

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge

Modesto, California

July 18, 2024 at 10:30 a.m.

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1. <a href="#">18-90029</a> -E-11	JEFFERY ARAMBEL	CONTINUED MOTION TO USE CASH
<a href="#">FWP-28</a>	Pro Se	COLLATERAL
		10-20-23 [ <a href="#">1927</a> ]

**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 Objection. 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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, other parties in interest, and Office of the United States Trustee on October 20, 2023. By the court's calculation, 20 days' notice was provided. 14 days' notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days' notice).

The Motion for Authority to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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 Use Cash Collateral is <span style="color: red;">XXXXXX</span>.</b>
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July 18, 2024 Hearing

Thursday, July 18, 2024 at 10:30 a.m.

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The court continued this hearing from June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral. A review of the Docket on July 16, 2024, reveals no supplemental pleadings have been filed.

At the hearing, **XXXXXXX**

## **REVIEW OF THE MOTION**

Focus Management Group, Inc., the duly appointed Plan Administrator (“Plan Administrator”), moves for an order approving the use of cash collateral pursuant to its stipulation with SBN V AG I LLC (“Summit”) for the period of October 1, 2023 through December 31, 2023. Plan Administrator requests the use of cash collateral to fund the plan budget, which is a budget setting forth the anticipated expenses of administration of the Plan for a period of time that is prepared by the Plan Administrator and approved by the Oversight Committee. Exhibit 1, Dckt. 1930, p. 2. Summit’s cash collateral constitutes the sole source of funds to operate Debtor’s business under the Plan.

Plan Administrator proposes to use cash collateral in accordance with the plan budget, which is as follows as set forth in the Budget filed as Exhibit A, Dckt. 1930.

### **Proposed Stipulation**

Summit entered into a stipulation with the Plan Administrator detailing how Summit’s cash collateral may be used to fund the Plan. The stipulation is filed as Exhibit 1, Docket 1930. The stipulation proposes the Plan will be funded by Summit’s cash collateral, and Summit is willing to consent to the Plan Administrator’s use of the cash collateral to fund the plan budget. Stipulation, Exhibit 1, Dckt. 1930, p. 3. The stipulation shall automatically terminate on December 31, 2023, unless Summit agrees to an extension in writing. *Id.*

### **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. When a debtor is not qualified to operate as a debtor in possession, the court may appoint a trustee pursuant to 11 U.S.C. § 1104. 11 U.S.C. § 1108 gives the trustee authority to operate the business. In operating the business, the trustee can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

**(b)(2) Hearing**

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**DISCUSSION**

Plan Administrator has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for administering the Plan, including paying employees, taxes, professional fees, and other business expenses. The Motion is granted, and Plan Administrator is authorized to use the cash collateral for the period October 1, 2023 through December 31, 2023, in accordance with the plan budget and stipulation. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Plan Administrator. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Plan Administrator.

The court continued the hearing to 10:30 a.m. on January 11, 2024, for Plan Administrator to file a Supplement to the Motion to extend authorization. That Supplemental pleadings shall be filed and served on or before December 21, 2023, with any opposition to be presented orally at the continued hearing.

**January 11, 2024 Hearing**

A review of the Docket on January 8, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) uploaded a new stipulation to extend the use of cash collateral. Docket 1947, DCN. FWP-29. Under the extension provision of the previous stipulation (Exhibit 1, Docket 1930 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through March 31, 2024. Docket 1947 at ¶ 3.

At the hearing, the court grants the Motion and sets a continued hearing on March 28, 2024, with supplemental pleadings filed by Movant two weeks prior thereto.

## **March 28, 2024 Hearing**

A review of the Docket on March 25, 2024 reveals that the Plan Administrator (Focus Management Group, Inc.) and SBN V Ag I LLC uploaded a new Stipulation and proposed budget to extend the use of cash collateral. Docket 1968.

In the Stipulation the Plan Administrator and SBV address the use of cash collateral, but there is no outline of how the cash collateral will be used to complete the confirmed plan (confirmation order entered September 15, 2019; Dckt. 970). As reflected in the Civil Minutes from the last Post-Confirmation Status Conference conducted on January 25, 2024:

At the Status Conference, counsel for the Plan Administrator reported that not a lot new to report at this point. The parties need to regroup on the Filbin Land and Cattle matters, with there being no resolution at this point in time.

Counsel for the Plan Administrator requested the that the Status Conference be continued 6 months. Counsel for Creditor Summit and the continuance of the Status Conference.

Civ. Minutes; Dckt. 1961.

There were prior disputes concerning the asserted dissolution of the related entity Filbin Land and Cattle Co. (Though it does not appear to be in dispute as to who owns 100% of the member interest in Filbin Land and Cattle Co.)

As this Case is now in its Seventh (7th) Year of Existence and this Plan is now in its Sixth (6th) Year of Performance, it could well be that the court's attempts to insure that all parties prosecuting cases in good faith were not deprived of such opportunity (in Chapter 11, 12,13, and even 7 cases), created the appearance that the *status quo* would be the norm and that actually litigating disputes was not expected.

Under the extension provision of the previous stipulation (Docket 1947 at ¶ 3) between Plan Administrator and Summit, the terms surrounding the use of cash collateral have been extended by the terms of the new stipulation through June 30, 2024. Docket 1968 at ¶ 3.

The Motion for Authority to Use Cash Collateral was granted, and continued to 10:30 a.m. on June 27, 2024, to consider a Supplement to the Motion to extend the authorization to use cash collateral.

Supplemental Pleadings shall be filed by Movant two weeks prior to the continued hearing date.

## **June 27, 2024 Hearing**

The court granted Focus Management Group, Inc., the duly appointed Plan Administrator ("Plan Administrator") authority to use cash collateral up and through June 30, 2024, in accordance with the proposed budget attached as Exhibit A to that Order. Order, Docket 1978. The court expressed concerns at the March 28, 2024 Hearing that the cash collateral was not being properly used in this case to move the case forward, the case now being in its seventh year of existence. Plan Administrator filed a Status Report with the court on June 13, 2024. Docket 1988. Plan Administrator requests the court continue the hearing on this Motion to July 18, 2024, as the parties are working on a proposed stipulation.

On June 20, 2024, Plan Administrator filed with the court its proposed Stipulation. Docket 1994. The Stipulation includes a new budget of Other Cash Collateral, defined in the Plan as “cash collateral (as defined by Section 363(a) of the Code) made available to the Reorganizing Debtor by Summit prior to or after the Effective Date, pursuant to a written cash collateral stipulation agreed to by Summit, which cash collateral is subject to the Allowed Secured Claim of Summit” (Plan 8:3-6, Docket 860). The proposed budget is as follows:

Arambel Cash Budget Plan of Conversion of Remaining Assets	Actual April 55	Actual May 56	June 57	July 58	August 59	September 60	Funeral Expense 13th Month	Cumulative Post January 2021 Period
Starting Cash	\$ 3,361,206	\$ 3,344,321	\$ 3,339,805	\$ 3,321,135	\$ 1,801,965	\$ 1,783,295	\$ 778,733	\$ 1,601,766
<b>Cash-In</b>								
Summit Funding	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
MetLife Funding	-	-	-	-	-	-	-	-
FLCC Deposit	-	-	-	-	-	-	-	500,390
Additional Funding/LBA Settlement	-	-	-	-	-	-	-	525,118
Farm Equipment Auction Net Proceeds	-	-	-	-	-	-	-	172,546
Property Tax Refunds - Stanislaus County	-	-	-	-	-	-	-	157,169
Crop Retainage/Coop Patronage	-	-	-	-	-	-	-	-
IRS/CA Tax Refunds	-	-	-	-	-	-	-	1,544,827
Rental Income	-	-	-	-	-	-	-	17,928
Property Sales	-	-	-	-	-	-	-	-
<b>Total Cash-In</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,917,978
<b>Cash-Out</b>								
<b>Personal Expenses</b>								
<b>Total Personal</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Farm Expenses</b>								
Lot Line Adj. and Other Asset Admin	145	183	170	170	170	170	2,000	13,496
Reorganizing Debtor's Professionals	-	-	-	-	-	-	-	11,645
<b>Total Farm</b>	\$ 145	\$ 183	\$ 170	\$ 170	\$ 170	\$ 170	\$ 2,000	\$ 25,141
<b>Plan Expenses</b>								
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,462
Property Taxes	10,991	-	-	-	-	-	10,000	218,861
Accountant	-	-	1,000	1,000	1,000	1,000	6,000	93,457
Plan Administrator's Attorneys	2,349	1,272	10,000	10,000	10,000	10,000	17,500	467,376
US Trustees Fees	500	-	-	500	-	-	-	32,730
Plan Administrator Fees	2,901	3,061	7,500	7,500	7,500	7,500	20,000	549,168
Contingency Reserve	-	-	-	-	-	-	(903,030)	-
<b>Total Plan</b>	\$ 16,740	\$ 4,332	\$ 18,500	\$ 19,000	\$ 18,500	\$ 18,500	\$ (841,643)	\$ 1,374,053
<b>Sub-Total</b>	\$ 16,885	\$ 4,516	\$ 18,670	\$ 19,170	\$ 18,670	\$ 18,670	\$ (839,643)	\$ 1,399,194
<b>Accrued Professional Fees</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2022 Income Tax	-	-	-	-	-	-	-	2,174
Unpaid Utilities	-	-	-	-	-	-	-	-
Class 2 Pre-Petition Property Taxes	-	-	-	-	-	-	-	-
Class 3 Cure Payments	-	-	-	-	-	-	-	-
<b>Sub-Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,174
<b>Property Sale Disbursements</b>								
Payment on Debt - Brighthouse	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Payment on Debt - Summit	-	-	-	1,500,000	-	-	1,418,376	2,918,376
Sale Expenses (Title, Escrow, Recording)	-	-	-	-	-	-	-	-
Property Taxes	-	-	-	-	-	-	-	-
Other Costs (Carve Out Unsecureds)	-	-	-	-	-	-	200,000	200,000
<b>Sub-Total</b>	\$ -	\$ -	\$ -	\$ 1,500,000	\$ -	\$ -	\$ 1,618,376	\$ 3,118,376
<b>Total Cash-Out</b>	\$ 16,885	\$ 4,516	\$ 18,670	\$ 1,519,170	\$ 18,670	\$ 18,670	\$ 778,733	\$ 4,519,744
<b>Ending Cash</b>	\$ 3,344,321	\$ 3,339,805	\$ 3,321,135	\$ 1,801,965	\$ 1,783,295	\$ 1,764,625	\$ 0	\$ (0)
<b>Period Ending Cash Balance:</b>								
PA Operating Account	\$ 223,946	\$ 219,614	\$ 201,114	\$ 182,114	\$ 163,614	\$ 145,114	\$ (1,618,022)	
PA Filbin Account	204	204	204	204	204	204	204	
PA U.S. Trustee Fees Reserve	-	-	-	-	-	-	-	
PA 10% Holdback after \$2M to Summit	-	-	-	-	-	-	-	
PA Tax Reserve Account	\$ 3,120,171	\$ 3,119,987	\$ 3,119,817	\$ 1,619,647	\$ 1,619,477	\$ 1,619,307	\$ 1,617,817	
RD Checkings/Petty Cash	-	-	-	-	-	-	-	
<b>Period Ending Cash Balance</b>	\$ 3,344,321	\$ 3,339,805	\$ 3,321,135	\$ 1,801,965	\$ 1,783,295	\$ 1,764,625	\$ (0)	

The proposed budget would be extended through September 30, 2024, including authorizing a property sale disbursement of \$1,500,000 to SBN V AG I LLC (“Summit”), being heard in conjunction with this Motion.

The court shall issue an 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 Plan Administrator having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Authority to Use Cash Collateral is  
**XXXXXXX**

**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.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on May 14, 2024. By the court’s calculation, 65 days’ notice was provided. 28 days’ notice is required.

However the Certificate of Service states that Creditor Cambridge Place Association was served as:

Cambridge Place Association  
c/o Law Office of Lyl D. Solomon  
PO Box 1411  
Rocklin, CA 95667

Cert. of Serv; Dckt. 15. The court addresses the adequacy of service on the “Target” Creditor.

~~————— The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.~~

**~~The Motion to Avoid Judicial Lien is XXXXXXX, and the lien of creditor Cambridge Place Association is avoided in its entirety.~~**

This Motion requests an order avoiding the judicial lien of Cambridge Place Association (“Creditor”) against property of the debtor, Dawn Marie Barnard (“Debtor”) commonly known as 2210 Monte Carlo Avenue, Modesto, California 95350 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$15,982.61. Exhibit B, Dckt. 14. An abstract of judgment was recorded with Stanislaus County on October 24, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$427,800 as of the petition date. Schedule A/B 11 line 1.1, Docket 1. The unavoidable consensual liens that total \$335,964 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D 22 line 2.4, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$125,000 on Schedule C. Schedule C 18 line 2, Docket 1.

### **Sufficiency of Service**

The Certificate of Service states that Judgment Lien Creditor Cambridge Place Association was served "C/O Law Office of Lyl D. Solomon, PO Box 1411, Rocklin, CA 95677." Dckts. 15, 18.

For a contested matter such as this Motion to Avoid Lien, service of the Motion, Notice, and Supporting Pleading must be served as provided in Federal Rule of Bankruptcy Procedure 7004. See, Rule 9014. Federal Rule of Bankruptcy Procedure provides in pertinent part (emphasis added):

#### **Rule 7004. Process; Service of Summons, Complaint**

...

(b) Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

...

**(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.**

...

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the entity upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such a defendant in the court of general jurisdiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the



authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

....

It appears that service was made on the attorney for Creditor in the State Court Action in which the Judgment and Judgment Lien obtained in such action. However, “merely” being an attorney in a State Court Action does not make that person the “creditor” or the agent for service of process for the creditor. Lyle D Solomon, Esq. is listed on the Abstract of Judgment that is the basis of the Judgment Lien. Dckt. 14.

There is no basis provided to show that Lyle D. Solomon, Esq. (whose name is misspelled on the Certificate of Service) is the proper registered agent for service.

The California Secretary of State identifies Creditor Cambridge Place Association as having an agent, located in Danville, California, at the same address as that of Cambridge Place Association, and that agent is Dan Nelson. <https://bizfileonline.sos.ca.gov/search/business>.

Service of the Motion, Notice, and Supporting Pleadings as required by Federal Rule of Bankruptcy Procedure 7004(b) have not been documented.

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).~~

#### **~~ISSUANCE OF A COURT-DRAFTED ORDER~~**

~~An order substantially in the following form shall be prepared and issued by the court:~~

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Dawn Marie Barnard (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the judgment lien of Cambridge Place Association, California Superior Court for San Joaquin County Case No. ‘STK-CV-LBC-2016-7309, recorded on October 24, 2022, Document No. 2022-0069869, with the Stanislaus County Recorder, against the real property commonly known as 2210 Monte Carlo Avenue, Modesto, California 95350, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~

**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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 3, 2024. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required. FED. R. BANKR. P. 4001(b)(2) (requiring fourteen days’ notice).

The Motion for Authority to Use Cash Collateral and grant Adequate Protection was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor in Possession, 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. At the hearing, -----.

**The Motion for Authority to Use Cash Collateral is granted, and the hearing is continued to **xx:xx** a.m. on **xxxx**, 202**x**.**

Martinez Pallet Services, Inc.(“Debtor in Possession”) moves for an order approving the use of cash collateral from operating its business on the commercial property commonly known as 3925 W. Linwood Avenue, Turlock, California 95380 (“Property”). Debtor in Possession’s business manufactures and sells wood pallets by buying new wood material and donated recycled wood it receives from various businesses. Mot. 2:13-14, Docket 15. Debtor in Possession’s gross receipts from January 1- through June 27, 2024 was \$498,372.64 with a net profit of \$4,960.19. *Id.* at 3:1-2.

Debtor in Possession’s business performed well during the Covid years when wood products were in high demand. However, the price of wood has since dropped by 50%. *Id.* at 3:17-18. Furthermore,

the interest rate on the note secured by the Property has increased from 3.5% in 2022 to 8.5% today, increasing the mortgage payment. *Id.* at 3:13-16. Debtor in Possession requests the use of cash collateral to continue operating the business in the ordinary course from the Property and to make adequate protection payments.

Debtor in Possession proposes to use cash collateral for the following expenses:

Martinez Pallet Services, Inc.							
Income/Expense	Interim	Final Budget					
Income	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	
Sales- Pallet Sales	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	
Sales- Wood Shavings	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Sales- Pickup Services	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	
Total Income	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	
Cost of Goods Sold							
Raw Materials- Wood	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	
Raw Materials- Broken Pallets	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	
Raw Materials- Nails	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	
Total COGS	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	
Gross Profit	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	
Expense							
Bookkeeping & Accounting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Fuel (Diesel, Gas, & Propane)	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	
Merchant Service Fee	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30	
Office Supplies	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75	
Salaries & Wages - 8 employees	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	
Shareholder Salaries & Wages - 3 employees	\$ -	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	
Meals & Entertainment	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Card and Bank Fees	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26	
IT & Telcom Expense	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350	
Utilities	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600	
Insurance - Liability	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167	
Insurance - Auto	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	
Saw Blades - Replacements	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	
Auto Expense - Maintenance	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	
Total Business Expense	\$ 38,898	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398	
Net Operating Income	\$ 41,602	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102	
Adequate Protection to secured creditors							
First Chatham Bank		\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	
Balboa Capital		\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	
Total Adequate Protection Expense	\$ -	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	
Net Income	\$ 41,602	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102	

Exhibit A, Docket 18. As seen in the chart, First Chatham Bank would be receiving adequate protection payments of \$20,000 per month, and Balboa Capital will be receiving adequate protection payments of \$1,000 per month.

First Chatham Bank holds a first priority security interest secured by a UCC-1 financing statement recorded on December 8, 2022 against all of Debtor in Possession's personal property assets utilized in the Debtor in Possession's business and a first priority Note secured by a deed of trust in the Property. Mot. 4:25-5:12. The Note is also personally guaranteed by Debtor in Possession's shareholders, Francisco J. Mora Martinez and Adela Espinoza Sanchez. Mr. Martinez testifies in his Declaration that "without cash collateral use Debtor would suffer irreparable harm to their business operations if not permitted immediate use of cash collateral." Decl. 6:13-14, Docket 17.

Debtor in Possession estimates the Property to be worth \$3,159,000 (Decl. 2:24-25, Docket 17), while First Chatham Bank's Claim is estimated to be \$3,000,000 (Decl. 4:20, Docket 17). Balboa Capital's claim is estimated to be in the amount of \$129,819.33. *Id.* at 4:21.

## **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## **DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the business and generating cash for adequate protection payments to secured creditors. The Motion is granted, and Debtor in Possession is authorized to use the cash

collateral for the period July 24, 2024, through December 24, 2024, including required adequate protection payments. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

The court continues the hearing to **xx:xx x.m. on xxxx, 202x**, for Debtor in Possession to file a Supplement to the Motion to extend authorization. That Supplement is due by **xxxx, 202x** (seven days before hearing), with any opposition to be presented orally at the continued hearing.

The court shall issue an 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 Martinez Pallet Services, Inc. (“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 the Motion is granted, pursuant to this order, for the period July 24, 2024, through December 24, 2024, and the cash collateral may be used to pay the following expenses:

Martinez Pallet Services, Inc.							
Income/Expense	Interim	Final Budget					
		Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24
Income							
Sales- Pallet Sales	\$	80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000	\$ 80,000
Sales- Wood Shavings	\$	2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Sales- Pickup Services	\$	9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000	\$ 9,000
Total Income	\$	91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000	\$ 91,000
Cost of Goods Sold							
Raw Materials- Wood	\$	6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000	\$ 6,000
Raw Materials- Broken Pallets	\$	3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000
Raw Materials- Nails	\$	1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500
Total COGS	\$	10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500	\$ 10,500
Gross Profit	\$	80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500	\$ 80,500
Expense							
Bookkeeping & Accounting	\$	-	\$ -	\$ -	\$ -	\$ -	\$ -
Fuel (Diesel, Gas, & Propane)	\$	18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000	\$ 18,000
Merchant Service Fee	\$	30	\$ 30	\$ 30	\$ 30	\$ 30	\$ 30
Office Supplies	\$	75	\$ 75	\$ 75	\$ 75	\$ 75	\$ 75
Salaries & Wages - 8 employees	\$	7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550	\$ 7,550
Shareholder Salaries & Wages - 3 employees	\$	-	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500
Meals & Entertainment	\$	2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Card and Bank Fees	\$	26	\$ 26	\$ 26	\$ 26	\$ 26	\$ 26
IT & Telcom Expense	\$	350	\$ 350	\$ 350	\$ 350	\$ 350	\$ 350
Utilities	\$	600	\$ 600	\$ 600	\$ 600	\$ 600	\$ 600
Insurance - Liability	\$	167	\$ 167	\$ 167	\$ 167	\$ 167	\$ 167
Insurance - Auto	\$	7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000	\$ 7,000
Saw Blades - Replacements	\$	1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100	\$ 1,100
Auto Expense - Maintenance	\$	2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000	\$ 2,000
Total Business Expense	\$	38,898	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398	\$ 50,398
Net Operating Income	\$	41,602	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102	\$ 30,102
Adequate Protection to secured creditors							
First Chatham Bank			\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000
Balboa Capital			\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000	\$ 1,000
Total Adequate Protection Expense	\$	-	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000	\$ 21,000
Net Income	\$	41,602	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102	\$ 9,102

**IT IS FURTHER ORDERED** that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

**IT IS FURTHER ORDERED** that Debtor in Possession shall make monthly adequate protection payments of \$20,000 to First Chatham Bank, and monthly adequate protection payments of 1,000 to Balboa Capital.

**IT IS FURTHER ORDERED** that the hearing on the Motion is continued to **xx:xx x.m. on xxxx, 202x**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before **xxxx, 202x**, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the **xxxx, 202x** hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

