

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
Caption in Compliance with D.N.J. LBR 9004-2(c) <b>WASSERMAN, JURISTA &amp; STOLZ, P.C.</b> 110 Allen Road, Suite 304 Basking Ridge, NJ 07920 Phone: (973) 467-2700 Fax: (973) 467-8126 <i>Counsel for SITO Mobile Solutions, Inc., SITO Mobile, Ltd., and SITO Mobile R&amp;D IP, LLC.</i> <b>DANIEL M. STOLZ</b> <b>DONALD W. CLARKE</b>	
In Re:  <b>SITO MOBILE SOLUTIONS, INC.,</b>  Debtor.	Case No.: 20-21436  Judge: Honorable Stacey L. Meisel  Chapter: 11
In Re:  <b>SITO MOBILE, LTD.,</b>  Debtor.	Case No.: 20-21435  Judge: Honorable Stacey L. Meisel  Chapter: 11
In Re:  <b>SITO MOBILE R&amp;D IP, LLC.,</b>  Debtor.	Case No.: 20-21437  Judge: Honorable Stacey L. Meisel  Chapter: 11

**JOINT MOTION FOR AUTHORIZATION TO MAINTAIN EXISTING  
BANK ACCOUNTS AND CASH MANAGEMENT SYSTEM**

**TO: THE HONORABLE STACEY L. MEISEL  
UNITED STATES BANKRUPTCY JUDGE:**

SITO Mobile, Ltd. (“SITO Limited”), SITO Mobile Solutions, Inc., (“SITO Solutions”),  
and SITO Mobile R&D IP, LLC. (“SITO R&D”) the debtors and debtors-in-possession  
(collectively, the “Debtors”), in the above captioned chapter 11 cases (the “Cases”) hereby file

this Joint Motion for Authorization to Maintain Existing Bank Account and Cash Management System (the “Motion”). In support of the Motion, the Debtors respectfully represents as follows:

**JURISDICTION and VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief requested herein are 11 U.S.C. §§ 105 and 363, and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

**BACKGROUND**

3. On October 8, 2020, the Debtors each filed a voluntary chapter 11 petitions (the “Petition Date”) for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

4. The Debtors continues to manage and operate their businesses as Debtors-in-Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

5. A detailed description of the background of the Debtors, their operations, and the events leading up to the filing of these cases is provided in the Certification of Thomas Candelaria filed in support of the Debtors’ First Day Motions (the “Candelaria Certification”), which is incorporated by reference herein.

**DEBTORS’ BANK ACCOUNT AND CASH MANAGEMENT**

6. As of the Petition Date, the Debtors maintained an operating bank account at Wells Fargo Bank, account number ending 5994 (the “Wells Fargo Account”).

**RELIEF REQUESTED**

7. As described herein, the Debtors seek an Order authorizing the continued use of the Debtors' Wells Fargo Account and cash management system. The Debtors respectfully submit that this request is in the best interests of their estates and creditors.

8. The Office of the United States Trustee has established certain operating guidelines for Debtors-in-Possession to supervise the administration of Chapter 11 case. These guidelines require a Chapter 11 debtor to, *inter alia*, (a) close all existing bank accounts and open new Debtor-in-Possession bank accounts and (b) obtain checks for all Debtor-in-Possession accounts which bear the designation "Debtors-In-Possession" and the bankruptcy case number. These requirements are designed to provide a clear line of demarcation between pre-petition and post-petition transactions and operations to prevent the inadvertent post-petition payment of prepetition claims.

9. The Debtors propose to use the Wells Fargo Account consistent with the Code, the Office of the United States Trustee's guidelines, and their prepetition cash management system.

10. By preserving business continuity and avoiding the operational and administrative delays, the relief requested herein is in the best interests of the Debtors' estates and all parties-in-interest.

11. Additionally, subject to the terms of the applicable depository agreement, and until the DIP Accounts are opened, the Banks should be entitled to honor existing uncashed checks issued by the Debtors as if the checks were marked "Debtor-in-Possession" and the respective account had the title of "Debtor-in-Possession." The Debtors will endeavor to mark

all post-petition checks with the Debtor-in-Possession label but seek the relief herein to avoid inadvertent dishonor of post-petition payments during the transition into bankruptcy.

12. The Banks should be authorized and directed to accept and honor all representations from the Debtors as to which checks, drafts, or ACH transfers should be honored or dishonored consistent with Orders entered by the Court, whether dated prior to, on, or subsequent to the Petition Date, and whether or not the Banks believe the payment is authorized by an Order of the Court.

13. The Debtors further request the authorization to execute any additional documents as may be required to carry out the purposes recited in this Motion. The Debtors propose to serve a copy of the Order on this Motion on Wells Fargo within three (3) business days of the entry of the Order granting the sought-after relief.

#### **BASIS FOR RELIEF REQUESTED**

14. Requests for authorization to continue routine cash management systems are consistent with section 363(c)(1) of the Bankruptcy Code, which allows a Debtor-in-Possession to “use property of the estate in the ordinary course of business.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a Debtor-in-Possession with the flexibility to engage in the ordinary transactions required to operate their businesses without unneeded oversight by their creditors or the court. See In re Mr. Gatti’s, Inc., 164 B.R. 929, 941 (Bankr. W.D. Tex. 1994) (section 363(c)(1) provides an “alternative to court-supervised payment”); In re Enron Corp., No. 01-16034 (ALG), 2003 WL 1562202, at \*15 (Bankr. S.D.N.Y. Mar. 21, 2003); In re Centennial Healthcare Corporation, Case No. 02-74974 (Bankr. N.D. Ga. Dec. 24, 2002); Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne), 114 F.3d 379,

384 (2d Cir. 1997); Chaney v. Official Comm. Of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.), 207 B.R. 406, 409 (S.D.N.Y. 1997).

15. The authority granted by section 363(c)(1) extends to a debtor-in-possession's continued use of its customary cash management system and, thus, supports the relief requested. See, e.g., Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.), 778 F.2d 617, 621 (11<sup>th</sup> Cir. 1985) (indicating that an order authorizing the debtor to employ a cash management system that was "usual and customary in the past" was "entirely consistent" with Section 363(c)(1)). Bankruptcy Courts routinely grant Chapter 11 Debtors authority to continue utilizing existing cash management systems, treating requests for such authority as relatively "simple matters." In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987); In re UNR Indus. Inc., 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984) (Debtor "utilize[d] a court-approved and common cash management system"). Bankruptcy Courts in this district and other districts have previously granted such relief. See, e.g., In re TXCO Resources Inc., et al., Case No. 09-51807 (Bankr. W.D. Tex. May 21, 2009); In re Spectrum Jungle Labs Corp., Case No. 09-50455 (Bankr. W.D. Tex. Feb. 5, 2009) (interim order); In re Gourmet Express, LLC, Case No. 07-52143 (Bankr. W.D. Tex. August, 27, 2007); In re SI Restructuring, Inc., Case No. 04-5404 (Bankr. W.D. Tex. August 11, 2004) (interim order); In re Integra Hospital Plano, L.L.C., Case No. 08-42998 (Bankr. E.D. Tex. Nov. 26, 2008); In re Bag Liquidation, Case No. 08-32096 (Bankr. N.D. Tex. May 12, 2008); In re OneTravel Holdings, Inc., Case No. 06-70085 (Bankr. W.D. Tex. July 20, 2006).

16. The Court may also exercise its equitable powers to grant the relief requested herein. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of this title." 11 U.S.C. § 105(a).

Continuing the Debtors' Cash Management System without interruption is vital to the survival of the Debtor and any successful reorganization.

17. For the reasons set forth herein, and consistent with the relief granted in the cases cited above, the Debtors submit that it is in the best interests of its estate, employees, creditors, and other parties in interest for the Debtors to continue their pre-petition cash management.

**NOTICE**

18. Notice of this Motion has been given to: (i) any pre-petition and post-petition lenders, their respective counsel and the top twenty (20) unsecured creditors of the Debtors; (ii) the United States Trustee; (iii) those persons who have formally appeared in these cases and requested service pursuant to Bankruptcy Rule 2002; and (iv) all applicable government agencies to the extent required by the Bankruptcy Rules and the local rules of this Court. The Debtors submit that no other or further notice of the Motion is necessary.

**WHEREFORE**, the Debtors respectfully request that the Court enter an Order:

- (a) authorizing the continued use of the Debtors' existing cash management system; and
- (b) authorizing and directing the Banks to administer the Debtors' accounts as requested in this Motion; and
- (c) such other and further relief to which they may be justly entitled.

Respectfully submitted,

**WASSERMAN, JURISTA & STOLZ, P.C.**  
*Counsel for SITO Mobile Solutions, Inc., SITO Mobile, Ltd., and SITO Mobile R&D IP, LLC.*



By: \_\_\_\_\_

DONALD W. CLARKE

Date: November 9, 2020

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
Caption in Compliance with D.N.J. LBR 9004-2(c)	
<b>WASSERMAN, JURISTA &amp; STOLZ, P.C.</b> 110 Allen Road, Suite 304 Basking Ridge, NJ 07920 Phone: (973) 467-2700 Fax: (973) 467-8126 <i>Counsel for SITO Mobile Solutions, Inc., SITO Mobile, Ltd., and SITO Mobile R&amp;D IP, LLC.</i> <b>DANIEL M. STOLZ</b> <b>DONALD W. CLARKE</b>	
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In Re:  <b>SITO MOBILE R&amp;D IP, LLC.,</b>  Debtor.	Case No.: 20-21437  Judge: Honorable Stacey L. Meisel  Chapter: 11

**ORDER AUTHORIZING THE DEBTORS TO MAINTAIN EXISTING BANK  
ACCOUNTS AND CASH MANAGEMENT SYSTEM**

The relief set forth on the following pages is hereby **ORDERED**.

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Debtors: SITO Mobile Solutions, Inc., SITO Mobile, Ltd., SITO Mobile R&D IP, LLC.

Case No.: 20-21436, 20-21435, 20-21437

Caption: Order Authorizing the Debtors to Maintain Existing Bank Accounts and Continued Use Of Cash Management System

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Upon the motion (the “Motion”)<sup>1</sup> of the Debtors, by and through their proposed counsel, Wasserman, Jurista & Stolz, P.C, seeking entry of an Order Authorizing the Debtors to Maintain Existing Bank Accounts and Continued Use Of Cash Management System; and it appearing that the Court has jurisdiction to consider this Motion; and it appearing that the relief requested in the best interest of the Debtors, their estates and creditors; and it appearing that due notice of the Motion has been given and no further notice need to be given; and upon the proceedings before the Court; and good and sufficient cause appearing;

**IT IS HEREBY ORDERED THAT:**

1. The Debtors are authorized, in the reasonable exercise of its business judgment and subject to the terms of this Order, to continue to administer their accounts as such prepetition operating accounts were maintained prepetition, without interruption and in the usual and ordinary course of the Debtors’ cash management.

2. The Debtors are authorized to request Wells Fargo, and Wells Fargo is authorized and directed to accept and honor all representations from the Debtors, as to which checks, drafts, wires, ACH transfers, or other transfers should be honored or dishonored whether the bank believes the payment is or is not consistent with the order(s) of this Court and governing law, and whether such checks, drafts, wires or ACH transfers are dated or made prior to, or on subsequent

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.



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Debtors: SITO Mobile Solutions, Inc., SITO Mobile, Ltd., SITO Mobile R&D IP, LLC.

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to the Petition Date. The bank has no duty to inquire as to whether such payments are authorized by an order of this Court.

3. The bank will not be liable to any party on account of (a) following the Debtors' instructions or representations as to any check or other item that may be honored or as to any order of this Court, (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) an innocent mistake made despite implementation of reasonable item handling procedures. Once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks; provided further that, with respect to checks which the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within ten (10) days of the date of entry of this Order.

4. The Debtors shall serve a copy of this Order on Wells Fargo within three (3) business days of the entry of this Order.

6. The Office of the U.S. Trustee shall have 60 days to review and raise any issue with the accounts and/or the Debtor's cash management system.

7. For banks at which the Debtors holds bank accounts that are party to a Uniform Depository agreement with the Office of the United States Trustee, within fifteen (15) days of

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the date of entry of this Order the Debtors shall (a) contact each bank, (b) provide the bank with the Debtors' employer identification number and (c) identify each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and provide the case number.

For banks at which the Debtors hold accounts that are not party to a Uniform Depository agreement with the Office of the United States Trustee, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

The Debtors are authorized to open any new bank accounts or close any existing bank accounts as it may deem necessary and appropriate in their sole discretion; provided, however, that the Debtors give notice within fifteen (15) days to the Office of the United States Trustee and any statutory committees appointed in these chapter 11 cases; provided, further, however that the Debtors shall open any such new bank account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee, or at such banks that are willing to immediately execute such an agreement.