

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

In re:)	
)	
ENDLESS SALES, INC.)	Case No. 17-11037-EEB
EIN: 26-2964586)	Chapter 11 Bankruptcy
)	
Debtor.)	

**OBJECTION TO DEBTOR’S CONTINUED USE OF CASH COLLATERAL AND
MOTION TO PROHIBIT FURTHER USE OF CASH COLLATERAL OR PROVIDE
ADEQUATE PROTECTION**

COMES NOW the Creditor, **BBVA COMPASS BANK** (“Compass”), by and through its undersigned attorneys, Brown, Dunning Walker PC, and as its Objection to Debtor’s Continued Use of Cash Collateral and Motion to Prohibit Further Use of Cash Collateral or provide Adequate Protection, states as follows:

1. The Debtor filed for relief under Chapter 11 of the Bankruptcy Code on February 13, 2017 (the “Petition Date”). The Debtor remains a Debtor-in-Possession.
2. The Debtor buys and sells forklifts in Denver, Colorado.
3. Compass is a secured creditor of the Debtor with a first lien interest, evidenced by three (3) operating lines of credit, on substantially all of the Debtor’s assets, including its inventory, accounts receivable, equipment, cash and accounts. Compass’ liens are evidenced by a July 15, 2015 Promissory Note for \$200,000.00 secured by a Security Agreement and recorded Financing Statement securing Accounts Receivables and Equipment among other assets of the Debtor; a July 24, 2015 Promissory Note for \$300,000.00 secured by a Security Agreement and recorded Financing Statement securing Accounts Receivables and Equipment among other assets of the Debtor, and an April 24, 2014 Promissory Note for \$500,000.00 secured by a Security Agreement and recorded Financing Statement securing Accounts Receivables and Equipment among other assets of the Debtor. The Debtor currently owes Compass \$576,774.67 on these secured loans as of the date of

this Motion. The Debtor also owes Compass \$80,224.67 on three unsecured loans as of the date of this Motion.

4. As of the Petition date, Debtor owed Compass \$644,275.80 on the secured loans and \$70,680.46 on the unsecured loans. As of the Petition date the most recent appraisal of April 10, 2014 reflected an estimated value of the equipment collateral securing Debtor's loans with Compass was fair market value of \$2,050,087.00 and liquidation value of \$1,039,000.00.

5. The Debtor and Compass had previously reached an agreement for the Debtor to continue to use cash collateral to meet its operational needs and generate new revenues which Agreement was effective through May 31, 2017.

6. The Debtor and Compass subsequently agreed to extend their agreement for the Debtor to use cash collateral through August 29, 2017.

7. At the time of drafting this motion, an order for the Debtor's use of Cash collateral is not in place.

8. The Debtor has not been providing the monthly reports which Debtor agreed to provide in the initial Cash Collateral Agreement and in the subsequent Cash Collateral Agreement, including monthly reports on financial statements, balance sheet, WIP, inventory evaluation, AR aging and AP aging and a WIP report that manually brings the WIP report forward each week.

9. Debtor's financial reports filed with the Court, do not adequately provide information for Compass to track an increase or decrease in Debtor's fork lift inventory from purchases and or sales of forklifts and it has been difficult for Compass, despite a recently prepared appraisal by Roller & Associates, to determine if Compass' equity cushion in the collateral has been maintained by the current adequate protection payments or whether its equity cushion has deteriorated over the six months this case has been in Chapter 11 bankruptcy. The recent appraisal estimates the value of the equipment collateral as \$1,185,000.00, retail and \$632,450.00 liquidation value. The debtor's most recent monthly report of operations from June 2017 shows a cash balance of \$416,514.92.

10. The Debtor's financial reports filed with the bankruptcy court, when filed, have not been consistently filed on a timely basis. Such reports do not provide the information necessary to monitor Compass' collateral. Borrower has not filed July 2017 reports of operations that were due August 21, 2017.

11. Compass is aware that the Debtor has resolved the state court litigation filed by former employees of the Debtor but despite request has not been advised how such settlement, if at all, will impact the cash accumulated by the Debtor in its DIP account from sale of forklifts.

12. Compass Bank is not the depository lender for Debtor's DIP account and proceeds from equipment sales, although sitting in Debtor's DIP account, have accumulated from the sale of Compass' equipment collateral. Compass is not receiving a pay down on its loans when forklifts are sold and since Compass Bank is not the DIP depository account, Compass is not able to monitor Debtor's cash balances, and as such Compass requests as additional adequate protection, as is allowed by 11 U.S.C. 363 (c) (4) that a portion of the cash on deposit in Debtor's DIP account, in a suggested amount of \$250,000.00, be segregated into a separate account where Compass receives a Control Agreement over such segregated funds with Debtor and the DIP account depository, further protecting Compass that the cash collateral funds will not be spent except as is authorized by the terms and provisions of a new cash collateral agreement or as further ordered by the court.

13. Should a new cash collateral agreement be ordered, Compass Bank as adequate protection would request the following provisions:

- a. The Debtor provide an Amended Budget based on current operations allowing the Debtor the ability to deviate from the Amended Budget by up to 15% per line item, per month;
- b. The Debtor shall continue to provide Compass with a replacement lien on all inventory, equipment, cash, accounts receivable and accounts generated by the Debtor post-petition to the extent that the use of cash collateral results in a decrease in the value of the secured party's interest in such property pursuant to 11 U.S.C. § 361(2);
- c. The Debtor shall continue to maintain adequate insurance coverage on all personal property assets and adequately insure against any potential loss;
- d. The Debtor shall provide to Compass, in addition to all periodic reports and information filed with the Bankruptcy Court, including debtor-in-possession reports, the following weekly reports or as otherwise stated:

- (i) Monthly reports on financial statements, including, Income Statements, Balance Sheet, and WIP; Weekly reports on Cash Flows, Inventory Valuation, A/R aging (including a break out of retention, and bonded A/R), A/P aging, and a WIP report that manually brings the monthly WIP report forward each week;
- e. The Debtor shall only expend cash collateral pursuant to the Budget subject to reasonable fluctuation that results in a change of no more than 15% in net cash flow per month;
- f. The Debtor shall pay all post-petition taxes;
- g. The Debtor shall retain in good repair all collateral in which such party has an interest;
- h. The Debtor, to return Compass to the equity cushion it had at the time of the filing of the bankruptcy proceeding, shall pay Compass the sum of \$25,000.00 per month as adequate protection, during the term of any order for use of Cash Collateral;
- i. The Debtor agrees that Compass, or any of its representatives, shall be permitted, on reasonable advance notice, to inspect, examine and copy any books and records and operations and collateral related to Debtor's ongoing business. The Debtor agrees that Compass shall be entitled to physical inspection, on no more than two (2) days advanced notice to Debtor, of the collateral, specifically including but not limited to the inventory and equipment;
- j. The Debtor segregate \$250,000.00 of the cash collateral from its DIP operating account, as is allowed by 11 U.S.C. 363 (c) (4) subject to a Control Agreement between Compass, the Debtor and the DIP depository, on terms agreeable to the parties and the Court.

WHEREFORE, Compass Bank, for the reasons set forth above moves this court for an Order prohibiting the Debtor's further Use of Cash Collateral unless and until a Cash Collateral Order

providing adequate protection to Compass Bank, is entered, and for any further relief deemed appropriate by the court.

DATED this 13th day of September 2017.

Respectfully submitted,

BROWN DUNNING WALKER PC

s/ Neal K. Dunning

Neal K. Dunning, Atty. Reg. No. 10181

Attorneys for BBVA COMPASS Bank

2000 S. Colorado Blvd.

Tower Two, Suite 700

Denver, Colorado 80222

Telephone: 303-329-3363

Fax: 303-393-8438

Email: ndunning@bdwfirm.com

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that on this 13th day of September, 2017 served a true and correct copy of the foregoing **OBJECTION TO DEBTOR'S CONTINUED USE OF CASH COLLATERAL AND MOTION TO PROHIBIT FURTHER USE OF CASH COLLATERAL OR PROVIDE ADEQUATE PROTECTION**, was placed in the U.S. Mail, postage prepaid and addressed as listed below, and as listed on the attached mailing matrix:

Endless Sales, Inc.

4625 Colorado Blvd
Denver, CO 80216

Jeffrey S. Brinen

1660 Lincoln St., Ste. 1850
Denver, CO 80264

Keri L. Riley

1660 Lincoln St., Ste.1850
Denver, CO 80202

US Trustee

Byron G. Rogers Federal Building
1961 Stout St., Ste. 12-200
Denver, CO 80294

Paul Moss

Byron G. Rogers Federal Building
1961 Stout St., Ste. 12-200
Denver, CO 80294

s/ Jennifer L. Mellott

Label Matrix for local noticing
1082-1
Case 17-11037-EEB
District of Colorado
Denver
Wed Sep 13 09:03:44 MDT 2017

Adam Yates Frye
16740 E. Maplewood Ave
Aurora, CO 80016-1026

BBVA Compass
c/o Neal K Dunning
Brown Dunning Walker PC
2000 S. Colorado Blvd, 2-700
Denver, CO 80222-7930

BMO
PO BOX 71951
Chicago, IL 60694-1951

Brian Firkins
2400 Champa St. # 9
Denver, CO 80205-2793

City and County of Denver
201 W Colfax Ave, Dept 1001
Attn: Jennifer Maldonado
Denver, CO 80202-5332

Craig Steven Bird
5101 South Grant Street
Littleton, CO 80121-1008

Endless Sales, Inc.
4625 Colorado Blvd
Denver, CO 80216-3217

Jason Frye
1698 S. Oakland Street
Aurora, CO 80012-5247

Hampton & Pigott, LLP
1203 Airport Way
Suite 200
Broomfield, CO 80021

5280 Sales & Estimating
Zach Jackson
3818 W 30th Ave
Denver, CO 80211-3608

Arturo Sanchez
10521 WCR 142
Fort Lupton, CO 80621

BC Kustoms LLC
Byron Chapuis
6612 Braun Ct
Arvada, CO 80004-2131

BMO Harris Bank N.A.
1010 Thomas Edison Blvd SW
Cedar Rapids, IA 52404-8247

Jeffrey S. Brinen
1660 Lincoln St.
Ste. 1850
Denver, CO 80264-9911

Colorado Department Of Revenue
1375 Sherman St.
Room 504
Attention Bankruptcy Unit
Denver CO 80261-3000

Dillon Sloan
10755 W 60th Ave
Arvada, CO 80004-4675

Exodus Translin LLC
Sunny Coleman
9550 Forest Lane #511
Celeste, TX 75423

Erica Grossman
Holland, Holland Edwards & Grossman, PC
1437 High Street
Denver, CO 80218-2608

Taylor Hansen
4092 TPC Parkway, #825
San Antonio, TX 78261-2930

Adam Frye
16075 E. Easter Cir., Suite 303
Aurora, CO 80016-5065

BBVA Compass
PO Box 830696
Birmingham, AL 35283-0696

BDR Sales
Brian Rosco
121 W 11th Street
Loveland, CO 80537-4742

Blink-in Sales
Chris Blinsinsoph
7585 Raleigh Street
Westminster, CO 80030-4740

Bryan Schmidt
12150 Race Street, G303
Thornton, CO 80241-3320

Colorado Department of Revenue
1375 Sherman Street
Denver, CO 80261-2200

Neal K. Dunning
2000 S. Colorado Blvd.
Tower Two
Ste. 700
Denver, CO 80222-7900

Adam Frye
16075 E. Easter Cir., Apt. 303
Aurora, CO 80016-5065

HF Unlimited LLC
Ryan Haywood
1666 South Depew Street
Denver, CO 80232-7234

IRS
PO Box 7346
Philadelphia PA 19101-7346

(p) INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

JD Miller
Justin Miller
1164 S. Acoma St #185
Denver, CO 80210-1596

JDL Enterprise LLC
Jesse D Lehman
3925 S Bannock Street
Englewood, CO 80110-4601

Jason Frye
c/o Christopher Light, Esq.
14143 Denver West Parkway, Suite 100
Golden, CO 80401-3275

Joie Rico
16996 E 106th Ave
Commerce City, CO 80022-0590

Jonathan Hammond
414 S. Salsberry St. Apt 2D
Denver, CO 80226-3480

Joseph R. Antczak
5420 Nolan St.
Denver, CO 80226

Kasra Haddadzadeh
17710 E. Hamilton Cir. #136
Aurora, CO 80013-7613

Kevin Roth
13509 Fillmore Court
Thornton, CO 80241-1331

Keyzmind
Peter Eiselt
15390 E Arizona Ave #306
Aurora, CO 80017-4735

Lara Sohn
5857 Newcombe
Arvada, CO 80004-4720

Mile High Connections
Steve Cutlip
6544 Urban Street
Arvada, CO 80004-2467

Paul Moss
Byron G. Rogers Federal Building
1961 Stout St.
Ste. 12-200
Denver, CO 80294-6004

Steven T Mulligan
1099 18th St.
Ste. 2150
Denver, CO 80202-1958

Noel Ray
3911 Roan Drive
Colorado Springs, CO 80922-2444

(c)OFFICE OF THE ATTORNEY GENERAL
STATE OF COLORADO
1525 N SHERMAN ST STE 700
DENVER CO 80203-1700

Office of the Attorney General
US Department of Justice
950 Pennsylvania Avenue, NW
Suite 4400
Washington, DC 20530-0001

Office of the US Attorney
District of Colorado
1225 Seventeenth Street, Suite 700
Denver, CO 80202-5598

Priefert Manufacturing, Inc.
2630 S Jefferson Ave
Mount Pleasant, TX 75455-5961

Priefert Manufacturing, Inc.
c/o Trent W. Rexing, Esq.
Thanksgiving Tower
1601 Elm Street, Suite 3700
Dallas, TX 75201-4798

Randall Douglas Jones
4255 Kittredge Street Apt 19-23
Denver, CO 80239-5712

Keri L. Riley
1660 Lincoln St., Ste.1850
Denver, CO 80264-9911

Robert Berman
980 S. Dexter St #8
Denver, CO 80246-2630

Ryan Rickert
1501 Phoenix Ct.
Denver, CO 80229-3772

Securities and Exchange Commission
Central Regional Office
1961 Stout St.
Ste. 1700
Denver CO 80294-1700

Securities and Exchange Commission
Midwest Regional Office
175 W. Jackson Blvd.
Ste. 900
Chicago IL 60604-2815

State of Colorado
Division of Securities
1560 Broadway, Suite 900
Denver, CO 80202-5150

TK Serves LLC
Tyler Levitt
275 S. Cherokee St Apt 3411
Denver, CO 80223-2103

Taylor Hansen
4092 TPC Parkway, #2150
San Antonio, TX 78261-2914

Taylor Hansen
c/o Christopher Light, Esq.
14143 Denver West Parkway, Suite 100
Golden, CO 80401-3275

U.S. Bank, N.A. dba U.S. Bank Equipment Fina
1310 Madrid Street
Marshall, MN 56258-4001

US Bank
1310 Madrid St. Suite 106
Marshall, MN 56258-4006

US Trustee
Byron G. Rogers Federal Building
1961 Stout St.
Ste. 12-200
Denver, CO 80294-6004

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service
Insolvency Unit
1999 Broadway
MS 5012 DEN
Denver, CO 80202-3025

Addresses marked (c) above for the following entity/entities were corrected as required by the USPS Locatable Address Conversion System (LACS).

Office of the Attorney General
State of Colorado
1525 Sherman Street, 7th Floor
Denver, CO 80203

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)BBVA Compass

(u)Robert Berman

(d)Jason Frye
1698 S. Oakland Street
Aurora, CO 80012-5247

(u)Rick Robertson

(u)SINO SURE
Fortune Times Building
11 Fenghuiyuan
Xicheng District Beijing 100032

End of Label Matrix
Mailable recipients 63
Bypassed recipients 5
Total 68