

SO ORDERED: July 18, 2017.



  
Jeffrey J. Graham  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 ) Case No. 17-03613-JJG-11  
EVERMILK LOGISTICS, LLC, )  
Debtor. )

**FINAL ORDER AUTHORIZING DEBTOR’S USE OF CASH COLLATERAL**

This matter is before the Court on the Motion for Order Authorizing use of Cash Collateral and Requesting Preliminary and Final Hearing (“Cash Use Motion”) filed by the Debtor on May 16, 2017 [Docket No. 4]. At the hearing held on May 18, 2017, the Internal Revenue Service (“IRS”) objected to the relief sought by the Debtor. At the conclusion of the hearing, this Court granted interim relief requested by the Cash Use Motion [Docket No. 32] and set the Cash Use Motion for final hearing on June 14, 2017, as subsequently continued to

July 10, 2017 (“Final Hearing”). At the Final Hearing, the Debtor and the Internal Revenue Service advised the Court on the record that an agreement had been reached with respect to Debtor’s use of cash and cash equivalents in which the IRS asserts a prepetition lien. No other party filed an objection or raised an objection at the Final Hearing.

The Court, having considered the Cash Use Motion, the statements of counsel at the Final Hearing, and being otherwise advised in the premises now FINDS AND ORDERS:

1. The Cash Use Motion is granted and Debtor is authorized on a final basis to use its cash and cash equivalents as those terms are defined in 11 U.S.C. § 363(a) (“Cash Collateral”) in which the IRS asserts a prepetition perfected security interest to pay expenses arising in the ordinary course of Debtor’s business and/or as otherwise authorized by order of this Court on the following terms and conditions:

- a. The Debtor shall pay the IRS the sum of \$7068.54 on July 14, 2017, and, \$7068.54 on the 1st day of each month thereafter as adequate protection pursuant to 11 U.S.C. § 361(1), which payments shall be applied to reduce the taxes owed. These payments will continue until the earlier of one of the following events: (1) dismissal, (2) conversion to Chapter 7, or (3) confirmation of a plan of reorganization. Debtor shall send these payments, by mail to: Elizabeth Medina, Internal Revenue Service, 575 North Pennsylvania Street, Mail Stop SB380, Indianapolis, Indiana 46204.
- b. As additional adequate protection, the IRS is granted replacement liens in the Debtor’s postpetition property but only to the extent that Debtor’s prepetition collateral subject to federal tax liens as of the commencement of the case is consumed or otherwise disposed of. Subject to challenge by a party in interest, the IRS is

- deemed to have a prepetition secured claim in the amount of \$383,815.03 for purposes of this Order.
- c. The Debtor shall keep current in deposit and payment of its postpetition tax liabilities as they become due by properly making all federal income tax withholding and FICA tax deposits and all federal FUTA tax deposits. Debtor shall within two days after making a tax deposit report the same by mail to: Elizabeth Medina, Internal Revenue Service, 575 North Pennsylvania Street, Mail Stop SB380, Indianapolis, Indiana 46204.
  - d. Debtor shall timely file any and all necessary postpetition federal tax returns with the SB/SE Compliance, Internal Revenue Service, at the above-stated address, and the IRS acknowledges that Debtor is currently working on bringing its prepetition tax filings current.
  - e. At all times during the pendency of this case, the Debtor shall maintain in full force and effect insurance coverage on the property subject to the Federal tax liens, insuring the reasonable value of said property against loss or damage by theft and/or casualty, subject to the customary deductibles in regard to such coverage. The United States of America, IRS, shall be designated on such policy as an additional insured as its interest may appear, by appropriate endorsement of any such policy. Within thirty (30) days of the entry of this Order, the Debtor shall provide the IRS with evidence of compliance by mail addressed to Elizabeth Medina, Internal Revenue Service, 575 North Pennsylvania Street, Mail Stop SB380, Indianapolis, Indiana 46204 .
  - f. Should the Debtor fail to comply with any of the provisions of subparagraphs 1.a through 1.e herein, the IRS shall provide written electronic notice of such failure to

the Debtor and to the Debtor's attorney. If seven (7) days after notification, the default is not cured, the IRS is authorized to file a motion alleging the default with supporting affidavit for the purpose of seeking stay relief provided by 11 U.S.C. § 362 from the Court. The IRS shall be entitled to a hearing on the motion, subject to the Court's calendar, on an expedited basis of not less than 10 days from the filing of the motion and the Debtor shall make any written response not less than two business days prior to the hearing.

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