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Attorneys for Howard and Anna Foster

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - RIVERSIDE DIVISION

In re

FOSTER ENTERPRISES, a California general
partnership,

Debtor.

In re

HOWARD DEAN FOSTER and ANNA MAE
FOSTER,

Debtors.

☒ Affects All Debtors

☐ Affects FOSTER ENTERPRISES, a
California general partnership

☐ Affects HOWARD DEAN FOSTER and
ANNA MAE FOSTER

FILED & ENTERED

APR 19 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY ygreen DEPUTY CLERK

Lead Case No.: 6:17-bk-15749-SC

Chapter 11

Jointly Administered with:

Case No.: 6:17-bk-15915-SC

**ORDER (1) GRANTING DEBTORS'
MOTION FOR ORDER AUTHORIZING
USE OF CASH COLLATERAL AND
GRANTING REPLACEMENT LIENS AND
(2) DENYING STIPULATION FOR
ADEQUATE PROTECTION AND USE OF
CASH COLLATERAL WITH THE UNITED
STATES AND ALLSTAR FINANCIAL
SERVICES, INC.**

Date: April 17, 2018

Time: 1:30 p.m.

Place: 411 West Fourth Street
Courtroom 5C
Santa Ana, California 92701

Alternative Location

3420 Twelfth Street
Video Hearing Room 126
Riverside, California 92501

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE, SUITE 2100
LOS ANGELES, CALIFORNIA 90071

On March 28, 2018, Foster Enterprises, a California general partnership (“Foster Enterprises”), and Howard and Anna Foster (the “Foster Individuals,” and with Foster Enterprises, the “Debtors”), the debtors and debtors in possession in the above-captioned chapter 11 cases, filed a motion for an order (1) authorizing the use of cash collateral, as that term is defined in § 363 of title 11 of the United States Code (the “Bankruptcy Code”) (“Cash Collateral”), of and granting, as adequate protection, replacement liens to (a) Beverly Gross and (b) New Lakeview Farms, LLC (“New Lakeview”) (together, the “Consensual Lienholders”), and (2) authorizing the Debtors to enter into the *Stipulation for Adequate Protection and Use of Cash Collateral* (the “Stipulation”) between the Debtors, on the one hand, and United States of America (the “United States”), on behalf of its agency, the Internal Revenue Service (the “IRS”), and Allstar Financial Services, Inc. (“Allstar”) (together, the “Lienholders”), on the other hand, which authorized the Debtors’ use of Cash Collateral and granted, as adequate protection, replacement liens to Allstar and the IRS (the “Motion”). On April 10, 2018, the IRS filed its “United States’ Opposition to Motion to Use Cash Collateral” (the “Opposition”) [Docket No. 257].

A hearing on the Motion took place before the Honorable Scott C. Clarkson on April 17, 2018 (the “Hearing”). Appearances were made as noted on the record. Upon review and consideration of the Motion and the Opposition, and the representations and arguments of counsel at the Hearing:

IT IS HEREBY ORDERED THAT:

1. Subject to the terms and conditions provided herein, the Debtors are authorized to use Cash Collateral through and including **April 30, 2018**.
2. The Debtors may use Cash Collateral pursuant to and in accordance with the budgets attached as **Exhibit B** to the Motion (the “Budgets”) in all respects, including, without limitation, the weekly expenditures set forth in each line item thereof; provided, however, that the Debtors shall be permitted to (1) carry over any amounts not expended for a particular line item in any week to succeeding weeks, (2) expend up to 15.0% more than the amounts set forth in a particular line item for a specific week in such week, and (3) expend over 15.0% more than the amounts set forth in a particular line item for a specific week in such week so long as the aggregate expenditures

1 during the period covered by this Order do not exceed the total shown on the Budgets for such
2 period by more than 15.0%.

3 3. As adequate protection, Allstar and the IRS shall each receive a replacement lien
4 against the Debtors' assets, retroactive to the petition date, with such replacement liens (the
5 "Replacement Liens") to have the same extent, validity, scope, and priority as the prepetition liens
6 held by these secured parties.

7 4. As adequate protection for any postpetition diminution in value of secured creditors'
8 interests in Cash Collateral (the "Diminution in Value"), the Debtors shall grant additional
9 replacement liens to the Consensual Lienholders (1) to the same extent, validity, and priority of the
10 Consensual Lienholders' respective prepetition liens, (2) to the extent of any Diminution in Value,
11 and (3) to the extent of the Debtors' use of Cash Collateral, in all property and assets of the Debtors
12 and all proceeds, rents, or profits thereof, including any after-acquired property of any nature
13 whatsoever (the "Additional Replacement Liens"); provided, however, that (1) the Additional
14 Replacement Liens shall not extend to any causes of action under § 502, 544, 545, 547, 548, 549
15 550, 551, or 553 of the Bankruptcy Code and any other avoidance actions under the Bankruptcy
16 Code (collectively, the "Avoidance Actions") and proceeds thereof or property or cash recovered
17 pursuant to any Avoidance Actions and (2) the Additional Replacement Liens are granted subject to
18 any determination by the Court that the applicable Consensual Lienholder's respective prepetition
19 lien is invalid or nonexistent (in which case, the Additional Replacement Liens provided to that
20 secured creditor will be deemed eliminated).

21 5. The Replacement Liens and Additional Replacement Liens shall be valid, perfected,
22 enforceable, and effective as of the entry of this Order without the necessity of execution, filing, or
23 recordation of any financial statements, security agreements, or notices, and the Additional
24 Replacement Liens and Replacement Liens shall be subject only to any non-avoidable, valid,
25 enforceable, and perfected liens or security interests on or in the Debtors' assets and property,
26 which existed as of the date of entry of this Order.

27 6. The Debtors' request for approval of the Stipulation is denied.
28

1 7. The Debtors shall immediately make payment of \$19,945.09 to the IRS on account
2 of postpetition payroll taxes.

3 8. Counsel for the Debtors, Allstar, and the IRS shall meet and confer on April 17,
4 2018 to discuss the adequate protection payments discussed in the Motion to Allstar and the IRS
5 and ensure that all payments are transmitted to Allstar and the IRS.

6 9. The Debtors shall provide adequate protection to Allstar in the form of periodic cash
7 payments totaling \$20,000 per month in the months of February, March, and April 2018. Allstar
8 acknowledges having received such payments.

9 10. The Debtors shall provide adequate protection to the IRS in the form of periodic cash
10 payments totaling \$9,000 per month in the months of February, March, and April 2018. The IRS
11 acknowledges having received such payments.

12 No objection to form of order:

13 /s/ *Alan F. Broidy*

14 _____
15 Alan F. Broidy
16 Law Offices of Alan F. Broidy
17 Counsel for Allstar Financial Services, Inc.

18 No objection to form of order:

19 /s/ *Jolene Tanner*

20 _____
21 Jolene Tanner
22 Assistant United States Attorney
23 Attorneys for the United States
24 of America

25 ###

26 Date: April 19, 2018

27 _____
28 Scott C. Clarkson
 United States Bankruptcy Judge

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12
13
14 No objection to form of order:

15 /s/ Alan F. Broidy

16 Alan F. Broidy
17 Law Offices of Alan F. Broidy
18 Counsel for Allstar Financial Services, Inc.

Alan F. Broidy (per email authorization)
[Signature]

19
20 No objection to form of order:

21 /s/ Jolene Tanner

22 Jolene Tanner
23 Assistant United States Attorney
24 Attorneys for the United States
25 of America
26
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Jolene Tanner

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