

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
Forward Foods LLC,)	Case No. 09-10545 (___)
)	
Debtor.)	
)	

**MOTION PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 9019 FOR AN ORDER APPROVING AND
AUTHORIZING THE SETTLEMENT AGREEMENT BY, BETWEEN AND
AMONG THE DEBTOR, EMIGRANT CAPITAL CORP., NEXT PROTEINS, INC.,
DAVID A. JENKINS AND BLUEGRASS BARS LLC**

Forward Foods LLC, the above-captioned debtor and debtor in possession ("Forward Foods" or "Debtor"), by this motion (the "Motion"), seeks entry of an order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and, approving a settlement agreement (the "Settlement Agreement") by, between and among the Debtor, Emigrant Capital Corp. ("Emigrant"), Next Proteins, Inc. ("Next Protein"), David A. Jenkins ("Jenkins") and Bluegrass Bars LLC ("Bluegrass Bars"). In support of the Motion, the Debtor respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested is section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a).

GENERAL BACKGROUND

A. Debtor's Business Background

2. On February 17, 2009, the Debtor filed with this Court its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

3. Forward Foods is a manufacturer of high protein, snack, energy and meal replacement bars primarily produced under the Detour brand name. Since the introduction of the original Detour bar in October 2002, Detour has grown into a \$50 million annual sale retail brand platform, and is the leading high protein brand in health and fitness stores.

4. A majority of the volume of the products produced by Forward Foods are sold directly to mass marketers as well as regional convenience and grocery stores, drugstores and health and fitness clubs.

B. The Product Recall

5. On January 29, 2009, Forward Foods was notified by Peanut Corporation of America ("PCA") that all peanut products produced by that company's Blakely facility were involved in a nationwide voluntary recall with regard to a salmonella poisoning risk. Forward Foods has contracted with PCA for a proprietary spiced roasted peanut for use in several of Forward Foods' Detour brand products. The sales of Detour products containing the PCA peanut product (the "Affected Peanuts") make up approximately 75% of all protein bar sales by Forward Foods.

6. As a matter of policy, Forward Foods has always employed an independent laboratory to test representative samples of its finished products for quality and safety assurance; however, the fact that the proprietary spiced roasted peanut incorporated by Forward Foods in its products was purchased from the specific PCA plant subject to the salmonella risk, thereby creating a risk of cross contamination, has created a sufficient risk for

Forward Foods to have initiated a voluntary recall with regard to specific products incorporating the PCA peanuts (the "Affected Product"). Notices with regard to Affected Products were delivered on January 29, 2009, to all known customers purchasing any of the Affected Products.

7. The effect of the Recall is material and is a leading cause of the Debtor's need to initiate these proceedings.

C. Debtor's Dispute with Next Protein and the Proposed Settlement

8. Forward Foods commenced operations on September 1, 2006. A group of investors led by Emigrant purchased the assets of a protein bar business from Next Protein, Jenkins and Bluegrass (collectively, the "Sellers").

9. Since the purchase of the protein bar business, Forward Foods and its major investor and lender, Emigrant, have been in dispute with the Sellers with regard to various aspects of disclosure and other matters involving the purchase. On November 26, 2007, Forward Foods and Emigrant commenced a lawsuit in the Supreme Court for the State of New York against the Sellers alleging breach of contract, breach of the duty of good faith and fair dealing, fraud and rescission. The Sellers filed a motion to dismiss the New York action based upon *forum non conveniens* which was granted on October 15, 2008.

10. On December 15, 2008, Forward Foods and Emigrant commenced suit in the Superior Court for the State of California, County of San Diego against the Sellers (the "Litigation") alleging breach of contract, negligent misrepresentation, fraud and deceit and requesting rescission and restitution.

11. On February 3, 2009, the Sellers filed their answer and cross complaint against the plaintiffs and other affiliated parties alleging fraud and deceit, negligent misrepresentation, intentional interference with prospective economic advantage, negligent interference with the prospective economic advantage, breach of fiduciary duty, aiding and

abetting breach of fiduciary duty and breach of the various affiliated agreements with regard to the sale transaction.

12. Shortly thereafter, Forward Foods, Emigrant, and the Sellers entered into a prospective settlement (the "Settlement")¹ which is being submitted to this Court for approval. The Settlement provides, among other things, a cash payment to Forward Foods of \$975,000, the release of \$500,000 in escrow to the Sellers, assignment of a \$4 million Term B obligation to Emigrant, assignment of an unsecured note of \$2.5 million to Emigrant, assignment of the Seller's equity interest to Emigrant, a grant to Forward Foods of an alleged defaulted license agreement as to specific trademarks to permit continued use by Forward Foods through and until December 31, 2009, continuance of Jenkins' non-compete agreement until August 1, 2009, and appropriate releases among the parties with regard to all claims. As part of the Settlement, Forward Foods has agreed to deposit \$50,000 into a segregated interest-bearing account (the "Reimbursement Account") to be used to reimburse Next Proteins and Bluegrass for expenses incurred by either of them arising, directly or indirectly, out of or in connection with any claim or demand asserted against one or both of them with respect to the manufacturer or sale of the Detour bar involved in the Recall. If no claims are outstanding on December 31, 2010, the funds in the Reimbursement Account may be withdrawn and used by Forward Foods. A copy of the Settlement Agreement by, between and among the Debtor, Emigrant and the Sellers is attached hereto as Exhibit A.

D. Approval of Settlement Required for DIP Financing

13. The Debtor has an immediate and ongoing need to continue its operations. Emigrant, as the Debtor's main investor and pre-petition lender, has agreed to extend post-

¹ The Debtor believes that the Motion accurately describes the Settlement; however, to the extent there are any inconsistencies between this Motion and the terms of the Settlement, the terms of the Settlement Agreement control.

petition financing on certain terms as more fully set forth in the Motion Of Debtor And Debtor In Possession For The Entry Of Interim And Final Orders (i) Authorizing Secured Post-Petition Financing, (ii) Granting Senior Liens, Junior Liens And Superpriority Administrative Expense Status, (iii) Providing Adequate Protection, (iv) Granting Limited Relief From The Automatic Stay, (v) Scheduling A Final Hearing, and (vi) Granting Related Relief.

14. As a condition for Emigrant to extend post-petition financing to the Debtor, among other things, the Settlement must be approved by this Court.

RELIEF REQUESTED

15. By this Motion, and in accordance with section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Debtor respectfully requests this Court to enter an Order (i) approving the Settlement and entry into the Settlement by the Debtor, Emigrant and the Sellers, and (ii) authorizing the Debtor, Emigrant and the Sellers to take any and all actions necessary to effectuate the Settlement. The parties have weighed the costs and risks associated with the continued Litigation described above against the compromises contained within the Settlement, and have concluded that it is in their respective best interests to compromise and settle the matter pursuant to the terms of the Settlement without further litigation.

BASIS FOR RELIEF REQUESTED

16. Bankruptcy Rule 9019(a) provides that "on motion by the trustee and after a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P 9019(a). The settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged and "generally favored in bankruptcy." In re World Health Alternatives, Inc., 344 B.R. 291, 296 (Bankr. D. Del. 2006); see also In re Penn Central Transp. Co., 596 F.2d 1102 (3d

Cir. 1979) ("administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims" (quoting In re Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968))).

17. In determining the fairness and equity of a compromise in bankruptcy, the United States Court of Appeals for the Third Circuit has stated that it is important that the bankruptcy court "apprise itself of all facts necessary to form an intelligent and objective opinion of the probabilities of ultimate success should the claims be litigated, and estimated the complexity, expense and likely duration of such litigation, and other factors relevant to a full and fair assessment of the [claims]." In re Penn Central Transp. Co., 596 F.2d at 1153; see also In re Marvel Entm't Group, Inc., 222 B.R. 243 (D. Del. 1998) (describing "the ultimate inquiry to be whether 'the compromise is fair, reasonable, and in the interest of the estate.'" (quoting, In re Louise's Inc., 211 B.R. 798, 801 (D. Del. 1997))).

18. The Third Circuit Court of Appeals has enumerated four factors that should be considered in determining whether a settlement should be approved. The four enumerated factors are: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." Meyers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996); accord Will v. Nw. Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 644 (3d Cir. 2006).

19. The decision to approve a settlement "is within the sound discretion of the bankruptcy court." In re World Health Alternatives, Inc., 344 B.R. at 296; see also In re Neshaminy Office Bldg. Assoc., 62 B.R. 798, 803 (E.D. Pa. 1986), cited with approval in Meyers v. Martin (In re Martin), 91 F.3d 389. The bankruptcy court should not substitute its

judgment for that of the debtor. See In re Neshaminy Office Bldg. Assoc., 62 B.R. at 803. The court is not to decide the numerous questions of law or fact raised by litigation, but rather should canvas the issues to see whether the settlement falls below the lowest point in the range of reasonableness. See In re W.T. Grant and Co., 699 F.2d 599, 608 (2d Cir. 1983), cert. denied, 464 U.S. 22 (1983); see also In re World Health Alternatives, Inc., 344 B.R. at 296 (stating that "the court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.") (internal citations and quotations omitted).

20. The Debtor respectfully requests that the Court approve the Settlement because it lies well above the lowest point in the range of reasonable potential litigation possibilities. In addition, each of the applicable Martin factors weighs in favor of approving the Settlement. Accordingly, the Settlement should be approved pursuant to Bankruptcy Rule 9019.

21. As with all litigation, the probability that the Debtor will prevail in the Litigation is uncertain. Absent the Settlement, the Litigation would have to be litigated with no assurances of a favorable outcome.

22. The resolution of the Litigation under the terms of the Settlement, without the need for litigation, is a favorable outcome because it will save the Debtor significant time and expense and enable the Debtor to continue to focus on its reorganization efforts.

23. The Settlement is also favorable because it will create a net positive cash infusion into the Debtor's estate at the initial stage of these proceedings, allowing the Debtor to benefit from the use of these resources.

24. Furthermore, Emigrant as the Debtor's post-petition lender, has required the approval of the Settlement in order for it to extend post-petition financing to the Debtor; thus,

without the Settlement, the ability for the Debtor to continue in its Chapter 11 proceedings is questionable.

25. Entry into the Settlement serves the paramount interest of creditors of the Debtor. The resolution of the Litigation represents a savings for the creditors by obviating litigation, thereby saving the expenses attendant to such litigation.

26. In light of the above, the Debtor believes the Settlement is fair, equitable, and in the best interests of its creditors and estate, represents an exercise of its sound business judgment, and should be approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

NOTICE

27. Notice of this Application has been provided to: (i) the Office of the United States Trustee; (ii) counsel to Emigrant; (iii) counsel to the Debtor's pre-petition secured lenders; (iv) counsel to the Sellers; (v) all parties entitled to notice under Bankr. Del. L.R. 2002-1(b), and (vi) all known creditors of in this case. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

NO PREVIOUS REQUEST

28. No prior request for the relief sought in this Motion has been made to this or any other court.

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WHEREFORE, the Debtor respectfully requests that this Court issue and enter an Order, in the form attached hereto as Exhibit B, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 (i) approving the Settlement and Debtor's entry into the Settlement, (ii) authorizing the Debtor to take any and all actions necessary to effectuate the Settlement, and (ii) granting such other and further relief as may be just and proper.

Dated: February 17, 2009
Wilmington, DE

Respectfully submitted,

BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP

/s/ Bradford J. Sandler

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*Proposed Counsel for Forward Foods LLC,
Debtor and Debtor in Possession*

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is made as of the ____ day of February, 2009, by and between Next Proteins, Inc., a California corporation ("Next Proteins"), David A. Jenkins ("Jenkins"), Bluegrass Bars, LLC, a Nevada limited liability company ("Bluegrass Bars," collectively with Next Proteins and Jenkins, the "Next Proteins Parties"), Forward Foods LLC, a Delaware limited liability company ("Forward Foods"), Emigrant Capital Corporation, a Delaware Corporation ("Emigrant Capital"), Emigrant Bank, a New York savings bank, referenced in cross-claims as Emigrant Savings Bank ("Emigrant Bank"), Edward Burns ("Burns"), Patrick Muldoon ("Muldoon"), John Appel ("Appel"), Val Stalowir ("Stalowir"), and Kenneth Walters ("Walters," collectively with Forward Foods, Emigrant Capital, Emigrant Bank, Burns, Muldoon, Appel, and Stalowir, the "Forward Foods Parties"). Each party to this Agreement may be referred to herein as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Next Proteins and Bluegrass Bars entered into an Agreement for Purchase and Sale of Assets (the "Purchase and Sale Agreement") as of September 1, 2006, pursuant to which Forward Foods acquired certain properties, rights and assets associated with the Seller Parties' protein bar business (the "Transaction");

WHEREAS, pursuant to the Purchase and Sale Agreement, Five Hundred Thousand Dollars (\$500,000) of the purchase price ("Escrow Amount") was deposited in an escrow ("Escrow") at Wilmington Trust Company (the "Escrow Agent"), and Two Million Five Hundred Thousand Dollars (\$2,500,000) of the purchase price was delivered by Forward Foods in the form of a Subordinated Promissory Note dated September 1, 2006 ("Subordinated Note");

WHEREAS, in furtherance of the Transaction, on September 1, 2006, Forward Foods (as Borrower) entered into a Financing Agreement with The CIT Group/Commercial Services, Inc. (as Agent and Lender) and Next Proteins (as Lender), pursuant to which Next Proteins advanced Four Million Dollars (\$4,000,000) to Forward Foods under the Term Loan B Promissory Note ("Term B Note");

WHEREAS, in furtherance of the Transaction and pursuant to a Subscription Agreement dated September 1, 2006, Next Proteins acquired 60,750 Preferred Capital Units and 6,750 Non-Voting Units of Forward Foods, as those units are defined in the Limited Liability Company Operating Agreement of Forward Foods LLC (the "Forward Foods Operating Agreement") for \$675,000 and received an additional 31,395 Non-Voting Units in consideration of Next Proteins serving as the Term Loan B lender under the Financing Agreement (the 60,750 Preferred Capital Units and the 38,145 Non-Voting Units shall be referred to as the "Units");

WHEREAS, in connection with the Transaction:

Forward Foods and Next Proteins entered into a Trademark License Agreement dated September 1, 2006 ("License Agreement") pursuant to which Next Proteins licensed the use of certain trademarks of Next Proteins by Forward Foods in connection with the sale of certain products by Forward Foods;

Forward Foods, on the one hand, and Next Proteins and Bluegrass Bars, on the other hand, entered into a Transition Services Agreement dated September 1, 2006 (the "Transition Services Agreement") for the transition of material transition services for a period of 120 days following the closing of the Transaction;

Forward Foods and Jenkins entered into a Consulting Agreement dated September 1, 2006 (the "Consulting Agreement"), whereby Jenkins was engaged by Forward Foods on a non-exclusive basis to perform consulting services with respect to Forward Foods;

Forward Foods and Jenkins entered into a Confidential and Proprietary Information, Work Product Ownership, Non-Competition and Non-Solicitation Agreement dated September 1, 2006 ("Non-Compete Agreement") whereby Jenkins agreed to undertake certain restrictions on Jenkins' business activities for a period of ten years;

Forward Foods and Next Proteins entered into a Board Observation Rights Agreement dated September 1, 2006 ("Board Observation Rights Agreement") in consideration of Next Proteins serving as the Term B Lender under the Financing Agreement; and

Forward Foods and Next Proteins entered into a number of additional agreements in furtherance of the Transaction;

WHEREAS, certain disputes have arisen between the Parties concerning the Transaction;

WHEREAS, on June 28, 2007, Forward Foods made a demand on Next Proteins and Bluegrass Bars for indemnification relating to an alleged infringement of third-party rights to operate the bar business ("Patent Indemnification Claim");

WHEREAS, on November 26, 2007, Emigrant Capital and Forward Foods filed a civil lawsuit in the Supreme Court for the State of New York, captioned Forward Foods LLC and Emigrant Capital Corporation v. Next Proteins, Inc., David A. Jenkins and Bluegrass Bars, LLC, Case No. 07603892 (the "New York Action"), asserting claims against the Next Proteins Parties for breach of contract, breach of the duty of good faith and fair dealing, fraud, and rescission, in response to which the Seller Parties filed a motion to dismiss the New York Action which was granted by the Court based upon *forum non conveniens* on October 15, 2008;

WHEREAS, on December 15, 2008, Forward Foods and Emigrant Capital filed a civil lawsuit in the Superior Court of the State of California, County of San Diego, North County, captioned Forward Foods LLC and Emigrant Capital Corporation v. Next Proteins, Inc., David A. Jenkins, and Bluegrass Bars, LLC, Case No. 37-2008-00101895-CU-FR-NC (the "Complaint"), asserting claims against the Next Proteins Parties for breach of contract, negligent misrepresentation and fraud and deceit, and for rescission and restitution;

WHEREAS, on January 30, 2009, Forward Foods announced a nationwide voluntary recall of Detour® branded bars manufactured by Forward Foods containing roasted peanuts due to possible health risks ("Recall");

WHEREAS, on February 3, 2009, the Next Proteins Parties filed an answer to the Complaint and a cross-complaint against the Forward Foods Parties asserting claims for fraud and deceit, negligent misrepresentation, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of the Transition Services Agreement, and breach of the Consulting Agreement (the "Cross-Complaint," together with the Complaint, the "Action");

WHEREAS, on February 6, 2009, Next Proteins served notice on Forward Foods of the immediate termination of the License Agreement as a result of the Recall. Forward Foods disputes whether the License Agreement was effectively terminated ("License Agreement Dispute");

WHEREAS, on February 17, 2009, Forward Foods commenced a voluntary petition for reorganization relief pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the

District of Delaware ("Bankruptcy Court"), designated Case No. _____ ("Bankruptcy Case");

WHEREAS, Forward Foods and Emigrant Capital have indicated their belief in the soundness of their claims and positions in the Complaint, and the Next Proteins Parties have indicated their belief in the soundness of their claims and positions in the Cross-Complaint, and the Forward Foods Parties and Next Proteins Parties have indicated their belief in the soundness of their defenses to the claims in the Action;

WHEREAS, the Parties have concluded that it is in their interests to compromise and settle their differences in the Action and with respect to the other matters mentioned herein without the time and expense of what otherwise may prove to be protracted and expensive litigation; and

WHEREAS, the Parties now desire to resolve the Action and the other matters mentioned herein without the need for further litigation and without admission of any liability or wrongdoing of any kind;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Settlement Payment. On the Effective Date (as defined in Section 26), Next Proteins shall pay a total of Nine Hundred and Seventy-Five Thousand Dollars (\$975,000) ("Settlement Payment") to Forward Foods. As provided in Section 9.b below, Forward Foods shall deposit Fifty Thousand Dollars (\$50,000) of the Settlement Payment into a segregated interest-bearing account ("Reimbursement Account") and remain subject to the conditions set forth in Section 9.b below. Such Settlement Payment shall be made by wire transfer to Forward Foods in accordance with wire transfer instructions provided by Forward Foods.

2. Release of Escrow. On the Effective Date, Forward Foods shall, in accordance with the Escrow Agreement, execute and deliver to the Escrow Agent a Joint Instruction Letter, in substantially the form attached hereto as Exhibit A, directing the Escrow Agent to release the Escrow Amount plus investment income earned thereon to Next Proteins.

3. Units. On the Effective Date, Next Proteins shall convey, sell, assign, and transfer the Units to Emigrant Capital and Next Proteins shall thereby cease to be a member of Forward Foods. Emigrant Capital hereby accepts the Units and all the rights of Next Proteins in respect thereof and assumes all duties and obligations of Next Proteins in respect of the Units, the Subscription Agreement, and the Forward Foods Operating Agreement. Forward Foods hereby consents to the transfer of the Units and waive all restrictions to such transfer contained in the Forward Foods Operating Agreement, including, without limitation, rights contained in section 7.4, or any other agreements and agree to obtain prior to the Effective Date any and all consents necessary to effectuate the transfer of the Units at their sole expense. The form of assignment is attached hereto as Exhibit B.

4. Notes. On the Effective Date, Next Proteins shall convey, sell, assign, transfer its rights, title, and interest in, to, and under the Term B Note, the Subordinated Note, the Financing Agreement, as well as any other agreements or amendments relating to or under any of the foregoing ("Debt Documents") to Emigrant Capital, without recourse to Next Proteins (or any other of the Next Proteins Parties), and Emigrant Capital shall purchase and assume from Next Proteins without recourse to Next Proteins (or any other of the Next Proteins Parties) all of Next Proteins' rights, title, interest, duties and obligations in, to and under the Debt Documents. With respect to the Term B Note, Next Proteins and Emigrant Capital shall each execute and deliver as soon as practicable after the Effective Date the Assignment and Transfer Agreement in the form

referenced in and as defined in the Financing Agreement and as attached hereto as Exhibit C. Forward Foods hereby consents to the transfer and assignment. Emigrant Capital and Forward Foods agree to use their best efforts to obtain prior to the Effective Date any and all consents, including, without limitation, the consent of CIT Group/Commercial Services, Inc ("CIT"), as Agent under the Financing Agreement, to effectuate such transfer at its sole cost and expense. Obtaining such consents shall not be a condition to consummation of the transactions contemplated by this Agreement, and Emigrant Capital assumes the risk of any failure to obtain any required consents. With respect to the Subordinated Note, Next Proteins shall deliver on the Effective Date the form of assignment attached hereto as Exhibit D.

5. Dismissal of Action. The Parties agree that the Action shall be withdrawn and dismissed in its entirety. The Forward Foods Parties, through counsel, and the Next Proteins Parties, through counsel, shall execute the Stipulation of Dismissal with Prejudice, in the form annexed hereto as Exhibit C, dismissing the Action with prejudice and deliver such executed Stipulation of Dismissal to counsel for the Next Proteins Parties no later than the Effective Date, to be held by counsel until the Effective Date and not filed before then. In the interim, the Parties will jointly request that the Court in the Action stay that matter from the date this Agreement is signed until the Effective Date and filing of the Stipulation of Dismissal. Counsel for the Next Proteins Parties will promptly file the executed Stipulation of Dismissal with Prejudice after delivery of Settlement Payment to Forward Foods.

6. New York Action. The Forward Foods Parties agree and covenant not to file an appeal of the order dismissing the New York Action.

7. Releases from Liability.

a. Release by Forward Foods Parties. Except as to the Surviving Obligations defined in Section 9.d. below, upon the Effective Date and subject to Section 7.d. below, each of Forward Foods, Emigrant Capital, Emigrant Bank, Burns, Muldoon, Appel, Stalowir, and Walters, on behalf of themselves and any and all of their present or former parent companies, limited liability members, shareholders, officers, owners, agents, board members, directors, affiliates, subsidiaries, related parties (defined as an entity that is controlling, controlled by, or under common control with), attorneys, predecessors, successors (including a chapter 11 or 7 trustee) and assigns (collectively, the "Forward Foods Releasers") hereby release and forever discharge each of Next Proteins, Jenkins, and Bluegrass Bars, and any and all of their present or former parent companies, subsidiaries, affiliates, directors, officers, attorneys, insurers, brokers, agents, employees, representatives, members, partners, limited partners, heirs, executors, administrators, predecessors, successors and assigns (collectively "Next Proteins Releasees") from any and all claims (including, without limitation, claims held by Forward Foods as a debtor in possession, claims of a chapter 11 or 7 trustee, and any claims transferred, conveyed or assigned by any of them, including an official committee of unsecured creditors), demands, costs, debts, actions, causes of action, suits, obligations, expenses and liabilities of any kind or character whatsoever, at law or in equity, whether known or unknown, suspected or unsuspected, contingent or absolute, disclosed or undisclosed, asserted or unasserted, hidden or concealed, matured or unmatured, material or immaterial (collectively, "Claims") that the Forward Foods Releasers ever had, now have or will have against the Next Proteins Releasees, for upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the Effective Date of this Agreement, including, without limitation, any Claim asserted or which could have

been asserted, relating to or arising out of (i) the Transaction (including, without limitation, any and all Claims under the Purchase and Sale Agreement), (ii) the Debt Documents, (iii) the Consulting Agreement, (iv) the Non-Compete Agreement, (v) the License Agreement, (vi) the Transition Services Agreement, (vii) Board Observation Rights Agreement, (viii) the Patent Indemnification Claim, (ix) the License Agreement Dispute, (x) the Bankruptcy Case, and (xi) any matters that were or might have been in any way raised in the Action by complaint, cross-complaint or otherwise or that arose out of facts, allegations or transactions pleaded or raised in the Action. Nothing in this Agreement shall release the Next Proteins Parties from (i) the Surviving Obligations (as defined in Section 9.d below) or (ii) any of the obligations set forth in this Agreement.

b. Release by Next Proteins Parties. Except as to the Surviving Obligations defined in Section 9.d. below, upon the Effective Date and subject to Section 7.d. below, each of Next Proteins, Bluegrass Bars and Jenkins, on behalf of themselves and any and all of their present or former parent companies, limited liability members, shareholders, officers, owners, agents, board members, directors, affiliates, subsidiaries, related parties (defined as an entity that is controlling, controlled by, or under common control with), attorneys, heirs, predecessors, successors and assigns (collectively "Next Proteins Releasers") hereby release and forever discharge Forward Foods, Emigrant Capital, Emigrant Bank, Burns, Muldoon, Appel, Stalowir, and Walters, and any and all of their present or former parent companies, subsidiaries, affiliates, directors, officers, attorneys, insurers, brokers, agents, employees, representatives, members, partners, limited partners, heirs, executors, administrators, predecessors, successors and assigns (collectively "Forward Foods Releasees") from any and all Claims that the Next Proteins Releasers ever had, now have or will have against the Forward Foods Releasees, for, upon or by

reason of any matter, cause or thing whatsoever from the beginning of the world to the Effective Date of this Agreement, including, without limitation, any Claim asserted or which could have been asserted, related to or arising out of (i) the Transaction (including without limitation any and all Claims under the Purchase and Sale Agreement), (ii) the Debt Documents, (iii) Consulting Agreement, (iv) Board Observation Rights Agreement, (v) the Non-Compete Agreement, (vi) the License Agreement, (vii) the Transition Services Agreement, (viii) the Patent Indemnification Claim, (ix) the License Agreement Dispute, (x) the Bankruptcy Case and (xi) any matters that were or might have been in any way raised in the Action by complaint, cross-complaint or otherwise or that arose out of the facts, allegations or transactions pleaded or raised in the Action. Nothing in this Agreement shall release the Forward Foods Parties from (i) the Surviving Obligations or (ii) any of the obligations set forth in this Agreement.

c. Complete Release. Subject to Section 7.d. below, the Forward Foods Releasers and Next Proteins Releasers recognize that they may have claims arising out of the matters described above which exist as of this date but which they do not know or suspect to exist in their favor and which, if known, might materially affect their decision to enter into this Agreement and the exhibits attached hereto. Accordingly, the Forward Foods Releasers and Next Proteins Releasers further expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them by, any other state, federal, foreign, statutory, common law principle or other law or right of any other kind or nature which would affect the validity of, or act as bar to, their release, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the Claims released herein. The Forward Foods Releasers and Next Proteins Releasers intend that their release shall be and will remain in effect as a full and complete release notwithstanding the discovery or existence of any additional

or different claims or facts arising out of the released matters. For the avoidance of doubt, nothing in this provision is intended to or does in any way alter the scope of the releases from liability set forth in Sections 7.a. and 7.b.

d. Waiver of Civil Code Section 1542. As to the claims released above, the Parties expressly waive and relinquish all rights and benefits they may have under Section 1542 of the Civil Code of the State of California. Civil Code, Section 1542 reads as follows:

§ 1542 [CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

e. Covenant Not to Sue. Subject to Section 7.d. above, the Forward Foods Releasors respectively covenant and agree that they will never initiate or file any suit or action at law or otherwise against any of the Next Proteins Releasees, or institute, prosecute or file any litigation, claim, demand, action or cause of action against any of the Next Proteins Releasees, for any relief whatsoever, including without limitation, damages, costs, expenses or compensation for or on account of any damage, loss or injury either to person or property, or both, or for breach of any agreement, obligation or duty, whether developed or undeveloped, resulting or to result, known or unknown, which any of the Forward Foods Releasors ever had, now have, or which they or their successors or assigns hereafter can, shall or may have for or by reason of any Claim released herein, excepting Claims pursuant to, arising out of or enforcement of this Agreement or the Surviving Obligations. For the avoidance of doubt, the scope of this provision is intended to be co-extensive with the scope of the releases set forth in Section 7.a. and nothing in this provision is intended to or does in any way alter the scope of the releases from liability set forth in Sections 7.a.

f. Covenant Not to Sue. Subject to Section 7.d. above, the Next Proteins Releasers respectively covenant and agree that they will never initiate or file any suit or action at law or otherwise against any of the Forward Foods Releasees, or institute, prosecute or file any litigation, claim, demand, action or cause of action against any of the Forward Food Releasees, for any relief whatsoever, including without limitation, damages, costs, expenses or compensation for or on account of any damage, loss or injury either to person or property, or both, or for breach of any agreement, obligation or duty, whether developed or undeveloped, resulting or to result, known or unknown, which any of the Next Proteins Releasers ever had, now have, or which they or their successors or assigns hereafter can, shall or may have for or by reason of any Claim released herein, excepting Claims pursuant to, arising out of or enforcement of this Agreement or the Surviving Obligations. For the avoidance of doubt, the scope of this provision is intended to be co-extensive with the scope of the releases set forth in Section 7.b. and nothing in this provision is intended to or does in any way alter the scope of the releases from liability set forth in Sections 7.b.

g. Lender Releases. If and to the extent that Forward Foods and/or Emigrant Capital enter into mutual releases with CIT and Comerica relating to, regarding, or arising from the Debt Documents, Forward Foods and Emigrant Capital shall require such releases extend to Next Proteins, as predecessor to Emigrant Capital under the Term B Note and Subordinated Note and related agreements. In connection with any such settlement and execution of mutual releases, Next Proteins agrees that it will provide CIT and Comerica with a release.

8. Termination of Certain Existing Agreements. All rights, duties, obligations and responsibilities provided for in the following agreements between the Parties shall be, and hereby are, terminated on the Effective Date of this Agreement: the Transition Services Agreement; the

Consulting Agreement, the Board Observation Rights Agreement, the License Agreement, and the Non-Compete Agreement. Notwithstanding the terms of any such agreements, none of the parties to such agreements shall have any continued rights, duties, obligations or responsibilities except as noted in Section 9 below. With respect to the Purchase and Sale Agreement, Next Proteins and Bluegrass Bars, on the one hand, and Forward Foods, on the other, shall have no further duties, obligations or responsibilities to the other and all claims by and between the Parties arising from, related to, or arising out of the Purchase and Sale Agreement are released and forever discharged pursuant to Section 7 of this Agreement.

9. Continued Rights and Obligations. Notwithstanding the termination of the License Agreement and the Non-Compete Agreement set forth in Section 8 above, the Next Proteins Parties and Forward Foods agree as follows:

a. Sell-Off Period. Notwithstanding the provision of 12.2 of the License Agreement, Forward Foods and Next Proteins agree that this Section 9.a. shall control Forward Foods continued use of Marks (as that term is defined in the License Agreement) and sell-off of inventory. Forward Foods shall have continued non-exclusive use of the Marks for the limited purpose of and only in connection with the sale of nutrition, protein, meal replacement, energy and snack bars inventory ("Bar Product Inventory") that is manufactured and packaged before December 31, 2009. Effective December 31, 2009, the non-exclusive license granted herein shall be terminated. After December 31, 2009, Forward Foods shall not manufacture or ship any product that bears or refers to the Marks. No later January 31, 2010, Forward Foods shall provide Next Proteins with a report setting forth the last manufactured date with the corresponding "Enjoy-by" date for any products that bear a Mark. Sections 4.1, 4.2, 5, 6, 13 and 14 of the License Agreement, including any definitions necessary to give meaning to the terms

referenced in Sections 4.1, 4.2, 5, 6, 13 and 14, as if set forth herein, shall continue to be binding on Forward Foods and Next Proteins in connection with the rights granted herein. This limited non-exclusive license of the Marks may not be voluntarily or involuntarily assigned, sold, pledged, sublicensed, or otherwise transferred in any manner by Forward Foods whether in connection with a sale, merger, plan of reorganization in the Bankruptcy Case or after the Bankruptcy Case has been closed or dismissed. The License Agreement Dispute is stayed pending Bankruptcy Court action on this Agreement, and in the event the Bankruptcy Court does not approve the Agreement, the stay of the License Agreement Dispute shall extend for a period of ten (10) days after the decision of the court.

b. License Agreement Obligations. Forward Foods represents, warrants and agrees that Next Proteins and Bluegrass Bars, to the extent that they are not already currently named as additional insureds under Forward Foods commercial general liability, commercial umbrella and products liability insurance policies (collectively, "Insurance Policies"), shall be named, retroactively to September 1, 2006, as additional insureds under the Insurance Policies, as evidenced by endorsements that will be delivered to Next Proteins as soon as possible but, in no event, later than the Effective Date. The endorsements reflecting Next Proteins and Bluegrass Bars as additional insureds under the Insurance Policies shall be attached hereto as Exhibit E. Forward Foods further represents and warrants that Next Proteins and Bluegrass Bars shall continue to be additional insureds under such Insurance Policies for a period of two years after the last "Enjoy by" date on products bearing the Marks sold by Forward Foods. The Parties agree that the order approving this Agreement shall provide that the Reimbursement Account shall be established for the sole purpose of reimbursing Next Proteins and Bluegrass Bars for expenses incurred by either of them arising, directly or indirectly, out of or in connection with

any claim or demand asserted against Next Proteins and/or Bluegrass Bars with respect to or arising from the manufacture or sale of Bar Product Inventory by or on behalf of Forward Foods before or after the commencement of the Bankruptcy Case. Upon the occurrence of any such expense or cost, Next Proteins and Bluegrass Bars shall promptly submit the invoice to William I. Cohen of Benesch, Friedlander, Coplan & Aronoff LLP, counsel for Forward Foods, at 200 Public Square #2300, Cleveland, OH 44114 (Fax: (216) 363-4588 and wkohn@Beneschlaw.com) for payment reimbursement by email, facsimile, overnight. Forward Foods shall either (i) reimburse Next Proteins within twenty (20) days of receipt of the invoice for the invoice amount from the funds in the Reimbursement Account, (ii) provide notice to Next Proteins that the invoice was submitted to the insurance carrier for payment, or (iii) provide notice to Next Proteins that the request for payment is being disputed. If the reimbursement request is disputed by Forward Foods, the parties agree to use their best efforts to resolve the difference before bringing the matter before the Bankruptcy Court. The order approving this Agreement shall provide that on December 31, 2010, so long as no claims for reimbursement are outstanding, Forward Foods shall be able to withdraw the balance of the funds in the Reimbursement Account. In the event that any legal proceedings shall be instituted against Next Proteins and/or Bluegrass Bars or that any claim or demand shall be asserted by any person in respect of which indemnification may be sought pursuant to the provisions of this Section 9.b or Section 13 of the License Agreement, Next Proteins and/or Bluegrass Bars shall cause prompt written notice of the commencement of such proceedings or the assertion of such claim or demand to be given to Forward Foods. Forward Foods shall promptly tender any such complaint or claim to its insurance carriers and demand that Next Proteins and/or Bluegrass Bars be defended and indemnified under the Insurance Policies. Nothing herein is meant to limit or

terminate the rights of Next Proteins and Bluegrass Bars for reimbursement of costs and expenses incurred in connection with any alleged property damage or personal injury claims arising from or related in any way to the Recall, or otherwise. Such claims, to the extent the Reimbursement Account is insufficient, shall be unimpaired and not be discharged under any plan of reorganization and Forward Foods agrees that Next Proteins and Bluegrass Bars shall retain all their rights as additional insureds under the Insurance Policies. Forward Foods represents, warrants, and agrees that it will immediately take all necessary and appropriate action to cease distribution of any Inventory Bar Product labeling which mention or refer to Next Proteins or its contact information.

c. Non-Compete Agreement. Jenkins agrees that those provisions of the Non-Compete Agreement that relate to Bar Products (as defined in the Non-Compete Agreement) shall remain in effect until August 1, 2009. After August 1, 2009, the Non-Compete Agreement shall be null and void and shall have no further force or effect.

d. The surviving obligations of Forward Foods, Next Proteins and Jenkins as noted in 9.a., 9.b., and 9.c. above shall be collectively referred to as the "Surviving Obligations."

10. No Claims Buying. The Next Proteins Parties agree that they, individually or collectively, will not purchase claims in the Bankruptcy Case. However, nothing contained herein or otherwise, shall prohibit or prevent the Next Proteins Parties from participating in a sale of some or all of Forward Foods' assets pursuant to section 363 of the Bankruptcy Code or pursuant to a plan of reorganization.

11. Acknowledgement of Representation. Each Party represents and warrants that: (i) it/he has had adequate and ample opportunity to review this Agreement with advisors of its choice, including legal counsel, that such Party has read and understands the Agreement and that

such Party has signed all documents freely, knowingly and voluntarily; and (ii) it/he is not relying upon any representation, oral or otherwise, express or implied, other than those specifically set forth in this Agreement in agreeing to execute and deliver this Agreement.

12. No Admissions. This Agreement reflects a business decision by the Parties to settle their differences, disputes and claims. Nothing contained in this Agreement is intended to be, or shall be construed to be, an admission of any liability by any Party or an admission of the existence of any facts upon which liability could be based.

13. No Assignments. Each Party to this Agreement further represents and warrants that it/he has not transferred, assigned or conveyed any Claim released by this Agreement. In the event that such representation is false, and any such Claim is asserted against any Party hereto (and/or the successor of such Party) by any Party or entity who is the assignee or transferee of such Claim, the assignor or transferor shall fully indemnify, defend and hold harmless the Party against whom such Claim is asserted (and its successors) from and against such claim or matter and from all actual costs, demands, fees, expenses, liabilities, and damages which that Party (and/or its successors) incurs as a result of the assertion of such Claim.

14. Cooperation and Best Efforts. The Parties agree to use best efforts to cooperate fully with each other and to execute and deliver any and all further documents that may be reasonably necessary or desirable to effectuate the purposes of this Agreement.

15. Organization; Authority; Validity. Each Party (that is not an individual) represents and warrants to the others that such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and that this Agreement has been duly authorized, executed and delivered by such Party and constitutes the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its

terms. Each person who signs this Agreement represents and warrants that he is duly authorized to sign on behalf of the entity or entities for which the signature is made. Each Party that is an individual represents and warrants to the others that he has executed and delivered this Agreement and that this Agreement constitutes the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.

16. Survival. The representations and covenants contained in this Agreement are deemed to and do survive the execution hereof.

17. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto as to the settlement of their disputes, and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

18. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties to be charged with such amendment. No waiver by any Party of any provision of this Agreement or of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

19. Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. With respect to Forward Foods, this Agreement shall be binding on a chapter 11 trustee, and/or chapter 7 trustee, and any Official Committee of Unsecured Creditors appointed in the

Bankruptcy Case, and shall continue to bind Forward Foods upon the dismissal of the Bankruptcy Case.

20. Costs. Except as otherwise set forth herein, the Parties shall pay their own costs and attorneys' fees incurred in connection with the negotiation, preparation and carrying out of this Agreement, as well as the New York Action and the Action.

21. Governing Law; Consent to Jurisdiction. This Agreement shall be governed by the laws of the State of California without giving effect to the principles of conflicts of law thereof. All Parties consent to the jurisdiction of the Bankruptcy Court in connection with any dispute relating to this Agreement. To the extent that the Bankruptcy Court does not or cannot exercise jurisdiction, all Parties consent to the jurisdiction of the Superior Court of the State of California, County of San Diego in connection with any dispute relating to this Agreement.

22. Severability. If any provision, covenant, term or condition of this Agreement is held to be invalid, illegal or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other provisions, covenants, terms or conditions of this Agreement.

23. Notice. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient, (ii) two business days after being sent to the recipient by reputable overnight courier service (charges prepaid), (iii) one business day after being sent to the recipient by facsimile transmission, or (iv) four business days after being mailed to the recipient by U.S. certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to Forward Foods:

Forward Foods LLC
2542 Business Parkway #2
Minden, NV 89423
Facsimile: (775)267-9057
Attention: Chief Financial Officer

With a copies (which shall not constitute notice) to:

Constantine Cannon, LLP
450 Lexington Avenue, 17th Floor
New York, New York 10017
Facsimile: (212) 350-2701
Attention: Robert L. Begleiter, Esq.

Benesch, Friedlander, Coplan
& Aronoff
200 Public Square, Suite 2300
Cleveland, OH 44114
Facsimile: (216)363-4588
Attention: William I Kohn

If to Jenkins, Next Proteins or Bluegrass Bar:

David A. Jenkins
Next Proteins, Inc.
5050 Avenida Encinas #350
Carlsbad, California 92008
Facsimile: (760) 431-9969

With a copy (which shall not constitute notice) to:

Wilson Petty Kosmo & Turner LLP
550 West C Street, Suite 1050
San Diego, California 92101
Facsimile: (212) 974-6940
Attention: Frederick W. Kosmo, Jr.

Allen Matkins Leck Gamble
Mallory & Natsis
501 W. Broadway, 15th Floor
San Diego, CA 92101
Facsimile: (619) 233-1158
Attention: Debra A. Riley

24. Headings. The various paragraph headings are for ease of reference and shall not affect in any way the meaning or interpretation of this Agreement.

25. Equitable Relief. Because immediate and irreparable injuries or damages could result in the event of a breach or threatened breach of any of the covenants made herein, and because damages in such event would be difficult to ascertain, in the event of breach of any covenant in this Agreement (including the Surviving Obligations) a Party seeking to enforce the covenant shall be entitled, in addition to any other remedy or damages otherwise available, to an immediate injunction to restrict the violation of any such covenant.

26. Effectiveness of Agreement. This Agreement is effective and binding on the Parties after signature by all Parties and conditioned upon Forward Foods obtaining an order of the Bankruptcy Court approving this Agreement and the transaction contemplated therein pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and such order becomes a final and non-appealable order (the date of such approval, the "Effective Date"). Forward Foods shall use its best efforts to file a motion to obtain approval of this Agreement and the transactions contemplated hereby within three (3) business days of commencing its chapter 11 case. Notice of the motion shall be in conformity with the local rules of the Bankruptcy Court which require at least eighteen (18) days notice to creditors.

27. Counterparts; Electronic Execution. This Agreement may be executed in one or more counterparts or by facsimile, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. A signature delivered by fax or by other reasonable electronic means shall be deemed the equivalent of an original signature for all purposes.

[SIGNATURE PAGES FOLLOW]

IN WITNESS HEREOF, the Parties hereto, agreeing to be bound hereby, execute this Agreement upon the date first set forth above.

Forward Foods LLC

By: _____
Name:
Title:

Emigrant Capital Corporation

By: _____
Name:
Title:

Emigrant Bank

By: _____
Name:
Title:

Edward Burns

Patrick Muldoon

John Appel

Val Stalowir

Kenneth Walters

Next Proteins, Inc.

By: _____

Name:

Title:

David A. Jenkins

Bluegrass Bars, LLC

By: _____

Name:

Title:

EXHIBIT A

ESCROW RELEASE LETTER

February __, 2009

Via Facsimile ((302) 636-4149) and Overnight Mail

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Attention: Margaret Pulgini, Vice President

Re: Escrow Account Name: Next Proteins, Inc.
Escrow Account No: 077336-000

Dear Ms. Pulgini:

Reference is hereby made to that certain Escrow Agreement, dated as of September 1, 2006 among Forward Foods, LLC, a Delaware limited liability company (“Buyer”), Next Proteins, Inc., a California corporation (“Company”), and Bluegrass Bars, LLC, a Nevada limited liability company, wholly owned subsidiary of Company (collectively with Company “Sellers”) and Wilmington Trust Company, a Delaware banking corporation (“Escrow Agent”).

A dispute has arisen between the Buyer and Sellers as to indemnification rights. Buyer and Sellers have resolved all disputes and claims for indemnification related to the Purchase Agreement and have signed a written agreement documenting that all disputes have been resolved. Further, the written agreement that resolves all disputes and signed by Buyer and Sellers has been approved by the Bankruptcy Court who has jurisdiction over the matters in dispute.

Based upon the foregoing and pursuant to the requirements of Section IV(g) of the Escrow Agreement, the Buyer and Sellers hereby instruct Escrow Agent to deliver to Next Proteins, Inc. (on behalf of Sellers) the entire balance of the Escrow Account (plus investment income earned on each such amount from the investments described in Section II of the Escrow Agreement).

NEXT PROTEINS, INC.

For Sellers,

By: _____
Name: David Jenkins
Title: CEO

FORWARD FOODS, LLC

as Buyer,

By: _____
Name:
Title:

EXHIBIT B

ASSIGNMENT OF MEMBERSHIP INTEREST

Pursuant to the Limited Liability Company Operating Agreement of Forward Foods LLC dated September 1, 2008 (the "Forward Foods Operating Agreement") and a Subscription Agreement dated September 1, 2006 (the "Subscription Agreement"), Next Proteins, Inc., a California corporation ("Assignor") owns 60,750 Preferred Capital Units and 38,145 Non-Voting Units of Membership Interest (the "Units") in Forward Foods LLC, a Delaware limited liability company (the "Company"), as those units are defined in the Forward Foods Operating Agreement.

Assignor hereby conveys, sells, assigns and transfers to Emigrant Capital Corporation, a Delaware corporation ("Assignee") all of the Units and all of Assignor's rights in respect of the Units.

Assignee hereby accepts the foregoing assignment, and assumes all duties and obligations of Assignee in respect of the Units, including without limitation all duties and obligations of Assignor under the Forward Foods Operating Agreement and the Subscription Agreement.

Dated: _____, 2009

ASSIGNOR:

ASSIGNEE:

NEXT PROTEINS, INC.,
a California corporation

EMIGRANT CAPITAL CORPORATION,
a Delaware corporation

By: _____
David A. Jenkins, CEO

By: _____
Its: _____

EXHIBIT C

ASSIGNMENT AND TRANSFER AGREEMENT

Reference is made to the Financing Agreement dated as of September 1, 2006 (as amended, restated supplemented or otherwise modified and in effect from time to time, the "Financing Agreement") among Forward Foods LLC, a Delaware limited liability company (the "Company"), the financial institutions from time to time party thereto, as lenders (collectively, the "Lenders", and individually, each a "Lender"), and The CIT Group/Commercial Services, Inc, a New York corporation, as agent for the Lenders (in such capacity, the "Agent"). Capitalized terms used in this Assignment and Transfer Agreement (this "Agreement") and not otherwise defined shall have the meanings given to such terms in the Financing Agreement. This Agreement, between the Assignor (as defined and set forth on Schedule 1, which is made a part of this Agreement) and the Assignee (as defined and set forth on Schedule 1) is effective as of Effective Date (as set forth on Schedule 1).

1. The Assignor hereby irrevocably sells and assigns to the Assignee, without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor, without recourse to the Assignor, as of the Effective Date, all of the Assignor's rights and obligations under the Financing Agreement (the "Assigned Interest") respecting those, and only those, portions of the financing facilities contained in the Financing Agreement as are set forth on Schedule 1 (collectively, the "Assigned Facilities").

2. The Assignor: (i) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Financing Agreement or any other instrument, document or agreement executed or delivered in connection therewith (collectively the "Loan Documents"), or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Financing Agreement, any Collateral thereunder or any of the other Loan Documents, other than a representation and warranty that the Assignor is the legal and beneficial owner of the Assigned Interest and that the Assigned Interest is free and clear of any adverse claim; and (ii) makes no representation or warranty and assumes no responsibility with respect to (x) the financial condition of the Company or any Guarantor, or (y) the performance or observance by the Company or any Guarantor of any of their respective obligations under the Financing Agreement or any of the Loan Documents.

3. The Assignee (i) represents and warrants that it is legally authorized to enter into this Agreement, (ii) confirms that it has received a copy of the Financing Agreement as amended through the Effective Date, and such other documents and information as the Assignee has deemed appropriate to make its own credit analysis, (iii) agrees that the Assignee will, independently and without reliance upon the Agent, the Assignor or any other Lender and based on such documents and information as the Assignee shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Financing Agreement, (iv) appoints and authorizes the Agent to take such action as agent on the Assignee's behalf and to exercise such powers under the Financing Agreement as are delegated to the Agent by the terms thereof, together with such powers as are reasonably incidental thereto, and (v) agrees that

the Assignee will be bound by the provisions of the Financing Agreement and will perform in accordance with its terms all the obligations which by the terms of the Financing Agreement are required to be performed by it as Lender.

4. Following the execution of this Assignment and Transfer Agreement, such agreement will be delivered to the Agent for acceptance by the Agent, effective as of the Effective Date.

5. Upon such acceptance, from and after the Effective Date, the Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee, whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date.

6. From and after the Effective Date, (i) the Assignee shall be a party to the Financing Agreement and, to the extent provided in this Agreement, have the rights and obligations of a Lender thereunder, and (ii) the Assignor shall, to the extent provided in this Agreement, relinquish its rights and be released from its obligations under the Financing Agreement.

7. THIS ASSIGNMENT AND TRANSFER AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers on Schedule 1 hereto.

SCHEDULE 1 TO ASSIGNMENT AND TRANSFER AGREEMENT

Name of Assignor: Next Proteins, Inc., a California corporation

Name of Assignee: Emigrant Capital Corporation, a Delaware corporation

Effective Date of Assignment: _____, 2009

<u>Assigned Facilities</u>	<u>Percentage of Facilities Assigned</u>
Revolving Line of Credit	_____ %
Term Loan A	_____ %
Term Loan B	100%

ASSIGNOR:

ASSIGNEE:

NEXT PROTEINS, INC.,
a California corporation

EMIGRANT CAPITAL CORPORATION,
a Delaware corporation

By: _____
David A. Jenkins, CEO

By: _____
Its: _____

Accepted by the Agent:

THE CIT GROUP/COMMERCIAL
SERVICES, INC., as Agent as aforesaid

By: _____
Its: _____

EXHIBIT D

ASSIGNMENT AND TRANSFER AGREEMENT

Next Proteins, Inc., a California corporation ("Assignor") hereby conveys, sells, assigns and transfers to Emigrant Capital Corporation, a Delaware corporation ("Assignee"), without recourse, representations or warranties of any kind, that certain \$2,500,000 Subordinated Promissory Note dated September 1, 2006, executed by Forward Foods LLC, a Delaware limited liability company, payable to the order of Assignor (the "Note").

Assignee hereby accepts the foregoing assignment, and assumes all of Assignor's duties and obligations arising under or in connection with the Note.

Dated: _____, 2009

NEXT PROTEINS, INC.,
a California corporation

By: _____
David A. Jenkins, CEO

EMIGRANT CAPITAL CORPORATION,
a Delaware corporation

By: _____
Its: _____

EXHIBIT E

INSURANCE POLICIES' ENDORSEMENTS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
Forward Foods LLC,)	Case No. 09-10545 (___)
)	
Debtor.)	
)	

**ORDER PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULE 9019 APPROVING AND
AUTHORIZING THE SETTLEMENT AGREEMENT BY, BETWEEN AND AMONG
THE DEBTOR, EMIGRANT CAPITAL CORP., NEXT PROTEINS, INC.,
DAVID A. JENKINS AND BLUEGRASS BARS LLC**

Upon consideration of the motion (the "Motion")¹ of the debtor and debtor in possession in the above-captioned case (the "Debtor"), seeking entry of an order pursuant to section 105(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and Rule 9019 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and approving the Settlement; and due and sufficient notice of the Motion having been given; and it appearing that the relief requested in the Motion is in the best interest of the Debtor, its estates and creditors; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED, that the relief requested in the Motion is hereby granted; and it is further

ORDERED, that the Settlement, attached hereto as Exhibit A, is approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019; and it is further

ORDERED, that the Debtor is authorized to enter into the Settlement; and it is further

¹ All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

ORDERED, that the Debtor is authorized to take any and all actions necessary to effectuate the Settlement; and it is further

ORDERED, that the releases set forth in the Settlement are approved; and it is further

ORDERED, that this Court shall retain jurisdiction to hear any and all disputes arising out of the interpretation or enforcement of this Order and/or the Settlement.

Dated: Wilmington, Delaware
_____, 2009

United States Bankruptcy Judge