

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
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In re:

Case No.: 19-10417-RBR
Chapter 11

BOCA HEALTH & FITNESS, LLC
d/b/a Dale's Raw Foods,

Debtor-in-Possession.

**MOTION TO USE CASH COLLATERAL
NUNC PRO TUNC TO JANUARY 11, 2019**

- **Debtor is seeking authority to use the cash collateral of American Express National Bank.**
- **There is a provision for the offer of adequate protection in the amount of \$175.14 per month as the security interest is under-secured.**
- **The cash collateral is all of Debtor's current and after-acquired assets.**
- **Debtor is requesting to use all cash collateral until a final hearing on this motion.**
- **Debtor has attached a Projected Budget (Exhibit "A") and Interim Order (Exhibit "B") pursuant to the Court's Guidelines for Motion Seeking Authority to Use Cash Collateral and Motion Seeking Approval of Post-Petition Financing.**

BOCA HEALTH & FITNESS, LLC (the "Debtor"), by and through undersigned counsel, files this *Motion to Use Cash Collateral Nunc Pro Tunc to January 11, 2019* (the "Motion"), and requests this Court to enter an order authorizing to use of the cash collateral of AMERICAN EXPRESS NATIONAL BANK (the "Secured Creditor"), and, in support thereof, states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and

1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The basis for relief requested herein are §§ 105 and 361 and 363 of the Bankruptcy Code, Rule 4001(b)(2) of the Federal Rules of Bankruptcy, Local Rule 4001-2 and 9013-1(F)-(G), and the Court's Guidelines for Motions Seeking Authority to Use Cash Collateral and Motions Seeking Approval of Post-Petition Financing.

Background

4. On January 11, 2019, Debtor filed for voluntary relief under Chapter 11 of the Bankruptcy Code.

5. Secured Creditor is secured in "[a]ll assets of the Debtor, whether now owned or hereafter acquired or arising" by virtue of its Uniform Commercial Code Financing Statement and Form (No. 201606613322) (Exhibit "C").

6. Secured Creditor is owed **\$265,870.00** (the "Prepetition Debt").

7. Debtor seeks to use Secured Creditor's cash collateral for business operations and proposes to pay Secured Creditor the sum of **\$175.14** per month as adequate protection payments as the Debt is under-secured.

Legal Analysis

8. Section 363 of the Bankruptcy Code provides for the use, sale or lease of property in bankruptcy. 11 U.S.C. § 363.

9. Pursuant to § 363(c)(2)(B), the Court may authorize the use of cash collateral only if the use accords with other provisions of Section 363. *See In re George Ruggiere Chrysler-Plymouth, Inc. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)* 727 F. 2d 1017, 1019 (11th Cir. 1984).

10. The principal determination on authorizing the use of cash collateral is whether

“adequate protection”, a term undefined by the Bankruptcy Code, is provided. *Id.*

11. Adequate protection payments are payments that are intended to protect against, and compensate for, a decrease in the value of a creditor’s collateral. *See In re Suncruz Casinos, LLC*, 298 B.R. 833 (Bankr. S.D. Fla. 2003).

Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process. If the value of the collateral decreases, the creditor is entitled to cash payments so that the value of its interest in the collateral remains constant. Thus, the amount by which the collateral depreciates is the amount of adequate protection to which the secured creditor is entitled.

First Fed. Bank v. Weinstein (In re Weinstein), 227 B.R. 284, 296 (9th Cir. BAP 1998) (citations omitted).

12. In the instant case, Secured Creditor is under-secured.

13. Although Secured Creditor is owed the Prepetition Debt, the value of the estate at the date of filing the bankruptcy was **\$28,021.98**.

14. Debtor requests access to all of the cash collateral to continue to its business operations.

15. Debtor proposes to make adequate protection payments in the amount of **\$175.14** per month, which is equal to the monthly payment of 7.5% annual interest of **\$28,021.98**.

16. It is crucial that Debtor maintains access to the cash collateral to continue to operate its business in the Chapter 11 case.

WHEREFORE Debtor requests this Court enter an interim order authorizing the Debtor’s use of cash collateral, authorizing a monthly adequate protection payment in the amount of **\$175.14** to Secured Creditor for the use of its cash collateral, setting a final hearing on this Motion, for any further relief this Court deems proper.

Dated: January 30, 2019

VAN HORN LAW GROUP, P.A.

330 N Andrews Ave., Suite 450

Fort Lauderdale, FL 33301

Telephone: (954) 765-3166

Facsimile: (954) 756-7103

Email: Chad@cvhlawgroup.com

By: /s/ Chad Van Horn, Esq.

Chad Van Horn, Esq.

Florida Bar No. 64500

Exhibit "A"

Boca Health & Fitness (19-10417-RBR)			
Projected Budget (January 2019 to December 2019)			
		Jan-19	Feb-19
INCOME	Total Receipts	\$110,000.00	\$88,000.00
DISBURSEMENTS	Advertising		\$1,000.00
	Bank Charges	\$160.00	
	Contract Labor	\$0.00	
	Fixed Asset Payments		
	Insurance	\$4,600.00	\$3,000.00
	Inventory Payments		
	Leases	\$260.00	\$260.00
	Manufacturing Supplies	\$40,000.00	\$30,000.00
	Office Supplies	\$100.00	\$100.00
	Officer Salary	\$7,500.00	\$7,500.00
	Payroll	\$16,000.00	\$16,000.00
	Professional Fees		
	Rent	\$6,500.00	\$6,500.00
	Repairs & Maintenance		
	Secured Creditor Payment	\$113.00	\$175.14
	Taxes Paid - Payroll	\$4,000.00	\$4,000.00
	Taxes Paid - Sale & Use	\$0.00	
	Taxes Paid - Other		
	Telephone	\$450.00	\$450.00
	Travel & Entertainment	\$0.00	
	U.S. Trustee Quarterly Fees		
	Utilities	\$600.00	\$600.00
	Vehicle Expenses		
	Other Operating Expenses (Shipping)	\$20,000.00	\$16,000.00
	Gross Disbursements	\$100,283.00	\$85,585.14

Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19
\$88,000.00	\$110,000.00	\$82,000.00	\$90,000.00	\$100,000.00	\$80,000.00
\$1,000.00	\$1,000.00		\$1,000.00	\$1,000.00	\$1,000.00
\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
\$260.00	\$260.00	\$260.00	\$260.00	\$260.00	\$260.00
\$30,000.00	\$40,000.00	\$30,000.00	\$30,000.00	\$40,000.00	\$25,000.00
\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00
\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00
\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00
\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00
\$175.14	\$175.14	\$175.14	\$175.14	\$175.14	\$175.14
\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00
\$450.00	\$450.00	\$450.00	\$450.00	\$450.00	\$450.00
	\$1,950.00			\$1,950.00	
\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00
\$16,000.00	\$22,000.00	\$18,000.00	\$15,000.00	\$18,000.00	\$12,000.00
\$85,585.14	\$103,535.14	\$86,585.14	\$84,585.14	\$99,535.14	\$76,585.14

Sep-19	Oct-19	Nov-19	Dec-19
\$90,000.00	\$100,000.00	\$75,000.00	\$85,000.00
\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
\$260.00	\$260.00	\$260.00	\$260.00
\$32,500.00	\$35,000.00	\$25,000.00	\$27,500.00
\$100.00	\$100.00	\$100.00	\$100.00
\$7,500.00	\$7,500.00	\$7,500.00	\$7,500.00
\$16,000.00	\$16,000.00	\$16,000.00	\$16,000.00
\$6,500.00	\$6,500.00	\$6,500.00	\$6,500.00
\$175.14	\$175.14	\$175.14	\$175.14
\$4,000.00	\$4,000.00	\$4,000.00	\$4,000.00
\$450.00	\$450.00	\$450.00	\$450.00
	\$1,950.00		
\$600.00	\$600.00	\$600.00	\$600.00
\$16,000.00	\$22,000.00	\$12,000.00	\$13,000.00
\$88,085.14	\$98,535.14	\$76,585.14	\$80,085.14

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
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In re:

Case No.: 19-10417-RBR
Chapter 11

BOCA HEALTH & FITNESS, LLC
d/b/a Dale's Raw Foods,

Debtor-in-Possession.

**INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL NUNC
PRO TUNC TO JANUARY 11, 2019 AND SETTING FINAL HEARING DATE**

THIS MATTER came before the Court on DATE at 10:00 a.m. upon Debtor's *Motion to Use Cash Collateral Nunc Pro Tunc to January 11, 2019* (DE XX) (the "Motion"). The Court, having reviewed the Motion and heard argument of counsel, finds that good cause exists to grant the Motion.

IT IS THEREFORE ORDERED:

1. The Motion is granted and approved on an interim basis pending a final order.
2. Debtor is authorized to use the cash collateral referenced in the Motion.

3. Debtor shall make monthly adequate protection payments to American Express National Bank (the “Secured Creditor”), in the amount of **\$175.14** for the use the cash collateral.

5. Subject to the provisions of this Order, Debtor is authorized to use cash collateral in accordance with the budget, a copy of which is attached hereto as Exhibit “A” (the “Projected Budget”), so long as the aggregate of all expenses of the Debtor do not exceed the amount in the Projected Budget for the Debtor by a ten (10%) percent variance (“Variance”).

6. A copy of this Interim Order shall be served on the Notice Parties within three (3) business days from entry.

7. There shall be a carve-out in the budget for the inclusion of fees due the Clerk of Court or the U.S. Trustee pursuant to 28 U.S.C. § 1930.

8. This Interim Order is without prejudice to the rights of the parties to seek any further or different relief, or modification of this Interim Order, including, but not limited to, relief from the automatic stay.

9. Except as expressly provided herein, the rights, claims, and interests of the Debtor, any prepetition lender, and all other parties in interest are hereby reserved.

10. A final hearing shall be held on *DATE at 10:00 a.m. at the United States Courthouse, 299 E. Broward Blvd., Courtroom 308, Fort Lauderdale, FL 33301*, and any objections to Debtor’s use of cash collateral must be served on Debtor’s counsel two (2) business days prior to the final hearing.

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Submitted by:

Chad Van Horn, Esq.

Florida Bar No.: 64500

VAN HORN LAW GROUP, P.A.

330 N. Andrews Ave., Suite 450

Fort Lauderdale, FL 33301

Telephone: (954) 765-3166

Facsimile: (954) 756-7103

Email: Chad@cvhlawgroup.com

(Chad Van Horn, Esq. is hereby directed to provide a conformed copy of this Order to all parties-in-interest and to file a Certificate of Service as to same.)

FILED

2016 Feb 26 09:06 AM

***** 201606613322 *****

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON
 CT LIEN SOLUTIONS; 8003313282
 Email SOSACK@UCCDIRECT.COM

B. SEND ACKNOWLEDGEMENT TO:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME (1a OR 1b) - Do Not Abbreviate or Combine Names

1a. ORGANIZATION'S NAME
 BOCA HEALTH & FITNESS, LLC

1b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

1c. MAILING ADDRESS Line One
 4180 OAK CIR
 This space not available.

MAILING ADDRESS Line Two | CITY | STATE | POSTAL CODE | COUNTRY
 BOCA RATON | FL | 33431 | US

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME (2a OR 2b) - Do Not Abbreviate or Combine Names

2a. ORGANIZATION'S NAME

2b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

2c. MAILING ADDRESS Line One
 This space not available.

MAILING ADDRESS Line Two | CITY | STATE | POSTAL CODE | COUNTRY

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - INSERT ONLY ONE SECURED PARTY NAME (3a OR 3b)

3a. ORGANIZATION'S NAME
 AMERICAN EXPRESS BANK, FSB

3b. INDIVIDUAL'S SURNAME | FIRST PERSONAL NAME | ADDITIONAL NAME(S)/INITIAL(S) | SUFFIX

3c. MAILING ADDRESS Line One
 4315 SOUTH 2700 WEST
 This space not available.

MAILING ADDRESS Line Two | CITY | STATE | POSTAL CODE | COUNTRY
 SALT LAKE CITY | UT | 84184 | US

4. This FINANCING STATEMENT covers the following collateral:

All assets of the Debtor, whether now owned or hereafter acquired or arising

5. ALTERNATE DESIGNATION (if applicable) LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR
 AG LIEN NON-UCC FILING SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX - YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX

All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.
 Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA 52692370