

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

In re: ) Case No: 18-20218  
J & D Dairy, Inc. )  
Debtor-in-Possession ) Chapter 11  
)  
) Hon. Daniel Opperman

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**DEBTOR-IN-POSSESSION'S FIRST DAY MOTION FOR ORDER  
AUTHORIZING USE OF CASH COLLATERAL AND GRANTING ADEQUATE  
PROTECTION**

NOW COMES Debtor-in-Possession, J & D Dairy, Inc., by and through Counsel, and for its First Day Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection states as follows:

1. Debtor-in-Possession, J & D Dairy, Inc. ("Debtor"), a Michigan corporation, filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq. ("Code") on February 9, 2018 ("Petition Date").
2. Debtor's principals, Jayme and Mary Allen, also filed for Chapter 11 relief in this Court as case number 18-20203.
3. A committee of creditors holding unsecured claims has not been appointed in accordance with Section 1102 of the Code.
4. Debtor is authorized to operate its business under sections 1107 and 1108 of the Bankruptcy Code.
5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1334(b), 11 U.S.C. 363 and L.B.R. 4001-2(a) (E.D.M.).
6. This matter is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(M).
7. The Debtor, a Michigan corporation operates a dairy farm in Ossineke, Michigan.

8. It should be noted that, not surprisingly, the Debtor and the Allens have somewhat cluttered the issues in this case because the Allens own the land and buildings and some of the farm equipment in their personal name, and some of the personal property is in the Debtor's name – most importantly, the dairy herd was purchased under the name of J & D Dairy, Inc. The major credit financing the herd and equipment financing was Chemical Bank.
9. The farm was run rather successfully at a time when milk was selling for \$18.00+ per hundred weight. The farm did not run so smoothly when the price of milk plummeted to around \$13.00 per hundred weight. It goes without saying that a drop in revenues of roughly 30% hurt the profitability of the farm while feed and other costs were relatively fixed.
10. With respect to the Debtor, the milk was sold through the Michigan Milk Producers Association (the "MMPA"). The MMPA has a central selling point for the milk that their member farms produce. The MMPA then cuts bi-monthly checks to the member for the milk that is sold.
11. In February 2017, the Debtor, through Mary Allen, signed a "milk assignment" which authorized the MMPA to divert \$11,543.44 of the monthly milk check to Chemical Bank.
12. The milk assignment is not a true assignment or sale of milk, but is, in reality, a security device for the payment of Chemical Bank's debt. It is to be noted that the assignment would, by its terms, no longer be honored once the debt to Chemical Bank was paid. Also, the assignment can be terminated upon written notice by the Debtor to the MMPA.
13. This assignment has caused great hardship as milk prices dropped, rendering it very difficult for the Debtor and the Allens to pay other bills that need to be paid.

14. The Debtor has commenced this case to facilitate a reorganization of its operations, and believes its efforts through this Chapter 11 Case will maximize recovery to all creditors and other parties in interest.
15. It is unclear whether the milk assignment truly constitutes cash collateral. Nevertheless, the Debtor is filing the motion to authorize the use of cash collateral out of an abundance of caution. The milk assignment was still in effect on the date of filing – although the Debtor is terminating the assignment forthwith pursuant to the terms of the milk assignment. The expected milk check from the MMPA is expected to be roughly \$18,000.00.
16. Chemical Bank may also have a security interest in any deposit accounts that the Debtor has with Chemical Bank.
17. The creditors who may have cash collateral are:
  - a. Chemical Bank – as described above.
18. Debtor is cash poor at the time of filing due to the milk assignment which deducts over \$11,000 from the bi-monthly milk check. Little is left to pay for feed and for the Allens to draw any sort of salary. Without the use of cash collateral, Debtor struggles to make payroll and keep the operations afloat.
19. Debtor needs the use of the funds constituting the milk check and other deposit accounts to run its business operations – including paying employees, withholding and FICA taxes, fuel vehicles, insurance, and all the other normal business expenses. Without the use of said cash collateral on an expedited basis, Debtor fears that it may become unable to pay its employees, make equipment and other mortgage payments, taxes, etc. described above.

20. Debtor likely will be unable, in the ordinary course of business or otherwise, to obtain unsecured credit under §§ 364(a) and 503(b)(1) of the Code and needs use of cash collateral to continue operations.
21. Debtor estimates that its current cash collateral needs are approximately \$20,000.00 on an interim emergency basis for the month of February and into to avoid irreparable harm.
22. As a condition of use of the aforesaid cash collateral, the aforementioned secured creditors are entitled to adequate protection pursuant to §§ 361 and 363 of the Bankruptcy Code.
23. L.B.R. 4001-2(a) (E.D.M.) provides in part:

A motion for use of cash collateral under 11 U.S.C. §363(c)(2) or to obtain credit under 11 U.S.C. §364(c) or (d) shall explicitly state the adequate protection offered the creditor, the moving party's position as to the value of each of the secured interests to be protected, and shall contain a summary of the other essential terms of the proposed use of cash collateral or post-petition financing...

24. Debtor has attached projections for the months of February 1, 2018 through July 31, 2018. Those projections are based on the historical income for the overall farm – it is the intent of the Debtor and the Allens to file for joint administration and file a combined plan.
25. Debtor proposes to pay the secured creditors the following amounts as adequate protection:

Chemical Bank	\$1,000.00
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26. Pursuant to Bankruptcy Rule 4001(b)(2) and Local Bankruptcy Rules 4001-2 and 9013-4, Debtor requests that the Court enter an order on a preliminary basis authorizing Debtor's use of cash collateral and granting adequate protection immediately. Entry of such an

order is essential for the Debtor to continue operating the farm and to collect milk checks and avoid immediate and irreparable harm to the Debtor.

27. Pursuant to Local Bankruptcy Rule 4001-2(c) (E.D.M.), Debtor states the following in support of its request for a preliminary order granting such authorization: a. the creditors identified in paragraph (17) are the only creditors with any interest in cash collateral. b. The requirements of Local Bankruptcy Rule 4001-2(c)(3) through (5) are addressed in the proposed order attached as Exhibit A. c. Debtor has attached an affidavit as Exhibit B satisfying the requirement of Local Bankruptcy Rule 4001-2(c)(6).

WHEREFORE, Debtor-in-Possession respectfully requests that this Court enter an Order authorizing the use of cash collateral as set forth in the proposed Order attached hereto.

Respectfully Submitted,

/s/ Brian A. Rookard

Edward J. Gudeman (P-14454)

Brian A. Rookard (P-69836)

Gudeman and Associates, P.C.

Counsel for Debtor-in-Possession

1026 West 11 Mile Road

Royal Oak, MI 48067

Telephone: 248-546-2800

brookard@gudemanlaw.com

Dated: February 13, 2018

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

In re: ) Case No: 18-20218  
J & D Dairy, Inc. )  
Debtor-in-Possession ) Chapter 11  
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**COVER SHEET FOR MOTION TO USE CASH  
COLLATERAL OR TO OBTAIN CREDIT**

The debtor has filed a motion to use cash collateral or to obtain postpetition financing, which is attached to this Cover Sheet. In accordance with LBR 4001-2(b) (E.D.M.), the debtor has identified below, by page and paragraph number, the location in the proposed order accompanying the motion of each of the following provisions:

Provision	Contained in Proposed Order	Location in Proposed Order
(1) Provisions that grant liens on the estate's claims and causes of action arising under Chapter 5 of the Code.	<input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No	Page ____, ¶ __
(2) Provisions that grant cross-collateralization protection to the prepetition secured creditor (i.e., clauses that secure prepetition debt with categories of collateral that were not covered by the secured party's lien prepetition) other than liens granted solely as adequate protection against diminution in value of a prepetition creditor's collateral.	<input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No	Page ____, ¶ __
(3) Provisions that establish a procedure or conditions for relief from the automatic stay.	<input type="checkbox"/> Yes  <input checked="" type="checkbox"/> No	Page ____, ¶ __

(4) Provisions regarding the validity or perfection of a secured creditor's prepetition liens or that release claims against a secured creditor.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(5) Provisions that prime any lien without that lienholder's consent.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(6) Provisions that relate to a sale of substantially all of the debtor's assets.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(7) Provisions for the payment of professional fees of the debtor or any committees, including any carve-outs for such payments.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(8) Provisions for the payment of prepetition debt.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(9) Provisions that waive the debtor's exclusive right to file or solicit acceptances of a plan during the time periods specified in 11 U.S.C. § 1121.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(10) Provisions that require the debtor's plan to be on terms acceptable to the secured creditor.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(11) Provisions that require or prohibit specific terms in the debtor's plan.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(12) Provisions establishing that proposing a plan inconsistent with the order constitutes a default.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __

(13) Provisions that waive surcharge under 11 U.S.C. § 506(c).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(14) Provisions that address the rights and obligations of guarantors or co-obligors.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(15) Provisions that prohibit the debtor from seeking approval to use cash collateral without the secured creditor's consent.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(16) Provisions that purport to bind a subsequent trustee.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __
(17) Provisions that obligate the debtor to pay any of a secured creditor's professional fees.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Page ____, ¶ __

Respectfully Submitted,

/s/ Brian A. Rookard  
Edward J. Gudeman (P-14454)  
Brian A. Rookard (P-69836)  
Gudeman and Associates, P.C.  
Counsel for Debtor-in-Possession  
1026 West 11 Mile Road  
Royal Oak, MI 48067  
Telephone: 248-546-2800  
brookard@gudemanlaw.com

Dated: February 13, 2018



# EXHIBIT 1

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

In re:  
J & D Dairy, Inc.

Debtor-in-Possession

) Case No: 18-20218  
)  
) Chapter 11  
)  
) Hon. Daniel Opperman

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**(PROPOSED) ORDER AUTHORIZING DEBTOR'S USE OF CASH COLLATERAL  
AND GRANTING ADEQUATE PROTECTION**

This issue having come before this Court on the Debtor's Motion for Order Authorizing Use of Cash Collateral and Granting Adequate Protection, this Court having reviewed the Motion and this Order, and being otherwise duly apprised in the premises:

THEREFORE, IT IS ORDERED that the recital of facts as stated in Debtor's Motion are adopted by this Court as its findings of fact and that the Motion is granted and Debtor is authorized to use Cash Collateral as of the Petition Date, in accordance with the following provisions:

1. Solely in accordance with the terms and conditions below, the Debtor is authorized to receive, collect, and make use of the Cash Collateral in its possession and that it receives in the ordinary course of its business. Such use of the Cash Collateral shall be as needed for the reasonable and necessary operating expenses incurred in the ordinary course of the Debtor's business, including, but not limited to, current taxes incurred after the Petition Date, personal property taxes whether incurred before or after the "Petition Date," employee salaries, unpaid withholding taxes for the last pay period before any pay periods after the "Petition Date," property insurance, vehicle and farm equipment repairs and maintenance, utilities and other ordinary course charges necessary for Debtor's

operations, U.S. Trustee quarterly fees and court approved fees and expenses of professionals retained by the Debtor.

2. The maximum amount of cash collateral necessary to avoid immediate and irreparable harm is \$20,000.00. Debtor may use such cash collateral on an emergency basis only until the earlier of the date of the final hearing under paragraph (6) below or the date that the order would become a final order.
3. The following creditors shall receive monthly adequate protection payments beginning March 1, 2018, and the first (1<sup>st</sup>) of every month thereafter up through confirmation of any plan.

Chemical Bank	\$1,000.00
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4. Within twenty-four (24) hours of the entry of this Order, Debtor shall serve this Order upon the U.S. Trustee, all secured creditors, any Committee formed in this case and the twenty (20) largest creditors.
5. Pursuant to Local Bankruptcy Rule 4001-2(c)(3) (E.D.M.), this Court shall hold a final hearing on entry of this Order as follows:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Location: The Courtroom of the Honorable Daniel Opperman, 111 First St., Bay City, MI 48708.

6. This Order is a preliminary order. Any objections to entry of this Order as a final order must be filed within fourteen (14) days from the entry of this order; except that an official committee may file objections within fourteen (14) days after it is served with the entered order. If any objections are filed timely, the hearing scheduled in the preceding paragraph

of this Order shall be held as detailed. If no objections are timely filed, this Order may become a final Order.

# EXHIBIT 2

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

In re:  
J & D Dairy, Inc.

Debtor-in-Possession

) Case No: 18-20218  
)  
) Chapter 11  
)  
) Hon. Daniel Opperman  
)

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**AFFIDAVIT OF JAYME J. ALLEN IN SUPPORT OF DEBTOR'S FIRST DAY  
MOTION RE: CASH COLLATERAL**

1. In support of the Debtor, J & D Dairy, Inc.'s, First Day Motion For Authority to Use Cash Collateral, I hereby attest to the following:
2. I am a principal of J & D Dairy, Inc. (the "Debtor"), a Michigan corporation.
3. Except as otherwise stated, I make this Affidavit upon personal knowledge, and if called as a witness, could competently testify to the facts contained herein.
4. Debtor filed for protection under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on February 9, 2018 (the "Petition Date"), in the United States Bankruptcy Court for the Eastern District of Michigan—Bay City.
5. The Debtor continues to operate its business and manage its assets as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. I have been informed by counsel that no request has been made for the appointment of a trustee or examiner, and no official committee has been appointed to date by the Office of the United States Trustee.
6. The Debtor, a Michigan corporation, operates a dairy farm in Ossineke, Michigan, and owns, at current, slightly less than 60 dairy cows.
7. The farm was run rather successfully at a time when milk was selling for \$18.00+ per hundred weight. The farm did not run so smoothly when the price of milk plummeted to around \$13.00 per hundred weight. It goes without saying that a drop in revenues of roughly 30% hurt the profitability of the farm while feed and other costs were relatively fixed.

8. With respect to the Debtor, the milk that was produced was sold through the Michigan Milk Producers Association (the "MMPA"). The MMPA has a central selling point for the milk that their member farms produce. The MMPA then cuts a bi-monthly check to the Debtor for the milk that is sold.
9. In February 2017, the Debtor, through my wife Mary Allen, sign a "milk assignment" which authorized the MMPA to divert \$11,543.44 of the monthly milk check to Chemical Bank.
10. This assignment has caused great hardship as milk prices dropped, rendering it very difficult for the Debtor and the Allens to pay other bills that need to be paid.
11. The combined income and expense projections for both J & D Dairy, Inc. and my wife and I are as stated in the attached projections.
12. I expect that our revenue and expenses should not change drastically over the coming year. In fact, my wife and I are looking to leasing additional dairy cows to take advantage of excess capacity and generate additional revenues.

Further, Affiant sayeth not.

/s/ Jayme J. Allen  
Jayme J. Allen  
President  
J & D Dairy, Inc.

Subscribed and duly affirmed before me in  
Oakland County on this 12<sup>th</sup> day of February 2018

/s/ Edward Gudeman  
Edward Gudeman  
Notary Public Oakland County, MI  
Acting in the County of Oakland  
My Commission expires July 25, 2020

# EXHIBIT 3



Six (6) Month Cash Flow Projection of Income and Expenses for J & D Dairy, Inc.

Income	March	April	May	June	July	August	Totals
# of Cows Milking*	72	72	74	72	74	72	
Lbs of milk per cow per day	62	62	64	65	64	64	
Lbs. of Milk per month	133,920	133,920	142,080	140,400	142,080	138,240	
Milk Price	13.76	13.94	14.13	14.52	15.02	15.46	
Quality Premium	0.50	0.50	0.50	0.50	0.50	0.50	
Total Milk Price	14.26	14.44	14.63	15.02	15.52	15.96	
Milk Check Amount	<u>\$19,097</u>	<u>\$19,338</u>	<u>\$20,786</u>	<u>\$21,088</u>	<u>\$22,051</u>	<u>\$22,063</u>	
Check Deductions	\$1,244	\$1,594	\$1,794	\$2,185	\$2,361	\$2,581	
<b>Total Milk Monthly Income</b>	<b><u>\$17,853</u></b>	<b><u>\$17,744</u></b>	<b><u>\$18,992</u></b>	<b><u>\$18,903</u></b>	<b><u>\$19,690</u></b>	<b><u>\$19,482</u></b>	<b>112,664.27</b>
<b>Expenses-Dairy:</b>							
AquaPure/Water Softner	\$23	\$23	\$23	\$23	\$23	\$23	
Auto Gas	\$75	\$75	\$75	\$95	\$120	\$120	
Barn Insurance	\$566	\$566	\$566	\$566	\$566	\$566	
Breeding/Vet	\$250	\$275	\$250	\$300	\$275	\$250	
Cattle Lease Expense	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	\$1,100	
Diesel Fuel	\$0	\$250	\$200	\$500	\$650	\$650	
Feed	\$6,372	\$6,372	\$6,549	\$6,372	\$6,549	\$6,372	
Hired Labor	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	\$1,200	
Jewells	\$92	\$92	\$92	\$92	\$92	\$92	
Life Insurance	\$365	\$365	\$365	\$365	\$365	\$365	
Officer Draw	\$4,500	\$4,500	\$4,500	\$4,500	\$4,500	\$4,500	
Power Bill	\$590	\$590	\$590	\$590	\$610	\$625	
Propane	\$165	\$165	\$165	\$165	\$165	\$165	
Saw Dust	\$100	\$100	\$100	\$100	\$100	\$100	
misc **	<u>\$770</u>	<u>\$784</u>	<u>\$789</u>	<u>\$798</u>	<u>\$816</u>	<u>\$806</u>	
<b>Total</b>	<b><u>\$16,168</u></b>	<b><u>\$16,457</u></b>	<b><u>\$16,564</u></b>	<b><u>\$16,766</u></b>	<b><u>\$17,131</u></b>	<b><u>\$16,934</u></b>	
<b>NET CASH INCOME (LOSS)</b>	<b><u>\$1,685</u></b>	<b><u>\$1,287</u></b>	<b><u>\$2,428</u></b>	<b><u>\$2,137</u></b>	<b><u>\$2,559</u></b>	<b><u>\$2,548</u></b>	
<b>Adequate Protection-Chemical Bank</b>	\$1,050	\$1,050	\$1,050	\$1,050	\$1,050	\$1,050	
<b>Adequate Assurance-Ferralgas</b>	\$500						
<b>Adequate Assurance-Utilities</b>	<u>\$1,200</u>						
<b>Total Adequate Protection &amp; Adequate Assurance Payments</b>	<b><u>\$2,750</u></b>	<b><u>\$1,050</u></b>	<b><u>\$1,050</u></b>	<b><u>\$1,050</u></b>	<b><u>\$1,050</u></b>	<b><u>\$1,050</u></b>	
<b>NET CASH INCOME (LOSS) AFTER ADEQUATE PROTECTION AND ADEQUATE ASSURANCE PAYMENTS</b>	<b><u>-\$1,065</u></b>	<b><u>\$237</u></b>	<b><u>\$1,378</u></b>	<b><u>\$1,087</u></b>	<b><u>\$1,509</u></b>	<b><u>\$1,498</u></b>	<b>\$4,645</b>

\* DIP will lease 25 head of Dairy Cattle beginning on or about March 1, 2018

\*\* Miscellaneous expenses are calculated as 5% of all other monthly expenses.