



Dated: November 29, 2018

The following is ORDERED:

A handwritten signature in black ink that reads "Sarah A. Hall".

Sarah A Hall
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:
AMERICAN TRUCK TRAINING, INC.,
Debtor.

Case No. 18-14438 SAH
(Chapter 11)

**FINAL ORDER GRANTING EMERGENCY MOTION FOR ORDER
AUTHORIZING USE OF CASH COLLATERAL AND
PROVIDING POST-PETITION LIENS**

COMES NOW before me, the undersigned Judge, the *Emergency Motion For Order Authorizing Interim Use Of Cash Collateral And Providing Post-Petition Liens With Brief In Support And Notice Of Opportunity For Hearing* (the “*Motion*”) [Doc. 003] filed October 22, 2018 (the “*Motion*”). The Court held an interim hearing on November 1, 2018, at 9:30 a.m. to consider the *Motion*. Present at the November 1, 2018, hearing were Gary D. Hammond, counsel for Debtor, Rebecca A. Frazier, counsel for the Internal Revenue Service, Eric Odom, counsel for Quail Creek Bank, N.A. and MJ Creasey, counsel for the United States Trustee. After hearing the arguments of counsel and reviewing the pleadings the Court entered the Agreed Interim Order Granting Emergency Motion For Order Authorizing Interim Use Of Cash Collateral And Providing Post-

Petition Liens And Notice Of Final Hearing And Opportunity To Object on November 5, 2018 [Doc. 27] (the “*Interim Order*”). Further, the Court set a deadline of November 20, 2018, for parties in interest to object to the *Motion* and *Interim Order* and a final hearing on November 27, 2018, at 9:30 a.m. Based on a review of the record the Court FINDS that no parties in interest have filed an objection to the *Motion* or *Interim Order*. Based on the foregoing, the Court Orders as follows:

1. The Court has jurisdiction over this proceeding, the parties, and the property of the Debtor’s bankruptcy estate pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Service’s secured tax claims are based upon federal tax liens, for which the Service claims to have properly filed pre-petition notices of federal tax liens. The federal tax liens, to the extent valid, attach to property and rights to property of the Debtor, pursuant to 26 U.S.C. §§ 6321 and 6322. Quail Creek Bank’s secured claims are secured by properly perfected priority liens and security interests.

3. The Debtor needs to use cash collateral, including proceeds from accounts receivable, to pay current operating expenses.

4. The parties agree that, for the debtor to use cash collateral, it is necessary to provide the Service and Quail Creek Bank with adequate protection of their respective secured claims under 11 U.S.C. § 361.

5. The *Motion* is granted in accordance with the terms and conditions of this Order.

6. Subject to the terms and conditions set forth in this Order, Debtor is authorized pursuant to 11 U.S.C. §§ 105, 361, 362 and 363 and F. R. Bankr. P. 2002, 4001, 6003 and 9014 to use Cash Collateral during the pendency of this case and until further order of the

Court.

7. The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures contained in the budget attached as Exhibit A (the “Budget”); provided, however, Debtor may use Cash Collateral in excess of the amount designated for a particular line-item so long as the percentage of deviation of each line item during any rolling 4-week period does not exceed ten percent (10%) in aggregate (the “Variance”). Any unused portion of the Variance will carry over to the following rolling 4-week period.

8. From and after the entry of this Order, Debtor shall provide to Quail Creek Bank, N.A. and IRS an initial aging of all accounts receivable and accounts payable and a list of all inventory, plus total current operating expenses and total current collections. This report shall be updated and provided to the Secured Creditors by the 30th day of each month thereafter (the “Reports”).

9. Quail Creek Bank, N.A. and the IRS are entitled to a validly perfected first priority lien on and security interests in the Debtor’s post-petition Collateral subject to existing valid, perfected and superior liens in the Collateral held by other creditors, if any, and the Carve-Out (as defined below). This lien shall be in addition to the liens that the Service and Quail Creek Bank had in the assets and property of the debtor as of the petition date, which liens extend to and encumber the proceeds and products of the property of the debtor in existence at the time the bankruptcy petition was filed.

10. The rights, liens and interests granted to the Secured Creditors shall be based on the Secured Creditors’ relative rights, liens and interests in the Debtor’s Cash Collateral pre-petition. The priority of each Secured Creditor in the post-petition property will be based on the priority each Secured Creditor held in property of the Debtors as of the petition date. Such priority shall be determined by agreement of the secured creditors

and/or by order or judgment of the Court. The liens of each Secured Creditor continue to attach to the newly –arising assets and protect each Secured Creditor’s respective claims.

11. The post-petition security interests and liens granted shall be valid, perfected and enforceable and shall be deemed effective and automatically perfected as of the Petition Date without the necessity of the Secured Creditors taking any further action.

12. Secured Creditors may, however, at their respective option, file continuation statements, financing statements or such documents as they deem necessary to evidence their respective security interests in the Collateral. Upon request by the Secured Creditors, Debtor will execute and deliver all such documents, or financing statements, as are necessary to effect and perfect the Secured Creditors’ security interests as set forth in this paragraph.

13. In the event of, and only in the case of Diminution of Value of the Secured Creditors’ interests in the Collateral, the Secured Creditors shall be entitled to a super-priority claim that shall have priority in the Debtor’s bankruptcy case over all priority claims and unsecured claims against the Debtor and its estate, now existing or hereafter arising, of any kind or nature whatsoever including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to 11 U.S.C. §§ 105, 326, 328, 330 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), and 726(b) or otherwise.

14. This super-priority claim shall be subject and subordinate only to the Carve-Out described below and not to any other unsecured claim (having administrative priority or otherwise).

15. The Carve-Out shall include any fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930 and fees and expenses incurred by the Debtor’s professionals and approved by the Court in an amount not to exceed \$20,000.00 (the “Carve-Out”).

16. Beginning thirty (30) days after the Petition Date, Debtor will make post-

petition monthly payments to Quail Creek in an amount equal to the amount paid pre-petition, pursuant to Debtor's pre-petition loan documents with Quail Creek, unless Debtor and Quail Creek agree to a different or lesser amount. In addition, beginning sixty (60) days after the Petition Date, Debtor shall make post-petition monthly payments to the Service equal to \$7,240, unless Debtor and the Service agree to a different or lesser amount. Debtor shall submit proof of payment to the Service's local Insolvency Group, Attention to M. Rita Galvan 1919 Smith Street Houston, TX 77002 within three (3) working days of payment.

17. Debtor shall be required to insure to its full value all Collateral subject to Quail Creek and the Service's liens. Debtor shall be required to furnish evidence of insurance to Quail Creek and IRS upon request.

18. If at any time the Debtor fails to properly insure the Collateral, fails to pay any local, state or federal taxes as they become due, fails to pay fees required by the U.S. Trustee or fails to comply with any other term of the Motion ("Default"), the Secured Creditors shall give the Debtor and its attorney written notice that it has thirty (30) days to cure such default after the mailing or transmission of written notice of such default.

19. If the default is not cured, the Secured Creditors may seek entry of an order granting them relief from the automatic stay. Upon such termination, the Secured Creditors shall be authorized to terminate the use of Cash Collateral and take such action against the Collateral as permitted under its respective loan documents, including, without limitation, the Security Agreements, and applicable state law. Additionally, the IRS may seek dismissal of this case for failure to meet post-petition tax obligations pursuant to 11 U.S.C. § 1112(b)(4)(I) or any other remedies that may be statutorily available to the IRS.

20. Nothing in this agreed order shall constitute an admission by the Secured Creditors that the protection provided to each shall not at some time become inadequate to fully and properly protect the respective Secured Creditor's interests, and at any time, either Secured Creditor may apply to the Court for additional adequate protection.

Further, nothing in this agreed order shall bind the Secured Creditors or any other party in interest or constitute an agreement to treatment of their respective claims under any plan of reorganization. Further, nothing in this Order shall prohibit Debtor or any other party in interest from challenging any creditor's claims or liens, including the validity, priority or extent of such liens.

21. Debtor shall not use cash collateral during the pendency of this agreement for any purpose that is not authorized by this Order.

All findings of fact are based upon representation of counsel for Debtor.

IT IS SO ORDERED.

APPROVED:

/s/ Gary D. Hammond

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