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Wells Fargo Credit Management
Group

E-Filed August 9, 2019

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

In re:

COLLEEN & TOM ENTERPRISES, INC.

CASE NO. 18-16462-btb
Chapter 11

**LIMITED OPPOSITION TO DEBTOR'S
MOTION FOR ORDER APPROVING
AUCTION OF DEBTORS' ASSETS
FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS AND
ENCUMBRANCES**

Creditor Wells Fargo Credit Management Group ("WF") by and through its attorneys,
Smith Larsen & Wixom, hereby files this Limited Opposition to Debtor Colleen & Tom
Enterprises, Inc.'s Motion for Order Approving Auction of Debtor's Assets Free and Clear of
Liens, Claims, Interests and Encumbrances ("Opposition"). In Support of this Opposition, WF
submits the Points and Authorities set forth herein.

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POINTS AND AUTHORITIES

FACTS

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1. On or about August 1, 2015, WF made a revolving line of credit loan in the amount of \$300,000.00 (“Loan”) to COLLEEN & TOM ENTERPRISES, INC., a Nevada corporation (“Borrower”), which Loan was evidenced by a promissory note, loan or credit agreement, and/or confirmation letter and disclosure (collectively “Note”) executed by the Borrower in favor of WF. The Loan is governed by the terms of a Business Lending Confirmation Agreement (“Loan Agreement”), dated August 1, 2015.

2. The Loan was secured, in part, by an interest in the accounts, inventory, and equipment of the Debtor.

3. This interest was memorialized by a UCC Financing Statement filed with the Nevada Secretary of State on July 20, 2012, with a file number of 2012019817-9. *See* UCC Financing Statement attached as Exhibit 1.

4. The UCC Financing Statement sets forth the collateral, which includes

All inventory, including all goods held for sale or lease or to be furnished under contracts for service ... now or at any time hereafter owned or acquired ... located at Grantor’s places of business or elsewhere [and] All equipment, goods, tools, machinery, furnishings, furniture and other equipment and fixtures of every kind no existing or hereafter acquired.

See Id.

5. WF has not released Debtor from the UCC Financing Statement prior to the current Bankruptcy.

LEGAL ARGUMENTS

WF does not contest the sale of the assets, provided that the sales have been and will be conducted in a commercially reasonable manner, and that the proceeds from the sales of the

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1 consigned goods, along with the sale of any fixtures of the estate, be retained for addressing the
2 interest of WF as a secured creditor with a perfected interest. WF has submitted a claim, based
3 on a perfected lien interest, which the Debtor has not contested. *See* Claim 65. Debtor has
4 already conceded to this request when the Debtor moved to retain the auctioneer, to the extent
5 that Debtor states that in order to “ensure timely liquidation of the Auction Property, if any lien
6 is asserted or alleged to be perfected against it, the Debtor proposes that said lien be deemed
7 transferred to the proceeds of the sale pending further order of this Court.” *See* Doc. 86 page 4
8 ¶18. WF does not take a position regarding the interest of the consigners in the consigned goods
9 beyond noting that the claims of the majority of the consigners do not appear to have been
10 perfected.

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13 To the extent that two sales have already occurred, and a third one is currently set for
14 September 19, 2019, WF also requests that Debtor provide evidence to WF and the Court of
15 the proceeds from the prior sale, and that the sales have been, and will be, conducted in a
16 commercially reasonable matter. Debtor notes that Nellis Auction inadvertently conducted two
17 auctions already. *See* Doc. 166 page 2 ¶6. WF was not given the opportunity to assess the
18 commercial reasonableness of the sale prior to these auction. WF currently has a state case
19 pending against the guarantors of the loan which is the basis of WF’s claim; failure to pursue a
20 commercially reasonable process for the auction could jeopardized WF’s ability to collect
21 against the guarantors. Disclosure of the proceeds from the conducted sale should be included
22 so as to evaluate the sales already conducted; the monthly operating reports do not disclose the
23 income from the sales. Thus, WF requests that Debtor provide WF and this Court evidence of
24 the outcome and commercial reasonableness of the prior and anticipated sale, prior to issuance
25 of an Order allowing the auctions.
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CONCLUSION

Based upon the foregoing, WF requests that its position be protected in any order authorizing the sale of the goods and fixtures as requested by the Debtor, and that a finding regarding the commercial reasonableness of the prior and anticipated sales be included in any forthcoming Order.

DATED this August 9, 2019.

SMITH LARSEN & WIXOM

/s/ Christopher L. Benner
Michael B. Wixom, Esq.
Nevada Bar No. 2812
Christopher L. Benner, Esq.
Nevada Bar No. 8963
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Creditor Wells Fargo
Credit Management Group

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CERTIFICATE OF SERVICE

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1. On the 9th day of August, 2019, I served the following document(s):

Limited Opposition to Debtor’s Motion for Order Approving Auction of Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances

2. I served the above-named documents by the following means to the persons as listed below.

(Check all that apply)

a. ECF System (You must attach the "notice of Electronic Filing, or list all persons and addresses and attach additional paper if necessary)

James T. Leavitt
Leavitt Legal Services, P.C.
601 South 6th Street
Las Vegas, Nevada 89101
Email: jamesleavittesq@gmail.com

U.S. Trustee - LV - 11
300 Las Vegas Boulevard S., Suite 4300
Las Vegas, NV 89101

b. United States mail, postage fully prepaid (List persons and addresses. Attach additional paper if necessary)

c. **Personal Service** (List persons and addresses. Attach additional paper if necessary)

For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the document(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the document(s) in a conspicuous place in the office.

For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place or abode with someone of suitable age and discretion residing there.

d. **By direct email (as opposed to through the ECF System)** (List persons and email addresses. Attach additional paper if necessary)

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Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the person at the email addresses listed below. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

e. **By fax transmission** (*List persons and fax numbers. Attached additional paper if necessary*)

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

f. **By messenger** (*List persons and addresses. Attach additional paper if necessary*)

I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service. (*A declaration by messenger must be attached to this Certificate of Service*).

I declare under penalty of perjury that the foregoing is true and correct.

Signed on August 9, 2019.

/s/ Jana L. Rivard
an employee of Smith Larsen & Wixom

EXHIBIT 1

EXHIBIT 1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

CT Lien Solutions
Representation of filing

This filing is Completed
File Number : 2012019817-9
File Date : 20-JUL-2012

A. NAME & PHONE OF CONTACT AT FILER (optional) Phone: Fax:	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
Wells Fargo Bank 4402 Piedras Dr. West MAC: T5601-012 San Antonio TX, 78228	34095486 NVNV
11268 -	
File with: Secretary of State, NV	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME COLLEEN & TOM ENTERPRISES, INC.				
OR	1b. INDIVIDUAL'S LAST NAME			
	FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS 3071 N Rainbow Blvd Ste 100		CITY Las Vegas	STATE NV	POSTAL CODE 89108
		COUNTRY USA		
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION INC	1f. JURISDICTION OF ORGANIZATION NV	1g. ORGANIZATIONAL ID #, if any C12387-1995 <input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S LAST NAME			
	FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
		COUNTRY		
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Wells Fargo Bank, National Association				
OR	3b. INDIVIDUAL'S LAST NAME			
	FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS P O Box 659713		CITY San Antonio	STATE TX	POSTAL CODE 78265
		COUNTRY USA		

4. This FINANCING STATEMENT covers the following collateral:

All accounts (including health care insurance receivables), deposit accounts, contract rights, chattel paper, (whether electronic or tangible), commercial tort claims, instruments, promissory notes, investment property, general intangibles (including payment intangibles and software), letter of credit rights, letters of credit, and other rights to payment of every kind now existing or at any time hereafter arising.

All inventory, including all goods held for sale or lease or to be furnished under contracts for service, or goods so leased or furnished, raw materials, component parts, work in process and other materials used or consumed in Grantor's business, now or at any time hereafter owned or acquired by Grantor, wherever located, and all products thereof, whether in the possession of Grantor, any warehousemen, any bailee or any other person, or in process of delivery, and whether located at Grantor's places of business or elsewhere.

All equipment, goods, tools, machinery, furnishings, furniture and other equipment and fixtures of every kind now existing or hereafter acquired, and all improvements, replacements, accessions and additions thereto and embedded software included therein, whether located on any property owned or leased by Grantor or elsewhere, including without limitation, any of the foregoing now or at any time hereafter located at or installed on the land or in the improvements at any of the real property owned or leased by Grantor, and all such goods after they have been severed and removed from any of said real property.

5. ALTERNATIVE DESIGNATION (if applicable):	<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOBR	<input type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (OPTIONAL FEE) (optional)		<input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2			

8. OPTIONAL FILER REFERENCE DATA
34095486

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