

**ORDERED** in the Southern District of Florida on JUL 20 2017



A handwritten signature in black ink, appearing to read "Erik P. Kimball".

Erik P. Kimball, Judge  
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)**

**In re:**

**Case No. 17-13690  
Chapter 11 Case**

**STEVE'S FROZEN CHILLERS, INC.,**

**Debtor.**

**ORDER (I) AUTHORIZING THE CONTINUED INTERIM USE OF CASH  
COLLATERAL AND (II) GRANTING ADEQUATE PROTECTION**

**THIS MATTER** came before the Court on July 19, 2017, at 2:00 p.m. upon the *Debtor's* *Emergency Motion for Entry of an Interim Order Authorizing (A) the Use of Cash Collateral Pursuant to 11 U.S.C. § 363, and (B) Granting Adequate Protection to Prepetition Secured Lender Pursuant to 11 U.S.C. § 361, Nunc Pro Tunc to Petition Date* (the "Cash Collateral Motion") (D.E. 14). The Cash Collateral Motion was granted on an interim basis, through and including July 18, 2017, by and subject to prior Court Orders dated April 10, 2017 (DE #33), May 8, 2017 (DE #47), and May 18, 2017 (DE #56) (individually, a "Cash Collateral Order,"

and collectively, the "Cash Collateral Orders"). At the July 19, 2017 hearing, proffer was made by counsel for Debtor, Steve's Frozen Chillers, Inc. (the "Debtor") and counsel for BFG Investment Holdings, LLC ("BFG") that the parties had reached an agreement, pursuant 11 U.S.C. § 363 and Fed. R. Bankr. P. 4001(b), with respect to the Debtor's continued use of Cash Collateral, which is subject to a perfected first priority interest held by BFG. This stipulated Order ("Agreed Order" or "Approval Order") reflects the parties' agreement in connection with the Cash Collateral Motion.

The Debtor and BFG stipulate and agree as follows:

**A. Procedural History**

1. On March 27, 2017 (the "Petition Date"), Steve's Frozen Chillers, Inc. ("SFC" or "Debtor") filed a voluntary petition under Chapter 11, title 11, United States Code (the "Bankruptcy Code") in this Court.

2. The Debtor continues to operate its business and manage its assets as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. No trustee, examiner or official committee of unsecured creditors has been appointed or established in the Debtor's bankruptcy case.

**B. BFG's Claims**

4. Prior to the Petition Date, the Debtor and BFG entered into a series of loan documents which are summarized and attached to BFG's Verified Motion for Relief from the Automatic Stay filed on April 5, 2017 (D.E. 28) and BFG's Proof of Claim, claim #2, filed on April 6, 2017, both of which are incorporated herein by reference, (the "Loan Documents").

5. BFG has a valid and perfected, first priority secured claim against the Debtor's estate in the amount set forth in BFG's proof of claim.

**C. Cash Collateral Use**

6. The Debtor requires the use of the cash collateral upon which BFG holds a valid and perfected lien and security interest ("BFG's Cash Collateral"). Pursuant to the terms and conditions of this Stipulation and Agreed order, BFG has agreed to permit the Debtor to use BFG's Cash Collateral through and including **September 18, 2017** (which may be extended as provided herein) consistent with the budget (the "Budget") that is attached hereto as **Exhibit "A"** and is incorporated herein by this reference. The Budget includes payments for the following secured creditors, in addition to BFG: payments on the premises lease, and payment of the loan on the protopac packaging equipment.

**D. BFG's Objections to Confirmation**

7. BFG contends and alleges that the Debtor has failed to fully comply with the Cash Collateral Order. Without waiving any rights, remedies, claims or objections with respect to any default under this Order, BFG consents to the Debtor's continued use of cash collateral under this interim Order, subject to the terms of this Agreed Order, as well as BFG's reservation of any and all objections, including without limitation the Debtor's defaults under the Cash Collateral orders, to confirmation of the Debtor's plan and further use of cash collateral beyond this interim period.

Based on the foregoing stipulations, the statements of counsel on the record, and the entire record before the Court, the Court

**ORDERS** as follows:

A. The Cash Collateral Motion is **GRANTED** to the extent provided herein and subject to the terms and conditions contained in this Agreed Order.

**Section 1. Preambles and Recitals.** The Debtor and BFG agree that the representations and recitals set forth in all the preceding paragraphs of this Stipulation and Agreed Order shall be deemed to be a part of this Agreed Order and are hereby deemed the Court's findings of fact subject to the rights of interested parties other than the Debtor.

**Section 2. Use of Cash Collateral; Budget.** Subject to the covenants, terms and conditions of this Agreed Order, and for as long as the Debtor timely and strictly complies with the covenants, terms and conditions of this Agreed Order, the Debtor is authorized to use BFG's Cash Collateral only through **September 18, 2017** (the "Termination Date") to pay the ordinary and necessary operating expenses of its business in the amounts and solely for the purposes set forth in the Budget. Except as authorized by this Agreed Order or by further order of the Court, the Debtor is prohibited from using Cash Collateral. If the Debtor fails to comply with any covenant, term or condition of this Agreed Order prior to the Termination Date defined above, the Termination Date shall instead be the date the Debtor fails to comply.

**Section 2.1. Extension of Agreement.** The time period set forth in the preceding paragraph shall not be extended without written consent of BFG or an Order of this Court.

**Section 2.2. Budget Variations.** Without prior approval of BFG or further order of the Court, the Debtor is permitted to increase its use of Cash Collateral for a particular line item in the Budget so long as: (a) such increase is equal to or less than ten percent (10%) of the amount listed in the Budget for such line item and (b) the

total amount of expenditures incurred prior to the Termination Date set forth in this Agreed Order does not increase.

**Section 2.3. Prohibited Uses of Cash Collateral.** Notwithstanding the items listed in the Budget, absent written consent of BFG or an Order of the Court, the Debtor shall not use the Cash Collateral: (a) to make any prepayments with respect to services which were not yet rendered, goods that have not been received, or any other item for which payment is not currently due, (b) to pay any increases in salaries or compensation for employees, other than increases in the normal course of business, or (c) to pay any part or portion of pre-petition claims (the "Prohibited Uses").

**Section 3. Continued Hearing.** The Court will hold a non-evidentiary, preliminary hearing on the Debtor's continued use of Cash Collateral after the Termination Date on **September 13, 2017 at 2:00 p.m. at the United States Bankruptcy Court, 1515 N. Flagler Dr., Courtroom B, West Palm Beach, Florida.** If requested by a party in interest at the preliminary hearing, the Court may set an evidentiary hearing on the Debtor's continued use of Cash Collateral on an emergency basis.

**Section 4. Replacement Liens, Additional Liens, and Super-Priority Administrative Claim.**

**Section 4.1. Replacement Liens.** As adequate protection for its interest in BFG's Cash Collateral, the Debtor grants BFG, effective as of the Petition Date valid and effective replacement security interests in and liens (the "Replacement Liens") on all property of the Debtor to the same extent, and with the same priority, as the liens held by BFG on property of the Debtor as of the Petition Date (such collateral, collectively, with the proceeds and products of any and all of the foregoing, the "BFG

Replacement Collateral”). No lien or security interest in any property of the Debtor granted or arising on or after the Petition Date shall be created or permitted to be pari passu with, or senior to, the liens and security interests of BFG in its prepetition collateral or the Replacement Liens, nor shall the Replacement Liens be altered by any plan. The grant of Replacement Liens hereunder shall be supplemental to the security interests and liens which BFG possesses pursuant to the Loan Documents.

**Section 4.2. Perfection of Replacement Liens.** The liens and security interests granted herein to BFG upon the BFG Replacement Collateral shall be deemed attached, perfected, and enforceable against the Debtor and all other persons including without limitation any subsequent Trustee (if appointed under Chapter 7 of the Bankruptcy Code), without the need to file, record, or execute any document as may otherwise be required under applicable non-bankruptcy law. The Debtor shall, however, at BFG’s request, execute and deliver any and all documents permitting such security interests to be filed or recorded with any appropriate agency or official. Any such filing or recording shall be deemed to have been filed or recorded on the date of the entry of this Order.

**Section 4.3 Adequate Protection Payments.** As further adequate protection for BFG for the diminution in the Cash Collateral resulting by and through Debtor’s use thereof, upon the entry of this Order, the Debtor shall pay **Thirteen Thousand Dollars (\$13,000.00)** per month in adequate protection payments to BFG on August 10, 2017 and September 10, 2017, which payments must be wired by close of business on each day pursuant to wiring instructions provided by BFG. These payments shall be applied by BFG in the manner set forth for application of payments

in the parties' loan documents. Nothing in this paragraph is intended to limit BFG's right to additional adequate protection payments.

**Section 4.4. Administrative Expense.** As further adequate protection for BFG for the extent of the use of Cash Collateral, BFG shall have *nunc pro tunc* as of the petition date an administrative expense claim pursuant to Sections 507(a)(2) and 503(b) of the Bankruptcy Code for the diminution in the Cash Collateral resulting by and through the Debtor's use thereof, subject to the payments to be made to BFG and described above in paragraph 4.4 and subject to payment for United States Trustee fees and Court costs.

**Section 5. Covenants.** As adequate protection for the use of BFG's Collateral and the Cash Collateral, the Debtor agrees to fulfill or obey, as applicable, the following covenants as a condition for the continued use of the Cash Collateral.

**Section 5.1. Reporting.**

A. **Semi-Monthly Reports.** The Debtor shall provide to BFG reports on actual performance on each line item in cash collateral budget to include the following (a) a report of the actual receipts and expenditures as compared to the budgeted receipts and expenditures; (b) a report reflecting the aging of the Debtor's accounts receivable, specifying the account debtor and balances owed; and (c) any other reports required under the terms of the Loan Documents, if any. These reports will be provided on or before the 18<sup>th</sup> day of each month and reflect the first day through the fifteenth of the month, and on the 3<sup>rd</sup> day of the month for the period from the 16<sup>th</sup> through the last day of the prior month.

**B. DIP Reports.** The Debtor shall provide BFG copies of any timely-filed reports provided to the Office of the United States Trustee (the "U.S. Trustee") at the time such reports are filed with the Court in the Bankruptcy Case. If these reports contain information required under subpart A of this subsection, they may be provided in lieu thereof.

**C. Financial Disclosures.** On or before May 31<sup>st</sup>, 2017, the Debtor shall also produce or refresh to BFG any of the following documents: (a) copies of bank statements for all bank accounts owned or held by the Debtor within the 12-month period preceding the date of entry of this Agreed Order; (b) the Debtor's ledger showing income and expenses for the 12-month period preceding the date of entry of this Agreed Order; (c) financial statements for 2016 and the first quarter of 2017, including balance sheets, profit and loss statements, and cash flow statements; (d) payroll records for the 12-month period preceding the date of entry of this Agreed Order; and (e) tax returns for 2014 and 2015.

**Section 5.2. Access/Inspection.** The Debtor shall permit any authorized representatives of BFG from time to time, upon 48 hours' notice to the Debtor, and during normal business hours, to examine and copy all the records and books of, and visit and inspect the business premises of, the Debtor and/or to appraise the collateral of BFG at BFG's initial cost and expense, but BFG reserves the right to seek to add such cost and expense to the balance of the debt owed to BFG by Debtor as provided in the Loan Documents.

**Section 5.3. Insurance.** The Debtor shall procure and maintain such insurance as required by the U.S. Trustee. Any such insurance shall at all times name BFG as a



loss-payee or additional-insured and the Debtor shall furnish evidence of such insurance promptly to BFG upon request.

**Section 5.4. Plan and Disclosure Statement.** The Debtor shall file its chapter 11 plan and disclosure statement within 90 days from the Petition Date, without prejudice to the Debtor request for extension of the deadline for cause.

**Section 5.5. Compliance.** The Debtor shall timely and strictly comply with all obligations and requirements of this Agreed Order, the United States Trustee, the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and orders of this Court.

**Section 5.6. Reserve of Net Surplus.** Until further Order of the Court or confirmation of a plan, the Debtor shall hold and reserve in its DIP account, and is hereby prohibited from transferring, using, or spending in any manner or for any purpose whatsoever, any net surplus remaining at the end of each month after making all payments authorized by this Order and the Budget, without regard to the source of surplus funds in the Debtor's DIP account.

**Section 6. No Waiver.** Nothing in this Stipulation and Agreed Order or in any other document or instrument contemplated to be delivered in connection herewith shall in any way be deemed or construed in any manner to affect, impair, or diminish any rights BFG may have against any party obligated to BFG that is not a Debtor, or any objection BFG may have to approval of the Debtor's disclosure statement or confirmation of any plan, or any rights or remedies BFG may have with respect to the Debtor's plan and disclosure statement or treatment of BFG's claim.

**Section 7. Termination.** The Debtor shall cease to use the Cash Collateral upon the occurrence of the Termination Date (as defined above), and shall not be permitted

further use of Cash Collateral unless a further Order of this Court extending the Termination Date has been entered.

**Section 8. No Agencies, Partnership or Joint Venture.** Nothing in this Stipulation and Agreed Order shall be deemed or construed as in any way creating a relationship, including, without limitation, agency, partnership, joint venture or any other similar relationship, between BFG and any of the other parties hereto of any nature other than judgment creditor, judgment debtor, BFG, borrower, hypothecator and guarantor. The Debtor is not the agent, partner, or representative of BFG, and BFG is not the agent, partner or representative of the Debtor, and nothing in this Stipulation or Agreed Order or any of the documents contemplated to be executed in connection herewith shall be construed to make BFG liable to anyone for goods delivered or services performed or debts or claims accruing against the Debtor's bankruptcy estate.

**Section 9. No Waiver; Cumulative Remedies.** No failure on the part of either of BFG or the Debtor to exercise, and no delay in exercising, any right granted hereunder or in any of the documents evidencing BFG's Claims or applicable law shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and may be exercised alternatively, simultaneously, successively or in any other manner as BFG in its sole discretion shall see fit, and such remedies and are not exclusive of any remedies provided by law.

**Section 10. Additional Documents: Further Assurances.** The Debtor and BFG shall deliver any and all other instruments and documents, and shall do, and cause to be done, all such additional acts and things, as are reasonably necessary to and proper in order to give effect to, all of the terms and provisions of this Stipulation and Agreed Order.

**Section 11. Severability.** In the event any one or more of the words, phrases, sentences, clauses, sections or subsections contained in this Stipulation and Agreed Order or any part hereof, all of which are inserted conditionally on their being valid in law, shall be declared invalid, this Stipulation and Agreed Order shall be construed as if such word or words, phrase or phrases, sentence or sentences, section or sections, or subsection or subsections, had not been inserted.

**Section 12. Section Headings.** The section and other headings contained in this Stipulation and Agreed Order are for reference purposes only and shall not affect the meaning or interpretation of this Stipulation and Agreed Order.

**Section 13. Successors and Assigns.** This Stipulation and Agreed Order shall be binding upon the Debtor and the Debtor's officers, employees, agents and successors. This Stipulation and Agreed Order shall inure to the benefit of BFG's respective officers, directors, employees, agents, executors, administrators, predecessors, successors and assigns. The rights, duties, covenants and obligations of the Debtor hereunder shall not be assigned, delegated or transferred to any other person or entity. BFG shall be free to assign, transfer and delegate its rights, duties, and obligations hereunder.

**Section 14. Entire Agreement.** This Stipulation and Agreed Order constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, both written and oral, among the parties hereto, all of which are merged into this Stipulation and Agreed Order. Nothing herein is intended to supersede or annul any express written term or provision of any Order of the Court in the Bankruptcy Case entered prior to the date of the Approval Order.

**Section 15. Time of Essence.** Time is of the essence under this Stipulation and Agreed Order and each of the transactions contemplated to be consummated hereunder.

**Section 16. Modifications.** This Stipulation and Agreed Order may not be amended or modified in any way except by a written instrument executed by all of the parties hereto, or by further order of the Court.

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Order submitted by:

Jonathan M. Sykes, Esq.

Florida Bar No.: 73176

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*Counsel for Creditor, BFG Investment Holdings, LLC*

Jonathan M. Sykes, Esq. is directed to immediately serve a conformed copy of this Order and to file a Certificate of Service evidencing same.

**EXHIBIT "A"**

Steve's Frozen Chillers, Inc.

Profit & Loss

January 2016 through April 2017

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6/20/17  
Account Books

	17-Jul	17-Aug	17-Sep	17-Oct	17-Nov	17-Dec
<b>Ordinary Income/Expense</b>						
<b>Income</b>						
SALES	228,633.00	221,666.00	226,877.00	204,998.00	209,774.00	189,423.00
Total COBT OF GOODS SOLD	93,739.53	90,883.06	93,019.57	84,049.18	86,007.34	85,795.52
<b>Total COGS</b>						
Gross Profit	134,893.47	130,782.94	133,857.43	120,948.82	115,314.60	104,127.48
<b>Expense</b>						
Legal Settlement	0	0	0	0	0	0
Bank Service Charges	300	300	300	300	300	300
<b>GENERAL AND ADMINISTRATIVE</b>						
Advertising	500	500	500	500	500	500
Advertising and Promotion	1000	1000	1000	1000	1000	1000
Auto and Truck Expenses	500	500	500	500	500	500
Automobile Expense	1150	1150	1150	1150	1150	1150
Bank Service Charges	50	50	50	50	50	50
Building Repair	0	0	0	0	0	0
Cleaning	214	214	214	214	214	214
Computer	0	0	0	0	0	0
Computer and Internet Expenses	400	400	400	400	400	400
Depreciation Expense	n/c	n/c	n/c	n/c	n/c	n/c
Discount Expense						
Donations						
Dues and Subscriptions	0	0	0	0	0	0
Filing Fees	0	0	0	0	0	0
GAS	1200	1200	1200	1200	1200	1200
GIR	0	0	0	0	0	0
<b>Insurance</b>						
Workers Compensation	250	250	250	250	250	250
Business	1545	1545	1545	1545	1545	1545
Disability Insurance	1800	1800	1800	1800	1800	1800
Employee Deductions	0	0	0	0	0	0
Health	4300	4300	4300	4300	4300	4300
Liability Insurance	0	0	0	0	0	0
Life	300	300	300	300	300	300
VEHICLE	2055	2055	2055	2055	2055	2055
Insurance - Other	0	0	0	0	0	0
Total Insurance	10,250.00	10,250.00	10,250.00	10,250.00	10,250.00	10,250.00
<b>Interest Expense</b>						
Loan Amortization Expense	0	0	0	0	0	0
Finance Charge	0	0	0	0	0	0
Loan Interest (Equip Lease)	1022	1022	1022	1022	1022	1022
Interest Expense - Other	250	250	250	250	250	250
Total Interest Expense	1,272.00	1,272.00	1,272.00	1,272.00	1,272.00	1,272.00
Licenses and Permits	100	100	100	100	100	100
Meals and Entertainment	0	0	0	0	0	0
Merchant Account Fees						
Miscellaneous	0	0	0	0	0	0
Office Supplies	150	150	150	150	150	150
<b>Payroll Expenses</b>						
Storage Unit Reimbursement	142	142	142	142	142	142
Retro-Payroll	0	0	0	0	0	0
Service Dept Payroll	5000	5000	5000	5000	5000	5000
Warehouse payroll	1900	1900	1900	1900	1900	1900
Sales Payroll	5500	5500	5500	5500	5500	5500
Manufacturing payroll	0	0	0	0	0	0
Office Payroll	5000	5000	5000	5000	5000	5000
Officers Salary	20000	20000	20000	20000	20000	20000
Payroll Oasls	700	700	700	700	700	700
FICA	2700	2700	2700	2700	2700	2700
FUTA	70	70	70	70	70	70
SUTA	255	255	255	255	255	255
Payroll Expenses - Other	60	60	60	60	60	60
Total Payroll Expenses	41,377.00	41,377.00	41,377.00	41,377.00	41,377.00	41,377.00
Postage	200	200	200	200	200	200
Printing and Reproduction	250	250	250	250	250	250
<b>Professional Fees</b>						
Accounting	1500	1500	1500	1500	1500	1500
Consulting	0	0	0	0	0	0
Legal Fees	6000	6000	6000	6000	6000	6000
Professional Fees - Other						
Total Professional Fees	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00	7,500.00
<b>Real Expense</b>						
Repairs	100	100	100	100	100	100
Building Repairs	100	100	100	100	100	100
Computer Repairs	50	50	50	50	50	50
Equipment Repairs	200	200	200	200	200	200
Repairs and Maintenance	100	100	100	100	100	100
Security	60	60	60	60	60	60
Supplies	50	50	50	50	50	50
Marketing	500	500	500	500	500	500
Office	200	200	200	200	200	200
Taxes	0	0	0	0	0	0
Local	0	0	0	0	0	0
Property	0	0	0	0	0	0
State (Sales Tax on Rent)	695	695	695	695	695	695
Telephone Expense	1200	1200	1200	1200	1200	1200
<b>Travel &amp; Ent</b>						
Airfare	300	300	300	300	300	300
Car Rental	150	150	150	150	150	150
Lodging	300	300	300	300	300	300
Meals	150	150	150	150	150	150
Travel	10	10	10	10	10	10
Travel & Ent - Other	0	0	0	0	0	0
Total Travel & Ent	910.00	910.00	910.00	910.00	910.00	910.00
Travel Expense	0	0	0	0	0	0
Uniforms	0	0	0	0	0	0
<b>UTILITIES</b>						
Gas and Electric	1500	1500	1500	1500	1500	1500
Water	0	0	0	0	0	0
Utilities - Other	400	400	400	400	400	400
Total UTILITIES	1,900.00	1,900.00	1,900.00	1,900.00	1,900.00	1,900.00
<b>Total GENERAL AND ADMINISTRATIVE</b>	82,628.00	79,628.00	79,628.00	79,628.00	79,628.00	79,628.00
<b>SELLING EXPENSES</b>						
Commission	3000	3000	3000	3000	3000	3000
Trade Show	0	0	0	0	0	0
SELLING EXPENSES - Other	0	0	0	0	0	0
Total SELLING EXPENSES	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00	3,000.00
<b>WAREHOUSE EXPENSES</b>						
Equipment Rental	150	150	150	150	150	150

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6/20/17  
Annual Budget

Steve's Frozen Chillers, Inc.  
Profit & Loss  
January 2016 through April 2017

	17-Jul	17-Aug	17-Sep	17-Oct	17-Nov	17-Dec
Maintenance	50	50	50	50	50	50
Service	250	250	250	250	250	250
Shipping Expense	12000	12000	12000	12000	12000	12000
Storage	100	100	100	100	100	100
Warehouse Supplies / Expense	600	600	600	600	600	600
WAREHOUSE EXPENSES - Other	0	0	0	0	0	0
<b>Total WAREHOUSE EXPENSES</b>	<b>13,150.00</b>	<b>13,150.00</b>	<b>13,150.00</b>	<b>13,150.00</b>	<b>13,150.00</b>	<b>13,150.00</b>
Total Expense	96,078.00	96,078.00	96,078.00	96,078.00	96,078.00	96,078.00
Net Ordinary Income	35,815.47	34,704.94	37,779.43	24,870.82	19,136.60	8,049.48
Adequate Protection: BFG	13,000.00	13,000.00	13,000.00			