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8 **UNITED STATES BANKRUPTCY COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 IN RE:	Bankruptcy Case No.: 2016-14004
11 PURPLE TOOTH SOCIETY, LLC;	Chapter 11
12	DC No.: DMG-1
13 Debtor-in-possession	

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15 **EMERGENCY MOTION FOR ORDER ALLOWING**
16 **USE OF CASH COLLATERAL**

17 Date: Not set
18 Time: Not set
19 Place: 2500 Tulare Street, 5th Floor
20 Courtroom _____
21 Fresno, CA

22 Judge: Hon.

23 TO THE UNITED STATES BANKRUPTCY COURT:

24 PURPLE TOOTH SOCIETY, LLC (“Debtor”) respectfully represents as follows:

- 25 1. The Debtor filed a voluntary chapter 11 bankruptcy petition on November 2, 2016.
2. Debtor is a California limited liability company and operates a Bakersfield restaurant

known as Valentien Restaurant and Wine Bar, located at 3310 Truxtun Ave #160, Bakersfield,

1 CA 93301.

2 3. Debtor's largest creditor is the Internal Revenue Service, who is owed payroll taxes in the
3 approximate amount of \$750,000 for various tax years. Multiple tax liens have been filed by the
4 IRS and in the past six-to-eight months, the Debtor, and or its representatives, have been in
5 regular contact with the IRS. During the course of these contacts, Debtor and the IRS agreed
6 that as to an alternative to the business being shut down pursuant to the collection of back taxes
7 owed to the IRS, a Chapter 11 case could be filed. This case is therefore commenced in an effort
8 to promptly propose a Chapter 11 plan of reorganization that would pay the outstanding taxes
9 consistent with the provisions of 11 U.S.C. Section 1129(a)(9)(C).
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11 4. Debtor requires an order authorizing the use of post-petition cash on an emergency basis
12 arising from restaurant sales in the amount of \$11,500 in payroll due and payable on Friday,
13 November 5, 2016, and \$6,500 in food purchases, also on Friday, November 5, 2016. Debtor
14 requests that in addition to the order authoring the expenditures on November 5, 2016, that the
15 Court authorize expenditures for the month of November, 2016 and December, 2016 pursuant to
16 the monthly expense report that accompanies the Declaration of Jennifer Sanderson in Support of
17 Emergency Motion for Order Authorizing Use of Cash Collateral that is filed concurrently
18 herewith. All expenses detailed in the monthly expense report are ordinary and necessary
19 expenses required to operate Valentien Restaurant.
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21 5. The undersigned counsel prepared and forwarded a proposed stipulation for use of cash
22 collateral over the past few weeks attempting to obtain the consent of the IRS to the use of cash
23 collateral prior to filing. However, absent a case number, the IRS would not assign the case to
24 a representative with authority to enter into a cash collateral stipulation.

25 6. Debtor will agree to the following as a condition to the use of the cash collateral:

1 a. Use of cash collateral may be renewed upon subsequent stipulation with the IRS.

2 b. The Debtor shall submit an updated budget with supporting documentation to counsel
3 for the IRS on or before January 1, 2017

4 c. A replacement lien on the Debtor's post petition cash receipts shall be ordered as a
5 condition to the use of cash collateral.

6 d. The Debtor will submit periodic detailing the amount of existing original and
7 replacement collateral on a quarterly basis.

8 e. The IRS may examine the Debtor's books and records upon one week notice.

9 f. The Debtor will make monthly adequate protection payments to the IRS of \$4,000. The
10 first payment shall be received on or before November 30, 2016 and be payable on or before
11 the last day of each month thereafter.

12 g. All payments shall be made payable to the "United States Treasury," and state in the
13 memo line the Debtor's name and case number, and be directed to such address as directed by
14 the IRS.

15 h. All payments made shall be deemed paid on the date received.

16 i. All amounts paid pursuant will be credited against the prepetition secured tax liabilities
17 of the Debtor or to post-petition interest thereon, at the IRS' discretion.

18 j. As further adequate protection, the IRS shall receive a replacement lien secured with
19 first priority lien on all post-petition cash, and all other property acquired by the Debtor up to
20 the full extent of the value of its pre-petition lien(s). The lien shall be in addition to any other
21 liens of the IRS against the assets and property of the Debtor as of the petition date.

22 k. The replacement liens are valid, perfected and enforceable and shall not be subject to
23 dispute, avoidance, or subordination and those replacement liens need not be subject to
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1 additional recording. The IRS is authorized to file a certified copy of the cash collateral order
2 and any other necessary and related documents.

3 1. The Debtor must remain post-petition current on all filing requirements and pay all
4 post-petition taxes as they come due, this includes timely making federal payroll tax deposits
5 and estimated income tax payments.

6 m. To the extent the Debtor fails to timely pay any post-petition tax, the IRS is granted
7 relief from stay, upon filing a declaration and lodging an order, to file a notice of federal tax
8 lien with the appropriate recording offices for the delinquent post-petition period.

9 n. If the Debtor fails to make any payment of tax to the IRS required under an order
10 approving use of cash collateral, within 10 days of the due date of such provision, then the
11 United States may declare the Debtor is in material default

12 o. If the IRS declares the Debtor is in default of the Debtor's obligations under an order
13 approving the use of cash collateral, the IRS must serve written notice of default to the Debtor,
14 and any attorney for the Debtor.

15 p. The obligations and replacement liens shall continue in full force and effect in the event
16 of a dismissal of the case.

17
18 WHEREFORE, DEBTOR PRAYS AS FOLLOWS:

- 19 1. that this Emergency Motion for Use of Cash Collateral be granted;
20 2. that the Court approve the expenditures described in Exhibit "A" for the months of
21 November and December 2017;
22 3. that the Court approve the other terms and conditions of this Emergency Motion for Use
23 of Cash Collateral described herein;
24 4. that the Court order a final hearing on this Motion at a date and time convenient to the
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1 Court; and

2 5. for such other and further relief appropriate under the circumstances of this case.

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4 Dated: November 2, 2016

_____ /s/
5 D. Max Gardner, Attorney for Debtor

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