UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re:	)	Case No. 6:19-bk-5890-KSJ
	)	
RODRIGUEZ CANO, INC., dba Aloma Kids Academy,	)	Chapter 11
	)	
Debtor.	)	
______________________________	)	

AMENDED MOTION FOR AUTHORITY TO USE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 *NUNC PRO TUNC* TO SEPTEMBER 9, 2019 (Cash Collateral Budget Amended)

The Debtor, RODRIGUEZ CANO, INC. dba Aloma Kids Academy (hereinafter "Debtor" or the "Academy"), by and through its undersigned counsel, hereby files its Amended Motion for Authority to Use Cash Collateral Pursuant to 11 U.S.C. § 363, *nunc pro tunc* to September 9, 2019, and in support thereof, respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicate for the relief requested in this Motion is 11 U.S.C. §§ 105 and 363 and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

3. On September 9, 2019, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "Petition Date"). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtor is operating its business and managing its affairs as a debtor in possession. As

of the date hereof, no trustee, examiner, or statutory committee has been appointed in this Chapter 11 case.

4. The Debtor is a Florida corporation, formed on April 18, 2007, that operates a child day care center in Winter Park, Florida.

5. The Debtor owns real property located at 3416 Aloma Avenue, Winter Park, Florida 32792 (the "Property"), which is where it operates its business. The Debtor also owns office furniture, computers, printers, copiers, software licenses, desks, chairs and other items that are necessary to the administration of its business.

6. The Debtor's assets also include cash and receivables. The Debtor is paid by State and Local governments that subsidize child care, voluntary pre-kindergarten programs, Community Coordinated Care for Children, Inc. (including food services programs), as well as parents of the students.

7. The Debtor owns two unencumbered vehicles that are used to transport some of its students.

IDENTIFICATION OF SECURED CREDITORS

8. Sunrise Bank ("Sunrise" or "Creditor") extended a pre-petition loan to the Debtor to refinance the Property in the original amount of $966,500.00 (the "Loan").

9. As security for the indebtedness owed under the Loan, the Debtor granted to Sunrise a security interest in the Property via a Mortgage and Security Agreement dated and recorded on April 11, 2018 in the Public Records of Orange County, Florida, bearing Instrument Number 20180216794.

10. As further security for the indebtedness owed under the Loan, the Debtor granted to Sunrise a security interest in, *inter alia*, accounts, accounts receivable, chattel paper, general

intangibles and all returned and repossessed merchandise and all of Debtor's tangible personal property presently owned or hereafter acquired and used by Debtor at all of its business operations including equipment, machinery, furnishings, and fixtures, as more thoroughly described in the UCC-1 Financing Statement recorded in the Florida Security Transaction Registry on April 16, 2018, Document Number 201804877385.

11. As of the Petition Date, the unpaid indebtedness owed and outstanding to Sunrise under the Loan documents is approximately $951,555.11, which includes principal and interest, late charges, and other charges due under the Loan documents.

12. Accordingly, given Sunrise's security interest in substantially all of Debtor's assets, as described in the security instruments, Debtor requests entry of an order granting Debtor's use of Sunrise's cash collateral (the "Cash Collateral") *nunc pro tunc* to the Petition Date, for (a) the care, maintenance and preservation of the estate's assets; (b) payment of necessary payroll and other operating expenses; (c) the purchase of goods and services; and (d) the continued business operations..

RELIEF REQUESTED

13. By this Motion, the Debtor seeks the entry of an Order authorizing the use of cash collateral pursuant to 11 U.S.C. § 363 and Rule 4001(b) of the Federal Rules of Bankruptcy Procedure; setting an expedited hearing on this Motion; and granting any such further relief that this Court deems just and proper.

14. As set forth in the budget, incorporated herein and attached hereto as Exhibit "A" (the "Budget"), the Debtor requires the use of cash collateral to fund all necessary operating expenses of the Debtor's business.

15. The Debtor will suffer immediate and irreparable harm if it is not authorized to use cash collateral to fund the expenses set forth in the Budget. Absent such authorization, the Debtor will not be able to maintain and protect the business assets and operations.

CASH COLLATERAL AND THE RELIEF SOUGHT BY THE DEBTOR

16. The Debtor's use of property of the estate is governed by section 363 of the Bankruptcy Code, which provides that:

> If the business of the debtor is authorized to be operated under section … 1108 … of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with Section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

17. When a Chapter 11 debtor-in-possession is authorized to operate its business, it may use property of the estate in the ordinary course of business, but is prohibited from using cash collateral absent consent of the secured creditor or court authorization. *In re Kahn*, 86 B.R. 506 (Bankr. W.D. Mich. 1988); *In re Westport-Sandpiper Associates Ltd. P'Ship*, 116 B.R. 355 (Bankr. D. Conn. 1990)(debtor may not use cash collateral unless entity that has interest in it consents or debtor proves that interest of the entity is adequately protected).

18. "Cash collateral" is defined by the Bankruptcy Code as, "cash, negotiable instruments, documents of title securities, deposit accounts or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest . . ." 11 U.S.C. § 363(a). Any cash collateral generated by the Debtor may constitute the cash collateral of the alleged secured creditors.

19. Further, the Debtor proposes to use the cash collateral in accordance with the terms of the Budget. The Debtor also requests that it be authorized: (i) to exceed any line item on the budget by an amount up to ten (10) percent of each such line item; or (ii) to exceed any line item by more than ten (10) percent so long as the total of all amounts in excess of all line items for the Budget do not exceed ten (10) percent in the aggregate of the aggregate total budget.

APPLICABLE AUTHORITY FOR RELIEF REQUESTED

A. The Court Should Enter an Order Authorizing the Use of Cash Collateral Because the Debtor is Providing the Secured Creditors with Adequate Protection.

20. The Bankruptcy Code does not define "adequate protection" but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including "other relief" resulting in the "indubitable equivalent" of the secured creditors' interest in such property. See 11 U.S.C. § 361.

21. Adequate protection is to be determined on a case-by-case factual analysis. *See Mbank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). For example, in *O'Connor*, the court held that "[i]n order to encourage the debtors' efforts in the formative period prior to the proposal of a reorganization, the court must be flexible in applying the adequate protection standard." *O'Connor*, 808 F.2d at 1936 (citations omitted). *See also In re Quality Interiors, Inc.*, 127 B.R. 391 (Bankr. N.D. Ohio 1991) (holding that the granting of a replacement lien provided adequate protection).

22. Adequate protection is meant to ensure that the secured creditors receive the value for which it originally bargained pre-bankruptcy. *Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3rd Cir. 1994) citing *In re O'Connor*, 808 F.2d 1393, 1396-1397 (10th Cir. 1987). Courts have noted that the essence of adequate protection is the assurance of the maintenance and continued responsibility of the lien value during the interim between the filing and the confirmation. *In re*

Arrienes, 25 B.R. 79, 81 (Bankr. D. Or. 1982). The purpose of the adequate protection requirement is to protect secured creditors from diminution of value during the use period. *See In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *In re Becker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986); *In re Ledgmere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990).

23. In the instant case, adequate protection provided to the creditors includes granting them a lien on the Debtor's assets, to the extent and validity of their lien as of the Petition Date. While the Orange County Property Appraiser's Office lists the just market value of the Property at $620,711.00, the Debtor believes that the actual value is higher. The Debtor received a pre-petition offer to sell the Property, including the business, for $1,250,000.00. Although some of that is attributed to the business, the Property makes up the majority of that amount.

24. Section 361(2) of the Bankruptcy Code expressly provides that the granting of a replacement lien constitutes a means of providing adequate protection. In the instant case, granting the creditors a replacement lien on the post-petition collateral to the extent that its prepetition collateral is diminished by the Debtor's use of cash collateral, provides them with adequate protection. *See e.g., O'Connor*, 808 F.2d 1393; *In re Coody*, 59 B.R. 164, 167 (Bankr. M.D. Ga. 1986); *In re Dixie-Shamrock Oil & Gas, Inc.*, 39 B.R. 115, 118 (Bankr. M.D. Tenn. 1984).

B. The Use of Cash Collateral Will Preserve the Debtor's Going Concern Value and Will Inure to the Benefit of the Secured Creditors.

25. The continued operation of the Debtor's business is the only manner in which it can successfully reorganize. The Debtor is a child day care center that can only operate using its revenues to pay its mortgage, employees, as well as goods and services used in providing its services to the public. The Debtor requires use of the constant cash flow in order to fund its operations. If the Debtor is not allowed to use cash collateral, it will be unable to operate and will certainly result in harm to the Debtor.

26. The Debtor will use the cash collateral during the interim cash collateral period to pay utilities, pay employee wages, marketing and advertising, food services, and pay payroll taxes, as well as the normal expenses of day-to-day operation.

27. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor as a going concern.

> A debtor, attempting to reorganize a business under Chapter 11, clearly has a compelling need to use cash collateral in its effort to rebuild. Without the availability of cash to meet daily operating expenses such as rent, payroll, utilities etc., the congressional policy favoring rehabilitation over economic failure would be frustrated.

In re George Ruggiere Chrysler-Plymouth, Inc., 727 F.2d 1017, 1019 (11th Cir. 1984).

28. Accordingly, courts authorize the use of cash collateral to enhance or preserve the debtor's going concern value. For example, in *In re Stein*, 19 B.R. 458 (Bankr. E.D. Pa. 1982), the Court allowed a debtor to use cash collateral where the secured party was undersecured, finding that the use of cash collateral was necessary to the debtors' continued operations and the creditor's secured position can only be enhanced by the continued operation of the debtor's business. *Id.* at 460; *see also In re Dynaco Corp*, 162 B.R. 389, 395-396 (Bankr. D. N.H. 1983) (finding that the alternative to the debtor's use of cash collateral, termination of its business, would doom reorganization and any chance to maximize value for all creditors); *In re Karl A. Neise, Inc.*, 156 B.R. 600, 602 (Bankr. S.D. Fla. 1981) (marginally secured creditor adequately protected by lien on post-petition property acquired by debtor, debtors can use cash collateral in the normal operation of their business).

29. If the Debtor cannot use cash collateral, it will be forced to cease operations. By contrast, granting authority will allow the Debtor to maintain operations and preserve the going

concern value of its business which will inure to the benefit of any secured creditors and all other creditors.

30. The Debtor believes that use of cash collateral pursuant to the terms and conditions set forth above is fair and reasonable and adequately protects the secured creditors in this case. The combination of: (i) the Debtor's ability to preserve the going concern value of the business with the use of cash collateral; and (ii) providing the secured creditors with the other protections set forth herein, adequately protects its alleged secured position under Sections 361(2) and 361(3) of the Bankruptcy Code.

31. The Debtor believes that the approval of this Motion is in the best interest of the Debtor, its creditors and its estate because it will enable the Debtor to (i) continue the orderly operation of its business and avoid an immediate total shutdown of operations; (ii) meet its obligations for necessary ordinary course expenditures, and other operating expenses; and (iii) make payments authorized under other orders entered by this Court, thereby avoiding immediate and irreparable harm to the Debtor's estate.

Request for Relief *Nunc Pro Tunc* to Petition Date

32. The Debtor is seeking authority to use cash collateral *nunc pro tunc* to the Petition Date.

33. The use of cash collateral, or lack thereof, by the Debtor, for even one day, would likely cause a collapse of the business.

34. The Debtor provides child day care services to working families. The inability to pay its vendors, employees, utilities, and other related expenses would result in the immediate, or near immediate, cessation of operations.

35. Out of pure survival, the Debtor has been required to use cash collateral, even absent court order, to preserve the business as a going concern.

36. It is in the best interest of the creditors to grant relief *nunc pro tunc* to the Petition Date. Since the Debtor does not have any assets to liquidate, the creditors' only chance of being paid is if the Debtor operates without cessation.

WHEREFORE, the Debtor respectfully requests that this Court enter an order (a) authorizing the Debtor's use of cash collateral in accordance with the attached Budget *nunc pro tunc* to September 9, 2019; (b) granting the replacement liens of the Creditor set forth above in connection with the use thereof; and (c) granting such other and further relief that this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via CM/ECF and/or U.S. Mail, first class and postage prepaid, to all Parties-In-Interest listed on the attached Mailing Matrix, this 24th day of September, 2019.

__*/s/ Aldo G. Bartolone, Jr.*______
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EXHIBIT "A"

Monthly Operating Budget
Rodriguez Cano, Inc. d/b/a Aloma Kids Academy
Case No. 6:19-bk-5890-KSJ

GROSS MONTHLY REVENUES:

• Service Food Program:	$4,520
• Service VPK:	$3,150
• Service School Readiness:	$4,900
• Parent Fee:	$32,400
Total Monthly Income:	**$44,970**

AVERAGE MONTHLY EXPENSES

• Advertising:	$400
• Automobile Expense:	$803
• Computer & Internet:	$471
• Contract Labor:	$150
• Dues & Subscriptions:	$57
• Food for Children:	$2,250
• Insurance:	$1,130
• Materials & Supplies:	$247
• Merchant Fees:	$386
• Mortgage Interest:	$5,637.92
• Office Supplies:	$210
• Rent (parking spaces):	$350
• Repairs & Maintenance:	$450
• Taxes & Licenses:	$1,667
• Telephone:	$320
• Utilities:	$875
• Wages:	$16,600
• Wells Fargo HELOC:	$1,125.78
• Payroll Taxes:	$1,300
• Reserve (Property Taxes):	$500
Total Monthly Expenses:	**$34,929.70**

Available Cash/End of Month: **$10,040.30**

Label Matrix for local noticing
113A-6
Case 6:19-bk-05890-KSJ
Middle District of Florida
Orlando
Tue Sep 24 17:34:38 EDT 2019

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

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(d)Internal Revenue Service
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Bypassed recipients 1
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