

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	
)	Case No. 16-32021
P3 FOODS, LLC,)	Chapter 11
)	Hon. Donald R. Cassling
Debtor.)	
)	

**SECOND INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL
PURSUANT TO §365(c)(2) and BANKRUPTCY RULE 4001(b)**

THIS ORDER (the “Second Interim Order”) is made as of the 5th day of November 2016, on the motion for use of cash collateral (“Motion”) of P3 Foods, LLC, as Debtor and Debtor in Possession (the “Debtor”), as to the use of collateral and expenditure of cash collateral in which Element Financial Corp. (“Element”) claims an interest and consents to same and provides adequate protection to other secured creditor as set forth herein..

RECITALS

WHEREAS, in accordance with the terms of Loan No. 127973 and Loan No. 132066 (the “Loans”) described herein, Element and the Debtor agree that all amounts owed to Element under the Loans are secured by a first priority, perfected security interest in all the Debtor’s personal property, including fixtures, goods, equipment, furniture, inventory, accounts, accounts receivable, deposit accounts, securities, general intangibles, intellectual property, goodwill, leaseholds interests, cash and insurance proceeds (collectively, the “Collateral”);

WHEREAS, Element asserts a secured claim in the amount of \$689,965.62 as of the Petition Date;

WHEREAS, on October 18, 2016, this Court entered the First Interim Order Authorizing Use of Cash Collateral Pursuant to §365(c)(2) and Bankruptcy Rule 4001(b) (the “First Interim Order”) (Docket No. 27);

WHEREAS, the Debtor’s Proposed Interim Budget (which is annexed hereto and incorporated herein as Exhibit A (the “Budget”) indicates that the Debtor will require the use of cash collateral in order to meet the Debtor’s expenses incidental to its operations;

WHEREAS, Element and the Debtor agree that all of the Debtor’s cash and available funds, wherever located, whether as original collateral or proceeds of other Collateral, constitute Element’s cash collateral;

WHEREAS, subject to the terms and conditions of this Second Interim Order, Element is willing to permit the Debtor to use Element’s cash and non-cash Collateral solely for the purposes set forth in, and in accordance with the terms and conditions of, the Budget and this Second Interim Order.

NOW THEREFORE, subject to the Bankruptcy Court entry of this Second Interim Order, it is hereby stipulated and agreed by and between the Debtor and Element as follows:

1. USE OF CASH COLLATERAL.

- a. Subject to the terms and conditions of this Second Interim Order, the Debtor may use Element’s cash and non-cash Collateral solely to pay its ordinary and necessary business expenses as set forth on the Budget through December 2, 2016. The Debtor warrants and represents that, exclusive of professional fees as may be allowed by the Court and fees payable pursuant to 28 U.S.C. § 1930, the Budget represents a projection of all likely, reasonable, and necessary expenses to be incurred in connection with this Chapter 11 case and the operation of the Debtor’s business for the period set forth in the Budget.
- b. Except as may be approved by the Court after written notice to Element and a hearing or after written request to Element and to 20/20 Franchise Funding and Element’s and 20/20 Franchise Funding’s written consent, in no event shall the Debtor or any other party be authorized to use any of Element’s cash Collateral to pay any items:

- i. not contained in the Budget;
 - ii in excess of 105% of the amount set forth in the Budget, whether by line item, category, or in the aggregate; and
- c. The Debtor agrees not to knowingly or intentionally incur any administrative expenses other than as set forth in the Budget, exclusive of professional fees approved by the Bankruptcy Court pursuant to 11 U.S.C. § 330, 331, or 503(b) and fees payable pursuant to 28 U.S.C. § 1930, or as is otherwise provided herein, without the prior written consent of Element or approval by the Bankruptcy Court after notice to Element and a hearing.

2. ADEQUATE PROTECTION. In consideration of and as adequate protection for any diminution in the value of the Element's cash and non-cash Collateral arising from the use, sale, or lease of the Collateral and/or the imposition of the automatic stay:

- STEP*
- a. Retroactive to the Petition Date, Element is hereby granted and shall have replacement liens in and to Element's Collateral whether pre-petition and post petition to the extent of any diminution in the value of Element's ~~cash and non-cash~~ Collateral, including, but not limited to, accounts, accounts receivable, ~~equipment, furniture, fixtures, general intangibles, goods, goodwill, intellectual property, inventory, insurance proceeds~~ and leasehold interests, as well as all products and proceeds thereof (the "Adequate Protection Liens"). The Adequate Protection Liens granted to Element herein may not be primed by any other lien or encumbrance, whether by order of the Bankruptcy Court or by the passage of time, except after written notice to Element and hearing. Without executing or recording any financing statements, security agreements, or other documents, the Adequate Protection Liens granted to Element herein shall be a valid, perfected, first priority lien in favor of Element against all existing and hereafter acquired pre-petition and post-petition assets of the Debtor (including, but not limited to, ~~accounts, accounts receivable, equipment, furniture, fixtures, general intangibles, goods, goodwill, intellectual property, inventory, insurance proceeds~~ and leasehold interests, as well as all products and proceeds thereof), ~~excluding only those assets that, as of the Petition Date, were subject to a valid prepetition, perfected security interest of another creditor of the Debtor.~~

LOF THE SAME KIND AND TYPE AND TO THE SAME EXTENT AND PRIORITY AS EXISTED

- b. Except as ordered by the Court, the Adequate Protection Liens and the priorities of same shall not be affected by the incurrence of indebtedness pursuant §364 of the Bankruptcy Code, or otherwise. Nothing contained in this Second Interim Order shall be deemed to be the consent by Element, whether express or implied, to any claims against the Collateral or the assets subject to the Adequate Protection Liens under §506(c) of the Bankruptcy Code.
- c. To the extent that the use of Element's ^{CASH} Collateral, ~~including cash~~ Collateral, results in diminution of Element's interest in such Collateral as of the Petition Date in excess of the value of the Adequate Protection Liens, then Element

CASH

shall have a claim pursuant to §§503(b) and 507(b) of the Bankruptcy Code which shall have priority over all other claims entitled to priority under §507(a)(1), with the sole exception of quarterly fees due to the United States Trustee pursuant to 28 U.S.C. § 1930; provided that, this shall not affect a Trustee's exercise of rights, if any, under §506(c) of the Bankruptcy Code.

- d. The Debtor shall maintain all necessary insurance, including, without limitation, fire, hazard, comprehensive, public liability, and workmen's compensation as may be currently in effect, and obtain such additional insurance in an amount as is appropriate for the business in which the Debtor is engaged. Upon request, the Debtor shall timely provide Element with evidence that Element is listed as an additional insured loss payee on all such existing policies and all renewals and replacements of such policies. The Debtor shall also provide Element with prompt notification of any change in such coverage that may hereafter occur.
- e. Element shall have the right to inspect the Collateral or the assets subject to Adequate Protection Liens as well as the Debtor's books and records during normal business hours.
- f. In addition to the foregoing, Debtor shall make an adequate protection payment, in the amount of \$16,428.14 to Element during the term of this Second Interim Order. This payment is intended to be adequate protection for the Debtor's use of the ^{Collateral} Collateral. The payment will be paid to Element on or before November 10, 2016. This payment shall be applied to the amounts due under Element's claim consistent with the provisions of the Loans, subject to reallocation as deemed appropriate by the Court. Both the Debtor and Element reserve their respective rights related to the adequate protection payments provided in the First Interim Order, including, but not limited to, the application of those payments in general and their application to the extent of any diminution of value of the Collateral and the Adequate Protection Liens granted to Element in Paragraph 2(a).

3. FINANCIAL REPORTING. The Debtor shall furnish to Element and to 20/20 Franchise Funding such financial and other information as Element and 20/20 Franchise Funding shall reasonably request including, but not limited to the following:

- a. By Tuesday of each week, commencing November ¹⁵~~8~~, 2016, a report which sets forth in reasonable detail:
 - i. total cash receipts and other collections for the prior week;
 - ii. a comparison of the Debtor's actual performance during the prior week with the Budget and the projections contained therein; and
 - iii. a schedule of all outstanding checks or payments issued by the Debtor identifying the line item within the Budget to which they relate;
- b. By the twenty-first (21st) day of each month beginning November 21, 2016,

a balance sheet, income statement, accounts payable report, and accounts receivable report reflecting the Debtor's financial performance for the preceding month. Service of the Debtor's monthly operating report shall satisfy this paragraph.

- c. All other financial information and reports prepared by the Debtor in the ordinary course of its business, including any financial information required by the Bankruptcy Court or by the Operating Guidelines and Reporting Requirements of the United States Trustee's Office.
- d. All other reports and financial information required by the Loans or historically provided to Element and to 20/20 Franchise Funding , and any additional reports as may be reasonably requested by Element and 20/20 Franchise Funding from time to time with respect to the Debtor.
- e. Debtor shall send Burger King Corporation copies of all financial reports that are sent to Element.

4. NOTICE. Any notice or correspondence required to be sent under this Interim Order shall be forwarded by email at the address set forth below and by first class mail, and shall be deemed given upon the earlier of (i) successful email transmission, or (ii) two (2) days after being deposited in the United States Mail, postage pre-paid, and addressed as follows:

5 . As and for adequate protection, 20/20 FRANCHISEE FUNDING LLC, LEAF CAPITAL FUNDING LLC, AND AMERICAN EXPRESS BANK FSB are granted adequate protection as follows: a post-petition replacement lien, to the same extent and with the same priority as held pre petition, under 11 U.S.C. §§ 361(2) on the same type of asset ~~and 363~~ without any further action by the Debtor or said secured creditor and without executing or recording any financing statements, security agreements, or other documents.

6 In addition on or before November 10, 2016, the Debtor-in-Possession shall make the following payments secured creditors listed in paragraph 5 as and for adequate protection:

20/20 Franchise Funding LLC \$4835.00
American Express \$7802.00
. Leaf Capital Funding \$797.00

7. Nothing in this order adjudicates the priority of any secured interests nor does it act with prejudice with respect to the priority of any of the secured creditors or their right to challenge the nature, extent, priority or validity by any party.

8. The Debtor shall be authorized to deposit all cash into its Debtor in Possession operating accounts at US Bank

9. Debtor's Motion For Use of Cash Collateral Pursuant to § 363 and Bankruptcy Rule 4001(b) is continued for final hearing to December 6, 2016 at 10:00 a.m.

10. Notice Addresses:

If to Element: Thomas Askounis Alex Darcy C. Randall Woolley
Askounis & Darcy PC 444 North Michigan Avenue Suite 3270
Chicago, IL 60611 312 784-2400 312 784-2410 Facsimile
taskounis@askounisdarcy.com adarcy@askounisdarcy.com
rwoolley@askounisdarcy.com

Richard L. Hirsh Richard L. Hirsh, P.C. 1500 Eisenhower Lane, #800 Lisle, IL 60532
630 434-2600 richalas@sbcglobal.net 630 434-2626 Facsimile
If to the Debtor:

11. TERMINATION.

- a. The Debtor's right to use the Element's cash and non-cash Collateral shall terminate ("Termination") upon the earliest of:
 - i. The Debtor's failure to make the adequate protection payments as required by Paragraph 2(f) above to the extent such failure continues for five (5) calendar days after the date such payment is due;
 - ii. December 6, 2016;
 - iii. The Debtor's failure to obtain and/or maintain all necessary insurance as required by Paragraph 2(d) above;
 - iv. The material breach by the Debtor of any of the terms, conditions, or covenants of this Second Interim Order, which is not cured to the reasonable satisfaction of Element within three (3) business days of receipt by the Debtor of written notice of such breach from Element. To the extent that such written notice is served by Element and the Debtor disputes either the existence of a material breach or the satisfactory nature of any cure, the Debtor shall be entitled to request an emergency hearing to address those issues. For the purposes of clarification and by way of example only, the Debtor agrees that any violation by it of the restrictions contained in paragraph 1(b), above, shall be a material breach;
 - v. The appointment of a Trustee for the Debtor pursuant to § 1104 of the Bankruptcy Code;
 - vi. The conversion of this case to a case under Chapter 7 of the Bankruptcy Code;

- vii. The dismissal of this case;
 - viii. The appointment of an examiner with any of the powers of a Trustee for the Debtor; or
 - ix. The allowance of a Motion for Relief from the Automatic Stay allowing a creditor of the Debtor to foreclose upon any material asset of the Debtor.
- b. Upon Termination, the Debtor shall immediately cease using the Element's cash collateral. Debtor hereby stipulates and agrees that upon Termination, Element shall be entitled to a hearing on a Motion for Relief from the Automatic Stay on an expedited basis.

12. MODIFICATION. Element and the Debtor may agree to nonmaterial modifications or amendments to this Second Interim Order without further Order of the Bankruptcy Court. Further, Element and the Debtor may modify the Budget, to take effect upon five (5) business days written notice to the Creditors' Committee, if any, to the United States Trustee, and to the Court.

13. RESERVATION OF RIGHTS. Notwithstanding the terms of this Second Interim Order, Element reserves all rights and remedies it may have including, without limitation, the rights to seek additional adequate protection, to object to further use of cash collateral, to seek to terminate use of cash Collateral, and to request relief from the automatic stay.

14. MISCELLANEOUS.

- a. Any stay, modification, reversal or vacation of this Second Interim Order shall not affect the validity of any obligation of the Debtor to Element incurred pursuant to the First Interim Order. Notwithstanding any such stay, modification, reversal or vacation, all use of cash and non-cash Collateral and all obligations incurred by the Debtor pursuant hereto prior to the effective date of such stay, modification, reversal or vacation, shall be governed in all respects by the original provisions hereof and Element shall be entitled to all the rights, privileges and benefits, including without limitation, the replacement lien and Element's super-priority claims granted herein.
- b. The provisions of this Second Interim Order, and any actions taken pursuant hereto, shall survive entry of any order which may be entered (a) confirming any plan of reorganization in the Chapter 11 case, (b) converting the Chapter 11 case to a Chapter 7 case, or (c) dismissing the Chapter 11 case, and the terms and provisions of this Second Interim Order as well as Element's super-priority claims and replacement lien granted pursuant to the Interim Order and this Second Interim Order shall continue in full force and effect notwithstanding the entry of such order, and Element's super-priority claims and replacement lien shall maintain their priority as provided by the Interim Order, and this Second Interim

Order.

- c. Nothing contained in the Motion or this Second Interim Order shall constitute a waiver by Element or 20/20 Franchise Funding of its rights to seek other or additional adequate protection, or other or additional relief from the Court as the circumstances may dictate, including, but not limited to, the right to seek additional adequate protection, relief from the automatic stay, dismissal or conversion of the Chapter 11 case, or the appointment of a trustee or an examiner (including a trustee or examiner with duties in addition to those set forth in Sections 1106(a)(3) and (a)(4) of the Bankruptcy Code).
- d. The Debtor is authorized to perform all acts that are deemed reasonably necessary by it and Element to effectuate the terms and conditions of this Second Interim Order.
- e. The entry of this Order is made without prejudice to the rights of any party to object to the validity, enforceability, priority or amount of any claim or the relief granted herein or hereafter sought,

14. The Debtor's Motion For Use of Cash Collateral Pursuant to § 363 and Bankruptcy Rule 4001(b) is continued for final hearing to December 6, 2016 at 10:00 a.m.

Dated: November 8, 2016

ENTERED: Donald R. Cassling
Hon. Donald R. Cassling

Jointly submitted by:

/s/ [Signature]
Richard L. Hirsh
Richard L. Hirsh, P.C.
1500 Eisenhower Lane, #800
Lisle, IL 60532
630 434-2600
630 434-2626 Facsimile
richala@sbcglobal.net

/s/ [Signature]
Thomas Askounis
Alex Darcy
C. Randall Woolley
Askounis & Darcy PC
444 North Michigan Avenue
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312 784-2400
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taskounis@askounisdarcy.com
adarcy@askounisdarcy.com
rwoolley@askounisdarcy.com

Cash Budget Required from
November 4 thru December 2, 2016

Food and Supplies		\$	340,000
Liability Insurance		\$	6,790
Workmen Comp Insurance		\$	4,427
Electric		\$	22,000
Water		\$	2,750
Heat		\$	6,750
Pest Control		\$	450
Phone/Internet		\$	1,350
Scavenger		\$	5,000
Payroll		\$	241,781
Taxes		\$	75,297
Sales Tax		\$	70,000
Repairs, Miscellaneous		\$	40,000
Contingency		\$	35,000
Elements		\$	16,428
American Express		\$	7,802
NFA		\$	4,835
Leaf		\$	797
Rent due to Burger King			
	139 November	\$	5,416
	2920 November	\$	7,500
	2794 November	\$	6,250
	3519 November	\$	7,500
	3970 November	\$	6,250
	4006 November	\$	5,833
	4669 November	\$	7,166
	13662 November	\$	7,500
Store Rent Brainerd	2423 November	\$	7,107
Burger King Royalty	Oct 6-Oct 31	\$	30,645
Burger King Advertising	Oct 6-Oct 31	\$	30,645
Taxes Burger King	November	\$	35,355
Taxes Brainerd		\$	1,893
Grand Total		\$	1,040,517
Cash in Bank 10/23		\$	361,000
Projected Sales Oct 24-Nov 3		\$	297,000
Projected Sales Nov 4-Dec 2nd		\$	786,000
Projected Cash in		\$	1,444,000
Gross Projected Surplus		\$	403,483
Remaining payments from Oct 6 to Nov 3			

Food & Supplies	\$	128,000
Payroll	\$	117,000
Taxes	\$	36,000
Repairs	\$	7,000
Utilities	\$	34,000
Scavenger	\$	5,000
Contingency	\$	15,000
Total Remaining from Oct 6 to Nov 3	\$	342,000
Projected Net Surplus Cash 12/2/16	\$	61,483