

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE: §  
§ CHAPTER 11  
BULLIONDIRECT, INC., §  
§ CASE NO. 15-10940-tmd  
Debtor. §

**EMERGENCY MOTION FOR ORDER AUTHORIZING DISPOSITION OF UNDEPOSITED CHECKS**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW BullionDirect, Inc., debtor and debtor in possession in the above-styled and referenced case (“Debtor”), and files this its *Emergency Motion for Order Authorizing Disposition of Undeposited Checks* (the “Motion”), and in support thereof would respectfully show the Court as follows:

**Summary of Relief Requested**

**Debtor has in its possession undeposited checks, money orders, and bank drafts (“Checks”) from customers. Debtor seeks authorization from the Bankruptcy Court to dispose of those checks by depositing them into the DIP account or returning the Checks to the customer.**

**I.  
JURISDICTION AND VENUE**

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

**II.  
BACKGROUND**

2. On July 20, 2015 (the “Petition Date”), the Debtor filed its voluntary petition

for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business as debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3. No examiner has been appointed in the Debtor’s bankruptcy case, nor has any official committee been appointed pursuant to Section 1102 of the Bankruptcy Code.

### **III. RELIEF REQUESTED**

4. The debtor’s web-based precious metal trading business ([www.bulliondirect.com](http://www.bulliondirect.com)) has ceased operations. Before it ceased operations customers entered into agreements regarding trade of precious metals; and, based on the agreements, they sent payments to Debtor. The date on which BDI suspended operations is not clear, but BDI instructed IDS, the entity where BDI precious metals are stored, to return any product received on or about June 17, 2015. However, there continued to be some transactions at the website up to and through the petition date. Some of the Checks are dated as early as March 2015, and a substantial number are dated prior to June 17, 2015. All are dated prior to the petition date. By the petition date BDI had received and had in its possession a significant number of checks, none of which were deposited. On information and belief, Debtor believes that the checks relate to transactions which were not completed and which BDI intended to return to the senders. Debtor has inventoried the Checks received to date, and they are listed in Exhibit A, which is attached hereto and made a part hereof.<sup>1</sup>

5. As a general rule, the breadth and scope of “property of the estate” as set forth in § 541 of the Bankruptcy Code establishes that property in the possession of a debtor on the petition date is presumptively property of the estate. The Terms of Service Agreement under

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<sup>1</sup> Debtor has continued to receive checks after the petition date of July 20, 2015. Debtor proposes to return those checks to sender.

which the website transactions were conducted did not appear to create any special escrow or create a lien with respect to funds tendered to BDI. However, The Debtor is willing to provide 14-days' notice to the Senders of the Checks prior to depositing the checks into the DIP account.

6. In the alternative, Debtor seeks authorization by the Court to return the Checks to the Sender.

**WHEREFORE, PREMISES CONSIDERED,** Debtor prays that this Court will approve its *Emergency Motion for Order Authorizing Disposition of Undeposited Checks* and for such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

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By: /s/ Joseph D. Martinec  
Joseph D. Martinec  
State Bar No. 13137500  
PROPOSED ATTORNEYS FOR DEBTOR-IN-  
POSSESSION

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing *Emergency Motion for Order Authorizing Disposition of Undeposited Checks* has been served via the Court's ECF Noticing System, by First Class Mail, postage prepaid, or by facsimile transmission, if so indicated, to the creditors and parties in interest on the attachment and to the following on the 27<sup>th</sup> day of July, 2015.

BullionDirect, Inc.  
P.O. Box 1987  
Austin, TX 78767-1987  
*Debtor*

U.S. Trustee  
903 San Jacinto, Suite 230  
Austin, TX 78701

/s/ Joseph D. Martinec  
Joseph D. Martinec

Label Matrix for local noticing  
0542-1  
Case 15-10940-tmd  
Western District of Texas  
Austin  
Mon Jul 27 14:59:34 CDT 2015

BullionDirect, Inc. 31  
P.O. Box 1987  
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U.S. BANKRUPTCY COURT  
903 SAN JACINTO, SUITE 322  
AUSTIN, TX 78701-2450

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2224 Walsh Tarlton Lane #220  
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Seattle, WA 98109-5210

American Express  
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End of Label Matrix	
Mailable recipients	94
Bypassed recipients	0
Total	94



Proposed Order

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

IN RE: §  
§ CHAPTER 11  
BULLIONDIRECT, INC., §  
§ CASE NO. 15-10940-tmd  
Debtor. §

**ORDER AUTHORIZING THE DISPOSITION OF UNDEPOSITED CHECKS**

**CAME ON** for consideration on this date the *Emergency Motion for Order Authorizing Disposition of Undeposited Checks* (the “Motion”) filed by the above referenced Debtor. The Court, having considered the matters contained in the Motion, finds that good and sufficient cause exists for granting the Motion and that the terms of the Motion and the Order were discussed with and approved by the United States Trustee. Accordingly, it is therefore

**ORDERED** that, subject to the provisions set forth below, Debtor is authorized to deposit the checks, money orders, and bank drafts (“Checks”) into the Debtor’s Debtor-in-Possession Account and use the proceeds of said Checks as authorized by the Court if, after fourteen (14) days after each Sender or payor listed on **Exhibit A** has been served with a copy of this Order and has not filed and served an Objection to this Order on the Debtor, Debtor’s counsel, counsel for a Creditors Committee if a committee has been appointed, and the Attorney for the U. S. Trustee. If such objection is filed, the Check attributable to the

objecting party shall not be deposited pending a ruling by the court on the status of the Check in question. It is further

**ORDERED** that Debtor may return checks received after July 20, 2015, to the sender without further order of this court.

# # #

Order prepared by:

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