

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	
	§	
WWW RETAIL, LLC	§	CASE NO. 16-42145
	§	
Debtor	§	

**EMERGENCY MOTION FOR INTERIM AND FINAL AUTHORITY
TO USE CASH COLLATERAL**

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

THE DEBTORS ARE REQUESTING AN EMERGENCY HEARING ON THIS MATTER AND THE DEADLINES SET FORTH ABOVE MAY BE SHORTENED.

TO THE HONORABLE CHIEF U.S. BANKRUPTCY JUDGE:

COMES NOW, WWW Retail, LLC (“Retail”) (hereafter called “Debtor”), the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Case”), and files this Emergency Motion for Interim and Final Authority to Use Cash Collateral (the “Motion”) pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and FED. R. BANKR. P. 4001, and in support thereof respectfully represents to the Court as follows:

I.

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O).
2. This Motion is made pursuant to §§ 105, 361 and 363 of the United States Bankruptcy Code (“Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedure and LBR 4001(c).

II.

GENERAL BACKGROUND

3. On November 29, 2016, Retail filed its voluntary petition for relief under Title 11, Chapter 11 of the United States Bankruptcy Code.
4. Jeremy Hubnik (85%) and James O’Leary (15%) own the Debtor and White Wing Weaponry, LLC (“Wing”).
5. Concurrently herewith, the Debtor and Wing are filing their Joint Motion for Procedural Joint Administration of Cases under Bankr. R. 1015(b) for cases involving two or more related debtors.
6. The Debtor is the debtor in possession at this time pursuant to Bankruptcy Code Sections 1107 and 1108 and is operating its business and managing its property and assets. The Debtor has 2 full time employees in addition to Mr. Hubnik.
7. The Debtor is a Texas limited liability company and operates a retail firearms store, including providing repair and servicing of firearms.
8. The Debtor's business assets consist generally of inventory of new and used firearms held for retail sale, some of which are also on consignment for sale, equipment, parts and

materials to repair firearms, receivables from these operations generated in the ordinary course of businesses together with cash payments, office equipment, furniture and software to track its sales and inventory. The Debtor leases the real property where it operates its businesses.

9. To date no official committee of unsecured creditors has been appointed in the Case.
10. Upon information and belief, the following creditors potentially assert a security interest in, among other things, the accounts receivable and cash of the Debtor:

- (a) Northstar Bank of Texas (“Northstar”) may assert a lien against substantially all the assets of the Debtors. Northstar has a UCC-1 financing statement covering, among other assets, accounts receivable, inventory and equipment. Northstar’s address is 400 N. Carroll Blvd., Denton, Texas 76201.

- (b) Firstlease, Inc. as assignee of MD Capital Partners (“Firstlease”), Inc. may assert a lien against specific computer software which the Debtors use in their business operations. Firstlease’s address is 1300 Virginia Drive, Suite 1300, Fort Washington, PA 19034.

Collectively, the foregoing creditors are hereinafter referred to as the “Alleged Secured Creditors.”

11. On information and belief, Northstar asserts a total claim against the Debtor in the amount of approximately \$380,000.00.
12. On information and belief, Firstlease may assert a total claim against Wing in the amount of approximately \$7,000.00.
13. On information and belief, no other party asserts a secured claim against the Debtors.

14. As of the filing date, Retail had \$5,322.85 in cash on hand. It also holds \$20,553.09 in deposits for work in process on which a balance of \$3,949.86 remains to be paid upon completion of the work in process. Retail seeks to use \$34,160.00 cash collateral over the next 30 days as set out in the Budget attached as Exhibit "A".
15. Rent for the Debtor for the month of December is due on December 1, 2016.
16. Payroll of the Debtor is next due on December 10, 2016.

III.

REQUEST FOR ENTRY OF INTERIM ORDER FOR AUTHORITY TO USE CASH COLLATERAL

17. Pursuant to Bankruptcy Rule 4001(b)(2), the Debtor respectfully requests entry of an interim order authorizing use of claimed or alleged cash collateral of the Alleged Secured Creditors.
18. Section 363(c) of the Bankruptcy Code prohibits the debtor's use of a secured creditor's "cash collateral" unless that creditor consents, or the Court, after appropriate notice and hearing, authorizes such use. 11 U.S.C. § 363(c). The Debtor does not, at this juncture, admit or deny that any of its property constitutes the cash collateral of the Alleged Secured Creditors pursuant to Section 363(a) of the Bankruptcy Code. Nonetheless, and without waiving the right to seek another characterization from the Court regarding its property, and in particular, the accounts receivable and cash, Debtor would demonstrate to this Court that to continue the proper operation and management of the Debtor's business operations and its respective property, and to enable the Debtor to effectuate a viable plan of reorganization, it is necessary that Debtor be authorized to utilize the cash and accounts receivable associated with its operations, in a manner substantially consistent with its normal course of business, in order to meet the day to day operations

of the Debtor's business and consistent with the monthly Budget attached hereto as Exhibit "A."

19. In addition to the specific items identified on the monthly Budget attached hereto as Exhibit "A," Debtor would show that it makes periodic sales of firearms. There is no set number of firearms which the Debtor can anticipate being sold in any given month, as such sales can vary widely, and on a seasonal basis. Further, the value of the firearms being sold varies widely as well, with some firearms retailing for more than \$600.00 each. Debtor would show that when and as such sales are made, the Debtor is under no obligation to remit payment to any creditor claiming a security interest therein.

20. If Debtor is not allowed to use the pre-petition accounts receivable and other cash associated with its operations substantially as it did pre-bankruptcy, immediate and irreparable harm will occur to the Debtor's business in that the Debtor will have no operating funds. In such event, the Debtor's business would be immediately shut down and Debtors' business operations would have to be discontinued and its estate immediately liquidated.

21. Debtor offers the following to the Alleged Secured Creditors regarding the provision of adequate protection for any post-petition diminution in value of the Alleged Secured Creditors' alleged pre-petition collateral, if any, caused by the Debtor's continued use of any accounts receivable, cash, or other property claimed by the Alleged Secured Creditors as cash collateral:

- (a) granting a replacement lien and security interest in the Debtor's accounts receivable and cash (including all such receivables collected post-petition), to the extent the use of cash collateral results in a decrease in the

value of the Alleged Secured Creditors' interest in such property as of the Petition Date and to the same extent, validity, priority, and value as existed as of the Petition Date, to secure the payment of any decrease in value of cash collateral resulting from the Debtor's use of such cash collateral;

(b) continuing to pay insurance premiums to insure all inventory and other property constituting the Alleged Secured Creditors' collateral;

(c) furnishing to the Alleged Secured Creditors copies of all monthly operating reports;

22. Debtor would respectfully would show that, under the circumstances, the foregoing adequately protects the interests claimed by the Alleged Secured Creditors in the cash and accounts receivable generated from the business operations of the Debtor prior to the Petition Date, and that the Debtor therefore should be authorized to use such putative cash collateral as described herein.

IV.

REQUEST FOR ENTRY OF FINAL CASH COLLATERAL ORDER

23. Bankruptcy Rule 4001(b)(2) authorizes the Court to also enter a final order authorizing the use of cash collateral during the pendency of this Case.
24. Attached hereto as Exhibit "A" is a monthly budget outlining the categories of expenses which the Debtor must pay to operate as Debtor-in-Possession. Debtor requires the use of cash collateral to fund its post-petition operations and to preserve property of its estate.
25. The Debtor's reorganization efforts require the continued use of cash collateral in order to avoid immediate and irreparable harm to Debtor's estate which will occur if this Motion is not granted and the use of cash collateral requested herein not approved.

26. The Debtor has contacted Northstar's representatives seeking consent to use cash collateral. The parties are working collaboratively to attempt to reach agreement on the use of cash collateral.

WHEREFORE, Debtor respectfully requests that the Court enter an order authorizing it to use the cash collateral pursuant to the terms of the monthly budget attached hereto as Exhibit "A," and for such further and other relief to which it may show itself justly entitled.

Respectfully submitted,

Dated: November 26, 2014.

ORENSTEIN LAW GROUP, P.C.

/s/ Rosa R. Orenstein
Rosa R. Orenstein
State Bar No. 17153200
Nathan M. Nichols
State Bar No. 24060336
1910 Pacific Ave., Suite 8040
Dallas, Texas 75201
214-757-9101
972-764-8110 (fax)

**PROPOSED BANKRUPTCY COUNSEL
FOR DEBTOR**

CERTIFICATE OF CONFERENCE

I, the undersigned, hereby certify that I have communicated with counsel for Northstar Bank of Texas, Ms. Laura Worsham and while Ms. Worsham and proposed counsel for the Debtor are working collaboratively to reach agreement on the use of cash collateral. As of the filing of this Motion, no agreement has yet been reached. I further certify that I contacted Firstlease by calling (215) 283-9727 and spoke with Mr. Stephen Parkes. He was to contact his supervisor before making any decision regarding the relief requested in the Motion.

/s/ Rosa R. Orenstein
Rosa R. Orenstein, Esq.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served to the U.S. Trustee's office and all other parties on the attached service list via ECF delivery to those parties entitled to receive such service on November 30, 2016, and/or by U.S. Mail on November 30, 2016.

/s/ Nathan M. Nichols
Nathan M. Nichols

EXHIBIT "A"

WWW RETAIL CASH COLLATERAL BUDGET

CASH ON HAND	\$ 5,322.85
REVENUE	\$ 40,000.00
SALES TAXES COLLECTED	\$ 3,300.00
LESS SALES TAXES 8.25%	\$ (3,300.00)
TOTAL AVAILABLE REVENUE	\$45,322.85

EXPENSES:

RENT	\$ 7,305.00
ELECTRICITY	\$ 300.00
TELEPHONE*	\$ -
ISP	\$ 115.00
PAYROLL (NON INSIDER)	\$ 4,000.00
PAYROLL TAXES (NON INSIDER)	\$ 600.00
PAYROLL (INSIDER)	\$ 1,600.00
PAYROLL TAXES (INSIDER)	\$ 240.00
VEHICLE INSURANCE*	\$ -
CELL PHONES*	\$ -
LIABILITY INSURANCE*	\$ -
GEN OFFICE/GUNSMITHING*	\$ -
EXPENSES SUBTOTAL	\$14,160.00

GROSS INCOME	\$31,162.85
INVENTORY PURCHASE/PREPAY	\$ 20,000.00

NET INCOME	\$11,162.85
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*PAID BY WHITE WING

NORTHSTAR BANK OF TEXAS
400 N CARROLL BLVD
Denton, TX 76201

RSR Group
4700 Amon Carter Blvd.
Fort Worth, TX 76155-2207

White Wing Weaponry (Denton)
5101 E. University Pkwy
Suite 614
Denton, TX 76208

Whitestone Headquarters Village LLC
2600 South Gessner
Suite 500
Houston, TX 77063

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	
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WWW RETAIL, LLC	§	CASE NO. 16-42145
	§	
	§	Chapter 11
Debtor.	§	
	§	

FIRST INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL

Pursuant to Debtor in Possession WWW Retail, LLC’s (“Debtor”) Emergency Motion for Interim and Final Authority to Use Cash Collateral, filed on November 30, 2016 (Dkt. No. __) (the “Motion”), and following a hearing on the Motion held on _____, and in consideration of the evidence produced and arguments made at the hearing, the Court finds as follows:

A. The Debtor has requested that it be allowed to use the Alleged Secured Creditors’ (this term having the meaning ascribed in the Motion) claimed or potential cash collateral pursuant to section 363(c) of the Bankruptcy Code in order to provide funds to be used solely for such purposes set forth in the budget (the “Budget”), attached hereto as Exhibit “A” in order to avoid immediate and irreparable harm to the Debtor’s estate which will occur if this Motion is not approved.

B. An immediate and critical need exists for the Debtor to use the claimed cash collateral. Without the use of the claimed cash collateral, the Debtor will not have the funds to pay expenses necessary for the continued operation of its business and reorganization, and the Debtor will, as a result, suffer irreparable harm. The Debtor’s reorganization efforts require the use of the purported cash collateral, the use of the purported cash collateral will benefit the Debtor and its estate, and the ability of the Debtor to maximize the value of its estate is dependent upon the Debtor's ability to use the claimed cash collateral.

C. Good, adequate, and sufficient cause has been shown to justify the granting of the relief provided for herein. The use of the claimed cash collateral by the Debtor is actual and necessary to preserve the Debtor's estate and will avoid immediate and irreparable harm to the Debtor, its estate, and its assets.

D. Northstar Bank of Texas ("Northstar") and Firstlease, Inc. ("Firstlease") claim or may claim a security interest in property of the Debtor consisting of, among other things, Debtor's accounts receivable and/or cash.

Accordingly, it is therefore

ORDERED that the Debtor is hereby authorized to use the Alleged Secured Creditors' claimed cash collateral to pay expenses listed in the Budget, but not to exceed by 10% the budgeted amounts listed therein, and only in accordance with the terms and conditions contained in the Budget and contained in and provided for in this Order; it is further

ORDERED that, as adequate protection to the Alleged Secured Creditors for the continued use of their claimed cash collateral,

- 1) The Alleged Secured Creditors of the Debtor shall receive replacement liens on post-petition accounts receivable and cash as adequate protection, which replacement liens shall be held by the Alleged Secured Creditors in the same extent, validity, priority, and value as they existed prior to the petition date;
- 2) Such replacement liens shall secure an amount equal to the sum of the aggregate diminution, if any, subsequent to the petition date, in the value of the claimed cash collateral of the respective Alleged Secured Creditors, provided this grant (i) shall be subject to any prior perfected liens, and (ii) the exercise and enforcement of this lien remains subject to the Court's determination that a diminution has occurred;
- 3) Debtor will maintain insurance coverage on all inventory and other property constituting the Alleged Secured Creditors' collateral;
- 4) Debtor will provide the Alleged Secured Creditors copies of its Monthly Operating Reports at the same time the Reports are filed with the Court; it is further

ORDERED that this Order is without prejudice to the rights of the Alleged Secured Creditors

and the Debtor with respect to the use of claimed cash collateral at the final hearing on cash collateral;
and it is further

ORDERED that the Debtor's authorization to use the claimed cash collateral shall continue for thirty (30) days from the entry of this Order, pending the conclusion of a final hearing on cash collateral, scheduled for _____, at _____ p.m. in the Courtroom of *The Honorable Chief Judge Brenda Rhoades*, except that nothing in this Order shall be construed so as to prevent a party-in-interest from requesting an expedited setting should such an expedited hearing become necessary or appropriate.

HONORABLE BRENDA T. RHOADES,
CHIEF UNITED STATES BANKRUPTCY JUDGE