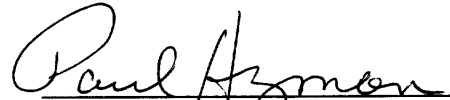




**ORDERED** in the Southern District of Florida on December 29, 2016.

  
Paul G. Hyman, Jr., Judge  
United States Bankruptcy Court

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

IN RE:

CASE NO.: 16-15760-PGH  
CHAPTER 11

C & D PRODUCE OUTLET, INC. and  
C & D PRODUCE OUTLET - SOUTH, INC.

Jointly Administered

Debtors.  
\_\_\_\_\_ /

**FIFTH ITERIM ORDER AUTHORIZING DEBTORS IN POSSESSIONS' EMERGENCY  
MOTION FOR DETERMINATION AND/OR AUTHORIZATION TO USE CASH COLLATERAL**

THIS MATTER came before the Court on December 20, 2016, upon Debtor in Possession, C & D PRODUCE OUTLET, INC., (the "Debtor") and final hearing on Debtor's Emergency Motion for Authorization to Use Cash Collateral (C.P. #9) and Motion to Continue Use of Cash Collateral (C.P. #147) (hereinafter referred to as "Motion"), the Court having reviewed the file and the Motion, having heard argument of counsel, being otherwise duly advised in the premises, it is hereby

**ORDERED** and **ADJUDGED**, as follows:

1. The Debtor's Motion for Authorization to Use Cash Collateral ("Motion") and Debtor's Motion to Continue Use of Cash Collateral are hereby GRANTED on an interim basis, as set forth herein.

2. The Court finds that Debtor's cash collateral is subject to the trust established by the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. § 499e(c)(2), by virtue of Debtor's purchase of wholesale quantities of perishable agricultural commodities and license under the PACA, 7 U.S.C. § 499a *et seq.*, and that FRESHPOINT SOUTH FLORIDA, INC. (hereinafter referred to as "FRESHPOINT"), FREEDOM FRESH, LLC (hereinafter referred to as "FREEDOM FRESH") and FRESKO FOODS, LLC ("FRESKO"), are PACA trust creditors of the Debtor in the approximate outstanding aggregate principal amount of \$203,000.00, plus interest, costs and reasonable attorneys' fees.

3. The Court finds that CSC also claims to have a security interest in certain cash collateral of C & D Outlet North, Inc by virtue a UCC-1 Financing Statement dated June 12, 2015 as amended by a UCC-3 dated December 4, 2015 and purports to have a lien on all of all of C & D Outlet North, Inc operating accounts, accounts receivable, credit card and charge card receivables, cash on hand and on deposit in banks cash equivalents, contracts, real property leases, note. Since identity of this creditor is currently unknown, this claim shall be deemed contingent until the proper secured party can be substantiated. The Court finds that this creditor may be under-secured or unsecured in its lien position, subject to further review.

4. The Court finds that Happy Rock Merchant Solutions claims to have a security interest in certain cash collateral of C&D North Outlet, Inc by virtue of three Merchant Sales Agreements dated May 27, 2015, June 30, 2015 and December 3, 2015, respectively, whereby the Debtor agreed to sell its future receivables including all debit card and credit card receivables to Happy Rock Merchant Solutions in exchange for the purchase price of \$275,000.00 (May 27, 2015 Agreement), the separate purchase price of \$125,000.00 (June 30, 2015 Agreement) and the separate purchase price of \$50,000.00 (December 3, 2015 Agreement). Since Happy Rock Merchant Services did not file UCC-1

Financing Statements in its name perfecting its security interest in the Debtor's assets, this claim shall be deemed contingent until any perfected security interest can be substantiated. This creditor may be under-secured or unsecured in its lien position, subject to further review. The executory contract with this creditor has been rejected by separate order of this Court.

5. As adequate protection for FRESHPOINT SOUTH FLORIDA, INC., the Court hereby approves the monthly payment by the Debtor, C&D Produce Outlet, Inc to FRESHPOINT SOUTH FLORIDA, INC. of an aggregate amount equal to **\$500.00** per month. The adequate protection payment shall be due on the 25th day of each month until further of Court. The issue on allocation of the adequate protection payments will be determined by further order of this Court and all parties reserve their rights. There shall be a five (5) business day grace period for each payment.

6. As adequate protection for FRESKO FOODS, LLC, the Court hereby approves the monthly payment by Debtor, C&D Produce Outlet, Inc to FRESKO FOODS, LLC of an aggregate amount equal to **\$500.00** per month. The adequate protection shall be due on the 25th day of each month until further of Court. The issue on allocation of the adequate protection payments will be determined by further order of this Court and all parties reserve their rights. There shall be a five (5) business day grace period for each payment.

7. As adequate protection for FREEDOM FRESH, the Court hereby approves the monthly payment by Debtor, C&D Produce Outlet, Inc to FREEDOM FRESH of an aggregate amount equal to **\$250.00** per month. The adequate protection payment shall be due on the 25th day of each month thereafter until further of Court. The issue on allocation of the adequate protection payments will be determined by further order of this Court and all parties reserve their rights. There shall be a five (5) business day grace period for each payment.

8. During the pendency of this bankruptcy and until further Order of this Court, all pre-petition and post-petition income shall be turned over and paid to the Debtor for deposit into the Debtor's in Possession bank accounts. The use of the cash collateral is necessary for an effective reorganization and to avoid harm to the Debtor's bankruptcy estate. The Debtor needs to be able to pay

its regular business operating expenses and administrative expenses and other ordinary expenses as they become due.

9. Based upon the evidence admitted and arguments made on the record at the hearing on this matter, the Debtor is authorized to use cash collateral in the regular course of its business affairs pursuant to the Budget attached hereto as Exhibit "1" on an interim basis until further Order of this Court, subject to the variance in Paragraph 14 below.

10. The Exhibit presented at the hearing on this matter are deemed admitted into evidence as of the hearing date.

11. The Debtor's authorization to use cash collateral is limited to a variance not to exceed 10% of any particular line item expense on the budget attached hereto, unless otherwise agreed in writing between FRESHPOINT, FREEDOM FRESH, and FRESKO and the Debtor, or by Order of this Court.

12. The Debtor asserts that the current income and expenditures set forth in the Budget presented by the Debtor at the hearing and attached hereto as Exhibit "1" are estimates and approximations based on past, present and projected data of the Debtor's operations, and found to be reasonable.

13. As of the date of this Motion, an unsecured creditor's committee has not been appointed. Any creditor with standing or any committee that may be appointed will be allowed sixty (60) days from the date of the entry of the Final Order Authorizing Use of the Cash Collateral to analyze and object to the validity, priority and extent of the secured creditors' liens.

14. As adequate protection for and to the extent of the Debtor's use of Cash Collateral pursuant to this Order and related to the above specified properties, as well as for any decrease in the value of subject Collateral as of the Petition Date, the aforementioned creditors are hereby granted *nunc pro tunc*, as of the Petition Date, a replacement lien, subject to Paragraph 15 below, to the same extent as any pre-petition lien, pursuant to 11 U.S.C. §361(2) on and in all property set forth in the respective security agreements and related lien documents of the aforementioned creditors on the

specific Collateral listed in the security documents, including proceeds derived from the creditors' Collateral generated post-petition by the Debtor, on an interim basis through and including the next interim or final hearing in this matter, without any waiver by the Debtor as to the extent, validity or priority of said liens.

15. Nothing in this Order affects or impairs the rights of any party asserting statutory trust claims under Section 5(c) of the PACA, 7 U.S.C. 499e(c)(2), or impairs any defenses of the Debtor or any other party-in-interest to such claims. Subject to paragraph 20 below, qualified PACA trust creditors have priority to all assets of the Debtor impressed with PACA, ("PACA Trust Assets") over and against the Debtor, all other creditors, priority, secured, and unsecured, and all other interested parties, notwithstanding any other language in this or any other Order to the contrary. Subject to paragraph 20 below, nothing in this Order grants any lien in or claim against any PACA Trust Assets of equal or senior priority over a PACA trust claim against PACA Trust Assets. If the Debtor uses any PACA Trust Assets on or after the Petition Date for any purpose other than to pay qualified PACA trust claims, the PACA trust claims to those PACA Trust Assets attach to the Debtor's post-petition assets to the same extent to which the Debtor uses PACA Trust Assets and with the same validity as existed as of the Petition Date.

16. FRESHPOINT, FREEDOM FRESH and FRESKO expressly reserve all rights, including but not limited to, their rights to object to the use of cash collateral or to move for an immediate turnover of assets.

17. The post-petition liens granted herein, respectively and hereunder, in connection with the use of Collateral and Cash Collateral shall at all times be subject and junior to the fees of the Office of the United States Trustee pursuant to 28 U.S.C. §1930 (hereinafter "U.S. Trustee Fees"), Court costs and any administrative fees and costs awarded by the Court in this proceeding (hereinafter "administrative fees and costs"). The relief granted herein is on an interim basis and without prejudice to any future cash collateral orders.

18. Any award by this Court of administrative fees and costs shall be subject to detailed Applications for Reimbursement of Attorney Fees and Expenses (hereinafter "Applications"), as may be appropriate, using the format promulgated and approved by the United States Bankruptcy Court for the Southern District of Florida Local Rule 2016-1. Such Applications shall be subject to objection, notice and hearing by all creditors and nothing herein shall waive any rights to object to said Applications. In addition, the Debtor is authorized to make monthly post-petition retainer payments to counsel in the amount of \$1,500.00 per month from each estate, per the attached Budgets, which shall be deposited into trust and used as payment toward future Applications upon a hearing specifically approving and awarding reimbursement for attorneys' fees and costs pursuant to an Application filed with the Court.

19. Debtor's ability to use Cash Collateral under this Order shall terminate on February 20, 2017 or upon entry of an order terminating the Debtor's use of cash collateral.

20. The Debtor, C&D Produce Outlet, Inc shall have (7) seven days from the date of this Order to file the delinquent DIP reports.

21. The relief granted herein is *nunc pro tunc* to the Petition Date.

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Submitted by:  
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*Craig I. Kelley, Esq. is directed to serve a copy of the signed order on all parties of record and file with the court a certificate of service conforming with Local Rule 2002-1(F).*

<b>C &amp; D Produce Outlet, Inc.</b>			
<b>Income</b>	<b>JANUARY</b>	<b>FEBRUARY</b>	<b>MARCH</b>
Grocery Department	\$ 14,000.00	\$ 14,000.00	\$ 14,000.00
Produce Department	\$ 65,000.00	\$ 65,000.00	\$ 65,000.00
<b>Total Income</b>	<b>\$ 79,000.00</b>	<b>\$ 79,000.00</b>	<b>\$ 79,000.00</b>
<b>Cost of Goods Sold</b>			
Cogs of Grocery Department	\$ 8,000.00	\$ 8,000.00	\$ 8,000.00
Cogs Produce Department	\$ 52,000.00	\$ 52,000.00	\$ 52,000.00
Total COGS	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00
<b>Gross Profit</b>	<b>\$ 19,000.00</b>	<b>\$ 19,000.00</b>	<b>\$ 19,000.00</b>
<b>Expense</b>			
Bank Charges	\$ 525.00	\$ 525.00	\$ 525.00
Property Insurance	\$ 485.00	\$ 485.00	\$ 485.00
Liability Insurance	\$ 646.00	\$ 646.00	\$ 646.00
Vehicle Insurance	\$ 700.00	\$ 700.00	\$ 700.00
Licenses Expense	\$ 200.00	\$ 200.00	\$ 200.00
Maintenance Expense	\$ 350.00	\$ 350.00	\$ 350.00
Marketing and Advertising	\$ 200.00	\$ 200.00	\$ 200.00
Pest Control	\$ 120.00	\$ 120.00	\$ 120.00
Postage Expense	\$ 10.00	\$ 10.00	\$ 10.00
Attorney's Fees	\$ 1,500.00	\$ 1,500.00	\$ 1,500.00
Accountant Fees	\$ 500.00	\$ 500.00	\$ 500.00
Property Tax	\$ 1,043.00	\$ 1,043.00	\$ 1,043.00
Payroll	\$ 6,200.00	\$ 6,200.00	\$ 6,200.00
Worker's Compensation	\$ 844.00	\$ 844.00	\$ 844.00
Office Supplies	\$ 100.00	\$ 100.00	\$ 100.00
Electric	\$ 1,600.00	\$ 1,600.00	\$ 1,600.00
Waste management	\$ 800.00	\$ 800.00	\$ 800.00
Cell phone	\$ 284.00	\$ 284.00	\$ 284.00
Internet	\$ 150.00	\$ 150.00	\$ 150.00
ADT	\$ 60.00	\$ 60.00	\$ 60.00
US Trustee Fees	\$ -	\$ -	\$ 650.00
Adequate Protection Fresh Point	\$ 500.00	\$ 500.00	\$ 500.00
Adequate Protection Freedom Fresh	\$ 250.00	\$ 250.00	\$ 250.00
Adequate Protection Fresko	\$ 500.00	\$ 500.00	\$ 500.00
Total Expense	\$ 17,567.00	\$ 17,567.00	\$ 18,217.00
<b>Net Income</b>	<b>\$ 1,433.00</b>	<b>\$ 1,433.00</b>	<b>\$ 783.00</b>