

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

In re:

FANSTEEL, INC.

Debtor and Debtor in Possession.

1746 Commerce Rd.
Creston, IA 50801

EIN: 36-1058780

Chapter 11

Case No. 16-01823-11-als
Affiliated Case Nos.: 16-01825 & 16-01827

Honorable Anita L. Shodeen

STIPULATION AND CONSENT ORDER FOR INTERIM USE OF CASH COLLATERAL

Date entered on docket: September 19, 2016

Fansteel, Inc. (“**Fansteel**”), Wellman Dynamics Corporation, and Wellman

Dynamics Machining and Assembly, Inc., as Debtors and Debtors in Possession (collectively, the “**Debtors**”) in the above referenced chapter 11 cases (the “**Chapter 11 Cases**”), by and through their Proposed General Reorganization Counsel, Jeffrey D. Goetz, Esq., of the law firm of Bradshaw, Fowler, Proctor & Fairgrave, P.C., respectfully file the instant *Stipulation and Consent Order for Interim Use of Cash Collateral*, and would stipulate and agree to the terms as entered by the Court herein.

1. On September 13, 2016 (the “**Commencement Date**”), the Debtors commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Iowa (the “**Bankruptcy Court**”). The Debtors are continuing to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have filed a motion seeking to have their Chapter 11 Cases jointly administered under the caption of Fansteel.

2. TCTM Financial FS, LLC (“**TCTM**” and collectively with the Debtors, the “**Parties**”) is party to that certain Loan and Security Agreement (as amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the “**Loan Agreement**”) dated as of July 15, 2005, by and among, *inter alios*, the Debtors and TCTM (as successor by assignment to Fifth Third Bank (“**Fifth Third**”)).

3. As of the Commencement Date, the Debtors estimate that the balance outstanding under the Loan Agreement was (a) \$27,599,683.86, plus (b) \$500,000 of cash collateral advanced by TCTM on behalf of the Debtors to Fifth Third in respect of certain purchasing / credit “multi-cards” and/or similar programs issued by Fifth Third Bank for use by the Debtors, plus (c) \$1,587,532.74 of cash collateral advanced by TCTM on behalf of the Debtors to Fifth Third in respect of certain Letters of Credit (as defined in the Loan Agreement), plus (d) all other costs and fees (including, without limitation, unpaid amendment fees in an aggregate amount equal to \$535,000), including reasonable attorneys’ fees, expenses, charges and other sums due to TCTM pursuant to the Loan Agreement together with such interest, costs and fees, including reasonable attorneys’ fees, expenses, charges and other charges accruing after the Commencement Date to the extent permitted by section 506(b) of the Bankruptcy Code.

4. TCTM holds validly perfected and enforceable liens on and security interests in, among other things, the Debtors’ accounts, inventory, equipment, certain real estate and mortgages, machinery, and general intangibles, and all proceeds thereof (the “**Collateral**”) to secure the Debtors’ obligations under the Loan Agreement. The Debtors’ obligations under the Loan Agreement constitute legal, valid and binding obligations of the Debtors, enforceable in accordance with the terms and conditions of the Loan Agreement.

5. On the Commencement Date, the Debtors filed, among other things, the *Debtor's Emergency and Ex Parte Motion for Order Authorizing Interim Use of Cash Collateral and Providing Post-Petition Liens* [Dkt. No. 7] (the "**Motion**").

6. Pursuant to the Motion, the Debtors seek the use of the Collateral of TCTM including cash and other amounts on deposit or maintained in any account or accounts by the Debtors, any amounts generated by the collection of accounts receivable or other disposition of cash collateral, and the proceeds and products of each of the foregoing, in each instance cash collateral within the meaning of section 363(a) of the Bankruptcy Code ("**Cash Collateral**") to, among other things, pay for the usual, ordinary, customary, regular, and necessary post-petition expenses incurred in the ordinary course of the Debtors' businesses and for payment only of those prepetition claims approved and allowed by Order of the Bankruptcy Court. Continued use of Cash Collateral on an interim basis as set forth herein and in the Motion is necessary and appropriate and in the best interests of the Debtors, their estates, and their creditors. Accordingly, the Debtors and TCTM have engaged in arms'-length, good faith negotiations to arrive at an agreed upon stipulation governing the use of Cash Collateral.

7. In connection with the foregoing, the Parties have agreed, subject to approval by the Bankruptcy Court, for the Debtors to use Cash Collateral on a two-week interim basis, pursuant to the terms and conditions contained herein. The Parties have agreed to a subsequent hearing on September 28, 2016, to consider the Debtors' use of Cash Collateral on a continued basis.

8. Effective Date. This Stipulation and Consent Order shall have no force or effect unless and until the date it is approved by the Bankruptcy Court (the "**Effective Date**").

9. Use of Cash Collateral. Upon the Effective Date, the Debtors are hereby authorized, on a two-week interim basis subject to the terms and conditions of this Stipulation and Consent Order, and in accordance with the Budget (as defined below), to use TCTM's Cash Collateral and all proceeds of Collateral in accordance with, and for the purposes, and in the amounts, set forth in the Budget.

10. Budget. Annexed as **Exhibit "1"** hereto and incorporated by reference herein is the weekly statement of collections and disbursements of the Debtors for the four (4) weeks commencing with the week of September 16, 2016, including (i) individual line items for "Total Disbursements" and (ii) the anticipated uses of the Cash Collateral for such period, in form and substance reasonably satisfactory to TCTM (substantially similar to the form of budget annexed hereto, the "**Budget**"). The Debtors shall use the Cash Collateral in accordance with the Budget and this Stipulation and Consent Order, it being understood and agreed that the actual amounts for any expense line item may not vary from the applicable Budget by more than ten percent (10%) for each week during the Budget period. Any collections line item may not vary from the applicable Budget by more than fifteen percent (15%) for each week during the Budget period and such collections line items may not vary from the applicable Budget by more than ten percent (10%) on a cumulative basis for each rolling two-week portion of the Budget period then ended. Within two business days of the end of each week, the Debtors shall provide a variance report comparing actual collections and actual expenditures to the Budget. Notwithstanding anything in this Stipulation and Consent Order to the contrary, no Cash Collateral or Collateral or any portion of the Carve Out may be used by the Debtors or any other person or entity to fund any expenditures other than as set forth in the Budget and agreed to by TCTM in its sole discretion or by Bankruptcy Court order upon notice to TCTM and hearing. The Debtors and

TCTM may agree to a revised budget (a “**Revised Budget**”) and file such Revised Budget with the Bankruptcy Court, at which time the Revised Budget shall become the Budget for purposes of this Stipulation and Consent Order.

11. Limitations on Payments. The following payments shall not be considered ordinary and usual expenses necessary to continue the operation of the Debtors’ businesses and shall not be paid unless TCTM consents to any such payment in writing prior to such payment being made and provided prior approval of the Bankruptcy Court has been obtained for any such payment: (i) operation of the Debtors’ businesses at any fixed locations other than the prepetition business premises or locations; (ii) payment of trade debt incurred prior to the Commencement Date, unless approved by Order of the Bankruptcy Court; (iii) payment of any taxes owed prior to the Commencement Date; and (iv) payment of any other debt incurred prior to the Commencement Date.

12. Adequate Protection. As adequate protection for any diminution in the value of the Collateral resulting from the use of Cash Collateral or Collateral, the imposition of the automatic stay under section 362 of the Bankruptcy Code or otherwise (the “**Diminution Claim**”), TCTM is hereby granted (subject to the Carve Out, as defined below) the following:

a. Adequate Protection Liens. To secure the Diminution Claim, TCTM is hereby granted validly perfected first priority liens on and security interests in the Debtors’ post-petition Collateral subject only to existing valid, perfected, and superior liens in the Collateral held by other creditors, if any, and the Carve Out (the “**Adequate Protection Liens**”).

b. Superpriority Claim. In the event of, and only in the case of, Diminution of Value (as defined in the Motion) of the Collateral, such Diminution of

Value having been determined by order of the Bankruptcy Court upon notice and hearing, and subject to the Carve Out, TCTM is hereby granted a superpriority administrative expense claim as contemplated by section 507(b) of the Bankruptcy Code, which claim shall have priority over all priority claims and unsecured claims against the Debtors and their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to §§ 105, 326, 328, 330, 331, 503(a), 506(c), 507(a), 507(b), 546(c), 726(b), and 114 of the Bankruptcy Code or otherwise.

c. Adequate Protection Payments. Post-petition monthly payments, payable on the last business day of each month, in an amount equal to the default interest rate payable under the Loan Agreement (including, for the avoidance of doubt, payment of all prepetition accrued and unpaid interest under the Loan Agreement).

d. Professional Fees and Expenses. The Debtors shall pay in cash all reasonable and documented out-of-pocket fees and expenses of TCTM that (i) have accrued as of the Commencement Date and (ii) accrue on or after the Commencement Date. It is expressly agreed that the out-of-pocket fees and expenses of (i) Weil, Gotshal & Manges LLP, (ii) Mackinac Partners, LLC, as financial advisor, and (iii) Davis, Brown, Koehn, Shorts & Roberts, P.C., as Iowa counsel, shall be covered by section 14.3 of the Loan Agreement. Payments in accordance with this paragraph shall be made in cash within seven (7) calendar days after presentment of invoices (redacted for privilege) to the Debtors. In the event that within seven (7) calendar days from receipt of such invoices the United States trustee raises an objection, and the parties are unable to resolve any dispute regarding the fees and expenses included in such invoice, the Bankruptcy

Court shall hear and determine such dispute; provided, that payment of invoices shall not be delayed based on any such objections and the relevant professional shall only be required to disgorge amounts objected to upon being “so ordered” pursuant to a final order of the Bankruptcy Court. The Debtors and TCTM agree to work in good faith during the two-week interim period to determine the budget for TCTM’s professional fees.

e. Financial Reporting. The Debtors shall provide TCTM all financial reports, budgets, forecasts, evidence of insurance, balance sheets, income statements, and all other legal or financial documentation required to be provided under the Loan Agreement, as and when it would otherwise be required under the Loan Agreement. To the extent reasonably practical, Debtors’ counsel shall provide advance copies of all pleadings and/or filings in the Chapter 11 Cases to be made by the Debtors, and if not practical shall provide advance notice of the filing of same. Such financial reporting shall include an initial aging of all accounts receivable and accounts payable and a list of all inventory, plus total current operating expenses and total current collections to be delivered as soon as practical but not later than five (5) days’ of the Effective Date. The Debtors shall also provide TCTM with copies of any monthly reporting provided to the Bankruptcy Court or the U.S. Trustee.

f. Access to Books and Records. The Debtors (and/or their legal and financial advisors) will (a) keep proper books, records and accounts in which entries fairly presented in all material respects in accordance with GAAP shall be made of all dealings and transactions in relation to their business and activities, and (b) permit, upon twenty-four (24) hours’ prior notice, during normal business hours, representatives of

TCTM to visit and inspect any of their properties, make abstracts or copies from any of their books and records, and to discuss their affairs, finances, and condition with their respective officers, including the Chief Executive Officer and proposed Chief Restructuring Officer, and independent public accountants.

Notwithstanding anything contained herein, TCTM does not concede, and nothing in this Stipulation and Consent Order shall (i) be construed as an admission or finding that the adequate protection granted herein does in fact adequately protect TCTM or (ii) be deemed to be a waiver of, or otherwise impact the rights of, TCTM to request at any time additional or further protection of its interests in the Collateral (including Cash Collateral), or any other or supplemental relief in respect of the Debtors or their Chapter 11 Cases.

13. Limitation on Liens and Security Interests. So long as this Stipulation and Consent Order is in effect, the Debtors shall not file any pleading seeking to grant any entity, other than TCTM, a security interest in or lien on any of the assets of the Debtors, including the Collateral, the Cash Collateral, and all other assets subject to the liens held by TCTM, including the Adequate Protection Liens provided for herein, having priority or parity with TCTM's secured interest in such assets without the prior express written consent of TCTM.

14. Termination of Use of Cash Collateral

a. The Debtors' right to use the Cash Collateral pursuant to the terms set forth in this Stipulation and Consent Order shall terminate upon the earliest to occur of any of the following (each a "**Cash Collateral Termination Event**") that has not been waived by TCTM:

- i. the failure of the Debtors to comply with any term of or make any payment required under this Stipulation and Consent Order;

ii. the occurrence of September 28, 2016 without the Bankruptcy Court having held a hearing on the Debtors' continued use of Cash Collateral;

iii. the dismissal of the Chapter 11 Cases, the conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or appointment of a chapter 11 trustee with expanded powers in any of the Chapter 11 Cases;

iv. any stay, reversal, vacatur, rescission or other modification of the terms of this Stipulation and Consent Order not consented to by TCTM; or

v. the failure of the Debtors to pay any post-petition local, state, or federal taxes as they become due.

b. Upon the occurrence of a Cash Collateral Termination Event, (i) the Debtors' right to use Cash Collateral shall cease upon three (3) days' written notice provided to (a) the U.S. Trustee, (b) the Debtors and the Debtors' counsel, and (c) counsel for any Official Committee of Unsecured Creditors appointed in the Chapter 11 Case (collectively, the "**Carve Out Notice Parties**"); *provided* that during the period after such written notice is provided, the Debtors' use of Cash Collateral must conform to the Budget; and (ii) upon seven (7) days' written notice to the Carve Out Notice Parties (which may be delivered by electronic mail), the automatic stay of section 362 of the Bankruptcy Code shall be terminated for the limited purpose of permitting TCTM to exercise any and all of its rights and remedies with respect to the Collateral, unless the Debtors have obtained an order to use Cash Collateral on a non-consensual basis consistent with Paragraph 15 below. The failure or delay by TCTM in seeking relief or

otherwise exercising its rights and remedies under the Stipulation and Consent Order shall not constitute a waiver of any of TCTM's rights. For the avoidance of doubt, the automatic stay of section 362 of the Bankruptcy Code shall be terminated for the limited purpose of permitting TCTM to exercise any and all of its rights and remedies with respect to the Collateral in the event the Bankruptcy Court has not held a hearing to consider approval of the Debtors' continued use of Cash Collateral on or prior to September 28, 2016, without TCTM having to take any additional or further actions.

15. Reservation of Debtor's Rights. Notwithstanding anything to the contrary herein, upon the occurrence of a Cash Collateral Termination Event, the Debtors may seek authority from the Bankruptcy Court to use the Cash Collateral on a non-consensual basis; *provided* that TCTM reserves all rights to object to such request.

15A. Reservation of Rights of All Parties in Interest. The interests, rights, and liens of all parties-in-interest in the Chapter 11 Cases, including, without limitation, TCTM, as of the Commencement Date are expressly preserved. Nothing in this Stipulation and Consent Order shall relieve the Debtors of any obligations under federal, state, or local police or regulatory laws or under 28 U.S.C. § 959(b).

16. Carve Out. For purposes hereof, the "**Carve Out**" shall mean an amount equal to the sum of:

- i. all fees required to be paid to the clerk of the Bankruptcy Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code and 31 U.S.C. § 3717; and
- ii. all fees and expenses incurred by the Debtor's professionals and approved by the Court in an amount not to exceed \$250,000.00.

17. Filings. TCTM is hereby authorized, but not required, to file or record all such financing statements, instruments, mortgages, and other documents as TCTM may deem necessary or desirable to evidence, confirm, validate or perfect the liens granted pursuant hereto and the Debtors shall pay such fees and expenses as are reasonably required for the filing of the same with the applicable governmental authorities; *provided* that the liens granted pursuant hereto shall be deemed valid and perfected irrespective of any such filings. The Secretary of State of the State of Iowa, each county clerk and each other state or local official responsible for the filing of any such financing statement, mortgage or other document is hereby directed to accept and record the same upon presentation thereof by TCTM.

18. Subsequent Reversal or Modification. This Stipulation and Consent Order is entered pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rules 4001(b) granting TCTM all protections and benefits afforded by section 363 of the Bankruptcy Code. If any or all of the provisions of this Stipulation and Consent Order are hereafter reversed, modified, vacated or stayed, on appeal or otherwise, such action shall not affect (i) the validity of any obligation, indebtedness or liability incurred or payment made hereunder by the Debtors to TCTM or (ii) the validity and enforceability of any lien or priority authorized, created, or granted hereunder.

19. Binding Effect; Successor and Assigns. The provisions of this Stipulation and Consent Order, including all findings herein, shall be binding upon all parties-in-interest in the Chapter 11 Cases, including, without limitation, TCTM, as well as the Debtors, the Debtors' estates and the Debtors' respective successors and assigns (including any Chapter 7 or Chapter 11 trustee hereinafter appointed or elected for the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative

of the Debtors, or similar responsible person or similar designee or litigation trust hereinafter appointed or elected for the estate of the Debtors) and shall inure to the benefit of TCTM and the Debtors and their respective successors and assigns, including after any conversion or dismissal of the Chapter 11 Cases; *provided* that, except to the extent expressly set forth in this Stipulation and Consent Order, TCTM shall have no obligation to permit the use of Cash Collateral or extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person or similar designee or litigation trust hereunder appointed for the Debtors' estates.

20. Limitation of Liability. In permitting the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Stipulation and Consent Order or the Loan Agreement, TCTM shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to or in connection with the Debtors' restructuring efforts or the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in this Stipulation and Consent Order shall in any way be construed or interpreted to impose or allow the imposition upon TCTM of any liability for any claims arising from the prepetition or post-petition activities of the Debtor and its affiliates (as defined in section 101(2) of the Bankruptcy Code).

21. Waiver of Bankruptcy Rule 6004. This Stipulation and Consent Order shall take effect immediately upon the Effective Date, and there shall be no stay of execution of effectiveness of this Stipulation and Consent Order. Any stay of the effectiveness of this Stipulation and Consent Order under Bankruptcy Rule 6004 or otherwise is waived.

22. Record of Case. This Stipulation and Consent Order shall be filed and become part of the record in the Debtors' Chapter 11 Cases.

23. Execution. This Stipulation and Consent Order may be executed simultaneously in one or more counterparts, and by different parties hereto in separate counterparts, and with facsimile signatures being deemed originals, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

24. Headings. The heading of any provision of this Stipulation and Consent Order is intended only for convenience and shall not be construed to be or interpreted as a part, or limitation on the scope, of any such provision.

25. Retention of Jurisdiction. The Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Stipulation and Consent Order.

/s/ Jeffrey D. Goetz

Jeffrey D. Goetz
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Attorney for Debtor and Debtor in Possession

Stipulation and Consent Order Approved as to Form and Substance:

/s/ Richard Gladstein

Richard Gladstein, Senior Counsel
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Stipulation and Consent Order Approved as to Form and Substance:

/s/ Mary C. Luxa

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Attorneys for TCTM Financial FS, LLC

No Objection to Stipulation and Consent Order:

/s/ Jim Snyder

Jim Snyder
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SO-ORDERED THIS 19 DAY OF SEPTEMBER, 2016

/s/ Anita L. Shodeen

HONORABLE ANITA L. SHODEEN
UNITED STATES BANKRUPTCY JUDGE

Parties receiving this Order from the Clerk of Court:
Electronic Filers in this Chapter Case

FANSTEEL, INC

4 WEEK CASH COLLATERAL BUDGET

FANSTEEL, INC	1	2	3	4	Total
WEEKLY CASH COLLATERAL BUDGET	9/16/16	9/23/16	9/30/16	10/7/16	4 weeks
Beginning Cash Balance	224,927	223,564	222,202	220,839	224,927
Collection proceeds from customers	1,492,158	1,492,158	1,492,158	1,492,158	5,968,632
Collections	1,492,158	1,492,158	1,492,158	1,492,158	5,968,632
Sub-total COH	1,717,085	1,715,722	1,714,360	1,712,997	6,193,559
Payments COGS Labor and Materials Shop					
Wellman Dynamics	946,948	946,948	946,948	946,948	3,787,792
Wellman Dynamics M&A	39,761	39,761	39,761	39,761	159,042
Intercast	156,008	156,008	156,008	156,008	624,030
AST	161,196	161,196	161,196	161,196	644,783
Discount and misc	35,561	35,561	35,561	35,561	142,244
Sub-total payments to Labor and Materials	1,339,473	1,339,473	1,339,473	1,339,473	5,357,892
Sub-total COH	377,612	376,249	374,887	373,524	835,667
COH AFTER COGS					
EXPENSES					
Corporate HQ					
Salaries	6,144	6,144	6,144	6,144	24,576
Officer	15,000	15,000	15,000	15,000	60,000
Payroll taxes	453	453	453	453	1,812
Property Taxes	697	697	697	697	2,788
Commercial insurance	359	359	359	359	1,436
Building lease	3,592	3,592	3,592	3,592	14,368
Workman's comp	733	733	733	733	2,932
Travel	2,792	2,792	2,792	2,792	11,168
Utility	1,960	1,960	1,960	1,960	7,840
Professional fees	5,000	5,000	5,000	5,000	20,000
Other misc.	41,470	41,470	41,470	41,470	165,880
Division Expenses					
Wellman Dynamics	23,635	23,635	23,635	23,635	94,542
Wellman Dynamics M&A	17,542	17,542	17,542	17,542	70,170
Intercast	19,651	19,651	19,651	19,651	78,604
AST	13,619	13,619	13,619	13,619	54,476
TRUSTEE FEE BUDGET	1,400	1,400	1,400	1,400	5,600
Expenses	154,048	154,048	154,048	154,048	616,191
Ending Cash	223,564	222,202	220,839	219,476	219,476

**TCTM and the United States do not take a position as to the adequacy of this interim budget.