

**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

**Honorable Ronald H. Sargis  
Chief Bankruptcy Judge  
Sacramento, California**

**April 24, 2019 at 11:00 a.m.**

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| 1. | <a href="#"><u>19-90122-E-11</u></a><br><a href="#"><u>MF-3</u></a> | <b>MIKE TAMANA FREIGHT<br/>LINES, LLC</b> | <b>CONTINUED MOTION FOR<br/>AUTHORITY TO OBTAIN FINANCING<br/>2-12-19 <a href="#"><u>[15]</u></a></b> |
|----|---|---|---|

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**  
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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the twenty largest unsecured claims, creditors, and Office of the United States Trustee on February 12, 2019. By the court’s calculation, 2 days’ notice was provided. The court set the hearing for February 14, 2019. Dckt. 28.

The Motion For Authority To Obtain Financing was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

<b>The Motion For Authority To Obtain Financing is <span style="color:red">XXXXXX</span>.</b>
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Debtor in Possession Mike Tamana Freight Lines, LLC filed this First Day Motion to Obtain Debtor in Possession Financing from Transportation Alliance Bank, Inc. which is styled as a Accounts Receivable Purchase and Sale Agreement so that the Debtor in Possession can continue to operate the estate’s business. The terms of the financing are stated in the document titled “Debtor in Possession Accounts Receivable Purchase and Security Agreement.” Exhibit C, Dckt. 17.

## **FEBRUARY 14, 2019 HEARING**

At the February 14, 2019 hearing the court granted the Motion and authorized the requested financing on an interim basis through April 5, 2019 (making no determination if there is a sale of accounts receivable or secured financing). Civil Minutes, Dckt. 44.

The court further held Amajot Tamana, identified as the President and Manager of Mike Tamana Freight Lines, LLC, is the Responsible Representative to act for the Debtor in Possession and the person authorized to execute all documents for this authorized financing.

The court issued an Order providing the foregoing, continuing the hearing to March 28, 2019, and also requiring any opposition to the Motion be filed and served on or before March 14, 2019, and replies, if any, filed and served on or before March 21, 2019. Order, Dckt. 46.

### **CREDITOR'S OPPOSITION**

Creditor Wells Fargo Equipment Finance, Inc. holding a secured claim ("WFEF") filed a Limited Opposition on March 13, 2019. Dckt. 93.

WFEF asserts it has a secured interest in equipment of the Debtor, including trucks and trailers, and their proceeds. WFEF opposes the Security Agreement to the extent it seeks to grant a security interest in already encumbered assets of the Debtor in Possession.

### **DEBTOR IN POSSESSION'S REPLY**

Debtor in Possession filed an Omnibus Reply on March 21, 2019. Dckt. 108. Debtor in Possession states it does not oppose limiting the lien granted under the order approving agreement with TAB to the unencumbered assets of the estate, consistent with the request made in the Motion.

### **FINANCING TERMS**

As WFEF comments, the financing to be provided seeks to encumber all of the personal property assets of the bankruptcy estate. The terms of the financing (see discussion below about the selling/financing issue) include:

- A. The contract is between Transportation
  - 1. Alliance Bank, Inc., dba TAB
  - and
  - 2. Debtor Mike Tamana Freight Lines, LLC

The contract is clear that it is between the Debtor LLC and TAB, not the fiduciary Debtor in Possession and TAB. The signature block at the end of the agreement is equally clear that it is being signed by the Debtor individually and not in its fiduciary capacity as the Debtor in Possession.

Presumably a sophisticated lender has intentionally drafted this agreement to do business

with the LLC shell entity and not the fiduciary Debtor in Possession.

- B. The Debtor LLC is “required” to submit all of the Debtor, LLC’s “Accounts” to TAB. Agreement ¶ 2; Exhibit C, Dckt. 17.
  - 1. “Accounts” is a defined term to as defined in the Uniform Commercial Code (the agreement does not specify whether it is the Commercial Code as enacted by the State of California or the academic Uniform Commercial as developed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute). Agreement *Id.* ¶ 1. Paragraph 19 of the agreement states that the agreement and transaction are to be governed by “internal laws of the State of Utah,” so it is possible that the reference could be to that State’s Commercial Code, or the specific reference is intended to be the academic Uniform Commercial Code.
    - a. This section goes further to state: “any and all amounts owing to Seller under any rental agreement or lease, payments on construction contracts, promissory notes or on any other indebtedness, any rights to payment customarily or for accounting purposes classified as accounts receivable, and all rights to payment, proceeds or distributions under any contract of Seller, presently existing or hereafter created, and all proceeds thereof.”
- C. TAB will consider (indicating no obligation to perform on TAB’s part) purchasing only “Accounts” that meet a set of terms stated in a long paragraph that is 48 lines long and contains three periods and four hundred and fifty-six (456) words (excluding the two periods and two words used in the title). One sentence consists of fourteen (14 words) and a second sentence consists of thirty-five (35) words. That leave the third sentence of this one paragraph consisting of four hundred and seven (407) words. The paragraph is one large block, with no organization of subparagraphs, listed items, or other devices to make such a long string of words more easily readable. *Id.* ¶ 3.
- D. The Debtor LLC will offer to sell “Accounts” to TAB, with TAB as the absolute owner. *Id.* ¶ 4. TAB’s purchase of any “Accounts” is in its sole discretion. *Id.* TAB has no obligation to purchase any “Accounts.”
- E. During the term of this agreement in which TAB has no obligation to purchase any accounts, the Debtor LLC “shall not sell, factor or otherwise finance its accounts receivable except with Purchaser.” *Id.*

Thus, it appears that TAB has drafted this agreement and the Debtor LLC seeks to enter into an agreement by which TAB controls the finances of the Debtor LLC, freezing the use of its “Accounts” (which is very broadly defined).

- F. The purchase price is denied to be “the Face Amount of the Purchased Account.”

*Id.* ¶ 1. The term “Face Amount” is defined to be “the total amount due specified on an Account’s invoice, at the time of Purchase, less any finance charges included therein.” *Id.*

G. The Debtor LLC is obligated to pay various fees and expenses as stated in Paragraph 7 of the agreement. These are stated (in one long run on paragraph) to be

(I) discount fees, at the Discount Fee Rate, on the Balance Subject to Discount Fee, from the date upon which an Account is purchased hereunder, with said discount fee being due and payable monthly on the last Business Day of the calendar month in which it accrues;

(ii) the Administration Fee on each Purchased Account at the time each said Purchased Account is Closed;

(iii) any Misdirected Payment Fee immediately upon its accrual;

(iv) any Missing Notation Fee on any Invoice that is sent by Seller to an Account Debtor that does not contain the notice as required by Section 12 hereof;

(v) any amount by which the sum of the fees and charges earned in any month (prorated for partial months) is less than the Minimum Monthly Fee, to be paid on the last Business Day of the calendar month in which it accrues;

(vi) the Early Termination Fee if Seller terminates this Agreement or prepays the Obligations (whether by acceleration or otherwise) prior to the termination date set forth herein, computed from the date of termination to the date on which termination is requested by Seller pursuant to Section 18 hereof;

(vii) the Late Charge on all past due amounts due from Seller to Purchaser hereunder, and on the amount of any Reserve Shortfall;

(viii) any and all other fees and charges referred to herein, at the earlier of the time required by the terms hereof or when billed by Purchaser; and

(ix) any expenses directly incurred by Purchaser in the administration of this Agreement such as wire transfer fees, postage, extra-ordinary collection costs, periodic UCC or tax lien searches, and audit fees, calculated at Purchaser’s standard fee schedule, a copy of which will be provided to Seller upon request;

(x) in the event any applicable law, statute, rule or regulation shall subject Purchaser or any of its affiliates to any tax levy (other than taxes

imposed on or measured by the overall net income of Purchaser), duty, impost, duty, charge, fee, deduction or withholding, or increase the cost to Purchaser of purchasing Accounts due to the application or use of the LIBOR Rate, then upon written demand therefor, Seller shall reimburse Purchaser for all such costs and expenses. Any amounts owed by Seller to Purchaser shall be paid by Seller, at Purchaser's option, by:

- (a) charging said amounts to the Reserve Account;
- (b) deducting said amounts from the Purchase Price otherwise directed by Seller to be deposited into Seller's Account;
- (c) debiting said amounts from Seller's Account; or
- (d) Seller's paying said amounts, in cash or other good funds acceptable to Purchaser, immediately upon demand made by Purchaser.

H. While structured as a "purchase" of accounts, TAB has the power to "require," on TAB's Demand, Debtor LLC to "repurchase" the purportedly "sold" "Accounts." *Id.* ¶ 8.

I. Debtor LLC grants a security interest in "Collateral" described as:

"Collateral" – any collateral now or hereafter described in any financing statement, continuation statement, financing change statement, or any other UCC-1 filing, or any other amendment, or similar security filing or registration statement filed against or executed by Seller naming Purchaser as the secured party, and all of Seller's right, title and interest in, to and under the following property, now owned or hereafter acquired:

(I) All Accounts (including any Exclusions and any Accounts purchased by Purchaser hereunder and repurchased by Seller), chattel paper, general intangibles, including, but not limited to, tax refunds, registered and unregistered patents, trademarks, service marks, copyrights, trade names, trade secrets, customer lists, licenses, documents, instruments, deposit accounts, certificates of deposit, and all rights of Seller as a seller of goods, including rights of reclamation, replevin and stoppage in transit;

(ii) All Inventory as defined in the Uniform Commercial Code, wherever located, all goods, merchandise or other personal property held for sale or lease, names or marks affixed thereto for purposes of selling or identifying the same or the seller or manufacturer thereof and all related rights, title and interest, all raw materials, work or goods in process or materials or supplies of every nature used, consumed or to be used in

Seller's business, all packaging and shipping materials, and all other goods customarily or for accounting purposes classified as inventory of Seller, now owned or hereafter acquired or created, all proceeds and products of the foregoing and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the foregoing, all property received wholly or partially in trade or exchange for any of the foregoing, all leases of any of the foregoing, and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein;

(iii) All Equipment and fixtures and goods, wherever located, and all additions, substitutions, replacements (including spare parts), and accessions thereof and thereto;

(iv) All books and records relating to all of the foregoing property and interests in property, including, without limitation, all computer programs, printed output and computer readable data in the possession or control of the Seller, any computer service bureau or other third party;

(v) All investment property; and

(vi) All proceeds of the foregoing, including but not limited to, all insurance proceeds, all claims against third parties for loss or destruction of or damage to any of the foregoing, and all income from the lease or rental of any of the foregoing. *Id.* ¶ 1.

J. The Exhibit A to the agreement contains the interest rate and other fee and expense terms, *Id.*, Dckt. 17 at 42, which include:

1. A "Discount Fee Rate" calculated at the LIBOR Rate plus 8.37%. Based on the current stated LIBOR Rate, the agreement identifies the interest rate to start at 11.46% on all "Obligations" of Debtor LLC under the agreement. However, the Agreement also provides that notwithstanding the stated "Discount Fee Rate" calculation, at no time shall the LIBOR Rate used in the calculation be less than 8.73%.

This appears to be a drafting error. Likely the Agreement sought to make the minimum Discount Fee Rate 8.73% (the amount of the "plus" interest above the LIBOR Rate). Instead, the language seems to fix the LIBOR Rate at a minimum of 8.73%, which would make the minimum Discount Fee Rate 17.46%.

2. Origination Fee of \$15,000.

3. Attorney Documentation Fee (for agreement between TAB and the Debtor LLC) of \$7,500.

4. Administration fee of 0.10% per diem (.10% per day x 365 days = 36.5%

per annum). This 36.5% fee is computed on:

- a. “the cumulative uncollected balance of the Purchase Price of all outstanding Purchased Accounts (which are not Closed) minus the balance in the Reserve Account” *Id.* ¶ 1.
5. Minimum Monthly Fee 0.40% (0.40% per month x 12 months = 4.8% per annum). This is a fee computed on the “Maximum Amount,” \$3,000,000, without regard to the account’s purchased, which equals \$144,000 a year to be paid for TAB having the discretion to “purchase” accounts.

### **MARCH 28, 2019 HEARING**

At the March 28, 2019 hearing on the Motion, the court noted (as discussed above) a number of issues that have arisen in connection with the financing, the parties involved, and the terms. Civil Minutes, Dckt. 143. Counsel for the Debtor in Possession reported that alternative financing sources are being considered. Counsel for the lender confirmed with the court that she would address with her client the issues discussed; including the actual terms (including whether the lender would be recovering interest, whether designated interest, maintenance fees, or minimum monthly fee -in addition to origination and drafting fees); and whether the annual interest and maintenance fees are in excess of 40% of the outstanding accounts "purchased" on which interest and fees must be paid.

The court issued an Order on April 1, 2019, extending its Interim Order (Order, Dckt. 46) through and including April 19, 2019, and continuing the hearing on the Motion to April 4, 2019. Order, Dckt. 148.

### **APRIL 9, 2019 HEARING**

At the hearing April 9, 2019 hearing, the court further continued the hearing on the Motion to April 24, 2019 at the request of the parties. Civil Minutes, Dckt. 186.

### **RULING**

At the hearing, counsel for the Debtor in Possession and Counsel for TAB advised the court

XXXXXXXXXXXXXXXXXXXX

Counsel for Debtor in Possession reported at a prior hearing that alternative financing sources were being considered.

At the hearing, XXXXXXXXXXXXXXXXXXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Obtain Post-Petition Financing filed by Mike Tamana Freight Lines, LLC (“Debtor in Possession”) having been presented





## **FEBRUARY 14, 2019 HEARING**

At the February 14, 2019 hearing creditor Transportation Alliance Bank, Inc., holding the senior lien on the collateral, which was represented to be over encumbered, represented non-opposition to the Motion to Use Cash Collateral. Dckt. 43.

To provide for any diminution in the value of the collateral to junior lien holders by the use of cash collateral (11U.S.C. § 506(a) secured claim), the court granted replacement liens to the creditors having liens on the cash collateral being used by the Debtor in Possession.

The court issued an Order providing the foregoing, continuing the hearing to March 28, 2019, and also requiring any opposition to the Motion be filed and served on or before March 14, 2019, and replies, if any, filed and served on or before March 21, 2019. Order, Dckt. 47.

### **WELL'S FARGO'S OPPOSITION**

Creditor Wells Fargo Equipment Finance, Inc. holding a secured claim ("Wells Fargo") filed a Limited Opposition on March 13, 2019. Dckt. 95. Wells Fargo asserts an interest certain equipment of the Debtor, including trucks and trailers, and their proceeds.

While Wells Fargo does not oppose the proposed \$100,000.00 weekly adequate protection payment, Wells Fargo argues the Motion is silent as to which creditors are to be paid, the amount of payment, and when payment will be provided.

Wells Fargo asserts that as of the filing of its Limited Opposition no payment had been received.

### **TCF'S OPPOSITION**

Creditor TCF Equipment Finance, a division of TCF National Bank or its assigns, holding a secured claim ("TCF") filed a Limited Opposition on March 14, 2019. Dckt. 98. TCF asserts it has an interest in multiple trucks and trailers used by Debtor in the operation of its business.

While not opposing the use of its cash collateral, TCF asserts Debtor's Motion and budget fail to identify which secured creditors will be paid or the amounts of such payments. TCF argues Debtor in Possession should be required, as a form of adequate protection, to specify to whom payments will be made, the amount of the payments, and the dates that the payments will be made.

TCF asserts it has received one adequate protection payment totaling \$12,789.89.

### **DEBTOR IN POSSESSION'S REPLY**

Debtor in Possession filed an Omnibus Reply on March 21, 2019. Dckt. 110. Debtor in Possession states Wells Fargo and TCF oppose the motion to the extent that the underlying agreement purports to prime their liens on certain equipment assets of the Debtor in Possession. Debtor in Possession states further it does not oppose limiting any replacement lien granted under the order approving the use of cash collateral.

**MARCH 28, 2019 HEARING**

At the March 28, 2019 hearing, counsel for the Debtor in Possession reported that cash collateral stipulations are being executed.

The court issued an Order on April 1, 2019, extending its Interim Order (Order, Dckt. 47) through and including April 19, 2019, and continuing the hearing on the Motion to April 4, 2019. Order, Dckt. 149.

**APRIL 9, 2019 HEARING**

At the April 9, 2019 hearing no opposition was presented to extending the further interim use and continuing the hearing to April 24, 2019, as the parties addressed the financing alternatives. Civil Minutes, Dckt. 187.

**DISCUSSION**

On April 4, 2019, the Declaration of Amanjot Tamana, the Responsible Representative of the Debtor in Possession (Dckt. 155), was filed. Filed with the Declaration is Exhibit “D,” which is identified to be the amended post-petition operating budget for the estate during the 13-week period starting on February 10, 2019. That budget provides:

<i>Week Starting On:</i>	<b>Feb 10 2019</b>	<b>Feb 17 2019</b>	<b>Feb 24 2019</b>	<b>Mar 3 2019</b>	<b>Mar 10 2019</b>	<b>Mar 17 2019</b>	<b>May 24 2019</b>	<b>Mar 31 2019</b>	<b>Apr 7 2019</b>	<b>Apr 14 2019</b>	<b>Apr 21 2019</b>	<b>Apr 28 2019</b>	<b>May 5 2019</b>	<b>Total</b>
<b>Income</b>														
Revenue	\$390,000	\$410,000	\$400,000	\$390,000	\$400,000	\$425,000	\$450,000	\$400,000	\$425,000	\$450,000	\$400,000	\$450,000	\$450,000	\$5,440,000
Brokerage Revenue	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$105,000	\$1,365,000
<i>Total Income</i>	<i>\$495,000</i>	<i>\$515,000</i>	<i>\$505,000</i>	<i>\$495,000</i>	<i>\$505,000</i>	<i>\$530,000</i>	<i>\$555,000</i>	<i>\$505,000</i>	<i>\$530,000</i>	<i>\$555,000</i>	<i>\$505,000</i>	<i>\$555,000</i>	<i>\$555,000</i>	<i>\$6,805,000</i>
<b>Expenses</b>														
Driver Payroll	\$94,000	\$99,000	\$96,000	\$94,000	\$96,000	\$102,000	\$108,000	\$96,000	\$102,000	\$108,000	\$96,000	\$108,000	\$108,000	\$1,307,000
Payroll Taxes	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$12,000	\$13,000	\$12,000	\$12,000	\$13,000	\$12,000	\$13,000	\$13,000	\$160,000
Benefits	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$6,000	\$78,000
Workers Comp	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$9,200	\$119,600
Diesel/DEF/Reefer	\$82,000	\$86,000	\$84,000	\$82,000	\$84,000	\$90,000	\$94,000	\$84,000	\$90,000	\$94,000	\$84,000	\$94,000	\$94,000	\$1,142,000
Carrier Pay	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$1,170,000
Office Payroll	\$19,500	\$19,500	\$19,500	\$18,000	\$18,000	\$17,400	\$17,400	\$16,000	\$16,000	\$16,000	\$16,000	\$16,000	\$16,000	\$225,300
Office Payroll Taxes	\$2,300	\$2,300	\$2,300	\$2,050	\$2,050	\$1,950	\$1,950	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$25,700
Officer Salary	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$52,000
Insurance	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$19,200	\$249,600
Car	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$5,200
Ceres Yard	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$1,800	\$23,400
Houston Yard	\$900	\$900	\$900	\$900	\$900	\$900	\$900	\$900	\$900	\$900	\$900	\$900	\$900	\$11,700
Unloading/ Lumpers	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$97,500
Scales	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$13,000
Truck and Trailer Washing	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$15,600

Tolls	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$6,500
Gps/Elogs/Trailer Temp Transflo	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$15,600
Recruiting	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$400	\$5,200
Maintenance	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$1,250	\$16,250
Safety	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$130,000
Oregon Tax/NM Tax	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$1,500	\$19,500
IT Expense/Software	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$4,000	\$52,000
Miscellaneous	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$39,000
Modular Office	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$13,000
Utilities	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$6,500
Property Taxes (Real Prop.)	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$13,000
Other Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,493	\$0	\$0	\$0	\$0	\$0	\$6,493
Equip. Adq. Protection Pmts	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$32,500
Allegiance Fin. Group	\$0	\$0	\$0	\$0	\$7,585	\$24,092	\$0	\$0	\$0	\$31,677	\$0	\$0	\$0	\$63,355
Banc of America	\$0	\$0	\$0	\$17,061	\$0	\$0	\$0	\$0	\$17,061	\$0	\$0	\$0	\$17,061	\$51,182
BB&T Commercial Equip.	\$0	\$26,048	\$3,431	\$0	\$0	\$26,048	\$3,431	\$0	\$0	\$26,048	\$0	\$3,431	\$0	\$88,437
First Midwest	\$0	\$0	\$6,128	\$0	\$0	\$0	\$0	\$0	\$6,128	\$0	\$0	\$6,128	\$0	\$18,385
Hitachi	\$0	\$3,818	\$0	\$0	\$0	\$3,818	\$0	\$0	\$0	\$3,818	\$0	\$0	\$0	\$11,453
Lee Financial	\$0	\$0	\$0	\$0	\$62,977	\$0	\$31,641	\$0	\$62,977	\$0	\$31,641	\$0	\$62,977	\$252,214
People's Capital	\$12,121	\$0	\$28,663	\$0	\$12,121	\$0	\$28,663	\$0	\$0	\$12,121	\$0	\$28,663	\$0	\$122,351
Signature Financial	\$0	\$0	\$0	\$14,219	\$0	\$0	\$0	\$14,219	\$0	\$0	\$0	\$0	\$14,219	\$42,656
TCF Equipment Fin.	\$0	\$0	\$3,831	\$12,790	\$0	\$0	\$3,831	\$12,790	\$0	\$0	\$0	\$16,621	\$0	\$49,863
Volvo	\$0	\$2,457	\$12,964	\$34,134	\$0	\$2,457	\$12,964	\$34,134	\$0	\$0	\$2,457	\$44,326	\$2,751	\$148,643
Wells Fargo Equip. Fin.	\$59,058	\$0	\$0	\$0	\$59,058	\$0	\$0	\$0	\$0	\$59,058	\$0	\$0	\$0	\$177,175
Executory K Assumption														
Love's Carriers	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$13,462	\$13,462
Debtor's Professionals*	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$100,000	\$100,000
TAB DIP Fees	\$0	\$19,000	\$0	\$0	\$0	\$19,000	\$0	\$0	\$0	\$19,000	\$0	\$0	\$0	\$57,000
US Trustee Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$40,000	\$0	\$40,000
<b>Total Expenses</b>	<b>\$449,030</b>	<b>\$438,173</b>	<b>\$436,867</b>	<b>\$454,303</b>	<b>\$521,842</b>	<b>\$466,815</b>	<b>\$482,930</b>	<b>\$511,344</b>	<b>\$541,875</b>	<b>\$552,573</b>	<b>\$486,948</b>	<b>\$540,019</b>	<b>\$611,319</b>	<b>\$6,494,037</b>
<b>Net Income/(Loss)</b>	<b>\$45,970</b>	<b>\$76,827</b>	<b>\$68,133</b>	<b>\$40,697</b>	<b>-\$16,842</b>	<b>\$63,185</b>	<b>\$72,070</b>	<b>-\$6,344</b>	<b>-\$11,875</b>	<b>\$2,427</b>	<b>\$18,052</b>	<b>\$14,981</b>	<b>-\$56,319</b>	<b>\$310,963</b>
Contribution to TAB Reserve	\$45,970	\$76,827	\$68,133	\$23,855	\$0	\$35,214	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
TAB Reserve Account Balance	\$45,970	\$122,798	\$190,931	\$214,786	\$214,786	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000	
Cumulative Free Cash	\$0	\$0	\$0	\$16,842	\$0	\$27,971	\$100,041	\$93,697	\$81,822	\$84,249	\$102,301	\$117,282	\$60,963	

To summarize the above, the Debtor in Possession projects the following financial consequences of operating under the cash collateral budget:

Total Revenue.....\$6,805,000  
Total Expenses.....(\$6,494,037)

Net Operating Income For the 13 Week Period.....\$310,963

The (\$6,494,037) includes (\$40,000) in U.S. Trustee fees and (\$57,000) in “TAB DIP Fees.” It is not clear if this is the interest payable on the financing provided by TAB, the 0.1% per day Administrative Fee, or the estimated 11.46% interest on the TAB financing.

In addition to the operating expenses, (\$250,000) for the period is held in the TAB financial reserve account. This leaves \$60,963 of apparently unspent, unencumbered monies (before paying any state or federal taxes) left from the operation generating \$6,805,000 in revenues after 13 weeks.

The above expenses do include an allocation of (\$100,000) for professional fees and (\$1,025,750) in adequate protection payments for creditor’s with secured claims.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by Mike Tamana Freight Lines, LLC (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Use Cash Collateral is **XXXXXXXXXX**.