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FILED & ENTERED

NOV 16 2018

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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Proposed Attorneys for Chapter 11 Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re:

ZACKY AND SONS POULTRY, LLC,  
Debtor and Debtor in Possession

Case No.: 2:18-bk-23361-RK

Chapter 11 Case

**AMENDED INITIAL INTERIM ORDER: (I) AUTHORIZING THE DEBTOR TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; (II) GRANTING ADEQUATE PROTECTION PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364; (III) SCHEDULING A CONTINUED HEARING; AND (IV) GRANTING RELATED RELIEF**

DATE: November 15, 2018

TIME: 10:00 a.m.

PLACE: Courtroom "1675"  
255 East Temple Street  
Los Angeles, CA

1 A hearing was held at the above-reference date, time and location for the Court to  
2 consider approval of the emergency motion (the "Motion") filed as Docket Number 2 by Zacky  
3 and Sons Poultry, LLC (the "Debtor"), the debtor and debtor-in-possession in the above-  
4 captioned chapter 11 bankruptcy case, pursuant to Local Bankruptcy Rule 2081-1, and 11 U.S.C.  
5 §§ 105(a), 361, 362, 363, and 364, for the entry of an interim order followed by a final order  
6 which provides for, among other things:  
7

8 (1) approval of and authorization for the Debtor to obtain post-petition financing in  
9 the aggregate principal amount of \$2,249,000.00 ("DIP Loan") from Great Rock Capital Partners  
10 Management, LLC ("Great Rock"), which currently serves as one of the Debtor's primary pre-  
11 petition secured lenders, to enable the Debtor to pay the expenses in the DIP Loan budget (the  
12 "DIP Loan Budget") attached as Exhibit "A" to the Declaration of Marvin Scheidt (the "Scheidt  
13 Declaration") as Docket Number 3;  
14

15 (2) authorization for the Debtor to use cash collateral, as such term is defined in 11  
16 U.S.C. § 363(a), in accordance with the Debtor's weekly cash flow forecast setting forth all  
17 projected post-petition cash receipts and cash disbursements ("Initial Cash Collateral Budget"), a  
18 true and correct copy of which is attached as Exhibit "B" to the Scheidt Declaration, and all  
19 future budgets, and ordering secured creditor GemCap Lending I, LLC ("GemCap"), which has  
20 possession and control over the Debtor's cash, to turn over to the Debtor all of the Debtor's cash  
21 in GemCap's possession;  
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23 (3) pursuant to 11 U.S.C. §§ 364(c)(1), (c)(2), (c)(3) and 364(d)(1), the grant to Great  
24 Rock of valid, enforceable, non-avoidable, fully perfected and continuing liens on and security  
25 interests in and to all assets of the Debtor (but excluding any pre-petition avoidance causes of  
26 action under 11 U.S.C. §§ 544, 546, 547, 548 and 549, collectively referred to herein as  
27 "Avoidance Actions") to secure all obligations of the Debtor to Great Rock on account of the  
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1 DIP Loan and all interest, fees, etc. accrued thereon, with such DIP Loan secured by (i) a first  
2 priority priming lien on all collateral against which Great Rock had a senior lien on the petition  
3 date securing the obligations of the Debtor to Great Rock under the pre-petition Great Rock  
4 Credit Agreement, (ii) a first priority lien against all unencumbered assets of the Debtor's estate  
5 (except for Avoidance Actions), and (iii) a junior lien against all encumbered assets of the  
6 Debtor's estate (except for Avoidance Actions);

8 (4) pursuant to 11 U.S.C. § 507(b), the grant of a super-priority administrative  
9 expense priority claim against the Debtor's estate ("Super-Priority Claim") to (i) Great Rock on  
10 account of any post-petition diminution in the value of Great Rock's collateral and (ii) to  
11 GemCap on account of any post-petition diminution in the value of GemCap's collateral, with  
12 any such Super-Priority Claim to have priority over any and all administrative expenses and  
13 claims asserted against the Debtor or its respective bankruptcy estate;

15 (5) the grant of adequate protection to GemCap and Great Rock on account of the  
16 Debtor's use of their cash collateral as defined in 11 U.S.C. § 363(a), which adequate protection  
17 shall be in the form of valid, enforceable, non-avoidable and fully perfected replacement liens  
18 on, and security interests in, all assets of the Debtor's estate that secured the perfected liens of  
19 GemCap and Great Rock as of the Debtor's petition date (the "GemCap and Great Rock  
20 Adequate Protection Liens") and all proceeds therefrom, with such GemCap and Great Rock  
21 Adequate Protection Liens to have the same validity, priority and scope as their pre-petition  
22 liens;

24 (6) the grant of adequate protection to subordinated secured creditors Robert D.  
25 Zacky and Lillian D. Zacky Trust U/D/T Dated July 26, 1988 and Zacky, Lillian Trustee  
26 (collectively, the "Zacky Trust"), which adequate protection shall be in the form of valid,  
27 enforceable, non-avoidable and fully perfected replacement liens on, and security interests in, all  
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1 assets of the Debtor's estate that secured the perfected liens of the Zacky Trust as of the Debtor's  
2 petition date (the "Zacky Trust Adequate Protection Liens") and all proceeds therefrom, with  
3 such Zacky Trust Adequate Protection Liens to have the same validity, priority and scope as their  
4 pre-petition liens subject to the pre-petition subordination agreements;

5  
6 (7) the grant of adequate protection to recorded lien creditor Associated Feed &  
7 Supply Co. ("Associated Feed"), whose lien was recorded on November 1, 2018, which adequate  
8 protection shall be in the form of valid, enforceable, non-avoidable and fully perfected  
9 replacement liens on, and security interests in, all assets of the Debtor's estate that secured the  
10 perfected liens of Associated Feed as of the Debtor's petition date and which are not set aside as  
11 an avoidable preference (the "Associated Feed Adequate Protection Liens") and all proceeds  
12 therefrom, with such Associated Feed Adequate Protection Liens to have the same validity,  
13 priority and scope as their pre-petition liens; and  
14

15 (8) the scheduling of a final hearing (the "Final Hearing") on the Motion on a date  
16 and time that is convenient for the Court.

17 The Court, having considered the Motion and all of the pleadings filed by the Debtor in  
18 support of the Motion, any and all opposition filed to the Motion, the statements, arguments and  
19 representations of the parties made at the hearing on the Motion, and good cause appearing,  
20

21 HEREBY FINDS AS FOLLOWS:

22 A. Except as otherwise provided herein, this Court has jurisdiction over the Debtor's  
23 case, the Motion, and the parties and property affected thereby pursuant to 28 U.S.C. §§ 157(b)  
24 and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. §  
25 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

26 B. Notice of the Motion, the relief requested therein and the interim hearing on the  
27 Motion was served by the Debtor on its twenty largest unsecured creditors, all known secured  
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1 creditors, the United States Trustee for the Central District of California (the “U.S. Trustee”),  
2 and any parties who have requested special notice in this case. Under the circumstances, the  
3 notice given by the Debtor of the Motion, the relief requested therein, and the interim hearing on  
4 the Motion constitutes due and sufficient notice thereof and complies with Bankruptcy Rules  
5 4001(b) and 4001(c).  
6

7 C. The Debtor has an immediate need to use cash collateral to pay the certain of the  
8 expenses set forth in the Initial Interim Cash Collateral Budget attached hereto as Exhibit “A”  
9 (the “Initial Interim Cash Collateral Budget”). Payment of such expenses is necessary to enable  
10 the Debtor to avoid irreparable harm to the Debtor and its estate.

11 D. The Debtor has requested immediate entry of this Initial Interim Order pursuant to  
12 Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent granting the interim relief set forth in this  
13 Initial Interim Order, the Debtor’s estate will be immediately and irreparably harmed.  
14

15 E. Authorizing the Debtor to use cash collateral to pay certain of the the expenses set  
16 forth in the Initial Interim Cash Collateral Budget is in the best interest of the Debtor’s estate.

17 F. Good cause has been shown for the entry of this Initial Interim Order.

18 Based upon the foregoing findings and conclusions, and upon the record made before this  
19 Court at the interim hearing, and good and sufficient cause appearing therefor, **THIS COURT**

20 **HEREBY ORDERS, DETERMINES AND DECREES AS FOLLOWS:**  
21

22 **Motion Partially Granted**

23 The Motion is partially granted on the terms and conditions set forth in this Initial Interim  
24 Order, with the foregoing findings incorporated herein by reference. This Initial Interim Order  
25 shall be valid and binding on all parties-in-interest and fully effective immediately upon its entry.  
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**Cash Collateral**

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2 The Debtor, in accordance with the Stipulation reached between Debtor and GemCap, is  
3 authorized to use cash collateral to pay the expenses set forth in the Initial Interim Cash  
4 Collateral Budget pending a continued hearing to be held on November 21, 2018, at 10:00 a.m.  
5 (the "Continued Hearing"). The Initial Interim Cash Collateral Budget will, consistent with the  
6 Stipulation between GemCap and Debtor, include the items identified for the week of November  
7 17, 2018 in the Interim Cash Collateral Budget filed in support of Debtor's Motion [Doc. 3],  
8 with the exception of expenses in the category entitled "Utilities" and the incentive bonus portion  
9 of the line item entitled "Wages & Benefits" (an amount totaling approximately \$350,000), none  
10 of which may be paid absent a further order of the Court. GemCap has agreed to the limited use  
11 of its cash collateral for purposes of payment of the expenses identified in the Initial Cash  
12 Collateral Budget – excluding the items listed above—without prejudice to any of its rights or  
13 remedies in connection with the further use of its cash collateral on or after November 21, 2018,  
14 including specifically whether GemCap is adequately concerning the use of any of its cash  
15 collateral and that GemCap maintains it has no obligation under law or contract to fund the  
16 Debtor's payroll, paid time off expenses or other wages and benefits. These approved expenses  
17 shall be paid with the Debtor's funds collected post-petition either, at GemCap's option, directly  
18 by GemCap (from post-petition collected Debtor's funds held by GemCap) or by the Debtor with  
19 post-petition collected Debtor's funds turned over to the Debtor by GemCap. To the extent that  
20 the payment of any approved expenses should be made by the Debtor with funds turned over to  
21 the Debtor, the Debtor is authorized to make such payment from its existing pre-petition bank  
22 accounts at Wells Fargo Bank, N.A. The Debtor and GemCap shall work cooperatively to  
23 achieve the most efficient and least disruptive manner for these approved expenses to be paid,  
24 including, in accordance with their pre-petition pattern and practice, Debtor shall provide  
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1 GemCap an itemized breakdown of the expenses to be funded consistent with the borrowing base  
2 certificates Debtor provided GemCap in support of pre-petition protective advances. GemCap  
3 shall be allowed to continue to sweep and retain the Debtor's funds until further order of the  
4 Court, recognizing that the swept funds remain property of the Debtor and shall not be used to  
5 pay any pre-petition debt owed to GemCap without further order of the Court. GemCap shall  
6 retain the balance of the Debtor's funds in a segregated account pending further order of the  
7 Court. GemCap shall not be permitted to pay down any of its pre-petition debt without further  
8 order of the Court. Except as otherwise ordered by the Court, the Debtor shall only use its Cash  
9 Collateral in accordance with the Initial Interim Cash Collateral Budget. Nothing in this Initial  
10 Interim Order obligates GemCap to make loans, or advance any amounts, to the Debtor to the  
11 extent there are insufficient post-petition collected Debtor's funds to pay any of the amounts set  
12 forth on the Initial Interim Cash Collateral Budget. The Debtor shall have the right to modify or  
13 deviate from the Initial Interim Cash Collateral Budget without any further Court order if  
14 GemCap agrees to such modification or deviation.  
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17 As further adequate protection to GemCap and Great Rock on account of the Debtor's  
18 use of their cash collateral, GemCap and Great Rock are hereby granted the GemCap and Great  
19 Rock Adequate Protection Liens, with such GemCap and Great Rock Adequate Protection Liens  
20 to have the same validity, priority and scope as their pre-petition liens. As further adequate  
21 protection to the Zacky Trust on account of the Debtor's use of their cash collateral, the Zacky  
22 Trust is hereby granted the Zacky Trust Adequate Protection Liens, with such Zacky Trust  
23 Adequate Protection Liens to have the same validity, priority and scope as its pre-petition liens  
24 as subordinated by the subordination documents executed by the Zacky Trust. As further  
25 adequate protection to Associated Feed on account of the Debtor's use of its cash collateral,  
26 Associated Feed is hereby granted the Associated Feed Adequate Protection Liens, with such  
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1 Associated Feed Adequate Protection Liens to have the same validity, priority and scope as its  
2 pre-petition liens. Notwithstanding the foregoing or anything else to the contrary in this Initial  
3 Interim Order, all rights of GemCap with respect to adequate protection are hereby reserved.  
4

5 **Preservation of Rights Granted Under this Initial Interim Order**

6 All rights, claims and defenses of all parties are preserved.

7 **Effect of Stipulations on Third Parties**

8 Each stipulation, admission and agreement contained in this Initial Interim Order shall be  
9 binding upon the Debtor and any successor thereto (including, without limitation, any chapter 7  
10 trustee or any chapter 11 trustee appointed or elected for the Debtor) under all circumstances and  
11 for all purposes existing as of the date hereof.  
12

13 **Binding Effect on Successors and Assigns**

14 This Initial Interim Order, including all findings herein, shall be binding upon all parties  
15 in interest in the Debtor's chapter 11 case and each of their respective successors and assigns  
16 (including any chapter 7 or any chapter 11 trustee hereafter appointed or elected for the estate of  
17 the Debtor, an examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other  
18 fiduciary appointed as a legal representative of the Debtor or with respect to any property of the  
19 Debtor's estate).  
20

21 **Effectiveness**

22 This Initial Interim Order shall constitute findings of fact and conclusions of law and  
23 shall take effect and be fully enforceable immediately upon entry hereof. This Initial Interim  
24 Order shall be immediately effective and enforceable upon its entry and there shall be no stay of  
25 execution or effectiveness of this Initial Interim Order.  
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**Controlling Effect of this Initial Interim Order**

To the extent any provisions in this Initial Interim Order conflict with any provisions of the Motion, the provisions of this Initial Interim Order shall control.

**Continued Hearing, Notice and Objections**

The Continued Hearing on the Motion shall be held on November 21, 2018 at 10:00 a.m. (Pacific Standard Time) before this Court. Notice of the Continued Hearing is waived.

IT IS SO ORDERED.

###

Date: November 16, 2018



Robert Kwan  
United States Bankruptcy Judge

## **EXHIBIT “A”**

**CASH COLLATERAL BUDGET**

Filing	Nov 2018			Dec 2018					Jan 2019					Feb 2019			Mar 2019		18 Week TOTAL		
	17-Nov	24-Nov	1-Dec	1-Dec	8-Dec	15-Dec	22-Dec	29-Dec	5-Jan	12-Jan	19-Jan	26-Jan	2-Feb	9-Feb	16-Feb	23-Feb	2-Mar	9-Mar		16-Mar	
week ending																					
<b>Receipts</b>	\$2,983	\$3,646	\$1,943	\$1,385	\$814																
A/R - Collections																					
<b>Disbursements</b>	\$1,170	\$193	\$174	\$956	\$56	\$85	\$206	\$3	\$3	\$33											
Wages & Benefits	30	30	30	30																	
Self Insured WC Claims	50	50	50	50																	
Self Insured Medical Claims	474	265	140	80																	
Grow Out	217	136	171	86	15	25	25														
Plant Operations (x-labor & utilities)																					
Security (3rd Party)																					
Utilities	461	7	82	115	154																
Freight	351	33	147	50																	
Property taxes					198																
Insurance	62			62																	
SG&A	35	35	35	35	25	25	25														
Other																					
Total Operating	2,850	749	829	1,402	520	135	256	3	3	33											
Debtor Professional Fees																					
<b>Total Disbursements</b>	\$2,850	\$749	\$829	\$1,402	\$520	\$135	\$256	\$3	\$3	\$33											
<b>Net Cash Flow</b>	\$133	\$2,897	\$1,114	(\$17)	\$294	(\$135)	(\$256)	(\$3)	(\$3)	(\$33)											
<b>Cash Balance</b>																					
Beginning Cash		\$133	\$3,030	\$4,144	\$4,127	\$4,421	\$4,286	\$4,030	\$4,027	\$4,024	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	
Total Receipts	2,983	3,646	1,943	1,385	814																
less: Total Disbursements	(2,850)	(749)	(829)	(1,402)	(520)	(135)	(256)	(3)	(3)	(33)											
Ending Cash	\$133	\$3,030	\$4,144	\$4,127	\$4,421	\$4,286	\$4,030	\$4,027	\$4,024	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	\$3,991	