) (same); In re Plainwell, Inc., Case No. 00-04350 (Bankr. D. Del. Nov. 22, 2000) (allowing the debtors to maintain existing bank accounts when changing accounts would be too burdensome); In re Alamac Knit Fabrics, Inc., Case No. 00-03746 (Bankr. D. Del. Sept. 25, 2000) (same); In re AmeriServe Food Distrib., Inc., Case No. 00-00358 (Bankr. D. Del. Feb. 3, 2000) (same); In re Harnischfeger Indus., Inc., Case No. 99-02171 (Bankr. D. Del. June 7, 1999) (same); In re Acme Metals Inc., Case No. 98-02179 (Bankr. D. Del. Sept. 29, 1999) (same).

31. The Debtor further submits that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth

herein, Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) has been satisfied.

32. In addition, the Debtor should be granted relief from the United States Trustee Guidelines to the extent they require that the Debtor make all disbursements by check. Considering the complexity of the Debtor’s operations, it is necessary for the Debtor to conduct some transactions by wire transfer. To deny the Debtor the opportunity to conduct wire transfers would interfere with the Debtor’s performance of its contracts and unnecessarily disrupt the Debtor’s business operations. The Court should permit these practices to continue.

33. Finally, FNBO should be directed to continue providing merchant processing services for the Debtor’s credit card sales under the Merchant Processing Agreement, notwithstanding the Debtor’s entry into chapter 11. In addition, HSBC should continue to perform under the Credit Card Program Agreement, and to provide financing to the Debtor’s customers in the normal and customary manner. The Debtor requests that the Court provide that no new or extraordinary offsets will be imposed (including, without limitation, chargebacks), and that the relationships with FNBO and HSBC be handled using the same procedures and bases as in the past. Further, the Debtor should be granted authority to continue to perform under its Merchant Processing Agreement and Credit Card Program Agreement (including in each case reimbursement for valid customer charge-backs relating to prepetition transactions). The Debtor estimates that more than 82% of its total sales are purchased via credit card (including the Gottschalks private label credit card, which accounts for approximately 47% of the Debtor’s total sales). The Debtor thus believes that the Merchant Processing Agreement and the Credit Card Program Agreement are in the best interest of the estate and are essential to its continued business. The Debtor will seek agreement of FNBO and HSBC but believes that the foregoing is consistent with its rights as a debtor in possession. Nothing herein shall constitute an assumption of an executory contract under section 365 of the Bankruptcy Code or otherwise.

34. It is critical both to the continued operation of the Debtor’s business and to the preservation of the value of that business that the Debtor continue to utilize its existing Cash

Management System without disruption. Accordingly, it is appropriate and entirely consistent with applicable provisions of the Bankruptcy Code and case law for the Court to approve the Debtor's Cash Management System in its current form (except to the extent it needs to be modified in accordance with the debtor in possession financing arrangements as further described in paragraph 28 above).

D. Cause Exists for Authorizing the Debtor to Continue its Existing Investment Policies and Waiving the Requirements of Bankruptcy Code Section 345(a)

35. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money of estates, such as the Debtor's cash, only in a manner that will yield the maximum reasonable net return on such funds, taking into account the safety of each deposit or investment. If deposits or investments are not insured or guaranteed by the United States or backed by the full faith and credit of the United States, section 345(b) of the Bankruptcy Code provides that, unless the court for cause orders otherwise, the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States that is secured by the undertaking of an adequate corporate surety.

36. It is within the Court's discretion to extend or waive the investment guidelines requirement of section 345(b) of the Bankruptcy Code "for cause." See 11 U.S.C. § 345(b); see also 140 Cong. Rec. H10752, H10767 (October 4, 1994) (section 345(b) investment guidelines may be "wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, [but] can work to needlessly handcuff larger, more sophisticated debtors.").

37. The Debtor respectfully requests a sixty (60) day extension within which to come in compliance with section 345 of the Bankruptcy Code. If the Debtor determines that it is unable to comply with the requirement of section 345 within that sixty (60) day period, the Debtor will file a motion seeking authority to deviate from such requirements.

NOTICE

38. No trustee, examiner or creditors' committee has been appointed in this chapter 11 case. Notice of this Motion has been provided to: (1) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (2) counsel to General Electric Capital Corporation, agent for the Debtor's senior secured creditors; (3) the 20 largest unsecured creditors for the Debtor as identified in the Debtor's chapter 11 petition; (4) Wells Fargo; (5) FNBO; (6) HSBC; (7) the Internal Revenue Service; (8) the Securities and Exchange Commission; and (9) the Office of the United States Attorney General for the District of Delaware. As this Motion is seeking first day relief, notice of this Motion and any order entered hereon will be served as required by Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is required.

NO PRIOR REQUEST

39. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor requests entry of an order, substantially in the form attached hereto as Exhibit D, granting the relief requested herein and such other further relief the Court deems just and proper.

Dated: January 14, 2009
Wilmington, Delaware

Respectfully submitted,



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*Proposed Attorneys for the Debtor and
Debtor-in-Possession*

EXHIBIT A

Bakersfield.com

Current Bank Accounts

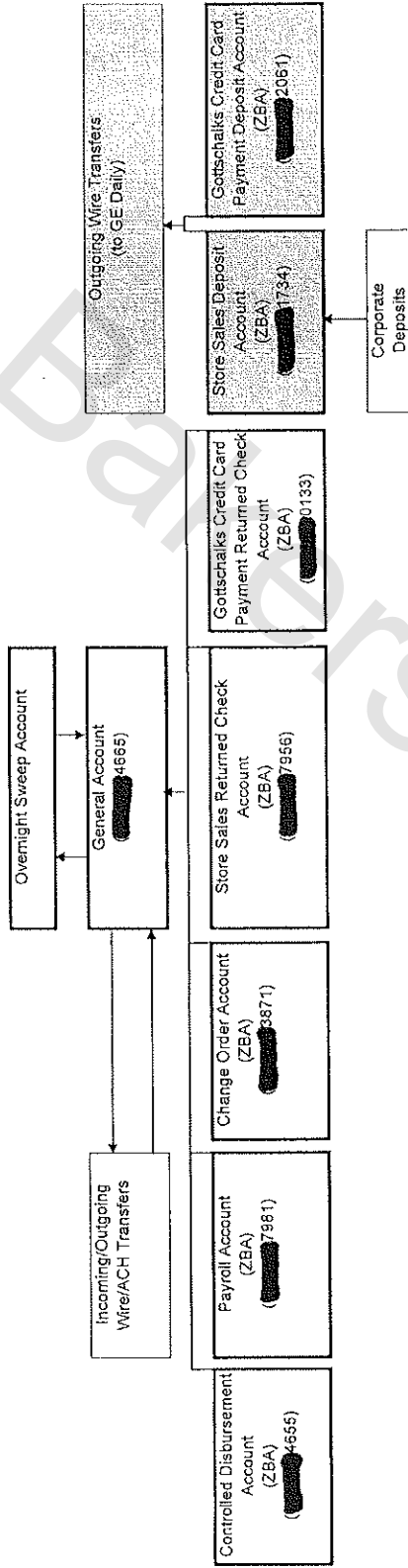
Name of Bank	Type of Account	Account number	Notice Address
Wells Fargo	General	XXX – XXX 4665	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Cash Sales	XXX – XXX 1734	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	HSBC Card Payments	XXX - XXX 2061	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Controlled Disbursements	XXX - XXX 4655	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Payroll Account	XXX - XXX 7981	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Returned Checks	XXX - XXX 7956	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Returned Checks	XXX - XXX 0133	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Change Orders	XXX - XXX 3871	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	General (Alaska)	XXX - XXX 1459	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Cash Sales (Alaska)	XXX - XXX 1181	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	HSBC Card Payments (Alaska)	XXX - XXX 1173	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Returned Checks (Alaska)	XXX - XXX 1203	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Returned Checks (Alaska)	XXX- XXX 1211	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Change Orders (Alaska)	XXX - XXX 1125	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox

EXHIBIT B

Chart of Accounts

Bakersfield.com

CA Wells Fargo Accounts



AK Wells Fargo Accounts

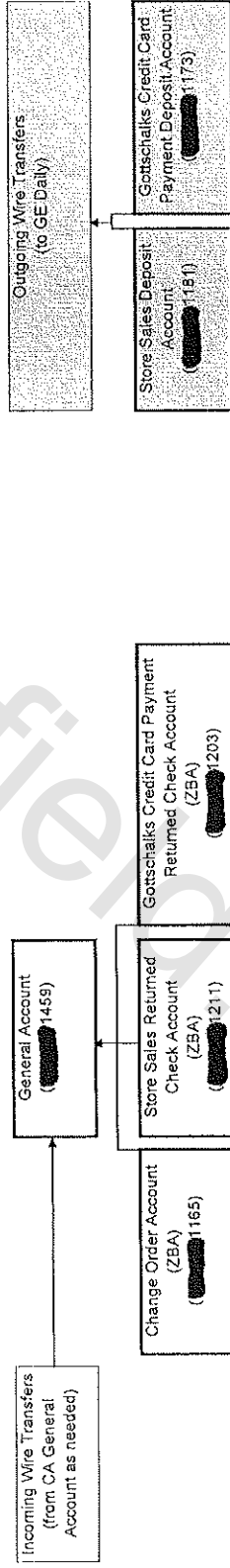


EXHIBIT C

Bakersfield.com

Bank: Deutsche Bank Trust Company Americas, New York, New York

Account #: XXXX513

Account Name: GECC/CAF Depository

Reference: CFN 8802 Gottschalks

Bakersfield.com

EXHIBIT D

Bakersfield.com

Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtor is authorized and empowered, but not directed, to continue to manage its cash pursuant to the cash management system maintained by the Debtor immediately prior to the commencement of this chapter 11 case, provided, however, that (a) the Debtor is authorized to make changes to its cash management system as it deems necessary or appropriate to facilitate the Debtor's use of cash collateral and funds available under the DIP Loan Facility in accordance with the documents and orders evidencing the DIP Loan Facility and (b) modifications to the cash management system shall be made to the extent necessary to effectuate the terms and conditions of the documents and orders evidencing the DIP Loan Facility.
3. Any amounts received in the GECC Collection Account are to be applied in accordance with the documents and orders evidencing the DIP Loan Facility.
4. GECC, as agent under the DIP Loan Facility, is hereby granted a lien on all Bank Accounts, in addition to any liens in favor of GECC, in its capacity as agent under the GECC Facility.
5. Any and all prepetition blocked account agreements and similar control agreements entered into by any bank, GECC (in its capacity as agent under the GECC Facility) and Debtor, shall continue in effect in favor of GECC (in its capacity as agent under the GECC Facility), and all rights of GECC (in its capacity as agent under the GECC Facility) under such agreements shall also inure to GECC (in its capacity as agent under the DIP Loan Facility). Further, the Debtor is authorized and directed to deliver to GECC (in its capacity as agent under the DIP Loan Facility) any blocked account agreement in respect of any account established or maintained by the Debtor as reasonably requested by GECC (in its capacity as agent under the DIP Loan Facility) and as required under the documents and orders evidencing the DIP Loan Facility.

6. First National Bank of Omaha, N.A. and any other credit card merchant processors providing services to the Debtor are authorized and directed to perform their services as such have normally and customarily been performed prior to the commencement of this chapter 11 case, provided that there are no new or extraordinary offsets or reserves and that chargebacks are handled using the same procedures as pre-petition.

7. HSBC Bank Nevada, N.A., as the Debtor's private label credit card services provider, is authorized and directed to perform its services as such have normally and customarily been performed prior to the Petition Date, provided that there are no new or extraordinary offsets or reserves and that chargebacks are handled using the same procedures and bases as prior to the Petition Date.

8. The Debtor is further authorized, but not directed, to continue to perform under the Merchant Processing Agreement and the Credit Card Program Agreement (including in each case reimbursement for valid customer charge-backs relating to prepetition transactions).

9. The Debtor is directed to maintain records of all transfers within the cash management system so that all transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, its books and records, to the same extent maintained by the Debtor prior to the commencement of this chapter 11 case.

10. The Debtor is authorized, but not directed, to: (i) designate, maintain, and continue to use any or all of its existing Bank Accounts (as identified on Exhibit A hereto) in the names and with the account numbers existing immediately prior to the commencement of the Debtor's chapter 11 case; provided, however, that, upon immediate notice to the U.S. Trustee and any official committee appointed in this chapter 11 case, the Debtor may close certain of such bank accounts and open new debtor-in-possession accounts as may be necessary, in the Debtor's business judgment, to facilitate the Debtor's chapter 11 case (subject to GECC's consent as required under the documents and orders evidencing the DIP Loan Facility); (ii) deposit funds in and withdraw funds from such accounts by all usual means including, without limitation, checks, wire transfers, automated clearinghouse transfers and other debits

(subject to the budget approved as part of the DIP Loan Facility and any restrictions under the documents and orders evidencing the DIP Loan Facility); and (iii) treat its prepetition bank accounts for all purposes as debtor-in-possession accounts.

11. All banks with which the Debtor maintained bank accounts as of the commencement of this chapter 11 case are authorized and directed to continue to maintain, service and administer such Bank Accounts. Subject to section 553 of the Bankruptcy Code, all banks at which the Bank Accounts are maintained are prohibited from offsetting, affecting or otherwise impeding any funds of the Debtor deposited in the Bank Accounts on account of, or by reason of, any claim (as defined in section 101(5) of the Bankruptcy Code) of any such bank against the Debtor that arose before the Petition Date, absent further order of the Court; provided, however, the banks listed in Exhibit A hereto, with which the Debtor maintained bank accounts as of the commencement of this chapter 11 case, are authorized to debit the Debtor's accounts in the ordinary course of business without the need for further order of the Court for: (i) 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; (ii) 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 (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to such bank as service charges for the maintenance of the Cash Management System.

12. The Debtor's banks may rely on the representations of the Debtor with respect to whether any check or other payment order drawn or issued by the Debtor prior to the Petition Date should be honored pursuant to this or any other order of the Court, and such bank shall not have any liability to any party for relying on such representations by the Debtor as provided for herein.

13. All banks with which the Debtor maintains bank accounts are authorized and directed to (a) sweep on a daily basis all funds from the Debtor's depository accounts as well

as certain other accounts to the GECC Collection Account and (b) to follow any instruction of GECC (with respect to the disposition of any such accounts (and all deposits therein) maintained with such bank following the exercise of any remedies of GECC (in such capacity) in accordance with the documents and orders evidencing the DIP Loan Facility.

14. Each credit card processor who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment with respect to sales transactions of the Debtor involving credit or debit cards are authorized and directed to transfer all credit cards receipts to a depository account of the Debtor referenced in paragraph 9 above or to the GECC Collection Account.

15. The Debtor is authorized, but not directed, to maintain and continue to use any and all existing stationery, correspondence and business forms, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials and other business forms, substantially in the forms existing immediately prior to the commencement of this chapter 11 case, without reference to the Debtor's status as a debtor in possession.

16. The Debtor is granted an additional sixty (60) days from the Petition Date to come into compliance with section 345 of the Bankruptcy Code. If the Debtor determines that it is unable to comply with the requirements of section 345 within the sixty (60) day period, the Debtor will file a motion seeking authority to deviate from such requirements.

17. The Debtor, its officers, employees and agents, are authorized to take or refrain from taking such acts as are necessary and appropriate to implement and effectuate the relief granted herein.

18. Nothing herein or in the Motion shall be deemed to constitute an assumption of an executory contract, whether under section 365 of the Bankruptcy Code or otherwise.

19. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion.

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

Dated: January _____, 2009
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

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EXHIBIT A

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Current Bank Accounts

Name of Bank	Type of Account	Account number	Notice Address
Wells Fargo	General	XXX - XXX 4665	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Cash Sales	XXX - XXX 1734	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	HSBC Card Payments	XXX - XXX 2061	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Controlled Disbursements	XXX - XXX 4655	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Payroll Account	XXX - XXX 7981	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Returned Checks	XXX - XXX 7956	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Returned Checks	XXX - XXX 0133	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Change Orders	XXX - XXX 3871	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	General (Alaska)	XXX - XXX 1459	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Cash Sales (Alaska)	XXX - XXX 1181	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	HSBC Card Payments (Alaska)	XXX - XXX 1173	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Returned Checks (Alaska)	XXX - XXX 1203	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Returned Checks (Alaska)	XXX- XXX 1211	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox
Wells Fargo	Change Orders (Alaska)	XXX - XXX 1125	8405 N. Fresno St. Fresno, CA 93720 Attn: Ben Maddox