



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 8, 2018

United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

DENTON DOUGH COMPANY
27-3393645
217 East Hickory Street
Denton, TX 76201

Debtor.

Case No.: 17-34650-SGJ-11

Chapter: 11

AGREED FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL

On this day came on for consideration the *Debtor's, Emergency Motion for Order Authorizing the Interim and Final Use of Cash Collateral [11 U.S.C. §§ 105, 361, and 363]* (the "**Motion**"). After this Court held an expedited hearing on the Motion on December 14, 2017, the Court entered an *Order Authorizing Interim Use of Cash Collateral [Docket Entry No. 17]* and set a hearing for further consideration of the Motion on **January 3, 2018**. Denton Dough Company ("**Debtor**"), on the one hand, and First State Bank ("**Bank**"), on the other hand, have advised the Court that they have reached a final agreement to allow the Debtor to use cash

collateral pursuant to certain terms and conditions in light of which the Court hereby makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. General

1. Adequate and sufficient notice of the Motion and the Interim Hearing, under the circumstances, has been provided to all persons entitled thereto pursuant to Rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure.

2. This matter constitutes a “core proceeding” within the meaning of 28 U.S.C. § 157.

3. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

4. Debtor commenced the case *sub judice* on **December 11, 2017**, (the “**Petition Date**”) by the filing of a petition for relief under chapter 11 of the Bankruptcy Code.

5. Bank asserts it is secured in substantially all Debtor’s personal property (collectively, the “**Prepetition Collateral**”) and the proceeds thereof (the “**Cash Collateral**”).

ACCORDINGLY, IT IS ORDERED THAT:

6. Debtor is permitted to use Cash Collateral, in accord with the budget attached hereto as Exhibit “A” (the “**Budget**”), provided, Debtor may exceed any line item in the Budget by up to ten percent (10%). The Budget may be updated and modified through the date of the Final Hearing by agreement of Debtor and Bank subject to further order of this Court. Nothing in this Order, the Budget or any pre-petition arrangement allowing Debtor to defer weekly royalty and brand development fund fees shall prejudice the rights of Home-Grown Industries

of GA, Inc. ("**Franchisor**") from seeking or obtaining an allowed administrative expense for such accrued but unpaid obligations under the applicable franchise agreements between the Franchisor and Debtor. No prepetition expenses shall be paid except those prepetition expenses approved by the Bankruptcy Court.

7. Thereafter, as to the subsequent use of cash collateral, Debtor shall apply the following procedure as to the use of cash collateral for each succeeding 30 day period:

a. Debtor will file a proposed budget with the Court, and via CM/ECF or by e-mail or fax as applicable, seven (7) days prior to **February 1, 2018**, which date would be **January 25, 2018**. The proposed budget will be for the next month's operational expenses (*i.e.* February) (the "**Monthly Budget Filing**").

b. If Bank does not timely object to the Monthly Budget Filing by close of business two (2) days prior to **February 1, 2018**, which would be **January 30, 2018**, then the proposed Monthly Budget Filing shall become the budget for the next calendar month period.

c. If Bank timely objects to Monthly Budget Filing, then cash collateral use shall be allowed in accordance with the prior month's budget until the Court can hear the objection. Nothing prohibits Debtor from seeking emergency relief if the effect of the objection and the continuance of the prior month's budget would jeopardize business operations.

d. Each subsequent month, the Monthly Budget Filing shall be submitted seven (7) days prior to the end of the applicable monthly cycle as set forth above and the deadline for objecting to the proposed use of cash collateral shall be two (2) business days prior to the end of the applicable monthly cycle. The time frame for objection and the procedure for hearing will be the same for each period, until further order of the Court.

e. Nothing in this procedure would prohibit Bank from seeking to require that a different procedure be used solely for cash collateral budgeting purposes, provided Bank makes such known by filing an objection to the procedure fourteen (14) days or more before Debtor's deadline to file the next Monthly Budget Filing.

8. All cash received by the Debtor in excess of the expenditures authorized herein ("**Excess Cash**") shall be retained in the appropriate bank account in accord with the procedures

set forth in the *Final Order (I) Authorizing the Continued Use of Cash Management System and (II) Authorizing the Use of Prepetition Bank Accounts and Certain Payment Methods* [Docket Entry No. ____] (the “**Cash Management Order**”) and the Debtor is prohibited from spending any Excess Cash without the written consent of Bank or further order of this Court.

9. Debtor’s right to use Cash Collateral under the Order shall commence on the date of entry of the Order.

10. As adequate protection of Bank’s interest, if any, in the Cash Collateral pursuant to sections 361 and 363(e) of the Bankruptcy Code to the extent of any diminution in value from the use of the Collateral the Court hereby grants Bank replacement security liens on and replacement liens on all of Debtor’s personal property including any and all products and proceeds thereof (the “**Replacement Liens**”), whether such property was acquired before or after the Petition Date.

11. Such Replacement Liens are exclusive of any avoidance actions available to the Debtor’s bankruptcy estate pursuant to sections 544, 545, 547, 548, 549, 550, 553(b) and 724(a) of the Bankruptcy Code and the proceeds thereof.

12. The Replacement Liens granted herein shall maintain the same priority, validity and enforceability as Bank’s liens on the respective prepetition Collateral. Bank shall not be required to file or serve financing statements, notices of liens or similar interests which otherwise may be required under federal or state law in any jurisdiction, or take any action, including taking possession, to validate and perfect such Replacement Liens.

13. The Replacements Liens shall be subject and subordinate to: (a) professional fees and expenses of the attorneys, financial advisors and other professionals retained by the

Debtor in the amounts set forth in the Budget and any supplemental budget approved by the Court and/or consented to by Bank and subject to this Court's approval under section 330 and/or section 331 of the Bankruptcy Code; (b) professional fees and expenses of the attorneys, financial advisors and other professionals retained by any creditors committee if and when one is appointed; and (c) any and all fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) and the Clerk of the Bankruptcy Court (collectively, the "**Carve Out**").

14. There shall be no Carve Out allowed for any professional fees and expenses in the event the Bank forecloses on the Bank's Collateral (defined *infra*).

15. Debtor shall, after the expiration of fourteen (14) days from the entry of this Order, unless a party-in-interest files an objection with the Court, as additional adequate protection to Bank, the sum of **\$1,500.00** on or before the **15th of January, 2018**, and thereafter the sum of **\$4,000.00 per month** beginning on the **15th of February, 2018**, and continuing thereafter on or before the 15th day of each month thereafter until modification of this Order, confirmation of a plan, conversion to a chapter 7 case, entry of an order lifting or modifying the automatic stay, or dismissal to protect against the diminution in value of Prepetition Collateral. In the event an objection to the adequate protection payment provided herein is filed with the Court, the Debtor shall not make any adequate protection payments until further order of this Court.

16. By and through the filing of the Debtor's monthly operating reports, Debtor shall provide Bank with an accounting of the Debtor's business operations. Further, to the extent such monthly operating reports do not have attached a complete copy of the bank statements for the Debtor's bank accounts as provided for in the Cash Management Order, such bank

statements shall be provided to the Bank within three (3) days of the Debtor receiving the same.

17. Debtor shall maintain insurance with respect to all of the Collateral for all the purposes and amounts in accordance with the requirements of the loan documents with Bank. Such insurance shall contain a standard mortgage clause with Bank named as loss payee, except that Bank shall not be named as loss payee for any particular items of equipment as to which Bank's liens are not superior to the liens of any other lien claimant.

18. This Order will be binding on and inure to the benefit of the assigns, representatives and successors of the parties hereto, including any Trustee appointed by the Court under Chapter 11 of the Bankruptcy Code and all parties in interest.

19. Debtor shall allow Bank to review, upon reasonable advance notice, (i) all vouchers, invoices, contracts and other writings relating to any and all disbursements made or obligations incurred by the Debtor with respect to the maintenance and operation of the business; (ii) all information regarding claims or suits against the Debtor; and (iii) any and all other books and records of the Debtor pertaining to the Debtor's business or financial affairs.

20. Debtor shall, upon three business days' written notice, permit representatives, agents and/or employees of Bank to visit, inspect, have reasonable access to and consult with (such access not to occur on weekends or legal holidays as defined in Bankruptcy Rule 9006(a) absent agreement), as the case may be,

a. the Debtor's books and records of the information set forth therein, including, without limitation, checks, bank statements, ledgers, etc.

b. the personnel of the Debtor who are familiar with the Debtor's books and records of the information set forth therein to the extent such personnel are available

c. such other information as Bank may reasonably request, and shall cooperate and consult with, and provide to such representatives, agents, and/or employees all such information as they may reasonably request for all reasonable purposes including, without limitation, the following: a) to determine and verify compliance by the Debtor with the terms of this Order; b) to examine and verify the Debtor's financial statements and determine the Debtor's financial condition; c) to audit or review the operations of the Debtor's business, at the sole cost and expense of the Bank; and d) inspect the Bank's collateral as that term is defined in the Bank's loan documents ("**Bank's Collateral**").

21. Bank's consent to use of cash collateral hereunder shall not be construed to be an admission that the Budget is reasonable and shall not bind it for any purpose other than the use of cash collateral pursuant to this order.

22. This Order is without prejudice to the rights of Bank or Debtor as to any further order regarding the use of Cash Collateral as to the request for payment of any other expenses incurred during the period covered by this Order or any further relief that either party might request from this Court. For the sake of clarity, this Order is without prejudice to the rights of Bank to seek an emergency hearing with this Court to disallow continued use of Cash Collateral or to seek additional protection of its interests. In any such instance, Debtor hereby agrees and stipulates to the scheduling by the Court of an emergency hearing regarding Debtor's use of Cash Collateral.

23. Nothing in this Order shall be construed to acknowledge or grant liens that prime any *ad valorem* tax liens.

24. Except as otherwise provided herein, this Order is without prejudice to the rights of any party-in-interest to contest the priority, validity and enforceability of Bank's liens and security interests in and to the Bank's Collateral.

25. The Debtor shall serve a copy of this Order on the entire mailing matrix within 1 business day of the Order's entry upon the Court docket.

26. This Order is and shall be fully effective upon its entry.

END OF ORDER

ORDER SUBMITTED BY:

/s/ Robert T. DeMarco

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BUDGET ESTIMATE Denton Dough, LLC dba Mellow Mushroom

January		
		Jan 1 - Jan 31
		30 day
	Cash at beginning of Period 05/05	22,778.00
	Sales	132,000.00
		0.00
	Total Income	132,000.00
	Cost of Goods Sold	
	COGS (Food, Produce and LBW)	37,620.00
		0.00
	Total COGS	37,620.00
	Gross Profit	94,380.00
	Labor	
	Salaries, Wages and Commissions	36,000.00
	(includes all Taxes and fees)	
	Total	36,000.00
	CredCard Processing (inc GCards)	2,500.00
	HGI (Royalties)	8,400.00
	Depreciation Expense	0.00
	Hotschedules, NCR, HCS, IX	800.00
	Equipment Rental (Ecolab, Reliant)	419.00
	Insurance Expense	
	General Liability	1,405.00
	Health Insurance	1,563.00
	Total Insurance Expense	2,968.00
	Loan and Interest Expense	1,500.00
	Licenses and Permits	0.00
	Office Supplies	200.00
	Other Leases	0.00
	Store Cash Withdrawals	3,600.00
	Other Minor Exp (ecard, give back)	1,100.00
	Accounting Fees	1,500.00

EXHIBIT "A"

					State BR Fee	0.00
					Metro Linen	450.00
					Total Other Expenses	3,050.00
					Rent Expense	10,204.00
					Repairs and Maintenance	1,000.00
					Restaurant Supplies	300.00
					Taxes Franchise Tax	0.00
					Sales Tax + TABC Paid	11,500.00
					Total Taxes	11,500.00
					Business Personal Property Tax	6,246.00
					Telephone/Internet (Frontier)	322.86
					pest control	106.00
					Utilities (DME, Atmos)	5,000.00
					Total Expense	94,115.86
					Cash Need or Excess	264.14
					Cash at the end of the period	23,042.14