

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

In re

CANDI CONTROLS, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-10679 (CSS)

**DEBTOR'S MOTION FOR ORDER  
AUTHORIZING DEBTOR TO CONTINUE USING  
EXISTING BANK ACCOUNTS AND BUSINESS FORMS**

Candi Controls, Inc., debtor-in-possession in the above-captioned Chapter 11 case (the “**Debtor**”), respectfully moves the Court for an order under §§ 105(a) and 363 of Title 11 of the United States Code (the “**Bankruptcy Code**”), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) authorizing the Debtor to continue using its existing bank accounts and its existing business forms. This Motion seeks immediate entry of an order and is brought on an emergency basis under Local Bankruptcy Rule 9013-1(m) to avoid immediate and irreparable harm to the Debtor’s estate. This Motion is supported by the entire record before the Court, the *Declaration of Douglas Klein in Support of First Day Pleadings* (the “**Klein Declaration**”) filed contemporaneously with this Motion, and by the following:

**BACKGROUND**

**Jurisdiction and Venue**

1. On March 23, 2018 (the “**Petition Date**”), CGM Partners, LLC, Howard Elias, and Kelly Yang Living Trust filed an involuntary petition in this Court under Chapter 11 of the

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 4409. The Debtor’s principal place of business is 428 13th Street, Third Floor, Oakland, CA 94612.

Bankruptcy Code against the Debtor. The Debtor filed its *Certificate of Counsel Regarding Proposed Order for Relief in Involuntary Case* on March 23, 2018. The Court entered the Chapter 11 order for relief on March 27, 2018. The Debtor now operates its business and manages its assets as a debtor-in-possession under Bankruptcy Code §§ 1107 and 1108.

2. This Court has jurisdiction over this Chapter 11 case under 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. This is a core proceeding under 28 U.S.C. § 157(b)(2). Under Local Rule 9013-1(f), the Debtor consents to the Court's entry of a final order on this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection with this Motion consistent with Article III of the United States constitution. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief this Motion seeks are Bankruptcy Code §§ 105(a) and 363 and Bankruptcy Rules 6003 and 6004.

4. No official committees have been appointed in this case. No party has requested the appointment of a trustee or an examiner.

#### **Debtor's Bank Accounts**

5. In the ordinary course of business, the Debtor uses conventional bank accounts to manage its cash and support its business operations: (a) a "Business Choice Checking Account" maintained at Wells Fargo Bank, which serves as the Debtor's general operating account to satisfy payroll, accounts payable, taxes, and other ordinary course operating obligations, with a balance as of the Relief Date of approximately \$20,792; (b) a second checking account that had previously been used to receive funds from investors, with a zero balance as of the Relief Date; and (c) a savings accounts, which had previously been used to store excess cash not needed for

short-term operational expenses, with a balance as of the Relief Date of approximately \$200. These three accounts (the “**Bank Accounts**”) are FDIC-insured and are held at Wells Fargo Bank, a US Trustee-approved depository institution.

6. The Debtor’s operations do not currently generate revenue; typically, the Debtor paid expenses and funded its bank account from cash made available to the Debtor from several rounds of equity and unsecured debt financing raised in private placements. As of the Petition Date, nearly all the Debtor’s cash had been used to satisfy the Debtor’s most recent payroll, so the balances in the Bank Accounts are exceedingly low. (Funding for this Chapter 11 case is intended to come from debtor-in-possession financing, approval of which is sought in an emergency motion filed contemporaneously with this one.)

#### **RELIEF REQUESTED**

7. By this Motion, the Debtor seeks an order authorizing the Debtor to continue using its existing bank account rather than one or more new debtor-in-possession accounts, to continue using its existing business forms, and waiving the investment and deposit requirements imposed by Bankruptcy Code § 345.

8. The Executive Office of the United States Trustee has established certain operating guidelines for debtors-in-possession in order to supervise the administration of Chapter 11 cases. These guidelines require a Chapter 11 debtor, among other things, to: (a) close all existing bank accounts and open new debtor-in-possession bank accounts; (b) establish one debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (c) maintain a separate debtor-in-possession account for cash collateral; and (d) obtain checks for all debtor-in-possession accounts bearing the designation “Debtor-in-Possession,” the bankruptcy case number, and the type of accounts.

**Existing Bank Accounts**

9. The Debtor seeks a waiver of the United States Trustee's requirement that the prepetition Bank Accounts be closed and that new post-petition "debtor-in-possession" accounts be opened. If enforced in this case, that requirement would cause unnecessary disruption in the Debtor's business and would cause the estate unnecessary expense for no benefit, especially considering the relatively small amount of funds involved. The Bank Accounts are already located at a United States Trustee-authorized depository institution and will serve the needs of the estate and the United States Trustee more than adequately.

10. The Debtor further seeks authorization to continue operating, in the ordinary course of business, under depository or similar contracts between themselves and Wells Fargo Bank where the Bank Accounts are located. Under the usual and ordinary terms that existed under those contracts before the Petition Date, Wells Fargo Bank could charge back and revoke provisional credits for deposited items that are returned unpaid and charge the amounts of these items against balances from time to time on deposit in the Bank Accounts, and to assess and deduct from the Bank Accounts customary periodic service charges. The Debtor seeks authorization to continue these ordinary course practices regardless of whether those items were deposited prepetition or post-petition and regardless of whether the items are returned prepetition or postpetition.

11. To avoid delays in payments to ordinary course administrative creditors, to ensure as smooth a transition into Chapter 11 as possible with minimal disruption, and to aid in the Debtor's efforts to successfully and rapidly complete this case, it is important that the Debtor be permitted to continue to maintain its Bank Account in the ordinary course of business and under the existing agreements between the Debtor and Wells Fargo Bank.

12. The Debtor requests that its Bank Accounts be deemed debtor-in-possession accounts and that the Court authorize their maintenance and continued use in the same manner and with the same account number, style, and document forms as those employed before the Petition Date. The Debtor further requests that the Court authorize Wells Fargo Bank to continue administering the Bank Accounts as they were maintained before the Petition Date without interruption and in the ordinary course of business, paying all checks, drafts, or wires issued on the Bank Accounts on account of any postpetition claims as long as sufficient funds remain in the Bank Account. Further, the Debtor respectfully requests that: (a) Wells Fargo Bank be authorized to honor all representations from the Debtor as to which checks should be honored or dishonored in light of the Debtor's statutory ability to operate post-petition in the ordinary course and to pay any prepetition claims specifically authorized by the Court; and (b) any final payment made instrument issued by Wells Fargo Bank on behalf of the Debtor under a "midnight deadline" or otherwise be deemed to be paid before the Petition Date, whether or not actually debited from one of the Bank Accounts prepetition. As soon as possible after the Petition Date, the Debtor will provide written direction to Wells Fargo Bank and its counsel regarding which checks should be honored and which checks should not. Wells Fargo Bank should be permitted to reasonably rely, in good faith, on the Debtor's direction and representations regarding the honoring of checks. Absent gross negligence or bad faith, Wells Fargo Bank should not be liable for the failure to honor any checks or the inadvertent honoring of any checks that should not have been honored.

13. The Debtor submits that the relief requested in this Motion is appropriate and well within the authority of this Court. The Debtor's request for authorization to continue to use its existing Bank Accounts has been held to be entirely consistent with Bankruptcy Code

§ 363(c)(1), which allows a debtor-in-possession in the ordinary course of business to use property of the estate.<sup>2</sup>

14. Courts often waive the United States Trustee's guidelines in Chapter 11 cases for operating business debtors, recognizing that those guidelines are often impractical and potentially detrimental to a debtor's postpetition business operations and restructuring efforts.<sup>3</sup> The United States Trustee's concerns with oversight, which lie at the heart of the United States Trustee's operating guidelines are easily met in this case with the Debtor's existing Bank Accounts. The Debtor can easily distinguish between prepetition and postpetition obligations and payments without closing the Bank Accounts and opening new ones. Wells Fargo Bank has considerable experience in Chapter 11 cases being advised to honor or dishonor prepetition checks, advices, drafts, and other requests for payment. Wells Fargo Bank also collateralizes a debtor-in-possession's bank accounts in accordance with the depository agreement with the United States Trustee. There is no need to open new accounts simply to ensure that sufficient funds exist for the payment of federal and state payroll taxes.

15. Moreover, Bankruptcy Code § 105(a) permits the Court to "issue any order ... necessary or appropriate to carry out the provisions" of the Bankruptcy Code. Granting the relief requested in this Motion is an appropriate use of the authority granted to this Court under Bankruptcy Code § 105(a) in order to enhance the Debtor's ability to achieve a successful

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<sup>2</sup> See *In re Columbia Gas Sys., Inc.*, 997 F.2d 1039, 1061 (3d Cir. 1993) (requiring new accounts "would be a huge administrative burden and economically inefficient"); *In re Dant & Russell, Inc.*, 853 F.2d 700, 703-04 (9th Cir. 1988).

<sup>3</sup> See, e.g., *In re The Standard Register Company*, Case No. 15-10541 (BLS) (Bankr. D. Del. Mar. 13, 2015); *In re Brookstone Holdings Corp.*, No. 14-10752 (BLS) (Bankr. D. Del. Apr. 4, 2014); *In re F&H Acquisition Corp.*, No. 13-13220 (KG) (Bankr. D. Del. Dec. 17, 2013); *In re Overseas Shipholding Group, Inc.*, No. 12-20000 (PJW) (Bankr. D. Del. Jan. 24, 2013); *In re Vertis Holdings, Inc.*, No. 12-12821 (CSS) (Bankr. D. Del. Nov. 1, 2012); *In re THQ Inc.*, No. 12- 13398 (MFW) (Bankr. D. Del. Dec. 20, 2012); *In re Delta Petroleum Corp.*, No. 11-14006 (KJC) (Bankr. D. Del. Dec. 16, 2011).

outcome in this case by avoiding needless expense and disruption in the Debtor's business. Furthermore, Bankruptcy Code § 363(c)(1) permits a debtor-in-possession to enter into transactions and use property of the estate in the ordinary course of its business. Maintaining the Debtor's existing Bank Accounts falls well within the scope of the ordinary course of business transactions that are allowed under § 363(c).

### **Existing Business Forms and Checks**

16. To minimize expense to the estate and to minimize disruption of its business, the Debtor requests that it be authorized to continue to use its existing stock of pre-printed checks, correspondence, and business forms (including letterhead, stationery, etc.) in the form that they exist immediately before the Petition Date (collectively, the "**Business Forms**"), without reference to the Debtor's status as a debtor-in-possession.

17. Because of the nature and scope of the Debtor's business operations will continue to be narrow and limited in advance of a sale of the Debtor's assets, changing the Business Forms would be needlessly expensive and burdensome to the Debtor's estate and would not confer any benefit on those dealing with the Debtor. (The Debtor, nonetheless, will endeavor to print any checks in-house on blank stock and will label all post-petition checks with the legend "Debtor-In-Possession" and the Debtor's bankruptcy case number as soon as practicable.) For these reasons, the Debtor requests that it be authorized to use existing Business Forms without being required to place the label "debtor-in-possession" on each Business Form.<sup>4</sup>

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<sup>4</sup> See *In re Gold Standard Baking, Inc.*, 179 B.R. 98, 105–06 (Bankr. N.D. Ill. 1995) (holding United States Trustee's requirement that the debtor issue checks with "debtor-in-possession" designation to be unenforceable); *In re Young*, 205 B.R. 894, 897 (Bankr. W.D. Tenn. 1997) (same). Courts in this District routinely grant similar relief. See, e.g., *In re The Standard Register Company*, Case No. 15-10541 (BLS) (Bankr. D. Del. Mar. 13, 2015); *In re AI23 Sys., Inc.*, Case No. 12-12859 (KJC) (Bankr. D. Del. Oct. 18, 2012) (granting interim relief); *In re WP Steel Venture LLC*, No. 12-11661 (KJC) (Bankr. D. Del. Jun. 1, 2012); *In re DSI Holdings, Inc.*, Case No. 11- 11941 (KJC) (Bankr. D. Del. June 28, 2011); *In re Friendly Ice Cream Corp.*, Case No. 11- 13167 (KG) (Bankr. D. Del. Oct. 6, 2011); *In re Neb. Book Co.*, Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011); *In re L.A. Dodgers LLC*, Case No. 11-12010 (KG) (Bankr. D. Del. June 28, 2011).

**REQUEST FOR IMMEDIATE RELIEF**

18. Under Bankruptcy Rule 6004(h), “An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth throughout this Motion and the Klein Declaration, ample cause exists to waive that 14-day stay, since any delay in implementing the relief granted under this Motion would jeopardize the Debtor’s business operations and reorganization efforts to the detriment of the Debtor’s estate and creditors. Because cause exists to do so, the Debtor requests that the Court waive the 14-day stay on any interim or final order granting the relief requested in this Motion.

**NOTICE**

19. The Debtor has provided notice of this Motion to the Office of the United States Trustee for the District of Delaware, the holders of all claims against the Debtor, and all parties that have filed a request for notices under Bankruptcy Rule 2002. Notice of this Motion and any order entered on it will be served in accordance with Local Rule 9013-1(m). Considering the nature of relief requested in this Motion, the Debtor believes no additional notice is necessary.



**CONCLUSION**

For the foregoing reasons, the Debtor respectfully requests that the Court enter an Order substantially in the form attached as **Exhibit A**: (a) authorizing the Debtor to maintain its Bank Accounts; (b) authorize the Debtor to continue using its Business Forms; and (c) granting any further appropriate relief.

Dated: March 28, 2018  
Wilmington, Delaware

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# EXHIBIT A

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

In re

CANDI CONTROLS, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-10679 (CSS)

Related Docket No. \_\_\_\_

**ORDER AUTHORIZING DEBTOR TO CONTINUE USING  
EXISTING BANK ACCOUNTS AND BUSINESS FORMS**

THIS MATTER is before this Court on the motion (the “**Motion**”)<sup>2</sup> of the above-referenced Debtor, Candi Controls, Inc. (the “**Debtor**”), seeking an order authorizing the Debtor to continue using its existing bank accounts and its existing business forms. The Court conducted an emergency hearing (the “**Hearing**”) under Local Bankruptcy Rule 9013-1(m) to avoid immediate and irreparable harm to the Debtor’s estate. Based on the record of the Hearing,

**THE COURT FINDS AND CONCLUDES:**

a. On March 23, 2018 (the “**Petition Date**”), CGM Partners, LLC, Howard Elias, and Kelly Yang Living Trust filed an involuntary petition in this Court under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) against the Debtor. The Debtor filed its *Certificate of Counsel Regarding Proposed Order for Relief in Involuntary Case* on March 23, 2018 [D.I. 4]. The Court entered the Chapter 11 order for relief on March 27, 2018 (the “**Relief Date**”). The Debtor now operates its business and manages its assets as a debtor-in-possession under Bankruptcy Code §§ 1107 and 1108.

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 4409. The Debtor’s principal place of business is 428 13th Street, Third Floor, Oakland, CA 94612.

<sup>2</sup> Capitalized terms used but not defined in this Order have the meaning ascribed to them in the Motion.

b. This Court has jurisdiction over this Chapter 11 case under 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. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

c. Notice of the Hearing and the expedited relief requested in the Motion was provided to the United States Trustee for the District of Delaware, the Debtor's 20 largest unsecured creditors, the Debtor's prepetition secured creditors, the Debtor's proposed debtor-in-possession lender, and all parties requesting notices in this case under Bankruptcy Rule 2002. Under the circumstances, notice of the Hearing and the relief requested in the Motion was sufficient under the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of the Court.

d. Cause exists under Bankruptcy Rule 6004(h) to waive the 14-day stay in implementing the relief granted in this Order.

Accordingly, based on the foregoing findings of fact and conclusions of law, and on the Motion and the record of the Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY FOUND, ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted as set forth below.
2. The Debtor is authorized to maintain its Bank Accounts in the manner the Debtor used them before the Petition Date.
3. Within its internal systems, Wells Fargo Bank must code the Bank Accounts so they are identified as debtor-in-possession accounts.
4. The Debtor is authorized to continue using its Business Forms without replacing them or altering them to bear this case's case number or the legend "Debtor-In-Possession" or similar verbiage. Once the Debtor's existing checks have been used, the Debtor must, when reordering checks, require the designation "Debtor In Possession" and the corresponding

bankruptcy case number on all checks. With respect to checks the Debtor or its agents print themselves, the Debtor must begin printing the “Debtor in Possession” legend on such items within ten days of the date of entry of this Order.

5. The Debtor’s bank is authorized and directed to follow the Debtor’s instructions regarding which checks and electronic payment requests should be honored or dishonored, consistent with any order of this Court and governing law, irrespective of whether such checks or electronic payment requests are dated before, on, or after the Petition Date.

6. For banks at which the Debtor holds bank accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, within 15 days of the date of entry of this Order, the Debtor must (a) contact each bank, (b) provide the bank with the Debtor’s employer identification number, and (c) identify each of its bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case.

7. The Debtor is authorized to open any new bank accounts or close any existing Bank Accounts as it may be necessary and appropriate in its sole discretion, but: (a) the Debtor must give notice within 15 days of doing so to the Office of the United States Trustee for the District of Delaware and any statutory committees appointed in this Chapter 11 case; and (b) the Debtor must open any such new bank accounts 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.

Dated: April \_\_\_\_, 2018  
Wilmington, Delaware

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Honorable Christopher S. Sontchi  
United States Bankruptcy Judge