

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In re:	§	
	§	
AUSTLEN BABY CO.	§	Case No. 18-10749-HCM
	§	Chapter 11
Debtor	§	

**DEBTOR’S EMERGENCY MOTION FOR INTERIM AND FINAL
AUTHORIZATION OF USE OF CASH COLLATERAL**

TO THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Austlen Baby Co. (“**Austin**” or the “**Debtor**”), the Debtor and Debtor-in-Possession, and files this, its Motion for Interim and Final Authorization of Use of Cash Collateral (the “**Cash Collateral Motion**”), and respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157, 1334 and the standing order of reference in the United States District Court for the Western District of Texas. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (M) and (O). The statutory bases for the relief requested in this Motion are 11 U.S.C. §§ 105, 361, 363 and 507, and Rules 4001 and 9014 of the Bankruptcy Rules.

FACTUAL BACKGROUND

2. On June 10, 2018 (the “**Petition Date**”), the Debtor filed its voluntary petition for relief under chapter 11, Title 11 of the United States Code (the “**Bankruptcy Code**”) commencing the above styled and numbered case in the United States Bankruptcy Court for the Western District of Texas, Austin Division (the “**Bankruptcy Court**” and the “**Bankruptcy Case**”). Pursuant to Bankruptcy Code §§ 1107(a) and 1108, the Debtor

is operating its business and managing its property as debtor in possession. No trustee or committee has been appointed in this matter.

3. Reference is made to the factual background information contained in the Debtor's Emergency Motion to Incur Post-Petition Secured Indebtedness [Docket No. 4] (the "**DIP Financing Motion**") and the Declaration of Leslie Stiba in Support of Certain First Day Motions (the "**Declaration**"). For the sake of brevity and economy, the historical information regarding the Debtor's operations contained in the DIP Financing Motion will not be restated herein. Instead, it is incorporated by reference for all purposes.

4. Alleged cash collateral in this case consists of the cash and receivables generated from the Debtor's business (the "**Cash Collateral**"). The Cash Collateral is proposed to be used for payment of normal, necessary, and appropriate expenses of the Debtor-in-Possession, including, but not limited to employee salaries, rent, taxes and insurance, professional fees and quarterly fees to the United States Trustee. Without the use of Cash Collateral, the Debtor will be unable to operate its business and manage its affairs.

5. Austlen's operations have been financed through secured, SBA backed debt issued by Amplify Federal Credit Union ("**Amplify**") through two loan facilities: (1) Loan #74820950-00 in the aggregate original principal amount of \$1,700,000.00; and (2) Loan #82792450-07 in the aggregate original principal amount of \$1,800,000 (collectively, the "**Amplify Debt**"). The current balance of Loan #74820950-00 is 1,383,947.90. The current balance of Loan #82792450-07 is 1,606,945.50. The Amplify Debt is secured by blanket liens on Austlen's assets. The Amplify Debt is personally guaranteed by Stiba and her husband, as well as Laffan and his wife. Amplify asserts a lien on the Cash Collateral, and

should the Court grant the DIP Financing Motion, the DIP Lenders will have a senior lien on Cash Collateral.

RELIEF REQUESTED

A. Use of Cash Collateral

6. Pursuant to 11 U.S.C. § 363 and Bankruptcy Rule 1007(d), the Debtor seeks Interim and Final Orders of the Bankruptcy Court authorizing the use of Cash Collateral. The expenses the Debtor proposes to pay from the Cash Collateral are necessary and important for the protection of the bankruptcy estate. Without access to and use of the Cash Collateral, the Debtor will be unable to meet its obligations and to properly administer the estate. Attached as Exhibit “A” to this Motion is a detailed budget showing the proposed expenses to be funded by the Debtor (the “**Budget**”). The Budget shows expenses and income for a three-week period. The Debtor requests authority to use cash and cash proceeds on the condition all such expenditures shall be consistent with the Budget. The Debtor requests that actual amounts may not vary from the applicable Budget by more than (i) twenty percent (20%) on a monthly basis, to be tested monthly and (ii) twenty percent (20%) on a cumulative basis for the Budget period (the “**Budget Variances**”).

7. A 120-day budget is being finalized and will be served on all creditors and parties in interest as soon as possible, but in no event on less than 14-days’ notice of the final hearing on the Motion.

8. Bankruptcy Rule 4001(b) requires a final hearing on a motion for authorization to use cash collateral to be held on no less than 14-days’ notice. The Rule permits the Court to conduct a preliminary hearing, before the expiration of the 14-day

notice period, to consider authorizing the Debtor to use that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending the final hearing.

9. The three-week Budget includes only those items necessary to avoid such immediate and irreparable harm. The 120-day budget shall include those items that are properly considered at a final hearing.

10. The Debtor reserves the right to seek approval of additional interim periods beyond the three-week period in the Budget and/or to seek to extend the budget beyond the 120-day period included in the Budget.

B. Adequate Protection

11. As adequate protection for the use of Cash Collateral, Amplify will retain its alleged liens (subject to the liens proposed to be granted to the DIP Lenders in connection with the DIP Facility), and will be granted an administrative claim and replacement liens (also subject to the liens and super-priority administrative claims proposed to be granted to the DIP Lenders in connection with the DIP Facility) upon any post-petition receivables, and other proceeds of their alleged pre-petition collateral, to the extent that the proposed use of Cash Collateral results in a decrease, if any, in the value of Amplify's alleged collateral interests. The Debtor will provide a comparison of budget-to-actual figures throughout the time of any use of alleged Cash Collateral. The Debtor reserves all rights as to the amount, validity and priority of Amplify's alleged liens and claims. No liens shall be or are proposed to be granted to Amplify upon any chapter 5 causes of action or commercial tort claims of the Debtor.

12. Reference is made to 11 U.S.C. § 361 for the establishment of the forms of adequate protection. The grant of a replacement lien such as proposed herein to the extent

that the use of Cash Collateral results in a decrease in the value of an entity's interest in such property is specifically contemplated by the Bankruptcy Code and is appropriate in this case under the circumstances.

13. Without the use of the Cash Collateral, the Debtor would have no means to pay its expenses, hindering its ability to formulate and have confirmed a plan of reorganization.

WHEREFORE, the Debtor prays that the Court:

- A. Authorize Debtor to use Cash Collateral on an interim basis pending a final hearing consistent with the Budget;
- B. Authorize the Debtor to provide the Adequate Protection proposed herein;
- C. Authorize the Debtor to use Cash Collateral on a final basis as set forth herein consistent with a 90-day budget; and
- D. Grant such other and further relief as the Debtor maybe justly entitled.

Date: June 11, 2018

Respectfully submitted,

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PROPOSED ATTORNEY FOR THE
DEBTOR-IN-POSSESSION

CERTIFICATE OF SERVICE

I hereby certify that June 11, 2018, a true and correct copy of the foregoing pleading was served via this Courts ECF/CM notification system to all parties registered to receive just notice, and via email to the parties listed below and parties on the attached Service List.

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