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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re

BENITAGO INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-11394 (SHL)

(Jointly Administered)

LIMITED OBJECTION AND RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS REGARDING DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, INCLUDING EXISTING BANK ACCOUNTS, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN EXISTING BANK ACCOUNTS AND UTILIZE EXISTING BUSINESS FORMS, AND (D) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, SUBJECT TO THE POSTPETITION ESCROW PROCEDURES; (II) EXTENDING THE TIME TO COMPLY WITH, OR SEEK WAIVER OF 11 U.S.C. SECTION 345(B), AND (III) GRANTING RELATED RELIEF

The Official Committee of Unsecured Creditors (the "Committee") appointed in the cases (the "Chapter 11 Cases" or "Cases") in the United States Bankruptcy Court for the Southern

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Benitago, Inc. (4084); Acrux LLC (9391); Aludra Limited (4147); Algedi LLC (3835); Biham LLC (4095); Canopus LLC (8124); Denebola LLC (5430); Errai LLC (7652); Felis LLC (4176); Ginan LLC (2439); Hamal LLC (1775); Izar LLC (6010); Jabbah LLC (0658); Kamuy LLC (8461); Lich LLC (2892); Maasym LLC (9332); Nusakan LLC (1861); Okab LLC (6499); Phact LLC (3663); Chechia LLC (N/A); Dalim LLC (4741); Segin LLC (8849); Taiyi LLC (N/A); Veritate LLC (6416); Wazn LLC (7193); Yildun LLC (3017); Bharani LLC (1732); Alhena LLC (7613); and Revati LLC (0170). The location of the Debtors' service address for purposes of these chapter 11 cases is: 1 Liberty Street, Ste. 320, New York, New York 10006.

District of New York (the “**Court**”) of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), by and through the undersigned counsel, hereby submits this limited objection and reservation of rights (the “**Limited Objection**”) to the *Debtors’ Motion for Entry of Interim and Final Orders (i) Authorizing the Debtors to (a) Continue to Operate Their Cash Management System, Including Existing Bank Accounts, (b) Honor Certain Prepetition Obligations Related Thereto, (c) Maintain Existing Bank Accounts and Utilize Existing Business Forms, and (d) Continue To Perform Intercompany Transactions, Subject to the Postpetition Escrow Procedures; (ii) Extending the Time to Comply With, or Seek Waiver of 11 U.S.C. § 345(B), and (iii) Granting Related Relief* [Dkt. No. 6] (the “**Cash Management Motion**”). In support of this Limited Objection, the Committee respectfully states as follows:

LIMITED OBJECTION

1. Debtor Benitago Inc. (“**Benitago**”), the parent entity of the other Debtors, historically purchased inventory that was sold under brands owned by its Debtor subsidiary Acrux LLC and its subsidiaries (collectively, “**Acrux**”), and provided administrative services at its own cost for the benefit of Acrux.² Any sale proceeds generated by the sale of such inventory, net of Amazon fees, were paid by Amazon directly to Acrux, which then transferred the proceeds to Benitago.³ In maintaining such structure, Benitago singularly assumed all the costs and risks of

² See Declaration of Santiago Nestares Lampo Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the Debtors’ Chapter 11 Petitions [Dkt. No. 12] (the “**First Day Declaration**”) at ¶¶ 16 (“Other than the contributed inventory described above, Acrux and the Acrux Subsidiaries do not own any inventory, and the vast majority of the inventory associated with its sales is produced, provided, and owned by the Parent.”); 17 (“Parent undertakes and provides all services, including administrative, operational, corporate, management, and related services, for the entire portfolio of brands . . . including for the brands owned by the Acrux Subsidiaries.”).

³ See *id.* ¶ 18 (“Historically, substantially all sales proceeds received by the Acrux Subsidiaries (net of certain amounts payable to Amazon through FBA) were transferred to the Parent. At the end of each month, the Debtors reviewed the amount of inventory sold by the Acrux Subsidiaries and then effectively “charged” the applicable Acrux Subsidiary by transferring funds upstream to the Parent as repayment of such inventory, at cost. The balance of the funds transferred to the Parent (after accounting for the cost of inventory actually sold) was recorded as dividend income received by the Parent on account of its ownership interest in Acrux and the Acrux Subsidiaries.”).

the Debtors' brand aggregator business, including all vendor and other unsecured creditor obligations. It was, however, compensated for these costs and risks by receiving the full inventory sale proceeds, net of certain Amazon fees.

2. During the pendency of these cases, Benitago, "is effectively financing [Acrux] in these Chapter 11 Cases"⁴ by continuing to fund inventory and services, and Acrux has continued to receive the net proceeds. To date, however, Benitago, has received nothing in return.⁵ The *Interim Order (I) Authorizing the Debtors to Continue to Operate their Cash Management System, Including Existing Bank Accounts (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Bank Accounts and Utilize Existing Business Forms, and (D) Continue to Perform Intercompany Transactions, Subject to the Acrux Cash Procedures; (II) Extending the Time to Company with, or Seek Waiver of 11 U.S.C. § 345(b), and (III) Granting Related Relief* [Docket No. 35] (the "**Interim Cash Management Order**") authorizes Benitago to continue to incur the costs of inventory purchases ("**Inventory Costs**") and allocated services ("**Service Costs**") for Acrux's benefit, but includes no requirement that Acrux transfer sale proceeds to the Benitago or even reimburse Benitago for its costs. In fact, the Interim Cash Management Order prohibits Acrux from making any transfers to Benitago.⁶ To make matters worse, the Interim Cash Management Order does not even provide Benitago an administrative claim for Inventory Costs or Service Costs. Rather, the Interim Cash Management Order merely reserves the right of Benitago to assert a claim for these amounts.

3. Due to Benitago's sustained unremunerated funding of Inventory Costs and Service Costs for its insolvent subsidiary, the assets of Benitago's estate have been and continue to be

⁴ See *id.* at ¶ 62.

⁵ Given that Acrux is likely insolvent, any value transferred from Benitago to Acrux without consideration is, at best, a constructive fraudulent transfer and should not be endorsed by this Court.

⁶ See Interim Cash Management Order at ¶ 9.

rapidly depleted. Between the Petition Date and the week ending September 22, 2023, it is estimated that Benitago incurred approximately [REDACTED] of Inventory Costs and Service Costs for the benefit of Acrux. For context, extending the measurement period to the week ending October 20, 2023 would result in an estimated total of approximately [REDACTED], or an incremental [REDACTED] of expenditures between September 22 and October 20, 2023. Meanwhile, the cash proceeds of sales of Benitago-purchased inventory continue to build up at Acrux. As of September 22, 2023, the latest known actuals, the Debtors' combined cash pool is approximately [REDACTED], comprised of ending cash balances of approximately [REDACTED] and [REDACTED] for Acrux and Benitago, respectively. Under the existing and proposed framework for treatment of intercompany transfers, Benitago's cash position would decline from [REDACTED] to [REDACTED] while Acrux's cash position would increase from [REDACTED] to [REDACTED], using the latest projections from the Debtors for the weeks ending September 29 through October 20, 2023. Because the vast majority, if not all, of the unsecured claims in these cases reside at Benitago, the failure to properly account for these intercompany transfers potentially prejudices the rights of unsecured creditors. The Court should prevent an improper siphoning of assets out of Benitago's estate to the detriment of its unsecured creditors.

4. Although the Committee does not oppose Benitago's continued efforts to provide inventory and services to the Acrux brands and bridge to a value-maximizing sale, the arrangement must be conditioned on reasonable protections for Benitago and its stakeholders. Accordingly, the Committee requests that the Interim Cash Management Order be revised to include, without limitation:

- a requirement that Acrux be authorized and directed to (i) reimburse Benitago for all Inventory Costs and Service Costs incurred for or on behalf of Acrux since the August 30, 2023 petition date and (ii) reimburse Benitago on a current basis for all go-forward

Inventory Costs and Service Costs incurred during the pendency of these cases (collectively, the “**Acrux Payment Obligations**”);

- the grant of a superpriority administrative claim under Section 507(b) of the Bankruptcy Code in favor of Benitago for any accrued and unpaid Acrux Payment Obligations, which claim should have priority over all other administrative claims;⁷ and
- grant of an express right to Benitago to surcharge any assets of Acrux on which there is an asserted lien in the amounts of Inventory Costs and Service Costs, which are “reasonable, necessary costs and expenses of preserving, or disposing of, such property” for which any such lienholder will receive a benefit through a sale process. *See* 11 U.S.C. § 506(c).

5. There is no rational business purpose for Benitago to transfer its assets and cause them to accumulate at Acrux at the expense of Benitago’s own creditors without being afforded reasonable protections. By providing inventory and services to sustain Acrux’s operations until the consummation of a sale, Benitago is entitled to adequate assurances that it will be reimbursed. Payment of these costs does not harm Acrux or its creditors. In fact, Acrux and its creditors will benefit from the preservation of Acrux’s going concern value made possible through Benitago’s support, which value it will realize by a “going concern” sale of Acrux’s assets. Thus, the Committee’s proposed protections of Benitago are consistent with the Debtors’ professed objective to maximize the value of the entire enterprise.

6. Attached hereto as **Exhibit A** is a modified Interim Cash Management Order, which set out in detail, among others, the Committee’s proposed revisions.

RESERVATION OF RIGHTS

7. The Committee hereby reserves the right to amend, modify, or supplement this Limited Objection and to raise further and other objections to the Cash Management Motion and any proposed final orders thereof.

⁷ The Committee also intends to seek, among other things, a priming lien securing Benitago’s superpriority administrative claim in connection with the entry of a final order authorizing the use of cash collateral.

CONCLUSION

8. The Committee respectfully requests that the Court, for the foregoing reasons: (i) approve the Cash Management Motion with the Committee's proposed modifications as set forth herein and attached hereto; and (ii) grant such further relief as is just and proper.

Dated: October 3, 2023
New York, New York

Respectfully submitted,

/s/ Douglas Mannal

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*Proposed Counsel for the Official Committee of
Unsecured Creditors*

Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re

BENITAGO INC., et al.,

Debtors.¹

Chapter 11

Case No. 23-11394 (SHL)

(Jointly Administered)

SECOND INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, INCLUDING EXISTING BANK ACCOUNTS, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN EXISTING BANK ACCOUNTS AND UTILIZE EXISTING BUSINESS FORMS, AND (D) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, SUBJECT TO THE ACRUX CASH PROCEDURES; (II) EXTENDING THE TIME TO COMPLY WITH, OR SEEK WAIVER OF 11 U.S.C. § 345(b), AND (III) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Second Interim Order”) (i) authorizing, but not directing, the Debtors to (a) continue their Cash Management System; (b) honor certain prepetition obligations related thereto; (c) continue using existing business letterhead, purchase orders, invoices, envelopes, promotional materials and other business forms and correspondence;

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² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

(d) authorizing the Debtors to continue to perform intercompany transactions with each other and the Non-Debtor Affiliate on a postpetition basis in the ordinary course of business and according administrative expense priority status to postpetition intercompany transactions, subject to the Acrux Cash Procedures (as defined below); (ii) extending the time to comply with section 345(b) of the Bankruptcy Code by forty-five (45) days (or such later time as may be agreed to by the U.S. Trustee or as approved by the Court) or seek a waiver thereof; and (iii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declarations; and the Court having jurisdiction to consider the Motion and relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and the Court having determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and the Court having reviewed the Motion and the First Day Declarations and having heard the statements in support of the relief requested therein at a hearing before the Court, if any (the “Hearing”); and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and the Court having determined that the legal and factual basis set forth in the Motion and on the record of the Hearing established just cause for the relief granted herein; and all objections to the Motion, if any, having been withdrawn or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on ~~an~~ a second interim basis as set forth herein.

2. The final hearing (the “Final Hearing”) on the Motion shall be held on October ~~519~~, 2023 at ~~2:00 p.m.~~ : _____.m. (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on ~~September 28~~ October _____, 2023, and shall be served on: (a) proposed counsel to the Debtors, Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, New York 10119, Attn: Kyle J. Ortiz, Esq. (kortiz@teamtogut.com), Bryan M. Kotliar, Esq. (bkotliar@teamtogut.com), and Eitan B. Blander, Esq. (eblander@teamtogut.com); (b) proposed counsel to Acrux and the Acrux Subsidiaries, Klestadt Winters Jureller Southard & Stevens, LLP, 570 Fashion Avenue, New York, NY 10018, Attn: Fred Stevens, Esq. (fstevens@klestadt.com) and Sean Southard, Esq. (ssouthard@klestadt.com); (c) the United States Trustee, One Bowling Green, Suite 511, New York, NY 10004, Attn: Annie Wells, Esq. (annie.wells@usdoj.gov) and Richard C. Morrissey, Esq. (richard.morrissey@usdoj.gov); and (d) ~~counsel to any statutory committee appointed in the Chapter 11 Cases (each, a “Committee”)~~. proposed counsel for the Official Committee of Unsecured Creditors (the “Committee”), Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036, Attn: Douglas Mannel, Esq. (douglas.mannel@dechert.com).

3. The Debtors are authorized, on an interim basis and in their sole discretion, to (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those identified on Exhibit C to the Motion; (b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (c) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers,

and other debits; (d) pay all prepetition Bank Fees, if any; and (e) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts.

4. The Debtors are authorized to implement any changes to their Cash Management System that they deem appropriate in their sole discretion, including, without limitation, closing Bank Accounts or opening new bank accounts by providing no less than three (3) business days' notice and an opportunity to object (the "Objection Deadline") to the U.S. Trustee, counsel to CoVenture, and counsel for ~~any~~the Committee, and consistent with any other orders that the Court has entered; *provided, however*, that any new bank accounts shall be opened in a bank listed by the U.S. Trustee Guidelines as an authorized depository; *provided, further*, that any such changes in the Cash Management System, including the opening and the closing of any such Bank Accounts, shall not be effective until the later of (a) the expiration of the Objection Deadline if no objections are received and (b) if one or more objections are received, the date such objections are determined by the Court or otherwise resolved by agreement of the parties. With respect to the closing and/or opening of any Bank Accounts with Acrux or the Acrux Subsidiaries, the Debtors and CoVenture shall work in good faith in connection with implementing with respect to any such new Bank Accounts the same rights that CoVenture has with respect to the applicable Debtor's Bank Account(s) prior to the Petition Date.

5. Amazon is authorized to continue to charge the Amazon Fees in the ordinary course of business and in accordance with the Amazon Agreements.

6. The Debtors are authorized to continue to use current Ramp Cards and issue new Ramp Cards in the ordinary course of business and consistent with past practices and pay any outstanding prepetition obligations with respect to the Ramp Cards in an amount not to exceed \$331,000, and all postpetition obligations with respect to the Ramp Cards.

7. Subject to paragraphs 8 and 9 of this [Second](#) Interim Order, Parent is authorized to (a) purchase and produce inventory for the brands owned by Acrux and the Acrux Subsidiaries, provided that (i) the Special Manager for Acrux and the Acrux Subsidiaries (the “[Special Manager](#)”) approves Parent's proposed inventory purchases in advance thereof and (ii) the Special Manager determines that such purchases are commercially reasonable and generally consistent with industry practices, in an amount not to exceed ~~\$340,000~~ [150,000](#) per week [from the date of this Second Interim Order](#) absent the written consent of CoVenture and the Special Manager, and (b) continue performing intercompany transactions with the Non-Debtor Affiliate arising from or related to the operation of the Debtors' business in the ordinary course ~~and consistent with past practices; provided, that, notwithstanding the foregoing authorizations,~~ [Parent shall have an allowed administrative claim for the all postpetition obligations of the Acrux Parties to Benitago for actual costs of inventory related to the intellectual property owned by Acrux \(the “Inventory Costs”\) and the allocated costs as identified by Portage Point pursuant to the allocation report delivered to Benitago, Acrux, and CoVenture on or about July 29, 2023 and approved by the Special Manager \(the “Service Costs”\) \(such allowed superpriority administrative claims, the “Allowed Inventory and Service Cost Intercompany Claims”\), and](#) the Debtors’ rights are reserved with respect to the assertion of any [other](#) claims, including intercompany claims, arising from the intercompany transactions

described in this paragraph and any other amounts incurred by Parent on behalf of Acrux and the Acrux Subsidiaries allocable to the Acrux and the Acrux Subsidiaries ~~pursuant to a further order of the Court,~~(the "Other Intercompany Claims"), and all parties' rights, claims and defenses with respect thereto are expressly reserved. In connection with intercompany transactions, the Debtors shall continue to maintain current records with respect to all transfers such that all intercompany transactions readily may be ascertained, traced, and properly recorded. The Debtors shall provide the Committee and CoVenture with a weekly report detailing any such purchases of inventory for the brands owned by Acrux and the Acrux Subsidiaries approved by the Special Manager pursuant to this ~~Paragraph 7~~paragraph, which report shall (a) include the amounts paid in advance for any inventory purchases, any remaining amounts due and owing for each such inventory purchase upon delivery (other than with respect to customs, duties, taxes and other landed costs outside of inventory costs (which shall be estimated)) and (b) otherwise be in form acceptable to the Committee and CoVenture.

8. The Debtors shall maintain a matrix summarizing all cash and non-cash intercompany transactions, the amount paid on account of such intercompany transactions, the parties to such intercompany transactions, and the month-end intercompany gross receivable and gross payable balances between and among Debtors and the Non-Debtor Affiliate, and shall provide such matrix on a bi-weekly basis to the advisors for ~~any~~the Committee and CoVenture. The rights of ~~any~~the Committee and CoVenture to seek additional disclosures from the Debtors, including disclosures regarding the terms of specific intercompany transactions, and the Debtors' rights and defenses in respect of any such requests or actions, are expressly reserved and shall not be prejudiced by entry of this Second Interim Order. ~~For the avoidance of doubt, nothing in~~

~~this Interim Order shall authorize Parent or any other Debtors or the Non-Debtor Affiliate to setoff, draw from, or otherwise transfer or effectuate the transfer of any amounts from any of the Bank Accounts by Acrux or the Acrux Subsidiaries absent further order of the Court.~~

9. Pending entry of a final order with respect to the Motion and an order of the Court with respect to the Debtors' ~~Motion for Entry of an Order (I) Authorizing the Debtors' Use of Cash Collateral and (II) Granting Related Relief~~, filed on August 31, 2023 [Docket No. 16], ~~the~~The Court hereby approves the following procedures (the "Acrux Cash Procedures"):

~~(a) Each of Acrux and the Acrux Subsidiaries shall not transfer and shall retain all cash on hand as of the Petition Date and all cash received after the Petition Date in their respective Bank Accounts or any such other Bank Accounts opened by such Debtors after the Petition Date in accordance with this Interim Order.~~

(a) ~~(b)~~ Parent is authorized to continue to pay all expenses, including, without limitation Inventory Costs and Service Costs, on behalf of (i) itself and all Debtors, including (ii) each of Acrux and the Acrux Subsidiaries (the foregoing (ii), the "Acrux Expenses").

(i) Notwithstanding anything to the contrary herein and in accordance with paragraph 7 of this Second Interim Order, Acrux and the Acrux Subsidiaries are authorized and directed to (i) reimburse Parent for the amount of Inventory Costs and Service Costs incurred from Petition Date to and including the date of this Second Interim Order; and (ii) reimburse Parent on a current basis for all go-forward Inventory Costs and Service Costs incurred after the date of this Second Interim Order during the pendency of these Chapter 11 cases.

~~(c) All parties' rights are reserved with respect to the cash and expenses described in the foregoing (a) and (b), including, without limitation, Parent's right to assert a claim to be paid on account of amounts paid for or on behalf of or for the benefit of Acrux or the Acrux Subsidiaries, including directly from the Bank Accounts described in the foregoing (a) (or otherwise), and all parties' claims, rights and defenses with respect thereto are expressly preserved.~~

(b) The Allowed Inventory Intercompany Claim and all allowed Other Intercompany Claims shall be super priority claims under section 507(b) of the Bankruptcy Code against each of Acrux and the Acrux Subsidiaries with priority over all other administrative claims

(c) Parent shall have a right to surcharge any assets of Acrux on which there is an asserted lien under section 506(c) of the Bankruptcy Code for the Inventory Costs and Service Costs.

10. The Debtors shall not modify the Acrux Cash Procedures without the Committee and CoVenture's express written consent or further order of the Court. To the extent that the Acrux Cash Procedures are modified by the consent of the parties, the Debtors shall file a notice describing such modifications with the Court by no later than three (3) business days thereafter.

11. The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; *provided* that once the Debtors have exhausted their existing stock of Business Forms, the Debtors shall ensure that any new Business Forms are clearly labeled "Debtor-in-Possession"; *provided, further*, with respect to any Business Forms that exist or are generated electronically, to the extent reasonably practicable, the Debtors shall ensure that such electronic Business Forms are clearly labeled "Debtor-in-Possession."

12. The Banks are authorized and directed to: (a) continue administering the Bank Accounts in the usual and ordinary course of business in accordance with the Debtors' instructions, (b) pay any and all checks, drafts, wires, or electronic funds transfers presented, issued, or drawn on the Bank Accounts on account of any claims arising postpetition so long as sufficient funds are available in such Bank Accounts unless the Debtors specifically issue "stop payment" instructions with respect to such items; (c) honor the Debtors' directions with respect to the opening or closing of any Bank Account; and (d) accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions.

13. Such Banks may rely on this [Second](#) Interim Order and on the Debtors' representations and instructions as to the payments and transfers that may be honored or dishonored. The Banks shall not be liable to any party on account of (a) following the Debtors; instructions or representations as to any order of the Court or (b) honoring any checks, drafts, wires, or electronic funds transfers presented in a good faith belief that the Court has authorized the honoring of such checks, drafts, wires, or electronic funds transfers.

14. Any and all accounts opened by the Debtors on or after the Petition Date at any Bank shall be deemed a Bank Account (as if it had been opened prior to the Petition Date and listed on the Bank Account List) and any and all Banks at which such accounts are opened shall similarly be subject to the rights and obligations of this [Second](#) Interim Order.

15. To the extent any other order entered by the Court directing Banks to honor checks, drafts, automated clearing house (ACH) transfers, or other electronic funds transfers or any other withdrawals made, drawn, or issued in payment of prepetition claims, the obligation to honor such items shall be subject to this [Second](#) Interim Order; *provided, however*, that notwithstanding anything to the contrary contained herein, any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under any approved order regarding the use of cash collateral and any budget in connection therewith.

16. Those certain existing deposit and service agreements between the Debtors and the Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Banks, and all provisions of such agreements, including, without limitation, the termination, chargeback, and fee provisions, shall remain in full force and effect.

17. To the extent any of the Debtors' Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code, the Debtors shall have 45 days from the Petition Date, without prejudice to seek an additional extension, to come into compliance with section 345(b) of the Bankruptcy Code; *provided* that nothing shall prevent the Debtors or the U.S. Trustee from seeking relief from the Court to the extent that an agreement cannot be reached.

18. Notwithstanding the relief granted in this [Second](#) Interim Order and any actions taken pursuant to such relief, nothing in this [Second](#) Interim Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors [\(other than the Allowed Inventory and Service Cost Intercompany Claims\)](#); (b) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (c) a promise or requirement to pay any particular claim [\(other than the Allowed Inventory and Service Cost Intercompany Claims\)](#); (d) an implication or admission that any particular claim is of a type specified or defined in this [Second](#) Interim Order or the Motion; [\(other than the Allowed Inventory and Service Cost Intercompany Claims\)](#); (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this [Second](#) Interim Order is not intended and should not be construed as an admission as to the validity of any particular claim [\(other than the Allowed Inventory and Service Cost Intercompany Claims\)](#) or a waiver of the Debtors' rights to subsequently dispute such claim.

19. ~~By no later than three (3) business days following the~~ As soon as practicable after
entry of this Second Interim Order, the Debtors shall serve a copy of this Second Interim Order
on the Banks.

20. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

21. Notice of the Motion as provided therein shall be deemed good and sufficient notice
of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied
by such notice.

22. This Second Interim Order shall be immediately effective and enforceable upon
its entry.

23. The Debtors are authorized to take all actions necessary to effectuate the relief
granted in this Second Interim Order in accordance with the Motion.

24. The Court shall retain jurisdiction with respect to all matters arising from or
related to the implementation, interpretation, or enforcement of this Order.

New York, New York
Dated: _____, 2023

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

Summary report:	
Litera Compare for Word 11.4.0.111 Document comparison done on 10/3/2023 3:49:06 PM	
Style name: Dechert Default	
Intelligent Table Comparison: Active	
Original filename: Benitago - Revised Interim Cash Management Order (9.6.23)(submission version).docx	
Modified filename: Benitago - Revised Second Interim Cash Management Order (Dechert Comments 10.3.2023) (002) (002).docx	
Changes:	
Add	59
Delete	31
Move From	1
Move To	1
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	92