

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

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In re: \* Bankr. Case No. 19-40294  
Chapter 11

LOGISTICS BUDDY \*  
TRANSPORTATION, LLC, \*  
EIN/ITIN: 47-4790835, \*

Debtor. \*

**DEBTOR’S MOTION FOR  
AUTHORITY TO OBTAIN  
SECURED CREDIT, AND TO  
USE CASH COLLATERAL  
(OCTOBER 1, 2019 THROUGH  
NOVEMBER 30, 2019)**

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**COMES NOW** the Debtor, Logistics Buddy Transportation, by and through its attorneys of record, and hereby moves the Court pursuant to Sections 363 and 364(c) of the Bankruptcy Code and Rule 4001(b) and (c) of the Federal Rules of Bankruptcy Procedure and Bankr. D.S.D.R. 4001-2, for an order authorizing Debtor to obtain secured credit and to use cash collateral, and for a final hearing on this Motion, as needed, and in support thereof respectfully states:

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §157 and §1334. Venue is proper under 28 U.S.C. §1408 and §1409.
2. Debtor runs a trucking operation located in and around Sioux Falls, South Dakota.
3. On July 5, 2019, Debtor filed a petition seeking relief under Chapter 11 of the bankruptcy code (the “Petition Date”). Pursuant to 11 U.S.C. §1203, §1107(a), and §1108, Debtor continues to operate its business and manage its affairs as Debtor in Possession.
4. Subsequent to the Petition Date, the Court entered several orders authorizing the interim and final use of cash collateral and for the Debtor’s sale and Wex Bank’s purchase of the Debtor’s accounts receivable (doc. nos. 71, 101, 106, 152, 183, and 192) (collectively, “the Financing Orders”).
5. Under the Financing Orders, the Debtor obtained, among other things, authorization to use cash collateral and under document 192, final authority to continue to sell its accounts receivable to Wex Bank up to \$1,200,000.00 on a revolving basis, incur secured debt to Wex Bank, and grant Wex Bank and the Internal Revenue Service (the “IRS”) adequate protection (the “Final Order. The Debtor is seeking authority to extend the Final Order to cover the sale of accounts and the use of cash collateral through November 30, 2019.

6. The Debtor has determined it needs to continue to sell accounts to Wex Bank and to continue to use cash collateral from October 1, 2019 through November 30, 2019. As a result, the Debtor proposes to continue to obtain financing from Wex Bank under the APA, up to a total of \$1,200,000 (plus charges and fees under the APA) on a **revolving basis**, retroactive to the Petition Date. The amount of debt at any one time will vary based on the amounts advanced, the collections on the accounts Wex Bank purchases, and the terms of the APA. The Debtor will use the proceeds from the sale of the accounts for the purposes listed on Exhibits 1 and 2. Wex Bank will own the accounts it purchases under the APA, and be authorized to continue to receive, collect, and apply amounts due and become due on the accounts Wex Bank purchases under the APA.

7. Both the Internal Revenue Service and Wex Bank have an interest in the Debtor's "cash collateral", as that term is defined under 11 U.S.C. §363(a). The Debtor must use cash collateral to maintain the operation of its business for the time period October 1, 2019 through November 30, 2019.

8. The Debtor proposes to provide Wex Bank with collateral and adequate protection for Wex Bank's purchase of accounts (and other obligations under the APA) by granting Wex Bank the same security and protections granted to it in the previous Final Order retroactive to the Petition Date.

9. Wex Bank holds a pre-petition security interest through a blanket lien on the Debtor's assets, and a pre-petition security interest in the pre-petition proceeds Debtor earns from its trucking operation.

10. The Internal Revenue Service holds a pre-petition security interest through a federal tax lien on Debtor's property.

11. In addition, Wex Bank and the IRS hold replacement liens and other forms of adequate protection granted to them in the Financing Orders.

12. Debtor will continue to run and operate in the ordinary course of business.

13. Debtor was not able to consult with Wex Bank or the IRS regarding the specific authorization of cash use as requested above prior to the filing of this motion, so neither refuses nor agrees to the use of cash collateral proposed herein.

14. Debtor estimates its cash flow, income and expenses, for the time period between October 1, 2019, through November 30, 2019 as set forth on Exhibits 1 and 2.

15. Nothing contained in this motion shall limit Wex Bank and the IRS rights and remedies, nor constitute or be relied on as a waiver or release of their respective rights and remedies. Wex is under no obligation to provide the Debtor with any further financing, accommodations, or concessions, and nothing contained in this Motion or any order entered as a result hereof shall constitute a commitment by Wex Bank to provide any of the foregoing. Wex

Bank and the IRS may seek an order to modify the protections proposed to be granted by this motion, nor constitute any agreement or consent to treatment under a Plan of Reorganization.

**WHEREFORE**, Debtor requests authorization to obtain and use cash collateral and to continue to use revolving credit and sale of accounts up to \$1,200,000.00, respectively, in the operation of its business pursuant to the attached Exhibits, and to grant Wex Bank and the IRS adequate protection retroactive to the Petition Date, upon the terms and conditions set forth in this Motion and the Exhibits attached thereto. In addition, the Debtor requests authorization to sell accounts and grant liens to Wex Bank up to \$1,200,000 (plus charges and fees under the APA) on a **revolving basis**, retroactive to the Petition Date), and to grant liens and adequate protection to Wex Bank retroactive to the Petition Date to secure such obligations upon the terms and conditions set forth in this Motion and the Exhibits attached thereto; for Wex Bank to continue to own the accounts it purchases and will purchase under the APA, and be authorized to continue to receive, collect, and apply amounts due and to become due to the accounts Wex Bank purchases under the APA, and for such other and further relief as appropriate in the premises.

Dated this 17<sup>th</sup> day of September, 2019.

GERRY & KULM ASK, PROF. LLC:

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