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COUNSEL FOR DEBTOR
HENRY J. MELTON

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION**

In re §
§
H. MELTON VENTURES, LLC § Case No.17-43922-RFN-11
§
Debtor §
§
HENRY J. MELTON § Case No. 17-44206-RFN-11
§
§

EMERGENCY MOTION TO AUTHORIZE USE OF CASH COLLATERAL AND BRIEF IN SUPPORT

COME NOW, HENRY J. MELTON, individually (Melton) and pursuant to *Bankr. R.* 9014 files this Emergency Motion to Authorize Use of Cash Collateral and Brief in Support, and respectfully shows the Court the following:

1. On September 28, 2017, voluntary petition for relief under Chapter 11 of the Bankruptcy Code was filed by the Debtor, Henry Melton Ventures, LLC (“HMV”), under case No. 17-43922-rfn-011. Subsequently, Melton filed for the same relief under case no. 17-44206. Subsequently, H. Melton Ventures RD, LLC, a 90% owned affiliate of Melton which owns a

residence occupied by Melton's mother, filed on November 6, 2017 a petition to avert an eminent foreclosure scheduled for November 7, 2017.

2. A Chapter 11 Trustee was appointed for both HMV and Melton in December 2017 by agreed order entered December 6, 2017 for Melton [Dkt. #80] and December 6, 2017 for HMV [Dkt. #79].
3. The individual Debtor, Melton, a resident of Dallas County, is the 90% owner, President and Chief Executive Officer of HMV.
4. Each of the cases is substantially related in that Melton owns 90% of HMV which owns RD and other operating non-debtor affiliates.
5. On October 14, 2017, each debtor, other than RD, joined in a motion for joint administration. [Docket # 16]. An amended motion was filed to join RD. [Docket #25].
6. On November 15, 2017, the Court ordered procedural consolidation of all cases. [Docket #58]
7. On November 8, 2017, Andrew R. Korn ("Receiver") filed his motion and brief to prohibit use of cash collateral and for an accounting and alternative for adequate protection. [Docket #19].
8. The Receiver obtained, by default, a state court receivership as to all of Mr. Melton's non-exempt assets with respect to a judgment in excess of two hundred thousand and no/100 dollars. Melton's holding company, Ventures, was drawn into the receivership by a default judgment, notwithstanding this business had nothing to do with the liability of Melton to the Receiver's client.
9. The Receiver requested by his motion that the Debtor be prohibited from use of cash collateral.
10. The motion presumes an interest in cash collateral arising from a pre-petition judgment that appointed a receiver. Query if this judgment created a perfected equitable lien on all the Debtor's non-exempt property, including that generated by wholly owned subsidiaries, generated

post-petition. Such property of the estate pursuant to 11 USC §541 is property of the estate, and pre-petition liens are cut-off. Further, such statutory liens are avoidable by the Trustee under 11 USC §545, or inferior to the lien of the Trustee under 11 USC §544.

11. Further, the simple answer is that there is no cash collateral since the holding company, Ventures, has no operations that generate cash. Since the Receiver lien purports to secure only non-exempt assets, current wages of Melton are likewise not involved. The Receiver, however, disputes that current wages, once actually received, retain their exempt character, and then the Receiver obtains an interest in the cash collateral once received that requires adequate protection.
12. In the alternative, if in fact the Receiver has a protected interest in cash collateral constituting pre-petition assets used by the Debtor post-petition, Debtor proposes as adequate protection for the cash collateral replacement liens on Debtor's substantial and erstwhile exempt retirement assets, and certain non-exempt assets involving movie title investments that are promised return of investment and profit share. At this time, only the initial investment value is being considered as collateral.
13. These assets are specifically described in the schedules and statements of affairs as follows:
 - a. NFL 401(k) having a current market value of \$99,061 with Debtor eligibility to withdraw at age 45. Evaluating immediate monetization.
 - b. NFL Cap Plan having a current market value of \$86,995. Lump sum in 4 years when Debtor reaches 35. Evaluating immediate monetization.
 - c. NFL Annuity having a current market value of \$270,799. Lump sum in 4 years when Debtor reaches 35. Evaluating immediate monetization.
 - d. NFL Disability. Currently under evaluation by the NFL. Based on substantial injuries sustained over length of career, Debtor estimates this benefit at \$50,000 per year

commencing in 2018 and continuing for ten years.

- e. Movie titles. Aggregate \$100,000 cash investment providing return of investment plus profit share and/or eligible pro rata share of tax credits by the State of Louisiana.

III. LEGAL ARGUMENT

14. Receiver concedes the well-founded general rule is any interest he has in cash collateral would be cash collateral only of Debtors.
15. A holding company owned by other debtors that has operating revenues from separate entities has no cash collateral for the Receiver's alleged interest to attach.
16. In this connection, the statute's reference to cash collateral in the hands of third parties refers to actual rents, products, offspring's, and the like of a debtor that happen to be in the hands of a third party, such as accounts held by a bank in a garnishment proceeding. *In re Trujillo*, 485 B.R. 238 (Bankr. D. Colorado 2012).
17. Cash collateral representing income generated by non-debtors is not subject to an interest of the Receiver in the Debtors cash collateral.
18. The Receiver's interest in cash collateral would then be only relevant to distributions made by the separate operating entities to the Debtors prior to the filing of the petition. The operating entities have made no distributions other than exempt wages to the Debtors. As above argued, Debtor disputes the Receiver's statutory lien attaches to these assets and, as discussed below, this issue has been deferred.
19. In addition, if the lien can only trap exempt pre-petition assets, the lien is avoidable, and no adequate protection is required of an avoidable lien. *In re Scott Polly*, 2008 WL 5786899 (Bankr. E.D. Va. 2008).
20. In recognition of these intertwined legal issues, on February 2, 2018, this Court Entered the

Agreed Order Regarding Motion of Receiver Seeking to Prohibit Use of Cash Collateral, for Accounting, or in the Alternative for Adequate Protection. [Dtk. #63]. (the “Adequate Protection Order”)

21. Under the terms of the Adequate Protection Order several matters relevant to this motion for use of cash collateral were ordered:

- a. On or before February 17, 2018 Melton is to deliver an accounting of all funds that were in his possession, custody, or control from the Petition Date, October 14, 2017 until date of appointment of his Chapter 11 Trustee. Same is attached hereto as Exhibit “A”.
- b. The decision as to whether the Receiver is a secured creditor with an interest to be protected in cash collateral is deferred to another day;
- c. Funds in possession, custody and control of the Chapter 11 Trustee for Melton will not be disbursed absent a court order authorizing the disbursement. To the extent Melton utilized funds without prior Court or written authorization from the Trustee, the estate and Trustee were provided with replacement liens against properties claimed as exempt by Melton, which included the substantial NFL retirement benefits

22. Under the Code, as reinforced by the Adequate Protection Order, cash collateral can and may be used by the Debtor if the Debtor proposes adequate protection and same is authorized by the Court. In this regard, assuming the Receiver prevails on his position that current wages actually received become then cash collateral, Debtor proposes use of a replacement lien on current wages from his Lyft employment of \$1500-\$2000 per month from date of filing to the present that has been used with consent of the Trustee under the Cash Collateral Order if replacement liens were provided and assuming a budget of less than \$2000 per month to meet ordinary and necessary household and living expenses.

23. In addition, Debtor proposes approved use of cash collateral that came into his possession from pre-petition assets prior to the appointment of the Trustee and Cash Collateral Order other than from Lyft employment. Said cash collateral is described in the Exhibit A. Adequate protection as to any interest in the cash collateral is proposed by the replacement lien described herein.

24. Debtor also proposes use of some of the \$25,000 that came into his possession after the appointment of the Trustee and entry of the Adequate Protection Order arising from pre-petition assets which was duly turned over to the Trustee during the course of the case from note payments owed to him on the Express Working Capital, LLC note (\$10,000) and payments on a damage claim from Progressive insurance (\$15,000). Said use would be limited to meet child support obligations, automobile payments, insurance payment, all pursuant to the budget as follows:

- a. Child Support--\$1500 per month retroactive to February 1, 2018;
- b. Automobile payments budgeted at \$350.00 per month retroactive to February 1, 2018.
- c. Car insurance-\$100 per month.
- d. Electricity, Cable/internet-\$300
- e. Food/Groceries/Gas--\$350
- f. Phone-\$250
- g. Child visitation. \$500.00 per month

Total: \$3,350

In addition, Debtor has received notice that he will receive an additional \$6000 for a rental deposit in an apartment he formerly owned in Tampa Bay, Florida from his former landlord, Future Home Realty, Inc., Tampa Bay, Florida.. He request permission to use \$3000 of this rental deposit for securing new housing and initial month's rent for April after his current lease

terminates on March 31, 2017. Debtor intends to exit bankruptcy through a confirmed plan by May 1, 2018 but if he does not complete by that date, Debtor requests an additional use of cash collateral for \$1500 per month for he and his daughter.

WHEREFORE, PREMISES CONSIDERED, the Debtors respectfully request that this Court enter an Order Authorizing Use of Cash Collateral and that the Debtors be granted other and further relief as is just and proper.

Respectfully submitted,

WILEY LAW GROUP, PLLC

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COUNSEL FOR DEBTOR

HENRY J. MELTON

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with the Attorney for the Trustee and Trustee, Scott Seidel; Seymour Roberts, the Attorney for Andrew R. Korn, the Receiver; Robert Franke, the Attorney for the priority creditor, Catherine Roock; Erin Schmidt, the Attorney for the U.S. Trustee the regarding the relief requested in the foregoing Motion for Use of Cash Collateral. Each party makes objection or reserves objection to the relief requested.

_____/s/_____
Kevin S. Wiley, Sr.

CERTIFICATE OF SERVICE

I the undersigned certify that a true and correct copy of the foregoing Motion to Authorize Use of Cash Collateral has been served upon the United States Trustee, all parties on the attached service list on the ECF service list, and all parties in interest that have filed notices requesting receipt of service this the 20th day of February 2018.

_____/s/_____
Kevin S. Wiley, Sr.

CASH FLOW ACCOUNTING FOR HENRY J. MELTON, II TAKEN FROM MONTHLY OPERATING REPORT BANK STATEMENTS FOR PERIOD OCTOBER 2017-

JANUARY 31, 2018

AMOUNT	SOURCE	LOCATION	TRANSFER DATE	TRANSFEEE	REASON	CONSIDERATION
OCTOBER 2017 BANK STATEMENTS TAKEN FROM MO. OP. REPORT						
61,713	TAMPA BAY BUCS	WORST BEH.	10/3/17	H MELTON	SEVERANCI	CONTRACT
697.37		9023 WORST BEH.	10/16/2017	H MELTON	UNKOWN	UNKNOWN
1000		766 WORST BEH.	10/26/2017	H MELTON	HAVANA	DISTRIBUTION
1000		766 WORST BEH.	10/30/2017	H MELTON	HAVANA	DISTRIBUTION
-234.9	ATM	WORST BEH.	10/2/2017	LIFE TIME	MO DUES	CONTRACT
-374.49	ATM	WORST BEH.	10/4/2017	IMOTION	AIRFARE	CHILD VISIT
-454.5	ATM	WORST BEH.	10/5/2017	TURO	CAR RENTAL	
954.09	ATM	WORST BEH.	10/10/2017	ANATOLE	HOTEL	
-208.94	ATM	WORST BEH.	10/10/2017	EL RANCHO	DINING	
-204	ATM	WORST BEH.	10/10/2017	H MELTON	CASH	
-752.86	ATM	WORST BEH.	10/16/2017	STUBHUB	TICKETS	UT FOOTBALL
-343.39	ATM	WORST BEH.	10/16/2017	TOTAL WINE	SUPPLIES	TRANS.TO HMV
-1058	ATM	WORST BEH.	10/18/2017	PROGRESIVE	AUTO	INSURANCE
-482.5	ATM	WORST BEH.	10/19/2017	TICKETMASTER	TICKETS	UT FOOTBALL
-520	ATM	WORST BEH.	10/20/2017	AIRNB	AIR FARE	CHILD VISIT
-771	ATM	WORST BEH.	10/23/2017	TOTAL WINE	SUPPLIES	TRANS.TO HMV
-370	ATM	WORST BEH.	10/23/17	CIGAR WHSE	SUPPLIES	TRANS.TO HMV
-1281	ATM	WORST BEH.	10/24/2017	PROGRESIVE	AUTO	INSURANCE
-552	ATM	WORST BEH.	10/27/2017	LYFT	DEPOSIT	EMPLOYMENT
-303	ATM	WORST BEH.	10/27/2017	DFW AIRPORT	PARKING	
-475	ATM	WORST BEH.	10/27/2017	TOTAL WINE	SUPPLIES	TRANS.TO HMV
-216	ATM	WORST BEH.	10/30/2017	AMERICAN AIR	AIRFARE	CHILD VISIT
-375	ATM	WORST BEH.	10/30/2017	ANATOLE	HOTEL	CHILD VISIT
-476	ATM	WORST BEH.	10/30/2017	TOTAL WINE	SUPPLIES	TRANS.TO HMV
-12000	ONLINE	WORST BEH.	10/4/2017	COURTYD VILLA	ADVANCE	TRANS.CTYD
-2000	ONLINE	WORST BEH.	10/4/2017	C. ROOCK	SUPPORT	COURT ORDER
-3000	ONLINE	WORST BEH.	10/10/2017	HMV	ADVANCE	TRANS.TO HMV
-1500	ONLINE	WORST BEH.	10/16/2017	PUTNAM LSG	LSE PAYME	CONTRACT
-1500	ONLINE	WORST BEH.	10/17/2017	JORDAN WOY	AGT PYMT	INJURY BENEFITS
-3500	ONLINE	WORST BEH.	10/20/2017	COURTYD VILLA	ADVANCE	TRANS.CTYD
-8097	CASH WITHDRAW	WORST BEH.	Oct-17	H MELTON	LEGAL	WLG \$6400
-24314.88	ATM	WORST BEH.	10/1/2017	MISC. SERVICES FOR FOOD, TRANS., ENT.		

15,959 ENDING BALANCE FOR OCTOBER 2017
 NOVEMBER 2017 BANK STATEMENTS TAKEN FROM MONTHLY OPERATING REPORTS

15559 OPENING BALANCE

1,000	766 WORST BEH.	11/2/2017	HENRY MELTON	HAVANA	DISTRIBUTION
1,000	766 WORST BEH.	11/10/2017	HENRY MELTON	HAVANA	DISTRIBUTION
800	766 WORST BEH.	11/6/2017	HENRY MELTON	HAVANA	DISTRIBUTION
4646	1592 WORST BEH.	11/14/2017	HENRY MELTON	UNKNOWN	UNKOWN
1000	766 WORST BEH.	11/14/2017	HENRY MELTON	HAVANA	DISTRIBUTION
1500	766 WORST BEH.	11/27/2017	HENRY MELTON	HAVANA	DISTRIBUTION
500	766 WORST BEH.	11/27/2017	HENRY MELTON	HAVANA	DISTRIBUTION
-231 ATM	WORST BEH.	11/2/2017	SUNGLASS HUT	GLASSES	OPEN ACCOUNT
-246 ATM	WORST BEH.	11/2/2017	LIFE TIME	ENT.	CONTRACT
-363 ATM	WORST BEH.	11/3/2017	STUBHUB	TICKETS	
-710 ATM	WORST BEH.	11/6/2017	AM AIRLINES	TICKETS	CHILD VISIT
-365 ATM	WORST BEH.	11/6/2017	STUBHUB	TICKETS	
-400 ATM	WORST BEH.	11/6/2017	GRAPEVINE		?
-209 ATM	WORST BEH.	11/10/2017	NIKE	CLOTHING	
-467 ATM	WORST BEH.	11/14/201	ANATOLE	HOTEL	
-206 ATM	WORST BEH.	11/14/2017	IPHONE		REPAIRS
-1864 ATM	WORST BEH.	11/15/2017	BOATSETTER	RENTAL	ENTERT.
-336 ATM	WORST BEH.	11/15/2017	ANATOLE	HOTELS	
-889 ATM	WORST BEH.	11/20/2017	KARRENTALS		CHILD VISIT
-352 ATM	WORST BEH.	11/21/2017	FOUNTAINBLEAU		ENTERT.
-204 ATM	WORST BEH.	11/24/2017	ELWOOD		?
-400 ATM	WORST BEH.	11/27/2017	PROGRESSIVE		INSURANCE
-441 ATM	WORST BEH.	11/27/2017	AM AIRLINES	AIRFARE	CHILD VISIT
-870 ATM	WORST BEH.	11/'28/2017	PROGRESSIVE		INSURANCE
-1500 ONLINE	WORST BEH.	11/2/2017	CATHERINE ROOCK		CHILD SUPPORT
-375 ONLINE	WORST BEH.	11/6/2017	VENMO		?
-1565 ONLINE	WORST BEH.	11/21/2017	PUTNAM LSG		CAR LEASE
-3200 CASH	WORST BEH.	11/6/2017	CASH WITHDRAWAL		?
-2000 CASH	WORST BEH.	11/14/2017	CASH WITHDRAWAL		?

CASH FLOW ACCOUNTING FOR HENRY J. MELTON, II TAKEN FROM MONTHLY OPERATING REPORT BANK STATEMENTS FOR PERIOD OCTOBER 2017-
JANUARY 31, 2018

(6,747) MISC. EXPENSES
 8,812 BALANCE FWD`
 4445 ENDING BALANCE PER BANK STATEMENT

AMOUNT	SOURCE	LOCATION	TRANSFER DATE	TRANSFEEE	REASON >200	CONSIDERATION
	25	BEGINNING BAL				
1200	CASH	DIP OPENING	12/4/2017	MELTON		
1003	CASH	DIP OPENING	12/6/2017	MELTON		
29	LYFT	DIP ACCT	12/20/2018	MELTON	WAGES	
368	LYFT	DIP ACCT	12/20/2018	MELTON	WAGES	
49	LYFT	DIP ACCT	12/27/2018	MELTON	WAGES	
1788.79	DIP ACCT	DIP ACCT	12/1-12/31	MISC. LIVING EXPENSES		
883.94				ENDING BALANCE PER BANK STATEMENT		
883.94				BEGINNING BALANCE		
1542.75	ATM 6480	DIP ACCT	1/3/2018	MELTON	UNKNOWN	UNKOWN
109.31	LYFT	DIP ACCT	1/10/2018	MELTON	LYFT	WAGES
488.37	LYFT	DIP ACCT	1/17/2018	MELTON	LYFT	WAGES
1000	EDEPOSIT	DIP ACT	1/17/2018	MELTON	UNKNOWN	UNKOWN
420.81	LYFT	DIP ACCT	1/17/2018	MELTON	LYFT	UNKNOWN
244.92	LYFT	DIP ACCT	1/31/2018	MELTON	LYFT	UNKOWN
500	H MELTON	DIP ACCT	1/31/2018		HMV	DISTRIBUTION
4538.35				MIXC. LIVING EXPENSES		
ENDING BALANCE				883.38		