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13 IN THE UNITED STATES BANKRUPTCY COURT
14 FOR THE DISTRICT OF ARIZONA

15 In re

16 FRONTIER STAR, LLC, a Delaware
17 limited liability company,

18 and

19 FRONTIER STAR CJ, LLC, A Delaware
20 limited liability company,

21 Debtors.

22 In Proceedings Under
23 Chapter 11

24 No. 2:15-bk-09383-EPB
25 2:15-bk-09385-EPB

26 (Joint Administration Pending)

**MOTION FOR ORDER APPROVING
STIPULATION REGARDING
POSTPETITION CREDIT,
PREPETITION DEBT, ADEQUATE
PROTECTION, AND SETTLEMENT
AND RELEASE AGREEMENT
WITH MEADOWBROOK MEAT
COMPANY, INC. D/B/A/ MBM
CORPORATION PURSUANT TO
FED.R.BANKR.P. 9019**

27 Frontier Star, LLC, a Delaware limited liability company (“Star”) and Frontier Star
28 CJ, LLC, a Delaware limited liability company (“CJ”) (Star and CJ are collectively
29 referred to hereinafter as the “Debtors”), and Meadowbrook Meat Company, Inc., d/b/a
30 MBM Corporation (“MBM”), herewith move this Court, pursuant to Federal Rule of
31 Bankruptcy procedure 9019, to approve the attached *Stipulation Regarding Post-Petition*

1 *Credit, Pre-Petition Debt, Adequate Protection and Settlement and Release Agreement*
2 (the “Stipulation”) for the purpose of allowing favorable terms on continuing credit and
3 providing temporary cash debt relief. It is the Debtor’s business judgment that approval
4 of this Stipulation is in the best interest of creditors and the Estates. Under the applicable
5 franchise agreements, the Debtors are obligated to obtain its food supplies from MBM.
6 Notwithstanding the bankruptcy petitions, MBM has agreed to continue, uninterrupted
7 vendor services on ordinary and customary business terms. In support of their Stipulation,
8 the Debtors state as follows:

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I.**

11 **JURISDICTION AND VENUE**

12 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.
13 This matter relates to the administration of the Debtors’ bankruptcy estates and is
14 accordingly a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (D), (F), (H), (K),
15 (M) and (O). Venue of this case is proper in this Court pursuant to 28 U.S.C. §§ 1408 and
16 1409. The statutory predicates for the relief requested herein are sections 105(a), 363(b),
17 364(c) and (d), 503(b)(9), 544, 547, and 548 of title 11 of the United States Code (the
18 “**Bankruptcy Code**”), and Rules 4001 and 9019 of the Federal Rules of Bankruptcy
19 Procedure (“**FRBP**”) and Local Bankruptcy Rule 4001-4.

20 **II.**

21 **RELEVANT FACTUAL BACKGROUND**

22 On July 27, 2015 (the “**Petition Date**”), the Debtors commenced voluntary cases
23 under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to
24 operate their business and manage their properties as debtors in possession pursuant to
25 sections 1107(a) and 1108 of the Bankruptcy Code. The United States Trustee has not yet
26 appointed an official committee of unsecured creditors under section 1102 of the

1 Bankruptcy Code. On July 28, 2015, the Debtors moved the Court to jointly administer
2 the above-captioned cases. *See* Case No. 15-09383, D.E. 5.

3 Non-debtor Frontier Star I, LLC, a Delaware limited liability company, (“**Frontier**
4 **Star I**,” together with Debtors, the “**Frontier Entities**”) is the sole member of the
5 Debtors, and Jason LaVecke is the Manager of Frontier Star I, who has submitted his
6 Declaration in support of this Motion (the “**LaVecke Declaration**”).

7 The Frontier Entities are franchisees operating approximately eight-one (81)
8 Hardee’s® and approximately eighty-four (84) Carl’s Jr.® restaurants located throughout
9 the states of Arizona, Texas, Illinois, Missouri, Kentucky, and Tennessee under franchise
10 agreements with CKE Hardee’s Restaurants, LLC and CKE Carl’s Jr. Restaurants, LLC
11 (together, the “**Franchisor**”).

12 As Hardee’s® or Carl’s Jr.® franchisees, the Frontier Entities are required to
13 comply with certain recipe and ingredient specifications dictated by their respective
14 Franchisor. Per its distribution agreements with Franchisor (or Franchisor’s affiliates),
15 MBM is the sole-source and exclusive national supplier to the Frontier Entities, and thus,
16 MBM purchases, warehouses, and distributes substantially all the food items and related
17 restaurant items, including, among other things, meat products, produce, paper products,
18 and cleaning supplies (the “**Goods**”) for the Frontier Entities’ restaurants.

19 The Frontier Entities’ primary source of revenue comes from restaurant sales,
20 specifically, the sale of food and beverages, and thus, the Frontier Entities are largely
21 dependent on MBM’s Goods to derive revenue and are required to purchase such Goods
22 from MBM per their franchise agreements with their respective Franchisor; indeed, as the
23 sole-source and exclusive national supplier to the Frontier Entities, MBM is uniquely
24 equipped to distribute the fresh ingredients required in the Frontier Entities’ businesses,
25 and the Frontier Entities’ businesses would collapse or be materially harmed (both
26 financially and operationally) if MBM refused to ship the Goods to the Frontier Entities.

1 MBM is not required to deliver any Goods to the Frontier Entities on credit by
2 virtue of any executory contract with the Frontier Entities or otherwise; instead, the award
3 of any credit terms is determined by MBM in MBM's sole and absolute discretion, and
4 MBM may freely revoke any award of credit terms entirely by forcing wire in advance of
5 delivery of Goods, which would severely and negatively affect the Frontier Entities'
6 liquidity.

7 In the ordinary course of their businesses before the Petition Date, the Debtors,
8 non-debtor Frontier Star, and MIH Admin Services, LLC, an Arizona limited liability
9 company acting solely in its capacity as the management company for the Frontier
10 Entities (the "**Management Company**"), together utilized a consolidated cash
11 management system, whereby revenues generated from store sales are deposited into a
12 centralized account (or accounts) held in the name of Frontier Star I at Wells Fargo Bank,
13 National Association, and through which the Frontier Entities (or the Frontier Entities
14 through their Management Company) processed and managed cash receipts, credit card
15 payments, electronic funds transfers, and other transfers and disbursements for the
16 Frontier Entities, including payment of MBM's invoices for the sale of Goods to the
17 Frontier Entities (the "**Consolidated Cash Management Account**").

18 Before the Petition Date, MBM had (consistent with its internal credit policies,
19 which are established, administered, and changed in MBM's sole and absolute discretion)
20 awarded the Debtors net 21-day terms, and upon learning of the Debtors' bankruptcy
21 filings, MBM, through counsel, notified the Debtors and their counsel that MBM was
22 seriously considering converting the Debtors' credit terms to bank wire in advance of
23 delivery. Due to the cash flow, liquidity, and logistical issues that would be caused by the
24 conversion of the Debtors' credit terms from net 21-day terms to bank wire
25 (approximately \$3.6 million of liquidity), the Debtors requested that MBM continue to
26 award to them net 21-day terms after the Petition Date.

1 On January 26, 2011, to secure all indebtedness of the Frontier Entities to MBM,
2 each Frontier Entity executed a Purchase Money Security Agreement (the “**PMSAs**”),¹
3 granting MBM purchase money security interests (the “**PMSIs**”), securing the debt the
4 Frontier Entities owe to MBM by the Goods MBM delivers to the Frontier Entities and
5 the proceeds thereof, including cash proceeds, which MBM perfected by filing UCC-1
6 financing statements and sending authenticated notices to other secured creditors of
7 record; MBM is thus a secured creditor of the Debtors with a properly perfected security
8 interest in and lien on the Goods purchased by the Debtors and proceeds thereof.

9 As of the Petition Date, Frontier Star CJ owed MBM \$1,664,576.26 (the “**Frontier**
10 **Star CJ Prepetition Amount**”), and Frontier Star owed MBM \$1,926,484.06 (the
11 “**Frontier Star Prepetition Amount**”) for a total sum of \$3,591,060.32 (together, the
12 “**Prepetition Amount**”). Of the Frontier Star CJ Prepetition Amount, \$1,452,913.95 falls
13 within the 20-day window under section 503(b)(9) of the Bankruptcy Code (the “**Frontier**
14 **Star CJ Admin Claim**”), and of the Frontier Star Prepetition Amount, \$1,425,611.73
15 falls within the 20-day window under section 503(b)(9) of the Bankruptcy Code (the
16 “**Frontier Star Admin Claim**,” together with the Frontier Star CJ Admin Claim, the
17 “**Admin Claim**”).

18 In addition to the fact that MBM has (i) properly perfected PMSIs and (ii) an
19 Admin Claim allowable under section 503(b)(9) of the Bankruptcy Code, MBM also
20 holds a claim equal to \$231,712.07 against Frontier Star CJ and a claim equal to
21 \$182,439.53 against Frontier Star (together, the “**PACA Claim**”) under the Perishable
22 Agricultural Commodities Act, 7 U.S.C. § 499, *et seq.*, as amended (“**PACA**”), which
23 allows the imposition of a trust over Goods subject to PACA and over the proceeds
24 received by the Frontier Entities for such Goods.

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26 ¹ Copies of the PMSAs are attached as Exhibit “A-1” to the LaVecke Declaration.

1 Subject to the terms and conditions of the Stipulation Regarding Postpetition
2 Credit, Prepetition Debt, Adequate Protection, and Settlement and Release Agreement
3 (the “**Agreement**”),² MBM has agreed, in its sole and absolute discretion, to continue
4 shipping to the Frontier Entities and to accommodate their request for net 21-day terms, if,
5 and only if, the Court approves each of the conditions precedent and subsequent as set
6 forth in the Agreement. Moreover, based on the LaVecke Declaration, the Frontier
7 Entities submit that, to encourage MBM to continue providing the Goods to the Frontier
8 Entities, the Frontier Entities have reached an Agreement with MBM, which, if approved
9 by Court order, will govern the treatment of MBM’s prepetition claims and the Frontier
10 Entities’ and MBM’s post-petition relationship.

11 **III.**

12 **THE PROPOSED AGREEMENT WITH MBM**

13 Because MBM is extremely critical to the Frontier Entities’ operations, it is in the
14 best interests of the Debtors’ estates to (1) ensure that MBM continues to deliver Goods to
15 the Debtors during these cases, and (2) obtain deliveries from MBM on credit as opposed
16 to payment in advance. MBM is willing to deliver Goods to the Debtors on credit,
17 provided that the Debtors satisfy certain requirements, including, among other
18 requirements set forth in the Agreement, resolving the Prepetition Amount and granting
19 MBM a replacement lien in any Goods delivered, including the proceeds thereof, to the
20 extent as set forth in the PMSAs.

21 Subject to approval of the Bankruptcy Court, the Debtors and MBM have entered
22 into the Agreement. The material terms of the Agreement are as follows:

23 1. **Payment of Prepetition Debt.** Immediately upon the Effective Date (as
24 defined in the Agreement), MBM shall be entitled to apply all amounts received (or to be
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26 ² A copy of the Agreement is attached hereto as Exhibit “B”.

1 received) from the Frontier Entities or the Management Company to its oldest outstanding
2 invoices until the Prepetition Amount is unavoidably paid in full. To provide some
3 liquidity relief to the Frontier Entities, however, MBM has agreed that payment of
4 \$100,000.00 of the Prepetition Amount may be deferred and paid in full within sixty (60)
5 days of the effective date of the Debtors' plans of reorganization or liquidation.

6 **2. Post-petition Credit.** Upon the Effective Date (as defined in the
7 Agreement), MBM will continue to ship Goods to the Debtors on net 21-day terms. If the
8 Frontier Entities commit a default in payment to MBM of the Prepetition Amount and/or
9 any outstanding post petition invoice according to such invoice's terms, MBM shall have
10 no obligation to ship the Goods on net 21-day terms, and the net 21-day terms may be
11 revoked in MBM's sole and absolute discretion, including by reducing the Debtors' terms
12 to bank wire in advance of load; provided, for the sake of clarity, that it shall be a default
13 under this Agreement if the Debtors exceed or stretch the terms beyond net-21 days post-
14 petition, and MBM shall provide Debtors notice of such default with a three calendar day
15 cure period; provided further, that if the Frontier Entities default in payment to MBM
16 more than twice during a six month period, the net-21 day terms may be revoked in
17 MBM's sole and absolute discretion.

18 **3. Stipulation to Liens/Claims.** Subject to the Challenge Period (defined
19 below), the Frontier Entities have stipulated and agreed that as of the Petition Date, (A) all
20 of MBM's claims (i) constitute legal, valid, binding, and non-avoidable obligations of the
21 Frontier Entities and (ii) are not, and shall not be, subject to any avoidance, disallowance,
22 disgorgement, reductions, setoff, offset, re-characterization, subordination (whether
23 equitable, contractual or otherwise), counterclaims, cross-claims, defenses or any other
24 challenges of any kind or nature under the Bankruptcy Code or any other applicable law
25 or regulation and (B)(i) MBM's PMSIs and liens constitute valid, binding, enforceable,
26 non-avoidable, and properly perfected liens on the Goods MBM delivers to the Frontier

1 Entities and the cash proceeds thereof, that, prior to the entry of this Agreement, were
2 senior in priority over any and all other liens on the Goods and cash proceeds thereof,
3 subject only to those liens that were valid, enforceable, properly perfected, non-avoidable,
4 and senior in priority to the PMSIs as of the Petition Date, if any (the “**Permitted Liens**”);
5 (ii) shall not be subject to avoidance, reductions, recharacterization, subordination
6 (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses or
7 any other challenges under the Bankruptcy Code or any other applicable law or
8 regulation; and (iii) are subject and subordinate only to the Permitted Liens, if any. The
9 Frontier Entities irrevocably waive any right to challenge or contest in any way the
10 perfection, validity, or enforceability of the PMSIs or the allowance, validity or
11 enforceability of MBMs claims and security interest or the perfection thereof. The
12 Frontier Entities believe that the MBM’s claims and liens constitute allowable, fully
13 secured claims against the Debtors’ estates. To avoid any doubt, the Frontier Entities
14 stipulate that, based the allocation of claims to each Debtor’s estate (as set forth above):
15 (1) the Prepetition Amount is a valid and outstanding obligation of the Debtors and shall
16 be fully allowed as a secured claim; (ii) MBM shall also have an allowed claim under
17 section 503(b)(9) of the Bankruptcy Code equal to the Admin Claim; and (iii) MBM shall
18 also have a secured claim equal to \$414,151.60 under PACA. Despite the foregoing,
19 MBM shall only be entitled to a single satisfaction of the Prepetition Amount.

20 **4. Adequate Protection.** As adequate protection for MBM’s PMSIs in
21 Collateral (as defined in the PMSAs),³ MBM is hereby granted, pursuant to Section

22 ³ Collateral means “all of the Debtor's right, title and interest in and to each of the following, at
23 the restaurant locations wherever located and whether now or hereafter existing, or now owned or
24 hereafter acquired or arising: (a) all Inventory; and (b) any and all products and proceeds of any
25 of the foregoing (including, but not limited to, any claims to any items referred to in this
26 definition, and any claims of the Debtor against third parties for loss of, damage to or destruction
of, any or all of the Collateral or for proceeds payable under, or unearned premiums with respect
to, policies of insurance) in whatever form, including, but not limited to, cash, instruments,
general intangibles, accounts receivable, goods, documents and chattel paper.

1 361(1), 363(e), and 552(b) post-petition liens (the “**Replacement Liens**”) in such
2 Collateral, including any cash collateral, to the same validity, extent, and priority of
3 MBM’s prepetition PMSIs equal to the aggregate diminution in the value of such
4 Collateral (whether such diminution is a result of, arises from, or is attributable to, the
5 imposition of the automatic stay, use or disposition of cash collateral, or physical
6 deterioration, consumption, use, shrinkage, disposition, or decline in market value or
7 otherwise). The Replacement Liens granted to MBM shall be perfected by operation of
8 law upon execution and entry of the Court order approving this Agreement. MBM shall
9 not be required to take any action to validate or perfect such Replacement Liens.

10 5. **Challenge Period.** The stipulations contained in Paragraph B of the
11 Agreement (Paragraph 3 above) shall be without prejudice to the right of any non-debtor
12 party in interest, including any unsecured creditors’ committee, to challenge MBM’s
13 PMSIs. Parties in interest, including any unsecured creditors’ committee, shall have until
14 the later of: (A) October 10, 2015 (75 days from the Petition Date); or (B) thirty calendar
15 days after MBM files its proof of claim attaching the PMSAs (the “**Challenge Period**”),
16 to commence the appropriate action challenging MBM’s PMSIs. If no such action is
17 timely filed, the Debtors’ stipulations in Paragraph B of the Agreement shall become final
18 and binding on the Debtors, their estates (excluding any subsequently appointed chapter 7
19 trustee), and all parties in interest, including any unsecured creditors’ committee.

20 6. **Waiver of Chapter 5 Claims Against MBM.** In the Debtors’ business
21 judgment and given the fact that MBM has (i) properly perfected PMSIs and (ii) PACA
22 claims (secured claims) against the Debtors, which would bar any preference claim, and
23 after reviewing MBM’s statutory defenses under sections 547(c)(2) and 547(4)(c)(5) of
24 the Bankruptcy Code, among others, the consideration being extended by MBM in this
25 Agreement, including the provision of significant post-petition credit, warrants the
26 accommodation of the waiver of all claims against MBM under sections 544, 547, 548,

1 549 and 550 of the Bankruptcy Code.

2 IV.

3 **THE AGREEMENT SHOULD BE APPROVED**

4 It is a well-established maxim that “[t]he law favors compromise and not litigation
5 for its own sake.” *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th
6 Cir.), cert. denied sub nom., *Martin v. Robinson*, 479 U.S. 854, 107 S. Ct. 189 (1986); see
7 also *In re Blair*, 538 F.2d 849, 851 (9th Cir. 1976). The standard for approval of a
8 compromise or settlement is set forth in Rule 9019 of the Federal Rules of Bankruptcy
9 Procedure. Rule 9019(a) provides:

10 On motion by the trustee and after notice and a hearing, the court
11 may approve a compromise or settlement. Notice shall be given
12 to creditors, the United States trustee, the debtor, and indenture
trustees as provided in Rule 2002 and to any other entity as the
court may direct.

13 Pursuant to Rule 9019(a), a Bankruptcy Court may approve a proposed
14 compromise so long as it is fair and equitable. *Woodson v. Fireman's Fund Insurance Co.*
15 (*In re Woodson*), 839 F.2d 610, 620 (9th Cir. 1987). The Ninth Circuit has held that the
16 Bankruptcy Court has “great latitude in approving compromise agreements” proposed by
17 a debtor in possession. *Id.*

18 In *A&C Properties*, the Ninth Circuit set forth certain factors relevant to approving
19 a settlement in a bankruptcy case:

20 In determining the fairness, reasonableness and adequacy of a
21 proposed settlement agreement, the court must consider: (a) The
22 probability of success in the litigation; (b) the difficulties, if any,
23 to be encountered in the matter of collection; (c) the complexity
24 of the litigation involved, and the expense, inconvenience and
25 delay necessarily attending it; (d) the paramount interest of
26 creditors and a proper deference to their reasonable views in the
premises.

784 F.2d. at 1381 (citation omitted).

The factors set forth in *A&C Properties* are easily satisfied in this case, and other

1 bankruptcy courts have approved similar requests from debtors in possession who are
2 franchisees required to purchase Goods from MBM as the sole and exclusive national
3 supplier. *See, e.g., In re Pollo West Corp. & In re Mi Pollo, Inc.*, Jointly Administered
4 Case No. 11-11433-VK at D.E. 92, 114 (Bankr. C.D. Cal. May 11, 2011) (approving
5 similar agreement, including chapter 5 claims); *In re Duke and King Acquisition Corp.*,
6 Jointly Administered Case No. 10-38652, D.E. 153, 200, 201 (Bankr. D. Minn. April 5,
7 2011) (approving similar agreement, including chapter 5 claims); *In re Fast American*
8 *Restaurants, Inc.*, Case No. 10-37391-hdh11, D.E. 89, 100 (Bankr. N.D. Tex. Jan. 1,
9 2011) (approving similar agreement, including chapter 5 claims).

10 1. Probability of Success. Pursuant to the Agreement, the Debtors
11 propose to, among other things, satisfy the Prepetition Amount (except for \$100,000.00)
12 and grant MBM a release from potential avoidance action claims. The Debtors have
13 reviewed MBM's prepetition claim and PMSA and do not dispute that (1) MBM is the
14 holder of a valid, perfected purchase money security interest in the Goods that it delivered
15 (and the proceeds thereof), and (2) substantially all of the Prepetition Amount is an
16 administrative expense claim under section 503(b)(9) of the Bankruptcy Code. Thus, the
17 Debtors are not aware of any colorable argument that the Prepetition Amount could be
18 treated as a general unsecured claim. Further, with respect to the avoidability of
19 prepetition transfers, MBM has always held a perfected security interest in the delivered
20 Goods and the Debtors always timely paid all amounts owed in the ordinary course of
21 business pursuant to the credit terms. As such, the Debtors are not aware of any colorable
22 argument that any payments made to MBM in any applicable reach back period are
23 avoidable as preferential or fraudulent transfers.

24 2. Difficulty of Collection. This factor does not apply to the settlement.

25 3. Complexity of Litigation. This factor does not apply to the
26 settlement.

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4. Interests of Creditors. In the absence of approval of the Agreement, the Debtors will be required to continue to pay for Goods in advance and will not obtain the benefits of 21-day credit terms. A conversion from net-21 days terms to bank wire in advance of delivery will not only severely impact the Debtors' liquidity—to the tune of approximately \$3.6-\$4 million dollars—it will also impose logistical and administrative burdens on the Debtors when they need to be focusing on preparing and consummating an exit strategy from chapter 11. For instance, MBM will not even load their trucks until they receive a wire for each delivery, which has the potential to create significant inventory shortages. When one applies this hands-on process to approximately 165 restaurants across six states, the logistical and administrative burden is magnified.

5. Furthermore, while MBM has been willing to continue to deliver Goods to the Debtors on credit post-petition, MBM has indicated that it is unwilling to do so absent this Court's approval of the Agreement. Indeed, the Agreement ensures that MBM will deliver on 21-day terms for the remainder of the cases (provided the Debtors do not default). As consideration, the Debtors will be required to satisfy the Prepetition Amount and release avoidance action claims, but, as set forth above, the Debtors believe there is no colorable argument that the Prepetition Amount could be treated as a general unsecured claim or that the avoidance action claims have any value. Under these circumstances, the Agreement is in the best interests of the estates and should be approved.

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V.

CONCLUSION

For all the foregoing reasons, the Debtors request the Court enter an order, approving and authorizing the Debtors to enter into the Stipulation attached hereto as Exhibit "B".

DATED this 11th day of August, 2015

THE CAVANAGH LAW FIRM, P.A.

By: 
Philip G. Mitchell
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COPY of the foregoing mailed
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