

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Rojo One, LLC¹,

Debtor.

Case No. 16-54348-mlo
Chapter 11
Hon. Maria L. Oxholm

**FIRST DAY INTERIM ORDER AUTHORIZING
USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION
AND SETTING FINAL HEARING**

This matter having come before the Court on the First Day Motion For Interim Authority to Use Cash Collateral and Related Relief (the "Motion") filed by Rojo One, LLC, Rojo Two, LLC, Rojo Four, LLC, Rojo Five, LLC and Rojo Six, LLC (the "Debtors"); due and proper notice of the Motion having been given to all parties entitled thereto; Secured Creditors First State Bank and Rewards Network having filed formal Objections to the Motion; the Court having considered all relevant matters related thereto and being otherwise fully advised in the premises; preliminary hearings having been held on the Motion pursuant to the provisions of Fed. R. Bankr. P. 4001(c)(2); the Parties having stipulated to the entry of this Order; and sufficient cause appearing therefore; Accordingly,

IT IS HEREBY FOUND AND, WHERE APPLICABLE, STIPULATED:

A. On October 20, 2016 (the "Petition Date"), the Debtors commenced cases under Chapter 11 of the Bankruptcy Code and have requested joint administration. The Debtors are continuing to operate their business as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

B. Prior to the Petition Date, the Debtors and First State Bank ("FSB"), Rewards Network Establishment Services, Inc. ("Rewards Network"), Strategic Funding Source, Inc. ("Strategic Funding") (collectively known as "Creditors") were parties to various agreements.

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An Order has been entered in this case directing the procedural consolidation and joint administration of the chapter 11 cases of Rojo One, LLC Case No. 16-54348-mlo, Rojo Two LLC Case No 16-54349-mlo, Rojo Four, LLC Case No. 16-54350-mlo, Rojo Five LLC, Case No. 16-54352-mlo, and Rojo Six, LLC Case No. 16-54353-mlo. The docket in Case No. 16-54348-mlo should be consulted for all matters affecting this case.

C. As a consequence of the foregoing, Creditors claim they possess valid and perfected security interests as to some or all of the Debtor entities, including Rojo One, LLC, Rojo Two, LLC, Rojo Four, LLC, Rojo Five, LLC, and Rojo Six, LLC (the "Prepetition Liens") in substantially all of the Debtors' property, whether personal, tangible, or intangible, and wherever located, and whether now or hereafter acquired and all cash, cash equivalents, proceeds, products, and profits of the Collateral in existence before, on, or after the Petition Date (the "Cash Collateral"). Creditors contend that any such Cash Collateral is "cash collateral" within the meaning of § 363(a) of the Bankruptcy Code.

D. This Court has jurisdiction over this proceeding and the parties in interest and assets affected hereby under 28 U.S.C. §§ 157(b) and 1334. The interim hearing for the use of cash collateral was noticed to all creditors holding secured claims of record, those creditors required to be noticed pursuant to Fed. R. Bankr. P. 1007(d), and to the United States Trustee, and that this satisfies the notification required pursuant to Fed. R. Bankr. P. 4001(b).

E. The Debtors require the use of Cash Collateral in order to operate their businesses.

F. FSB, Rewards Network and Strategic Funding Source, Inc. ("Creditors") have indicated a willingness to agree to allow the use of Cash Collateral subject to (i) the entry of this Order.

G. These stipulations will not be binding on the Unsecured Creditor Committee, if any is appointed, or on the Chapter 7 Trustee in the event the case is converted to Chapter 7.

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Motion is hereby granted on an interim basis subject to the terms and conditions set forth in this Order.

2. **The Motion is hereby set for a Final Hearing before this Court at 11:00 a.m. on December 15, 2016 in Room 1975** (the "Final Hearing Date"), at which time any party in interest may present any timely filed objections to the entry of a final order ("Final Order") in the form of, and containing relief substantially similar to, this Order. The Debtors shall promptly serve a notice of the Final Hearing, together with a copy of this Order, by regular mail upon (i) the Office of the United States Trustee, (ii) each of the Debtors' creditors, and (iii) any other party which has filed a request with this Court for notice in the Debtors' case and served such request upon the Debtors' counsel. The notice of the Final Hearing shall state that objections to the entry of a Final Order on the Motion shall be in writing and shall be filed with the United States Bankruptcy Court Clerk for the Eastern District of Michigan no later than December 14, 2016 which objections shall be served so that the same are received on or before 12:00 pm (Eastern Standard Time) of such date by: (i) Aaron J. Scheinfeld, Scott M. Kwiatkowski, Goldstein, Bershad & Fried, P.C. counsel to the Debtors, 4000 Town Center, Suite 1200, Southfield, Michigan 48075; (ii) the Office

of the United States Trustee; (iii) Secured Creditors; (iv) Office of the United States Attorney for the Eastern District of Michigan, US Department of Justice. Any objections by creditors or other parties in interest to any of the provisions of this Order shall be deemed waived unless filed and served in accordance with this paragraph.

3. Debtors shall serve this Order within twenty-four (24) hours after its entry on the 20 largest unsecured creditors, all secured creditors, any committee formed in this case, all other parties that have requested notice, and the United States Trustee's Office.

4. Objections to this Order must be filed no later than one (1) business day prior to the Final Hearing, except that an official committee may file an objection within fourteen (14) days after it is served with this Order.

5. If no timely objections are filed, this Order shall become a final order without any further action by the Court.

6. All revenue, accounts, and proceeds generated in connection with the operation of the Debtors' businesses prior to or as of the Petition Date constitute proceeds of Creditors' Collateral and, therefore, constitute cash collateral within the purview of § 363 of the Bankruptcy Code. All monies in any of the Debtors' bank accounts as of the Petition Date constitute proceeds of the Creditors' Collateral and are, therefore, subject to the Creditors' liens and security interests. Cash Collateral shall be deemed to include, without limitation, all deposits, accounts, including but not limited to credit card account receivables, and cash arising from the sale or other conversion to cash from property of the Debtors, including but not limited to its food and non-alcoholic beverage inventory, its accounts and credit card accounts receivables, and any other generated revenue, in which the Creditors have security interests or liens, whether such security interest or liens existed as of the commencement of these proceedings or arise thereafter pursuant to this Order, and whether the property converted to cash existed as of the commencement of these proceedings or arose or was generated thereafter.

7. The use of Cash Collateral is essential to the Debtors' business operations and the Debtors are authorized to use Cash Collateral effective immediately in a manner substantially consistent with the budget/6-month cash flow projections that was attached to the Motion, including the payment of United States Trustee quarterly fees when due and Court approved fees and expenses of professionals retained by the Debtors until further order of the Court. Debtors shall file with the Court and serve upon Creditors and any other parties who request to receive a copy any future budgets going forward

8. The Debtors shall only use Cash Collateral during the term of this Order in a manner substantially consistent with the Budget or for purposes authorized under the Bankruptcy Code and order of the Court.

9. With respect to its use of Cash Collateral, the Debtors shall provide adequate protection to FSB as follows:

- a. Debtors shall pay FSB the sum of \$3,000.00 per month, commencing December 1, 2016 with monthly payments continuing thereafter on the 1st day of each month.
 - b. The Debtors grant FSB valid and perfected replacement liens nunc pro tunc to the Petition Date on the assets of the Debtors, including, but not limited to, accounts, payment intangibles, general intangibles, inventory, and proceeds of the foregoing to the same extent, validity, and priority as FSB's prepetition liens. FSB's replacement liens shall be effective and perfected by operation of law and without the necessity of execution by the Debtors of any security agreements or financing statements. FSB's replacement liens will secure all obligations owing to FSB by the Debtors. The replacement liens will be evidenced by the existing agreements between FSB and the Debtors, and this Order.
 - c. Each of the Debtors shall have until February 1, 2017 to file a sale motion. Each of the Debtors that have not filed a sale motion by February 1, 2017 will stipulate to convert its respective case to Chapter 7 by February 2, 2017.
 - d. The Debtors will insure all of its tangible personal property against loss or destruction for those perils generally insured against under the standard form of general commercial fire and other hazard insurance written by insurance companies authorized to underwrite general commercial fire and other hazard insurance in Michigan. FSB shall be identified as a loss payee by the insurer and the insurance will require that notice of cancellation or other material changes in the terms of the insurance be given to FSB at least ten days before the change occurs.
 - e. The Debtors will pay all post-petition personal property taxes, state and federal taxes, and shall file all returns in conformity with applicable legal requirements. The Debtors shall furnish to the FSB a copy of all filed tax returns within thirty (30) days of filing.
 - f. During the term of this Order, the Debtors shall timely file complete Monthly Operating Reports.
10. With respect to its use of Cash Collateral, the Debtors shall provide adequate protection to Rewards Network as follows:
- a. Upon entry of this Order, the Debtors shall pay Rewards Network the sum of \$3,000.00 per month, commencing December 1, 2016 with monthly payments continuing thereafter on the 1st day of each month.
 - b. The Debtors grant Rewards Network valid and perfected replacement lien nunc pro tunc to the Petition Date on accounts, payment intangibles, general intangibles, inventory, and proceeds of the foregoing to the same extent,

validity, and priority as Rewards Network's prepetition liens. Rewards Network's replacement liens will secure all obligations owing to Rewards Network by the Debtors. The replacement liens will be evidenced by the existing agreements between Rewards Network and the Debtors, and this Order.

- c. Rewards Network shall be identified as a loss payee by the Debtors' insurer and the insurance will require that notice of cancellation or other material changes in the terms of the insurance be given to Rewards Network at least ten days before the change occurs.

11. Each of the following shall constitute an event of default under the terms of this Order and shall be cause for the filing of a motion seeking to terminate the use of cash collateral:

- a. The date which the Debtors are no longer Debtors-In-Possession or are otherwise limited or excluded from the management and operation of their businesses (through the appointment of a trustee or an examiner under the Bankruptcy Code, or through the appointment of some other type of fiduciary or custodian under federal or state law);
- b. The filing of a stipulation providing for or the entry of an order dismissing the case, converting the case to Chapter 7, appointing a trustee, whether under Chapter 11 or Chapter 7 of the Bankruptcy Code, or the entry of an order terminating the authority of the Debtors to conduct business;
- c. Any violation by the Debtors of any provision of this Order which is not cured within seven (7) calendar days after written notice thereof. Written notice shall be provided to the Debtors' counsel.
- d. Debtors' use of Cash Collateral in a manner substantially inconsistent with this Order, including failure to timely pay the adequate protection payments due hereunder.
- e. The granting of stay relief to any party that claims an interest in the Collateral, including but not limited to the Cash Collateral.
- f. The Debtors cease to operate their businesses without the prior written consent of Rewards Network and FSB.
- g. An order is entered by the Court rejected a non-residential real property lease relating to any of the Debtors' restaurants.

12. Subject to all other provisions of this Order, the Debtors' authority to use Cash Collateral pursuant to this Order shall remain in effect until further order of the Court after notice and hearing.

13. The entry of this Order is without prejudice to the Debtors' right to seek authority to use additional Cash Collateral or borrow funds pursuant § 364 of the Bankruptcy Code if the Debtors determine that the Cash Collateral use authorized by this Order is insufficient.

14. Debtors recognize Strategic Funding Source, Inc. as a Secured Creditor and shall be granted a replacement lien on all of the Debtors' assets that existed as of the petition date to the same extent validity, and priority as Strategic Funding Source, Inc.'s prepetition liens.

15. Debtors Rojo One, LLC, Rojo Two, LLC, Rojo Four LLC and Rojo Five, LLC recognize Working Capital Funding, LLC as a Secured Creditor that holds lien(s) to the same extent validity, and priority as Working Capital Funding, LLC's prepetition liens.

16. Nothing in this Order will be deemed or construed as an admission or waiver by Rewards Network or FSB as to adequate protection, or any other issue in the case, and this Order will not constitute consent by Rewards Network or FSB to the use of its Cash Collateral other than as expressly provided herein. To the extent that Rewards Network or FSB's interest in the Collateral or Cash Collateral is not adequately protected by the terms of this Order, Rewards Network and FSB reserve its right to seek an allowed superpriority administrative expense pursuant to Bankruptcy Code § 507(b). In addition, nothing contained in this Order will prejudice the rights of Rewards Network or FSB to (i) seek further relief from the automatic stay of Section 362(a) of the Bankruptcy Code; (ii) oppose confirmation of any plan of reorganization filed by the Debtors or any other party in interest; (iii) oppose approval of any postpetition financing; (iv) seek a dismissal of the Debtors' bankruptcy cases; (v) seek allowance of an administrative claim or additional adequate protection in connection with the use of Rewards Network or FSB's Cash Collateral; or (vi) seek any other relief that Rewards Network or FSB may deem necessary and appropriate under the circumstances. Moreover, nothing contained in this Order will be deemed to waive or diminish any rights of Rewards Network or FSB under any of the agreements entered into by and between the Debtors and Rewards Network or FSB.

17. The provisions of this Order will be binding upon and inure to the benefit of Rewards Network and FSB and the Debtors and their respective successors and assigns, including but not limited to any trustee in bankruptcy hereinafter appointed as a representative of the Debtors' estates.

18. The Automatic Stay of §362 of the Bankruptcy Code is deemed modified to the extent necessary to implement this Order.

19. After the expiration of this Order, FSB and Rewards Network shall continue to receive adequate protection payments provided for herein and any and all liens, including any and all replacement liens granted herein, shall continue to be effective unless modified by the Court.

20. Luna Properties Novi, LLC shall be granted replacement liens to the same extent, validity and priority as Luna's prepetition liens that existed as of the bankruptcy filing date. Nothing within this Order will be deemed to waive or limit any of Luna's rights to seek any other relief under the Bankruptcy Code.

Signed on December 09, 2016

/s/ Maria L. Oxholm

Maria L. Oxholm

United States Bankruptcy Judge