

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

IN RE: Chapter 11
WIGGINTON ENTERPRISES, LLC, Case No. 9:17-bk-09516-FMD
Debtor.

DEBTOR'S MOTION SEEKING AUTHORITY TO USE CASH COLLATERAL

Wigginton Enterprises, LLC (“Debtor” or “Wigginton”), through its undersigned attorney, pursuant to 11 U.S.C. § 363 of the Bankruptcy Code and in compliance with Rule 4001(b) of the Federal Rules of Bankruptcy Procedure) files its Motion Seeking Authority to Use Cash Collateral (“Motion”), and in support thereof, states as follows:

Jurisdiction and Venue

1. This court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(M). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This is a “core” matter.

2. The statutory predicates for the relief requested herein are 11 U.S. C. §363 and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

Background

3. On November 3, 2017, the Debtor filed a Voluntary Petition for Relief under Chapter 11 of the United States Code (the “Bankruptcy Code”).

4. No official committees have yet been appointed pursuant to § 1102 of the Bankruptcy Code. No request for relief similar to that requested herein has been previously made to this Court.

Relief Requested and Grounds for Relief

5. The Debtor's secured debt is summarized as follows:

<u>Creditor/Lender</u>	<u>Collateral</u>	<u>Amount</u>
Regions Bank	All of the Debtor's assets including cash collateral – first lien	\$425,385.60
Strategic Funding	Future accounts, cash, receivables, contract rights – second lien position	\$44,355.00

6. Given the loan value of the Debtor's assets, and pursuant to §506(b), the Debtor believes that only Regions Bank holds a secured claim against the Debtor's cash collateral.

7. The Debtor believes that the parties identified as secured creditors above will assert liens on the Debtor's bankruptcy estate and upon the Debtor's cash collateral, as that term is defined in §363(a) of the Bankruptcy Code.

8. The Debtor files this Motion to obtain an order authorizing the use of cash collateral generally and for purposes which include the following:

- a) Care, maintenance, and preservation of the Debtor's assets;
- b) Payment of business expenses;
- c) Payment of unsecured creditors pursuant to a confirmed plan of reorganization; and
- d) Costs of administration in this Chapter 11 case.

9. The Debtor requests authority to use cash collateral on an interim basis to immediately pay the expenses referenced above to continue the operation of the Debtor's business, to maximize the return on its assets and to otherwise avoid irreparable harm and injury to the business and the estate. A proposed budget is annexed as Exhibit A.

10. There is insufficient time for a final evidentiary hearing, as required by Rule 4001 (b)(2) of the Federal Rules of Bankruptcy Procedure, to be held before the Debtor must

arguably use cash collateral. If this Motion is not considered on an expedited basis and if the Debtor is denied the ability to immediately use cash collateral, there will be direct and immediate harm to the continuing operation of the Debtor business. In order to continue the business activity in an effort to achieve successful reorganization, the Debtor needs to use cash collateral in its ordinary business operations. The inability of the Debtor to meet its ordinary business expenses will result in the Debtor's further breach of the commercial loan with Regions Bank. Indeed, it is in the best interest of all creditors and the Debtor that the Debtor use its cash collateral since such usage will preserve the value of any secured parties collateral. Rule 4001 (b)(2) of the Federal Rules of Bankruptcy Procedure authorizes this Court to hold an immediate preliminary hearing on this Motion.

11. The alternative is that the Debtor will not be able to maintain the operation of its business and would lose the benefit of the Lease and the Commercial Loan with Regions Bank which would in turn prevent the unsecured creditor body from receiving any payment of their claims over time.

12. If allowed to use cash collateral, the Debtor believes it will maximize the value of the Debtor's assets which will in turn maximize the prospects of generating a dividend to the unsecured creditors.

13. The Debtor intends to immediately file its plan of reorganization and disclosure statement which will provide for the prompt sale of the majority of the Debtor's assets and the redemption of other assets so as to minimize any negative impact from use of cash collateral.

Notice

14. The U.S. Trustee has not yet filed a Notice of Appearance on. No official committees have yet been appointed pursuant to §1102 of the Bankruptcy Code. Notice of this

Motion has been given: (i) by the Court's CM/ECF system to the U.S. Trustee, and (ii) by United States first class mail to all known secured creditors of the Debtor, the twenty (20) largest unsecured creditors of the Debtor, and certain other parties listed on the attached Certificate of Service. The Debtor submits that, given the emergency nature of the relief requested herein, no other or further notice need be given.

15. Johnston Law, PLLC filed its notice of appearance through counsel on behalf of the Debtor on November 9, 2017.

Basis for Emergency Relief

16. The facts previously set out herein clearly justify an immediate hearing on this Motion. If the Debtor cannot utilize cash collateral, the Debtor will be unable to pay operating expenses necessary to continue the operation of the Debtor's business and will be irreparably harmed. The Debtor has narrowly tailored the relief requested on an emergency basis in order to allow it to survive pending a final cash collateral hearing, as required by Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure.

17. The Debtor requests that this Court enter an order granting the instant Motion and authorizing the interim use of cash collateral, the proposed form of which is annexed as Exhibit "B"; schedule a preliminary hearing on the Motion at the earliest possible time; schedule a final cash collateral hearing in accordance with Bankruptcy Rule 4001 (b)(2); authorize the Debtor to use the cash collateral in the operation of its business on an interim basis; and grant such other

and further relief as may be just and proper.

Dated: November 10, 2017

/s/ Richard Johnston, Jr.
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Attorney for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via
CM/ECF electronic mail this 10th day of November, 2017, to:

United States Trustee
Benjamin Lambers
All attorneys of record

And via U. S. Mail to:
Wigginton Enterprises, LLC
1400 Colonial Blvd., Suite 29
Fort Myers, FL 33907

Mailing Matrix

/s/ Richard Johnston, Jr.
Richard Johnston, Jr.