

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

In re:

QSL PORTAGE, LLC,
Debtor.

Case No. 17-21799-jra
Chapter 11

**MOTION OF DEBTOR QSL PORTAGE, LLC TO EXTEND AUTHORIZED USE OF
CASH COLLATERAL AND PROVIDE ADEQUATE PROTECTION**

QSL Portage, LLC, the above-captioned debtor and debtor in possession (the “**Debtor**”), pursuant to 11 U.S.C. §§ 361 and 363, and Fed. R. Bank. P. 4001, hereby requests that this Court enter an order extending the Debtor’s authorized use of cash collateral until April 1, 2018 and granting adequate protection to alleged secured creditors under the same terms and conditions as this Court’s July 28, 2017 *Final Order (II) Authorizing Use Of Cash Collateral And (II) Granting Adequate Protection* [Doc. 71] (the “**Cash Collateral Order**”). In support of this motion, the Debtor states as follows:

I. INTRODUCTION

A. The Debtor’s Chapter 11 Case

1. On June 26, 2017 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), in this Court. The Debtor continues to operate its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. The Debtor has all of the rights and powers of a trustee in bankruptcy pursuant to 11 U.S.C. § 1107(a).

2. No request has been made for the appointment of a trustee or examiner, and no official committee of unsecured creditors has been appointed by the Office of the United States Trustee.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The Debtor is an Indiana limited liability company that has operated the Quaker Steak & Lube restaurant located at 6245 Ameriplex Dr., Portage, IN 46368 since 2006.

5. Shortly before the Petition Date, the Debtor's franchisor, QSL Franchise Systems LLC (the "**Franchisor**"), improperly and wrongfully purported to terminate the Debtor's franchise, thereby jeopardizing the Debtor's ability to continue operating its business and the livelihood of the Debtor's approximately 80 employees.

6. On the Petition Date, the Debtor initiated an adversary proceeding by filing a complaint against Franchisor for damages related to Franchisor's prepetition misconduct. Debtor recently filed an amended complaint to add stay violation claims against Franchisor for its ongoing misconduct and additional damages incurred by the Debtor. At bottom, the Debtor filed bankruptcy to preserve the going concern value of its business while it explores a financial restructuring or sale through chapter 11.

B. The Cash Collateral Order

7. In its original motion to authorize use of cash collateral and grant adequate protection [Doc. 7], the Debtor identified American Express Bank, FSB ("**American Express**") and US Foods, Inc. ("**US Foods**" and together with American Express, the "**Creditors**"), as potential secured creditors with interests in cash collateral.

8. Upon review of IRS' objection to the cash collateral motion and further investigation of IRS' proof of claim and related lien notices, the Debtor determined that IRS has a priority secured claim in front of the Creditors. Accordingly, the Debtor modified the Cash

Collateral Order to provide adequate protection to IRS (as well as the Creditors) and obtained IRS' consent to the use of cash collateral in exchange for certain forms of adequate protection.

9. The Cash Collateral Order currently provides for the Debtor's use of cash collateral in accordance with the Budget attached thereto through the week of November 20, 2017 (the "**Termination Date**").

10. As adequate protection for any use or diminution in the value of their interests in the Debtor's prepetition assets (the "**Prepetition Collateral**"), including cash collateral, the Cash Collateral Order granted the IRS and the Creditors valid, enforceable, non-avoidable, and fully perfected liens of the highest available priority upon (i) any property that the Debtor acquires after the Petition Date including, without limitation, any inventory acquired during the Debtor's postpetition operations, but excluding any avoidance actions under chapter 5 of the Bankruptcy Code, and (ii) any proceeds generated from such property, in the same order of priority of liens that existed on the Petition Date (the "**Adequate Protection Liens**"). The Adequate Protection Liens are (i) limited to the extent of the aggregate diminution subsequent to the Petition Date in the value of the IRS's and the Creditors' respective interests in the Prepetition Collateral (including the cash collateral subject to the Motion), whether by depreciation, use, sale, loss, or otherwise, and (ii) subject only to prior perfected and unavoidable liens in property of the Debtor's estate as of the Petition Date.

11. The Cash Collateral Order further provides that the grant of adequate protection provided therein is without prejudice to the rights of IRS and the Creditors to seek additional adequate protection of their interests in the Debtor's property, and that by virtue of 11 U.S.C. § 507(b), the IRS and the Creditors may also assert superpriority administrative expense status to

the extent that the Adequate Protection Liens are insufficient to protect them from any diminution in the value of their interests in cash collateral.

12. The Cash Collateral Order expressly states that it is without prejudice to the Debtor's right to seek authority to use additional cash collateral or borrow funds pursuant to 11 U.S.C. § 364 if the Debtor determines that the cash collateral use authorized by this Order is insufficient or if an extension of the Termination Date is necessary. Furthermore, the Debtor's authority to use any cash collateral of the IRS and the Creditors shall extend through the Termination Date unless subsequently extended by written agreement of the Debtor, the IRS and the Creditors, or pursuant to further order of the Court.

13. Finally, in resolution of the prior objection filed by the Franchisor, the Cash Collateral Order provides that the entry of the order was without prejudice to the respective rights and obligations, if any, of the Debtor and the Franchisor related to the franchise agreement, including the question of whether the termination of the franchise agreement should be rescinded, which is the subject of adversary proceeding no. 17-02062, that the order did not constitute authorization for the Debtor's continued use of the Quaker Steak & Lube franchise, and that the parties reserved their rights and objections regarding the Debtor's continued use of the Quaker Steak & Lube franchise.

II. REQUESTED AUTHORITY TO CONTINUE CASH COLLATERAL USE

14. By this motion, the Debtor requests entry an order extending the Debtor's authorized use of cash collateral through April 1, 2018, granting adequate protection to IRS and the Creditors under the same terms and conditions as set forth in the Cash Collateral Order, and including the same reservation of rights language for the Franchisor.

15. The Debtor requires the continued use of cash collateral in order to continue its operations and to maintain and preserve the value of its property pending a sale or the

confirmation of a chapter 11 plan. The Debtor's efforts in this regard have been delayed pending resolution of the lawsuit against QSL Franchise Systems. Until that litigation is resolved, the Debtor is not in a good position to market its assets for sale or formulate a plan of reorganization.

16. Accordingly, and pursuant to 11 U.S.C. § 363(c)(2), the Debtor requests authority to continue its authorized use of cash collateral through April 1, 2018 in accordance with the provisions of the proposed *Extended Final Order (II) Authorizing Use Of Cash Collateral And (II) Granting Adequate Protection* attached hereto (the "**Extension Order**") and the proposed budget attached as Exhibit 1 thereto (the "**Extension Budget**").

17. The proposed Extension Order contains substantially the same terms and conditions as the Cash Collateral Order. A blacklined comparison showing the specific differences in wording between the proposed Extension Order and the Cash Collateral Order is attached hereto as **Exhibit A**.

18. The proposed Extension Budget provides for the payment of ongoing expenses incurred in the ordinary course of the Debtor's business through April 1, 2018. These expenses include, without limitation, inventory costs, payroll, taxes, rent (including catch-up payments to bring rent current by November 6), and insurance. The proposed Extension Budget also provides for professional fee payments to Debtor's counsel and the United States Trustee for statutory quarterly fees.

19. The Debtor's proposed use of cash collateral as described in the proposed Extension Order and Budget is designed to preserve the value of the Debtor's property and thereby adequately protect the value of the IRS' and the Creditors' interests in the Debtor's property as of the Petition Date, and the relief requested in this motion is otherwise appropriate under the circumstances.

III. NOTICE

20. Notice of this Motion has been provided to: (a) IRS and the Creditors; (b) the United States Trustee; (c) the entities included on any list required by Fed. R. Bankr. P. 1007; and (d) parties requesting notice or having filed a notice of appearance in the case, with a 21-day objection deadline.

WHEREFORE, pursuant to 11 U.S.C. §§ 361 and 363, the Debtor requests the entry of an order, substantially in the form of the proposed Extension Order, and specifically: (i) authorizing the Debtor to continue its use of cash collateral through April 1, 2018; (ii) authorizing the Debtor to provide adequate protection in favor of IRS and the Creditors in the manner and to the extent described herein; and (iii) granting such other and further relief as is just and to which the Debtor may be entitled under the circumstances.

Dated: October 23, 2017

Respectfully submitted,

QSL Portage, LLC

By: /s/ Gordon E. Gouveia II

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