

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

IN RE:	)	
	)	Case No. 18-18234-KHT
COOL FROOTZ, LLC,	)	
a Delaware limited liability company	)	
EIN: 20-0873295	)	Chapter 11
	)	
Debtor.	)	

**MOTION FOR AUTHORITY TO USE CASH COLLATERAL**

The Debtor and Debtor in Possession, Cool Frootz, LLC (“Cool Frootz” or “Debtor”) by and through its attorneys, Kutner Brinen, P.C., moves the Court pursuant to 11 U.S.C. § 363(c)(2) and Bankruptcy Rules 4001(b) and 9014 for entry of an order authorizing the Debtor’s use of cash collateral, setting a final hearing on the use of cash collateral, and providing adequate protection to properly perfected secured creditors, and as grounds therefor states as follows:

**Background**

1. The Debtors filed for relief under Chapter 11 of the Bankruptcy Code on September 20, 2018. The Debtor continues to operate its business as a debtor-in-possession.
2. The Debtor is a company engaged in the business of producing and distributing on a national basis frozen fruit snacks that are made in different flavors out of blended fruits. The fruit snacks are made from 100% whole fruit and are marketed under the tradename Froozer. Information on the Debtor can be found online at [www.froozer.com](http://www.froozer.com).
3. A review of the Debtor’s business, generation of income, and its secured debt structure is set forth in the Declaration of David Patterson which will be filed in this case in advance of the hearing on this Motion.
4. The Debtor has three secured creditors who claim liens on inventory and accounts. The first secured creditor is CircleUp Credit Advisors LLC (“CircleUp”). The amount due to Circle Up is approximately \$107,585. Circle Up holds a first priority security interest on the Debtor’s accounts receivable from most of its main customers including Walmart, Woodlands/Publix, Kroger and Giant Eagle. The second secured creditor is DNS-Frootz, LLC (“DNS”) who began to advance money to the Debtor through promissory notes in 2017. The DNS claim is based upon promissory

notes dated in October 2017 and subsequent notes dated through early 2018 in the collective amount of approximately \$1,595,000. The notes are secured by a security interest and a UCC-1 Financing Statement was recorded. DNS will claim liens in the Debtor's assets including inventory and accounts receivable. S2G Ventures Fund 1, L.P. ("S2G") is also a secured creditor holding a claim in the amount of approximately \$1,600,000 based upon loans made to the Debtor in 2017 and 2018. S2G also holds a security interest encumbering various assets of the Debtor.

5. In addition, the Debtor has one claim that has been asserted under the Perishable Agricultural Commodities Act ("PACA") by the creditor, Fruittrade International, Inc. ("Fruittrade"). The Fruittrade claim is in the amount of approximately \$87,083.59. The PACA claim holds certain priority rights with respect to the cash proceeds from the sale of the Debtor's fruit products.

6. The cash collateral is derived from the sale of inventory. The Debtor's inventory is perishable and is generally frozen fruit products. It is generally replaced in the ordinary course of business. The Debtor's current account receivable balance is approximately \$100,625, most of the are factored through CircleUp. The Debtor also holds cash in bank accounts in the amount of approximately \$50,000. Given the amount of cash, accounts receivable, and inventory, the three secured creditors are very under-secured with respect to cash collateral issues. Only CircleUp and DNS hold any material secured claim in cash collateral.

7. The Debtor is replacing its accounts, cash, and inventory in the ordinary course of its operations on an ongoing basis.

### **Relief Requested**

8. The Debtor plans to continue operation of its business throughout the Chapter 11 case and propose a Plan of Reorganization which provides for the continuation of the Debtor's business. It is only through a Plan and the Debtor's continued operation that secured and unsecured creditors will see a recovery on account of their claims.

9. In order to pay necessary operating expenses, the Debtor must immediately use cash collateral in which one or more creditors may have an interest. The Debtor proposes to use cash collateral on an interim basis until such time as the Court schedules a final hearing on the use of cash collateral. At the final hearing, the Debtor will seek relief to use cash collateral during the term of this Chapter 11 proceeding.

10. The majority of the Debtor's revenues and available cash are derived from the sale of inventory. Without the use of cash collateral, the Debtor will have insufficient funding for business

operations. Therefore, the Debtor's use of cash collateral during the interim period is necessary to avoid immediate and irreparable harm to the estate. Without the use of cash collateral, the Debtor will not be able to pay employees, rent, utilities, materials and other costs associated with goods sold. The Debtor will be replacing its accounts, cash, and cash equivalents in the course of its daily operations and therefore the collateral base will remain stable and will improve over time.

11. The Debtor's cash position is projected to be positive after meeting expenses on a reduced basis during the term of the Chapter 11 case.

12. In order to provide adequate protection for the Debtor's use of cash collateral to secured creditors, the Debtor has proposed adequate protection for secured creditors in the order of their relative priorities as set forth below. The proposal provides the following treatment on account of cash collateral:

a. The Debtor will provide secured creditors with a post-petition lien on all post-petition inventory, accounts receivable, and income derived from the operation of the business and assets, to the extent that the use of the cash results in a decrease in the value of secured creditor's interest in the collateral pursuant to 11 U.S.C. § 361(2). All replacement liens will hold the same relative priority to assets as did the pre-petition liens;

b. The Debtor will only use cash collateral in accordance with the Budget attached to this Motion as Exhibit B subject to a deviation on line item expenses not to exceed 15% without the prior agreement of secured creditors or an order of the Court;

c. The Debtor will keep all of secured creditor's collateral fully insured;

d. The Debtor will provide secured creditors with a complete accounting, on a monthly basis, of all revenue, expenditures, and collections through the filing of the Debtor's Monthly Operating Reports; and

e. The Debtor will continue its ongoing operation and maintain a constant level of inventory which will preserve secured creditor's collateral position.

13. Should the Debtor default in the provision of adequate protection, the Debtor's approved use of cash collateral will cease and the secured creditor will have the opportunity to obtain further relief from this Court.

14. The Debtor's request to use cash collateral is made with a complete reservation of rights of secured creditors to their various claims and lien positions in and to the Debtor's assets and the Debtors' reservation of rights to challenge, avoid, or otherwise contest the secured creditor lien and claim.

15. Approval of the Debtor's use of cash collateral in accordance with this Motion is, on an interim basis and a final basis, in the best interest of the Debtor, its creditors and the estate as it will allow the Debtor to maintain its ongoing business operations, allow the Debtor to generate revenue, and provide the Debtor with an opportunity to propose a meaningful Plan.

16. The Debtor's proposed use of cash collateral in accordance with the Budget that is attached hereto as Exhibit A. The Budget projects a 30 day use of funds for both the Colorado and Oregon operations.

**Relief Requested on an Interim Emergency Basis**

17. Without the immediate use of cash collateral, the Debtor will not be able to fund ongoing business operations. The Debtor is filing a separate motion requesting an expedited entry of an order approving the interim use of Cash Collateral pursuant to this Motion.

WHEREFORE, the Debtor prays that the Court enter an Order, authorizing the Debtor's use of cash collateral in accordance with this Motion, authorize the Debtor to provide adequate protection to the secured creditors with an interest in cash collateral in the form of that set forth herein, and for such further and additional relief as to the Court may appear proper.

DATED: September 24, 2018

Respectfully submitted,

By: /s/ Lee M. Kutner  
Lee M. Kutner, # 10966  
**KUTNER BRINEN, P.C.**  
1660 Lincoln Street, Suite 1850  
Denver, CO 80264  
Telephone: (303) 832-2400  
Telecopy: (303) 832-1510  
Email: lmk@kutnerlaw.com