IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SOLAR BIOTECH, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 24-11402 (LSS) Jointly Administered
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF SOLAR BIOTECH, INC., Plaintiff, v. INGREDION INCORPORATED, Defendant.	Adv. Pro. No.

COMPLAINT

Plaintiff, the Official Committee of Unsecured Creditors (the "Committee") of Solar Biotech, Inc. ("SBI") and Noblegen Inc. ("NI") (each a "Debtor" and together, the "Debtors"), by and through its undersigned counsel, brings this adversary proceeding against Ingredion Incorporated ("Ingredion") and in support thereof states as follows:

NATURE OF THE ACTION

1. The Committee seeks: (a) the avoidance of a transfer in connection with the roll-up of the $3,000,000 SAFE (as defined below) into a $7,000,000 secured convertible promissory note on July 17, 2023, and the liens granted on all of the Debtors' assets under Sections 544, 547, and 548 of the Bankruptcy Code; (b) the recharacterization of $3,000,000 of Ingredion's pre-petition secured claim as equity under the Simple Agreement for Future Equity ("SAFE") from May 20,

[1] The Debtors in these Chapter 11 Cases are Solar Biotech, Inc. and Noblegen Inc. The location of Debtors' principal place of business is 5516 Industrial Park Rd, Norton, VA 24273, Attn: Alex Berlin.

2022, rather than as a secured debt; and (c) the subordination under Section 510 of the Bankruptcy Code of all of Ingredion's pre-petition claims due to its collusion with the Debtors to conceal material information about the SAFE and its undue influence over the Debtors.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief sought in this complaint are 11 U.S.C. §§ 105, 510, 548, and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

PARTIES

5. **Plaintiff:** The Official Committee of Unsecured Creditors of the Debtors duly appointed pursuant to Section 1102 of the Bankruptcy Code.

6. **Defendant:** Ingredion Incorporated is a corporation organized under the laws of Delaware, with its principal place of business at 5 Westbrook Corporate Center, Westchester, IL 60154.

FACTUAL BACKGROUND

7. Debtor Solar Biotech, Inc. is a technology and bioproducts development company that offers sustainable biomanufacturing solutions with its principal place of business in Norton, Virginia. Debtor Noblegen Inc. is a biotechnology company that specializes in producing nutritional and functional plant-based food ingredients with its principal place of business in Peterborough, Ontario, Canada.

8. On June 23, 2024 ("Petition Date"), each Debtor filed a *Voluntary Petition for Non-Individuals Filing for Bankruptcy* [D.I. 1]. On June 26, 2024, the Court entered an *Order (I)*

Directing Joint Administration of Related Chapter 11 Cases and (II) Granting Related Relief [D.I. 31].

9. On June 24, 2024, the Debtors filed the *Declaration of Alex Berlin in Support of Debtors' Chapter 11 Petitions and First Day Motions* [D.I. 3] ("First Day Declaration") and the *Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Debtor-in-Possession Financing and (B) Use Cash Collateral, (II) Granting DIP Liens and Claims with Superpriority Administrative Expense Status, (III) Scheduling a Final Hearing; and (IV) Granting Related Relief* [D.I. 10] ("DIP Motion").

10. Both the First Day Declaration and DIP Motion share the same description of the Debtors' pre-petition relationship with Ingredion, which both begin (identically):

> On July 17, 2023, the Debtors and Ingredion (in its capacity as prepetition lender, the "Pre-Petition Secured Lender") entered into the following agreements: (i) a secured convertible promissory note from Solar Biotech, Inc. ("SBI") in the principal amount of $7,000,000.00 (the "Secured Convertible Promissory Note"); (ii) a security agreement between SBI and Ingredion, as a condition to the obligations under the Secured Convertible Promissory Note (the "Security Agreement"); (iii) a grant of security interest in United States trademarks from SBI to Ingredion; (iv) Guarantee from NI to Ingredion with respect to all indebtedness and obligations of SBI arising pursuant to or in connection with the Secured Convertible Promissory Note; (v) a General Security Agreement between NI and Ingredion; (vi) a Confirmation of Security Interest (Intellectual Property) from NI to Ingredion; and (vii) all other instruments, documents and agreements relating to the foregoing evidencing the obligations thereunder (collectively herein referred to as, the "Pre-Petition Secured Convertible Note Documents")

First Day Declaration, pp. 4-5, ¶15; DIP Motion, p. 2, ¶ 2.

11. On July 8, 2024, the United States Trustee ("UST") appointed the Committee pursuant to section 1102 of the Bankruptcy Code [D.I. 76]. The Committee is responsible for investigating the acts, conduct, assets, liabilities, and financial condition of the Debtors, as well as pursuing any potential claims or causes of action that may benefit the unsecured creditors (11 U.S.C. § 1103(c)(2)).

12. On July 1, 2024, the UST scheduled a meeting of creditors and equity security holders pursuant to section 341 of the Bankruptcy Code ("341 Meeting") for Tuesday, July 23, 2024 at 2:30 PM Eastern Time [D.I. 56-59]. The 341 Meeting was held on that date at that time, but the Debtors had not yet filed their Schedules of Assets and Liabilities, or their Statements of Financial Affairs. In spite of this, the Committee proceeded to ask questions of the Debtors, represented by the Debtors' Chief Executive Officer and Chief Technology Officer, Alex Berlin ("Mr. Berlin"). However, due a scheduling conflict with the UST attorney and because the Schedules and SOFA had not been filed, the 341 Meeting ended after two hours and a continuation was to be scheduled at a future date [D.I. 124].

13. On July 29, 2024, the Debtors filed the *Schedules and Assets and Liabilities for Solar Biotech, Inc.* [D.I. 128] and the *Schedules of Assets and Liabilities for Noblegen Inc.* [D.I. 129] ("Schedules") together with each of their *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy* ("SOFAs").

14. On August 14, 2024, the continued 341 Meeting was scheduled for August 23, 2024 at 9:00 AM Eastern Time [D.I. 154]. The continued 341 Meeting was held on that date and at that time, but this time the Debtors presented their Chief Restructuring Officer, Ken Yager ("Mr. Yager"), to answer questions. Mr. Yager testified at the meeting under oath that he did not assist in the preparation of the Schedules or SOFAs, and after some modest questioning by the Committee, it became apparent that he had no personal knowledge about the information on those documents. The continued 341 Meeting was adjourned after a little over an hour, and a second continued 341 Meeting was to be scheduled [D.I. 164]. No continuation of the 341 Meeting has yet been scheduled.

15. The Committee was able to verify that the Debtors and Ingredion had been parties to a simple agreement for future equity ("SAFE") note for $3,000,000.00. This was not disclosed the Court.

16. **The SAFE Agreement:** On May 20, 2022, Ingredion entered into a Simple Agreement for Future Equity ("SAFE") with Solar Biotech, Inc., under which Ingredion invested $3,000,000 in exchange for future equity in the Debtor. The SAFE lacked typical debt features, such as a fixed maturity date, interest payments, or scheduled repayment, and entitled Ingredion to receive equity in the Debtor upon certain triggering events, such as an equity financing or a liquidity event. In addition, the SAFE gave Ingredion the right to designate a representative to attend and observe all quarterly meetings of the directors of SBI, as well as to receive copies of all notices, minutes, consents, and other materials that it provides to its directors.

17. **The Secured Convertible Promissory Note:** On July 17, 2023, less than a year before the Petition Date, the Debtor and Ingredion entered into a secured convertible promissory note agreement for $7,000,000, which rolled up the $3,000,000 SAFE into the principal of this new secured debt instrument. Upon information and belief, Ingredion did not even advance $4,000,000 in new money but instead got certain credits for non-monetary contributions. This promissory note was secured by liens on substantially all of the Debtors' assets. Further, this occurred at a time when the Debtors were already experiencing severe financial hardship due to a 'lackluster venture capital market' and COVID-19.[2]

[2] "The Debtors were unable to close its most recently round of seed funding, due in part to the venture capital slowdown, which has been occurring since 2022." First Day Declaration, p. 3, ¶ 11 "Throughout 2021 and 2022, the Debtors experienced shortages of supply that resulted in an inability to fulfill certain customer orders within normal lead times. This adversely impacted the Debtors' revenue and operating results for fiscal years 2021 and 2022." First Day Declaration, p. 3, ¶ 12.

18. **Debtor-in-Possession ("DIP") Financing:** Following the filing of the Debtors' bankruptcy petitions on June 23, 2024, Ingredion provided DIP financing to the Debtors and acted as a DIP lender under a secured DIP facility. In connection with the DIP financing, the Debtors, without any disclosure of the SAFE asked for a 3-1 roll-up of the prepetition obligations.

19. **Concealment of the SAFE:** There have been several obstacles for the Committee in its attempts to fully investigate the pre-petition claim of Ingredion and the proximity of its relationship to the Debtors. Ingredion and the Debtors failed to disclose the SAFE and its equity-like nature in any of the filings submitted to this Court or to creditors, materially misrepresenting Ingredion's pre-petition claim as purely secured debt. In addition, the 341 Meetings to date have been wholly inadequate as a means for creditors or equity holders to inquire about the financial conditions or past dealings of the Debtors.

20. On July 19, 2024, the Court entered a Final DIP Order that authorized the Debtors to enter into a debtor-in-possession financing arrangement with Ingredion, subject to specific provisions regarding lien rights and claims [D.I. 118]. Under this Final DIP Order, the Committee was granted a defined period (the "Challenge Period") during which it could investigate and, if warranted, challenge the validity, priority, and enforceability of Ingredion's liens, claims, and security interests.

21. After motion practice and protected negotiations, Ingredion agreed to a Joint Stipulation and Agreed Order filed on September 16, 2024, which extended the Challenge Period by 45 days, moving the deadline to October 25, 2024 [D.I. 220][3]. The Joint Stipulation and Agreed

[3] The Joint Stipulation and Agreed Order provides *inter alia* "No extensions beyond October 25, 2024 will be granted unless Ingredion does not produce requested discovery within a reasonable time, in which case the Committee and Motif, acting in good faith, can ask the Court for additional time" and "Motif and/or the Committee reserve the right to request additional extensions of the Challenge Period based on new facts/circumstances." Stipulation and Order at ¶¶ 5 & 2(a).

Order also provides, "Ingredion and the Debtors hereby stipulate that the Committee (but no other parties in interest) has standing to pursue a challenge as defined in the Final DIP Order." *Id.* at ¶ 2(b).

22. On October 25, 2024, counsel for the Committee requested an additional thirty (30) day extension. However, Ingredion would only agree to a five (5) day extension, moving the deadline to October 30, 2024.

COUNT I: FRAUDULENT TRANSFER (11 U.S.C. § 548) (Both Debtors)

23. The Committee repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

24. The Committee seeks avoidance of the transfer of liens on all of the Debtors' assets securing the roll-up of the $3,000,000 SAFE into a secured convertible promissory note on the grounds it constitutes a fraudulent transfer under 11 U.S.C. § 548:

> A fraudulent transfer under 11 U.S.C. § 548(a)(1) requires: (1) a transfer "of an interest of the debtor in property," (2) within two years before the bankruptcy petition, and (3) either "actual intent to hinder, delay or defraud," § 548(a)(1)(A), or constructive fraud as shown by less than reasonably equivalent value in exchange for the transfer and a "badge of fraud," § 548(a)(1)(B). For purposes of fraudulent transfers, a debtor's "interest in property… includes any interest of the debtor that would have been preserved for the benefit of the bankruptcy estate but for the alleged transfer.

Miller v. Matco Elec. Corp. (In re NewStarcom Holdings, Inc.), 608 B.R. 614, 620 (D. Del. 2019) quoting *In re Besing*, 981 F.2d 1488, 1493 (5th Cir. 1993).

25. The Committee seeks to avoid the roll-up of the $3,000,000 SAFE into a secured convertible promissory note (and the grant of liens on all of the Debtors' assets) under both § 548(a)(1)(A) (actual intent to defraud) and § 548(a)(1)(B) (constructive fraud). Upon information and belief, Ingredion did not even advance $4,000,000 in new money but instead got certain credits

for non-monetary contributions. The Committee therefore also seeks to avoid all amounts of Ingredion's secured claim that are not based on new money.

26. Actual Intent to Defraud: Under § 548(a)(1)(A), a transfer is considered fraudulent if it was made with actual intent to hinder, delay, or defraud any creditor. While direct evidence of intent to defraud is rare, courts often infer fraudulent intent from circumstantial evidence, or "badges of fraud."

a. **The relationship between the debtor and the transferee:** Ingredion was a pre-existing investor through the SAFE, and the roll-up of the SAFE into secured debt provided significant benefits to Ingredion, effectively elevating its position from an equity holder to a secured creditor. This change in relationship may indicate preferential treatment that could suggest actual intent to hinder other creditors.

b. **The financial condition of the debtor at the time of the transfer**: The Debtors were insolvent at the time of the roll-up. Transferring the equity interest into secured debt while the Debtors were in financial distress may show an intent to protect Ingredion's interest at the expense of other unsecured creditors.

c. **The amount or value of the consideration received in relation to the value of the transferred assets**: Rolling up the $3,000,000 SAFE (equity investment) into a $7,000,000 secured debt, which was collateralized by liens on all of the Debtors' assets, provided Ingredion with substantially greater protection than its original equity investment. Upon information and belief, Ingredion did not even advance $4,000,000 in new money but instead got certain credits for non-monetary contributions. The Debtors did not receive reasonably equivalent value for the liens granted in exchange for the secured promissory note.

d. **The concealment of the transfer**: If the SAFE's original nature as an equity investment was concealed or not properly disclosed in the Debtors' bankruptcy filings (particularly those asking for the roll-up of Ingredion’s prepetition debt), this could indicate actual intent to defraud creditors by misrepresenting the nature of Ingredion’s pre-petition claim.

27. Based on these factors, there is a strong argument that the roll-up of the SAFE into secured debt could be viewed as having been executed with actual intent to hinder, delay, or defraud other creditors.

28. **Constructive Fraud:** Under § 548(a)(1)(B), a transfer can be avoided if the debtor received less than reasonably equivalent value in exchange for the transfer, and one of the following conditions is met: (i) the debtor was insolvent at the time of the transfer or became insolvent as a result of it;(ii) the debtor was left with unreasonably small capital after the transfer; (iii) the debtor intended to incur debts beyond its ability to repay; or (iv) the transfer was made to benefit an insider.

a. **Less than Reasonably Equivalent Value:** The SAFE was originally an equity instrument, and equity investors typically assume the risk of losing their investment without any security interest in the debtor's assets. By rolling up the $3,000,000 SAFE into a $7,000,000 secured convertible promissory note, the Debtors provided Ingredion with a secured claim, which drastically improved Ingredion's position. The Debtors gave away $7,000,000.00 in secured debt in exchange for less than $4,000,000 in new money, which constitutes less than reasonably equivalent value. Upon information and belief, Ingredion did not even advance the $4,000,000 in new money but instead got certain credits for non-monetary contributions. The Committee therefore also seeks to avoid all amounts of Ingredion's secured claim that are not based on new money.

b. **Insolvency or Insolvency Caused by the Transfer:** The Debtors were either insolvent or became insolvent as a result of the roll-up. The Debtors were likely insolvent, as evidenced by their financial distress leading to the Chapter 11 filings. Additionally, granting liens on all of their assets in favor of Ingredion limited the Debtors' ability to secure new financing and placed an excessive burden on the remaining assets. This pushed the Debtors further into insolvency.

c. **Unreasonably Small Capital:** The roll-up and subsequent liens reduced the Debtors' liquidity and ability to obtain other sources of capital. After granting liens on all their assets to Ingredion, the Debtors were left with unreasonably small capital to continue operations, support their business, or satisfy creditor claims.

d. **Intent to Incur Debts Beyond Ability to Repay:** By elevating Ingredion to a secured creditor status with respect to its $3,000,000 equity interest, the Debtors have created a situation in which their unsecured creditors were left with fewer assets to satisfy their claims. This, coupled with the Debtors' poor financial state, suggests that the Debtors may have intended to incur further debts beyond their ability to repay.

e. **Insider Benefit:** While Ingredion may not be an insider in the traditional sense, its pre-existing relationship as a major investor in the Debtors along with its right to observe board meetings could place it in a position of significant influence. By elevating its position from an equity holder to a secured creditor, Ingredion benefited disproportionately compared to other creditors.

29. **Conclusion:** The roll-up of the $3,000,000 SAFE into secured debt, along with the grant of liens on all of the Debtors' assets, constitutes a fraudulent transfer under both § 548(a)(1)(A) and § 548(a)(1)(B). Given these factors, the transaction should be avoided as a fraudulent transfer under § 548.

a. **Under § 548(a)(1)(A)**, the circumstances, including the relationship between the Debtors and Ingredion, the timing of the transfer, and the concealment of the SAFE's nature from the Court and other parties in interest, evidence that the transaction was conducted with actual intent to hinder or defraud creditors.

b. **Under § 548(a)(1)(B)**, the Debtors did not receive reasonably equivalent value in exchange for granting the liens, and the Debtors were either insolvent at the time of the transfer or became insolvent as a result. Furthermore, the transaction left the Debtors with unreasonably small capital and created a situation where they incurred debts beyond their ability to repay.

COUNT II: FRAUDULENT TRANSFER (11 U.S.C. § 544; CODE OF VIRGINIA § 55.1)

30. The Committee repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

31. The roll-up of the $3,000,000 SAFE into a secured convertible promissory note and the subsequent grant of liens on Solar Biotech's assets constitutes a voidable transfer under 11 U.S.C. § 544(b)(1) and the relevant Virginia state statutes.

32. Section 544(b)(1) allows the trustee in bankruptcy to avoid transfers that would be voidable under applicable state law by an unsecured creditor. The language of § 544(b)(1) plainly contains four elements: (1) a transfer of an interest of the debtor in property; (2) that is voidable under applicable [state] law; (3) by a creditor; (4) holding an allowable unsecured claim. *In re*

Roman Cath. Diocese of Harrisburg, 640 B.R. 59, 68 (Bankr. M.D. Pa. 2022) citing *In re Forbes*, 372 B.R. 321, 330 (B.A.P. 6th Cir. 2007) (citation omitted).

33. **Transfer of Interest in Property**: The roll-up of the SAFE into a secured convertible note and the granting of liens on Solar Biotech's assets constitute a transfer of an interest in the Debtors' property. The SAFE, originally structured as an equity investment, was converted into secured debt, providing Ingredion with liens on Solar Biotech's assets .

34. **Voidable Under State Law**: To analyze this, we must look to the Virginia statutes governing voidable and fraudulent transfers. Virginia's Uniform Voidable Transactions Act (UVTA), particularly § 55.1-400 and § 55.1-401, provides the legal framework for determining whether the transfer in question was fraudulent and thus voidable.

35. **Voidable Transfer Under § 55.1-400[4] (Void Fraudulent Acts):** § 55.1-400 of the Code of Virginia renders void any transfer made with intent to hinder, delay, or defraud creditors. The roll-up of the SAFE into secured debt and the subsequent granting of liens could be seen as a transaction designed to elevate Ingredion's status over unsecured creditors, effectively protecting Ingredion's interest at their expense.

36. **Actual Intent to Defraud**: Courts look to "badges of fraud" to determine intent. In this case: (i) the transfer significantly improved Ingredion's position by converting its equity investment into secured debt, potentially depriving other creditors of the ability to recover; and (ii)

[4] **Code of Virginia § 55.1-400. Void fraudulent acts; bona fide purchasers not affected** reads: **"**Every (i) gift, conveyance, assignment, or transfer of, or charge upon, any estate, real or personal, (ii) action commenced or order, judgment, or execution suffered or obtained, and (iii) bond or other writing given with intent to delay, hinder, or defraud creditors, purchasers, or other persons of or from what they are or may be lawfully entitled to shall, as to such creditors, purchasers, or other persons or their representatives or assigns, be void. This section shall not affect the title of a purchaser for valuable consideration, unless it appears that he had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor."

the timing of the transfer, in proximity to the bankruptcy filing, raises concerns of intent to shield assets from other creditors.

37. **Fraudulent Transfer Under § 55.1-401[5] (Voluntary Conveyances Void as to Prior Creditors):** § 55.1-401 addresses transfers made without receiving "reasonably equivalent value" while the debtor was insolvent or became insolvent as a result.

1. **Lack of Reasonably Equivalent Value**: The transfer did not provide Solar Biotech with any new funds or value. Instead, the $3,000,000 SAFE, an equity interest, was rolled up into secured debt, for which the debtor did not receive a comparable benefit.

2. **Insolvency**: If Solar Biotech was insolvent at the time of the roll-up or became insolvent due to the additional secured obligation, the transfer is voidable. The Debtors' financial distress suggests insolvency during this period, making the transfer potentially voidable as a fraudulent conveyance.

38. **Conclusion:** Based on the analysis under **11 U.S.C. § 544(b)(1)** and **Virginia's UVTA**, the transfer of liens on Solar Biotech's assets in favor of Ingredion, following the roll-up of the $3,000,000 SAFE into a secured convertible note, constitutes a **voidable transfer**. The lack of reasonably equivalent value provided to the debtor, combined with the likely insolvency of Solar Biotech at the time of the transfer, renders the transaction subject to avoidance under both federal and Virginia state law.

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[5] **Code of Virginia § 55.1-401. Voluntary gifts, conveyances, assignments, transfers, or charges; void as to prior creditors** reads: "Every gift, conveyance, assignment, transfer, or charge that is not upon consideration deemed valuable in law, or that is upon consideration of marriage by an insolvent transferor or by a transferor who is thereby rendered insolvent, shall be void as to creditors whose debts were contracted at the time such gift, conveyance, assignment, transfer, or charge was made but shall not, on that account merely, be void as to creditors whose debts have been contracted, or as to purchasers who have purchased, after such gift, conveyance, assignment, transfer, or charge was made. Even though it is decreed to be void as to a prior creditor, because voluntary or upon consideration of marriage, it shall not, for that cause, be decreed to be void as to subsequent creditors or purchasers."

COUNT III: FRAUDULENT TRANSFER (11 U.S.C. § 544; REVISED STATUTES OF ONTARIO 1990, CHAPTER F.29)

39. The Committee repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

40. The roll-up of the $3,000,000 SAFE into a secured convertible promissory note and the subsequent grant of liens on all of NI’s assets constitutes a fraudulent conveyance under 11 U.S.C. § 544(b)(1) of the Bankruptcy Code and Ontario’s Fraudulent Conveyances Act.

41. **Fraudulent Conveyance Under 11 U.S.C. § 544(b)(1):** 11 U.S.C. § 544(b)(1) allows the bankruptcy trustee or the Official Committee of Unsecured Creditors to avoid any transfer of the debtor's interest in property that is voidable under applicable state law (in this case, Ontario law) by an unsecured creditor. Here, the Committee seeks to avoid the transfer of liens on NI's assets to Ingredion.

42. The following elements must be satisfied to show that a transfer is voidable under § 544(b)(1): (i) a transfer of an interest of the debtor in property; (ii) that is voidable under applicable state (or foreign) law; (iii) by a creditor holding an allowable unsecured claim.

43. **Transfer of an Interest of the Debtor in Property:** The roll-up of the $3,000,000 SAFE into a secured convertible promissory note and the subsequent granting of liens on all of NI’s assets constitute a transfer of the debtor's interest in property. Before this transaction, the $3,000,000 SAFE was an equity instrument, meaning Ingredion had no secured interest in NI’s assets. After the transaction, Ingredion’s position was converted into secured debt, which gave Ingredion priority over other creditors by granting liens on the Debtor's assets.

44. **Voidable Under Applicable Law: Ontario's Fraudulent Conveyances Act:** Ontario's Fraudulent Conveyances Act (FCA), R.S.O. 1990, c. F.29,[6] defines fraudulent conveyances and allows creditors to void transfers that were made with the intent to defeat, delay, or defraud creditors. The relevant sections include:

a. **Section 2**: Every conveyance of property made with intent to defeat, hinder, delay, or defraud creditors is void as against creditors.

b. **Constructive Fraud**: Even if the transaction was not made with actual intent to defraud, a transfer may be voided if it was made without reasonably equivalent value when the debtor was insolvent or became insolvent as a result.

45. **Intent to Defeat, Delay, or Defraud Creditors:** The conversion of the SAFE into secured debt and the grant of liens to Ingredion significantly altered the nature of the relationship between NI and Ingredion, elevating Ingredion's status from that of an equity investor to a secured creditor with priority over unsecured creditors. This change in status occurred shortly before NI filed for bankruptcy, indicating that the roll-up may have been made with the intent to shield assets from other creditors and allow Ingredion to recover more than it would have as an equity holder.

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[6] The relevant portions of Ontario's Fraudulent Conveyances Act (FCA), R.S.O. 1990, c. F.29:
"Where conveyances void as against creditors

2. Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns. R.S.O. 1990, c. F.29, s. 2.

Where s. 2 does not apply

3. Section 2 does not apply to an estate or interest in real property or personal property conveyed upon good consideration and in good faith to a person not having at the time of the conveyance to the person notice or knowledge of the intent set forth in that section. R.S.O. 1990, c. F.29, s. 3.

Where s. 2 applies

4. Section 2 applies to every conveyance executed with the intent set forth in that section despite the fact that it was executed upon a valuable consideration and with the intention, as between the parties to it, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless it is protected under section 3 by reason of good faith and want of notice or knowledge on the part of the purchaser. R.S.O. 1990, c. F.29, s. 4."

46. The timing and nature of the transaction suggest that the purpose was to hinder or delay the claims of other unsecured creditors. This transaction could be viewed as a means of frustrating the ability of other creditors to collect on their claims, which is one of the primary focuses of fraudulent conveyance statutes like the FCA.

47. **Lack of Reasonably Equivalent Value**: NI's parent received less than $4,000,000 in new money in exchange for giving $7,000,000 in secured debt. Upon information and belief, Ingredion did not even advance the $4,000,000 in new money but instead got certain credits for non-monterary contributions. The Committee therefore also seeks to avoid all amounts of Ingredion's secured claim that are not based on new money.

48. This constitutes a lack of reasonably equivalent value. This lack of equivalent value raises the possibility that the transaction was fraudulent under the FCA's constructive fraud provisions. "[T]ransfers made for the benefit of third parties do not constitute reasonably equivalent value, such as when a debtor-subsidiary makes a transfer resulting in consideration for the parent corporation." *FBI Wind Down Inc. Liquidating Tr. v. All Am. Poly Corp. (In re FBI Wind Down, Inc.)*, 581 B.R. 116, 148 (Bankr. D. Del. 2018). "The directors of a wholly-owned subsidiary cannot allow the subsidiary to be plundered for the parent company's benefit." *Burtch v. Seaport Capital, LLC (In re Direct Response Media, Inc.)*, 466 B.R. 626, 649 (Bankr. D. Del. 2012) citing *RSL COM PRIMECALL, INC. v. Beckoff*, 2003 Bankr. LEXIS 1635, 2003 WL 22989669, at *13 (Bankr. S.D.N.Y. 2003).

49. **Insolvency**: NI was either insolvent at the time of the roll-up or became insolvent as a result of the additional secured debt. The company's financial distress prior to the bankruptcy suggests that the Debtor was struggling to meet its obligations and that the roll-up may have worsened its financial position by encumbering all of its assets with new secured debt.

50. **By a Creditor Holding an Allowable Unsecured Claim:** The unsecured creditors of NI would have been directly harmed by this transaction, as the granting of liens to Ingredion diminished the pool of assets available for recovery by these creditors. The Plaintiff, acting on behalf of the estate, represents the interests of such creditors.

51. **Fraudulent Conveyance Under Ontario's Fraudulent Conveyances Act:** The Ontario Fraudulent Conveyances Act operates similarly to the U.S. fraudulent transfer laws and allows creditors to void transfers that were made with intent to defraud or hinder creditors.

52. **Intent to Defraud or Hinder Creditors:** Ingredion's conversion of its equity position into secured debt and the subsequent grant of liens on all of NI's assets suggest that the Debtors intended to hinder or delay the claims of unsecured creditors. By granting Ingredion priority in this manner, the Debtors deprived other creditors of access to assets that could have been used to satisfy their claims.

53. **Constructive Fraud (Lack of Equivalent Value and Insolvency):** Even if actual intent to defraud cannot be established, the transaction may still be voidable as a constructive fraud because: (i) the Debtor did not receive reasonably equivalent value in exchange for the grant of liens, as the Debtors exchanged a $7,000,000 secured claim for less than $4,000,000 in new money. Upon information and belief, Ingredion did not even advance $4,000,000 in new money but instead got certain credits for non-monetary contributions. The Committee therefore also seeks to avoid all amounts of Ingredion's secured claim that are not based on new money.

54. NI was insolvent or became insolvent as a result of the transaction, which supports the conclusion that the transaction is voidable under Ontario's FCA.

55. **Conclusion:** The roll-up of the $3,000,000 SAFE into a secured convertible promissory note and the subsequent grant of liens on all of NI's assets constitutes a fraudulent conveyance under both 11 U.S.C. § 544(b)(1) and Ontario's Fraudulent Conveyances Act.

a. **Under U.S. law (11 U.S.C. § 544(b)(1))**, the transfer is voidable because it involved a transfer of the Debtor's interest in property (the liens) that was made with intent to hinder creditors or was constructively fraudulent due to the lack of reasonably equivalent value and the Debtor's insolvency.

b. **Under Ontario law (Fraudulent Conveyances Act)**, the transfer was made with the intent to hinder or delay creditors and is voidable as a fraudulent conveyance. Even if actual intent is not proven, the transaction can still be voided because NI did not receive reasonably equivalent value and was insolvent at the time.

56. Both legal frameworks support the conclusion that the transfer of liens should be avoided and the value of the transferred property recovered for the benefit of the estate.

COUNT IV: AVOIDANCE OF PREFERENTIAL TRANSFER (11 U.S.C. § 547)

57. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as though fully set forth herein.

58. 11 U.S.C. § 547(b) allows a trustee or representative of the estate to avoid transfers of interests in the debtor's property made on account of antecedent debts, benefiting a creditor, made while the debtor was insolvent, and within specific timeframes, particularly when the transfer benefits an insider.

59. **Antecedent Debt:** On or about May 20, 2022, Solar Biotech and Ingredion entered into a Simple Agreement for Future Equity (SAFE) for $3,000,000. This SAFE was later rolled

into a secured convertible promissory note on July 17, 2023, creating a debt owed by Solar Biotech to Ingredion.

60. **Transfer of Interest in Property:** The subsequent promissory note was accompanied by the grant of liens on substantially all of Solar Biotech's assets in favor of Ingredion, thereby transferring a secured interest in property to Ingredion, which it did not have under the initial SAFE.

61. **Insider Status:** Ingredion was an insider at the time of the transfer. Given Ingredion's close involvement with the Debtor, including the structured roll-up of its equity interest into secured debt, Ingredion's influence on the Debtor's financial decisions constituted insider conduct under 11 U.S.C. § 101(31).

62. **Insolvency:** Solar Biotech was insolvent at the time of the transfer or became insolvent as a result. The debtor's financial distress, evidenced by its bankruptcy filing shortly thereafter, supports this presumption of insolvency within the preference period.

63. **Preferential Effect:** The transfer enabled Ingredion to receive more than it would have in a Chapter 7 liquidation, as the conversion of the SAFE into secured debt prioritized Ingredion's claims above unsecured creditors, contrary to the treatment of unsecured claims in bankruptcy.

64. **Timeframe of Transfer:** The transfer of liens occurred within one year before the Debtor's bankruptcy filing, falling within the preferential period applicable to insider transactions under 11 U.S.C. § 547(b)(4)(B).

65. **Conclusion:** Under 11 U.S.C. § 547(b), the roll-up of the $3,000,000 SAFE into a secured convertible promissory note and subsequent lien on all assets qualifies as an avoidable preferential transfer to an insider. The transfer disadvantaged other unsecured creditors by

elevating Ingredion's repayment priority. Thus, the Official Committee of Unsecured Creditors seeks avoidance of the transfer for the benefit of the estate.

COUNT V: RECHARACTERIZATION OF $3,000,000 OF INGREDION’S CLAIM AS EQUITY (11 U.S.C. § 105)

66. The Committee repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

67. The SAFE between Ingredion and the Debtor from May 20, 2022, was not intended as a loan but as an equity investment, as evidenced by its lack of repayment terms, interest obligations, and its conversion feature upon future equity financing or liquidity events. Ingredion's $3,000,000 claim originating from the SAFE should be recharacterized as equity based on the intent of the parties, the nature of the SAFE, and the surrounding circumstances:

a. Recharacterization is an equitable doctrine that allows a court to determine whether a purported loan is, in substance, a capital contribution of equity. The eleven factors courts have considered in recharacterization cases are: “(1) the names given to the instruments, if any, evidencing the indebtedness; (2) the presence or absence of a fixed maturity date and schedule of payments; (3) the presence or absence of a fixed rate of interest and interest payments; (4) the source of repayments; (5) the adequacy or inadequacy of capitalization; (6) the identity of interest between the creditor and the stockholder; (7) the security, if any, for the advances; (8) the corporation's ability to obtain financing from outside lending institutions; (9) the extent to which the advances were subordinated to the claims of outside creditors; (10) the extent to which the advances were used to acquire capital assets; and (11) the presence or absence of a sinking fund to provide repayments.” The Third Circuit has held that recharacterization is a question of fact and involves “an overarching inquiry” into “whether the parties called an instrument one thing when in fact they intended it as something else.” “That intent may be inferred from what the parties say in their contracts, from what they do through their actions, and from the economic reality of the surrounding circumstances. Answers lie in facts that confer context case-by-case.”

68. *AIG Fin. Prods. Corp. v. Arthurs (In re AIG Fin. Prods. Corp.)*, 660 B.R. 603, 612-13 (Bankr. D. Del. 2024) quoting *Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448 (3d Cir. 2006).

69. **The names given to the instruments evidencing the indebtedness:** The instrument is explicitly named a “Simple Agreement for Future Equity” (SAFE), which strongly

indicates that the parties intended it as an equity investment rather than debt. The term “equity” in the name supports the conclusion that the agreement was designed to provide Ingredion with an equity interest in the company rather than creating a debtor-creditor relationship.

70. **The presence or absence of a fixed maturity date and schedule of payments:** There is no fixed maturity date or schedule of payments in the SAFE. Ingredion does not have the right to demand repayment of the $3,000,000 investment. Instead, the SAFE is designed to convert into equity upon certain events, such as an equity financing or a liquidity event. This absence of repayment terms is characteristic of an equity investment rather than debt.

71. **The presence or absence of a fixed rate of interest and interest payments:** The SAFE does not provide for a fixed rate of interest or regular interest payments to Ingredion. Debt instruments typically include interest obligations, but the SAFE lacks this feature, further indicating that the investment was intended to be treated as equity.

72. **The source of repayments:** The SAFE does not contemplate any form of repayment akin to debt. Instead, the instrument provides for the issuance of shares in Solar Biotech upon the occurrence of a triggering event, such as an equity financing or liquidity event. Ingredion’s return on investment is tied to the success of Solar Biotech, much like an equity holder’s interest in the company’s future growth.

73. **The adequacy or inadequacy of capitalization:** Ingredion’s $3,000,000 SAFE investment appears to have been made to provide working capital for Solar Biotech, indicating that the Debtors may have needed additional funds. Courts often look at whether the company was adequately capitalized at the time of the investment. If the Debtors needed equity contributions to sustain operations, this factor weighs in favor of recharacterizing the SAFE as equity.

74. **The identity of interest between the creditor and the stockholder:** Ingredion, through the SAFE, would gain an ownership interest in Solar Biotech once the SAFE converts into equity. The nature of this relationship aligns with equity rather than debt because Ingredion's interest depends on the future success of the company. This aligns Ingredion's interest with the stockholders' interest, as they both stand to benefit from the company's profitability.

75. **The security, if any, for the advances:** The SAFE does not provide Ingredion with any secured interest in the assets of Solar Biotech. Debt instruments typically involve collateral or security interests to protect the lender in case of default, but the SAFE does not offer such protections. This lack of security further supports the characterization of the SAFE as an equity instrument.

76. **The corporation's ability to obtain financing from outside lending institutions:** If Solar Biotech was unable to obtain traditional financing from banks or other lending institutions, it may have turned to equity investments such as the SAFE to raise capital. This factor supports the argument that the SAFE was intended to be an equity contribution, especially if the company was undercapitalized or viewed as a high-risk borrower by lenders.

77. **The extent to which the advances were subordinated to the claims of outside creditors:** The SAFE explicitly subordinates Ingredion's rights to receive proceeds in a dissolution event to those of creditors. Ingredion's rights are junior to outstanding debt obligations, and this subordination of the SAFE aligns it more closely with equity interests, which are typically paid after creditors in the event of liquidation.

78. **The extent to which the advances were used to acquire capital assets:** The Committee has no direct knowledge of what the advances were used for. However, the SAFE was likely used to fund Solar Biotech's operations and growth rather than to pay down existing debt.

This type of capital infusion is consistent with an equity contribution aimed at providing the company with necessary resources for expansion rather than a loan repayment obligation.

79. **The presence or absence of a sinking fund to provide repayments:** The SAFE does not include a sinking fund or any other mechanism for repayment, which is characteristic of debt instruments designed to ensure that funds are available for future repayments. The absence of a sinking fund is a strong indicator that the parties did not intend the $3,000,000 to function as debt.

80. **Conclusion:** Based on the analysis of these eleven factors, the SAFE between Solar Biotech and Ingredion exhibits numerous characteristics of an equity investment and lacks the hallmarks of a traditional loan or debt instrument. The intent of the parties, as reflected in the terms of the agreement and the economic reality of the transaction, indicates that the $3,000,000 investment was meant to provide Ingredion with an equity interest in Solar Biotech rather than creating a debt obligation. Therefore, recharacterization of the SAFE as equity is appropriate in this case.

81. Recharacterization is warranted to prevent Ingredion from unjustly receiving the treatment of a secured creditor when it initially made an equity investment in the Debtor.

COUNT V: SUBORDINATION OF INGREDION'S CLAIM (11 U.S.C. § 510(b))

82. Plaintiff incorporates by reference all preceding paragraphs of this Complaint as though fully set forth herein.

83. 11 U.S.C. § 510(b) mandates the subordination of claims arising from the rescission of a purchase or sale of a security of the debtor, for damages arising from the purchase or sale of such security, or for reimbursement or contribution allowed under section 502 on account of such a claim.

84. **Origination of the $3,000,000 SAFE**: On or about May 20, 2022, Ingredion entered into a Simple Agreement for Future Equity (SAFE) with Solar Biotech, investing $3,000,000 with the expectation of future equity in the Debtor. This arrangement was structured as an equity investment, anticipating Ingredion's ownership stake in Solar Biotech in exchange for the funds provided.

85. **Roll-up into Secured Debt**: On July 17, 2023, the $3,000,000 SAFE was rolled up into a secured convertible promissory note as part of a $7,000,000 total secured debt, with Ingredion being granted liens on all assets of Solar Biotech. This conversion altered Ingredion's initial equity investment, elevating it to secured debt status, with priority over unsecured creditors in the event of liquidation. Upon information and belief, Ingredion did not even advance $4,000,000 in new money but instead got certain credits for non-monetary contributions.

86. **Claim Arising from a Purchase or Sale of Security**: Ingredion's initial SAFE was a form of equity financing, representing an agreement to purchase an interest in the company. The restructuring of this equity investment into secured debt does not change the fact that Ingredion's claim arose from its initial equity investment. According to 11 U.S.C. § 510(b), claims based on equity interests are subordinated to all general unsecured claims, preserving the absolute priority rule in bankruptcy and ensuring that creditors do not convert equity risk into secured claims at the expense of other creditors. "Section 510(b) is not limited to shareholder claims." *In re Touch Am. Holdings, Inc.*, 381 B.R. 95, 103-04 (Bankr. D. Del. 2008) citing *Rombro v. Dufrayne* (In re Med Diversified, Inc.), 461 F.3d 251, 258 (2d Cir. 2006) "[A] claimant need not be an actual shareholder for his claim to be covered by the statute." Id. quoting *In re Walnut Equipment Leasing Co.*, 1999 Bankr. LEXIS 1626, 1999 WL 1271762, *6 (Bankr.E.D.Pa. Dec. 28, 1999).

87. **Claim Related to Equity Investment**: The $3,000,000 SAFE represents a claim arising from Ingredion's initial equity interest in Solar Biotech. Section 510(b) mandates subordination of claims that are linked to the purchase or sale of a debtor's securities. Although the SAFE was subsequently rolled into a secured debt position, the origin of Ingredion's claim remains grounded in its equity transaction with the Debtor. "A significant test for capital contribution is whether a disinterested lender would have made such loans at the same time." *Official Comm. of Unsecured Creditors of Interstate Cigar Co. v. Bambu Sales* (In re Interstate Cigar Co.), 182 B.R. 675, 679 (Bankr. E.D.N.Y. 1995), citing *In re N & D Properties, Inc.* 799 F.2d 726, 733 (11th Cir. 1986); and *Montclair Inc. v. Commissioner of Internal Revenue*, 318 F.2d 38, 40 (5th Cir. 1963); Diasonics, Inc., 121 Bankr. at 631. As the Debtors describe in the First Day Declaration, "[t]he Debtors recently lost a major customer who provided roughly 80% in revenue ($400,000.00 in monthly revenue) of the Debtor's revenue over the last two years… Due to customer's decision to cease business with the Debtors, the Debtors have suffered a major loss of revenue, which has greatly hampered the Debtors' liquidity situation [and] [t]he Debtors were unable to close its most recent round of seed funding." First Day Declaration, p. 3 ¶¶ 9-11. It appears obvious that not only were other potential investors not interested in acquiring the Debtors at the time of the $7,000,000 promissory note, but very likely that other potential lenders would have been out of reach as well. Therefore, it also appears that Ingredion only extended the loan because it already had exposure to the Debtors' risks because of the SAFE note. This makes the loan much more akin to a injection of equity rather than a loan, and the characterization of the funds as a secured loan was done as a prophylactic measure in the event of bankruptcy. Either way, the transaction relates to an exchange of securities because it involves a grant of liens in the Debtors' assets and roll-up of Ingredion's SAFE note.

88. **Preservation of Absolute Priority**: Section 510(b) is designed to prevent equity holders from avoiding the risks inherent in their equity position by recharacterizing equity interests as debt in anticipation of a debtor's insolvency. Ingredion's attempt to elevate its equity investment to a secured debt position contravenes the principles underlying section 510(b) and justifies the subordination of its claim to the level of common equity.

89. **Policy Considerations**: Bankruptcy policy seeks to prevent "disaffected equity investors" from recouping their investments at the expense of unsecured creditors by allowing such investors to convert equity investments to debt post-insolvency. *In re Orange Cty. Nursery, Inc.*, 479 B.R. 863, 869 (Bankr. C.D. Cal. 2012). Ingredion's conversion of the SAFE into secured debt, while the Debtor was insolvent or nearing insolvency, suggests a similar attempt to circumvent the bankruptcy priority scheme, meriting subordination.

90. **Conclusion:** The $3,000,000 claim based on Ingredion's SAFE investment, rolled into secured debt status, should be subordinated under 11 U.S.C. § 510(b). Subordination is warranted to uphold the absolute priority rule and ensure that Ingredion's initial equity risk is not unjustly prioritized over unsecured creditors. The Plaintiff, therefore, seeks this Court's confirmation to subordinate Ingredion's claim consistent with bankruptcy policy and statutory mandates.

COUNT VI: EQUITABLE SUBORDINATION (11 U.S.C. § 510(c))

91. The Committee repeats and realleges the allegations contained in the preceding paragraphs as if fully set forth herein.

92. The Committee seeks the equitable subordination of all of Ingredion's pre-petition claims to those of other unsecured creditors. Pursuant to Section 510(c) of the Bankruptcy Code, "after notice and a hearing, the court may (1) under principles of equitable subordination,

subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or (2) order that any lien securing such a subordinated claim be transferred to the estate." In the Third Circuit:

> "[T]hree conditions must be satisfied before exercise of the power of equitable subordination is appropriate:" (1) "[t]he claimant must have engaged in some type of inequitable conduct;" (2) "[t]he misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage on the claimant;" and (3) "[e]quitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy [Code]."

Shubert v. Lucent Techs. Inc (In re Winstar Communs., Inc.), 554 F.3d 382, 411 (3d Cir. 2009) quoting *Benjamin v. Diamond (In re Mobile Steel Co.)*, 563 F.2d 692, 699-700 (5th Cir. 1977).

93. Equitable subordination under 11 U.S.C. § 510(c) allows a bankruptcy court to subordinate a creditor's claim if the creditor has engaged in inequitable conduct that harms other creditors or confers an unfair advantage on the claimant. Courts apply a three-pronged test to determine whether equitable subordination is appropriate. Below is an analysis of Ingredion's actions under this standard, arguing for the equitable subordination of its claim.

94. **Inequitable Conduct by Ingredion:** For equitable subordination to be appropriate, the first requirement is that the claimant must have engaged in some form of inequitable conduct. Inequitable conduct typically includes actions such as fraud, misrepresentation, breach of fiduciary duty, or any conduct that disadvantages other creditors.

a. **Misrepresentation of the SAFE as Debt**: Ingredion entered into a Simple Agreement for Future Equity (SAFE) on May 20, 2022, which was, by its terms, an equity instrument. The SAFE was designed to give Ingredion the right to convert its $3,000,000 investment into equity under certain conditions. However, when the Debtors and Ingredion rolled up the SAFE into a secured convertible promissory note on July 17, 2023, Ingredion effectively misrepresented an equity investment as secured debt, seeking an unfair advantage over other unsecured creditors.

b. **Collusion with the Debtors**: Ingredion and the Debtors failed to properly disclose the nature of the SAFE as an equity interest in their bankruptcy filings. Further exemplifying the lack of disclosure – the Debtors initially sought a 3-1 roll-up of Ingredion's prepetition debt in the post-petition DIP facility, and named Ingredion as the stalking horse bidder with the right to credit bid all its prepetition obligations including the amounts rolled up from the SAFE. This concealment of the true nature of Ingredion's pre-petition claim as equity rather than debt allowed Ingredion to wrongfully position itself as a secured creditor, elevating its priority over unsecured creditors without full transparency.

c. **Improper Elevation to Secured Creditor**: By converting the SAFE into a secured note and obtaining liens on all of the Debtors' assets, Ingredion was able to secure a disproportionate claim on the Debtors' estate, effectively elevating an equity position into a senior secured creditor status without providing additional value to the Debtors. This inequitable conduct unfairly disadvantaged other creditors who would now receive less in distributions.

95. **Injury to Creditors or Unfair Advantage to the Claimant:** The second prong requires that the inequitable conduct results in an injury to the creditors or confers an unfair advantage on the claimant. The harm need not be intentional, but the claimant must have obtained an unjust benefit or caused damage to the bankruptcy estate or other creditors.

a. **Securing Priority Over Unsecured Creditors**: By rolling up the $3,000,000 SAFE into secured debt, Ingredion was able to secure its claim against all of the Debtors' assets**.** This roll-up essentially shifted an equity interest, which typically ranks lower in the bankruptcy priority scheme, into a senior secured debt position. Ingredion's newly secured position gave it priority over all unsecured creditors, who now stand to receive diminished recoveries from the Debtors' assets.

b. **Depriving Other Creditors of Assets**: The roll-up of the SAFE and the subsequent grant of liens on the Debtors' assets diminishes the available estate for unsecured creditors. Had Ingredion's $3,000,000 claim remained equity, other creditors could have had greater access to the Debtors' assets for recovery. Instead, Ingredion's secured status, achieved through inequitable conduct coupled with deficient disclosures, conferred an unfair advantage that directly harmed other creditors.

c. **Injury to Creditor Pool**: Ingredion's actions led to a direct injury to the pool of unsecured creditors, reducing the likelihood of their full recovery. By misrepresenting the SAFE, Ingredion positioned itself in a way that depleted the available assets for distribution to unsecured creditors, creating an imbalance in the distribution process.

96. **Equitable Subordination is Consistent with the Bankruptcy Code:** The third prong requires that subordinating the claim be consistent with the provisions of the Bankruptcy Code. Equitable subordination under § 510(c) is meant to ensure fairness and equity in the distribution of assets. Courts have broad discretion to subordinate claims where necessary to preserve equity and fairness within the framework of the Bankruptcy Code.

d. **Preservation of Fairness and Equity**: The Bankruptcy Code prioritizes the fair treatment of creditors, ensuring that secured claims are genuine and that unsecured creditors receive a fair share of the debtor's estate. Subordinating Ingredion's claim would prevent the unjust elevation of an equity interest to secured creditor status, aligning with the Code's goal of equitable distribution.

e. **Avoiding Unjust Enrichment**: The Bankruptcy Code does not permit claimants to use inequitable conduct to elevate their position over others unfairly. By subordinating Ingredion's claim, the Court would correct the mischaracterization of an equity investment as debt, ensuring that Ingredion is not unjustly enriched at the expense of other creditors

f. **Consistency with Recharacterization and Fraudulent Transfer Provisions**: Subordinating Ingredion's claim is consistent with other provisions of the Bankruptcy Code, including those governing recharacterization (which supports treating the SAFE as equity) and fraudulent transfers (which addresses the roll-up of equity into secured debt). All these provisions support ensuring fairness and transparency in the distribution of assets.

97. **Conclusion:** Given the facts and the application of the three-prong test, Ingredion's claim should be equitably subordinated under 11 U.S.C. § 510(c) because:

a. **Inequitable Conduct**: Ingredion engaged in inequitable conduct by misrepresenting its equity investment as secured debt and colluding with the Debtors to conceal the nature of the SAFE from the Court and other creditors.

b. **Unfair Advantage and Injury to Creditors**: Ingredion's actions resulted in an unfair advantage, elevating its claim to secured creditor status at the expense of unsecured creditors, who were harmed by the reduction in available assets for distribution.

c. **Consistency with Bankruptcy Code**: Subordinating Ingredion's claim is consistent with the goals of the Bankruptcy Code, which seeks fairness and equity in the treatment of all creditors and prevents the unjust enrichment of parties engaging in inequitable conduct.

98. Ingredion, in collusion with the Debtors, engaged in inequitable conduct by concealing the nature of the SAFE and failing to disclose its equity-like characteristics in any of

the Debtors' filings, including those seeking to roll-up Ingredion's prepetition debt into the post-petition DIP **facility**. Ingredion's actions have unfairly harmed the unsecured creditors of the Debtors by artificially inflating its secured claim and reducing the assets available for distribution to other creditors.

99. Subordinating Ingredion's entire claim to that of unsecured creditors would restore fairness and align the distribution of the Debtors' assets with the principles of equity and the Bankruptcy Code.

PRAYER FOR RELIEF

WHEREFORE, the Committee respectfully requests that this Court:

1. Avoid the liens and obligations granted by both Debtors to Ingredion in connection with the July 17, 2023, secured convertible promissory note under 11 U.S.C. § 548;
2. Avoid the liens and obligations granted by Solar Biotech, Inc. to Ingredion in connection with the July 17, 2023, secured convertible promissory note under 11 U.S.C. § 544 and Virginia's Uniform Voidable Transactions Act;
3. Avoid the liens and obligations granted by Noblegen Inc. to Ingredion in connection with the July 17, 2023, secured convertible promissory note under 11 U.S.C. § 544 and the Ontario Fraudulent Conveyances Act;
4. Avoid the transfer of liens on all assets of Solar Biotech to Ingredion as a preferential transfer under 11 U.S.C. § 547(b);
5. Preserve the avoided transfer for the benefit of the estate pursuant to 11 U.S.C. §§ 550 and 551;
6. Recharacterize Ingredion's $3,000,000 pre-petition claim originating from the SAFE as equity;

7. Equitably subordinate Ingredion's pre-petition claims under 11 U.S.C. § 510(c); and

8. Grant such other and further relief as the Court deems just and proper.

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Wilmington, Delaware

ESBROOK P.C.

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