



ENTERED  
01/15/2021

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
SOUTHERN FOODS GROUP, LLC, <i>et al.</i> ,	)	Case No. 19-36313 (DRJ)
	)	
Debtors. <sup>1</sup>	)	Jointly Administered
	)	
	)	(Docket No. 3303)

**STIPULATION AND AGREED ORDER BETWEEN THE  
DEBTORS AND THE UNITED STATES**

Southern Foods Group, LLC, Dean Foods Company, and certain of their affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), and the United States (the “**Claimant**” and, together with the Debtors, the “**Parties**”) hereby enter into this stipulation and agreed order (the “**Stipulation and Agreed Order**”). The Parties stipulate and agree as follows:

WHEREAS, on November 12, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the

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<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (9785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly’s Ice Cream Holdings Corp. (7609); Friendly’s Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah’s Pride, LLC (2858); Steve’s Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt’s Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors’ mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

“**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”). The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”) and the *Order Directing Joint Administration of Chapter 11 Cases* [D.I. 9] entered by the Court on November 12, 2019 in each of the Chapter 11 Cases;

WHEREAS, on November 22, 2019, the office of the United States Trustee for the Southern District of Texas appointed an Official Committee of Unsecured Creditors, *see Notice of Appointment of Committee of Unsecured Creditors* [D.I. 288];

WHEREAS, the Parties agree that (i) the Court has jurisdiction over this Stipulation and Agreed Order pursuant to 28 U.S.C. § 1334, (ii) this matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and (iii) venue of the Chapter 11 Cases is proper in this district pursuant to 28 U.S.C. § 1408;

WHEREAS, the Parties confirm their consent, pursuant to Bankruptcy Rule 7008 and Rule 7008-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the “**Local Rules**”), to the entry of this Stipulation and Agreed Order by the Court to the extent that it is later determined that the Court, absent consent of the Parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution;

WHEREAS, the Claimant, through the United States Department of Agriculture (the “**USDA**”), establishes and administers Federal Milk Marketing Orders (collectively, the “**FMMOs**”), pursuant to which the USDA regulates the purchase of raw milk by processors or handlers (collectively, the “**Handlers**”) from individual dairy farmers and dairy cooperatives (collectively, the “**Producers**”) in the United States;

WHEREAS, pursuant to the FMMOs, Handlers are obligated to make certain monthly payments (the “**FMMO Obligations**”) to certain administrative accounts and into settlement funds, which, among other things, are pass-through funds used to equalize the average pricing received by the Producers on account of purchased raw milk;

WHEREAS, the FMMO Obligations include amounts owed by the Handlers to (i) the Producer Settlement Fund, (ii) the Administrative Fund (which also includes marketing service payments), and (iii) the Transportation Credit Balancing Fund;

WHEREAS, the Claimant asserts that, pursuant to 7 C.F.R. § 1000.78, amounts owed under an FMMO to “the market administrator . . . from a handler” accrue late fees of 1% of the unpaid obligations per month, compounding monthly (such fees, the “**USDA Direct Obligation Late Fees**” that, for the avoidance of doubt, exclude any other late fees that may accrue on account of amounts owed under an FMMO, or otherwise, directly to any Producers, such excluded fees, the “**Producer Late Fees**”);

WHEREAS, the Claimant asserts that, pursuant to 7 C.F.R. §§ 1150 and 1160, Handlers and fluid milk processors are obligated to make certain monthly payments (such payments, the “**Dairy and Fluid Milk Promotion Obligations**”) directly to the National Dairy Promotion and Research Board and the National Fluid Milk Processor Promotion Board (collectively the “**Dairy and Fluid Milk Promotion Boards**”) on account of raw milk produced and processed;

WHEREAS, the Claimant asserts that, pursuant to 7 C.F.R. §§ 1150.156 and 1160.214, amounts owed to the National Dairy Promotion and Research Board and the National Fluid Milk Processor Promotion Board accrue late fees of 1.5% of the unpaid obligations per month, compounding monthly (the “**Board Late Fees**”);

WHEREAS, the Claimant has asserted administrative expense claims under section 503 of the Bankruptcy Code against (i) Alta-Dena Certified Dairy LLC, (ii) Berkeley Farms LLC, (iii) Country Fresh LLC, (iv) Dean Dairy Holdings LLC, (v) Dean Foods Company, (vi) Dean Foods North Central LLC, (vii) Dean Foods of Wisconsin, (viii) Reiter Dairy LLC, (ix) Southern Foods Group LLC, (x) Suiza Dairy Group LLC, (xi) Tuscan-Lehigh Dairies Inc., (xii) Garelick Farms LLC, (xiii) Mayfield Dairy Farms LLC, and (xiv) Model Dairy LLC (collectively, the “**Debtor Obligors**”) in their respective Chapter 11 Cases on account of the following: (a) unpaid post-petition FMMO Obligations (which, for the avoidance of doubt, do not include (1) any FMMO Obligations owed directly to any Producers, as defined in each order at 7 C.F.R. 1---.73, or (2) any Producer Late Fees, including any pursuant to 7 C.F.R. 1000.78), and Dairy and Fluid Milk Promotion Obligations, each as accrued by the Debtor Obligors from and after the Petition Date through and including May 4, 2020 in the aggregate amount of \$32,313,535.84 (the “**Asserted USDA Direct Obligation Claim**”), (b) all post-petition USDA Direct Obligation Late Fees on account of the Asserted USDA Direct Obligation Claim that have accrued and will accrue through and including the date of the payment of the Allowed USDA Direct Obligation Claim (as defined below) (the “**USDA Direct Obligation Late Fees Claim**”), and (c) all post-petition Board Late Fees that have accrued and will accrue through and including the date of payment of the Allowed USDA Direct Obligation Claim (the “**Board Late Fees Claim**” and, collectively with the USDA Direct Obligation Late Fees Claim and the Asserted USDA Direct Obligation Claim, the “**Resolved USDA Claims**”);

WHEREAS, the Parties have conferred and negotiated in good faith and have agreed that, subject to entry by the Court of this Stipulation and Agreed Order, (i) the Claimant shall have an allowed administrative expense claim under section 503 of the Bankruptcy Code against the

Debtor Obligors in the amount of \$32,313,535.84 in the Chapter 11 Cases (the “**Allowed USDA Direct Obligation Claim**”), (ii) no later than 30 days following entry by the Court of this Stipulation and Agreed Order, the Debtor Obligors shall make payment to the USDA equal to ninety percent (90%) of the Allowed USDA Direct Obligation Claim, or \$29,082,182.26 (the “**Debtor Settlement Payment**”), to the Claimant in full and final satisfaction of the Resolved USDA Claims including, for the avoidance of doubt, the Allowed USDA Direct Obligation Claim, the USDA Direct Obligation Late Fees Claim, and the Board Late Fees Claim;

WHEREAS, the Parties have further agreed that, to the extent that any amounts are separately paid to the Claimant by any state agency or authority, on account of any portion of the Asserted USDA Direct Obligation Claim, from proceeds received or secured by such state agency or authority from any surety bonds, letters of credit, or other collateral held to secure and/or assure the Debtors’ FMMO Obligations or the Resolved USDA Claims, so that the Claimant’s total recovery exceeds the Allowed USDA Direct Obligation Claim, the Claimant shall: (i) return such excess payment(s) back to such state agencies or authorities to the extent required by applicable law, or (ii) if the Claimant is not required to return such excess payment(s) to the state agencies or authorities, remit it (them) to the Debtor Obligors as the Claimant is authorized to do so under 7 C.F.R. § 1000.25 or other applicable federal law; the Claimant does not intend to retain any such excess payment(s);

WHEREAS, the Parties have further agreed to the releases set forth below on the terms and conditions set forth in this Stipulation and Agreed Order;

WHEREAS, the Debtors have determined, in their reasonable business judgment, that the terms and conditions of this Stipulation and Agreed Order are in the best interests of the Debtors and their estates;

WHEREAS, the Parties now desire to enter into this Stipulation and Agreed Order on the terms and conditions set forth herein; and

WHEREAS, the undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective Parties and that the respective Parties have full knowledge of, and have consented to, this Stipulation and Agreed Order.

**NOW, THEREFORE, IT IS STIPULATED AND AGREED BY THE PARTIES AND HEREBY ORDERED THAT:**

1. The foregoing recitals are hereby incorporated by reference into this Stipulation and Agreed Order as if set forth at length herein.

2. Upon entry by the Court of this Stipulation and Agreed Order, the Allowed USDA Direct Obligation Claim shall be allowed in the amount of \$32,313,535.84.

3. By no later than 30 days following the entry by the Court of this Stipulation and Agreed Order, the Debtor Obligors shall pay the Debtor Settlement Payment to the order of the United States Department of Justice in full and final satisfaction of the Resolved USDA Claims including, for the avoidance of doubt, the Allowed USDA Direct Obligation Claim, the USDA Direct Obligation Late Fees Claim, and the Board Late Fees Claim.

4. Upon payment of the Debtor Settlement Payment, the Claimant shall make all corresponding payments to the applicable Handlers in accordance with applicable law.

5. Upon payment of the Allowed USDA Direct Obligation Claim by the Debtor Obligors to the Claimant, to the extent permitted under applicable law, the Claimant (for the avoidance of doubt, including the FMMOs and their respective market administrators, the National Dairy Promotion and Research Board, and the National Fluid Milk Processor Promotion Board) shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever

released the Debtors and the Debtors' estates, and all of their respective current and former officers and directors, principals, partners, managers, and employees, and each such persons' respective heirs, executors, estates, and nominees (collectively, the "**Debtor Released Parties**") from any and all claims, interests, and obligations relating to the Resolved USDA Claims. Notwithstanding the foregoing or anything to the contrary in this Order and for the avoidance of doubt, the Claimant does not release the Debtor Released Parties from (a) any FMMO Obligations owed by the Debtors directly to any Producers, or any Producer Late Fees, (b) any claim with respect to any FMMO Obligations owed by the Debtors directly to individual dairy farmers and/or dairy cooperatives and any Producer Late Fees, (c) any claim or cause of action under Title 18, United States Code, or (d) any claim or cause of action under Title 31, United States Code.

6. Upon entry by the Court of this Stipulation and Agreed Order, the Debtors and the Debtors' estates (collectively, the "**Debtor Releasing Parties**") shall be deemed to have released the Claimant (for the avoidance of doubt, including the FMMOs and their respective market administrators, the National Dairy Promotion and Research Board, and the National Fluid Milk Processor Promotion Board) from any and all avoidance, recovery, subordination or similar actions or remedies that may be brought under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under chapter 5 of the Bankruptcy Code, whether known or unknown, foreseen or unforeseen, asserted or unasserted, that the Debtor Releasing Parties (individually or collectively) would have been legally entitled to assert.

7. In the event that the Claimant receives, on account of any portion of the Asserted USDA Direct Obligation Claim, any payment from any state agency or authority from proceeds received or secured by such state agency or authority from any surety bonds, letters of credit, or other collateral held to secure and/or assure the Debtors' FMMO Obligations or the Resolved

USDA Claims, so that such payment and the Debtor Settlement Payment together exceed the Allowed USDA Direct Obligation Claim, the Claimant shall: (a) return such excess payment(s) back to such state agencies or authorities to the extent required by applicable law; or (b) if the Claimant is not required to return such excess payment(s) to the state agencies or authorities, remit it (them) to the Debtor Obligors as the Claimant is authorized to do so under 7 C.F.R. § 1000.25 or other applicable federal law. The Claimant does not intend to retain any such excess payment(s).

8. Except as specifically provided herein, nothing contained in this Stipulation and Agreed Order, and no actions taken pursuant hereto, shall be deemed (a) an agreement or admission by the Debtors as to the validity, categorization, amount, allowance, or priority of any claim against any Debtor entity on any grounds, (b) a waiver or impairment of any rights, claims, or defenses of the Debtors or any other party in interest to dispute any claim on any grounds, (c) a promise by the Debtors that any claim is payable pursuant to this Stipulation and Agreed Order, (d) a waiver of the rights of the Debtors or any other party in interest under the Bankruptcy Code or any other law, or (e) a grant of any third-party beneficiary status or bestowal of any additional rights on any third party.

9. Nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity, or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

10. Nothing in this Stipulation and Agreed Order nor any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

11. This Stipulation and Agreed Order shall be binding upon and inure to the benefit



of the Parties and their respective heirs, executors, administrators, agents, and permitted successors and assigns, including, as applicable, bankruptcy trustees and estate representatives, and any parent, subsidiary, or affiliated entity of the Parties.

12. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or any of the Local Rules that might otherwise delay the effectiveness of this Stipulation and Agreed Order is hereby waived, and the terms and conditions of this Stipulation and Agreed Order shall be effective and enforceable immediately upon its entry.

13. Producer Late Fees are not resolved by, and are unaffected by, this Stipulation and Agreed Order. Producer Late Fees will continue to accrue in accordance with 7 C.F.R. 1000.78 to the extent that FMMO obligations owed directly to Producers remain unpaid.

14. This Stipulation and Agreed Order contains the entire agreement by and among the Parties with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Stipulation and Agreed Order.

15. This Stipulation and Agreed Order shall not be modified, altered, amended or supplemented except either by a writing executed by the Parties or their authorized representatives or by an order issued by a court of competent jurisdiction.

16. Neither this Stipulation and Agreed Order nor any actions taken pursuant hereto shall constitute evidence admissible against the Parties in any action or proceeding other than to enforce the terms of this Stipulation and Agreed Order.

17. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Stipulation and Agreed Order.

18. The Court shall retain jurisdiction to the maximum extent permitted by law to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Agreed Order.

**Signed: January 15, 2021.**



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**DAVID R. JONES**  
**UNITED STATES BANKRUPTCY JUDGE**

Respectfully submitted this twenty third day of December 2020.

**NORTON ROSE FULBRIGHT US LLP**

/s/ William R. Greendyke

William R. Greendyke (SBT 08390450)  
Jason L. Boland (SBT 24040542)  
Robert B. Bruner (SBT 24062637)  
Julie Goodrich Harrison (SBT 24092434)  
1301 McKinney Street, Suite 5100  
Houston, Texas 77010-3095  
Tel.: (713) 651-5151  
Fax: (713) 651-5246  
william.greendyke@nortonrosefulbright.com  
jason.boland@nortonrosefulbright.com  
bob.bruner@nortonrosefulbright.com  
julie.harrison@nortonrosefulbright.com

-and-

**DAVIS POLK & WARDWELL LLP**

Brian M. Resnick (admitted *pro hac vice*)  
Steven Z. Szanzer (admitted *pro hac vice*)  
Nate Sokol (admitted *pro hac vice*)  
Omer Netzer (admitted *pro hac vice*)  
450 Lexington Avenue  
New York, New York 10017  
Tel.: (212) 450-4000  
Fax: (212) 701-5800  
brian.resnick@davispolk.com  
steven.szanzer@davispolk.com  
nathaniel.sokol@davispolk.com  
omer.netzer@davispolk.com

*Counsel to the Debtors and Debtors in  
Possession*

**ATTORNEYS FOR THE UNITED STATES**

/s/ Richard A. Kincheloe

Richard A. Kincheloe  
Assistant United States Attorney  
United States Attorney's Office  
Southern District of Texas  
Texas Bar No. 24068107  
S.D. Tex. ID No. 1132346  
1000 Louisiana St., Suite 2300  
Houston, Texas 77002  
Telephone: (713) 567-9422  
Facsimile: (713) 718-3033  
Email: Richard.Kincheloe@usdoj.gov

I-Heng Hsu  
Department of Justice  
Commercial Litigation Branch  
Civil Division  
P.O. Box 875, Ben Franklin Station  
Washington, D.C. 20044-0875  
Telephone: (202) 616-3619  
Facsimile: (202) 514-9163  
Email: i-heng.hsu@usdoj.gov

*Attorneys For the United States of America*