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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

In re:

TITUS INDUSTRIAL, INC.

Debtor-in-Possession.

Case No. 18-14414-A-11
Chapter 11
DC No. LKW-2

Date: November 14, 2018
Time: 1:30 p.m.
Place: Bankruptcy Court - Department A
United States Courthouse
2500 Tulare Street, Fifth Floor
Fresno, CA

Judge: Honorable Fredrick E. Clement

**MOTION FOR ORDER AUTHORIZING DEBTOR TO (a) USE CASH
COLLATERAL AND (b) PROVIDE ADEQUATE PROTECTION**

Titus Industrial, Inc. ("Debtor") moves the Court for an Order authorizing Debtor to (a) use cash collateral and (b) provide adequate protection to the Internal Revenue Service ("the IRS") as a part of its Chapter 11 case. In support of its Motion, Debtor represents:

SUMMARY

1. Debtor filed a Voluntary Petition Under Chapter 11 on October 30, 2018 – Case No. 18-14414-A-11
2. Secured Party: Internal Revenue Service.
3. Amount of IRS' Secured Claim \$221,479.72.
4. IRS' Collateral: Debtor's Personal Property including (a) equipment, (b) machinery, (c) deposit accounts, (d) accounts receivable and (e) other personal property

1 described in Debtor's Schedule of Assets and Liabilities filed on October 30, 2018. Debtor's
2 money on deposit and prepetition accounts receivable are described in the Motion as "the Cash
3 Collateral".

4 5. Value of IRS' Collateral Net of Senior Liens: \$477,560.19. See Debtor's
5 Schedules of Assets and Liabilities filed on October 30, 2018.

6 6. Amount of Cash Collateral:

7 a. Money on Deposit \$ 5,000.00

8 b. Accounts Receivable: \$413,820.02

9 See Debtor's Schedules of Assets and Liabilities filed on October 30, 2018.

10 7. Cash Expected to be Generated from November 1, 2018 through April 30, 2019:
11 \$1,110,000.00. See Income and Expense Projection ("the Budget") included in the Exhibits to
12 Motion for Order Authorizing Debtor to (a) Use Cash Collateral and (b) Provide Adequate
13 Protection ("the Exhibits") on file herein as Exhibit "B".

14 8. Cash Collateral to be Used from November 1, 2018 through April 30, 2019:
15 \$1,088,714.40. See Exhibit "B" to Exhibits.

16 9. Proposed Adequate Protection to IRS: Debtor will operate its business, generate
17 income, and give a replacement lien on post-petition assets of the like kind and to the same
18 extent as existed before Debtor filed its Chapter 11 case to the IRS. Additionally, Debtor will
19 make adequate protection payments of \$3,000.00 per month to the IRS and pay all of its
20 postpetition obligations owed to the Service as required by the law pending confirmation of a
21 Plan of Reorganization.

22 JURISDICTION AND VENUE

23 10. Debtor is a "Debtor-in-Possession" as that term is defined by the Bankruptcy
24 Code and Debtor is operating its business and managing its affairs as a Debtor-in-Possession.
25 A Trustee has not been sought or appointed in Debtor's case.

26 11. The Court has jurisdiction under 28 USC Sections 1334 and 157. This is a
27 "core" proceeding under 28 USC Section 157(b)(2)(A) and (M). These matters have been
28 referred to the Court by the United States District Court for the Eastern District of California

1 under General Orders 182 and 223.

2 **FACTUAL BASIS FOR MOTION**

3 **A. INTRODUCTION**

4 12. Debtor owns and operates a general contracting business. Debtor was
5 incorporated in February 2014 and Debtor operates its business in the State of California.
6 Debtor's business generated income of (a) \$2,525,313.00 in 2016, (b) \$1,327,160.70 in 2017,
7 and (c) \$1,379,410.72 from January 1, 2018 to October 30, 2018. Debtor employs ten people
8 and Debtor expects its business to be profitable during the term of its Chapter 11 case.

9 13. Scott W. Hale is Debtor's General Manager and Mr. Hale is qualified to lead
10 Debtor's business operations and reorganization efforts.

11 **B. DEBTOR'S FINANCIAL CONDITION**

12 14. Debtor incurred debt in its business before it filed its Chapter 11 case. This debt
13 included secured claims of \$442,779.43, priority unsecured claims of \$122,286.94, and general
14 unsecured claims of \$473,055.12. Debtor's secured debt includes debt of about \$220,000.00
15 owed to the IRS secured by federal tax liens recorded by the Service. The IRS' federal tax
16 liens encumber all of Debtor's personal property including Debtor's money on deposit and
17 account receivable. Copies of the Notices of Federal Tax Liens recorded by the IRS are
18 included in the Exhibits as Exhibit "A".

19 15. Debtor's assets had a value of \$689,071.02 when Debtor filed its Chapter 11
20 case including money on deposit and accounting receivable totaling \$418,820.028. See
21 Schedules of Assets and Liabilities filed on October 30, 2018.

22 **C. REASON FOR FILING CHAPTER 11 CASE**

23 16. Debtor's gross revenue decreased by more than \$1 million from 2016 to 2017.
24 This decrease in Debtor's gross revenue made it impossible for Debtor to pay all of its debt as
25 the debt became due including Debtor's obligations to the IRS. However, Debtor's gross
26 revenue in 2018 has increased from the gross revenue generated in 2017 and Debtor is
27 confident that its gross revenue will increase in the future and permit Debtor to repay the debt
28 owed to its creditors through confirmation of a Plan of Reorganization.

1 **AMOUNT OF CASH COLLATERAL SOUGHT BY DEBTOR**

2 17. Debtor intends to file a Plan of Reorganization and operate its business as a part
3 of its Chapter 11 case. In the interim, Debtor needs to use Cash Collateral to pay expenses
4 incurred by it in the normal course of its business.

5 18. Use of Cash Collateral. The Motion requests that Debtor be authorized to use
6 the Cash Collateral from the date of the filing of its Chapter 11 case through April 30, 2019
7 consistent with the Budget. A copy of the Budget is included in the Exhibits as Exhibit "B".
8 Debtor will reserve the right to vary from the expenses described in the Budget so long as the
9 variances are consistent with the ordinary operation of Debtor's business. Debtor's use of the
10 Cash Collateral will permit Debtor to operate its business and conduct its reorganization efforts
11 without interruption or delay.

12 19. Urgent Need for Cash Collateral. Debtor will not be able to operate its business
13 or conduct its reorganization without use of the Cash Collateral. Debtor believes that the items
14 included in the Budget are necessary to the continued operation of its business. The Budget
15 includes payments of \$3,000.00 per month to the IRS on its secured claim and \$7,069.98
16 per month to other secured creditors. The payments to the IRS and the other secured creditors
17 will provide adequate protection of the secured creditors' interests and help Debtor's
18 reorganization efforts.

19 20. The Budgets reflect income of \$1,110,000.00 and expenses of \$1,088,714.40
20 from November 1, 2018 through April 30, 2019. Debtor will use profit generated by its
21 business to fund its Plan of Reorganization.

22 **LEGAL BASIS FOR MOTION**

23 21. Debtor seeks an Order authorizing it to use Cash Collateral and grant adequate
24 protection to Tri Counties under 11 USC Section 363(b) and (c), Federal Rules of Bankruptcy
25 Procedures 9014, 4001(b), and 2002(a)(2), and Local Rules of Practice 4001-1(c) and 9014-
26 1(f)(4).

27 22. Section 363(c)(2) of the Bankruptcy Code provides in pertinent part that:

28 "[T]he Trustee [or debtor in possession in a Chapter 11 or Chapter 12 case]

1 cannot use, sell or lease cash collateral . . . unless –

2 (A) Each entity that has an interest in such cash collateral consents; or

3 (B) The Court, after notice and a hearing, authorizes such use, sale, or lease in
4 accordance with the provisions of this section”\

5 “Cash Collateral” is defined in Section 363(a) as “cash negotiable instruments, documents of
6 title, securities, deposit accounts, or other cash equivalents whenever acquired in which the
7 estate and an entity other than the estate have an interest...” 11 USC Section 363(a).

8 23. A debtor should be permitted to use cash collateral where the debtor provides a
9 secured creditor with adequate protection of the secured creditor’s interest. See 11 USC
10 Section 363(c)(2)(b) and In re Inforex, Inc., 1 CBC 2d 159, 163 (BC Mass. 1979). This is true
11 because a debtor attempting to rehabilitate a business has a compelling need to use cash
12 collateral in its effort to reorganize. In re George Ruggieve Chrysler Plymouth, 727 F.2d 1017,
13 1019 (11th Cir. 1984). Without the availability of cash to meet daily operating expenses such as
14 rent, payroll, and utilities, the congressional policy favoring rehabilitation over economic
15 failure would be frustrated. *Id.*

16 **LOCAL RULE OF PRACTICE 4001-1(c) RECITALS**

17 24. Local Rule of Practice 4001-1(c)(3) requires that a Motion concerning the use of
18 cash collateral must include recitals and explanations concerning the following:

19 a. LBR 4001-1(c)(3)(A): the Motion does not contain any “Cross-collateralization
20 clauses” that give IRS any liens on post-petition assets except for its replacement lien against
21 Debtor’s money on deposit and post-petition accounts receivable. The granting of a
22 replacement lien is necessary to protect IRS’ interest as required by law,

23 b. LBR 4001-1(c)(3)(B): Debtor acknowledges and agrees through the Motion that
24 (i) it is liable to the IRS for the amounts described in the Motion, (ii) the debt owed to the IRS
25 constitutes an allowed claim under the law, and (iii) the debt owed to the IRS is secured by
26 valid and perfected liens against its collateral. These provisions in the Motion are proper
27 because Debtor does not dispute the amount or validity of the IRS’ claims or liens,
28

1 c. LBR 4001-1(c)(3)(C): the Motion does not bind anyone except Debtor and its
2 successors-in-interest, the Chapter 11 estate, and the IRS concerning the priority of the IRS'
3 liens vis-a-vie persons who are not parties to the Motion,

4 d. LBR 4001-1(c)(3)(D): the Motion does not include a "506(c) Waiver".
5 However, a surcharge under 11 USC Section 506(c) should not be necessary in Debtor's case
6 because Debtor's assets have a value in excess of creditors' secured claims,

7 e. LBR 4001-1(c)(3)(E): the Motion does not divest Debtor of any rights available
8 to Debtor under the law,

9 f. LBR 4001-1(c)(3)(F): the Motion does not release the IRS from any alleged
10 pre-petition torts or breaches of contract,

11 g. LBR 4001-1(c)(3)(G): the Motion does not waive any avoidance actions under
12 the Bankruptcy Code,

13 h. LBR 4001-1(c)(3)(H): the Motion does not provide for automatic relief from
14 the automatic stay upon default, conversion to Chapter 7, or the appointment of a trustee,

15 i. LBR 4001-1(c)(3)(I): the Motion does not waive the procedural requirements
16 for foreclosure mandated by non-bankruptcy law,

17 j. LBR 4001-1(c)(3)(J): the Motion does not create any liens or grant any relief
18 under the Bankruptcy Code except for the replacement lien described in the Motion. The
19 granting of a replacement lien in favor of the IRS is necessary and proper in order to protect the
20 Service's interests in this matter.

21 k. LBR 4001-1(c)(3)(K): the Motion does not waive Debtor's right to move the
22 Court for an Order authorizing Debtor to use cash collateral if the IRS will not consent to
23 Debtor's further use of cash collateral after April 30, 2019, and

24 l. LBR 4001-1(c)(3)(L): the Motion does not contain any findings of act on
25 "matters extraneous to the approval process" that violate the law or prejudice Debtor or any
26 other party in interest.

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PRAYER FOR RELIEF

WHEREFORE, Debtor prays that the Court enter an Order:

- 1. granting the Motion for Order Authorizing Debtor to (a) Use Cash Collateral and (b) Provide Adequate Protection,
- 2. providing that –
 - i. Debtor is authorized to use the Cash Collateral described in the Motion consistent with the terms of the Motion, and
 - ii. the Internal Revenue Service is granted the adequate protection of its interests as set forth in the Motion, and
 - iii. granting Debtor such other relief as the Court deems to be just and proper.

Date: November 6, 2018

LAW OFFICES OF LEONARD K. WELSH



By: /s/ Leonard K. Welsh
LEONARD K. WELSH
Attorneys for Debtor-in-Possession