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PROPOSED ATTORNEYS FOR THE DEBTORS
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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

In re: § Chapter 11
§
LE-MAR HOLDINGS, INC, *et al.*,¹ § Case No. 17-50234-RLJ
§
§ Debtors §
§

**EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING
DEBTORS TO USE CASH COLLATERAL AND GRANTING ADEQUATE
PROTECTION TO PRE-PETITION LENDERS**

¹ The Debtors in these chapter 11 cases are: Le-Mar Holdings, Inc. (Case No. 17-50234-RLJ), Edwards Mail Service, Inc. (Case No. 17-50235-RLJ), and Taurean East, LLC (Case No. 17-50236-RLJ).

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COME NOW the above-referenced debtors and debtors in possession (collectively, the “Debtors”) and file this Emergency Motion for Interim and Final Orders Authorizing the Debtors to Use Cash Collateral and Granting Adequate Protection to Pre-Petition Lender (the “Motion”) and in support thereof respectfully shows the Court as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 362(d), 363(b), 364(c) and (d), and 507(a) of title 11 of the United States code (the “Bankruptcy Code”); rules 4001, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and Appendix H to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”).

BACKGROUND

4. On September 17, 2017 (the "Petition Date"), the Debtors commenced these Chapter 11 Cases by each filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors remain in possession of their assets and continue to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

6. No trustee, examiner, or committee of creditors has been appointed in these cases.

A. 7. As set forth in detail in the Declaration of Chuck C. Edwards in Support of First Day Motions (the "Edwards Declaration"), filed contemporaneously herewith, the Debtors provide freight delivery services to the United States Postal Service ("USPS"). Pursuant to an agreement with the USPS, the Debtors deliver equipment, mail and packages between USPS processing centers. The Debtors' delivery territory covers the entire southwest United States. The Debtors operate a fleet of over 250 tractor-trailers, trucks and vans, and employ 285 people, of which 250 are full-time employees, substantially all of the Debtors' employees are located in Texas.

DEBTORS' CAPITAL STRUCTURE

8. A more-complete description of the Debtors' financial history and capital structure is set forth in the Edwards Declaration, which is incorporated herein by reference.

9. The Debtors entered into a consolidated note and loan agreement with Mobilization Funding ("Mobilization"), in the original principal amount of \$3,377,751.68 (the collectively, the "Mobilization Facility"). Mobilization contends the outstanding balance owed on the Mobilization Facility is \$1,631,140.42, and that Mobilization has a first-position lien against all of the Debtors' accounts receivable (the "A/R"), pursuant to a security agreement (the "Mobilization Security").

Agreement”). The Debtors’ dispute the amount owed to Mobilization on the Mobilization Facility. The Debtors’ propose to provide adequate protection of Mobilization’s interest in the Debtors’ A/R by granting replacement lines on newly created A/R.

10. The Debtors entered into a loan facility with City Bank (“City”), which is secured by a second lien on the Debtors’ A/R and first lien on certain equipment pursuant to a security agreement (the “City Security Agreement”). As of the Petition Date, City was owed approximately \$979,540.00. Therefore, the Debtors’ cash from A/R is also City’s cash collateral (and together with Mobilization’s cash collateral, the “Cash Collateral”). City’s interest in the A/R will be adequately protected by among other things replacement liens on the newly created A/R.

RELIEF REQUESTED

11. By this Motion, Debtors seek authority to use Cash Collateral while it reorganizes. The Debtors have an immediate need for the use of Cash Collateral to pay employees, and continue to operate their business (delivering mail for the USPS as described more fully in the Edwards Declaration). Absent the use of the A/R, the Debtors will likely be unable to continue to operation and approximately 285 employees will lose their jobs.

12. Specifically, the Debtors request that the Court authorize the Debtors to immediately use the Cash Collateral in the amounts set forth in budget attached hereto and incorporated herein as **Exhibit A** (the “Budget”). At the final hearing, the Debtors request that the relief requested herein be granted on a permanent basis.

GROUND FOR RELIEF

13. The Debtors need to use cash collateral to fund post-petition operations. The Debtors anticipate operating at a profit so that the value of the A/R will increase during the Chapter 11 cases. Moreover, City is oversecured as it also has a first lien on the Debtors’ replacement fleet of trucks, which are valued at over \$1,000,000.

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14. The importance in cases like these of access to cash was recognized in *In re George Ruggieri Chrysler-Plymouth, Inc.*, 727 F.2d 1017 (11th Cir. 1984). The court in that case noted, “A debtor, attempting to reorganize in business under Chapter 11, clearly has a compelling need to use ‘cash collateral’ in its effort to rebuild.” *Id.* At 1019. The Debtor is hopeful that the secured lender will consent to the proposed use of cash collateral, subject to receiving a replacement lien and other protections as provided in the agreed order. To the extent they do not consent, however, the Court may authorize the use of cash collateral by the Debtor provided that the Court determines that any objecting entity’s interest is adequately protected. 11 U.S.C. § 326(c)(2)(B) and (e).

14. Section 363(e) of the Bankruptcy Code requires that the use of cash collateral be prohibited or conditioned as is necessary to provide adequate protection to persons that have an interest in cash collateral. *In re DeSardi*, 340 B.R. 790, 797 (Bankr. S.D. Tex. 2006) (“Adequate protection is . . . grounded in the belief that secured creditors should not be deprived of the benefit of their bargain”). Read together, § 363(c) and (e) of the Bankruptcy Code authorize a debtor-in-possession to use the cash collateral of a secured creditor if such creditor’s collateral is adequately protected. *See In re Harrington & Richardson, Inc.*, 48 B.R. 431, 433 (Bankr. D. Mass. 1985) (finding that the court may authorize the use of cash collateral upon a showing that those with an interest in the cash collateral are adequately protected).

15. Section 361 sets forth three non-exclusive examples of what may constitute adequate protection. They include “providing the secured creditor with “additional or replacement lines” and other relief that provides the secured creditor with the “indubitable equivalent” of the secured creditor’s interest in the cash collateral. Legislative history indicates that Congress intended to provide courts with the flexibility to grant relief on a case-by-case basis.

16. Pursuant to this motion, Debtors proposes to grant Modernization and City each a replacement lien on post-petition cash collateral to the extent its interest is secured by Debtors' assets, a recognized method for providing adequate protection as specified under sections 361 and 363.

17. Without access to Cash Collateral, the Debtors will not be able to maintain their business and move toward a successful reorganization. Furthermore, without access to Cash Collateral the Debtors will be unable to pay the ongoing expenses of the business, including the inability make employee payroll resulting in the loss of employees, and hindering its reorganization efforts; which would cause the going concern value of the Debtors' assets to plummet. From that standpoint, the overall collateral position of the secured creditors will deteriorate markedly, more than offsetting any erosion of the cash collateral.

CONCLUSION

WHEREFORE, the Debtors, request that the Court enter an order (a) authorizing the use of cash collateral to pay business related expenses in accordance with the attached budget with 10% variance per line item; (b) grant Modernization a replacement lien on the newly created A/R as described herein to the same extent, validity, and priority as existed on the date the Chapter 11 case was filed, and to the extent of cash collateral that is actually used; (c) grant City a replacement lien on the newly created A/R as described herein to the same extent, validity, and priority as existed on the date the Chapter 11 case was filed, and to the extent of cash collateral that is actually used; (d) set a final hearing on this motion; and (e) grant such other and further relief as is just and proper.

Dated: September 18, 2017

Respectfully submitted by,

s/ David L. Campbell
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Proposed Counsel for the Debtors and Debtors In Possession

Le-Mar Holdings, Inc. - 4 Week Budget

(September 18, 2017 - October 13, 2017)

<u>REVENUE</u>	<u>Week of 22-Sep</u>	<u>Week of 29-Sep-07</u>	<u>Week of 6-Oct-17</u>	<u>Week of 13-Oct-17</u>
Income	\$ 520,000	\$ 520,000	\$ 520,000	\$ 520,000
Cash Balance Forward:	<u>\$ -</u>	<u>\$ 138,100</u>	<u>\$ 30,550</u>	<u>\$ 390,450</u>
Total:	\$ 520,000	\$ 658,100	\$ 550,550	\$ 910,450
 <u>EXPENSES</u>				
Payroll	\$ 90,000	\$ 350,000		\$ 350,000
Payroll Taxes		\$ 95,000		\$ 95,000
Medical Insurance	\$ 87,000			\$ 87,000
Liability/Casualty Insurance/Wmployee Life/Workman's Comp./Long Term Disability	\$ 123,700			\$ 123,700
Fuel	\$ 35,000	\$ 95,000	\$ 95,000	\$ 95,000
Rent		\$ 20,500		
Lodging	\$ 2,000	\$ 4,000	\$ 4,000	\$ 4,000
Driver Expenses/Tire Repairs/Misc. Repairs	\$ 2,200	\$ 2,200	\$ 2,200	\$ 2,200
USPS/DOT Requirements/Loadtrek		\$ 4,600	\$ 16,900	
Utilities		\$ 14,250		
Truck Repairs - Maintenance	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000
Chapter 11 Expenses	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000
Misc. Expenses	<u>\$ 7,000</u>	<u>\$ 7,000</u>	<u>\$ 7,000</u>	<u>\$ 7,000</u>
Total:	\$ 381,900	\$ 627,550	\$ 160,100	\$ 798,900
Balance:	\$ 138,100	\$ 30,550	\$ 390,450	\$ 111,550

