IN THE UNITED STATES BANKRUPTCY COURT FOR
THE DISTRICT OF KANSAS

In Re:	)	
	)	
EVERGREEN PALLET, LLC	)	Case No. 19-21983
	)	Chapter 11
Debtor	)	

MOTION FOR ORDER PURSUANT TO 11 U.S.C. SECTION 363
AND SECTION 361 AND FEDERAL R. BANKR. P. 4001(b) AND (d) FOR USE
OF CASH COLLATERAL AND ADEQUATE PROTECTION PAYMENTS

COMES NOW the Debtor, by and through its attorneys, and moves the Court for authority to use Cash Collateral (as defined below), to provide adequate protection to Newtek and CDS (as defined below), and modifying the automatic stay, and in support thereof states as follows:

1. Debtor filed its Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on September 16, 2019 ("Petition Date").

2. No trustee has been appointed, and Debtor has remained in possession of the property of its estate as a Debtor-In-Possession. The Debtor operates a pallet business and employs approximately 65 individuals. The business is located in Park City, Kansas.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §157 and §1334. Venue is proper pursuant to 28 U.S.C. §1408 and §1409. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Debtor files this Motion and requests relief herein pursuant to 11 U.S.C. §363(c)(2).

4. As of the Petition Date, Debtor was indebted to Newtek Small Business Finance ("Newtek") for one loan with a balance of $3,651,298.65, and CDS Business Services Inc. ("CDS") for two lines, one in the amount of $411,899.32, with interest & other charges provided by the accounts Receivable Administration Agreement (A/R Line) and $399,136.66, with interest & other charges provided by the Inventory Advance Agreement (Inventory Line). Both Newtek and CDS have perfected security interests in all cash, cash equivalents, and accounts generated by Debtor's business ("Cash Collateral").

5. Debtor seeks the entry of an interim Order and the Final Order of the Court which (i) authorizes it to use Cash Collateral for payment of the normal and necessary expenses of its business, pending an evidentiary hearing, if necessary, if an objection to the Motion is filed, (ii) authorizes the Debtor to provide adequate protection to Newtek and CDS for any decrease in the value (such decrease being a "Diminution in Value") of its interest in the Debtor's property resulting from (a) the use, sale or lease of the Debtor's property (including the use of Cash Collateral) or (b) the imposition of the automatic stay pursuant to Section 362 of the Bankruptcy Code, (iii) modifies the automatic stay imposed pursuant to Section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order and the Final Order authorizing the use of the Cash Collateral, (iv) waives any applicable stays under the Bankruptcy Rules or otherwise and provides for the immediate effectiveness of the Order and any Final Order.

6. Use of the Cash Collateral is essential to the continued business operations and the reorganization of Debtor. Absent authorization to use the Cash Collateral, Debtor will suffer irreparable harm and will be forced to cease its business operations, to the detriment of Newtek and CDS, any other Secured Creditors and all other creditors.

7. Debtor shall not use the Cash Collateral to pay prepetition interest or principal on any existing indebtedness other than as ordered by the Court.

8. Attached hereto as Exhibit A is Debtor's estimated monthly budget of income and expenditures for the next thirty (30) days, which should be a good reflection of the Debtor's activity for the months in the future while the Chapter 11 is pending. The budget confirms that, with the cash on hand and continued operations, the Debtor is able to cash flow its business operation through the period requested. The Debtor submits that the collateral pledged to Newtek and CDS is valued at less than the outstanding balances owed on the Promissory Notes held by Newtek and CDS. The Inventory Line balance is $339,136.66, with interest and other charges. The Large Term Loan balance is $3,651,298.65. For the

purposes of the interim Order, the Debtor proposes to pay CDS $5,000/monthly toward the Inventory line and $12,000 on the Newtek loan on or before November 1, 2019. This will be the monthly payment to CDS and Newtek until the earlier of January 1, 2020, dismissal of the bankruptcy, sale of the assets pursuant to a Section 363 sale, or confirmation of the Plan of Reorganization. Debtor, and CDS shall, on a good faith basis, determine the monthly payments to be made by Debtor to CDS prior to the Final Hearing. The Debtor is paying the Accounts Receivable Line, which has a current balance of $441,899.32, with interest and other charges through the creditor's collection of the accounts receivable as provided by the term sheet attached hereto.

9. The Debtor estimates its future gross monthly income to be $532,737 per month. Debtor's estimated future monthly expenses total $516,513 per month, leaving a net profit of $16,224/month.

10. The attached Budget includes the proposed secured payments to Newtek and CDS, along with payments for payroll, payroll and unemployment taxes, worker's compensation, personal property taxes, inventory purchases, rent, utilities, office expenses and supplies, repairs and maintenance, vehicle expenses, trucking, equipment rental and leases, legal and professional fees, insurance, and secured debt to Pawnee Leasing, and Financial Pacific Leasing. The Debtor shall use Cash Collateral in an amount consistent with the expenditures described in the Budget. Newtek and CDS have an interest in the Cash Collateral pursuant to prepetition loan documents between the parties. Disbursements by the Debtor on an aggregate basis prior to the Final Hearing may not exceed 15% from the amounts specified in the Budget, other than disbursements to the Debtor's professionals which variance is capped at 5%.

11. Debtor shall make monthly reports to Newtek and to the U. S. Trustee of receipts and expenditures of the Cash Collateral.

12. The Debtor's ability to use Cash Collateral pursuant to the interim Order shall end on the earliest of: (i) entry of a Final Order, (ii) forty-five (45) days following entry of the interim Order if the

Final Order shall not have been entered by such date, (iii) the effective date of a confirmed plan of reorganization in this case, (iv) the closing of a sale of all or substantially all assets of the Debtor, (v) the dismissal or conversion of this case, or (vi) any material provision of the interim Order having ceased to be valid or binding for any reason.

13. The Debtor proposes to provide adequate protection to Newtek and CDS as follows: (i) a continuing security interest in and lien on all collateral, including, but not limited to, all Cash Collateral, of the Debtor of the same type and nature that exists as of the Petition Date with the same validity and priority as exists as of the Petition Date, including the income and proceeds thereof (the "Replacement Lien"), (ii) to the extent of any Diminution in Value, an additional and replacement security interest in and lien on all property and assets of the Debtor's estate (the "Adequate Protection Lien"), provided however, that (a) such security interest and lien shall be junior only to any existing, valid, senior enforceable and unavoidable prior perfected security interests and liens, and (b) such security interest and lien shall attach to all commercial tort claims and all claims, defenses, causes of action or rights of Debtor arising under chapter 5 of the Bankruptcy Code or applicable state fraudulent transfer law (including all proceeds thereof, the "Avoidance Actions") and (iii) to the extent provided by Sections 503(b) and 507(b) of the Bankruptcy Code, an allowed administrative claim (the "Adequate Protection Claim").

14. The Replacement Lien and the Adequate Protection Lien shall be valid, binding, enforceable, non-avoidable and automatically perfected, notwithstanding the automatic stay, without the necessity of filing or recording any financing statement, mortgage, or other instrument or document which otherwise may be required under the laws of any jurisdiction to validate or perfect such security interest and liens.

15. Contemporaneously with this Motion, Debtor is seeking approval for post-petition financing under 11 U.S.C. Section 364(c) (the "DIP Facility") from CDS (the "DIP Lender"). The proposed DIP Facility consists of a revolving line of credit with a maximum amount of 80% of outstanding

accounts receivable. The present outstanding balance owed on the Accounts Receivable Loan is $441,899.32 with interest and other charges. The accounts receivable is presently at $624,976.30.

16. If the DIP Lender and DIP Facility is approved, the DIP lender will have a valid, first super priority post-petition security interest in and lien on and against Debtor's rights in all chattel paper, accounts, and general intangibles (the "Collateral") up to the amount loaned post-petition, subject only to any Replacement Lien or Adequate Protection Lien. These assets are presently unencumbered as of the Petition Date under 11 U.S.C. Section 552; however, in this Motion, the Debtor proposes to give Newtek and CDS (based upon their UCC-1 filing positions) a replacement lien on all Cash Collateral in exchange for the use of its collateral during the pendency of this Chapter 11.

16. Debtor's counsel requests a carve-out of her retainer of $15,000, plus any further sums approved by the Court as attorneys' fees and expenses for the Debtor's counsel.

WHEREFORE, Debtor prays for an interim Order of the Court authorizing it to use Cash Collateral for payment of the normal and necessary expenses of its business, according to the attached Budget, pending an evidentiary Hearing; for a Final Order of the Court authorizing Debtor's continued use of Cash Collateral upon terms as agreed upon by the parties prior to the Final Hearing, and reserving to Debtor the right to seek a further extension of such Order; that in the event of an objection to said Motion, to set an immediate hearing on the within Motion; and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

KRIGEL & KRIGEL, P.C.

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ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019, a copy of the foregoing was mailed, either electronically or by U. S. Postal Service, postage prepaid, to all persons requesting notice through the Court's ECF noticing system, as well as all creditors listed on the Court's mailing matrix as of 9/27/19.

/s/ Erlene W. Krigel
Erlene W. Krigel