

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

**IN RE:**

**HOLLAND FERTILIZER COMPANY,  
INC.,**

**Debtor.**

**HOLLAND FERTILIZER COMPANY,  
INC.,**

**Movant,**

**v.**

**SOUTHERN STATES COOPERATIVE,  
INC., UNITED COMMUNITY BANK, ON  
DECK CAPITAL, INC., FUNDING  
METRICS, LLC, and LG FUNDING LLC,**

**Respondents.**

**CHAPTER 11**

**CASE NO. 19-42115-pwb**

**CONTESTED MATTER**

**MOTION REQUESTING ENTRY OF ORDER  
AUTHORIZING THE USE OF CASH COLLATERAL**

COMES NOW Holland Fertilizer Company, Inc. (“Debtor”), and hereby files this “Motion Requesting Entry of Order Authorizing the Use of Cash Collateral” (the “Motion”). In support of the Motion, Debtor shows the Court as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein is 11 U.S.C. §§ 105(a) and 363.

### **Background**

2. On September 13, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (as amended, modified, or supplemented the “Bankruptcy Code”).

3. Debtor is a Georgia Corporation and as its business, Debtor is the operator of an fertilizer and feed store (the “Business”). Debtor’s budget is attached hereto as Exhibit “A”.

4. Pursuant to Bankruptcy Code Sections 1107 and 1108, Debtor continues to operate its business as a debtor-in-possession. Debtor is currently a debtor-in-possession and is taking any and all actions necessary to preserve, protect, and maximize the value of the estate and effectively reorganize.

5. In order to preserve the estate, Debtor must have access to cash to pay the operating expenses of the Business. If Debtor does not have the authority to use its available cash to pay operating expenses of the Business, including insurance, rent, taxes and compensation for its work force, the Business’ going concern value will be significantly harmed and the estate and creditors will be negatively affected. Moreover, Debtor’s work force will be unfairly impacted.

### **Liens**

6. Upon information and belief, Southern States Cooperative, Inc. may assert a lien upon and security interest in Debtor’s assets as more particularly described in the UCC Financing Statement number 115-2008-00233 filed on April 16, 2008 in the records of the Superior Court of Polk County, Georgia, UCC-3 number 115-2013-00151 filed on February 27, 2013, and UCC-3 number 115-2018-00278 filed on April 2, 2018 securing an indebtedness of \$16,961.97 according to the Debtor’s books and records.

7. Upon information and belief, United Community Bank may assert a lien upon and security interest in Debtor's assets as more particularly described in the UCC Financing Statement number 038-2016-009554 filed on July 8, 2016 in the records of the Superior Court of Coweta County, Georgia securing an asserted outstanding indebtedness of approximately \$296,337.58 according to the debtor's books and records.

8. Upon information and belief, Secured Lender Solutions on behalf of On Deck Capital, Inc. may assert a lien upon and security interest in Debtor's assets as more particularly described in the UCC Financing Statement number 038-2018-015919 filed on September 26, 2018 in the records of the Superior Court of Coweta County, Georgia securing an asserted outstanding indebtedness of approximately \$192,000.00 according to the Debtor's books and records.

9. Upon information and belief, Funding Metrics, LLC d/b/a Lendini may assert a lien upon and security interest in Debtor's assets as more particularly described in the UCC Financing Statement number 007-2018-054839 filed on December 11, 2018 in the records of the Superior Court of Barrow County, Georgia securing an asserted outstanding indebtedness of approximately \$85,500.00 according to the Debtor's books and records.

10. Upon information and belief, LG Funding may assert a lien upon and security interest in Debtor's assets as more particularly described in the UCC Financing Statement number 007-2019-007033 filed on February 25, 2019 in the records of the Superior Court of Barrow County, Georgia securing an asserted outstanding indebtedness of approximately \$101,591.00 according to the Debtor's books and records.

11. Debtor is not aware of any other claims of liens or security interests in Cash Collateral.

12. On the Filing Date, Debtor had cash on hand for operations of approximately \$8,500.00 and outstanding receivables in an amount still being calculated, but with estimated face value of \$191,680.00 in receivables less than 90 days old less \$62,000.00 deemed doubtful or uncollectable for a total of estimated collectable receivables of \$129,680.00.

### **Relief Requested**

13. By this Motion, Debtor requests that the Court enter an order authorizing Debtor's use of cash collateral based on the Budget attached hereto as Exhibit "A". Debtor requests the court hold an expedited interim hearing on this Motion on or before Thursday, September 12, 2019 to prevent any harm to Debtor's ongoing business operations as Debtor must have the ability to continue operating in the ordinary course of business. Debtor is simultaneously filing its "Motion Requesting Entry of Order Authorizing Payment of Prepetition Compensation and Taxes" (the "Compensation Motion") and a Motion Requesting Expedited Hearing regarding this Motion and the Compensation Motion.

### **Basis for Relief**

14. Section 363(c)(2) provides that a debtor in possession may not use Cash Collateral unless an entity that has an interest in such cash collateral consents or the court approves the use of such cash collateral. Section 363(p) provides that at a hearing on the use of cash collateral, the entity asserting an interest in the cash collateral has the burden of proof on the issue of the validity, priority, or extent of such interest. Rule 4001(b)(2) provides that the Court may not hold a final hearing on a motion to use cash collateral earlier than 14 days after service of the motion but may authorize the use of cash collateral prior to a final hearing as necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

15. Debtor requests the Court enter an Order authorizing Debtor to use Cash Collateral generated from the Business and otherwise: (a) in accordance with the budget attached hereto as Exhibit “A” (the line items of which Debtor may modify by no more than fifteen percent (15%) and Debtor may carry over any unused budgeted amount), (b) for payment of U.S. Trustee fees and (c) or for other matters pursuant to orders entered by this Court after appropriate notice and hearing, except further provided that Debtor may pay the actual amount owed or deposit required to any utility, taxing authority, the United States Trustee or insurance company.

16. Debtor has an immediate need to continue the operation of the Business and to protect the interests of the estate. Without the use of Cash Collateral and the ability to operate, Debtor will not be able to maintain the going concern value of the estate.

17. The entry of an Order granting Debtor’s Motion to use Cash Collateral will minimize disruption of the Debtor’s Business and is in the best interests of Debtor’s estate and its creditors.

18. Notice pursuant to Federal Rule of Bankruptcy Procedure 4001(b) is being sent to all parties required by such rule. Specifically, notice of this Motion and any hearing thereon shall be provided to each Respondent, the United States Trustee and Debtor’s creditors.

19. Debtor requests that the Court approve the expenditures listed in Exhibit “A” which are reasonably necessary for the continued operation of Debtor’s business affairs. Debtor has included a proposed Interim Cash Collateral Order as Exhibit “B” hereto.

WHEREFORE, for all of the above reasons, Debtor requests that the Court:

- a) authorize the Debtor to pay the expenses and other expenditures reasonably necessary for the continued operation of the Debtor's Business to avoid immediate and irreparable harm to the estate as detailed on Exhibit "A" and in this Motion;
- b) schedule an expedited interim hearing on this Motion on or before Wednesday, September 18, 2019; and schedule a final hearing on this motion;
- c) enter the Interim Order attached hereto as Exhibit "B"; and
- d) grant the Debtor such other and further relief as may be just and equitable.

RESPECTFULLY SUBMITTED this 13th day of September, 2019.

**JONES & WALDEN, LLC**

/s/ Thomas T. McClendon

Leon S. Jones

Georgia Bar No. 003980

Thomas T. McClendon

Georgia Bar No. 431452

Proposed Attorneys for Debtor

21 Eighth Street, NE

Atlanta, Georgia 30309

(404) 564-9300

**Exhibit “A” to Motion  
Budget**

**Monthly Budget**

	September	October	November	December
<b>Gross Revenue</b>	\$180,714	\$205,636	\$162,116	\$154,282
COGS	\$129,203	\$150,137	\$122,639	\$112,400
<b>Gross Profit</b>	\$51,511	\$55,499	\$39,477	\$41,882
Freight/Trucking	\$59	\$131	\$65	\$169
Fuel	\$2,694	\$2,250	\$2,637	\$4,211
Insurance	\$6,530	\$7,961	\$3,173	\$4,165
Payroll	\$25,005	\$20,974	\$33,997	\$24,518
Repairs	\$4,845	\$7,103	\$3,182	\$2,838
Other Expense	\$11,662	\$12,343	\$16,063	\$20,892
<b>Net Profit</b>	\$716	\$4,737	(\$19,640)	(\$14,911)

**Exhibit “B” to Motion  
Proposed Interim Cash Collateral Order**



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**Respondents.**

**CHAPTER 11**

**CASE NO. 19-42115-pwb**

**CONTESTED MATTER**

**INTERIM ORDER GRANTING DEBTOR'S MOTION REQUESTING  
AUTHORIZATION TO USE CASH COLLATERAL**

THIS MATTER came before the Court on the Debtor's Motion Requesting Entry of Order Authorizing the Use of Cash Collateral filed on September 13, 2019 (the "Motion"). The

Court, having considered the Motion, the Budget filed by the Debtor and attached hereto as Exhibit “1” and all other matters of record, finds as follows:

A. On September 13, 2019 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, commencing this Bankruptcy Case (the “Case”).

B. Since the Petition Date, Debtor has operated as a debtor-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

C. Debtor is a Georgia corporation. Debtor is the operator of a fertilizer and feed store (the “Business”).

D. Upon information and belief, Southern States Cooperative, Inc. may assert a lien upon and security interest in Debtor’s assets as more particularly described in the UCC Financing Statement number 115-2008-00233 filed on April 16, 2008 in the records of the Superior Court of Polk County, Georgia, UCC-3 number 115-2013-00151 filed on February 27, 2013, and UCC-3 number 115-2018-00278 filed on April 2, 2018 securing an indebtedness of \$16,961.97 according to the Debtor’s books and records.

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F. Upon information and belief, Secured Lender Solutions on behalf of On Deck Capital, Inc. may assert a lien upon and security interest in Debtor’s assets as more particularly described in the UCC Financing Statement number 038-2018-015919 filed on September 26,

2018 in the records of the Superior Court of Coweta County, Georgia securing an asserted outstanding indebtedness of approximately \$192,000.00 according to the Debtor's books and records.

G. Upon information and belief, Funding Metrics, LLC d/b/a Lendini may assert a lien upon and security interest in Debtor's assets as more particularly described in the UCC Financing Statement number 007-2018-054839 filed on December 11, 2018 in the records of the Superior Court of Barrow County, Georgia securing an asserted outstanding indebtedness of approximately \$85,500.00 according to the Debtor's books and records.

H. Upon information and belief, LG Funding may assert a lien upon and security interest in Debtor's assets as more particularly described in the UCC Financing Statement number 007-2019-007033 filed on February 25, 2019 in the records of the Superior Court of Barrow County, Georgia securing an asserted outstanding indebtedness of approximately \$101,591.00 according to the Debtor's books and records.

I. Debtor shows that it requires the use of Cash Collateral to pay its operating expenses.

J. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This case is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Notice has been properly given in light of the circumstances in order to avoid irreparable harm to the Debtor's estate.

For the reasons stated on the record, and the Court being otherwise informed, it is hereby ORDERED that:

1. The aforesaid findings, enumerated in paragraphs A through J above, are hereby incorporated into this Order as if fully set forth herein.

2. Until 11:59 p.m. EDT on the date of the Final Hearing (as defined herein); or as extended by the Court or consent of the parties, the Debtor shall have the right to use the Cash Collateral on an interim basis subject to the terms of this Order.

3. Debtor is authorized to use Cash Collateral generated from the Business as required in Debtor's business judgment in accordance with the Budget (the line items of which Debtor may modify by no more than fifteen percent (15%) and Debtor may carry over any unused budgeted amount) and for other amounts allowed or awarded pursuant to orders entered by this Court after appropriate notice and hearing. Notwithstanding anything to the contrary herein, Debtor may use Cash Collateral to pay the actual amount owed or deposit required to any utility, taxing authority (for post-petition taxes), the United States Trustee or insurance company as actually due and needed.

4. For purposes of providing adequate protection to Respondents for the Debtor's use of Cash Collateral, without limiting any security interests or liens in the post-petition Cash Collateral that are granted or extended to a Respondent pursuant to 11 U.S.C. § 552, Respondents are hereby granted a security interest in, and lien upon all of the post-petition cash collateral to the same extent, validity, amount, and priority as a Respondent's pre-petition security interests and lien upon such cash collateral (the "Replacement Liens") to secure against any diminution in value of any prepetition cash collateral in which the Respondent holds a valid, enforceable and perfected lien or security interest resulting from the Debtor's use of Cash Collateral.

5. Subject to Paragraph 9 herein, this Order is without any prejudice to Respondents' right to dispute at any time the Debtor's continued use of the Cash Collateral on an interim basis, seek relief from the stay or dismissal of this Case, and contest the nature, extent, validity or priority of any lien or security interest; and the entry of this Order is not to be interpreted as an

agreement by Respondent to support or accept final use of Cash Collateral, the filing of the Debtor's bankruptcy petition, any plan of reorganization or disposal of assets under Section 363 of the Bankruptcy Code, or any other proposed treatment of a Respondent's asserted claim(s).

6. This Order is entered without prejudice to the rights of Respondent(s) or other creditors to seek additional adequate protection or other relief available under the Bankruptcy Code, other applicable law or applicable loan documents. Nothing herein shall be construed or interpreted as consent by Respondent(s) to entry of a final order authorizing the use of Cash Collateral. Entry of this Order is without prejudice to the rights of Respondent(s), creditors or any party in interest to challenge or otherwise contest entry of a final order authorizing the use of Cash Collateral.

7. This Order is also entered without prejudice to the claims, rights, and actions that: (A) Debtor may have to challenge the nature, validity, or extent of the liens or debts asserted by Respondent; and (B) Respondent may assert in any action by Debtor to challenge the nature, validity, or extent of the liens or debts it may assert.

8. Notwithstanding anything to the contrary within Bankruptcy Rule 4001(b)(2) or any other rule of similar import, this Order shall be effective immediately upon its entry.

9. This Order shall constitute an interim order for the authorization to use the Cash Collateral pursuant to Section 363 of the Bankruptcy Code and Fed.R.Bankr.P. 4001(b)(2). Any person who objects to the relief provided herein on a final basis:

- a. **Must file** a written objection, stating the grounds therefor, on or by \_\_\_\_\_, 2019<sup>1</sup> ("Objection Deadline"):

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<sup>1</sup> The deadline for filing objections electronically through the Court's electronic case filing system shall be 11:59:59 p.m. The deadline for filing objections manually with the Clerk's office shall be 4:00 p.m.

Clerk, U.S. Bankruptcy Court  
600 East First St, Room 339  
Rome, GA 30161-3187

- b. **Must serve** a copy of said objection on Debtor's counsel so that such written objection is received by Debtor's counsel by the Objection Deadline at the following address:

Thomas T. McClendon, Esq.  
Jones & Walden, LLC  
21 Eighth Street, NE  
Atlanta, GA 30309

- c. **Must advocate** the objection at the Final Hearing. If objections are timely filed and served by the Objection Deadline in accordance with this Order, a Final Hearing will be held on the \_\_\_\_ day of \_\_\_\_, 2019 at \_\_\_\_ a./p.m. in Courtroom \_\_\_\_, U.S. Courthouse, \_\_\_\_.
- Any objection not timely filed, served and advocated at the hearing shall be deemed waived. If no objection is filed as set forth above by the Objection Deadline, this Order and the relief granted herein shall thereupon stand APPROVED on a final basis without further notice or hearing.

**[End of Order]**

**Prepared and presented by:**  
JONES & WALDEN, LLC

/s/Thomas T. McClendon  
Thomas T. McClendon  
Georgia Bar No. 431452  
21 Eighth Street, NE  
Atlanta, GA 30309  
(404) 564-9300 Telephone  
(404) 564-9301 Facsimile  
*Proposed Counsel for the Debtor*

**Distribution List:**

Thomas T. McClendon, Jones & Walden, LLC, 21 Eighth Street, N.E., Atlanta, Georgia 30309

Office of the United States Trustee, Suite 362, Richard B. Russell Building, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303

Holland Fertilizer Company, Inc., 364 Piedmont Hwy., Cedartown, Georgia 30125

**Exhibit “1”  
Budget**

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