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

In re:	Chapter 11
HARVEST SHERWOOD FOOD DISTRIBUTORS, INC., *et al*.,[1]	Case No. 25-80109 (SGJ)
Debtors.	(Jointly Administered)

LIMITED REPLY AND JOINDER OF DIP AGENT IN SUPPORT OF DEBTORS' DIP FINANCING MOTION

JPMorgan Chase Bank, N.A., as the administrative agent (the "Agent") under the DIP Credit Agreement and the Prepetition Credit Agreement, by and through its undersigned counsel, respectfully submits this joinder to the *Debtors' (I) Omnibus Reply in Further Support of (A) the*

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are Del Mar Holding LLC (9207), Del Mar Acquisition Inc. (8866), Surfliner Holdings, Inc. (9456), Harvest Sherwood Food Distributors, Inc. (8995), Harvest Meat Company, Inc. (9136), LAMCP Capital, LLC (N/A), Western Boxed Meats Distributors, Inc. (8735), Cascade Food Brokers, Inc. (1389), Hamilton Meat, LLC (6917), SFD Acquisition LLC (8995), SFD Transportation Corp. (1551), Sherwood Food Distributors, L.L.C. (4375), and SFD Company LLC (1175). The Debtors' service address is c/o Epiq Corporate Restructuring, LLC 10300 SW Allen Blvd., Beaverton, OR 97005.

Debtors' Postpetition Financing and Use of Cash Collateral and (B) Other Second Day Motions; and (II) Objection to Motion to Continue Final Hearing on the Debtors' Postpetition Financing and Use of Cash Collateral filed contemporaneously herewith (the "Debtors' Reply") and limited reply in support of entry of the proposed order approving the DIP Facility on a final basis (the "Proposed Final Order"),[2] and respectfully submits as follows:

LIMITED REPLY

1. For more than seven months, the Agent and the Prepetition Lenders / DIP Lenders (collectively, the "Secured Parties") have engaged diligently with the Debtors to provide access to robust financing for both the Debtors' prepetition liquidation and these chapter 11 cases. The Secured Parties could have pulled the proverbial plug in October of 2024 when the Debtors defaulted under the Prepetition Credit Agreement. But they did not. Instead, the Secured Parties agreed to two prepetition amendments to the Prepetition Credit Agreement over the course of five months and subsequently committed to provide more than $25 million of additional financing (via the DIP Facility) to ensure the Debtors can remain administratively solvent in these chapter 11 cases for at least 18 months.

2. The goal of the Secured Parties is to provide the Debtors with a long runway and the best framework from which the Debtors can liquidate their remaining assets, collect on accounts receivable, and actively and aggressively pursue valuable litigation claims for the benefit of all the Debtors' stakeholders. The hope is that the proceeds from such efforts will not just yield

[2] Capitalized terms used but not defined herein have the meanings given to them in the Debtors' Reply, the Proposed Final Order, or the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Senior Secured Liens and Provide Claims with Superpriority Administrative Expense Status, and (D) Grant Adequate Protection to the Prepetition Secured Parties; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 12] (the "DIP Motion").

a full recovery for the Secured Parties but also meaningful recoveries for the remainder of the Debtors' creditors.

3. To that end, the Secured Parties and the Debtors engaged in protracted, arm's-length, and good-faith negotiations on the terms of the DIP financing and use of the Secured Parties' Cash Collateral. Those negotiations resulted in a package deal that is reflected in the DIP Facility before this Court. The Secured Parties' agreement to extend the DIP Facility and permit the consensual use of Cash Collateral is based on that package deal, including the Roll-Up DIP Loans and the terms and other protections afforded to the Secured Parties. The Debtors determined, in their business judgment, that the terms of this package deal are in the best interests of the Debtors and their estates as they increase the likelihood of maximizing the recovery for all of the Debtors' stakeholders.[3] As stated above and worth noting again, without DIP financing, all of the Debtors' stakeholders stand to lose. And there is no alternative DIP financing available.

4. Against that backdrop, it is not surprising that the Proposed Final Order has the support of the Creditors' Committee. Since the appointment of counsel for the Creditors' Committee, the Debtors, the DIP Secured Parties, and the Creditors' Committee have proactively engaged with each other, resulting in a global resolution of the Creditors' Committee's issues with respect to the DIP Facility. That global resolution is reflected in the Proposed Final Order.

5. Despite the broad support for the Proposed Final Order, the United States Trustee and Sprouts have maintained their objections to the Proposed Final Order and Sprouts has also waged a multitiered litigation-heavy attack on these chapter 11 cases. Neither party is a creditor. In fact, Sprouts is the opposite: it is the defendant from which the Debtors are seeking to recover

[3] *See Declaration of Eric Kaup in Support of Debtors' Chapter 11 Petitions, Debtor in Possession Financing, and First Day Pleadings* [Docket No. 14] at ¶¶ 62-70.

tens of millions of dollars for goods delivered prepetition. It is, thus, no wonder that Sprouts is seeking to have the DIP Facility denied—such denial would likely lead to a conversion of these cases to chapter 7 and impede the ability to effectively litigate against them.

6. The fundamental legal problem for Sprouts and the United States Trustee, however, is that there is nothing in the Proposed Final Order that warrants its denial. The DIP Facility is the only financing available for these chapter 11 cases, its terms are consistent with the market for similar financings, and it is the product of hard-fought and arm's-length negotiations between the Debtors and the Secured Parties.

I. THE ROLL UP IS REASONABLE AND APPROPRIATE IN THE CONTEXT OF A LIQUIDATING CHAPTER 11

7. While Sprouts asserts that approval of the Roll-Up DIP Loans would be "radical relief," Sprouts Objection ¶ 22, the evidence from the market undermines that assertion. Indeed, courts in this circuit routinely approve roll ups. *See, e.g.*, *In re TGI Friday's Inc.,* et al., Case No. 24-80069 (SGJ) (Bankr. N.D. Tex. Dec. 4, 2024) [Docket No. 291]; *In re KidKraft, Inc.,* et al., Case No. 24-80045 (MVL) (Bankr. N.D. Tex. June 24, 2024) [Docket No. 237]; *In re CiCi's Holdings, Inc.,* et al., Case No. 21-30146 (SGJ) (Bankr. N.D. Tex. Feb. 18, 2021) [Docket No. 130]; *In re Tuesday Morning Corp.,* et al., Case No. 20-31476 (HDH) (Bankr. N.D. Tex. July 10, 2020) [Docket No. 429]; *In re Wellpath Holdings Inc.,* et al., Case No. 24-90533 (ARP) (Bankr. S.D. Tex. Dec. 11, 2024) [Docket No. 388]; *In re Sungard AS New Holdings, LLC,* et al., Case No. 22-90018 (DRJ) (Bankr. S.D. Tex. May 11, 2022) [Docket No. 220]; *In re Sanchez Energy Corp., et al.*, Case No. 19-34508 (MI) (Bankr. S.D. Tex. Jan. 22, 2020) [Docket No. 865].

8. Courts also regularly approve the full roll up of prepetition debt (especially asset-based loans such as the Prepetition Loans) even where the ratio of rolled-up prepetition obligations to new-money commitments exceeds the three-to-one ratio under the DIP Facility here. *See, e.g.,*

In re EPIC! CREATIONS, INC., et al., Case No. 24-11161 (JTD) (Bankr. D. Del. Nov. 20, 2024) [Docket No. 313] (approving 7:1 ratio of rolled-up prepetition obligations to new-money commitments); *In re Edgio Inc.,* et al., Case No. 24-11985 (KBO) (Bankr. D. Del. Oct. 15, 2024) [Docket No. 230] (approving 6.6:1 ratio of rolled-up prepetition obligations to new-money commitments); *In re Capstone Green Energy Corp.,* et al., Case No. 23-11634 (LSS) (Bankr. D. Del. Nov. 23, 2023) [Docket No. 119] (approving 4:1 ratio of rolled-up prepetition obligations to new-money commitments); *In re GNC Holdings, Inc.,* et al., Case No. 20-11662 (KBO) (Bankr. D. Del. July 21, 2020) [Docket No. 502] (approving 3.75:1 ratio of rolled-up prepetition obligations to new-money commitments); *In re MLCJR LLC*, et al., Case No. 23-90324 (CML) (Bankr. S.D. Tex. June 13, 2023) [Docket No. 434] (approving 3.6:1 ratio of rolled-up prepetition obligations to new-money commitments).

9. Finally, courts have, in numerous instances, approved comparable roll ups for liquidating debtors. *See, e.g., In re Edgio Inc.,* et al., Case No. 24-11985 (KBO) (Bankr. D. Del., Oct. 15, 2024) [Docket No. 230] (approving 6.6:1 ratio of rolled-up prepetition obligations to new-money commitments for debtors who pursued 363 sales followed by chapter 11 plan of liquidation); *In re Sientra Inc.,* et al., Case No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) [Docket No. 168] (approving 3:1 ratio of rolled-up prepetition obligations to new-money commitments for debtors who pursued 363 sales followed by chapter 11 plan of liquidation); *In re MLCJR LLC*, et al., Case No. 23-90324 (CML) (Bankr. S.D. Tex. June 13, 2023) [Docket No. 434] (approving 3.6:1 ratio of rolled-up prepetition obligations to new-money commitments for debtors who pursued 363 sales and then converted to chapter 7); *In re Pier 1 Imports, Inc.,* et al., Case No. 20-30805 (KRH) (Bankr. E.D. Va. Mar. 13, 2020) [Docket No. 342] (approving 3.1:1 ratio of

rolled-up prepetition obligations to new-money commitments for debtors who pivoted to a chapter 11 plan of liquidation after failing to reorganize).

10. Contrary to the positions of the United States Trustee and Sprouts, the Roll-Up DIP Loans do not enhance the priority of the Prepetition Secured Parties vis-à-vis other creditor constituencies. Because the Prepetition Secured Parties already have first-priority liens on all of the Debtors' assets and no other creditors do, the Roll-Up DIP Loans do not enable the Prepetition Secured Parties to jump the priority of other prepetition secured creditors. Furthermore, the roll up does not prejudice any party's challenge rights, as the Roll-Up DIP Loans remain subject to such challenge rights.

11. Additionally, the common concern that a roll up will be used to short circuit the chapter 11 reorganization plan process is not present here. Given the Debtors are not reorganizing, there is no way in which the DIP Loans can be tied to exit financing or a rights offering. The roll up, therefore, cannot be used as a tool to insulate the prepetition lenders from a cram up. With no Debtor reorganizing, there cannot be a new debt instrument that the Secured Parties are forced to accept as part of a cram up. In short, the Roll-Up DIP Loans do not predetermine or distort the priorities of the Bankruptcy Code, do not impede or impair any challenge rights, and are an appropriate protection for DIP lenders.

12. Finally, while it is true the Debtors are not operating, they are nonetheless using their best efforts to maximize the value of the estates for all stakeholders—a fundamental duty of debtors in possession as estate fiduciaries. The Debtors have determined, in their business judgment and consistent with their duties, that the entirety of the DIP Facility, including the roll up (an essential term of the Secured Parties), will maximize the value of the estates by providing the funding needed to collect the remaining accounts receivable, sell the remaining assets, and

litigate with various parties (including Sprouts). The Debtors have made the reasonable and appropriate decision that this liquidation process funded by the DIP Facility and use of Cash Collateral will provide the highest likelihood of recovery to all of their stakeholders. The United States Trustee and Sprouts should not be allowed to substitute their business judgment for that of the Debtors.

II. THE REMAINDER OF THE OBJECTIONS ARE ALSO MERITLESS

13. The remainder of the United States Trustee's and Sprouts' objections takes aim at the granting of DIP Liens on Avoidance Proceeds, and the waivers of the right to surcharge collateral under section 506(c) of the Bankruptcy Code, the "equities of the case" exception under section 552(b) of the Bankruptcy Code, and the equitable doctrine of marshaling. *See* Sprouts Objection ¶¶ 23-28; UST Objection ¶¶ 22-25. These are the Debtors' rights to negotiate and waive. *See, e.g.*, *In re MPM Silicones, LLC*, Case No. 14-22503 (RDD) (Bankr. S.D.N.Y. May 27, 2014) [Docket No. 270], Hr'g Tr. 92:25 – 93:2 (approving a waiver of marshaling and noting that "[g]enerally speaking, this is the debtor's right to negotiate or secured creditors' right to insist on"); *see also, generally*, *Underwriters Ins. Co. v. Union Planters Bank N.A.*, 530 U.S. 1, 6 (2000).

14. Courts in this circuit routinely approve the granting of DIP liens on the proceeds of avoidance actions, and waivers of the right to surcharge collateral under section 506(c) of the Bankruptcy Code, the "equities of the case" exception under section 552(b) of the Bankruptcy Code, and the equitable doctrine of marshaling. *See, e.g., In re TGI Friday's Inc.,* et al., Case No. 24-80069 (SGJ) (Bankr. N.D. Tex. Dec. 4, 2024) [Docket No. 291] (granting liens on avoidance proceeds and authorizing debtors to waive the right to surcharge collateral and the equitable doctrine of marshalling); *In re Buca Texas Restaurants, L.P.,* et al., Case No. 24-80058 (SGJ) (Bankr. N.D. Tex. Aug. 30, 2024) [Docket No. 206] (same); *In re KidKraft, Inc.,* et al., Case No. 24-80045 (MVL) (Bankr. N.D. Tex. June 24, 2024) [Docket No. 237] (same); *In re CiCi's*

Holdings, Inc., et al., Case No. 21-30146 (SGJ) (Bankr. N.D. Tex. Feb. 18, 2021) [Docket No. 130] (same); *In re Invacare Corp.,* et al., Case No. 23-90068 (CML) (Bankr. S.D. Tex. Mar. 8, 2023) [Docket No. 298]; *In re Avaya Inc.*, et al., Case No. 23-90088 (DRJ) (Bankr. S.D. Tex. Mar. 7, 2023) [Docket No. 278] (same); *In re Party City Holdco Inc.*, et al., Case No. 23-90005 (DRJ) (Bankr. S.D. Tex. Mar. 3, 2023) [Docket No. 587] (same); *In re Talen Energy Supply, LLC*, et al., Case No. 22-90054 (MI) (Bankr. S.D. Tex. June 17, 2022) [Docket No. 588] (same); *In re Fieldwood Energy LLC*, et al., Case No. 20-33948 (MI) (Bankr. S.D. Tex. Sept. 15, 2020) [Docket No. 346] (same).

15. Such protections are appropriate in the context of a liquidation. The Secured Parties are providing the customary tradeoff for a 506(c) waiver by agreeing to "pay the freight" of these cases (the vast majority of which is professional fees) through the payment of administrative expenses with the DIP Facility and Cash Collateral in accordance with the DIP Budgets.

16. The "equities of the case" exception under section 552(b) of the Bankruptcy Code is likewise easier (rather than harder) to give in these cases. Because the Secured Parties have liens on substantially all of the Debtors' assets and the administration of these chapter 11 cases is being funded entirely by the DIP Facility and Cash Collateral, any appreciation in the value of the collateral from postpetition operations (of which there are essentially none) would necessarily result from the use of the existing collateral. Stated in the converse, it is essentially impossible that unencumbered assets have meaningfully increased the value of the Secured Parties' collateral and, therefore, there is no basis for the "equities of the case" exception.

17. For the foregoing reasons, the Agent respectfully submits that the Court should overrule any outstanding objections and enter the Proposed Final Order.

JOINDER AND RESERVATION OF RIGHTS

18. In addition to the foregoing, the Agent hereby joins in the arguments set forth in the Debtors' Reply. This joinder and limited reply is without prejudice to the Agent's rights, which are fully reserved, to raise additional arguments with respect to the DIP Financing and the DIP Objections or to supplement this joinder and limited reply.

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Dated: June 25, 2025
Dallas, Texas

Respectfully submitted,

/s/ Timothy A. ("Tad") Davidson II

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Certificate of Service

I certify that on June 25, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Timothy A. ("Tad") Davidson II
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