

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

In re: )  
Captain Nemos Subs and Salads, L.L.C. ) Case No: 18-41307  
(47-4379705) )  
28801 Telegraph Rd. ) Chapter 11  
Flat Rock, MI 48134 )  
Debtor-in-Possession ) Hon. Mark A. Randon

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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, Captain Nemos Subs and Salads, L.L.C., 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, Captain Nemos Subs and Salads, L.L.C. ("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 1, 2018 ("Petition Date").
2. A committee of creditors holding unsecured claims has not been appointed in accordance with Section 1102 of the Code.
3. Debtor is authorized to operate its business under sections 1107 and 1108 of the Bankruptcy Code.
4. 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.).
5. This matter is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(M).
6. The Debtor, a Michigan corporation is/was the owner of several sub and salad shops in the Downriver area of Southeast, Michigan. Captain Nemos sells subs, salads, appetizers, and other food goods and drinks to customers.

7. Two of the stores that were owned by the corporate entity were closed prior to the filing of this bankruptcy case and are defunct. Debtor is currently operating one store at a location in Flat Rock, Michigan, which is the store being saved through this bankruptcy filing.
8. The business is located at 28801 Telegraph Rd., Flat Rock, MI 48134.
9. 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.
10. The reason for the business getting in trouble is the typical “growing too fast.” The business ran into tax problems (which are the primary reason for the filing of this bankruptcy case). Also, the business borrowed money on terms which hampered the business cash flow.
11. Various creditors of the Debtor have filed UCC statements, all of which attach to equipment leased to the Debtor. However, the State of Michigan lien would attach to all personal property of the Debtor. The Debtor has some forms of money and deposits at the time of filing. The Debtor’s daily sales and credit card receivables could very well constitute additional cash collateral.
12. The creditors who may have cash collateral are:
  - a. The State of Michigan, Department of Treasury, who has filed several Notices of State Tax Lien filed under the UCC provisions with Secretary of State.
  - b. Rapid Financial Services, L.L.C. d/b/a Rapid Advance. Rapid Advance “purchased” \$52,000.00 worth of future credit card payment receivables of Captain Nemos for the price of \$40,000.00. The documentation provides that

Rapid Advance *may* file a UCC financing statement that covers “future accounts, chattel paper, deposit accounts, personal property, assets and fixtures, general intangibles, instruments, equipment, inventory wherever located, and proceeds now or hereafter owned or acquired by merchant.” Of the foregoing, the only collateral existing at the time of filing which *might* secure the obligation owed to Rapid Advance is the Debtor’s deposit accounts. Approximately \$7,000.00 is still owed to Rapid Advance.

13. Debtor is cash poor at the time of filing due to the various agreements he had to repay creditors. Without the use of cash collateral, Debtor struggles to make payroll and keep his operations afloat.
14. Debtor needs the use of the funds (which may constitute cash and other deposit accounts) to run his business operations – including paying employees, withholding and FICA taxes, fuel the delivery vehicle, 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, equipment lease payments, taxes, etc. described above.
15. 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.
16. As set forth in the attached Affidavit, Debtor estimates that his current cash collateral needs are approximately \$50,000.00 on an interim emergency basis for the month of February to avoid irreparable harm.

17. 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.

18. 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...

19. 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 Flat Rock location. At this time, the Debtor's 2017 and an income statement has been attached.

20. Debtor proposes to pay the secured creditors the following amounts as adequate protection:

State of Michigan Department of Treasury	\$300.00
Rapid Financial Services LLC	\$100.00

21. 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 collecting rents and would avoid immediate and irreparable harm to the Debtor.

22. 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 (12) 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 1, 2018



(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 1, 2018

# EXHIBIT 1

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

In re: )  
Captain Nemos Subs and Salads, L.L.C. ) Case No: 18-41307  
(47-4379705) )  
28801 Telegraph Rd. ) Chapter 11  
Flat Rock, MI 48134 )  
Debtor-in-Possession ) Hon. Mark A. Randon

---

**(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 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 \$50,000.00. 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.

State of Michigan – Department of Treasury            \$300.00

Rapid Financial Services LLC                                    \$100.00

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  
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**AFFIDAVIT OF BRETT MANNING IN SUPPORT OF DEBTOR’S FIRST DAY  
MOTION RE: CASH COLLATERAL**

In support of the Debtor, Captain Nemos Subs and Salads, L.L.C.’s, First Day Motion For Authority to Use Cash Collateral, I hereby attest to the following:

1. I am a principal of Captain Nemos Subs and Salads, L.L.C. (the “Debtor”), a Michigan limited liability company.
2. 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.
3. Debtor filed for protection under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on February 1, 2018 (the “Petition Date”), in the United States Bankruptcy Court for the Eastern District of Michigan—Detroit.
4. 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.
5. The Debtor, a Michigan corporation is/was the owner of several sub and salad shops in the Downriver area of Southeast, Michigan. Captain Nemos sells subs, salads, appetizers, and other food goods and drinks to customers.
6. Two of the stores that were owned by the corporate entity were closed prior to the filing of this bankruptcy case and are defunct. Debtor is currently operating one store at a location in Flat Rock, Michigan, which is the store being saved through this bankruptcy filing.

7. The business is located at 28801 Telegraph Rd., Flat Rock, MI 48134.
8. Captain Nemos' business is mildly seasonal, doing better in the Spring, Summer, and Fall. I project that revenues for Captain Nemos will be in the area of \$625,000.00 over the next twelve months, which will provide sufficient rental cash flow to the Debtor to pay new utilities charges as they come due.
9. The income and expense projections for Captain Nemos trailing twelve months are as stated in the attached projections.
10. I expect that our revenue and expenses should not change drastically over the coming year. With some years under our belt, and the closing of the unprofitable portions of the business, I have a better idea of the income and expenses that can be expected in running the facility.

Further, Affiant sayeth not.

/s/ Brett Manning

Brett Manning

Principal

Captain Nemos Subs and Salads, L.L.C.

Subscribed and duly affirmed before me in  
Oakland County on this 1<sup>st</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

Schedule A. to Motion to Use Cash Collaterals  
 Captain Nemos Subs and Salads LLC  
 Monthly Cash Flow Revenue vs Expenses

	<u>Month 1</u>	<u>Month 2</u>	<u>Month 3</u>	<u>Month 4</u>	<u>Month 5</u>	<u>Month 6</u>
Gross Revenue:	44,100.00	46,305.00	48,510.00	55,125.00	55,125.00	55,125.00
<b><u>Expenses</u></b>						
Advertising	500.00	500.00	500.00	500.00	500.00	500.00
Auto & Ins.	500.00	500.00	500.00	500.00	500.00	500.00
Bank service Fees	25.00	25.00	25.00	25.00	25.00	25.00
Discounts	2,205.00	2,315.25	2,425.50	2,756.25	2,756.25	2,756.25
Food & Supplies	13,230.00	13,891.50	14,553.00	16,537.50	16,537.50	16,537.50
Insurance	250.00	250.00	250.00	250.00	250.00	250.00
License Permits	50.00	50.00	50.00	50.00	50.00	50.00
Manager Draw	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00	2,500.00
Office Supplies	150.00	150.00	150.00	150.00	150.00	150.00
Outside Service	100.00	100.00	100.00	100.00	100.00	100.00
Payroll Gross	12,500.00	13,125.00	13,750.00	15,625.00	15,625.00	15,625.00
Payroll Taxes (ER FICA/FUTA/SUTA)	1,500.00	1,575.00	1,650.00	1,875.00	1,875.00	1,875.00
Phones	350.00	350.00	350.00	350.00	350.00	350.00
Professional Fees	600.00	600.00	600.00	600.00	600.00	600.00
Rent	1,725.00	1,725.00	1,725.00	1,725.00	1,725.00	1,725.00
Repairs	500.00	500.00	500.00	500.00	500.00	500.00
Sales Tax	2,646.00	2,778.30	2,910.60	3,307.50	3,307.50	3,307.50
Security	75.00	75.00	75.00	75.00	75.00	75.00
Telephone	340.00	340.00	340.00	340.00	340.00	340.00
Uniform	200.00	210.00	220.00	250.00	250.00	250.00
Utilities	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00	1,300.00
MISC	<u>400.00</u>	<u>425.00</u>	<u>450.00</u>	<u>500.00</u>	<u>500.00</u>	<u>500.00</u>
Total expenses	<u>41,646.00</u>	<u>43,285.05</u>	<u>44,924.10</u>	<u>49,816.25</u>	<u>49,816.25</u>	<u>49,816.25</u>
Net Cash Flow Income	<u>2,454.00</u>	<u>3,019.95</u>	<u>3,585.90</u>	<u>5,308.75</u>	<u>5,308.75</u>	<u>5,308.75</u>
Adequate Protection	100.00	100.00	100.00	100.00	100.00	100.00
US Financial Servcies	212.50	212.50	212.50	212.50	212.50	212.50
Attorney Retainer Agreement	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00	2,000.00
Net Cash Flow	141.50	707.45	1,273.40	2,996.25	2,996.25	2,996.25