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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

In Re:  BULK EXPRESS LOGISTICS, INC.,  Debtor.	Case No. 17-24308  Chapter 11 Proceeding  Honorable
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**MOTION OF THE DEBTOR FOR ENTRY OF AN INTERIM ORDER  
AUTHORIZING USE OF CASH COLLATERAL AND APPROVING POST-  
PETITION FACTORING AGREEMENT NUNC PRO TUNC THE  
PETITION DATE**

Bulk Express Logistics, Inc., the debtor and debtor-in-possession (“Debtor”), by and through its counsel, Hellring Lindeman Goldstein & Siegal LLP, respectfully represents the following:

**BACKGROUND**

1. On July 14, 2017 (the “Petition Date”), the Debtor commenced with this Court a voluntary case (the “Chapter 11 Case”) under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business and manage its property as a Debtor-In-Possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code.

2. As of this date, no Official Committee of Unsecured Creditors has been formed. No trustee has been appointed in the within chapter 11 proceeding.

3. The Debtor refers the Court to the accompanying Declaration of Charlene M. Barnett-Lombard for the background facts regarding the Debtor’s business.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §1334 and pursuant to 11 U.S.C. §363 and 364. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.

**RELIEF REQUESTED AND BASIS THEREFOR**

5. Interstate Capital Corporation (“ICC”) is in the business of factoring invoices and accounts receivable. The Debtor has factored receivables with ICC for over ten years.

6. By the within motion, the Debtor is seeking authorization from this Court to use cash collateral pursuant to §363 of the Code *tunc pro tunc* to the Petition Date and to authorize the Debtor to continue its factoring arrangement with ICC post-Petition pursuant to §364. The Debtor is unable to obtain unsecured credit.

7. ICC asserts a first priority lien on most of the accounts receivable of the Debtor existing as of the Petition Date.

8. In order for the Debtor to continue business operations in the ordinary course, it is necessary that the Debtor be authorized to use cash collateral in accordance with §363 of the Code. The Debtor believes that ICC’s interest is adequately protected by the value of the Debtor’s accounts receivable which total approximately \$1,250,000.00.

9. In addition to seeking authorization to use cash collateral, the Debtor wishes to continue its factoring arrangement post-Petition pursuant to the terms of the Factoring Agreement entered into between the parties dated November 13, 2006, and the Amendment thereto dated July 1, 2015 (collectively “Factoring Agreement”). A copy of the Factoring Agreement is annexed hereto and made a part hereof as Exhibit “A”. Under the

Factoring Agreement, ICC will continue post-Petition to factor selected accounts receivable due and owing to the Debtor from its account debtors.

10. For the period from July 1, 2017 through December 31, 2017, the Debtor anticipates using approximately \$870,000.00-\$970,000.00 per month to pay the following items: payroll, taxes, utilities, insurance and other operating expenses as more particularly set forth in the budget annexed hereto as Exhibit "B".

11. Failure to authorize the use of cash collateral and post-Petition financing on an emergent basis will cause serious damage to the continuing operation of the Debtor, since the Debtor is without sufficient unencumbered funds to meet its ongoing payroll and other normal operating expenses.

12. The Debtor proposes to provide ICC with adequate protection to the extent of any diminution in value of its interest in the pre-petition collateral (including the cash collateral) resulting from the Debtor's use, sale or lease of the pre-petition collateral (including the cash collateral) during the Chapter 11 Case and the imposition of the automatic stay by providing ICC with replacement liens in all pre-petition collateral, which includes the Debtor's cash and accounts receivable. As further protection against any diminution in the value of ICC's interest in the pre-petition collateral and as further security for post-Petition factoring, ICC shall be granted super priority claims against the Debtor to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code.

13. The Debtor submits that the above proposed forms of adequate protection, as stated in the proposed interim Order, are: (1) necessary and appropriate under the circumstances of the Chapter 11 Case to ensure that the Debtor is able to continue to use cash collateral; and (2) fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) and 364(c)(1) of the Bankruptcy Code.

**LEGAL BASIS FOR RELIEF REQUESTED**

14. The Debtor's use of property of its estate is governed by section 363 of the Bankruptcy Code, which provides in pertinent part that:

If the business of the debtor is authorized to be operated under section...1108...of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

U.S.C. § 363(c)(1).

15. Section 363(e) of the Bankruptcy Code requires a debtor to adequately protect its secured creditors' interest in property to be used by the debtor against any diminution in value of such creditors' interest resulting from the debtor's use of the property.

16. What constitutes adequate protection is decided on a case-by-case basis. See In re Columbia Gas Sys., Inc., 1992 Bankr. LEXIS 2456 (Bankr. D. Del. Feb. 18, 1992); see also, In re Martin, 761 F.2d 472 (8th Cir. 1985); In re Mosello, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); In re Sw.Assocs., 140 B.R. 360 (Bankr. S.D.N.Y. 1992). The purpose of adequate protection is to shield a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. See In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992); In re Hubbard Power & Light, 202 B.R. 680 (Bankr. E.D.N.Y. 1996). Adequate protection can come in various forms, including payment of adequate protection fees, payment of interest, and granting of replacement liens and administrative claims.

17. Section 364(c) of the Bankruptcy Code provides that if the debtor-in-possession is unable to obtain unsecured credit allowable as an administrative expense under Section 503(b)(1) of the Bankruptcy Code, then the Court, after notice and a hearing,

may authorize the debtor-in-possession to obtain credit or incur debt on, inter alia, the following basis:

“(1) with priority over any or all administrative expenses of the kind specified in Section 503(b) or 507(b) of this title....”

11 U.S.C. Section 364(c)(1).

18. Bankruptcy Rules 4001(b) & (c) govern authorization for use of cash collateral and for obtaining post-Petition financing and provide that the Court may (i) permit the Debtor to use cash collateral and obtain post-Petition financing and grant the other permanent relief requested herein after a final hearing on at least 14 days’ notice; and (ii) authorize the Debtor to obtain emergency financing “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.”

19. Based upon the foregoing, this Court is authorized to grant the interim and final relief requested in the Motion to authorize and approve the use of cash collateral and the post-Petition Factoring Agreement with ICC.

**NOTICE**

20. Notice of this Motion and proposed form of order is being served on (i) the United States Trustee for the District of New Jersey; (ii) Interstate Capital Corporation, or its counsel; (iii) other secured creditors; and (iv) the Debtor’s twenty (20) largest unsecured creditors.

**NO PRIOR REQUEST**

21. No prior request for the relief sought in this Motion has been made to this or any other court.

