

**IN THE UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF  
OHIO, WESTERN DIVISION**

In re:

**PRO FLO INDUSTRIES, INC.**

Debtor

Case No.: 17-33184

Judge: WHIPPLE

**EMERGENCY MOTION OF PRO FLO  
INDUSTRIES, LLC FOR AUTHORITY TO  
USE CASH COLLATERAL IN THE  
ORDINARY COURSE OF BUSINESS**

Patricia A. Kovacs (0061780)

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Attorney for Debtor

The Debtor-in-Possession, Pro Flo Industries, Inc. (the “Debtor”), hereby submits this motion (the “Motion”) pursuant to sections 105(a), 361, 363(b)(1), 363(c)(2)(B), 541 and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (as amended, the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Bankruptcy Rules 4001-2 and 4001-3 for an order permitting the Debtor to use cash collateral, consisting of funds on deposit, accounts receivable and rolling receivables from customers which is subject to interests of the secured creditor Huntington Bank upon such terms and conditions as required by 11 U.S.C. Section 1205, 11 U.S.C. 362(c)(1) and

(2) and which the court deems just in the ordinary course of business of the Debtor as more fully explained in the memorandum attached hereto.

Respectfully submitted,

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Attorney for DIP

INTRODUCTORY STATEMENT PURSUANT TO BANKRUPTCY RULE 4001

The following is a summary of the relief requested in this Motion:

(i) the name of each entity with an interest in the cash collateral:

Huntington Bank 2361 Morse Rd. Columbus, OH 43229
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- Huntington Bank, by virtue of a note and UCC Filing dated August 26, 2016;

(ii) the purposes for the use of the cash collateral: The Debtor's ordinary and necessary operating expenses. The Debtor's business is continuing to function and the DIP proposes to continue operating the business as a going concern to the extent that cash is available in the Budget.

(iii) the material terms, including duration, of the use of the cash collateral: The cash collateral will be used by the Debtor from the time that the interim order approving this Motion is entered through the earlier of (i) the date of entry of an order terminating the Debtor's authority to use the cash collateral or (ii) the date of a final order confirming a plan of reorganization for the Debtor in this case.

(iv) any liens, cash payments, or other adequate protection that will be provided to each entity with an interest in the cash collateral or, if no additional adequate protection is proposed, an explanation of why each entity's interest is adequately protected. The adequate protection to be provided includes the following: Debtor provides that it will pay the regular monthly payment due on the account.

MEMORANDUM IN SUPPORT

I. BACKGROUND

1. On October 8, 2017 (the "Petition Date"), the Debtor commenced this case by filing a voluntary petition under Chapter 11 of the Bankruptcy Code.

2. The Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue of this case is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. No request has been made for the appointment of a trustee or examiner, and no statutory committee has been appointed in this case.

4. The Debtor owns and operates ProFlo Industries, LLC (“ProFlo”), which is an Ohio Limited Liability Company engaged in the airline refueling business. The principal customers of the business are multi-national companies providing goods, services and advice in the global aviation industry.

5. ProFlo consists of one shareholder: Terry N. Bosserman who owns 100% of the shares.

## II. RELIEF REQUESTED (CASH COLLATERAL)

### A. Summary of Essential Terms of Relief Requested regarding cash collateral:

The Debtor, through this Motion, requests the authorization to use its receivables and current bank balance in the ordinary course of business on the following essential terms:

(a) The Debtor seeks interim authority to use cash collateral as described above in order to fund the Debtor’s actual, ordinary and necessary operating expenses.

(b) The cash collateral to be used is the bank balance and receivables that the Debtor receives from the sale of goods and provisions of services in the airline refueling industry.

(c) The creditors’ interest, if any, in the inventory, equipment, accounts receivable and bank balance will be adequately protected because the Debtor will grant a replacement lien on any property secured by the UCC filing of the creditor named above.

(d) Payment of fees to the United States Trustee quarterly or monthly post-petition.

(e) Payment of necessary operating expenses of Debtor including taxes, payroll, utilities, operational costs, implements, payments under lease agreements to be assumed and as necessary for the day-to-day operation the business and other expenses as outlined on the budget attached hereto.

(f) Upon Court approval, necessary professional fees (payable pursuant to statute).

(g) Relief is requested nunc pro tunc to the date of the filing of the case.

Debtor **does not** anticipate a need at present to borrow funds.

In the event of default of 30 days or more in filing of monthly operating reports, U.S. Trustee fees or post-petition taxes, the Debtor shall be subject to the possible revocation of this proposed Cash Collateral Order and, at the request of a party in interest or the United States Trustee, a motion may be filed seeking the dismissal or conversion of the within case, or, in the alternative, Relief from the Automatic Stay.

B. Items specifically **not** to be included in the proposed Order pursuant to L.R. 4001-2;

Debtor states that pursuant to L.R. 4001-2 the proposed order will not contain, except as specifically provided here the following terms:

Cross Collateralization clauses, i.e., clauses that secure the repayment of pre-petition debt with post-petition assets in which the secured creditor would not otherwise have a security interest by virtue of its pre-petition security agreement or applicable law.

Roll-up clauses that provide for the proceeds of a post-petition loan to pay pre-petition debt.

Provisions or findings of fact that bind the estate or all parties in interest with respect to the waiver of claims against the secured creditor without first giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if appointed, at least 60 days from the date of its appointment to investigate such matter.

Provisions or findings of fact that bind the estate and all parties in interest with respect to the validity, perfection, amount or relative priority of the secured creditors' pre-petition lien and liens held by persons who are not party to the financing agreement or stipulation, without first

giving parties in interest at least 75 days from the entry of the order and the creditors' committee, if appointed, at least 60 days from the date of its appointment to investigate such matters.

Provisions that create a lien senior or equal to any existing lien without the consent of that lienholder.

Provisions that seek a waiver, without notice, of rights the estate may have under section 506(c) of the Code.

Provisions that grant immediately to the pre-petition secured creditor liens on the debtor's claims and causes of action arising under sections 544, 545, 547, 548 and 549 of the Code.

Provisions that provide disparate treatment with regard to professional fee carveouts for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor.

Provisions that prime chapter 7 administrative expenses.

Provisions that operate to divest the debtor of any discretion by requiring a creditor's consent in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provisions of law.

Provisions that purport to release the secured creditor's liability for alleged pre-petition torts or breaches of contract.

Provisions that grant automatic relief from stay upon default, conversion to a chapter 7 or the appointment of a trustee.

Provisions that waive avoidance actions arising under the Code.

Provisions that waive, effective upon default or expiration, the debtor's right to move for a court order pursuant to section 363 (c)(2)(b) of the Code authorizing the use of cash collateral in the absence of the secured party's consent.

Provisions that grant a lien in an amount in excess of the dollar amount of cash collateral authorized under the applicable cash collateral order.

Findings of fact on matters extraneous to the approval process.

Provisions that bar the debtor from future bankruptcy filings.

C. Attachments evidencing security interests.

The Debtor attaches hereto all documents creating the respective secured interests.

The Debtor requests authority to use cash collateral on an ongoing basis, after hearings to all secured parties.

Respectfully submitted,

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Attorney for DIP

#### NOTICE

Please take note that the Respondents have ten days from service of this motion to file and serve a response or a request for a hearing, and that if a response or request is not timely filed with the court and served on the Movant, the Court may grant the relief requested without hearing.

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing motion of ProFlo Industries, LLC Debtor- In-Possession, For Authority To Use Cash Collateral in the Ordinary Course of Business was served on the following registered ECF participants, electronically through the Court's ECF system at their respective email addresses registered with the Court and on the other parties set forth below by the method indicated:

Via the Court's ECF System:

Office of the United States Trustee at: amy.l.good@usdoj.gov.

and via regular US mail upon the following creditors and parties in interest as demonstrated on this court mailing matrix attached hereto on this 13<sup>th</sup> day of October, 2017.

/s/Patricia A. Kovacs  
Patricia A. Kovacs (0061780)