IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§	Chapter 11
	§	
A'GACI, L.L.C.,[1]	§	Case No. 19-51919
	§	
Debtor.	§	
	§	

DECLARATION OF THOMAS J. LYNCH IN SUPPORT OF DEBTOR'S MOTION SEEKING ENTRY OF INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, AND 507 (I) APPROVING POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING AUTOMATIC STAY, (VI) GRANTING RELATED RELIEF, AND (VII) SCHEDULING A FINAL HEARING

I, Thomas J. Lynch, make this declaration pursuant to 28 U.S.C. § 1746:

1. I am a Senior Managing Director at Sierra Constellation Partners ("SCP"), which currently serves as financial advisor to A'GACI, L.L.C. ("A'GACI" or the "Debtor") in the above-captioned Chapter 11 case.

2. SCP is a global business advisory firm that provides multidisciplinary solutions to complex challenges and opportunities. The restructuring and turnaround experts at SCP help management stabilize finances and operations to reassure all parties-in-interest that proactive steps are being taken to enhance value. SCP's professionals have a deep expertise across many industries, allowing them to ascertain key issues quickly and react immediately on behalf of their clients. For clients in crisis, SCP's professionals develop liquidity forecasts, improve cash flow

[1] The last four digits of the Debtor's federal tax identification number are 9604.

management, obtain and consult regarding additional financing, and guide complex debt restructuring, among other services.

3. I have approximately 17 years of experience serving as a financial advisor and providing performance improvement services to corporations, various creditor groups, equity owners, and directors of underperforming companies. I have significant experience assisting distressed companies with day-to-day management activities, including development of business plans, cash flow management, and implementation of liquidity and cost saving strategies, including store closing strategies. I have also served in general management roles and on advisory engagements with large multinationals, private equity portfolio companies, and entrepreneurial startups in North and South America, Europe, and Asia.

4. On February 4, 2019, SCP was retained to serve as financial advisor for the Debtor. Since February 4, 2019, I have overseen a team of individuals that has assisted the Debtor's management team with, among other things, managing and forecasting the Debtor's liquidity position, evaluating store profitability, assessing business performance, and other financial analysis and planning. Specifically, I have been involved in the review and negotiation of the terms of the Debtor's proposed request for debtor-in-possession financing and use of cash collateral as well as the preparation of financial modeling, including cash flow forecasts and budgets. Accordingly, I am knowledgeable and familiar with the Debtor's day-to-day operations, business and financial affairs, cash flow needs and projections, and books and records. I am also familiar with the Debtor's supply chain and the status of the Debtor's relationships with various vendors, suppliers, and service-providers.

5. I submit this declaration (this "Declaration") in support of the *Debtor's Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Postpetition*

Financing, (II) Authorizing the Debtor to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Lenders, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the "DIP Motion").[2]

6. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by the Debtor's employees, advisors or professionals or by SCP employees working with the Debtor, or my opinion based upon experience with the Debtor, knowledge, and information concerning the Debtor's operations as well as the retail clothing industry, generally. I am not an officer or director of the Debtor and have relied on the accuracy of the information provided to me by the Debtor, the Debtor's employees, advisors, professionals or by SCP employees working with the Debtor. If called upon to testify, I would testify competently to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Debtor.

DIP MOTION

7. The Debtor has an immediate need to access incremental liquidity in the form of postpetition financing to preserve the value of the Debtor's estates and maximize recoveries for stakeholders. Accordingly, the Debtor seeks approval of a $10 million senior secured asset-based loan provided by the Prepetition Lenders (as defined herein). Because the DIP Facility (as defined herein) is being provided by the Prepetition Lenders, the Debtor is avoiding a potentially value-destructive priming fight with a third-party lender.

8. If approved, the Debtor will use the proceeds of the DIP Facility to, among other things: (a) fund the administration of the Debtor's chapter 11 case; (b) fund the Debtor's store

[2] Capitalized terms not otherwise defined in this Declaration shall have the meaning set forth in the Motion.

closing sales; and (c) repay amounts outstanding under the Debtor's Prepetition Facility. Obtaining an immediate injection of cash is critical to the Debtor's ability to fund the store closing sales. Without the liquidity provided by the DIP Facility and access to the Prepetition Secured Creditors' Cash Collateral (as each term is defined herein), the Debtor will be unable to effectuate the store closing sales, preventing the Debtor from maximizing the value of its estate for all stakeholders.

9. The Debtor seeks entry of an interim order, substantially in the form attached to the DIP Motion as **Exhibit A** (the "Interim Order"), and a final order (the "Final Order," and, together with the Interim Order, the "DIP Orders"):[3]

a. authorizing the Debtor to obtain senior secured, superpriority postpetition financing (the "DIP Facility," consisting of a senior secured superpriority revolving credit facility in an aggregate principal amount of $10,000,000) pursuant to the terms and conditions of that certain *Debtor-In-Possession Credit Agreement* (as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, the "DIP Credit Agreement"), by and among the Debtor and Second Avenue Capital Partners, LLC, as Administrative Agent and Collateral Agent (in such capacity, the "DIP Agent") and as a lender under the DIP Facility (in such capacity, the "DIP Lenders"), substantially in the form of **Exhibit B**, attached hereto;[4]

b. authorizing the Debtor to execute and deliver the DIP Credit Agreement and any other agreements, instruments, pledge agreements, guarantees, control agreements and other Loan Documents (as defined in the DIP Credit Agreement) and documents related thereto (including, without limitation, any security agreements, intellectual property security agreements, control agreements, or notes) (as amended, restated, supplemented, waived, and/or modified from time to time, and collectively, with the DIP Credit Agreement, the "DIP Loan Documents") and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents;

c. granting to the DIP Agent, for the benefit of itself and the DIP Lenders and other "Secured Parties" (as defined in the DIP Credit Agreement) on account of the DIP Facility and all obligations owing thereunder and under, or secured by, the DIP Loan Documents (collectively, and including all "Obligations" as described in the DIP

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[3] The Debtor will file the form of Final Order prior to the Final Hearing (as defined herein).

[4] Prior to entry of the Final Order, each day, any excess cash will be swept to the Agent Account and applied to prepay loans in accordance with the Prepetition Facility (as each term is defined in the Interim Order). Upon entry of the Final Order, any remaining unpaid Prepetition Obligations (as defined herein) and all accrued and unpaid interest thereon and fees and expenses shall "roll up" and become obligations under the DIP Facility and shall constitute DIP Obligations (as defined herein).

Credit Agreement, the "DIP Obligations") allowed superpriority administrative expense claim status in the Case and any Successor Cases (as defined herein), which superpriority administrative expense claims shall be subject to the priorities as set forth herein

d. granting to the DIP Agent, for its benefit and the benefit of the DIP Lenders and each other applicable Secured Party (as defined in the DIP Credit Agreement) under the applicable DIP Loan Documents, automatically perfected security interests in and liens on all of the DIP Collateral (as defined herein), including all property constituting "cash collateral" as defined in section 363(a) of the Bankruptcy Code ("Cash Collateral"), which liens shall be subject to the priorities set forth herein

e. authorizing and directing the Debtor to pay the principal, interest, fees, expenses and other amounts payable under the DIP Loan Documents as such become earned, due and payable, including, letter of credit fees (including issuance and other related charges), commitment fees, success fees, audit fees, appraisal fees, valuation fees, liquidator fees, structuring fees, administrative agent's fees, unused facility fees, and the fees and disbursements of the DIP Agent's attorneys, advisors, accountants, and other consultants, all to the extent provided in, and in accordance with, the DIP Loan Documents

f. authorizing the Debtor to use the Prepetition Collateral, including the Cash Collateral of the Prepetition Secured Creditors under the Prepetition Credit Documents, and providing adequate protection to the Prepetition Secured Creditors as set forth herein for any diminution in value of their respective interests in the Prepetition Collateral, including Cash Collateral, resulting from the imposition of the automatic stay, the Debtor's use, sale, or lease of the Prepetition Collateral, including Cash Collateral, and the priming of their respective interests in the Prepetition Collateral, including Cash Collateral, including by the Carve Out (collectively, and solely to the extent of such diminution in value, "Diminution in Value");

g. vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim Order

h. scheduling a final hearing (the "Final Hearing") within thirty (30) days of the Petition Date to consider the relief requested in the DIP Motion on a final basis and approving the form of notice with respect to the Final Hearing; and

i. granting related relief.

Background[5]

I. **The Debtor's Prepetition Capital Structure**.

[5] A detailed description of the Debtor and its business, and the facts and circumstances supporting the Debtor's chapter 11 case, are set forth in greater detail in the First Day Declaration.

10. As of the Petition Date, the Debtor's capital structure consists of outstanding funded-debt obligations in the aggregate principal amount of not less than $6,099,123.62 (collectively, together with any interest, fees (including, without limitation, any early termination and prepayment fees and closing fees owing under the DIP Facility) funded under the Prepetition Facility. The Debtor is a party to that certain Credit Agreement, dated as of August 2, 2018, (as amended, the "Prepetition Facility") A'GACI, L.L.C., as Borrower, the guarantors party thereto, Second Avenue Capital Partners, LLC ("Second Avenue"), as lenders (in such capacity, the "Prepetition Lenders") and as Collateral Agent and Administrative Agent (in such capacity, the "Prepetition Agent"). The Prepetition Facility provides for a $10 million senior secured revolving credit facility (subject to a borrowing base composed primarily of inventory and credit card receivables) with a maturity date of August 2, 2021

11. The Prepetition Facility provides for loans bearing interest at 3-month LIBOR *plus* an applicable margin of 8.5%. Interest is paid monthly in arrears. Obligations under the Prepetition Facility are secured by a first priority lien on all of the assets of the Borrower and the guarantors.

12. Additionally, the Debtor has entered into deposit account control agreements in favor of the Prepetition Agent with respect to its bank accounts. Thus, substantially all of the Debtor's cash is subject to a perfected first priority security interest in favor of the Prepetition Agent. Under the Prepetition Facility, the Debtor must remit substantially all cash receipts on a daily basis to a non-Debtor account maintained by the Prepetition Agent (the "Agent Account"). Accordingly, each day, any excess cash is swept to the Agent Account and applied to prepay loans in accordance with the Prepetition Facility. As of the Petition Date, there is not less than $6,099,123.62 (collectively, together with any interest, fees (including, without limitation, any

early termination and prepayment fees and closing fees owing under the DIP Facility) of outstanding principal and approximately zero of availability under the Prepetition Facility.

II. The Need to Use Cash Collateral and For Access to Financing.

13. The Debtor requires immediate access to liquidity to ensure that it is able to continue operating during this chapter 11 case and preserve the value of its estate for the benefit of all parties in interest. As of the Petition Date, the Debtor has limited cash on hand, which is insufficient to operate its enterprise and continue paying its debts as they come due. Without prompt postpetition financing and access to cash collateral, the Debtor will be unable to pay wages for its employees, pay the fees and expenses associated with the orderly liquidation of its inventory, preserve and maximize the value of its estate, and administer this chapter 11 case, causing immediate and irreparable harm to the value of the Debtor's estates to the detriment of all stakeholders

14. The Debtor, in consultation with its proposed restructuring advisor, Sierra Constellation Partners, reviewed and analyzed the Debtor's projected initial cash needs and prepared a projection (as updated from time to time in accordance with the terms of the DIP Credit Agreement, the "Budget")[6] outlining the Debtor's postpetition cash needs in the initial period of this case. The Debtor believes that the Budget and its projections provide an accurate reflection of its funding requirements over the identified period, will allow the Debtor to meet its obligations—including the administrative expenses of the chapter 11 cases—and are reasonable and appropriate under the circumstances

15. The Debtor relied on these forecasts to determine the amount of postpetition financing required to administer its chapter 11 case. The DIP Facility is critical to the Debtor's

[6] A copy of the Budget is attached to the Interim Order as **Exhibit 1**.

ability to smoothly operate postpetition, including by providing sufficient liquidity to fund the administrative cost of the chapter 11 case and the store closing sales. As a result, the Debtor believes that the DIP Facility provides the Debtor sufficient liquidity to stabilize its operations and fund the orderly wind down of its businesses, and is therefore essential to the preservation of its assets during the pendency of this case.

16. With virtually no cash on hand, the Debtor requires interim approval of the DIP Facility to obtain access to mission-critical financing. Absent the immediate relief requested by this motion, the Debtor faces a material risk of substantial, irreparable, and ongoing harm. Access to Cash Collateral and the DIP Facility will ensure the Debtor has sufficient funds to preserve and maximize the value of its estate and to responsibly administer this chapter 11 case

III. Alternative Sources of Financing Are Not Readily Available

17. The Debtor does not have alternative sources of financing readily available. The Debtor's Prepetition Lenders assert that substantially all of the Debtor's assets are encumbered under their existing capital structure, which, along with the Debtor's uncertain financial condition and overall weakness in the apparel industry, restricts the availability of, and options for, postpetition financing. The Prepetition Lenders also made it clear that they would not consent to "priming" debtor-in-possession financing provided by a third party. Additionally, as discussed below, the Debtor determined that there were no viable alternative lenders that would be willing to extend credit to the Debtor. Accordingly, the Debtor does not believe third-party debtor-in-possession financing would be reasonably obtainable.

18. While negotiating the DIP Facility with the Prepetition Lenders, the Debtor determined in its business judgment that there were no viable alternative lenders that would be willing to extend credit to the Debtor, especially after the Debtor's landlords began exercising their

rights and remedies under the leases, or that would able to close on the timeline necessary for implementation. No party provided a proposal that was better both in terms of economics as well as the ability to implement.

19. Indeed, any proposal by a lender outside the Debtor's prepetition capital structure would cost the Debtor substantially more than the DIP Facility and require priming of the Prepetition Lenders—likely resulting in expensive and distracting litigation at the critical start of this chapter 11 case. Additionally, with any third-party proposal, the Debtor would incur the execution risk associated with a new lender transaction, including material timing and due diligence constraints, necessarily involving the payment of additional professional fees. Therefore, it became clear to the Debtor that its existing lenders would provide the best source of postpetition financing.

20. The Debtor's determination to move forward with the DIP Facility is an exercise of its sound business judgment following an arm's-length process and careful evaluation of alternatives. Specifically, the Debtor and its advisors determined that postpetition financing will create certainty with respect to cash flows necessary for the administration of this chapter 11 case through the orderly wind down of the Debtor's businesses. The Debtor negotiated the DIP Credit Agreement and other DIP Loan Documents with the DIP Lenders in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtor believes that it has obtained the best financing available. Accordingly, the Court should authorize the Debtor's entry into the DIP Loan Documents, as it is a reasonable exercise of the Debtor's business judgment.

21. As described above and as set forth in the Lynch Declaration and the First Day Declaration, third-party lenders were unwilling to provide postpetition financing on an unsecured basis or otherwise junior to the Prepetition Lenders. Therefore, the Debtor, in consultation with

its advisors, concluded that any workable financing likely would require the support of, or be provided by, the Debtor's existing lenders. Absent the DIP Facility, which will provide certainty that the Debtor will have sufficient liquidity to administer the chapter 11 case, the value of the Debtor's estate would be significantly impaired to the detriment of all stakeholders. Given the Debtor's circumstances, the Debtor believes that the terms of the DIP Facility, as set forth in the DIP Credit Agreement, are fair, reasonable, and adequate. For all these reasons, the Debtor submits that it has met the standard for obtaining postpetition financing.

22. As noted above, the Debtor does not believe that alternative sources of financing are reasonably available given the realities imposed by the Debtor's existing capital structure and the Debtor's determination that no alternative financing proposal exists due to the facts and circumstances surrounding the Debtor's filing of this chapter 11 case. Substantially all of the Debtor's existing assets, including Cash Collateral, are encumbered. Moreover, the Debtor is confident no alternative proposal exists. There are no other options. Thus, the Debtor has determined that the DIP Facility provides the best opportunity available to the Debtor under the circumstances to fund this chapter 11 case. Therefore, the Debtor submits that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtor is satisfied.

23. The repayment of the Prepetition Facility, including the application of proceeds to reduce Prepetition Obligations prior to entry of the Final Order and, upon entry of such Final Order, repayment in full of the Prepetition Obligations, is a sound exercise of the Debtor's business judgment and is a material component of the structure of the DIP Facility and was required by the DIP Lenders as a condition to their commitment to provide postpetition financing. The Debtor was unable to obtain debtor-in-possession financing on similar terms that did not provide for the repayment of prepetition amounts on these terms.

24. The simple economic reality is that an orderly wind down of the Debtor's businesses comes at a price, which in this case the Debtor believes to be reasonable.

25. The Debtor should be authorized to use cash collateral.

26. Here, the Prepetition Lenders consent to the Debtor's use of the Cash Collateral (as well as the Prepetition Collateral), subject to the terms and limitations set forth in the Interim Order.

27. As described more fully above, and as set forth in the Interim Order, the Debtor proposes to provide the Prepetition Lenders with a variety of adequate protection to protect against the postpetition Diminution in Value of the Cash Collateral (as well as the Prepetition Collateral) resulting from the use of the Cash Collateral by the Debtor and the imposition of the automatic stay (collectively, the "Adequate Protection Obligations"):

a. valid and automatically perfected replacement liens and security interests in and upon the DIP Collateral

b. superpriority administrative claims under section 507(b) of the Bankruptcy Code;

c. the payment of the professional fees and expenses of the Prepetition Agent; and

d. the payment of interest, fees, and principal due under the Prepetition Credit Documents

28. Therefore, the Debtor submits that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Lenders from any diminution in value to the Cash Collateral and Prepetition Collateral. In light of the foregoing, the Debtor further submits, and the Prepetition Lenders agree, that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Lenders are appropriate.[7] Thus, the Debtor's provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair

[7] Pursuant to the DIP Orders, the Prepetition Lenders are permitted to seek additional adequate protection in accordance with the terms thereof.

and appropriate under the circumstances of this chapter 11 case to ensure the Debtor is able to continue using the Cash Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and its estate.

29. The proposed Adequate Protection Obligations are subject to the Carve Out. Without the Carve Out, the Debtor and other parties in interest may be deprived of certain rights and powers because the services for which professionals may be paid in this chapter 11 case would be restricted. The Carve Out does not directly or indirectly deprive the Debtor's estate or other parties in interest of possible rights and powers. Additionally, the Carve Out protects against administrative insolvency during the course of this chapter 11 case by ensuring that assets remain for the payment of the Clerk of the Court or U.S. Trustee fees and professional fees of the Debtor.

30. Under the DIP Loan Documents, the Debtor has agreed, subject to Court approval, to pay certain fees to the DIP Agent and the DIP Lenders. In particular, the Debtor has agreed to pay aggregate fees in accordance with the DIP Loan Documents consisting of the following: (a) closing fees of approximately $200,000; (b) an unused line fee equal to 0.75% per annum of the undrawn commitments; and (c) an administration fee of $6,500 per month.

31. It is understood and agreed by all parties, including the Debtor, that these fees are an integral component of the overall terms of the DIP Facility, and were required by the DIP Agent and the DIP Lenders as consideration for the extension of postpetition financing. Accordingly, the Court should authorize the Debtor to pay the fees provided under the DIP Loan Documents in connection with entering into those agreements.

32. As explained herein, in the First Day Declaration, the DIP Loan Documents are the result of: (a) the Debtor's reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing, and (b) arms'-length, good-

faith negotiations between the Debtor and the DIP Agent and DIP Lenders. The Debtor submits that the terms and conditions of the DIP Loan Documents are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

33. For the reasons noted above, the Debtor has an immediate postpetition need to use Cash Collateral, including advances under the DIP Facility. The Debtor cannot maintain the value of its estate during the pendency of the chapter 11 case without access to this liquidity. The Debtor will use cash to, among other things, fund the administration of the chapter 11 case and the store closing sales. The Debtor believes that substantially all of its available cash constitutes the Prepetition Lenders' Cash Collateral. The Debtor will therefore be unable to operate its business or otherwise fund the chapter 11 case without access to the Cash Collateral, and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. In short, the Debtor's ability to administer the chapter 11 case through the use of Cash Collateral is vital to preserve and maximize the value of the Debtor's estates.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my personal knowledge and information.

Dated August 7, 2019

Sierra Constellation Partners

By: /s/ Thomas J. Lynch
Thomas J. Lynch
Director

Signature Page to Declaration of Thomas J. Lynch in Support of Debtor's Emergency Motion for an Order Authorizing Entry into DIP Facility, Use of Cash Collateral and Granting Adequate Protection