

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>RED TAPE, INC</b>	§	<b>Case No. 18-10280</b>
	§	
<b>Debtor</b>	§	
<b>And</b>	§	
<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>RED TAPE II, INC</b>	§	<b>Case No. 18-10279</b>
	§	
<b>Debtor</b>	§	<b>Joint Administration Requested</b>

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

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**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 ATTORNEYS.**

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

RED TAPE, INC (“Red Tape”) and RED TAPE II, INC (“Red Tape II”), the above-captioned debtors and debtors-in-possession (together, the "Debtors"), by and through their

undersigned proposed attorneys, hereby file this Emergency Motion for Interim and Final Orders Authorizing Debtors to Use Cash Collateral and Granting Adequate Protection (the “Motion”) and in support thereof, respectfully states as follows:

### **I. PROCEDURAL BACKGROUND**

1. On September 16, 2018, (the “Petition Date”), the Debtors filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the “Code”). The Debtors continue to manage and operate their financial affairs as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No creditors’ committee has yet been appointed in this case by the United States Trustee. No trustee or examiner has been requested or appointed.

### **II. JURISDICTION AND VENUE**

2. This Court has jurisdiction over these matters pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these chapter 11 cases in this District is proper pursuant to 28 U.S.C. §§ 1408(1) because the Debtors’ place of business has been located in this district for more than 180 days preceding the filing of this bankruptcy case.

### **III. BACKGROUND**

3. The Debtor Red Tape, Inc. was formed on or about April 16, 1998. Debtor Red Tape II, Inc. was formed on or about December 7, 2000. Debtor Red Tape, Inc. was a Texas corporation formed with the intent of owning commercial real property and a commercial business to be used in housing a gentlemen’s nightclub in the Brownsville, Texas area.

4. Red Tape, Inc. is the owner of real estate Being a 0.961 acre tract of land, more or less, consisting of a 0.720 acre tract and a 0.241 acre tract both out of Lot Ten (10), Block "MM",

BROWNSVILLE LAND AND IMPROVEMENT COMPANY'S SUBDIVISION, according to the map or plat thereof recorded in Volume 1, Page 18, Map Records of Cameron County, Texas; said 0.961 acre tract being more particularly described as follows:

BEGINNING at a one-half inch iron pin with a yellow plastic cap stamped "M&R Inc." set at the Southeast corner of Lot 10, Block "MM", BROWNSVILLE LAND AND IMPROVEMENTS COMPANY'S SUBDIVISION, for the Southeast corner of this tract.

THENCE, contingent with the South boundary line of said Lot 10, North 83 degrees 54 minutes West a distance of 169.26 feet to a one-half inch iron pin found on the East Right-of-way Line of U.S. Expressway 77 & 83 (300 foot right of way), for the Southwest corner of this tract;

THENCE, contingent with the East Right-of-way Line of said Expressway North 39 degrees 07 minutes 28 seconds West a distance of 151.22 feet to a one-half inch iron pin with a yellow plastic cap stamped "M&R Inc." set, for the Northwest corner of this tract;

THENCE, contingent with the South boundary line a certain 1.25 acre tract, (Volume 1318, Page 435 Deed Records), being the North boundary line of this tract, North 70 degrees 46 minutes 34 seconds East a distance of 306.01 feet to a one-half inch iron pin found, for Northeast corner of this tract;

THENCE, contingent with the East boundary line of Lot Ten 10, South 06 degrees 06 minutes West, a distance of 237.40 feet to the POINT OF BEGINNING, CONTAINING 0.961 acres of land more or less.

5. Debtor Red Tape II, Inc. was a Texas corporation formed with the intent of owning commercial real property and a commercial business to be used in housing a gentlemen's nightclub in the Pharr, Texas area.
6. Red Tape II, Inc. is the owner of real estate located at Lots Two (2) and Three (3), ALBRAD SUBDIVISION, UNIT NO. 3, an Addition to the City of Pharr, Hidalgo County, Texas, as per map or plat thereof recorded in Volume 21, Page 94, Map Records of Hidalgo County, Texas.
7. The ownership of both companies is made up of Fred H. Feurtado, Jr. and Ramiro R. Arnedariz. Fred H. Feurtado, Jr. owns 50% of each Debtor, Ramiro R. Arnedariz owns 50% of each Debtor.

8. Prior to September 16, 2018, the Debtor Red Tape, Inc. was the signatory on two separate Real Estate Lien Notes secured for the benefit of the lender International Bank of Commerce by three separate properties and cash collateral.

9. Specifically, International Bank of Commerce, 1600 Ruben Torres Blvd., Brownsville, Texas held a first priority mortgage secured by the properties described above owned by Red Tape, Inc. and Red Tape II, Inc. The security is under a Deed of Trust for a Real Estate Lien Note/Promissory Note dated August 8, 2016 in the amount of \$800,000.00.

10. The second real estate lien note is for the principal amount of \$56,000.00 and was executed on or about April 24, 2017. The second real estate lien is secured by the real property owned by RRAFHF, Inc., a separate entity owned by the shareholders of Red Tape and Red Tape II, and described as follows:

A tract of land containing 0.782 of one acre situated in the County of Hidalgo, Texas, being a portion out of Lot 4, Engleman Re-Sub-Division South ½ Block 24, Sub-Div. A, La Blanca Agr. Co., according to the plate thereof recorded in Volume 3, Page 4, Hidalgo County Map Records, which said 0.872 of one acre were conveyed to RRA and FHF, Inc., a Texas Corporation, by virtue of a Warranty Deed recorded under Document Number 864359, Hidalgo County Official Records.

11. Prior to September 16, 2018, the Debtor Red Tape, Inc. was the signatory on two separate Promissory Notes secured for the benefit of the lender Home Tax Solutions, LLC (“HTS”) by two tax liens on the Real Property owned by Red Tape, Inc. and Red Tape II, Inc. described above.

12. The Debtors operate two separate gentlemen’s clubs with management for both clubs being located in Brownsville, Texas. The Comptroller of Public Accounts (the “Comptroller”) classifies these gentlemen’s clubs as sexually oriented businesses subject to the SOBF Act. *See* Tex. Bus. & Com. Code §102.051 *et seq.* The SOBF requires sexually oriented businesses to

pay an amount equal to \$5.00 for each entry by each customer admitted to the business. *Id.* §102.052.

13. Both Red Tape and Red Tape II challenged the validity of the tax and the amounts owed. The filing of these separate bankruptcy cases are filed as the result of a State Office of Administrative Hearings final decision adopted by the Comptroller of Public Accounts following hearing on Debtors' case. Specifically, the Comptroller following the hearing determined that Both Red Tape and Red Tape II were responsible for outstanding SOBF fees from January 1, 2008. The Texas Statement of Account for Red Tape provided that \$1,123,248.41 including penalties and interest was outstanding. The Texas Statement of Account for Red Tape II provided that \$1,121,686.75 including penalties and interest was outstanding.

14. The Debtors have filed this case to restructure their debt and pursue a traditional chapter 11 reorganization plan by paying the liquidation value to its unsecured creditors and to service their debts to IBC and the Comptroller of Public Accounts over time through a plan of reorganization.

15. The Debtors primarily generate income from the sale of alcoholic beverages, food, and revenue from the entertainers.

16. At the time of filing, the Debtors had the following cash:

Red Tape:

Cash on Hand: \$2,371.00

Checking Account:

Operating: \$2,051.11

Payroll: \$0.00

Red Tape II

Cash on Hand: \$2,543.00

Checking Account:

Operating: \$845.53

Payroll: \$1,089.42

Total cash at the time of filing was only \$8,900.06

17. Red Tape generates the approximate sum of \$70,000.00 per month in revenue.
18. Red Tape II, Inc. generates the approximate sum of \$110,000.00 per month in revenue (all collectively, the "Cash Collateral").
19. IBC contractually has a first priority secured claim against the Debtors real estate, receivables, cash, and funds generated by the real estate subject to its secured claim.
20. HTS contractually has a priority secured claims against the Debtors real estate.
21. The Comptroller may have second priority claim against Debtors' real estate and a second priority claim against money on hand at the time the bankruptcy was filed. The Comptroller does not have a secured interest in money generated by the real estate post bankruptcy filing.
22. During the short pendency of the Bankruptcy, Pursuant to Section 363(c)1-2, Debtor with agreement of the secured lender IBC has been using cash collateral in the ordinary course of business to operate the business with no payments being made to insiders.
23. To the extent the Court disagrees with Debtor, the Comptroller's interest in cash is diminimus and limited to the amount of cash on hand at the time the case was filed of \$8,900.06. Regardless, the Comptroller can be adequately protected by replacement liens if the Court finds it has a securable interest in this cash on top of IBC's interest.

#### **IV. RELIEF REQUESTED**

24. The Debtors will suffer immediate and irreparable harm if they are not authorized to use cash collateral to fund the expenses set forth in the Budget. Absent such authorization, the Debtors will not be able to maintain and protect the Property and continue their business.

25. By this Motion, the Debtors seek the entry of an Order authorizing its use of cash collateral pursuant to 11 U.S.C. § 363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and Local Rule 4002-1 in accordance the attached budget Exhibit “A” and grant the following:

26. Grant replacement liens to all secured creditors to the extent their claims were valid as of the filing date;

27. Grant secured creditor IBC adequate assurance payments of \$6300 per month;

28. Grant secured creditor HTS adequate assurance payments of \$391.16 per month as payment for that one certain Promissory Note secured by real property owned by Debtor in Possession Red Tape, Inc.

29. Grant secured creditor HTS adequate assurance payments of \$633.23 per month as payment for that one certain Promissory Note Promissory Note secured by real property owned by Debtor in Possession Red Tape II, Inc.

30. Set a time for a final hearing and objection for this Motion; and granting such other and further relief as is just and proper.

31. The Debtors will suffer immediate and irreparable harm if they are not authorized to use cash collateral to fund the expenses set forth in the Budget. Absent such authorization, the Debtors will not be able to maintain and protect the Property.

32. The Debtors acknowledge that IBC may have a lien on the cash collateral in accordance with 11 U.S.C §§ 361 and 363. In connection therewith, the Debtor seeks the use of Cash Collateral in the ordinary course of business.

CASH COLLATERAL AND  
THE RELIEF SOUGHT BY THE DEBTOR

33. The Debtors’ use of property of the estate is governed by section 363 of the Bankruptcy Code, which provides that:

If the business of the debtor is authorized to be operated under section... 1108 ... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). A debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with Section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

34. When a Chapter 11 debtor-in-possession is authorized to operate its business, it may use property of estate in ordinary course of business, but is prohibited from using cash collateral absent consent of the secured creditor or court authorization. *In re Kahn*, 86 B.R. 506 (Banker. W.D. Mich. 1988); *In re Westport-Sandpiper Associates Ltd. P'Ship*, 116 B.R. 355 (Banker. D. Conn. 1990)(debtor may not use cash collateral unless entity that has interest in it consents or debtor proves that interest of the entity is adequately protected).

35. "Cash collateral" is defined by the Bankruptcy Code as, "cash, negotiable instruments, documents of title securities, deposit accounts or other cash equivalents whenever acquired in the which the estate an entity other than the estate have an interest..." 11 U.S.C. §363(a). Any cash collateral generated by the Debtors may constitute the cash collateral of the secured creditors.

36. Further, the Debtors propose to use the Cash Collateral in accordance with the terms of the Budget. The Debtors also request that they be authorized: (i) to exceed any line item on the budget by an amount up to ten (10) percent of each such line item; or (ii) to exceed any line item by more than ten (10) percent so long as the total of all amounts in excess of all line items for the Budget do not exceed ten (10) percent in the aggregate of the aggregate of the total budget.



APPLICABLE AUTHORITY FOR RELIEF REQUESTED

A. The Court Should Enter an Order Authorizing the Continued Use of Cash Collateral Because the Debtor is providing the Secured Creditor with Adequate Protection

37. The Bankruptcy Code does not define “adequate protection” but does provide a non-exclusive list of the means by which a debtor may provide adequate protection, including “other relief” resulting in the “indubitable equivalent” of the secured creditors’ interest in such property. See 11 U.S.C. § 361.

38. Adequate protection is to be determined on a case-by-case factual analysis. See *Mbank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F.2d 1393, 1396 (10<sup>th</sup> Cir. 1987); *In re Martin*, 761 F.2d 472 (8<sup>th</sup> Cir. 1985). For example, in *O’Connor*, the court held that “[i]n order to encourage the Debtors’ efforts in the formative period prior to the proposal of a reorganization, the court must be flexible in applying the adequate protection standard.” *O’Connor*, 808 F.2d at 1396 (citations omitted). See also *In re Quality Interiors, Inc.*, 127 B.R. 391 (Bankr. N.D. Ohio 1991)(holding that the granting or a replacement lien provided adequate protection).

39. Adequate protection is meant to ensure that the secured creditors receive the value for which it originally bargained pre-bankruptcy. *Swedeland Dev. Group., Inc.*, 16 F.3d 552, 564 (3<sup>rd</sup> Cir. 1994)(citing *In re O’Connor*, 808 F.2d 393, 1396-97 (10<sup>th</sup> Cir. 1987)). Courts have noted that the essence of adequate protection is the assurance of the maintenance and continued responsibility of the lien value during the interim between the filing and the confirmation. *In re Arrienes*, 25 B.R. 79, 81 (Bankr. D. Or. 1982). The purpose of adequate protection requirement is to protect secured creditors from diminution of value during the use period. See *In re Kain*, 86 B.R.506, 513 (Bankr. W.D. Mich. 1988); *In re Becker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. 1986); *In re Ledgmere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990).

40. In the instant case, adequate protection provided to IBC includes a replacement lien on the Debtor's receivables and the Debtor's projected positive cash flow and adequate assurance payments of \$6,300.00

41. In the instant case, adequate protection provided to HTS includes adequate assurance payments of \$1,024.39

42. Section 361(2) of the Bankruptcy Code expressly provides that the granting of a replacement lien constitutes a means of providing adequate protection. 11 U.S.C. § 361(2). In the instant case, granting IBC a replacement lien on post-petition collateral to the extent its prepetition collateral is diminished by the Debtor's use of cash collateral provides IBC with adequate protection. See e.g., *O'Connor*, 808 F.2d 1393; *In re Coody*, 59 B.R. 164, 167 (Bankr. M.D. Ga. 1986); *In re Dixie-Shamrock Oil & Gas, Inc.*, 39 B.R. 115, 118 (Bankr. M.D. Tenn. 1984).

B. The Use of Cash Collateral will Preserve the Debtor's Going Concern Value Which will Inure to the Benefit of IBC and other Creditors.

43. The continued operation of the Debtors' businesses will preserve their going concern value, enable the Debtors to capitalize on that value through a reorganization strategy, and ultimately facilitate the Debtors' ability to confirm a Chapter 11 plan. If the Debtors are not allowed to use cash collateral, they will be unable to operate and potentially cause harm to the property.

44. The Debtors will use the cash collateral during the interim cash collateral period to pay employees, vendors, utilities and otherwise maintain and protect the real property.

45. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor as a going concern.

A debtor, attempting to reorganize a business under Chapter 11, clearly has a

compelling need to use cash collateral in its effort to rebuild. Without the availability of cash to meet daily operating expenses such as rent, payroll, utilities etc., the congressional policy favoring rehabilitation over economic failure would be frustrated.

*In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11<sup>th</sup> Cir. 1984).

46. Accordingly, courts authorize the use of cash collateral to enhance or preserve the debtor's going concern value. For example, in *In re Stein*, 19 B.R. 458 (Bankr. E.D. Pa. 1982), the Court allowed a debtor to use cash collateral where the secured party was undersecured, finding that the use of cash collateral was necessary to the debtors' continued operations and the creditor's secured position can only be enhanced by the continued operation of the debtor's business. *Id.* at 460; see also *Federal Nat. Mort. v. Dacon Bolingbrook Assoc.*, 153 B.R. 204, 204 (N.D. Ill. 1993) (security interest protected to extent debtor reinvested rents in operation and maintenance of the property); *In re Constable Plaza Assoc.*, 125 B.R. 98, 105 (Bankr. S.D.N.Y. 1991) (debtor's reinvestment of rents to maintain and operate office building will serve to preserve or enhance the value of the building which, in turn, will protect the collateral covered by [the] mortgage); *In re Dynaco Corp.*, 162 B.R. 389, 395-96 (Bankr. D. N.H. 1983)(finding that the alternative to the debtor's use of cash collateral, termination of its business, would doom reorganization and any chance to maximize value for all creditors); *In re Karl A. Neise, Inc.*, 156 B.R. 600, 602 (Bankr. S.D. Fla. 1981) (marginally secured creditor adequately protected by lien on postpetition property acquired by debtor, debtors can use cash collateral in the normal operation of their business).

47. If the Debtors cannot use cash collateral, they will be forced to cease operations. By contrast, granting authority will allow the Debtors' to maintain operations and preserve the going concern value of their businesses which will inure to the benefit of any secured creditors and all other creditors.

48. The Debtors believe that use of Cash Collateral pursuant to the terms and conditions set forth above is fair and reasonable and adequately protects the secured creditor in this case. The combination of: (i) the Debtors' ability to preserve the going concern value of the business with the use of cash collateral; and (ii) providing the Secured Lender with the other protections set forth herein, adequately protects its alleged secured position under §361(2) and (3). For all of the reasons stated above, this Court's approval of the Debtor's use of cash collateral is proper herein.

49. The Debtor believes that the approval of this Motion is in the best interest of the Debtor, its creditors and its estate because it will enable the Debtor to (i) continue the orderly operation of its business and avoid an immediate total shutdown of operations; (ii) meet its obligations for necessary ordinary course expenditures, and other operating expenses; and (iii) make payments authorized under other orders entered by this Court, thereby avoiding immediate and irreparable harm to the Debtor's estate.

WHEREFORE, the Debtor respectfully requests that this Court enter an order (a) authorizing the Debtor's use of cash collateral in accordance with the attached Budget and provide related adequate protection; (b) granting the replacement liens set forth above in connection with the use thereof; (c) granting such other and further relief that is just and proper.

Dated: September 25, 2018

Respectfully submitted,

/s/ Ricardo Guerra

Guerra Days Law Group, PLLC

Ricardo Guerra

State Bar No. 24074331

2211 Rayford Rd., Ste. 111 #134  
Spring, Texas 77386  
281-760-4295 (Tel)  
866-325-0341 (Fax)  
[bankruptcy@rickguerra.com](mailto:bankruptcy@rickguerra.com)  
PROPOSED ATTORNEY FOR DEBTORS

**CERTIFICATE OF SERVICE**

I hereby certify that on September 28, 2018, true and correct copies of the foregoing motion were forwarded by U.S. first class mail, postage prepaid, on, all parties listed on the attached Service List.

/s/ Ricardo Guerra  
RICARDO GUERRA

**SERVICE LIST**

Red Tape Inc. 1480 N. Expressway 77/83 Brownsville, TX 78521-1457	International Bank of Commerce Attn: Diann M. Bartek Jeana Long Dykema Cox Smith 1400 N. McColl Road, Ste. 204 McAllen, TX 78501	Yvette Aviles Dale & Klein, L.L.P. c/o Katie P. Klein William D. Mount 1100 E. Jasmine Ave., Suite 202 McAllen, TX 78501 Fax: 956-687-2416 Email: <a href="mailto:office@daleklein.com">office@daleklein.com</a>
Red Tape II Inc. 1480 N. Expressway 77/83 Brownsville, TX 78521-1457	AT&T c/o Bankruptcy 4331 Communications Dr. FLR 4W Dallas, TX 75211-1300	Cameron County Tax Assessor Collector 964 E. Harrison Brownsville, TX 78520-7123
Ricardo Guerra Ronald Smeberg Guerra & Smeberg PLLC 2010 W. Kings Hwy. San Antonio, TX 78201	Internal Revenue Services P.O. Box 7346 Philadelphia, PA 19101-7346	Hidalgo County Tax Assessor Collector 2804 S. US Highway 281 Edinburg, TX 78539-6243
US Trustee 606 N. Carancahua, Suite 1107 Corpus Christi, TX 78401	Cameron County c/o Diane W. Sanders Linebarger Goggan Blair & Sampson P.O. Box 17428 Austin, TX 78760-7428	Linebarger Goggan P.O. Box 17428 Austin, TX 78760-7428
Stephen Douglas Statham Office of US Trustee 515 Rusk, Ste. 3516 Houston, TX 77002	Hidalgo County c/o Diane W. Sanders Linebarger Goggan Blair & Sampson P.O. Box 17428 Austin, TX 78760-7428	Time Warner Cable Attn: Recovery Support 3347 Platt Springs Rd. West Columbia, SC 29170- 2203
Home Tax Solutions Attn: Matthew Countryman 8526 N. New Braunfels Ave. San Antonio, TX 78217		Underwood Perkins, PC Two Lincoln Center 5420 LBJ Freeway, Ste. 1900 Dallas, TX 75420-6230
Texas Comptroller of Public Accounts Jason Starks P.O. Box 12548 Austin, TX 78711-2548		