

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

In re:

DIRECT FOODS, LLC,

**Case No. 17-72036-SCS
Chapter 11**

Debtor-in-Possession.

**STIPULATION AND ORDER FOR AUTHORITY TO USE CASH COLLATERAL
OF SMALL BUSINESS TERM LOANS, INC. D/B/A
BUSINESS FINANCIAL SERVICES, INC.
AND PROVIDE ADEQUATE PROTECTION**

The Debtor, Direct Foods, LLC (the “**Debtor**”) and Small Business Term Loans, Inc. d/b/a BFS Capital (“**BFS**”)¹, represent and agree as follows:

BACKGROUND

A. On June 1, 2017 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”).

B. On the Petition Date, the Debtor owed an obligation to BFS, which obligation is secured by certain assets of the Debtor, and is evidenced by, among other things, a Secured Promissory Note (the “**Note**”) and a recorded UCC-1, which is recorded with the State Corporation Commission. The total principal amount outstanding on the loan with BFS, as of the Petition Date, was approximately \$113,789.00.

¹ BFS is not represented by counsel in this matter but has confirmed its agreement to the relief sought in this Motion and to this order.

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Counsel for the Debtor

C. The UCC Financing Statement recorded with the Virginia State Corporation Commission, and has a lien on the Debtor's accounts, equipment, machinery, fixtures, inventory, chattel paper and general intangibles of the Debtor (the "**Collateral**") pursuant to the note entered into on or about March 9, 2017 (the "**Loan**").

D. All amounts due to BFS on the Loan or otherwise are referred to herein as the "**Obligation.**" As security for the Obligation under the Loan, the Debtor granted a security interest in the Collateral. In addition, upon information and belief, BFS holds a security interest in the monies and accounts receivable received from Debtor's operation of the business (the "**Cash Collateral**").

G. The Debtor requires use of Cash Collateral to continue the operation and maintenance of the business and to pay money in the form of adequate protection to BFS. The Debtor's position is that the proposed use of Cash Collateral is necessary to avoid immediate and irreparable harm to the Debtor and the estate. BFS is willing to give limited and temporary consent to the Debtor's use of the cash collateral for a period of 120 days, subject to the Debtor's strict compliance with the terms and conditions of this Stipulation and Order, and upon the Court's approval of the adequate protection set forth below.

H. On June 28, 2017, the Debtor filed a Motion for Use of Cash Collateral. This Stipulation and Order constitutes an interim Order governing the rights of the Debtor with respect to the Debtor's continued use of cash collateral (as defined in § 363(a) of the Bankruptcy Code) in which BFS has an interest.

I. The Debtor proposes to use the Cash Collateral in the ordinary and normal course of its business subject to the Budget (defined below).

J. BFS, through Alex Nelsas, its Vice President, Business Affairs and Chief Privacy Officer, has consented to the use of the Cash Collateral and the proposed payments set forth in the Motion and has consented to the relief provided for in this Order.

STIPULATIONS

Accordingly, the Debtor and BFS hereby agree and stipulate as follows:

1. This Stipulation and Order shall govern the Debtor's use of its cash and any and all other proceeds of the Collateral that comprise the Cash Collateral for the period through and including October 26, 2017 at 5:00 p.m.

2. The Debtor is authorized to receive, collect and make use of all Cash Collateral strictly according to the Debtor-in-Possession Budget attached hereto as **Exhibit "A"** (the "**Budget**"), subject to BFS's continuing priority liens and security interests, and subject to the terms and conditions of this Stipulation and Order. In making decisions to permit the use of Cash Collateral or in connection with operating within this Cash Collateral Stipulation and Order, BFS shall not be deemed to be in control of the operations of the Debtor or to be an owner or operator with respect to the operation or management of the Debtor.

3. The Debtor may use Cash Collateral only to pay post-petition expenses itemized on the Budget in the amount itemized on the Budget, absent further permission from BFS to use Cash Collateral other than as provided for in the Budget.

4. The Debtor shall account for all income and expenses under the Budget.

5. The Debtor shall not make any payments to insiders without the prior written consent of BFS, other than as set forth in the Budget (payroll to Mr. Jackson).

6. The quarterly administrative fee payable to the Office of the United States Trustee may be paid under this Agreement from the Cash Collateral pursuant to the Budget. Accordingly, the Debtor shall escrow \$325.00 per month for payment of quarterly administrative fees payable to the Office of the United States Trustee.

7. Any additional requested payment or expenditure or post-petition expenditures outside the ordinary course of the Debtor's business or greater than the amount stated in the Debtor's Budget shall be approved of by BFS.

8. The Debtor's authorization to use the Cash Collateral subject to and on the terms and conditions of this Stipulation and Order shall terminate without any further order of this Court at 5:00 p.m. on October 26, 2017, unless the Debtor's right to use Cash Collateral has been previously terminated pursuant to the provisions of this Stipulation and Order.

9. In the event of (i) failure of the Debtor to fully perform any of his obligations as provided in this Stipulation and Order or breach of any covenant made herein, (ii) appointment of a trustee or of an examiner with enhanced powers for the Debtor or the property of the estate of the Debtor, (iii) conversion of the Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code, (iv) dismissal of the Chapter 11 case (collectively "**Default Events**"); then and upon the occurrence of any Default Event specified in subsection (ii)-(v) above, the Debtor shall immediately cease using Cash Collateral.

10. This Stipulation shall not be modified or amended without the consent of BFS in writing or pursuant to an Order of the Court after notice to BFS and a hearing before the Court unless such hearing is waived by BFS, except as otherwise provided for herein.

11. This Stipulation and Order is immediately valid and fully effective upon its entry, and is subject to a final order authorizing use of cash collateral.

12. The automatic stay of § 362 of the Bankruptcy Code is modified to the extent necessary to effectuate the perfection of the post-petition replacement liens granted by this Agreement. The provisions of this Stipulation and Order and any action taken hereto shall survive the entry of any order that may be entered dismissing this case, and the terms and conditions of this Stipulation and Order as well as the liens and security interests granted pursuant hereto shall continue in this and/or any superseding proceeding under the Code and such liens and security interests shall retain their priorities provided by this Stipulation and Order until satisfied and discharged or otherwise modified by Order of the Court.

13. Upon entry, a copy of this Order shall be sent to those parties identified on the attached Copy List.

It is so **ORDERED** this _____ day of Aug 10 2017, 2017.

/s/ Stephen C. St.John

Chief Judge of the United States Bankruptcy Court
Eastern District of Virginia

Entered on Docket: 8/14/17

STIPULATED AND AGREED TO:

/s/ Kelly M. Barnhart

Kelly M. Barnhart, VSB No. 65246
Counsel for Direct Foods, LLC

SEEN:

By: /s/ Cecelia A. Weschler

Cecelia A. Weschler, Esq.

Office of the United States Trustee - Region Four

(Permission to affix electronic signature provided by electronic mail sent to Ms. Barnhart by Ms. Weschler, which was received on

August 9, 2017)

CERTIFICATION

I hereby certify that the foregoing Stipulation and Order has been endorsed by all parties required to do so pursuant to the Rules of Bankruptcy Procedure and Local Rules.

/s/ Kelly M. Barnhart

Copy List:

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d/b/a Business Financial Services, Inc.
c/o Alex Nelsas, Vice President, Business Affairs
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Direct Foods, LLC
c/o Jimmy L. Jackson, III
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