

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

IN RE:	§	CHAPTER 11
	§	
La Petite France Bakery, LLC	§	CASE NO. 16-67787-mgd
	§	
Debtor.	§	
	§	

**MOTION FOR (A) AUTHORITY TO USE CASH COLLATERAL (B) TO
PROVIDE FOR ADEQUATE PROTECTION THEREFOR (C) TO APPROVE
SUPPLIER AGREEMENT IN CONNECTION THEREWITH AND (D)
REQUEST EMERGENCY PRELIMINARY HEARING**

COMES NOW, La Petite France Bakery, LLC, debtor and debtor-in-possession (the “Debtor”) in the above styled case (the “Case”), by and through its undersigned counsel, and files this Motion, respectfully showing the Court as follows:

RELIEF REQUESTED

1. By this Motion, the Debtor requests the entry of an order authorizing the Debtor to use Cash Collateral and for the entry of an Interim Order Authorizing Use of Cash Collateral to avoid immediate and irreparable harm pending a final hearing on this motion. The Debtor also seeks approval of a Supplier Agreement between itself and Citibank which is a critical part of the Debtor’s cash management system and necessary for the preservation of the use of cash collateral. For the reasons set forth below, the Debtor requests authority to use cash collateral.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

3. On October 4, 2016 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

4. No trustee or examiner has been appointed in these bankruptcy cases. No request has been made for the appointment of a trustee or examiner. No Committee has been appointed in this Case.

5. Filed contemporaneously with this Motion and in support hereof is the Declaration of Daniel Lemoine ("Lemoine Declaration"). As set forth in the Lemoine Declaration, the Debtor is a wholesale baker located at 1070 Atlanta Industrial Drive, Marietta Georgia. At present, the Debtor has fifty nine employees. Forty-five of these employees are engaged in the production and packaging of our baked goods. Nine are involved in delivery and the remaining employees are engaged in sales, management and accounting functions.

6. The Debtor has three loans with Georgia Primary Bank ("GPB"). The first is a Small Business Administration Term Loan ("Term 1"). The loan was taken out on April 30, 2013 in the original principal amount of \$598,400. The purpose of the loan

was to finance the acquisition of equipment to be used in baking operations. The balance of the loan as of the Petition Date is \$353,182.76. GPB asserts a first lien against all business assets and a second lien on accounts receivable of the Debtor to secure this loan.

7. The second loan is Small Business Administration Line of Credit (“LOC”) also taken out on April 30, 2013. The amount of the line of credit is \$200,000. As set forth in more detail below, the amount owed on this loan as of the Petition Date was approximately \$90,000. GPB asserts a lien against accounts receivable to secure this loan.

8. The third loan is a Small Business Administration Term Loan (“Term 2”) taken out in June, 2013 in the original principal amount of \$875,000. The balance owed on this loan as of the Petition Date is \$453,961.92. This loan was also used to purchase equipment and GPB asserts a lien against the new equipment purchased with the loan. Term 1 and Term 2 are cross collateralized.

9. With respect to the LOC, the balance owed on that loan as of September 26, 2016 was \$199,984. On that same date, GPB advised the Debtor that it was in breach of its borrowing covenants and that it needed to make a payment of \$37,447 in order to bring the loan back within the borrowing limits. At that time, the Debtor had a bank balance of approximately \$100,000 at GPB. Before arrangements could be made to bring the loan back within terms and without any other prior notice or demand, GPB seized the entire \$100,000 balance of the account leaving the Debtor without any cash.

10. The Debtor is currently investigating whether GPB’s seizure of its bank account was lawful and/or in accordance with the agreements in place between GPB and the Debtor. Notwithstanding any cash collateral order which may be entered in this case,

GPB reserves all rights to seek to recover these funds and/or to seek damages from GPB in the event the seizure was improper.

11. In addition to GPB, the Debtor believes that an entity names “BizFi” may assert claims to a portion of the Debtor’s cash collateral, although these claims are disputed.

12. The Debtor’s accounts receivable, cash and proceeds thereof may constitute “cash collateral” of GPB, and possibly BiZFi, as that term is defined in 11 USC section 363(a).

13. Unless authorized to use the Cash Collateral in the ordinary course of business, Debtor’s operations will be impaired and Debtor’s ability to reorganize will be jeopardized.

14. A proposed budget is attached to the Lemoine Declaration as Exhibit “A” and incorporated herein by reference.

15. As adequate protection for any interest lenders with valid security interests may have in cash collateral, Debtor proposes that GPB be granted a security interest in and lien upon Debtor' post-petition accounts receivable and proceeds to the same extent and priority as its pre-petition lien and interest in its pre-petition collateral, continuation of the lien and security interest held by such lender in its pre petition Collateral; that the Debtor’s ability to use cash collateral be in accordance with the Budget attached to the Lemoine Declaration as Exhibit “A”; and provision of Debtor's monthly operating reports required by the United States Trustee and filed with this Court.

WHEREFORE, Debtor moves this Court for the entry of an Order authorizing Debtor's use of cash collateral, and for such other and further relief as may be just and proper.

REQUEST FOR APPROVAL OF SUPPLIER AGREEMENT

16. One of the Debtor's more significant customers has established contract terms which provide this customer with 75 day payment terms. As set forth in the Lemoine Declaration, this customer generates approximately \$25,000 to \$35,000 per month in revenue.

17. In order to speed the collection of receivables from this Customer, the Debtor entered into an agreement with Citibank, the most recent version of which is attached to the Lemoine Declaration as Exhibit B. Pursuant to this agreement, Citibank purchases these receivables through an automated system established by Citibank and pays 97% of the face amount of these receivables within just a few days.

18. The Debtor believes it is critical for its business operations to continue this agreement. The Debtor further asserts that this agreement is in the best interests of both this Bankruptcy Estate and of GPB.

WHEREFORE, Debtor moves this Court for the entry of an Order authorizing the Debtor to continue to utilize this agreement and to continue to transfer the Receivables in accordance with its pre-petition practices and for such other and further relief as may be just and proper.

REQUEST FOR EMERGENCY PRELIMINARY RELIEF

19. The Debtor has an immediate need for the use of cash collateral for critical operating expenses prior to the scheduling of a final hearing on this Motion.

20. Unless authorized to use cash collateral during the mandatory fourteen (14) day period prior to a final hearing on this Motion, Debtor's operations will be immediately harmed and Debtor's ability to reorganize significantly impaired.

21. Conduct of an emergency preliminary hearing on this Motion and interim authorization of Debtor's use of cash collateral, in accordance with Exhibit "A" attached thereto, are necessary to avoid immediate and irreparable harm to the Debtor's estate pending a final hearing.

22. Attached as Exhibit "A" is a proposed Interim Order Authorizing Use of Cash Collateral Pending Final Hearing which is currently under negotiation with counsel for GPB.

WHEREFORE, the Debtor requests that this Court schedule an emergency preliminary hearing on this Motion and authorize Debtor's use of cash collateral on an interim basis, pending.

Dated: October 12, 2016.

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR.,
LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

Proposed Counsel for the Debtor

Law Offices of Henry F. Sewell, Jr., LLC
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that he has served a true and correct of the foregoing “*Emergency Motion for an Order Shortening Notice and Scheduling Expedited Hearing*” via the Court’s ECF system, if such party is registered, or via first class U.S. Mail, with adequate postage prepaid, on the following persons or entities at the addresses stated:

Viveon E. Kelley, Esq.
Office of the United States Trustee
362 Richard B. Russell Federal Building
75 Ted Turner Drive, SW
Atlanta, Georgia 30303
Via ECF

Douglas D. Ford, Esq.
Counsel for Georgia Primary Bank
Quirk & Quirk LLC
300 Century Springs West
6000 Lake Forrest Drive
Atlanta GA 30328
Via ECF

Synchrony Bank
c/o Recovery Management Systems Corporation
25 SE 2nd Avenue, Suite 1120
Miami, Florida 33131-1605
Via ECF

Dated: October 12, 2016.

Respectfully submitted,

LAW OFFICES OF HENRY F. SEWELL JR.,
LLC

/s/ Henry F. Sewell, Jr.

Henry F. Sewell, Jr.

Georgia Bar No. 636265

Proposed Counsel for the Debtor

Law Offices of Henry F. Sewell, Jr., LLC
Suite 200, 3343 Peachtree Road NE
Atlanta, GA 30326
(404) 926-0053

EXHIBIT A

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

IN RE:	§	CHAPTER 11
	§	
La Petite France Bakery, LLC	§	CASE NO. 16-67787-mgd
	§	
Debtor.	§	
	§	

**FIRST INTERIM ORDER GRANTING MOTION FOR (A) AUTHORITY TO
USE CASH COLLATERAL AND TO APPROVE SUPPLIER AGREEMENT IN
CONNECTION THEREWITH AND NOTICE OF HEARING ON ENTRY OF
FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL AND
APPROVAL OF SUPPLIER AGREEMENT**

IT APPEARING TO THIS COURT that on October 12, 2016, La Petite France Bakery, LLC (the “Debtor”), filed its “Motion for Authority to Use Cash Collateral and

To Provide Adequate Protection Therefor and Request for Emergency Preliminary Hearing” (the “Motion”); and

IT FURTHER APPEARING TO THIS COURT that the Motion first came before the Court for an interim hearing at _____

IT FURTHER APPEARING TO THIS COURT that counsel for the Debtor, Georgia Primary Bank (GPB”) and the United States Trustee have agreed that it is in the best interests of all parties to conclude an interim cash collateral order that, among other things, governs the Debtor’s use of cash until such time as further hearing can be held and the Court can enter a further Order authorizing the use of cash collateral; and

IT FURTHER APPEARING TO THIS COURT that counsel for the Debtor and GPB have consented to the entry of this Interim Order Granting Motion for Authority to Use Cash Collateral (the “First Interim Order”) by the signatures of their undersigned counsel, it appears to the Court as follows:

A. On October 3, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in this Court, and is continuing to manage its assets as debtor-in-possession, pursuant to 11 U.S.C. §§ 1107 and 1108.

B. The Debtor owns and operates wholesale bakery located in Atlanta, Georgia which has approximately 60 employees.

C. Prior to, on and after the Petition Date, the Debtor is entitled to collect the cash proceeds from the use and sale of the Pre-Petition Collateral (the “Cash Collateral”). The Debtor now seeks to use the Cash Collateral to operate its business.

D. The Debtor asserts that it is in the continued best interest of the estate and its creditors that the Debtor be permitted to use Cash Collateral in the manner provided for herein.

E. Notice of this Motion has been provided to necessary parties in compliance with Federal Rules of Bankruptcy Rule 4001(b)(2). Based upon the foregoing, it is hereby

ORDERED **AND** **ADJUDGED** as follows:

1. **Usage Period.** Subject to the terms and conditions contained herein, the Debtor is authorized to use Cash Collateral through the date of the final hearing on the Debtor's Motion to Use Cash Collateral.

2. **Projected Use of Cash.** Unless a senior secured creditor holding a security interest in the cash collateral shall otherwise agree in writing, the amount of Cash Collateral which the Debtor may use during the Usage Period shall not exceed one hundred and ten percent (110%) of each line item set forth in the budget attached hereto as **Exhibit "A"** (the "Budget"). In the event that the Debtor develops a surplus in regard to any line item, the Debtor may apply said surplus to a separate line item where the Debtor anticipates exceeding the line item limitation.

3. **Authorized Disbursements.** The Debtor shall only be authorized to use Cash Collateral for the actual and necessary expenses of operating the Debtor and conducting the Debtor's business affairs pursuant to the Budget, as set forth above. Unless otherwise authorized by order of the Court, the Debtor shall not use Cash Collateral for the payment of any pre- petition indebtedness or obligations of, or pre-petition claims against, the Debtor.

4. Lien on Post-Petition Collateral. Pursuant to 11 U.S.C. §§ 361 and 363, to the extent that the Debtor uses Cash Collateral, each existing senior secured lender is granted a continuing valid, attached, choate, enforceable, perfected and continuing security interest in, and lien upon, all post-petition assets of the Debtor of the same type and to the same extent as (i) the collateral securing the Debtor's indebtedness to such creditor prior to the Petition Date the "Post-Petition Collateral"). The priority of said security interests in, and liens upon, the Post-Petition Collateral shall be the same priority as existed in and upon the Pre-Petition Collateral. The liens and security interests granted by this Order shall, upon entry of this Order, continue to be perfected as of the Petition Date, without regard to applicable federal, state or local filing and recording statutes, and without further action of any party; provided, however, that the described replacement liens shall not attach to claims or causes of action of the Debtor that arise solely under Chapter 5 of the Bankruptcy Code.

5. Supplier Agreement with CitiBank. The Debtor is permitted to continue to transfer receivables through an automated system established by Citibank without prejudice in accordance with the terms of the Supplier Agreement attached as Exhibit "B" to the Motion for the duration of this Interim Order.

6. Validity of Collateral Claims. Nothing herein shall be deemed an admission by the Debtor as to the extent, validity or perfection of any creditor's security interests in the Pre- Petition Collateral, the Post-Petition Collateral or the Cash Collateral. In the event any creditor's security interests in, or lien upon, the Pre-Petition Collateral is reduced or invalidated by order of this Court, then its security interests in, and liens upon, the Post-Petition Collateral granted by this Order shall be reduced or invalidated commensurately.

7. **Deposits of Cash Collateral.** All Cash Collateral shall be deposited in the Debtor's debtor-in-possession Operating Account.

8. **Payment of Employee Taxes.** As a condition to issuing any payroll to employees during the pendency of this Case, Debtor's CEO shall first either pay or deposit in the Debtor's debtor-in-possession account all local, state and federal taxes, including withholding taxes, Social Security taxes and Medicare taxes related to such payroll (the "Related Taxes") and deliver to the United States Trustee a certification under penalty of perjury that the Debtor either (a) has paid all Related Taxes regarding such payroll or (b) has deposited in the Debtor's DIP Tax Checking Account a sum sufficient to pay all Related Taxes regarding such payroll.

9. **Accounting.** The Debtor shall at all times (a) sequester, segregate and account for all Cash Collateral that comes into its possession, custody or control, (b) keep and provide on a periodic basis (no less than monthly) records reasonably sufficient to determine the status of Cash Collateral collections and expenditures, and (c) provide to senior secured lenders with copies of the monthly operating reports filed with this Court and with the Office of the United States Trustee.

10. **Insurance.** To the extent that it remains necessary and appropriate, the Debtor shall insure the Pre-Petition Collateral and the Post-Petition Collateral against all risks to which it may be exposed, including loss, damage, fire, theft and all other such risks, in an amount not less than the fair market value of such collateral, with such insurance providers, and under such policies, and in such form as is appropriate for a business of a type similar to the Debtor using sound business judgment. The Debtor may pay the premiums necessary to reinstate its prepetition insurance.

11. **Failure of Adequate Protection.** The terms and conditions of this Order are intended to provide each creditor with a perfected pre-petition security interests with adequate protection for its interests in the property of the Debtor.

12. **Events of Default.** Each of the following shall constitute an “Event of Default” under this Order:

- a. The occurrence of any material breach, default or non-compliance with the terms of this Order;
- b. Conversion of this Chapter 11 case to a case under Chapter 7; and
- c. Appointment of a trustee in this Chapter 11 case.

13. **Termination.** The Debtor’s authority to use cash collateral shall terminate, and shall no longer be subject to the terms of this Interim Order,

- a. Upon payment to such secured creditor of all sums due and owing from the Debtor to such secured creditor, including such attorneys fees, expenses and interest as the parties may agree upon or this Court shall order, pursuant to 11 U.S.C. §§ 503 or 506;
- b. Upon confirmation by the Debtor of a Plan of Reorganization in this case; or
- c. _____;

Notwithstanding the deadlines set out above, this Order, and all provisions of this Order other than those pertaining to (i) the amount and character of the Debtor’s expenditures; and (ii) the Debtor’s reporting requirements, shall remain in full force and effect.

14. Effect of Modification, Vacation or Stay. If any provision of this Order is hereafter modified, vacated or stayed, such modification, vacation or stay shall not (i) affect the validity or authority of the Debtor's use of Cash Collateral under this Interim Order prior to such time, or (ii) affect the validity, priority or enforceability of the security interests and liens granted the senior secured lender for such use, prior to the effective date of such modification, vacation or stay.

15. Notice of Hearing on Entry of Final Order Authorizing the Use of Cash Collateral. Notice is herewith given to all parties that a hearing shall take place before this Court in Courtroom of the Richard Russell Federal Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303 on at ., to consider the entry of a final order authorizing the Debtor to use cash collateral. Any person wishing to object to the entry of a final order authorizing the Debtor to use cash collateral should file a written objection with the Clerk of the United States Bankruptcy Court for the Northern District of Georgia at Room 1340, Richard Russell Federal Building, 75 Ted Turner Drive, Atlanta, Georgia 30303, or online through ECF on or before . Any party filing such an objection shall appear at the hearing on to advocate said objection, or the objection may be denied without further hearing.

END OF DOCUMENT

Prepared and Presented By:

LAW OFFICES OF HENRY F. SEWELL JR., LLC

By: /s/ Henry F. Sewell, Jr.
Henry F. Sewell, Jr.
Georgia Bar No. 636265

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