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8 UNITED STATES BANKRUPTCY COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 In re: FRANK J. GOMES DAIRY, a California
12 limited partnership,
13 Debtor.

CASE NO. 09-61024-A-11

CHAPTER 11

DOCKET CONTROL NO.: HAR-1

14 **INTERIM ORDER AUTHORIZING USE OF**
15 **CASH COLLATERAL**

16 Date: November 18, 2009

Time: 2:00 p.m.

Judge: Honorable Whitney Rimel

17 Place: 1300 18th Street, First Floor,
18 Bakersfield, California

19
20 On November 18, 2009, the hearing on Debtor's Motion for Authority to Use Cash
21 Collateral on Both on Emergency Basis and on a Permanent Basis ("Motion") filed by Frank J.
22 Gomes Dairy, a California limited partnership (the "Debtor") came on for interim hearing before the
23 Honorable Whiney Rimel, Bankruptcy Judge at 2:00 p.m. Hilton A. Ryder, Esq. of McCormick
24 Barstow LLP appeared for the Debtor and Robert B. Kaplan, Esq. of Jeffer, Mangels, Butler &
25 Marmaro appeared for Wells Fargo Bank (the "Bank") and other appearances were as noted in the
26 record. The Court, having heard the oral arguments of counsel, and the Bank and the Debtor having
27 stipulated to the following Order ("Interim Order") and good cause appearing therefor:

28 IT IS HEREBY ORDERED as follows:

FILED ON
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November 18, 2009

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
0002232239

JVLLJLVJ | Butler & Marmaro LLP

1 1. The Motion is hereby GRANTED on an interim basis, and any objections to
2 the Motion are hereby OVERRULED on an interim basis, from November 12, 2009 through and
3 including December 15, 2009 (the "Budget Period").

4 2. Pursuant to the provisions of Sections 361, 363(c), and 363(e) of the
5 Bankruptcy Code (11 U.S.C. §§ 101, et seq.; all statutory references herein are to the Bankruptcy
6 Code), and subject to each of the limitations set forth below in this Interim Order, the Debtor is
7 hereby authorized to use and disburse "cash collateral", as that term is defined in Section 363(a), in
8 which the Bank has or asserts an interest (such cash collateral, "Cash Collateral"), including,
9 without limitation, all cash and all proceeds of accounts receivable, in the ordinary course of the
10 Debtor's business, from November 15, 2009 to and including December 15, 2009, solely for the
11 purposes and in a total amounts set forth in the budget attached hereto as Exhibit A and
12 incorporated herein by this reference as though set forth in full (the "Budget"), subject to a variance
13 of any line item not exceeding 10%.

14 3. The Debtor shall pay to the Bank an adequate protection payment of
15 \$34,309.89 upon the earlier to occur of (i) the Debtor's receipt of any milk checks from Saputo
16 Cheese USA, Inc. and/or Dairystream Cooperative, Inc previously levied upon by A.L. Gilbert
17 Company currently in the possession of the Merced and/or Stanislaus County Sheriffs , or (iii)
18 November 30, 2009.

19 4. The Debtor shall pay to the Bank an additional adequate protection payment
20 of \$34,309.89 on December 15, 2009.

21 5. The Debtor shall deposit all Cash Collateral, in kind, into a debtor in
22 possession account which the Debtor shall establish with the Bank (the "Account").

23 6. If an Event of Default (as hereinafter defined) occurs under this Interim
24 Order, the Bank shall give written notice of any such default to the Debtor's counsel of record in the
25 above-entitled Chapter 11 case (the "Case") by hand delivery, electronic mail or facsimile which
26 shall advise the Debtor it has 2 business days to cure said Event of Default.(the "Default Notice").
27 The Debtor's rights to use Cash Collateral shall immediately cease after 2 business days have
28 elapsed from the date of said Default Notice if said Event of Default is not cured. Notwithstanding

1 the occurrence of a default under this Interim Order, the Debtor shall be permitted to notice an
2 expedited hearing in the above-entitled Court so that the Court can determine whether to authorize
3 further use of Cash Collateral and the Bank shall cooperate with the Debtor in the setting of such
4 hearing.

5 7. In order to provide adequate protection to the Bank for the Debtor's use of its
6 Cash Collateral and to any other creditors whose Cash Collateral is being used by the Debtor , if any
7 (collectively, the "Other Secured Creditors"), the Debtor hereby grants the Bank and the Other
8 Secured Creditors a lien and security interest (the "Replacement Lien") in all assets of the Debtor
9 acquired on or after November 12, 2009, the date of filing of the petition herein (the "Petition
10 Date"), in order to secure the Bank's and Other Secured Creditor's claims against the Debtor to the
11 extent that the Debtor's use of Cash Collateral on or after the Petition Date results in a diminution of
12 the value of the collateral in which the Bank and the Other Secured Creditors hold a valid,
13 perfected, and enforceable security interest as of the Petition Date; provided, however that the
14 Replacement Lien shall have the same scope, validity, perfection, relative priority and
15 enforceability as the Bank's and the Other Secured Creditors pre-Petition Date security interests;
16 and provided further, that the Replacement Lien shall be subordinate to the allowed and approved
17 fees and costs of the trustee, if any, in any succeeding Chapter 7 case. The Replacement Lien shall
18 be valid, perfected, and enforceable as of the Petition Date without any further action by the Debtor,
19 the Bank, and the Other Secured Creditors and without the execution, filing, or recording of any
20 financing statements, security agreements, or other documents.

21 8. In order further to provide adequate protection to the Bank for the Debtor's
22 use of Cash Collateral, the Debtor shall deliver or otherwise provide the following reports,
23 documents, copies, and other information to the Bank at the following address-- Currie Butzbaugh,
24 currie.butzbaugh@wellsfargo.com:

25 a. Commencing on Monday, November 23, 2009 and continuing on
26 each Monday thereafter (or if Monday is a legal holiday, on the next business day thereafter), the
27 Debtor shall deliver a report to the Bank which shall reference each check written by the Debtor for
28 the prior week ending on Friday, which shall contain a reference to the line item in the Budget for

1 which the expenditure evidenced by the check is being made, and a weekly reconciliation of all
2 expenditures made by the Debtor for the prior week compared to the Budget;

3 b. Commencing on December 15, 2009 and continuing on the 15th day
4 of each and every month thereafter, a copy of the Debtor's Monthly Operating Report filed with this
5 Court which shall include a detailed statement of revenues generated by the Debtor for the
6 preceding month; and

7 c. Commencing on Monday, November 23, 2009 and continuing on
8 each Monday thereafter (or if Monday is a legal holiday, on the next business day thereafter), the
9 Debtor shall deliver a report to the Bank which shall set forth in detail all Collateral (as that term is
10 hereinafter defined) of the Bank sold by the Debtor for the prior week and all proceeds of sale paid
11 to the Debtor for the sale of said Collateral.

12 9. In order to provide further adequate protection to the Bank for the Debtor's
13 use of Cash Collateral, the Debtor shall permit the Bank and its agents access to inspect the
14 Collateral, as that term is defined in those certain Continuing Security Agreement - Rights to
15 Payment and Inventory, Security Agreement - Equipment, Security Agreement - Livestock, and
16 Security Agreement - Crops, each dated June 5, 2007 executed by the Debtor in favor of the Bank
17 in order to permit the Bank to, among other things, prepare a Dairy livestock and Feed Appraisal
18 report.

19 10. With respect to the Debtor's use of Cash Collateral, the Bank shall be entitled
20 to an administrative expense claim under sections 503(b) and 507(a)(1) of the Bankruptcy Code
21 with the super-priority status pursuant to Bankruptcy Code section 507(b) to the extent the Bank is
22 not adequately protected with respect to the Debtor's use of Cash Collateral.

23 11. In order to provide further adequate protection to the Bank for the Debtor's
24 use of Cash Collateral, at no time during the Budget Period shall the surcharge provisions of
25 Bankruptcy Code Section 506(c) be imposed on or against the Bank, the Bank's Cash Collateral or
26 the Collateral. By its consent to entry of this Interim Order, the Debtor is deemed to waive any
27 right to surcharge, and agrees not to seek, any such surcharge during the Budget Period or for work
28 or charges incurring or incurred during the Budget Period.

1 12. In order to provide further adequate protection to the Bank for the Debtor's
2 use of Cash Collateral, at all times during the Budget Period, the Loan to Value Ratio (as hereinafter
3 defined) shall not exceed 80%. The "Loan to Value Ratio" shall be defined as follows: [a fraction,
4 the numerator of which is the equal to \$6,000,000 and the denominator of which is equal to the sum
5 of the fair market value of the feed owned by the Debtor and the livestock owned by the Debtor,
6 both as determined by the Bank] multiplied by 100%.

7 13. The occurrence of any one or more of the following events shall constitute an
8 "Event of Default" under this Interim Order: (i) the Debtor fails to perform any of its obligations in
9 strict accordance with the terms hereof or otherwise defaults hereunder or breaches any provision
10 hereof, including (A) the use and disbursement of Cash Collateral except as expressly permitted
11 hereunder; (B) the failure to provide any report, document, or information to the Bank as required
12 hereby; (C) the failure to make any payment to the Bank as required hereby; and (D) if the Loan to
13 Value Ratio exceeds 80% on any calendar day; (ii) either of the Debtor's exclusive periods to file
14 and solicit acceptances of a plan is terminated or lifted under Bankruptcy Code Section 1121; (iii) a
15 trustee is appointed or elected, or an examiner with the power to operate the Debtor's business is
16 appointed, in the Case; (iv) the Case is converted to a case under Chapter 7 or is dismissed; (v) this
17 Interim Order is reversed, vacated, stayed, amended, or supplemented without the consent of the
18 Bank; (vi) relief from the automatic stay is granted to any party to permit the exercise of remedies
19 with respect to any property of the Debtor's estate; (vii) any representation or warranty, express or
20 implied, made by the Debtor in any certificate, report, expense statement, other financial statement,
21 or other document delivered to the Bank after the Petition Date proves to have been false or
22 misleading in any material respect as of the time when made or given (including by omission of
23 material information necessary to make such representation, warranty, or statement not misleading)
24 (for the avoidance of doubt, provision of a document to the Bank (A) by the Debtor constitutes an
25 implied representation and warranty that the contents thereof is true and correct to the best
26 knowledge of the Debtor; and (B) by or on behalf of the Debtor that is not what it appears to be
27 shall be deemed a false and misleading representation and warranty).

28 14. The Debtor's use of Cash Collateral is expressly limited to the categories set

1 forth in the Budget.

2 15. This Interim Order is made with an express reservation of rights by Bank and
3 the Debtor to pursue any and all rights and remedies Bank and Debtor may have under the
4 Bankruptcy Code and/or state law, including, but not limited to, seeking the appointment of a
5 trustee, an examiner or an examiner with expanded powers, adequate protection of Bank's security
6 interest, the right of the Bank to seek the recovery of default interest due under the Bank's loan
7 documents and/or relief from the automatic stay or moving to dismiss this chapter 11 proceeding.
8 Nothing contained in this Interim Order thereon shall be deemed or construed to be an admission by
9 Bank that Bank is or is not adequately protected or of the existence or priority of the lien rights of
10 Bank in any Cash Collateral including, but not limited to, any amounts to be paid to the Bank
11 pursuant to this Interim Order and any other sums paid to any entity pursuant to this Interim Order.

12 16. In the event the Debtor wishes to make an expenditure of Cash Collateral not
13 expressly provided for in the Budget, the Debtor shall notify the Bank immediately in writing of the
14 amount and nature of the proposed expenditure and provide to Bank such supporting documentation
15 as may be necessary for the Bank to evaluate the necessity and propriety of the proposed expense.
16 In the event that the Bank consents in writing to the Debtor's expenditure of Cash Collateral, which
17 consent shall be in the sole and absolute discretion, opinion and judgment of the Bank, then the
18 Debtor shall be entitled to expend Cash Collateral subject to the terms of this Interim Order as
19 authorized by the Bank in writing.

20 17. The terms and conditions of this Interim Order shall be binding upon, and
21 inure to the benefit of, the Bank and the Debtor and their respective successors and assigns
22 (including, but not limited to, any trustee or trustees hereafter appointed or elected under any
23 chapter or section of the Bankruptcy Code as a representative of the Debtor's estate).

24 18. The provisions of this Interim Order and any actions taken pursuant hereto
25 shall survive the entry of any order which may be entered (a) appointing a trustee in the Debtor's
26 Chapter 11 case, (b) converting the Debtor's Chapter 11 case from a Chapter 11 to a Chapter 7; or
27 (c) dismissing this case, and the terms of the provisions of this Interim Order as well as priorities in
28 payments, liens and security interests granted pursuant to this Interim Order shall continue in full

1 force and effect notwithstanding the entry of any such order, until all the obligations owing to the
2 Bank in this Interim Order are indefeasibly satisfied and discharged in accordance with their terms.

3 19. If any or all of the provisions of this Interim Order are hereafter reversed,
4 modified, vacated or stayed by subsequent order of this Court or any other Court, such reversal,
5 stay, modification or vacatur shall not affect the validity and enforceability or any obligation, debt
6 or claim incurred, or any priority, security interest or lien that is or was incurred or granted pursuant
7 to this Interim Order. Notwithstanding any stay, reversal, modification or vacatur of this Interim
8 Order, any obligations owing to the Bank arising prior to the effective date of such stay, reversal,
9 modification or vacatur, shall be governed in all respects by the original provisions of this Interim
10 Order. The Bank shall be entitled to all of its rights, privileges and benefits hereunder including,
11 without limitation, the liens, security interests, priorities and collection rights granted herein and
12 therein to or for their benefit with respect to all obligations owing to the Bank, all Collateral
13 securing same and the priority granted therefor under Bankruptcy Code Sections 363 and 507(b).

14 20. A continued interim hearing on the Motion shall be held on December 9,
15 2009 at 1:30 p.m. in this Court, with notice of said hearing to be served by the Debtor on or before
16 November 20, 2009 on the United States Trustee, the Bank, and the twenty largest unsecured
17 creditors identified in the list filed by the Debtor pursuant to Rule 4001(d) of the Federal Rules of
18 Bankruptcy Procedure and all parties who have requested special notice pursuant to provisions of
19 Rule 2002(i) of the Federal Rules of Bankruptcy Procedure. Any opposition to the Motion shall be
20 filed on or before December 4, 2009, with service to be made on that date on counsel for the Bank,
21 the Debtor and the United States Trustee via electronic mail or facsimile.

22 Dated:

Nov 19, 2009


United States Bankruptcy Judge

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1 Approved as to Form and Content:

2 MCCORMICK BARSTOW LLP

3
4 By: /s/
5 HILTON A. RYDER, ESQ.
6 Attorneys for Debtor
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EXHIBIT A

Frank J Gomes Dairy
Budget for November 15 - 30th, 2009

| Description | Income | Expenses. |
|-------------------------------|----------------|----------------|
| 10/31 Milk Check | 287,000 | |
| 11/15 Milk Check | 290,000 | |
| Cull Cows: 20 Head @ \$500 | 10,000 | |
| F&A Farms A/R | 74,000 | |
| | | |
| Feed: | | 142,849 |
| Corn: 275 Tons @ \$273 | | |
| Canola: 98 Tons @ \$305 | | |
| Corn Germ: 156 Tons @ \$166 | | |
| Cottonseed: 46 Tons @ \$258 | | |
| Labor: Gross Wages | | 72,000 |
| Labor: Payroll Taxes | | 11,500 |
| Utilities: | | 83,030 |
| PG@E Deposit - 76,000 | | |
| Propane - 2,300 | | |
| Trash Disposal - 1,130 | | |
| Phone & Mobile - 3,600 | | |
| Minerals | | 15,000 |
| Fuel & Oil | | 21,000 |
| Insurance: | | 37,600 |
| Health - 12,800 | | |
| Liability - 11,300 | | |
| Work Comp - 13,500 | | |
| Medicine | | 32,000 |
| Breeding | | 12,000 |
| Barn Supplies | | 13,800 |
| Testing | | 2,400 |
| Hoof Trim | | 5,000 |
| Animal Disposal | | 1,200 |
| Vet | | 5,000 |
| Repairs @ Maintenance | | 17,500 |
| Wells Fargo Interest Payments | | 43,000 |
| | | |
| Total | 661,000 | 514,849 |

| Description | Crop Value | Expenses. |
|----------------------------------------|----------------|----------------|
| Corn Silage: 5,800 Tons @ \$60 | 348,000 | |
| Sudan Silage: 2,500 Tons @ \$50 | 125,000 | |
| Plant: 607 Acres Oats @ \$100 per Acre | 60,700 | |
| Almond Hulls: 350 Tons @ \$70 | 24,500 | |
| | | |
| Bags | | 18,000 |
| Fuel | | 40,000 |
| Oat Seed | | 23,000 |
| Repairs @ Maintenance | | 30,000 |
| Almond Hulls: 350 Tons @ \$70 | | 24,500 |
| | | |
| Total | 558,200 | 135,500 |

Total: \$650,349.00

Frank J Gomes Dairy
Budget for December 1 - 15th, 2009

| Description | Income | Expenses. |
|-------------------------------|----------------|----------------|
| 11/30 Milk Check | 290,000 | |
| Cull Cows: 35 Head @ \$500 | 17,500 | |
| Sale of Cattle | 15,000 | |
| | | |
| | | |
| Feed: | | 142,819 |
| Corn: 275 Tons @ \$273 | | |
| Canola: 98 Tons @ \$305 | | |
| Corn Germ: 156 Tons @ \$166 | | |
| Cottonseed: 23 tons @ \$258 | | |
| Labor: Gross Wages | | 64,000 |
| Labor: Payroll Taxes | | 8,000 |
| Utilities: | | 1,500 |
| PG@E | | |
| Propane - 1,500 | | |
| Trash Disposal | | |
| Phone & Mobile | | 7,000 |
| Minerals | | 2,000 |
| Fuel & Oil | | |
| Insurance: | | |
| Health | | |
| Liability | | |
| Work Comp | | 2,000 |
| Medicine | | 12,000 |
| Breeding | | 1,000 |
| Barn Supplies | | |
| Testing | | 2,800 |
| Hoof Trim | | 1,200 |
| Animal Disposal | | 1,000 |
| Vet | | 7,000 |
| Repairs @ Maintenance | | 43,000 |
| Wells Fargo Interest Payments | | |
| Total | 322,500 | 295,319 |