

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.)	

INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL

UPON CONSIDERATION of the Motion of the Debtor and Debtor in Possession for entry of an order authorizing the use of cash collateral on an interim basis (“Motion”) and setting a final hearing, and any additional papers filed in opposition thereto and in further support thereof; and having heard the arguments of counsel, if any; and having considered any evidence presented; and due and proper notice of the Motion having been provided; and for good cause shown:

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as under the terms set forth herein;
2. The Debtor is authorized to use funds currently in its bank account. Debtor is not authorized to use any other cash collateral, including but not limited to any accounts receivable.
3. The adequate protection of the Secured Creditors’¹ interests in cash collateral proposed to be used by the Debtor in accordance with the Budget that accompanies the Motion is approved as follows:
 - a. Each Secured Creditor shall have a post-petition lien on post-petition assets of the same type as were encumbered by such Secured Creditor’s pre-petition lien(s), to the extent that the use of the cash results in a decrease in the value of any Secured Creditor’s interest in their respective collateral pursuant to 11 U.S.C. § 361(2). All

¹ “Secured Creditors” means CircleUp Credit Advisors LLC (“CUC Advisors”); DNS-Frootz, LLC, as collateral agent for the holders of secured convertible promissory notes made by the Debtor (the “Notes Collateral Agent”) and as holder of certain of such notes; S2G Ventures Fund I, L.P.; and Fruitrade International, Inc.

such replacement liens will hold the same relative priority to assets as did the Secured Creditors' respective pre-petition liens;

b. The liens granted under this paragraph 2(b) shall be subject only to any valid, enforceable, unavoidable, and properly perfected liens on the Adequate Protection Collateral existing on the Petition Date (including any such liens that are perfected after the Petition Date in accordance with section 546(b) of the Bankruptcy Code) and PACA claims, as defined herein, with priority over the Notes Collateral Agent's prepetition liens on such assets or otherwise on assets not constituting the Notes Collateral Agent's prepetition collateral, *in each and every case any lien granted herein is a replacement lien and shall only exist to the extent equal to the amount of any diminution in value of the Notes Collateral Agent's interest in the Debtor's inventory from the petition date forward.* The Notes Collateral Agent is hereby granted, subject to the foregoing, for the benefit of itself and all holders of the secured convertible promissory notes made by the Debtor, valid, binding, continuing, enforceable, fully perfected, security interests in and liens on any and all tangible and intangible pre- and post-petition property of the Debtor, whether existing before, on or after the Petition Date, together with any proceeds thereof, including, without limitation, any and all cash and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, retainer accounts, chattel paper, interests in leaseholds (*provided, however, that solely to the extent that any lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the leasehold interest, then in such event there shall only be a lien on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests unless the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code*), real property, deposit accounts (except for any account created to hold an adequate assurance deposit for utility providers, pursuant to separate order of this Court), securities accounts, patents, copyrights, trademarks, trade names, rights under license agreements and

other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents, accession and profits of the foregoing (collectively, the “Adequate Protection Collateral”); *provided, however*, that the Adequate Protection Collateral shall not include claims or causes of action of the Debtor arising under sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code or the proceeds of any such claims or causes of action. The liens granted to the Notes Collateral Agent herein are subordinate and junior to the prepetition and postpetition liens in favor of CUC Advisors in the following: Current and future accounts receivable assets (whether solely or jointly owned), whether now or hereafter acquired, whether now existing or hereafter arising, and wherever located, for the following accounts: Unfi East & West, DPI Specialty Foods, Woodland Partners, Walmart, Giant Eagle, Inc., Alpine Food Distributing, Bozzuto’s Inc, CY International Trading, Nassau Provisions, US Foods Inc. (Golden Bay), Kehe Distributors, Wakefern Food Corporation, Shamrock Food Company, Winco, Vistar, Associated Warehouse Grocers, Reese Group: MDV/NASH FINCH / SPARTAN / LANDOVER, Food Services of America (FSA), Supervalu Inc., The Kroger Company, Target Corporation. The liens granted to the Notes Collateral Agent herein are also subordinate and junior to the claims held by any creditor in this case holding an enforceable claim under the Perishable Agricultural Commodities Act (“PACA”) to the same extent that the Notes Collateral Agent’s prepetition liens were subordinate and junior to such claims as of the Petition Date. The Debtor will only use cash collateral in accordance with the Budget attached to the Motion as Exhibit A, subject to a deviation on line item expenses not to exceed 15% without the prior agreement of the Notes Collateral Agent or an order of the Court;

- d. The Debtor will keep all collateral of the Secured Creditors fully insured;
- e. The Debtor will provide the 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;
- f. The Debtor will promptly deliver to the Notes Collateral Agent and CUC Advisors such information as may be reasonably requested by either of them; and

g. The Debtor will maintain in good condition all of the Secured Creditors' collateral.

3. The replacement liens granted under paragraph 2(a) and 2(b) of this Order shall not be subject to challenge, unless the pre-petition liens were subject to challenge, and shall attach and become valid, perfected, enforceable, non-avoidable, and effective by operation of law as of the Petition Date, without any further action by the Debtor or any Secured Creditor and without the necessity of execution by the Debtor, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office, the U.S. Copyright Office, or the Library of Congress or other documents or the taking of any other actions. If any Secured Creditor hereafter requests that the Debtor execute and deliver to it financing statements, security agreements, collateral assignments, mortgages, or other instruments and documents considered by such Secured Creditor to be reasonably necessary or desirable to further evidence the perfection of such liens, as applicable, the Debtor is hereby directed to execute and deliver such financing statements, security agreements, mortgages collateral assignments, instruments and documents, and such Secured Creditor is hereby authorized to file or record such documents in their discretion without seeking modification of the automatic stay, in which event all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Order.

4. This Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, any of the Secured Creditors' rights with respect to any person or entity other than the Debtor or with respect to any other collateral owned or held by any person or entity other than the Debtor. The rights of the Secured Creditors are expressly reserved and entry of this Order shall be without prejudice to, and does not constitute a waiver, expressly or implicitly, of the following:

- (a) the Secured Creditors' rights under all applicable contractual agreements with the Debtor, including without limitation all applicable security, guarantee, and other documents;
- (b) the Secured Creditors' rights to seek any other or supplemental relief in respect of the Debtor;

- (c) the Secured Creditors' rights to seek modification of the grant of adequate protection provided under this Order so as to provide different or additional adequate protection at any time;
- (d) the Secured Creditors' rights under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the right to: (i) request modification of or relief from the automatic stay; (ii) request dismissal of this chapter 11 case, conversion of this chapter 11 case to a case under chapter 7, or appointment of a chapter 11 trustee or examiner with extended powers; or (iii) propose, subject to section 1121 of the Bankruptcy Code, a chapter 11 plan or plans;
- (e) the Secured Creditors' rights to credit bid to the fullest extent provided for in section 363(k) of the Bankruptcy Code up to the full amount of any secured obligations in the sale of any of their respective collateral, or pursuant to (i) section 363 of the Bankruptcy Code; (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code; or (iii) a sale or disposition by a chapter 7 trustee for the Debtor under section 725 of the Bankruptcy Code;
- (f) any other rights, claims, or privileges (whether legal, equitable, or otherwise) of the Secured Creditors.

5. If this chapter 11 case is dismissed, converted, or substantively consolidated, such dismissal, conversion, or substantive consolidation shall not affect the rights of the Secured Creditors under this Order, and all of their rights and remedies thereunder shall remain in full force and effect as if this chapter 11 case had not been dismissed, converted, or substantively consolidated. If an order dismissing this chapter 11 case is at any time entered, such order shall provide or be deemed to provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that the Secured Creditors' prepetition liens and security interests and liens granted by this Order shall continue in full force and effect and shall maintain their priorities as provided in this Order.

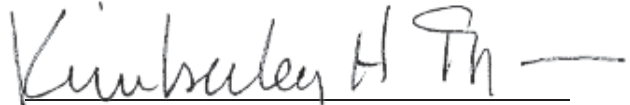
6. The Debtor's use of cash collateral pursuant to this Order is authorized with a complete reservation of rights of the Debtor as to the liens, claims, and encumbrances held by the Secured Creditors, the Notes Collateral Agent, CUC Advisors, and any other creditor.

7. A final hearing on the Debtor's Motion is set for 10:00 a.m. on October 9, 2018. At such date and time, or upon any other breach by the Debtor of the terms of this Order, after notification to the Debtor by the Secured Creditor claiming such breach and after providing the

Debtor three business days to cure the claimed breach (provided that such notification requirement and cure period shall be deemed waived if the breach is not capable of being cured), the Debtor's authority to use cash collateral shall automatically terminate unless DNS-Frootz, LLC, in its capacity as collateral agent, and CircleUp Credit Advisors LLC agree with the Debtor in writing that such use may continue on the terms set forth in this Order, or the Court orders otherwise.

Dated: September 28, 2018 *nunc pro tunc* September 27, 2018.

BY THE COURT:

Handwritten signature of Kimberley H. Tyson in black ink, written over a horizontal line.

Kimberley H. Tyson
United States Bankruptcy Judge