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12 *INSURERS' SECURITY FUND*

13 UNITED STATES BANKRUPTCY COURT
14 DISTRICT OF NEVADA

15 In re:

16 Red Rose, Inc.,

17 Debtor.

18 Affects:

19
20
21 ☒ All Debtors
22 ☐ 20-12815 Beachhead Roofing & Supply,
23 Inc.
24 ☐ 20-12816 California Equipment Leasing
25 Association, Inc.
26 ☐ 20-12818 Fences 4 America, Inc.
27 ☐ 20-12819 James Petersen Industries, Inc.
28 ☐ 20-12820 PD Solar, Inc.
☐ 20-12821 Petersen-Dean, Inc.
☐ 20-12822 Petersen Roofing And Solar
LLC

Case No. BK-20-12814-MKN

Chapter 11

**LIMITED OBJECTION AND
RESERVATION OF RIGHTS WITH
RESPECT TO THE CASH
COLLATERAL MOTION AND
ENTRY OF THE PROPOSED FINAL
CASH COLLATERAL ORDER**

- ☐ 20-12823 Petersendean Hawaii LLC
- ☐ 20-12824 Petersendean Roofing And Solar Systems, Inc.
- ☐ 20-12825 Petersendean Texas, Inc.
- ☐ 20-12826 Roofs 4 America, Inc.
- ☐ 20-12827 Solar 4 America, Inc
- ☐ 20-12829 Sonoma Roofing Services, Inc.
- ☐ 20-12831 Tri-Valley Supply, Inc.
- ☐ 20-12833 Td Venture Fund LLC

TO: THE HONORABLE MIKE K. NAKAGAWA, JUDGE OF THE UNITED STATES BANKRUPTCY COURT.

California Self-Insurers' Security Fund (the "Fund" or "CSISF"), by and through its counsel, Nixon Peabody LLP and Parsons Behle & Latimer, hereby files this limited objection and reservation of rights (the "Limited Objection") with respect to the *Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 361, 362, 363 and 552 and Fed. R. Bankr. P. 4001(b) and 4001 (d): (I) Determining Extent of Cash Collateral; (II) Authorizing Borrowing Debtors to Use Cash and Provide Adequate Protection; (III) Granting Related Relief; and (IV) Scheduling Final Hearing* [ECF No. 19] (the "Cash Collateral Motion").¹

As detailed below, the Fund holds a valid and perfected lien on the assets of Petersen-Dean, Inc. ("PDF") pursuant to Section 3701(k) of the California Labor Code to secure its statutory obligations with respect to workers' compensation claims, all as more fully detailed in the applicable statutes and regulations. With this Limited Objection, the Fund seeks confirmation that:

- i. the adequate protection liens afforded to the Pre-Petition Lenders under the Final Cash Collateral Order will not impair any valid pre-petition lien that the Fund

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Cash Collateral Motion. By consent of the Debtors, the deadline for CSISF to respond to the Cash Collateral Motion was extended to today.

1 holds and shall in all events be junior to any lien that the Fund holds up to

2 \$965,941.00; and

3 ii. the Debtors shall only use cash collateral in accordance with the proposed budget.

4 Notwithstanding the filing of this Limited Objection, the Fund is engaged in a continuing
5 dialogue with the Debtors to resolve the issues through the date of the hearing to consider final
6 relief with respect to the Cash Collateral Motion. In support of this Limited Objection, the Fund
7 respectfully states as follows:
8

9 **Background**

10 **A. The Fund's Pre-Petition Lien Under the California Labor Code**

11 Prior to the Petition Date, PDI elected to self-insure its workers' compensation obligations
12 under California law. Section 3701 of the California Labor Code requires self-insured employers,
13 such a PDI, to deposit security for their obligations in the form of either a surety bond issued in
14 favor of the Department of Industrial Relations for the State of California (the "Department"),
15 cash or marketable securities, or an irrevocable letter of credit. The amount of the security to be
16 posted by the self-insured employer is determined by, and may be increased or decreased from
17 time to time by, the Department in accordance with applicable rules and regulations.
18

19 On October 30, 2019, prior to the Petition Date, the director of the Office of Self-
20 Insurance Plans (an office of the Department) delivered a demand for PDI to post additional
21 collateral in connection with its participation in the Alternative Securities Program for self-
22 insurance of Workers Compensation Obligations in California in accordance with Section 3701 of
23 the California Labor Code (the "Demand"). To date, the Debtors have not posted the additional
24 collateral.
25

26 Section 3701(k) of the California Labor Code provides, in relevant part:
27
28

Upon the sending by the director of a request to renew, request to post, or request to increase or decrease a security deposit, *a perfected security interest is created in the private self-insured's assets in favor of the director and the Self-Insurers' Security Fund* to the extent of any then unsecured portion of the self-insured's incurred liabilities.

See Cal. Lab. Code § 3701(k) (emphasis added). Accordingly, as a result of and immediately effective upon and contemporaneous with the Demand, the Fund obtained a valid and perfected lien on PDFs assets (the “Fund Lien”).

B. The Chapter 11 Cases and the Interim Order and the Proposed Final Cash Collateral Order

On June 11, 2020, PDI and certain of its affiliates (collectively, the “Debtors”) commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under Bankruptcy Code sections 1107 and 1108. No trustee, examiner or statutory committee of creditors has been appointed in these chapter 11 cases.

On June 12, 2020, the Debtors filed the Cash Collateral Motion seeking, among other things, entry of an interim and final order authorizing and approving, among other things, (a) the Debtors’ use of the cash collateral of ACF Finco I LP (the “Pre-Petition Lender”), and (b) the Debtors’ provision of adequate protection to the Pre-Petition Lender.

On June 17, 2020 the Court held the initial hearing on the Cash Collateral Motion and on June 18, 2020 the Court entered the *Interim Order (I) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (ii) Granting Adequate Protection Pursuant to Section 361, 362, and 363 of the Bankruptcy Code, (Hi) Granting Liens and Superpriority Claims, and (IV) modifying the Automatic Stay, an (V) Scheduling a Final Hearing* [ECF No. 55] (the “Interim Order”). Paragraph 2(a) of the Interim Order grants the Pre-Petition Lender, “a valid, perfected security interest in and lien (the “Adequate Protection Liens”) on all of the Debtors’

assets, [...] with the same legality, validity, priority, perfection that the Pre-Petition Lenders' lien had on the Petition Date." Interim Order, 12(a).

On July 6, 2020, the Court entered an *Order Approving Stipulation to Continue Final Hearing on Debtors' Motion for Order (I) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (II) Granting Adequate Protection Pursuant to Sections 361, 362 and 363 of the Bankruptcy Code, (III) Granting Liens and Superpriority Claims, and (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing* [ECF No. 257] that (i) continued the Final Hearing date on the Cash Collateral Motion to July 15, 2020 at 3:00 p.m., (ii) set the opposition deadline to July 9, 2020; and (iii) set the reply deadline to July 13, 2020.

Limited Objection and Reservation of Rights

None of the Debtors' filings — including the Cash Collateral Motion — make any specific reference to the Fund Lien. Accordingly, the Fund files this Limited Objection to obtain confirmation that the Adequate Protection Liens afforded to the Pre-Petition Lenders under the Final Cash Collateral Order will not impair any valid pre-petition lien that the Funds holds and shall in all events be junior to any lien that the Fund holds up to \$965,941.00. To address those concerns, the Fund proposes that the following language be included in the Final Cash Collateral Order:

- A. Insert the following as a new paragraph "B" after Paragraph A on page 3 of the Interim Order:

On October 30, 2019, the Director of the Department of Industrial Relations for the State of California (the "Director") delivered a demand for the Debtor Petersen Deane, Inc. to post additional collateral in connection with its participation in the Alternative Securities Program for self-insurance of Workers Compensation Obligations in California. The position of the California Self Insurer's Security Fund ("CSISF"), which administers the program, is that the issuance of that notice, pursuant to the applicable statutes, resulted in a lien in the amount of \$965,941.00 on all of the assets of the Debtor Petersen Deane, Inc.

1 B. Insert the following as a new paragraph 29 of the Interim Order:

2
3 The adequate protection liens afforded to the Pre-Petition Lenders
4 hereunder shall not impair any valid pre-petition lien that the
5 Director holds and shall in all events be junior to any lien that the
6 Director holds up to \$965,941.00. The rights of all parties,
7 including without limitation the Debtors and the Pre-Petition
8 Lenders to challenge the lien asserted by the Director are
9 reserved. CSISF and the Director shall have the right to seek
10 additional adequate protection and/or to move for an order
11 prohibiting the further use of cash collateral, including without
12 limitation following any Event of Default. All notices to be
13 provided to the Pre-Petition Lenders under this Order shall also be
14 delivered to counsel to CSISF. This Order does not alter any
15 obligations of the Debtors to comply with laws of the State of
16 California, including those governing the maintenance of workers'
17 compensation insurance.

11 Upon information and belief, this language is acceptable to the Debtors, but it has not yet
12 been approved by other parties in interest. While the Fund asserts a lien on the assets of the
13 Peterson Deane, Inc., including cash on hand, it does not object to the Debtors' use of cash
14 collateral consistent with and to the extent requested and provided for in the "13 Week Budget"
15 proposed to be annexed to Final Cash Collateral Order.

17 DATED: July 15, 2020

PARSONS BEHLE & LATIMER

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*Attorneys for CALIFORNIA SELF INSURERS'
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Parsons Behle & Latimer, and that on this 15th day of July, 2020, I caused a true and correct copy of the foregoing LIMITED OBJECTION AND RESERVATION OF RIGHTS WITH RESPECT TO THE CASH COLLATERAL MOTION AND ENTRY OF THE PROPOSED FINAL CASH COLLATERAL ORDER to be filed and served with the Clerk of the Court through the Court's CM/ECF system which sent electronic notice of the same to the attached list:

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Employee of Parsons Behle & Latimer

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