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**UNITED STATE BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

In re:

BULEE CAFÉ, LTD.  
d/b/a SARAH'S ARTISANAL KITCHEN

Debtor-in-Possession

Case No. 17-40127-nhl

Chapter 11

**DEBTOR'S APPLICATION FOR AN ORDER (A) AUTHORIZING  
DEBTOR'S INTERIM AND FINAL USE OF CASH COLLATERAL  
PURSUANT TO 11 U.S.C. § 361 AND 363 AND GRANTING ADEQUATE  
PROTECTION AND (B) SCHEDULING FINAL HEARING PURSUANT TO  
11 U.S.C. § 363(c)(2) AND FED. R. BANKR. P. 4001**

Bulee Café, Ltd. d/b/a Sarah's Artisanal Kitchen ("Debtor" or "Bulee Cafe" or "Sarah's Kitchen"), by and through its proposed attorneys, The Law Office of John C. Kim, P.C., hereby moves the Court for the entry of Orders: (A) authorizing the interim and final use of the cash collateral of: (i) NewBank ("NewBank" or "Lender") pursuant to 11 U.S.C. §§ 361 and 363; and (B) scheduling a final hearing on the Debtor's application for use of cash collateral pursuant to 11 U.S.C. § 363(c)(2) and Federal Rule of Bankruptcy Procedure 4001 (the "Application"). In support of the Application, the Debtor respectfully represents as follows:

**I. INTRODUCTION AND JURISDICTION**

1. This Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(A), and (M) and (O).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**II. BACKGROUND**

3. On January 11, 2017 (the "Petition Date"), the Debtor initiated a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to operate its business and manage its affairs as a debtor-in possession-pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in these cases, nor has an official committee of unsecured creditors been established.

5. The Debtor’s primary business is the operation of the DELI/CATERING business, Sarah’s Kitchen, located at 270 Madison Avenue, New York, NY. The relevant factual information concerning the Debtor’s operations and the events and circumstances leading to the Petition Date are set forth in the Affidavit of Yong Won Bu made pursuant to Local Bankruptcy Rule 1007-4 (the “Bu Affidavit”), which is incorporated by reference herein.

**III. BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-5 CONCISE STATEMENT**

6. Pursuant to, and in accordance with, rule 4001(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-5 of the Local Bankruptcy Rules for the Eastern District of New York (the "Local Rules"), the following is a

concise statement of the relief requested that lists or summarizes, and sets out the location within the Interim Cash Collateral Order of, all material provisions included therein:<sup>1</sup>

Material Term	Summary of Material Term	Provision
<u>Parties with Interest in Cash Collateral</u>	NewBank	
<u>Use:</u>	For working capital and ordinary purposes, including purchase and sale of inventory and materials, costs and expenses related to this Chapter 11 Case including, without limitation, any and all relief afforded by the Court pursuant to "emergency motions" or otherwise.	Pg. 3;
<u>Adequate Protection</u>	<p>To the extent of the diminution in value of the Lenders' interests in the totality of its prepetition collateral, from and after the Petition Date, calculated in accordance with section 506(a) of the Bankruptcy Code, resulting from the use, sale or lease by the Debtors of the Cash Collateral, (collectively, the "<u>Diminution in Value</u>"): </p> <p>Each of the Lenders is hereby granted a replacement security interest and liens (the "Adequate Protection Liens") in and upon all of <del>the Debtors' now owned</del> and after-acquired cash, and cash collateral, any investment of such cash and cash collateral, accounts receivable, any right to payment whether arising before or after the Petition Date, and the proceeds, products, rents and profits of all of the foregoing prepetition and post petition assets and properties (tangible, intangible, real, personal and mixed), whether now existing or newly acquired or arising, and wherever located, including, without limitation, all receivables and all cash ("Cash Collateral") (but excluding all causes of <u>actions and all avoidance actions</u> ("Avoidance Actions")) to the same validity, <u>extent and priority</u> as existed prepetition;</p>	Pg. 5-6

<sup>1</sup> This summary is qualified in its entirety by the provisions of the Interim Cash Collateral Order. To the extent there are any conflicts between this summary and the Interim Cash Collateral Order, the terms of the Interim Cash Collateral Order shall govern.

	<p>provided that each such Lenders' Adequate Protection Liens shall only be granted to the extent any or each of the Lenders would have been entitled to a security interest in such Cash Collateral under applicable agreements, state and federal laws, is not subject to avoidance under chapter 5 of the Bankruptcy Code and only to the extent of the allowed amount of such lien calculated in accordance with section 506 of the Bankruptcy Code.</p> <p>Burden of Proof. The Lenders shall have the burden by motion, upon notice and a hearing, of demonstrating any Diminution in Value.</p>	
Reporting:	The Debtor shall provide the Lenders, within 20 days following the end of each prior month, a monthly report containing the following information: (a) all receipts and disbursements of the Debtors; and (b) a reconciliation of actual receipts and disbursements with those set forth in the budget on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget	Pg. 6
Time Frame:	The initial period for the use of cash collateral is for not less than thirty (30) days; subject to the entry of a final order permitting such use and continued disclosures in the form of budget items going forward.	

**The Debtor's Pre-Petition Relationship With The Lender(s)**

7 NewBank Loan Agreement 9/24/2013: The Debtor is party to a loan agreement with NewBank dated September 24, 2013 in the principal amount of \$1,600,000.00 bearing interest at the rate of prime plus 2.75% (the "NewBank Loan"). The NewBank Loan is an SBA loan, with a present outstanding balance of \$1,243,027.79. The NewBank Loan is secured by a blanket lien against all of the assets of Bulee Cafe and is also unconditionally guaranteed by Yong Won Bu and Kyu Taik Lee as 45% shareholders of Bulee Cafe, and by unconditional limited guarantees by their respective spouses, Su Nam Bu and Tong H. Yang.

8. NewBank Loan Agreement 2/25/2015: The Debtor is also party to an additional loan agreement with NewBank dated February 25, 2015 in the principal amount of \$300,000.00 bearing interest at the rate of prime plus 2.75% (the “NewBank Capital Loan”). The NewBank Capital Loan is secured by a blanket lien on all fixtures, equipment and intangibles. The present outstanding balance of the NewBank Capital Loan is \$261,975.09. The Debtor is presently examining the NewBank Capital Loan.

#### **IV. RELIEF REQUESTED AND BASIS THEREFOR**

9. The Debtor urgently requires access to the cash collateral to enable it to continue its operations. Attached as Exhibit “A” to the Proposed Order is a budget (the “Budget”) submitted by the Debtor to the Lender(s) for the period of thirty days over one month from the Petition Date. Included therein are payroll and other expenses, all of which must be paid in order for operations to continue without interruption.

10. A chapter 11 debtor-in-possession has the statutory right to use cash collateral to operate its business. The standards governing a debtor’s use of cash collateral are set forth in Section 363(c)(2) of the Bankruptcy Code, which provides:

The trustee [or debtor-in-possession] may not use, sell, or lease cash collateral under paragraph 1 of this subsection, unless -

(A) each entity that has an interest in such cash collateral consents;

or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).

11. The “provisions of this section” referenced in Section 363(c)(2) include Section 363(e), which provides:

Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e); *see also In re Realty Southwest Assoc.* 140 B.R. 360, 366 (S.D.N.Y. 1992); H.R. Rep. No. 595 95<sup>th</sup> Cong. 1<sup>st</sup> Sess. 344 (1977); King, Lawrence P. “COLLIER ON BANKRUPTCY” ¶ 363.03 (15<sup>th</sup> Ed. Rev.).

12. As set forth below, the Lender(s)' interests are adequately protected through a replacement lien on the Debtors' post-petition assets in equal priority, amount and effect as existed prepetition.

A. Adequate Protection of the Lender(s)

13. Section 361(2) of the Bankruptcy Code provides that adequate protection may be provided by granting a replacement lien in post-petition assets to protect a secured creditor from diminution of its collateral during the bankruptcy proceeding.

14. As summarized in the table above and detailed in the Interim Order, to protect against Diminution in Value, if any, resulting from the Debtor's use of the Cash Collateral, the Debtor proposes to provide the Lender(s), to the extent of the Diminution in Value, the Adequate Protection Liens.

15. Courts have utilized Section 361(2) of the Bankruptcy Code in fashioning adequate protection and permitting a debtor to use cash collateral under similar circumstances. *See, e.g., In re Prichard Plaza Associates Limited Partnership*, 84 B.R. 289, 302 (Bankr. D. Mass. 1988) (“If the proceeds stream is likely to remain stable through the collection of new accounts receivable or the sale of new inventory, adequate protection is often ensured by a replacement lien on post-petition accounts and inventory and their proceeds and by some

provision for monitoring the use of proceeds.”); *In re Airport Inn Associates, Ltd.*, 132 B.R. 951, 960 (Bankr. D. Col. 1990) (“The court could order a lien in post-petition accounts receivable as adequate protection if that relief was requested....”); and *In re International Design & Display Group, Inc.*, 154 B.R. 362, 364 (Bankr. S.D. Fla. 1993) (court authorized debtor to use cash collateral and, as adequate protection, granted secured creditor replacement lien on all post-petition accounts receivable, inventory and contracts to the extent the creditor’s collateral was depleted).

16. Granting the Lender(s) replacement liens on its prepetition collateral generated therefore adequately protects the Lender(s)’ interests.<sup>2</sup> In reaching this conclusion the Debtor considered chiefly the going concern value of its assets and the relative priority of each of the Lender(s) in relation to NewBank.

17. Additionally, the Debtor believes its projected operations will be sufficient to continue operations and insulate each of the Lender(s) from Diminution in Value, if any, and enable the Debtor to maintain the going concern value of the Lender(s)’ collateral. Given the current market conditions for the sale of the Debtor’s business, the continuation of the Debtor’s operations likely presents the best opportunity for the Lender(s) to receive the greatest recovery on account of their claims. The Debtor’s business, as a going concern, has a value far in excess of any value that might be obtained in a chapter 7 liquidation. A complete shutdown of the Debtor’s business, even for a short period, would result in the loss of numerous jobs, while unilaterally insuring diminished recoveries for creditors. Accordingly, it is imperative that a preliminary hearing be set immediately.

18. Based on the foregoing, the Debtor submits that use of the Cash Collateral will allow the Debtor to continue its operations and thereby protect the Lenders’ interests. Courts

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<sup>2</sup> Further supporting the Debtors’ request to use cash collateral is the fact that, as demonstrated on Exhibit A, the Lenders’ cash collateral will be used in part to maintain and continue to pay salaries of the Debtor’s numerous employees, taxes, and ordinary expenses which are designed to protect the collateral.

have consistently recognized that the preservation of the going concern value of secured lender(s)' collateral constitutes adequate protection of such creditors' interest in the collateral. *See, e.g., In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (holding that if there is no actual diminution of value of collateral and the debtor can operate profitably postpetition, then the secured creditor is adequately protected); *In re 499 W. Warren St. Assocs., Ltd. P'ship*, 142 B.R. 53, 56 (Bankr. N.D.N.Y. 1992) (finding a secured creditor's interest in collateral adequately protected when cash collateral was applied to normal operating and maintenance expenditures on the collateral property); *In re Stein*, 19 B.R. 458, 460 (Bankr. E.D. Pa. 1982) (creditors' secured position would be enhanced by the continued operation of the debtors' business); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) ("The important question, in determining whether the protection to a creditor's secured interest is adequate, is whether that interest, whatever it is, is being unjustifiably jeopardized.") (citation omitted).

19. As additional adequate protection, the Debtor will provide the Lender(s), within 20 days following the end of each prior month, a monthly report containing the following information: (a) all receipts and disbursements of the Debtor; and (b) a reconciliation of actual receipts and disbursements with those set forth in the Budget on a line-by-line basis showing any variance to the proposed corresponding line item of the Budget.

20. The Debtor respectfully submits that the adequate protection described above is sufficient and warrants entry of an interim (and ultimately final) Order approving the use of the Lender(s)' cash collateral in accordance with the Budget.

#### **V. REQUEST FOR ENTRY OF EMERGENCY INTERIM ORDER**

21. Bankruptcy Rule 4001(b)(2) requires that a hearing on an application for use of cash collateral be served at least fourteen (14) days after service of the Application unless necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

22. Unless the Debtor is authorized to use the Lender(s)' cash collateral, the Debtor's ability to reorganize will be materially impaired and jeopardized consequently visiting immediate and irreparable harm to the Debtor, their estates and their creditors.

23. Based on the foregoing, the Debtor respectfully submits that entry of an Order authorizing the interim use of cash collateral and scheduling a final hearing to approve the use of cash collateral is necessary and appropriate.

#### **VI. REQUEST FOR FINAL HEARING**

24. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court schedule a Final Hearing on the Motion as soon as practicable, but in no event later than 45 days following the entry of the Interim Cash Collateral Order, and fix the time and date for parties to file objections to the motion in advance of such Final Hearing.

#### **VII. WAIVER OF MEMORANDUM OF LAW AND BANKRUPTCY RULES 6004(a) AND 6004(h)**

25. To implement the foregoing successfully, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

#### **VIII. NOTICE**

26. No trustee, examiner or creditors' committee has been appointed in this chapter 11 case. The Debtor has provided notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) each of the Lenders and their counsel (if known); and (d) the Internal Revenue Service. The Debtor respectfully submits that no other or further notice need be provided.

27. No prior request for the relief requested by this Application has been made to this or any other Court.

**WHEREFORE**, the Debtor respectfully requests entry that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: January 20, 2017  
Flushing, New York

Respectfully submitted,

/s/ John C. Kim, Esq.

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