

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

	X	
	:	
In re:	:	Chapter 11
	:	
RCS CAPITAL CORPORATION, <i>et al.</i> ,	:	Case No. 16-10223 (MFW)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	:	Ref. Docket No. 410
	X	

**INTERIM ORDER (I) AUTHORIZING CETERA DEBTORS TO UTILIZE CASH
COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE
PROTECTION TO PREPETITION SECURED PARTIES AND DIP SECURED
PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362 AND 363, AND (III) SCHEDULING
FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND (c)**

Upon the supplemental motion (the “**Motion**”) of the Cetera Debtors pursuant to sections 105, 361, 362, 363(b), and 363(c)(2) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Bankruptcy Rules for the District of Delaware, seeking, among other things:

¹ The “**RCS Debtors**” in these chapter 11 cases, along with the last four digits of their respective federal tax identification numbers, are: RCS Capital Corporation (4716); American National Stock Transfer, LLC (3206); Braves Acquisition, LLC (6437); DirectVest, LLC (9461); J.P. Turner & Company Capital Management, LLC (7535); RCS Advisory Services, LLC (4319); RCS Capital Holdings, LLC (9238); Realty Capital Securities, LLC (0821); SCSI Insurance Agency of Texas, Inc. (9203); SK Research, LLC (4613); Trupoly, LLC (5836); and We R Crowdfunding, LLC (9785).

The “**Cetera Debtors**” in these chapter 11 cases, along with the last four digits of their respective federal tax identification numbers, are: Cetera Advisor Networks Insurance Services LLC (2417); Cetera Advisors Insurance Services LLC (5434); Cetera Financial Group, Inc. (8666); Cetera Financial Holdings, Inc (8663); Cetera Financial Specialists Services LLC (7737); Cetera Insurance Agency LLC (0645); Chargers Acquisition, LLC (6470); FAS Holdings, Inc. (7417); First Allied Holdings Inc. (7319); ICC Insurance Agency, Inc. (9587); Investors Capital Holdings, LLC (3131); Legend Group Holdings, LLC (8262); SBS Financial Advisors, Inc. (None Assigned); SBS Insurance Agency of Florida, Inc. (5829); SBS of California Insurance Agency, Inc. (5203); Summit Capital Group, Inc. (3015); Summit Financial Services Group, Inc. (7932); Summit Holding Group, Inc. (3448); and VSR Group, LLC (0470).

The RCS Debtors’ corporate headquarters and mailing address is located at 405 Park Avenue, 12th Floor, New York, NY 10022. Correspondence directed to the Cetera Debtors in relation to these chapter 11 cases may be sent to this same address.

(a) authorization for the Cetera Debtors to use any Cash Collateral (as defined below) in which any Prepetition Secured Party,² the DIP Agent or any DIP Lender (the DIP Agent, DIP Lenders and any co-agent or sub-agent appointed by the DIP Agent pursuant to Article VIII of the DIP Credit Agreement, the “**DIP Secured Parties**”) may have an interest;

(b) the granting of adequate protection as provided herein to the Prepetition Secured Parties and DIP Secured Parties with respect to the diminution in value of their collateral, if any;

(c) pursuant to Bankruptcy Rule 4001, that an interim hearing (the “**Interim Hearing**”) on the Motion be held before this Court to consider entry of the proposed interim order (the “**Interim Order**”), among other things, (i) authorizing the Cetera Debtors, on an interim basis, to use Cash Collateral up to an aggregate principal amount not to exceed \$30 million (the “**Interim Cash Collateral Cap**”) for the period commencing on March 26, 2016 (the “**Petition Date**”) and ending at 11:59 p.m. (prevailing Eastern time) on April 12, 2016 (the “**Interim Period**”), and (ii) granting the adequate protection described herein; and

(d) that this Court schedule a final hearing (the “**Final Hearing**”) to be held on April 12, 2016, subject to the Court’s calendar, to consider entry of a final order (the “**Final Order**”) authorizing the Cetera Debtors’ use of Cash Collateral on a final basis.

Due and appropriate notice of the Motion, the relief requested therein and the Interim Hearing having been served by the Cetera Debtors on the Notice Parties in compliance with Bankruptcy Rule 4001(b) and the Local Rule 4001-2.

² Capitalized terms used and not defined herein shall have the meaning ascribed to them in *Final Order (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; and (II) Granting Related Relief* [Docket No. 227] (the “**Final DIP Order**”).

The Interim Hearing having been held by this Court on March 29, 2016.

Upon the record made by the Cetera Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Disposition.* The Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, are hereby denied and overruled. All reservations of rights are continued until the Final Hearing.

2. *Jurisdiction.* This Court has core jurisdiction over these cases, the Motion, the parties, and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The statutory predicates for the relief sought herein are sections 105, 361, 362, and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014 and the Local Rules.

3. *Notice.* Under the circumstances, the notice given by the Cetera Debtors of the Motion, the relief requested therein and the Interim Hearing constitutes appropriate, due and sufficient notice thereof and complies with Bankruptcy Rule 4001(b) and the Local Rules, and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

4. *Cetera Debtors' Stipulations.* The Cetera Debtors stipulate and agree that:

(a) ~~Subject to the entry of the Final Order,~~ As of the Petition Date, the Prepetition Secured Parties were secured by the Prepetition Collateral and the DIP Secured Parties were secured by the DIP Collateral.

(b) ~~Subject to the entry of the Final Order,~~ Cash, securities and proceeds of the Prepetition Collateral and DIP Collateral are Cash Collateral of the Prepetition

01:18500034.3
subject to any challenge brought by any statutory committee appointed in these cases or other party in interest (other than the Cetera Debtors) prior to the earlier of (i) the expiration of the challenge period provided for in Local Rule 4001-2(a)(i)(B) and (ii) confirmation of a chapter 11 plan in these cases,

Secured Parties and DIP Secured Parties, respectively, within the meaning of section 363(a) of the Bankruptcy Code (the “**Cash Collateral**”).

(c) ~~Subject to the entry of the Final Order,~~ The Cetera Debtors affirm and adopt the stipulations set forth in Paragraph E of the Final DIP Order.

5. *Findings Regarding use of Cash Collateral.*

(a) Good cause has been shown for the entry of this Interim Order.

(b) The Cetera Debtors have an immediate need to obtain use Cash Collateral to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, and to satisfy other working capital and operational needs. The access of the Cetera Debtors to sufficient working capital and liquidity through the use of Cash Collateral is vital to the preservation and maintenance of the going concern values of the Cetera Debtors and to a successful reorganization of the Cetera Debtors.

(c) The terms of the use of Cash Collateral are fair and reasonable, and reflect the Cetera Debtors’ exercise of prudent business judgment.

(d) The Cetera Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and the Local Rules. Absent granting the relief sought by this Interim Order, the Cetera Debtors’ estates will be immediately and irreparably harmed. Authorization of the use of Cash Collateral in accordance with this Interim Order is therefore in the best interests of the Cetera Debtors’ estates.

6. *Use of Cash Collateral.*

(a) The Cetera Debtors are hereby authorized to use Cash Collateral of the Prepetition Secured Parties and DIP Secured Parties during the Interim Period pursuant to

and in accordance with the budget (the “**Budget**”), agreed upon among the Cetera Debtors, the Prepetition Secured Parties and the DIP Secured Parties in an amount not to exceed \$30 million.

(b) The Cetera Debtors’ right to use Cash Collateral set forth in Paragraph 6(a) hereof shall terminate upon the earlier of (i) the expiration of the Interim Period, subject to any extension of the Interim Period approved by the Court, which approval may come through an order submitted to the Court under certification of counsel; (ii) upon the termination of the right under the Final DIP Order of any to use Cash Collateral (as defined in therein); (iii) the date upon which the Remedies Notice Period has ended and the DIP Agent and DIP Lenders are entitled to seek remedies pursuant to Paragraph 24 of the Final DIP Order; or (iv) the date this Interim Order ceases to be in full force and effect for any reason to the extent the Final Order, which shall be in form and substance acceptable to the Prepetition Secured Parties, has not been entered at such time as provided for in the Final DIP Order.

7. *Adequate Protection.* Subject to the priorities established under the Intercreditor Agreement, the Prepetition Secured Parties and DIP Secured Parties are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral and DIP Collateral, respectively, in an amount equal to the Collateral Diminution, if any (as defined below). As used in this Interim Order, “**Collateral Diminution**” shall mean an amount equal to the diminution of the value of the Prepetition Collateral or DIP Collateral used by the Cetera Debtors upon which any of the Prepetition Secured Parties or DIP Secured Parties have valid, perfected, enforceable and unavoidable liens or security interests from and after the Petition Date for any reason provided for in the Bankruptcy Code, including, without limitation, the loss or use of such Cash Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, whether in

accordance with the terms and conditions of this Interim Order, or otherwise. As adequate protection for any Collateral Diminution which is entitled to adequate protection under the Bankruptcy Code, the Prepetition Agents, DIP Agent, Prepetition Secured Parties and DIP Secured Parties are hereby granted the following (collectively, the “**Adequate Protection Obligations**”):

(a) **Adequate Protection Unencumbered Property Liens.** Subject to the priorities established under the Intercreditor Agreement, the Prepetition Agents and the Prepetition Secured Parties, and the DIP Agent and the DIP Secured Parties are hereby granted, to the extent of Collateral Diminution, (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Cetera Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements, notices or filings), valid, binding, continuing, enforceable, fully-perfected senior security interests in and liens upon all pre- and post-petition property of the Cetera Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, “**Unencumbered Property**”), including without limitation, all of the outstanding equity interests of any persons that are or become assets of any Cetera Debtor, unencumbered cash (whether or not contained in a controlled account or a blocked account), cash equivalents, bank accounts, accounts, trade receivables, other receivables, contracts, inventory, equipment, intellectual property rights, general intangibles, investment property, deposit accounts, securities accounts, securities (whether or not marketable), documents, instruments, contract rights, copyrights, franchise rights, patents, tradenames, trademarks, supporting obligations, letter of credit rights, commercial tort claims, causes of action, chattel paper, real property interests and fixtures, and other current assets and all substitutions and

proceeds, products offspring and profits of the foregoing, subject and subordinate only to the Carve-Out, excluding however causes of action under chapter 5 of the Bankruptcy Code (the **“Adequate Protection Unencumbered Property Liens”**).

(b) **Adequate Protection Encumbered Property Liens.** Subject to the priorities established under the Intercreditor Agreement, the Prepetition Agents and the Prepetition Secured Parties, and the DIP Agent and the DIP Secured Parties, are hereby granted to the extent of Collateral Diminution, (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Cetera Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements, notices or filings), valid, binding, continuing, enforceable, fully-perfected security interests in and liens upon all pre- and post-petition property of the Cetera Debtors (other than the property described in clause (a) of this paragraph 7), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code (collectively, the **“Third Party Prepetition Liens”**), which security interests and liens in favor of the Prepetition Agents and DIP Agent (collectively, the **“Adequate Protection Encumbered Property Liens,”** and together with the Adequate Protection Unencumbered Property Liens, the **“Adequate Protection Liens”**), shall be junior to (i)(A) those Third Party Prepetition Liens that are senior to the security interests of the Prepetition Secured Parties and the DIP Secured Parties (collectively, the **“Permitted Priority Liens”**) and (B) any liens granted to the Prepetition Secured Parties and the DIP Secured Parties pursuant to the Final DIP Order and (ii)(A) shall be senior to the liens of the Prepetition Secured Parties granted prior to the commencement of the

RCS Debtors' chapter 11 cases and (B) those Third Party Prepetition Liens that are junior to the security interests of the Prepetition Secured Parties and the DIP Secured Parties.

(c) **Section 507(b) Claims.** Subject to the priorities established under the Intercreditor Agreement, the Prepetition Agents and the Prepetition Secured Parties, and the DIP Agent and the DIP Secured Parties, are hereby granted, to the extent of Collateral Diminution and subject to the payment of the Carve-Out, allowed superpriority claims (the "**Adequate Protection Superpriority Claim**") pursuant to section 507(b) of the Bankruptcy Code; and such Adequate Protection Superpriority Claim shall be payable from all prepetition and postpetition property of the Cetera Debtors; *provided, however*, that such Adequate Protection Superpriority Claim shall not have recourse to the proceeds of any property that is not subject to the Adequate Protection Liens, including Adequate Protection Unencumbered Property Liens.

8. *Perfection of Adequate Protection Liens.*

(a) The Cetera Debtors, the Prepetition Agents, the DIP Agent, the Prepetition Secured Parties and the DIP Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Prepetition Agents (on behalf of the Prepetition Secured Parties) or the DIP Agent (on behalf of the DIP Secured Parties) shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be

deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge dispute or subordination, at the time and on the date of entry of this Interim Order. The Cetera Debtors shall execute and deliver to the Prepetition Agents and DIP Agent all such agreements, financing statements, instruments and other documents as the Prepetition Agents and DIP Agent may reasonably request to more fully evidence, confirm, validate, perfect, preserve and enforce the Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Interim Order may, in the discretion of the Prepetition Agents and DIP Agent, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.

9. *Preservation of Rights Granted Under the Order.*

(a) If an order dismissing any of these chapter 11 cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (i) the superpriority claims and security interests granted to the Prepetition Secured Parties and DIP Secured Parties pursuant to this Interim Order, shall, notwithstanding such dismissal, remain binding on all parties in interest) and shall retain their priorities as provided in this Interim Order, and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (i) above.

(b) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification, or vacatur shall not

affect (i) the validity, priority or enforceability of any Adequate Protection Obligations incurred prior to the actual receipt of written notice by the Prepetition Agents or DIP Agent, of the effective date of such reversal, stay, modification or vacatur, or (ii) the validity or enforceability of any lien or priority authorized or created hereby with respect to any Adequate Protection Obligations. Notwithstanding any such reversal, stay, modification, or vacatur, any use of Cash Collateral, or Adequate Protection Obligations incurred by the Cetera Debtors to the Prepetition Agents, the other Prepetition Secured Parties, DIP Agent or other DIP Secured Parties prior to the actual receipt of written notice by the Prepetition Agents or DIP Agent, of the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the Prepetition Agents, and the other Prepetition Secured Parties and DIP Agent and other DIP Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 363(m) of the Bankruptcy Code and this Interim Order with respect to all uses of Cash Collateral and Adequate Protection Obligations.

(c) Except as expressly provided in this Interim Order, the Adequate Protection Superpriority Claims, the Adequate Protection Obligations, the Adequate Protection Liens and all other rights and remedies of the Prepetition Agents, the other Prepetition Secured Parties and DIP Agent and other DIP Secured Parties granted by this Interim Order shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of these chapter 11 cases to a case under chapter 7, dismissing any of these chapter 11 cases, terminating the joint administration of these chapter 11 cases or by any other act or omission or (ii) the entry of an order confirming a plan of reorganization or liquidation in any of these chapter 11 cases.

10. *Reservation of Rights.* The Prepetition Secured Parties, DIP Secured Parties, Prepetition Agents, and DIP Agent are deemed to have made a request for adequate protection pursuant to section 363(e) of the Bankruptcy Code. Neither their failure to object to this Interim Order, nor their consent to entry of this Interim Order, shall be deemed as consent to any term or condition of any Final Order authorizing use of Cash Collateral (including the sufficiency of adequate protection and the terms (and amounts) of the Carve-Out with respect to any time period after the expiration of the Interim Period), regardless of whether such terms were included in any interim order entered by this Court. Nothing herein shall result in the waiver of any of the rights of the Prepetition Secured Parties, DIP Secured Parties, Prepetition Agents, or DIP Agent, including, without limitation, the right to ask for additional adequate protection, which are specifically preserved. Nothing in this Interim Order shall adversely affect the rights, liens, security interests, priorities, adequate protection, remedies, protections, waivers and/or releases granted to any DIP Secured Party, any Prepetition Secured Party, any Prepetition Agent or the DIP Agent under the Final DIP Order, which rights shall continue in full force and effect.

11. *Order Governs.* In the event of any inconsistency between the provisions of this Interim Order and the Prepetition Credit Documents, the provisions of this Interim Order shall govern.

12. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

13. *Headings.* Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

14. *Jurisdiction.* This Court shall retain jurisdiction to enforce the terms of this Interim Order and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

15. *Final Hearing.* The Final Hearing will be held by this Court on ~~April 11~~ ^{April 11}, 2016 at ~~10:00 a~~ ^{10:30 a}.m. (prevailing Eastern time). The Cetera Debtors shall promptly transmit copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court. Any party in interest objecting to the relief sought at the Final Hearing shall file a written objection, which shall be served upon (i) the Cetera Debtors, 200 North Sepulveda Boulevard, Suite 1200, El Segundo, CA 90245 (Attn: Carol Flaton); (ii) proposed co-counsel to the Cetera Debtors, Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036 (Attn: Michael J. Sage and Shmuel Vasser), and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801 (Attn: Robert S. Brady and Robert F. Poppiti, Jr.); (iii) counsel to the Required Consenting First Lien Lenders, Jones Day, LLP, 222 East 41st Street, New York, NY 10017 (Attn: Scott Greenberg and Stacey L. Corr-Irvine), and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, DE 19889 (Attn: Derek C. Abbott and Tamara K. Minott); (iv) counsel to the First Lien Agent, Shearman & Sterling LLP, 599 Lexington Avenue, New York, NY 10022 (Attn: Joel Moss and Randall Martin), and Richards, Layton & Finger, PA, One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collins and

Brendan J. Schlauch); (v) counsel to the Required Consenting Second Lien Lenders, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Timothy Graulich and Natasha Tsiouris), and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801 (Attn: Adam G. Landis and Matthew B. McGuire); (vi) counsel to the Second Lien Agent, Covington & Burling LLP, 620 Eighth Avenue, New York, NY 10018 (Attn: Ronald A. Hewitt and Alex Clark), and Fox Rothschild LLP, Citizens Bank Center, 919 North Market Street, Suite 300, Wilmington, DE 19899 (Attn: Jeffrey Schlerf and L. John Bird); (vii) counsel to Luxor, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Stephen D. Zide and Rachael Ringer), and Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19889 (Attn: William P. Bowden); (viii) as counsel to the RCS Creditors Committee, Gibson, Dunn and Crutcher LLP, 200 Park Avenue, New York, NY 10166 (Attn: David M. Feldman and Matthew K. Kelsey), and Klehr, Harrison, Harvey, Branzburg, LLP, 919 North Market Street, Suite 1000, Wilmington, DE 19899 (Attn: Richard M. Beck Sally E. Veghte); and (ix) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox #35, Wilmington, DE 19801 (Attn: Linda Casey), in each case to allow actual receipt by the foregoing no later than April 8, 2016 at

12:00 p.m. (prevailing Eastern time).

Dated: March 29, 2016
Wilmington, Delaware



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE