

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:

COSI, INC., *et al.*,¹

Debtors.

Chapter 11
Case No. 16-13704-MSH

(Jointly Administered)

**FINAL ORDER (I) AUTHORIZING USE OF CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION, AND
(III) SCHEDULING A HEARING ON FURTHER USE OF CASH COLLATERAL**

Upon the Motion for Entry of an Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Hearing on Further Use of Cash Collateral, and (IV) Granting Related Relief (the “Cash Collateral Motion”) filed by Cosi, Inc. on behalf of itself and affiliated debtors and debtors-in-possession (the “Debtors”) on September 28, 2016; and notice of the Cash Collateral Motion being good and sufficient notice; the Court finding that the Cash Collateral Motion is in the best interest of the Debtors’ estate; and no objection to the Cash Collateral Motion having been filed or any such objection having been withdrawn or overruled; the Court finds as follows:

1. On September 28, 2016 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

¹ The Debtors in these Chapter 11 cases are Cosi, Inc. (Case No. 16-13704-MSH), Xando Cosi of Maryland, Inc. (Case No. 16-13706-MSH), Cosi Sandwich Bar, Inc. (Case No. 16-13705-MSH), Hearthstone Associates, LLC (Case No. 16-13707-MSH), and Hearthstone Partners, LLC (Case No. 16-13708-MSH). The Debtors’ corporate offices are located at 294 Washington Street, Suite 510, Boston, Massachusetts 02108. The cases are jointly administered under the Cosi, Inc. case number.

2. Since the Petition Date, the Debtors have continued in the management of their business and to manage their property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. The Debtors require the use of cash collateral in order to preserve their operations and the value of their assets. The relief granted in this Order is in the best interests of the Debtors, their estate, and their creditors.

4. The following creditors may have liens against the Debtor's personal property, including its cash and accounts receivable: (a) Milfam II LP, (b) AB Opportunity Fund LLC, and (c) AB Value Partners, L.P. (collectively, the "Senior Secured Lenders"). In addition, UCC financing statement have been filed on behalf of First Franchise Capital Corporation, Santander Bank, and American Express Bank, although the Debtors represent that their obligations to these entities have been discharged. JPMorgan Chase Bank, N.A. ("JPM") has a perfected, senior security interest in cash held in two separate collateral accounts of Cosi Sandwich Bar, Inc. (x2449; x7628) (the "CSB Collateral Accounts") and in the Debtors' primary operating account (x8539). The CSB Collateral accounts collectively hold approximately \$100,000. JPM's security interest secures all liabilities due from the Debtors to JPM. Such liabilities include, but are not limited to, outstanding letters of credit issued by JPM, in an amount of approximately \$288,000, plus exposure to ACH transactions and amounts in relation to Debtors' corporate credit card program through JPM.

5. This Court has not been asked to find, and it does not find, that any petition security interest asserted by the Senior Secured Lenders is valid or perfected.

6. The replacement liens and the equity in the Debtor's property, as set forth below, will adequately protect the interests of the Senior Secured Lenders for the purposes of Bankruptcy Code §§ 361 and 363(e).

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

A. The Cash Collateral Motion is allowed on a final basis through February ____, 2017.

B. The Debtor is authorized to use Cash Collateral in the ordinary course of its business.

C. For the purposes of Bankruptcy Code §§ 361 and 363(e) and as adequate protection for the Debtor's use of Cash Collateral, the Senior Secured Lenders are hereby granted replacement liens (the "Replacement Liens") in and to all property of the kind presently securing the prepetition obligations of the Senior Secured Lenders, including any property purchased or acquired with the Cash Collateral and any proceeds thereof, but excluding any causes of action under Chapter 5 of the Bankruptcy Code (other than Section 549) or the proceeds of any claims under or actions commenced pursuant to such powers. The Replacement Liens shall only attach to and be enforceable against the same types of property, to the same extent, and in the same order of priority as existed immediately prior to the Petition Date. The Replacement Liens shall be recognized only to the extent of any post-petition diminution in value of the Secured Creditors' prepetition collateral resulting from the Debtors' use of Cash Collateral during this bankruptcy case. The adequate protection provided in this Order shall be in addition to, but without duplication of the adequate protection provided to the Secured Creditors in the "FINAL ORDER UNDER 11 U.S.C. §§ 105(a), 361, 362(c)(2), 363(e) AND 364 AND FED. R. BANKR. P. 2002, 4001 AND 9014 (I) (A) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES".

D. Notwithstanding anything to the contrary herein, as adequate protection for the security interest of JPM, JPM is (i) entitled to maintain an administrative hold on (x) \$658,476 of cash held in Debtors' operating account, less any amounts JPM may release from administrative hold, and (y) all amounts held in the CSB Collateral Accounts, and (ii) solely to the extent that any of the amounts in (i)(x) or (i)(y) are determined to be PACA Trust Assets and are paid to satisfy and PACA Claims, a senior, first priority lien in such amount in the DIP Collateral (collectively the "JPM Cash Collateral"). The Debtors are not authorized to use the JPM Cash Collateral pursuant to this order.

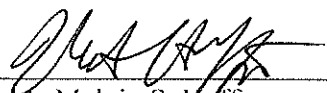
E. Trust Claims Under Perishable Agricultural Commodities Act. Nothing in this Order grants any lien in or claim against any assets of Debtors impressed with the PACA trust, 7 U.S.C. § 499e(c)(2), ("PACA Trust Assets") of equal or senior priority over a PACA Claim against PACA Trust Assets. If Debtors use any PACA Trust Assets on or after the Petition Date for any purpose other than to pay bona fide PACA Claims, the PACA Claims in those PACA Trust Assets attach to the Debtors' postpetition assets to the same extent to which the Debtors used PACA Trust Assets and with the same validity as existed as of the Petition Date.

F. Nothing in this Order shall constitute a waiver by the Debtors or restrict the Debtors' right to seek the further use of Cash Collateral, or the right of the Senior Secured Lenders to challenge any such use of Cash Collateral or seek modification of this Order.

G. This Order, and the Debtors' use of Cash Collateral as authorized in this Order, shall become effective immediately upon entry of this Order.

H. A further hearing on the Cash Collateral Motion shall be held on February 15,
2017 at 10:00 AM

Dated: December 16, 2016



Honorable Melvin S. Hoffman
United States Bankruptcy Judge