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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re:

Bob Bondurant School of High Performance
Driving, Inc.,

Debtor.

Chapter 11

Case No. 2:18-bk-12041-BKM

**EMERGENCY MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS:**

**(a) AUTHORIZING THE DEBTOR'S USE OF
CASH COLLATERAL;**

**(b) GRANTING ADEQUATE PROTECTION
TO JPMORGAN CHASE BANK, N.A.; AND**

**(c) SCHEDULING A FINAL HEARING
THEREON**

Pursuant to Code §§ 105, 361, and 363, Rules 4001 and 9014, and LBR 4001-4,¹ Bob Bondurant School of High Performance Driving, Inc. ("Bondurant School"), the debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the "Case"), hereby moves the Court on an emergency basis to enter an interim order ("Interim Order") substantially in the form attached hereto as **Exhibit A** (a) approving and authorizing the Bondurant School's immediate use of certain cash and other proceeds ("Cash Collateral") that may be subject to a lien asserted by JPMorgan Chase Bank, N.A. ("Chase"); (b) granting Chase adequate protection in the form of replacement liens in connection with that use of Cash Collateral; and (c) setting

¹ Unless otherwise indicated, all Section and Rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 ("Code"), and to the Federal Rules of Bankruptcy Procedure 1001-9037 ("Rules"), or the Local Bankruptcy Rules for the District of Arizona ("LBR").

the date and time for a final hearing.

This Motion is brought on an emergency basis to ensure employees are paid on the next payroll date of October 11, 2018 and to avoid irreparable harm to the bankruptcy estate in the first four weeks of the Case. The Bondurant School seeks interim approval to use Cash Collateral in accordance with the budget attached hereto as **Exhibit B** (“Budget”), pending a final hearing, and while the Bondurant School continues its investigation into Chase’s security interest and discusses with Chase its use of Cash Collateral. The Bondurant School’s requested relief will ensure that Chase’s interests are protected while the parties work out terms for continued use of Cash Collateral beyond the interim period. Without immediate use of Cash Collateral, the Bondurant School’s prospects for reorganization will be extinguished before the Case begins.

This Motion is supported by the *Declaration of Patricia C. Bondurant, President and Chief Executive Officer, in support of Debtor’s First Day Filings* [ECF No. 12] (“Declaration”) which is incorporated herein, and by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION, VENUE AND BACKGROUND GERMANE TO THIS MOTION

1. On October 2, 2018 (“Petition Date”), the Bondurant School filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.

2. The Bondurant School operates its business and manage its assets and affairs as a Debtor-in-possession under 11 U.S.C. §§ 1107 and 1108.

3. This Court has jurisdiction over this chapter 11 case under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). The statutory predicate is Code §§ 105 and 363.

4. The Bondurant School’s principal operations are located in Chandler, Arizona, which is located in Maricopa County. Accordingly, venue for the Bondurant School’s chapter 11 case is proper in this District under 28 U.S.C. §§ 1408 and 1409.

5. No trustee or examiner has been appointed in this case, nor has an official

committee of unsecured creditors been established.

Chase's Credit Facility

6. On July 28, 2011, the Bondurant School entered into certain loan documents with JPMorgan Chase Bank, N.A. ("Chase") whereby Chase provided a business line of credit ("Line of Credit") to Bondurant School in the principal amount of \$150,000, and the obligation was secured purportedly by a blanket lien against the Bondurant School's assets pursuant to a grant of security within a promissory note and a filed UCC financing statement. Chase's claim against the Bondurant School is approximately \$149,000. Due to certain irregularities, the Bondurant School is still investigating the scope of Chase's lien, and fully reserves its rights in connection therewith. Notwithstanding, the Bondurant School files this Motion to ensure it is compliant with Code § 363.

7. As of the Petition Date, the balance due and owing under the Line of Credit is approximately \$149,000. The Bondurant School is current on its obligations under the Line of Credit and makes monthly interest-only payments of approximately \$800.

8. Without use of cash to fund its ongoing operations, the Bondurant School cannot operate.

9. The Bondurant School has other secured creditors that hold collateral interests in specific equipment; however, only Chase could assert a secured interest in the Bondurant School's accounts.

III. REQUEST FOR AUTHORIZATION TO USE CASH COLLATERAL

The Bondurant School respectfully requests this Court to authorize the Bondurant School to use the Cash Collateral on an interim basis and subject to the Budget², and set a Final Hearing on this Motion to give the Bondurant School additional time to investigate the scope of the lien and, if the Bondurant School determines that Chase does have a lien on the Cash Collateral, to discuss with Chase an agreement regarding the use of Cash Collateral. If the lien

² The Debtor may not exceed the Budgeted expenditures by more than 10% in the aggregate over the duration of the interim period without Chase's consent.

is valid, the Bondurant School will adequately protect Chase for use of the Cash Collateral during this abbreviated period by: (1) continuing to make the \$800 monthly interest-only payments due under the Line of Credit, and (2) granting replacement liens on similar post-petition collateral (“Adequate Protection Terms”).

Pursuant to Code § 363(c)(2), the Court may authorize the Bondurant School to use the Cash Collateral as long as Chase consents or it is adequately protected. See In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984); In re Certified Corp., 51 B.R. 768, 770 (Bankr. D. Haw. 1985) (“It is well established that a debtor is entitled to use cash collateral upon proof of adequate protection.”) The Code permits the payment of adequate protection by granting creditors any relief that will result in the realization of the “indubitable equivalent” of such entity’s interest in the property. 11 U.S.C. § 361(3). While the Bankruptcy Code does not define “indubitable equivalent,” courts view this provision as a “catch-all” for any other form of adequate protection. See In re Timbers of Inwood Forest, Assocs. Ltd., 793 F.2d 1380, 1388 (5th Cir. 1988). In all events, adequate protection is a concept which is decided flexibly on a case-by-case basis. See In re Martin, 761 F.2d 472 (8th Cir. 1985).

Here, to the extent that the Bondurant School uses the funds from the accounts that may secure Chase’s claim, the Bondurant School will grant Chase replacement liens to the same extent and priority as it currently has on any new post-petition cash and accounts. Granting replacement liens on new cash or accounts generated by the Bondurant School’s use of Cash Collateral is a common method of providing adequate protection. See In re Wrecclesham Grange, Inc., 221 B.R. 978, 981 (Bankr. N.D. Florida, 1997); In re Barkley AAA Investors, Ltd., 175 B.R. 755 (Bankr. D. Kansas 1994).

Without immediate and interim use of the Cash Collateral, the Bondurant School will not be able to pay its operating expenses and employees. The Bondurant School’s operations will shut down, all ongoing business value will be lost, and unsecured creditors will lose any prospect for payment. However, because Chase is adequately protected for the use of its collateral, and where all other parties benefit from its continued operations, the Bondurant

School requests that it be permitted to use the Cash Collateral.

IV. NOTICE AND REQUEST FOR FINAL HEARING

Under Rule 4001(b)(2), the Bondurant School requests the Court set a date for the Final Hearing. Notice of this Motion has been given to the Office of the United States Trustee, the Bondurant School's secured creditors (including Chase), and the Bondurant School's landlord and its 20 largest unsecured creditors. Based on the nature of the relief requested in this Motion, the Bondurant School submits that no other notice need be given. Notice of a final hearing on this Motion will be provided promptly to those same parties and any creditor committee that may be formed by the time of the final hearing.

V. CONCLUSION

Based on the foregoing, the Bondurant School respectfully requests the Court to enter an Order in the form attached hereto as **Exhibit A**:

- (a) Granting this Motion on an immediate interim basis;
- (b) Authorizing the Bondurant School to use Cash Collateral as reflected in the Budget prior to any final hearing;
- (c) Finding that the Adequate Protection Terms set forth herein adequately protect Chase's interest in the Cash Collateral;
- (d) Setting a final hearing on the relief requested in this Motion; and
- (e) Such other and further relief as is just and equitable under the circumstances.

DATED: October 5, 2018.

ALLEN BARNES & JONES, PLC

/s/ HLB #19669
Hilary L. Barnes, Esq.
Philip J. Giles, Esq.
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Phoenix, Arizona 85004
Attorneys for the Debtor

E-FILED on October 5, 2018 with the
U.S. Bankruptcy Court and copies served
via ECF notice on all parties that have
appeared in the case.

COPY mailed and emailed same date via U.S. Mail to:

Elizabeth C. Amorosi
OFFICE OF THE UNITED STATES TRUSTEE
230 N. First Avenue, Suite 204
Phoenix, AZ 85003-1706
Elizabeth.C.Amorosi@usdoj.gov

COPY mailed same date via U.S. Mail to:

JP Morgan Chase Bank, N.A.
Collateral Management Small Business
P.O. Box 33035
Louisville, KY 40232-9891
Secured Creditor

Bancorp Bank
Attn: Lease Payment Center
P.O. Box 140733
Orlando FL 32814-0733
Secured Creditor

Sun Valley Marina Development Corp.
P.O. Box 5090
Chandler Az 85226
Landlord

Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346

Arizona Department of Revenue
P.O. Box 29086
Phoenix, AZ 85038-9086

Twenty (20) largest unsecured creditors

/s/ Misty Vasquez

Exhibit A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re:

Bob Bondurant School of High Performance
Driving, Inc.,

Debtor.

Chapter 11

Case No. 2:18-bk-12041-BKM

**INTERIM ORDER GRANTING
EMERGENCY MOTION FOR
INTERIM AND FINAL ORDERS:**

**(a) AUTHORIZING THE DEBTOR'S USE OF
CASH COLLATERAL;**

**(b) GRANTING ADEQUATE PROTECTION
TO JPMORGAN CHASE BANK, N.A.; AND**

**(c) SCHEDULING A FINAL HEARING
THEREON**

This matter came before the Court pursuant to the *Emergency Motion for Entry of Interim and Final Orders: (a) Authorizing the Debtor's Use of Cash Collateral; (b) Granting Adequate Protection to JPMorgan Chase Bank, N.A.; and (c) Scheduling a Final Hearing Thereon* ("Motion") filed by debtor and debtor-in-possession Bob Bondurant School of High Performance Driving, Inc. ("Bondurant School"), in which the Bondurant School requests the Court to enter interim and final orders under Code §§ 105, 361, and 363 approving and authorizing its immediately use of Cash Collateral¹ in accordance with the Budget attached to the Motion as Exhibit B. Having reviewed the Motion, the *Declaration of Patricia C. Bondurant, President and Chief Executive Officer, in support of Debtor's First Day Filings*

¹ Unless otherwise noted herein, capitalized terms shall retain the definitions set forth in the Motion.

filed concurrently therewith, and considered the entire record in this case, the Court finds and concludes that: (i) it has jurisdiction over the matters raised in the Motion under 28 U.S.C. §§ 157 and 1334; (ii) venue is proper under 28 U.S.C. §§ 1408 and 1409; (iii) this matter is a core proceeding under 28 U.S.C. § 157(b)(2); (iv) the relief requested in the Motion is in the best interests of the Bondurant School, its estate, its creditors, and other parties in interest; (v) adequate and proper notice of the Motion and the hearing on it has been given under the circumstances; and (vi) good and sufficient cause exists for granting the relief requested in the Motion. In light of the foregoing,

IT IS ORDERED THAT:

1. The Motion is GRANTED on an immediate interim basis.
2. The Bondurant School is authorized to use the Cash Collateral in accordance with the Budget.
3. The Adequate Protection Terms set forth in the Motion adequately protect JPMorgan Chase Bank, N.A. for use of the Cash Collateral.
4. A final hearing to consider the Motion is scheduled for _____, 2018 at ____:____.m. Arizona Time before this Court. Counsel for the Bondurant School shall promptly provide notice of the final hearing to all parties in interest. Any party in interest may file an objection to the relief sought in the Motion on or within 10 days from entry of this Interim Order.

DATED AND SIGNED ABOVE.

Exhibit B

Bob Bondurant School of High Performance Driving, Inc.
Weekly Cash Flow Budget

	1	2	3	4	5
Week Ending:	<u>10/5/2018</u>	<u>10/12/2018</u>	<u>10/19/2018</u>	<u>10/26/2018</u>	<u>11/2/2018</u>
Cash Inflows					
Collections	10,244	60,000	60,000	75,000	75,000
Other Receipts	-	43,872	12,677	23,914	5,399
Total Cash Inflows	10,244	103,872	72,677	98,914	80,399
Cash Outflows					
Employee expenses	-	80,208		70,000	
Insurance	-	39,567		850	22,249
Facilities expenses:	-	4,356	59,372	1,225	61,351
Operating Expenses	-	15,500	19,263	10,990	49,644
Total Cash Outflows	-	139,631	78,635	83,065	133,244
Net Operating Cash InFlows / (Outflows)	10,244	(35,759)	(5,958)	15,849	(52,845)
<u>Non Operating Cash OutFlows</u>					
The Bancorp Bank			32,675		32,675
Unifi Equipment			2,300		2,300
Chase	-	800			800
Total Non Operating Cash Inflows / (Outflows)	-	800	34,975	-	35,775
Net Cash Inflows / (Outflows)	10,244	(36,559)	(40,933)	15,849	(88,620)

Cash Analysis:

Beginning Book Cash Balance	415,844	426,088	389,530	348,597	364,445
Net Cash Flow From Above	10,244	(36,559)	(40,933)	15,849	(88,620)
Ending Book Cash Balance	426,088	389,530	348,597	364,445	275,825