

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA**

In re:)	
EATERIES, INC., et al.¹)	BK-17-11444-SAH
)	Chapter 11
)	Jointly Administered
Debtor.)	

**OBJECTION OF THE UNITED STATES TRUSTEE TO THE DEBTOR’S
AMENDED MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING THE
DEBTORS TO USE CASH COLLATERAL, (B) AUTHORIZING THE DEBTORS TO
OBTAIN POST-PETITION FINANCING, (C) GRANTING SUPERPRIORITY
SECURITY INTERESTS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE
STATUS TO LENDER, (D) SCHEDULING A FINAL HEARING;
AND (E) GRANTING RELATED RELIEF
[Docket #35]**

The United States Trustee (“UST”) files this objection to the Debtor’s Amended Motion for post-petition financing and for use of cash collateral (Docket #35). In support of this objection, the UST states:

1. The UST does not object to the general terms of the request for post-petition financing. However, the motion is unclear as to the entire relief that is being sought and appears to be asking for things that have not been brought properly before the Court.
2. For example, on its face the motion requests the use of cash collateral. However, the terms of the use of cash collateral are not set forth. Is a replacement lien going to be given? The parties and the Court need to know all the terms of the cash collateral and have a right for notice and opportunity in that regard.
3. Moreover, although a representation is made in the motion that the pre-petition creditor who holds an interest in cash collateral consents to its use, there is no stipulation or any other signature authority showing this consent.

¹ The Debtors in these chapter 11 cases include: Eateries, Inc. (above styled) and GRP of Zanesville, LLC. 17-11445.

4. The same is true with respect to Performance Food Group, Inc (“PFG”). A representation is made that this creditor consents to the use of cash collateral but there is no stipulation or other signature authority before the court establishing this consent.
5. In addition, at page 11 ¶24 the Debtor is requesting the Court to grant a lien in favor of PFG depending on the outcome of certain events. This request goes beyond the scope of the motion for debtor in possession financing.
6. There also needs to be clarification with respect to the carve out for case professionals. The motion includes provision for payment of counsel fees for the unsecured creditors committee (“UCC”) in an amount not to exceed \$10,000. However, in the proposed financing order the \$10,000 appears to be limited to any investigation into the validity of the Pre-Petition Creditors and Lender. The UST asserts that it is inappropriate to limit the UCC in this manner.
7. Moreover, it is unclear whether \$10,000 will be sufficient for the UCC. Perhaps the carve out amount for all professionals, including the UCC, should be subject to adjustment by the parties and approval by the Court.
8. The carve out fails to include fees payable under 28 U.S.C. § 1930.
9. The proposed order provides that in no event shall the proceeds made available by Lender to or for the benefit of the Debtors be used for the payment or reimbursement of any fees, expenses, costs, or disbursements of any Case Professional or other persons incurred with the purpose of:
 - (a) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, perfection, priority, or enforceability of the Pre-Petition Claims, the Pre-Petition Claim Documents, the Loan Facility, the Loan Facility Documents, this Interim Financing Order, or any liens or security interests granted thereby or with respect thereto, or any other rights or interests of the Lender under any Pre-Petition Claim Document or Loan Facility Document, and
 - (h) asserting or declaring any of the Pre-Petition Claim Documents, Loan Facility Documents or this Interim Financing Order to be invalid, not binding or unenforceable in any respect....except that counsel for the unsecured creditors committee can investigate in an

amount not to exceed \$10,000.

Docket #20-1 at p. 19-21, starting at ¶ 57.

10. The foregoing proposed terms are overreaching and over restrictive. It is not clear why the Pre-Petition claims are granted this protection.
11. Moreover, limiting any investigation to that of the unsecured creditors committee is also too restrictive. What if a committee is not appointed?
12. This same restrictive language with respect to the Pre-Petition claims is also listed as an event of default at page 21 of the proposed order ¶59.
13. The interim and final order should only grant necessary relief without containing terms and conditions that are overbroad, overcomplicated, or overreaching.
14. At ¶78 of the proposed order the Debtor lists those parties who shall receive notice of said proposed order. The UST asserts that all the applicable taxing authorities and other state regulatory authorities in each respective state in which the Debtor conducts business should also receive notice of said order.
15. At ¶8.6 of the Loan Agreement mandates that the Debtor will indemnify the Lender for its attorneys' fees and expenses incurred with respect to, among other things, the preparation, administration and enforcement of the Loan Agreement. Any such indemnification for attorneys' fees should be noticed to all interested parties, subject to the requirements of the bankruptcy code and approved by the Court.

WHEREFORE, based on the evidence presented at the April 25, 2017 hearing, the UST requests this Court only grant the interim relief "necessary to avoid immediate and irreparable harm" as directed by Rule 6003 of the FED. R. BANKR. P.; and for such other and further relief as this Court deems just, equitable, and proper.

Respectfully submitted,

s/ Marjorie J. Creasey
Marjorie J. Creasey, OBA #17819
Charles E. Snyder, OBA #8441
Office of the United States Trustee
215 Dean A. McGee, Fourth Floor
Oklahoma City, OK 73102
(405) 231-5961/231-5958 [fax]
Marjorie.Creasey@usdoj.gov
Charles.Snyder@usdoj.gov