

1 **5 PAGES**

2 **LAW OFFICES OF GABRIEL LIBERMAN, APC**

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9 Attorney for FIRST CAPITAL RETAIL, LLC

10 UNITED STATES BANKRUPTCY COURT  
11 EASTERN DISTRICT OF CALIFORNIA  
12 SACRAMENTO DIVISION

13 In re

14 FIRST CAPITAL RETAIL, LLC

15 FEIN: 47-2494283

16 Debtor,

17 Case No. 2017-26125

18 DCN: GEL-004

19 **ORDER CONDITIONALLY GRANTING**  
20 **MOTION FOR AN ORDER AUTHORIZING**  
21 **USE OF CASH COLLATERAL OF BYLINE**  
22 **BANK**

23 Date: December 26, 2017

24 Time: 10:00 AM

25 Location: 501 I Street, 7<sup>th</sup> floor,  
26 Courtroom 28;  
27 Sacramento, CA

28 Judge: Honorable Michael S. McManus

On October 6, 2017, First Capital Retail, LLC (the "Debtor") filed its Emergency Motion for an Order Authorizing Use Cash Collateral of Byline Bank, N.A., Docket No. 45. (the "Motion"). No written opposition was required to be filed and no written opposition was filed. The matter originally came on hearing on October 16, 2017 at 10:00 a.m. before the Honorable Michael S. McManus and Debtor was conditionally granted use of cash collateral on an interim basis for the interim period covering September 14, 2017 through October 31, 2017. The matter was continued to October 30, 2017 at 10:00 a.m.

On October 30, 2017 at 10:00 a.m. the continued hearing came before the Honorable Michael S. McManus and Debtor was conditionally granted use of cash collateral on an interim basis for the interim

RECEIVED

February 15, 2018

CLERK, U. S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
0006222132

1 period covering November 1, 2017 through November 13, 2017. The matter was continued to  
2 November 13, 2017 at 10:00 a.m.

3 On November 13, 2017, the continued hearing came before the Honorable Michael S. McManus  
4 and Debtor was conditionally granted use of cash collateral on an interim basis for the interim period  
5 covering November 14, 2017 through December 11, 2017. The matter was continued to December 11,  
6 2017 at 10:00 a.m.

7 On December 11, 2017, the continued hearing came before the Honorable Michael S. McManus  
8 and Debtor was conditionally granted use of cash collateral on an interim basis for the interim period  
9 covering December 12, 2017 through December 26, 2017. The matter was continued to December 26,  
10 2017 at 10:00 a.m.

11 On December 26, 2017, the continued hearing came before the Honorable Michael S. McManus  
12 and Debtor was conditionally granted use of cash collateral on an interim basis for the interim period  
13 covering December 27, 2017 through January 31, 2018. The matter was continued to January 22, 2018  
14 at 10:00 a.m.

15 Appearing at the December 26, 2017 hearing was Gabriel E. Liberman, Attorney for the Debtor,  
16 Reed Waddell, Attorney for secured creditor Byline Bank, Michael Myers, Attorney for Creditor Arden  
17 Fair Associates, L.P., Eric Goldberg, Attorney for Cinnabon Franchisor SPV, Walter Dahl, Attorney for  
18 Creditor First Capital Real Estate and Creditor's Attorney James Till.

19 The Court, after consideration of the Motion, the documents filed in support of the Motion and  
20 the objections stated orally on the record at the hearing on the Motion, **IT IS HEREBY ORDERED**  
21 **THAT:**

- 22 1. The Motion for an Order Authorizing Use Cash Collateral of Byline Bank is approved on an  
23 interim basis for the period December 12, 2017 through December 26, 2017 (the "Fifth Interim  
24 Period");
- 25 2. Debtor is authorized to use cash collateral as provided in the budget attached hereto as Exhibit A  
26 for the Fifth Interim Period with a 5% variance;
- 27 3. Adequate protection is granted to Byline Bank in the form of replacement liens on all the  
28 Debtor's post-petition collateral, nunc pro tunc, to the petition date, and confirming the interest  
payments to be made on a monthly basis at the non-default contract rate provided in Byline  
Bank's loan documents;
4. President of Debtor, Rameshwar Prasad's compensation shall be reduced by 50%, effective

1 November 14, 2017; and

2 5. The Hearing on interim or final approval of the Motion for an Order Authorizing Use Cash  
3 Collateral of Byline Bank will be held on January 22, 2018 at 10:00 a.m. in Department A,  
4 Courtroom 28.

5 **Approved as to form by:**

6  
7 FRANDZEL ROBINS BLOOM & CSATO, L.C.

8  
9 By:

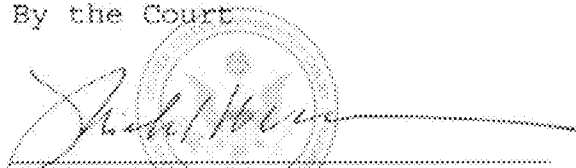


10 Reed S. Waddell  
11 Attorney for Secured Creditor, Byline Bank

12  
13 **IT IS SO ORDERED:**

14  
15 Dated: February 15, 2018

16 By the Court

  
18 Michael S. McManus  
19 United States Bankruptcy Judge

**EXHIBIT A**

Jan 18

Ordinary Income/Expense

Income

4000 · Sales - Taxable	664,244.76
4001 · Sales - Non Taxable	198,181.79
4005 · Chargebacks	-66.58
4120 · Sales Returns & Adjustments	
4190 · Stored Value Dividend	

**Total Income** 862,359.97

Cost of Goods Sold

5000 · Cost of Goods Sold	170,172.27
5010 · Food Products	13.74
5015 · Beverage Products	12,007.33
5020 · Paper Products	
5030 · Janitorial	106.59
5040 · Labor	
5042 · Labor - Crews	150,284.26
5045 · Labor - Management	126,275.74
5047 · Labor - Bonuses	0.00
5049 · Labor - Admin	

**Total 5040 · Labor** 276,560.00

5050 · Labor Burden & Benefits

5052 · Labor Burden & Benefits - Crews	12,995.33
5055 · Labor Burden & Benefits - Mgmt	13,521.60
5057 · Labor Burden & Benefits - Bonus	

**Total 5050 · Labor Burden & Benefits** 26,516.93

5060 · Workers Compensation

5062 · Workers Comp - Crews	8,028.87
5065 · Workers Comp - Management	5,804.57

**Total 5060 · Workers Compensation** 13,833.44

5070 · Contract Labor

5072 · Payroll Processing Fees	5,768.57
5075 · HR & District Manager	16,143.16
5085 · Small Equipment	705.43
5090 · Merchant Account Fees	21,083.82

**Total COGS** 542,911.28

**Gross Profit** 319,448.69

Expense

6010 · Accounting Expense	16,500.00
6020 · Advertising Expense	592.86
6030 · Bank Service Charges	880.46
6035 · Cash Over/Short	1,239.36
6040 · Company Repairs & Maintenance	1,593.70
6050 · Computer Expenses	3,555.02
6070 · Dues and Subscriptions	654.63
6080 · Franchise Fees Expense	
6081 · Franchise Royalties Expense	89,485.28
6082 · Franchise Advertising Expense	22,371.32
Franchise Pre-termination Expenses	27,565.34

**Total 6080 · Franchise Fees Expense** 139,421.93

6090 · Insurance Expense

6091 · Ins Exp - General Liability	0.00
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1	6090 · Insurance Expense - Other	49.56
	Total 6090 · Insurance Expense	49.56
2	6100 · Janitorial Expense	1,080.80
	6105 · Late Fees/Finance Charges	0.00
3	6110 · Legal and Professional Expense	1,900.40
	6120 · Licenses and Permits Expense	3,427.34
4	6135 · Loan Fees	0.00
	6140 · Meals & Entertainment	2,000.00
5	6150 · Office Supplies	79.31
	6155 · Outside Services/office rents	5,100.00
6	6160 · Payroll Taxes-Employer	0.00
	6170 · Property Taxes	6,116.35
7	6180 · Postage Expense	1,348.28
	6190 · Rent or Lease Expense	
8	6191 · Base Rent	195,129.00
	6192 · Percent Rent	785.51
9	6193 · Storage Rent	900.00
	6194 · Common Area Maintenance	29,078.69
10	6195 · Landlord Advertising Expense	2,027.36
	6196 · HVAC	1,089.01
11	6190 · Rent or Lease Expense - Other	0.00
	Total 6190 · Rent or Lease Expense	229,009.57
12	6205 · Technology	0.00
	6207 · Telephone Internet Data	
13	6208 · POS Montly Hosting	1,498.00
	6207 · Telephone Internet Data - Other	3,762.75
14	Total 6207 · Telephone Internet Data	5,260.75
	6210 · Training/Conferences	145.00
15	6220 · Travel Expense	5,000.00
	6230 · Uniform Expense	125.72
16	6250 · Utilities Expense	
	6252 · Utilities - Electric	11,477.62
17	6253 · Utilities - Water	594.67
	6254 · Utilities - Trash	1,905.44
18	6255 · Utilities - Fire Detection Syst	35.00
	6256 · Security Services	0.00
19	6259 · Utilities - Misc	702.40
	Total 6250 · Utilities Expense	14,715.13
20	Total Expense	439,796.17
21	Net Ordinary Income	120,347.48
	Other Income/Expense	
22	Other Expense	
	8010 · Loss on Sale of Receivables	0.00
23	8050 · Interest Expense	
	8052 · Loan Interest - 25314	949.45
24	8051 · Loan Interest - 23676	10,663.83
	8050 · Interest Expense - Other	0.00
25	Total 8050 · Interest Expense	11,613.28
	8070 · Penalties and Fines Expense	0.00
26	8080 · State LLC Taxes & Fees	0.00
	8090 · Suspense	
27	Total Other Expense	11,613.28
28	Net Other Income	-11,613.28
	Net Income	131,960.76