



Dated: 1/30/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:)
)
LYFE TEA, LLC,) CHAPTER: 11
) CASE NO.: 19-00137
) JUDGE: HARRISON
Debtor.)

**INTERIM AGREED ORDER (I) AUTHORIZING CONDITIONAL USE OF CASH
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, AND (III)
SCHEDULING A FINAL HEARING**

This matter came before the Court on the *Expedited Motion for Authority to Use Cash Collateral* (“Cash Collateral Motion”) [Docket No. 8] filed by the above-captioned debtor and debtor-in-possession (collectively, the “Debtor”) and the *Limited Objection* thereto [Docket No. 20] filed by creditor Jason Brubacher (“Mr. Brubacher”).

The Court, having reviewed the Cash Collateral Motion and considered the agreement herein, as evidenced by the signatures of respective counsel below, and following appearance and statements made on the record by counsel for Jason Brubacher at the January 22, 2019 hearing on the matter, hereby finds and ORDERS as follows:

1. The Cash Collateral Motion is conditionally GRANTED on an interim basis.
2. **Notice**: Pursuant to Fed. R. Bankr. P. 4001, notice of the Motion and the hearing on the Motion has been given to the Office of the United States Trustee, counsel for Mr. Brubacher, Advance Merchant Services, LLC (“AMS”), and the 20 largest unsecured creditors, and such notice is appropriate under the circumstances.

3. **Jurisdiction**: This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157, 11 U.S.C. § 363, and Fed. R. Bankr. P. 4001. Venue is proper in this Court pursuant to 28 U.S.C. § 1408. The Court possesses the requisite authority to grant the relief requested herein pursuant to 11 U.S.C. §§ 105, 363, and 1107.

4. **Purpose and Necessity**: The Court finds that good cause has been shown for the entry of this Interim Agreed Order (I) Authorizing the Debtor to Conditionally Use Cash Collateral (II) Granting Adequate Protection, and (III) Scheduling a Final Hearing (the “Interim Order”). The Debtor requires the immediate use of cash in which Mr. Brubacher claims an interest to, among other things, fund interim cash requirements, including, without limitation, supplies and materials, and other customary operating expenses, including interim adequate protection payments addressed herein.

5. **Jason Brubacher**: Mr. Brubacher asserts a lien on the Debtor’s cash collateral (as that term is defined in 11 U.S.C. § 363(a)). On April 11, 2017, Mr. Brubacher filed a UCC financing statement, Document No. 426654129, with the Tennessee Secretary of State, asserting a lien on assets of Debtor, including cash collateral (as that term is defined in 11 U.S.C. § 363).

6. Mr. Brubacher asserts a valid, perfected first-position security interest in the Debtor’s property, including its cash collateral (collectively, the “Collateral”), which would entitle it to adequate protection for any diminution in the value of its respective collateral arising from the Debtor’s post-petition use thereof. Based on the asserted existence of the security interests of Mr. Brubacher, in the interim period pending the Court’s final determination of any lien validity or priority the Debtor requires immediate use of cash collateral in order to continue its business operations without interruption, and to avoid immediate and irreparable harm to the estate pending a final hearing on the Motion. In the absence of the use of cash collateral, the continued operation

of the Debtor's business would not be possible, and serious and irreparable harm to the Debtor and its estate would occur.

7. **Advance Merchant Services**: Advance Merchant Services, LLC ("AMS") may assert a lien on the Debtor's cash collateral (as that term is defined in 11 U.S.C. § 363(a)). On January 3, 2019, AMS filed a UCC financing statement, Document No. 429928455, with the Tennessee Secretary of State. To which assets of the Debtor, if any, this lien of AMS attaches is not known by Mr. Brubacher; however, Mr. Brubacher has not subordinated his senior position to AMS with respect to any of Debtor's assets and, therefore, based on the timing of the UCC filings and applicable laws of perfection, any security interest in the Debtor's cash collateral is junior to Mr. Brubacher's interest therein. Nothing in this Order shall be construed to limit or expand any interested party's rights, including the US Trustee's, to challenge the validity, perfection and enforceability of the prepetition liens and any prepetition obligations.

8. The Debtor is hereby authorized to spend up to a maximum of 105% of the total amount set forth on the budget attached hereto as **Exhibit A** (the "Budget") to pay the expenses reflected on the Budget, which may be amended prior to a final hearing on the Motion during the "Interim Period." The Interim Period shall be January 10, 2019 through February 8, 2019. The Debtor may seek advance permission, in writing, from Mr. Brubacher to spend in excess of this allowed amount, but nothing herein shall require Mr. Brubacher to permit such use of its cash collateral. In the event such permission is obtained, the Debtor shall file a Notice of such change with the Court within forty-eight (48) hours.

9. The Debtor is further authorized to use cash collateral to pay amounts and/or any fees payable to the Clerk of the Court and to the United States Trustee.

10. Nothing herein shall be deemed to be a waiver by Mr. Brubacher, on prior notice to the Debtor, of his right to request additional or further protection of his interests, to move for relief from the automatic stay, to seek the appointment of a trustee or examiner or the conversion or dismissal of this Chapter 11 case, or to request any other relief in this case, including a request for derivative standing to pursue certain actions under Chapter 5 of the Bankruptcy Code; nor shall anything herein constitute an admission by Mr. Brubacher of the quantity, quality or value of any pre-petition collateral or constitute a finding of adequate protection with respect to the interests of Mr. Brubacher in any pre-petition collateral.

11. Nothing included herein shall prejudice, impair, or otherwise affect Mr. Brubacher's rights to seek any other or supplemental relief or additional adequate protection, or the Debtor's right to oppose the same.

12. **Adequate Protection:** Subject to the provisions of Paragraph 14 hereof, and pending a final hearing on the Motion, as interim adequate protection for the use of, and any diminution in the value of, the collateral, Mr. Brubacher is granted the following:

a. *Pre-Confirmation Adequate Protection Payments.* Mr. Brubacher shall receive adequate protection payments in the amount of \$1,000 per week during the Interim Period.

b. *Replacement Liens.* Mr. Brubacher shall receive a replacement security interest under Section 361(2) of the Bankruptcy Code in the Debtor's post-petition property and proceeds thereof, to the same extent and priority as its respective purported security interest in the Debtor's pre-petition property and the proceeds thereof.

c. *Automatic Perfection.* For the limited purpose of this Interim Order, the replacement lien and security interest granted herein shall be deemed perfected upon entry

of this Interim Order without the necessity of Mr. Brubacher taking possession of any collateral or filing financing statements or other documents.

13. **Insurance and Reporting:** The Debtor shall keep its assets insured by reasonable and sufficient insurance coverage as required by the terms of the documents executed by the Debtor in favor of the Mr. Brubacher and shall provide to Mr. Brubacher proof of such insurance coverage within three (3) days from the entry of this Interim Order.

14. **Financial Reports:** The Debtor shall provide to Mr. Brubacher weekly financial reports by 3:00 p.m. on the Wednesday following the prior week, with the first report due on Wednesday, January 24, 2019 for the week ending Friday, January 18, 2019. Such reports shall contain and reflect the following minimum items: (a) the cash revenues collected and the cash expenditures disbursed by Debtor during the preceding week; (b) a comparison of the actual revenues and expenditures to the budgeted amounts; and (c) such other information as may be reasonably requested by Mr. Brubacher.

15. In no event shall Mr. Brubacher have any obligation to consent to the use of Cash Collateral to any Chapter 7 or Chapter 11 trustee appointed or elected for the estate of Debtor.

16. If this Chapter 11 case is dismissed, converted or substantively consolidated with another case, then neither the entry of this Interim Order nor the dismissal, conversion or substantive consolidation of this Chapter 11 Case shall affect the rights or remedies of Mr. Brubacher under this Interim Order, and all of the respective rights and remedies thereunder of Mr. Brubacher shall remain in full force and effect as if this Chapter 11 case had not been dismissed, converted, or substantively consolidated. The provisions of this Interim Order, and any actions taken pursuant thereto, shall survive the entry of and shall govern with respect to any

conflict with any order that may be entered confirming any plan of reorganization or converting this Chapter 11 case from Chapter 11 to Chapter 7.

17. **Default**: Any of the following events or occurrences shall constitute an event of default (“Default”) hereunder:

- a. Any failure to comply with any of the terms of this Interim Order or any agreement executed in connection therewith;
- b. The Debtor seeks or if there is entered, any order dismissing this Chapter 11 case; or
- c. The Debtor submits any materially inaccurate information to Mr. Brubacher or to the Court.

18. Upon the occurrence of a Default, Mr. Brubacher shall be entitled to file a Notice of Default with the Court. Unless the Notice of Default is withdrawn by Mr. Brubacher or stayed or overruled by the Court, the Debtor’s authority to use cash collateral shall terminate twenty-four (24) hours after Mr. Brubacher files the Notice of Default. Upon declaring and noticing a Default, Mr. Brubacher may immediately seek an expedited termination of the automatic stay provided for in 11 U.S.C. § 362 and may additionally seek an expedited declaration from the Court that the Collateral be deemed abandoned from the Debtor’s estate.

19. **Interim Order**. This is an interim order. The Cash Collateral Motion is set for final hearing at 9:00 a.m., February 5, 2019, in Courtroom 3, 2nd Floor, Customs House, 701 Broadway, Nashville, Tennessee (the “Final Hearing”). Responses to the Cash Collateral Motion shall be filed by _____ February 4, 2019 at 4:00 p.m. CST.

- a. *Modification of Interim Order*. At the Final Hearing, all of the provisions of this Order with respect to adequate protection may be hereafter modified or continued

by the Court as a final order (the “Final Order”) based upon, without limitation, the terms and conditions of a final order determining any lien disputes, or as further determined by the Court at such Final Hearing on the Cash Collateral Motion. The Debtor and the Mr. Brubacher each reserve the right to seek to modify the terms and conditions of this Interim Order with respect to adequate protection, or otherwise, in connection with the entry of the Final Order.

b. *No Limitation.* Nothing contained herein shall be deemed or construed to (i) limit the Debtor or the Mr. Brubacher to the relief granted herein; (ii) bar the Debtor or the Mr. Brubacher from seeking other and further relief for cause shown on appropriate notice to parties-in-interest entitled to notice of same, provided, however, that any such relief constituting a modification of this Interim Order shall be permitted only to the extent consistent with the terms of the Final Order (as set forth herein), or (iii) require Mr. Brubacher to make any loans or advances to the Debtor.

20. In the event that the Debtor and Mr. Brubacher have reached an agreement for the use of cash collateral beyond the Interim Period prior to the Final Hearing, the Debtor shall file and serve in accordance with Bankruptcy Rules 2002 and 4001 a *Notice of Filing Further Order Granting Authority to Use Cash Collateral* together with a copy of the proposed Order Granting Authority to Use Cash Collateral (the “Further Cash Collateral Order”) and shall advise each party receiving notice that such party shall have fifteen (15) days to file objections to entry of the Further Cash Collateral Order. Any such objection shall be heard at the Final Hearing.

21. The terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

22. Upon entry of this Interim Order, notice of this Interim Order shall be served on (i) AMS, (ii) the Debtor's twenty largest unsecured creditors, (iii) the Office of the United States Trustee, and (iv) the Debtor's secured creditors.

IT IS SO ORDERED.

THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS
INDICATED AT THE TOP OF THE FIRST PAGE

APPROVED FOR ENTRY:

/s/ Steven L. Lefkovitz

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Budget for Interim Use of Cash Collateral			
Week 1 (ending)	Week 2	Week 3	Week 4
1/18/2019	1/25/2019	2/1/2019	2/8/2019

TOTALS

Beginning Cash	\$ 300.00	\$ 6,556.65	\$ 12,813.30	\$ 16,069.96
Income				
Projected Revenue (from Debtor's original budget exhibit)	\$16,680.00	\$16,680.00	\$16,680.00	\$16,680.00
Projected Other Revenue	\$0.00	\$0.00	\$0.00	\$0.00
Total Revenue	\$16,680.00	\$16,680.00	\$16,680.00	\$16,680.00

Projected Disbursements				
Payroll - Member/ Owner (Angelia Shockley)	(\$1,000.00)	(\$1,000.00)	(\$1,000.00)	(\$1,000.00)
Payroll - Non-Members and Non-Insiders	(\$1,632.00)	(\$1,632.00)	(\$1,632.00)	(\$1,632.00)
Payroll Taxes @ 7.65%	(\$201.35)	(\$201.35)	(\$201.35)	(\$201.35)
Adequate Protection Payments to J. Brubacher	(\$1,000.00)	(\$1,000.00)	(\$1,000.00)	(\$1,000.00)
Costs of Goods Sold	(\$1,121.75)	(\$1,121.75)	(\$1,121.75)	(\$1,121.75)
Merchant Account Fees	(\$500.00)	(\$500.00)	(\$500.00)	(\$500.00)
Advertising and Promotion	(\$1,500.00)	(\$1,500.00)	(\$1,500.00)	(\$1,500.00)
Bank Service Charges	(\$100.00)	(\$100.00)	(\$100.00)	(\$100.00)
Computer/Internet	(\$60.00)	(\$60.00)	(\$60.00)	(\$60.00)
Dues and Subscriptions	(\$250.00)	(\$250.00)	(\$250.00)	(\$250.00)
Insurance	(\$318.75)	(\$318.75)	(\$318.75)	(\$318.75)
Office Supplies	(\$35.00)	(\$35.00)	(\$35.00)	(\$35.00)
Postage and Delivery	(\$1,925.50)	(\$1,925.50)	(\$1,925.50)	(\$1,925.50)
Refunds	(\$44.50)	(\$44.50)	(\$44.50)	(\$44.50)
Rent	\$0.00	\$0.00	\$0.00	\$0.00
Taxes - F&E	(\$431.75)	(\$431.75)	(\$431.75)	(\$431.75)
Telephone	(\$58.25)	(\$58.25)	(\$58.25)	(\$58.25)
Utilities	(\$244.50)	(\$244.50)	(\$244.50)	(\$244.50)
Total Disbursements	(\$10,423.35)	(\$10,423.35)	(\$10,423.35)	(\$10,423.35)
Income/(Loss) from Operations	\$6,256.65	\$6,256.65	\$6,256.65	\$6,256.65

Projected Bankruptcy Costs				
Trustee Fees				\$0.00
Projected Bankruptcy Legal Fees				\$0.00
Estimated Effective Taxes at 0.0%	\$0.00	\$0.00	\$0.00	\$0.00
Change in Cash Balance	\$6,256.65	\$6,256.65	\$6,256.65	\$6,256.65
Ending Cash Balance	\$6,556.65	\$12,813.30	\$16,069.96	\$22,326.61

This Order has been electronically signed. The Debtor's signature and the Trustee's signature should appear at the top of the first page.

United States Bankruptcy Court.