

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

In re:)	Chapter 11
)	
Forward Foods LLC,)	Case No. 09-10545 (KJC)
)	
Debtor.)	Re: Docket No. 9
)	

CERTIFICATION OF COUNSEL REGARDING MOTION FOR ENTRY OF INTERIM ORDER (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) AUTHORIZING THE DEBTOR’S TO ENTER INTO CUSTOMER AGREEMENTS, (VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF [DOCKET NO. 9]

I, Bradford J. Sandler, Esquire, hereby certify as follows in connection with the proposed Interim Order (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 (the “Proposed Interim Order”) as follows:

1. On February 17, 2009 (the "Petition Date"), the Debtor commenced this case by filing a voluntary petition (the “Petition”) for relief under chapter 11 of the Bankruptcy Code (the "Bankruptcy Code"). Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtor continues in the management and operation of its business and property as debtor in possession. No trustee or examiner has been appointed in this case.

2. Concurrently with the filing of the Petition, the Debtor filed a Motion for Entry of Interim Order (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) Authorizing the Debtor's to Enter into Customer Agreements, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 9] (the "Motion").

3. CIT filed a limited objection to the Motion at docket number 25, and then conveyed to the Debtor some further informal comments regarding the Proposed Interim Order. The Debtor also received some informal comments from the United States Trustee (the "UST") regarding the Proposed Interim Order.

4. On February 18, 2009, the Court held a hearing (the "Interim DIP Hearing") to consider the interim relief sought in the Motion. Shortly before the Interim DIP Hearing, CIT, the UST and the Debtor agreed, in principle, on the terms of a form of order granting the Motion, which terms were explained to the Court during the Interim DIP Hearing. The Court also made certain comments regarding the Proposed Interim Order.

5. The Debtor revised the Proposed Interim Order reflecting all of the comments made by CIT, the UST and the Court, which revised form of Proposed Interim Order has been circulated to, and approved by, CIT and the UST.

6. Accordingly, attached hereto as Exhibit "A" is a revised, clean copy of the Proposed Interim Order and attached hereto as Exhibit "B" is a revised, redlined version of the Proposed Interim Order indicating all of the changes made to the Proposed Interim Order after it was filed with the Motion, which changes indicate all of the comments made by CIT, the UST and the Court.

WHEREFORE, on behalf of the Debtor, I respectfully request that this Honorable Court enter the Proposed Interim Order attached hereto as Exhibit "A".

Respectfully submitted,

BENESCH FRIEDLANDER COPLAN &
ARONOFF LLP

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Proposed Counsel to the Debtor

Dated: February 18, 2009

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

In re:)	Chapter 11
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Forward Foods LLC,)	Case No. 09-10545 (KJC)
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Debtor.)	Re: Docket No. 9
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**INTERIM ORDER (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**

This matter having come on to be considered upon the *Motion of Entry of Interim Order (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* dated February 17, 2009 (the "Motion") filed by Forward Foods LLC, debtor and debtor-in-possession herein (the "Debtor") (a) seeking this Court's authorization pursuant to sections 105, 362, and 364 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the "Bankruptcy Code") and Rules 2002, 4001(b), (c) and (d) and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for the Debtor, to obtain on an interim basis, among other things:

- (1) secured post-petition loans, advances and other accommodations pursuant to the DIP Financing (defined below), from Emigrant Capital Corporation (the "Lender"), secured by (i) first priority security interests in and liens upon the Post-Petition Collateral (defined herein); and (ii) junior liens and security interests in and upon the

Prepetition Collateral (defined herein), pursuant to sections 105, 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code;

- (2) this Court's approval, pursuant to Bankruptcy Code section 362, to grant limited relief from the automatic stay to: (i) allow CIT (defined herein) to collect and apply proceeds of Prepetition Accounts Receivable and Prepetition Inventory (defined herein) to the outstanding balance of the Prepetition Indebtedness (defined herein); and (ii) allow the Lender to exercise its rights under the DIP Loan Documents (defined herein), upon the occurrence of a Default or an Event of Default (defined below);
- (3) this Court's approval, pursuant to Bankruptcy Code sections 361 and 363, of adequate protection;
- (4) a Final Hearing (defined herein) on the Motion (this "Order"); and
- (5) any related relief this Court deems as appropriate, and

The Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested therein and any objections and any evidence offered at the interim hearing (the "Hearing") on the Motion, and the Court being fully advised of the parties premises; and it appearing that due and sufficient notice under the circumstances of the Motion and the Hearing having been provided to all required parties; based upon the Motion, the pleadings filed in this case and the entire record made at the Hearing, and this Court having found good and sufficient cause appearing therefor,

IT IS FOUND AND DETERMINED THAT:

A. The Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on February 17, 2009 (the "Petition Date").

B. This Court has jurisdiction over the Debtor's bankruptcy proceedings (the "Chapter 11 Case") and this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

C. The procedure set forth in Paragraph J of this Order constitutes sufficient "notice and hearing" under sections 102, 363, and 364 of the Bankruptcy Code, Rules 2002, 4001, 6004, 6007, and 9006, and all applicable local rules of this Court.

Prepetition Loans

D. Forward Foods commenced operations on September 1, 2006, when a group of investors led by Emigrant purchased the assets of a protein bar business from Next Proteins, Inc. ("NP"), David A. Jenkins and Bluegrass Bars, LLC ("Sellers"). The purchase of the assets was financed through a senior financing agreement with The CIT Group/Commercial Services, Inc. ("CIT") which provided a working capital line of credit and a senior secured Term A loan of \$8.9 million as a 5-year credit facility (the "Prepetition Loans"). Comerica Bank ("Comerica") is a participant in that Credit Facility. The Sellers participated in the financing with a limited, subordinated Term B loan in an original principal balance of \$4 million. Forward Foods also entered into a subordinated note with NP in the original principal amount of \$2.5 million.

E. Subject to paragraph 11 of this Order, the Debtor stipulates that, as of the Petition Date, it was indebted to CIT and Comerica in respect of the Prepetition Loans in the aggregate outstanding principal amount of approximately \$7,473,637.00, exclusive of interest and fees accrued and unpaid thereon and other costs, expenses (shall be referred to hereinafter as, the "Prepetition Indebtedness"). Subject to paragraph 11 of this Order, the Debtor further stipulates that the Prepetition Indebtedness constitutes legal, valid and binding obligations of the Debtor, enforceable in accordance with the terms of the prepetition loan documents (the "Prepetition Loan Documents") (subject to the stay arising from section 362 of the Bankruptcy Code).

F. Subject to paragraph 11 of this Order, the Debtor stipulates that, under the Prepetition Loan Documents and as security for repayment of the Prepetition Indebtedness, the Debtor granted to CIT and Comerica (the “Prepetition Lenders”) security interests in, and liens upon (the “Prepetition Liens”), substantially all of the Debtor's assets, including among other things, inventory, and the products and proceeds thereof (“Prepetition Inventory”), and accounts receivable and the products and proceeds thereof (the “Prepetition Accounts Receivable”), all as more fully described in the Prepetition Loan Documents, which are incorporated herein by reference (all of foregoing, shall be referred to hereinafter as, the “Prepetition Collateral”).

Post-Petition Loans

Findings Regarding Financing

G. The Debtor does not have sufficient available sources of working capital and financing to operate its business in the ordinary course of business or operate its business and maintain its property in accordance with state and federal laws without debtor-in-possession financing. The Debtor's ability to maintain business relationships with vendors, suppliers and customers, to pay employees and otherwise finance its operations, is essential to the Debtor's continued viability. In addition, the Debtor's need for post-petition financing is immediate. In the absence of the proposed DIP Financing the continued operation of the Debtor's businesses would not be possible, causing serious and irreparable harm to the Debtor and its estate.

H. The Debtor and the Lender have exchanged fair consideration for the rights each obtained in this Order and each acted in good faith in its negotiations over the terms of this Order.

I. Given the Debtor's current financial condition, financing arrangements and capital structure, the Debtor cannot obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. Financing on a post-petition basis is not otherwise available without the Debtor (i) granting, pursuant to Bankruptcy Code section 364(c)(1), claims

having priority over any and all administrative expenses of the kinds specified in Bankruptcy Code sections 503(b) and 507(b), (ii) securing, pursuant to Bankruptcy Code sections 364(c) and (d), such indebtedness and obligations with security interests in and liens on substantially all (if not all) of the Debtor's personal property, real property, the Prepetition Collateral and the Post-Petition Collateral as described below, (iii) providing for adequate protection of CIT's and Comerica's alleged interests in the Prepetition Collateral pursuant to sections 363(c) and 361, (iv) granting limited relief from the automatic stay to allow CIT and Comerica to collect and apply the proceeds of the Prepetition Accounts Receivable and the Prepetition Inventory to the outstanding Prepetition Indebtedness, and (v) granting the limited relief from the automatic stay, to allow the Lender to exercise its rights under the DIP Loan Documents.

J. Notice of the Hearing and the relief requested in the Motion has been given to (i) the Office of the United States Trustee, (ii) counsel to the Lender, CIT, and Comerica, (iii) the Debtor's twenty largest unsecured creditors, and (iv) all other known parties asserting a lien on or security interest in the Debtor's assets or property. Under the circumstances, such notice of the Hearing and the relief requested in the Motion constitutes adequate and sufficient notice under Bankruptcy Code sections 105, 361, 362, 363 and 364, and Bankruptcy Rules 2002 and 4001, and no other notice need be given.

K. At the Hearing, the Court considered representations made by counsel, offers of proof, and/or testimony regarding:

- (i) the negotiations pertaining to this Order;
- (ii) the necessity for this Order;
- (iii) the Debtor's need for credit to the extent necessary to avoid immediate and irreparable harm to its estate; and

- (iv) those expenses necessary to avoid immediate and irreparable harm to its estate.

L. Based on the record presented to the Court by the Debtor at the Hearing, the DIP Financing has been negotiated in good faith and at arm's length between the Debtor and the Lender, and any credit extended, and loans made to the Debtor pursuant to the DIP Loan Documents shall be deemed to have been extended, issued or made, as the case may be, in good faith by the Lender as required by, and within the meaning of Bankruptcy Code section 364(e).

M. Based on the record presented to the Court by the Debtor and the Lender at the Hearing, the terms of the DIP Loan Documents are fair and reasonable, are ordinary and appropriate for secured financing under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

N. The Debtor has requested immediate entry of this Order. The permission granted herein to enter into the DIP Loan Documents, and obtain funds thereunder to apply the proceeds of Post-Petition Collateral (as defined herein) to the obligations under the DIP Loan Documents is necessary to avoid immediate and irreparable harm to the Debtor and its estate and to allow the Debtor to maximize its ability to reorganize under Chapter 11. This Court concludes that entry of this Order is in the best interest of the Debtor's estate and creditors as its implementation will, among other things, provide the Debtor with the necessary liquidity to sustain the operation of the Debtor's business.

O. The Debtor has also made the Court aware of litigation among it, the Lender and the Sellers, in which litigation a proposed settlement (the "Settlement") is being memorialized in writing. The Debtor has, or promptly will, file a 9019 motion seeking approval by the Court of the settlement. The terms of the settlement have been explained to this Court, and the Court has been

made aware that in order for the Lender to extend the DIP Financing to the Debtor, the Settlement must be approved by this Court. Nothing herein prejudices the right of any party in interest to object to the Settlement.

P. No committee of unsecured creditors has been appointed in this case (the “Committee”).

IT IS HEREBY ORDERED, DECREED AND ADJUDGED, ON AN INTERIM BASIS, THAT:

1. The Motion is granted, subject to the terms and conditions set forth in this Order.

2. Authorization to Borrow and Use of DIP Financing Proceeds. The Debtor is authorized and empowered to borrow money, incur indebtedness, and seek other financial accommodations from the Lender effective as of the Petition Date pursuant to the terms and conditions of this Order and the DIP Loan Documents, as modified herein.

3. Post-Petition Loans. The Debtor is authorized to borrow money from the Lender and use the proceeds of the DIP Financing fully in accordance with the DIP Agreements, including, without limitation, in the operation of its business; *provided however*, that the use of the DIP Financing must be consistent with the terms of the DIP Loan Documents, this Order, and otherwise consistent with, the disbursements set forth in the budget attached to the Motion as Exhibit “C” (the “Budget”); and to provide adequate protection to CIT and Comerica (all of the post-petition obligations, liabilities and indebtedness owed by the Debtor to the Lender, of whatever kind, nature or description now or hereafter arising in accordance with this Order and the DIP Loan Documents, is referred to herein as the “Post-Petition Indebtedness”).

4. The Debtor shall use proceeds of the loans and advances made by the Lender to the Debtor under the DIP Financing solely for the payment of the costs and expenses set forth on the Budget and to pay the principal, interest, fees, costs, expenses, indemnities and other charges

payable by the Debtor to the Lender under or in connection with the DIP Loan Documents (regardless of whether such items are set forth in the Budget). The Budget may be modified by the written agreement of the Debtor and the Lender. In no event shall the proceeds of the DIP Financing or the Post-Petition Collateral (as hereinafter defined) be used by any person or entity to prosecute, challenge or pursue any claims or causes of action against or with respect to the Lender, the DIP Loan Documents, or any payments received or recoveries made by the Lender under the DIP Loan Documents; provided, however, that the foregoing shall not restrict any official committee or an authorized party-in-interest from using such proceeds to investigate claims, causes of action, or potential recoveries.

5. During the term of this Order, the Prepetition Loan Documents shall continue in full force and effect with respect to the Prepetition Indebtedness, except as otherwise modified herein.

6. The Debtor is authorized and directed to execute, deliver, perform and comply with the terms and covenants of the DIP Loan Documents. The Debtor and the Lender are further authorized to enter into (i) non-material amendments to the DIP Loan Documents, the Customer Agreements and the Budget, without further order of this Court, provided that written notice of such amendment is provided to the Committee¹ (once formed) in advance, or (ii) material amendments to the DIP Loan Documents and the Budget, upon further order of this Court. The terms and conditions of the DIP Loan Documents and the Budget (as same may be amended from time to time in accordance with this paragraph), and the Prepetition Loan Documents are incorporated into the terms and conditions of this Order and shall be sufficient and conclusive evidence of the borrowing arrangements among the Debtor, the Lender, CIT and Comerica.

¹ All notices and reporting provided to the Lender and the Committee pursuant to this Order, must also be provided to CIT and Comerica.

7. As security for the Post-Petition Indebtedness under the DIP Loan Documents, the Lender shall have and is hereby granted as of the Petition Date (without the necessity of entering into or the recordation of mortgages, security agreements, pledge agreements, assignments, control agreements, financing statements or otherwise):

- (a) valid and perfected **senior** security interests in, and liens on all property and interests in property acquired by the Debtor and the Debtor's estate from and after the Petition Date and wherever located, including, without limitation, the following: (i) accounts receivable, (ii) equipment, (iii) inventory (including the Prepetition Inventory when purchased post-petition by the Debtor) and other goods, (iv) instruments and documents of title, (v) general intangibles (including, without limitation, all trademarks, patents, rights under licenses (whether as licensor or licensee) and other intellectual property, rights with respect to insurance policies, state, federal and foreign tax and duty refunds, open purchase orders, customer lists rights under leases), (vi) investment property, (vii) real estate owned by the Debtor, (viii) all deposit accounts and all monies, securities, cash, cash equivalents contained in deposit accounts maintained by the Debtor, (ix) commercial tort claims, (x) letter of credit rights, (xi) rights under leases of real property, (xii) all books and records (including electronic media) pertaining to the foregoing, (xiii) equity interests in any subsidiaries or affiliates, and (xiv) the proceeds and products of all of the foregoing. The Lender's senior security interest excludes recoveries, claims and causes of action, and the proceeds of such recoveries, claims and causes of action arising under the avoidance provisions of chapter 5 of the Bankruptcy Code ("Avoidance Actions") and Prepetition Collateral; and

- (b) subject only to Prepetition Liens, valid and perfected **junior** security interests in, and liens on all property and interests in property acquired by the Debtor and the Debtor's estate prior to the Petition Date, wherever located, including, without limitation, the following: all Prepetition Collateral (all of such property described in this Paragraph 7 herein shall collectively be referred to as the "Post-Petition Collateral").

Except for the Prepetition Liens and the Carve-Out (defined herein), and to the extent otherwise expressly set forth in this Order, the liens granted to the Lender pursuant to this Order and the DIP Financing (the "DIP Liens") to secure the Post-Petition Indebtedness shall not be subordinated to or made *pari passu* with any other lien or security interest. The Prepetition Collateral will not be surcharged for the Carve-Out.

8. The Debtor shall use the proceeds of the DIP Financing solely for the payment of the costs and expenses set forth on the Budget and to pay the principal, interest, fees, costs, expenses, indemnities and any and all other charges payable by the Debtor to the Lender under the DIP Agreements (regardless of whether such items are set forth in the Budget). Nothing in the Budget or herein shall (a) constitute a finding that Debtor is entitled to use the proceeds of the Settlement or (b) prejudices any party in interest's assertion of a security interest in the Settlement.

9. Superpriority Claims. In accordance with Bankruptcy Code section 364(c), the Post-Petition Indebtedness shall constitute claims with priority in payment over any and all administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 503(b) or 507(b) (the "Superpriority Claims"), with the sole exception of the right to payment of professional fees pursuant to paragraph 14(b) hereof. No cost or expense of administration under Bankruptcy Code sections 105, 364(c)(1), 503(b), 507(b) or otherwise, including those resulting from the conversion of the Chapter 11 Case pursuant to Bankruptcy Code section 1112, shall be

senior to, or *pari passu* with, the Superpriority Claims of the Lender arising out of the Post-Petition Indebtedness.

10. Permitted Liens. Notwithstanding anything to the contrary set forth herein or in the DIP Loan Documents, the DIP Liens granted by this Order or otherwise do not have priority over valid, perfected and unavoidable security interests in and liens on the Debtor's property existing as of the Petition Date and having priority over the DIP Liens, including, without limitation, claims asserted by creditors with a "purchase money security interest" (as that term is used §9-103 of the Uniform Commercial Code) and statutory liens arising under applicable law, if any ("Statutory Lien Creditors"). The security interests and liens granted by this Order to the Lender shall, to the extent that any Statutory Lien Creditors have a valid, enforceable, properly perfected, unavoidable prepetition lien and security interest in any portion of the Prepetition Collateral and Post-Petition Collateral having priority over the security interests and liens of the Lender, be a lien and security interest in the Prepetition Collateral, junior in priority only to such liens and security interests pursuant to section 364(c)(3) of the Bankruptcy Code. Nothing contained herein shall preclude the Debtor or the Lender from contesting the validity, priority or amount of any liens held by the Statutory Lien Creditors.

11.

- (i) The amount, extent, validity, perfection, priority and enforceability of the DIP Liens or any other claims whatsoever against the Lender, including any claims arising from or related to the principal, fees, charges, interest, commissions, costs, indemnities and expenses chargeable by the Lender pursuant to the terms of the DIP Loan Documents, are and shall be for all purposes binding upon all parties in interest, unless (a) a party in interest (other than the Debtor), including a chapter 7 trustee or a chapter 11 trustee,

has commenced an adversary proceeding or a contested matter with respect to foregoing on or before the Objection Deadline (defined in Paragraph 35 herein) (or such later date agreed to in writing by the Lender); and (b) an order is entered ruling in favor of the plaintiff in any such adversary proceeding or contested matter and as to which no stay has been entered and which has not been reversed, modified, vacated or overturned. The Debtor and the Lender each acknowledge that the Committee (when formed) has standing to commence such an adversary proceeding or contested matter. If no such adversary proceeding is properly commenced by the expiration of the Objection Deadline, the Post-Petition Indebtedness, the DIP Loan Documents and the DIP Liens in the Post-Petition Collateral, shall be recognized as valid, binding and in full force and effect, not subject to defense, counterclaim, or offset of any kind, upon all parties in this proceeding, including, without limitation, the Committee, any chapter 7 or chapter 11 trustee (or any successor chapter 7 or chapter 11 trustee) appointed hereafter, allowed as a fully secured allowed claim pursuant to sections 506(a) and (b) of the Bankruptcy Code, without further order of this Court and all parties in interest shall forever be barred from asserting any claims against the Lender or otherwise challenge the DIP Loan Documents or any payments received or recoveries made by the Lender thereunder.

- (ii) The amount, extent, validity, perfection, priority and enforceability of the Prepetition Indebtedness, the Prepetition Liens or any other claims whatsoever against the Prepetition Lenders are and shall be for all purposes binding upon all parties in interest, unless (a) a party in interest (other than

the Debtor), including a chapter 7 trustee or a chapter 11 trustee, has commenced an adversary proceeding or a contested matter with respect to foregoing on or before the earlier of seventy-five (75) days after the Petition Date or sixty (60) days after the appointment of a Committee (the "Investigative Deadline") and (b) an order is entered ruling in favor of the plaintiff in any such adversary proceeding or contested matter and as to which no stay has been entered and which has not been reversed, modified, vacated or overturned. The Debtor and the Prepetition Lenders each acknowledge that the Committee (when formed) has standing to commence such an adversary proceeding or contested matter. If no such adversary proceeding is commenced by the expiration of the Investigative Deadline, the Prepetition Indebtedness, the Prepetition Loan Documents, and the Prepetition Liens shall be recognized as valid, binding and in full force and effect, not subject to defense, counterclaim, or offset of any kind, upon all parties in this proceeding, including, without limitation, the Committee, any chapter 7 or chapter 11 trustee (or any successor chapter 7 or chapter 11 trustee) appointed hereafter, allowed as a fully secured allowed claim pursuant to sections 506(a) and (b) of the Bankruptcy Code, without further order of this Court and all parties in interest shall forever be barred from asserting any claims against the Prepetition Lenders or otherwise challenge the Prepetition Loan Documents or any payments received or recoveries made by the Prepetition Lenders thereunder.

12. Fees and Costs of Lender and Professionals Retained by the Estate. The Debtor is authorized and directed, without further order of this Court, promptly to pay or reimburse the

Lender for all present and future fees, out-of-pocket costs, indemnities, charges and expenses paid or incurred by Lender (including, without limitation, any fees and expenses of Lender's in-house or outside counsel, auditors, appraisers, accountants, etc.) respecting the filing of the Chapter 11 Case, including, without limitation, respecting the financing transactions contemplated by this Order and the DIP Loan Documents (including, without limitation, fees, costs, indemnities, charges and expenses incurred prior to the Petition Date). The Lender may continue to charge, without further order of the Court, all of such costs, fees, indemnities, charges and expenses to the DIP Financing in accordance with the DIP Loan Documents; provided, however, that the Lender shall provide copies of invoices for such costs, fees, indemnities, charges and expenses to both the Office of the United States Trustee and any official committee appointed in this case at the same time they are provided to the Debtor, and the Lender agrees that any disputes regarding such invoices shall be submitted to this Court for adjudication.

13. To facilitate payment to the Retained Professionals (as that term is defined below), the following procedures shall be implemented:

a. On the first day of each month until an Event of Default (as defined herein) has occurred and subject to the terms of this Order and sufficient borrowing availability under the DIP Financing, the Lender will make funds available, in the amount set forth in the Budget under the line items "Debtor's Professionals" and "Committee's Professionals" to be held in escrow pursuant to the terms of this Order (the "Professional Fee Escrow"). The Professional Fee Escrow will be deemed to be held in trust solely for purpose of paying allowed interim and final fees and costs of the Retained Professionals and no other expenses or obligations of the Debtor. Any portion of the Professional Fee Escrow not used to pay allowed fees and costs of the respective professionals shall be held by counsel as cash collateral for the Post-Petition Indebtedness.

b. Except for fees payable to the United States Trustee pursuant to 28 U.S.C. §1930, the DIP Liens and the Superpriority Claims and the Prepetition Liens shall, following the occurrence and during the continuation of an Event of Default, be subject to: (a) unpaid professional fees and expenses up to the amounts disclosed in the Budget through the date of the Event of Default plus four weeks that are allowed pursuant to the applicable provisions of the Bankruptcy Code (the "Carve-Out") which may be used by the Retained Professionals for Court approved post-petition services. The Carve-Out shall only be applicable in the event, and to the

extent, that there are no unencumbered assets of the Debtor's estate which may be used to satisfy such fees and expenses; recourse for repayment of such fees and expenses shall be made first to such unencumbered assets. Moreover, the Carve-Out shall also exclude any fees and expenses incurred in connection with the prosecution of any claims or causes of action against the Lender for the DIP Liens or other claims, including any challenges or claims relating to the Customer Guaranties. If no Event of Default (as defined herein) exists, the Debtor may pay such professional fees and expenses as are authorized by the Bankruptcy Court; *provided, however*, that any such allowed fees and expenses incurred consistent with the Budget prior to an Event of Default shall be paid in conformity with the Budget after the Event of Default.

c. Upon entry of an order after the Final Hearing, no costs and expenses incurred in connection with the administration of the Chapter 11 Case or any conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code, or in any future proceedings related hereto, whether incurred pursuant to section 726(b) of the Bankruptcy Code or otherwise, shall be charged against the Post-Petition Indebtedness, or the Post-Petition Collateral, pursuant to section 506(c) of the Bankruptcy Code or otherwise, without the express written consent of the Lender, subject to the Final Order.

d. Neither the DIP Financing (including funds deposited in the Professional Fee Escrows) nor the Carve-Out may be used to (a) contest, hinder or delay the Lender's enforcement of this Order or the DIP Loan Documents, as the case may be, or the realization upon any of the Post-Petition Collateral (subject to the terms of this Order); (b) use or seek to use cash collateral or sell Prepetition Collateral or Post-Petition Collateral over an objection of the Lender; (c) prosecute any claim or action, the primary purpose of which is to invalidate, set aside avoid or subordinate, in whole or in part, the Prepetition Indebtedness or the Post-Petition Indebtedness, Lender's security interests in the Prepetition Collateral and/or Post-petition Collateral; (d) object to, contest or raise any defense to the validity, perfection, priority, extent or enforceability of the Prepetition Indebtedness, the Post-Petition Indebtedness, Lender's security interest in the Prepetition Collateral, the Post-Petition Collateral, or the DIP Liens securing the same; or (e) assert any claims, counterclaims, defenses or causes of action against the Lender or any of the DIP Loan Documents; provided, however, that the foregoing shall not restrict any official committee or an authorized party-in-interest from using such proceeds to investigate claims, causes of action, or potential recoveries.

e. Nothing herein shall be construed as consent to the allowance of any fees and expenses of the Retained Professionals, or shall affect the rights of the Lender or any other interested party to object to the allowance and payment of such fees and expenses.

Adequate Protection; Limited Relief from the Automatic Stay

14. Upon entry of this Order, and subject to the provisions of paragraph 11 hereof, CIT and Comerica shall be and hereby are granted the following adequate protection:

- (i) Upon entry of this Interim Order, the Debtor shall turnover to CIT and Comerica any proceeds of the Prepetition Accounts Receivable that the Debtor receives.
- (ii) Upon entry of this Interim Order, the Debtor shall first use the Prepetition Inventory and pay CIT and Comerica as follows:
 - (a) with regard to finished goods inventory, the wholesale value;
 - (b) with regard to raw inventory, the cost value.
- (iii) CIT and Comerica are hereby granted limited relief from the automatic stay and are further authorized to collect the Prepetition Accounts Receivable and sell the Prepetition Inventory, and apply the proceeds thereof to their secured claim, the Debtor represents that it intends to purchase such Prepetition Inventory in the ordinary course from CIT and Comerica;
- (iv) As adequate protection for the Debtor's use of its equipment and intangible property, CIT and Comerica shall retain their prepetition liens and receive a monthly payment of \$5,000.00 on the 1st day of each month, commencing on March 1, 2009;
- (v) The Debtor shall maintain its equipment in good working order and maintain insurance on the equipment;
- (vi) Effective upon the date of this Order and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or otherwise, CIT and Comerica are granted valid and perfected, replacement security interests in, and liens on, all of the Debtor's right, title and interest in, to and under the Prepetition Collateral, with the same priority as their Prepetition Liens.

15. Under the circumstances, the adequate protection and limited relief from stay provided herein is reasonable and sufficient to protect the interests of CIT and Comerica, *provided, however*, CIT and Comerica retain all rights and nothing herein contained shall affect or impair CIT's or Comerica's right to seek additional adequate protection of its interest, or the Debtor's right to seek to reduce the amount of adequate protection provided for herein in Paragraph 14(iii) above.

Events of Default

16. For purposes of this Order, each of the following is an “Event of Default” and, collectively, “Events of Default”: (a) the failure of the Debtor to perform in any material respect any of its obligations pursuant to this Order, including, without limitation, payments to the Lender contemplated in the Budget or in the Order; (b) conversion of the Chapter 11 Case of the Debtor to a case under chapter 7 of the Bankruptcy Code, without the consent of the Lender; (c) the appointment of a trustee appointed pursuant to sections 1104(a)(1) and 1104(a)(2) of the Bankruptcy Code; (d) dismissal of the Chapter 11 Case; (e) the entry of any order modifying, reversing, revoking, staying, rescinding, vacating or amending this Order without the express prior written consent of the Lender (and no such consent shall be implied from any other action, inaction or acquiescence by the Lender); (f) the entry of the Final Order shall not have occurred within 45 days after the Petition Date; (g) the Debtor’s filing, without the express written consent of the Lender, of (i) a motion for the use of cash collateral, (ii) a motion requesting authority to incur indebtedness either (A) having administrative expense priority equal or superior to the administrative expense priority granted to the Lender under this Order with respect to its claims other than debt incurred in the ordinary course of business, or (B) secured by a security interest or lien with priority equal or superior to the priority of Lender’s security interests in or liens on the Prepetition Collateral and the Post-Petition Collateral; (h) the Debtor filing a motion or application for an order seeking to (i) revoke, reverse, stay the implementation of, modify, supplement or amend this Order, or (ii) invalidate, raise defenses to, or otherwise challenge the extent, amount, validity, perfection, priority or enforceability of the security interests and liens of Lender in the Prepetition Collateral or the Post-Petition Collateral; or (i) the occurrence of a Default or an Event of Default (as such terms are defined in the DIP Loan Documents) under the DIP Loan Documents.

17. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Lender to exercise its rights, upon the occurrence of a Default or an Event of Default (as such terms are defined in the DIP Loan Documents and in this Order). If a Default or an Event of Default (as such terms are defined in the DIP Loan Documents and in this Order) occurs, the Lender may cease further advances under the DIP Agreement and this Order and upon three (3) business days written notice from the Lender to counsel for the Debtor, the Office of the United States Trustee, any official committee appointed in this case, and the parties which received notice of the Motion (“Default Notice”), the Lender may (a) terminate the DIP Financing (the date of any such termination, the “Termination Date”) and declare the Post-Petition Indebtedness to be immediately due and payable, (b) require the Debtor to immediately segregate and not use cash collateral without further order of this Court, (c) setoff amounts in any accounts maintained with the Lender which are the proceeds of Post-petition Receivables, or otherwise enforce rights against all or part of any Post-Petition Collateral in the possession of the Lender to the extent that such Event of Default would permit such relief under the DIP Loan Documents, as amended hereby; and/or (d) take any other action or exercise any other right or remedy of the Lender under the DIP Financing, the DIP Loan Documents this Order or by operation of law.

18. Upon the Debtor’s receipt of a Default Notice, it shall immediately cease making any disbursements pursuant to the Budget or otherwise without further order of the Court; *provided, however,* that the obligations and rights of the Lender and the Debtor with respect to all transactions which have occurred prior to the Termination Date shall remain unimpaired and unaffected by any such termination and shall survive such termination; and *provided further* that upon such termination the Lender shall be deemed to have retained all of its rights and remedies, including, without limitation, as provided in the DIP Agreements and under the Bankruptcy Code.

Miscellaneous Provisions

19. Notwithstanding anything to the contrary in this Order, the Lender shall be under no obligation to extend the DIP Financing to the Debtor on or after the Final Hearing unless and until, the Settlement is approved by an Order of this Court becoming final.

20. Subject to the provisions of paragraph 11 of this Order, upon entry of a final order, CIT and Comerica are hereby granted limited relief from the automatic stay as of the Petition Date to allow it to collect and apply the proceeds of the Prepetition Accounts Receivable and Prepetition Inventory to the outstanding Prepetition Indebtedness.

21. Subject to the requirements of 11 U.S.C. § 345 and any cash management order entered by this Court, the Debtor is authorized to establish a cash management system with the Lender, which shall include a lockbox/blocked account agreement in a form and substance reasonably acceptable to the Lender, pursuant to which the Lender will have full dominion and control over cash collateral and the Cash Proceeds (defined herein) of the Post-Petition Collateral.

22. Immediately upon the entry of this Order, the Debtor shall account to the Lender for all cash, checks, notes, drafts, instruments, acceptances or other property representing cash or other proceeds of the Post-Petition Collateral in the Debtor's possession, custody or control. All cash, checks, notes, drafts, instruments, acceptances and other property in the nature of items of payment representing proceeds of property and interests in property of the Debtor (collectively, "Cash Proceeds") currently in the possession of the Debtor or in any accounts in financial institutions, including any lock box established in accordance with the DIP Financing or depository accounts, must be determined to be either proceeds of the Prepetition Collateral or proceeds of the Post-Petition Collateral. All Cash Proceeds shall be remitted to the appropriate creditor in accordance with the terms of this Order.

23. The agreement by the Lender to make any DIP Financing available to the Debtor under the DIP Loan Documents and to allow the use of cash collateral pursuant to the terms of this Order shall continue until the earlier of (a) the conclusion of the Final Hearing, (b) the date Post-Petition Indebtedness is repaid in full, and (c) December 31, 2009 (the “Term”), unless terminated prior to this date upon the occurrence of the Termination Date or otherwise pursuant to the terms of the DIP Loan Documents or this Order.

24. The Debtor is required to deliver to the Lender such other financial and other information concerning the business and affairs of the Debtor as the Lender shall reasonably request from time to time, including, without limitation, the financial reports and information provided to the Lender under the DIP Loan Documents, as well as all material documents relating to any proposed sale or restructuring (including without limitation, solicitation materials, disclosure statements, solicitation for new financing, valuations, business plans, sale materials and projections) provided to third parties at such time as such documents and information are provided to such third parties, as well as such other information reasonably requested by Lender. The Debtor shall fully cooperate with and permit the Lender to perform physical inventories of all assets in the Debtor’s facilities at any reasonable times requested by the same.

25. The Debtor shall further provide the Lender, upon request, with: (i) detailed information as to the extent and composition of the Post-Petition Collateral and any collections thereon; (ii) a daily report, with information reasonably satisfactory to the Lender, identifying and differentiating accounts receivable; (iii) a weekly revenue report (including reports of sales); and (iv) a weekly variance report of actual expenditures versus projected expenditures versus projected Budget expenditures and all other information set forth in the DIP Loan Documents.

26. Having been found to be extending credit and making loans to the Debtor in good faith, the Lender shall be entitled to the full protection of Bankruptcy Code section 364(e) with

respect to the DIP Financing and the liens and priorities created or authorized by this Order in the event that this Order or any authorization contained herein is reversed or modified on appeal. Any stay, modification, reversal or vacation of this Order shall not affect the validity of any obligation of the Debtor to the Lender incurred pursuant to this Order. Notwithstanding any such stay, modification, reversal or vacation, all loans made pursuant to this Order, all use of cash collateral and all DIP Financing incurred by the Debtor pursuant hereto or the DIP Loan Documents prior to written notice to the Lender of the effective date of any such stay, modification, reversal or vacation, shall be governed in all respects by the provisions hereof and the Lender shall be entitled to all the rights, privileges and benefits of this Order, including, without limitation, the DIP Liens and Superpriority Claims granted herein.

27. The transactions contemplated by the DIP Financing are not intended to provide the Lender with sufficient control over the Debtor so as to subject the Lender to any liability (including, without limitation, environmental liability as an “owner,” “operator,” or “responsible person” as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorizations Act of 1986) in connection with the management of the Debtor’s business or any of the Debtor’s properties. Upon entry of an order after the Final Hearing, by providing the DIP Financing or taking any actions pursuant to this Order, the Lender shall not: (1) be deemed to be in control of the operations or liquidation of the Debtor; or (2) be deemed to be acting as a “responsible person” or “owner or operator” with respect to the operation, management or liquidation of the Debtor.

28. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered including without limitation (a) converting either of the Chapter 11 Case to chapter 7; or (b) dismissing either of the Chapter 11 Case, and the terms and provisions of this Order as well as the Superpriority Claims, DIP Liens granted pursuant to this

Order and replacement liens granted to CIT and Comerica shall continue in full force and effect notwithstanding the entry of such order, and such Superpriority Claims, DIP liens shall maintain their priority as provided by this Order until all Post-Petition Indebtedness is indefeasibly paid in full and discharged.

29. The Lender's obligations under this Order are subject to delivery to the Lender of evidence satisfactory to the Lender that the Post-Petition Collateral is insured for the full replacement value thereof and the Lender is named as loss payee and/or as additional insured on all insurance policies upon request of the Lender, as its interest appears. CIT and Comerica shall remain as additional insureds on all insurance policies as their interest appears.

30. The Lender may retain a restructuring consultant or additional third party consultants to review matters pertaining to the business and properties of the Debtor at its sole reasonable expense (collectively, the "Lender's Consultants"). The Debtor shall permit the Lender's Consultants to examine the respective corporate, financial and operating records, and, at the Debtor's reasonable expense, make copies thereof, inspect the assets, properties, operations and affairs of the Debtor, visit any or all of the offices of the Debtor to discuss such matters with their officers, independent auditors, accountants or consultants (and the Debtor hereby authorizes such independent auditors, accountants and consultant to discuss such matters with the Lender's Consultants), and the Debtor will cooperate with the Lender's Consultants in all reasonable respects.

31. In consideration for the DIP Financing, the Debtor on behalf of itself and its successors and assigns (collectively, the "Releasers"), but without prejudice to the rights of other parties in interest to assert claims, if any, on behalf of the Debtor's estates in accordance with Paragraph 12 hereof, shall forever release, discharge and acquit the Lender and their respective officers, directors, employees, agents, attorneys and predecessors in interest (collectively, the

“Releasees”) of and from any and all claims, demands, damages, liabilities, responsibilities, disputes, remedies, actions, causes of action, indebtedness and obligations, of every type, including, without limitation, any so-called “lender liability” claims or defenses, which arose on or prior to the date this Order is entered with respect to the Debtor, the Post-Petition Indebtedness or the DIP Financing; provided, however, the foregoing release shall not release the Lender from its obligations under this Order.

32. **Notice of Intent to Seek Waiver of Claims Under 11 U.S.C. § 506(c)**. This shall serve as notice that at the Final Hearing (defined herein) the Debtor shall seek a waiver of all claims under section 506(c) of the Bankruptcy Code until the occurrence of an Event of Default, except to the extent of the Carve-Out , no expenses of administration of the Debtor’s bankruptcy proceeding or any other proceedings or cases that may result therefrom, including liquidation in bankruptcy or any other proceeding of the Bankruptcy Code, shall be charged against or recovered from the collateral utilized to secure the DIP Agreement pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without prior written consent of the Lender and no such consent shall be implied from any other action, inaction, or acquiescence by the Lenders.

33. Entry of this Order shall be without prejudice to any and all rights, remedies, claims and causes of action which the Lender may have against the Debtor or any third parties, and without prejudice to the right of the Lender to seek further relief from the automatic stay in effect pursuant to Bankruptcy Code section 362, or any other relief in this Chapter 11 Case, and the right of the Debtor and parties in interest to oppose any such relief by contesting the existence of a Default or an Event of Default and as otherwise consistent with the terms of this Order. The provisions of this Order shall be binding upon and inure to the benefit of the Lender, CIT, Comerica and their

successors and assigns, the Debtor, and its successors and assigns, including any trustee or other fiduciary hereafter appointed in these cases as a legal representative of the Debtor's estate.

34. The Debtor is authorized to perform all acts, and execute and comply with the terms of such other documents, instruments and agreements in addition to the DIP Loan Documents, as the Lender may reasonably require, as evidence of and for the protection of the DIP Financing, or which otherwise may be deemed reasonably necessary by the Lender to effectuate the terms and conditions of this Order and the DIP Loan Documents.

35. This matter is set for a final hearing at 4:30 p.m. (EST) on March 18, 2009 (the "Final Hearing"), before a United States Bankruptcy Judge, U.S. Bankruptcy Court, District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, at which time any party in interest may appear and state its objections, if any, to relief requested in Motion. Objections shall be in writing and shall be filed with the Clerk of the Bankruptcy Court with a copy served upon (a) **William I. Kohn, Esq.**, Benesch Friedlander Coplan & Aronoff LLP, 2300 BP Tower, 200 Public Square, Cleveland, OH 44114-2378, fax (216) 363-4588; (b) **Bradford J. Sandler, Esq.**, Benesch Friedlander Coplan & Aronoff LLP, 222 Delaware Avenue, Suite 801, Wilmington, DE 19801, fax (302) 442-7012; (c) counsel for Emigrant Capital Corp., Attn: Ed. Burns and Ken Walters, 6 E. 43rd, New York, NY 10017; (d) counsel for Next Proteins, Inc.: Allen Matkins Leck Gamble Mallory & Natsis LLP, Attn: Debra A. Riley, 501 West Broadway, 15th Floor, San Diego, CA 92101-3541; (e) counsel for The CIT Group/Commercial Services, Inc.: Buchalter Nemer, Attn: Bernard Bollinger, Jr., 1000 Wilshire Boulevard, Suite 1500, Los Angeles, CA 90017-2457; (f) counsel for Comerica Bank: Bodman LLP, Attn: David J. Nowaczewski, 1901 St. Antoine Street, 6th Floor at Ford Field, Detroit, MI 48226; (f) **The Office of the United States Trustee**, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, fax (302) 573-6497; and (g) any other parties requesting notice in this case; so as to be received **on or before 4:00 p.m. (EST) on March**

11, 2009 (the "Objection Deadline"); any objections by creditors or other parties in interest to any of the provisions of this Order shall be deemed waived unless filed and served in accordance with the notice on or before the close of business on such date. Counsel for the Debtor shall promptly serve a copy of this Order on the parties that received notice of this Interim Hearing and those parties requesting notice in this Chapter 11 Case.

36. Except as otherwise provided herein, the terms of this Order shall be valid and binding upon the Debtor, all of its creditors, and all other parties in interest from and after the date of this Order. In the event this Court modifies any of the provisions of this Order and the DIP Agreements following such further hearing, such modifications shall not affect the rights and priorities of the Lender pursuant to this Order with respect to the Post-Petition Collateral and any portion of the DIP Financing which arises, or is incurred or is advanced prior to such modifications (or otherwise arising prior to such modifications), and this Order shall remain in full force and effect except as specifically amended or modified at such final hearing.

37. To the extent there exists any conflict between the DIP Loan Documents, and the terms of this Order, this Order shall govern.

Dated: Wilmington, Delaware
_____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

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

In re:)	Chapter 11
)	
Forward Foods LLC,)	Case No. 09-10545 (KJC)
)	
Debtor.)	Re: Docket No. 9
)	

INTERIM ORDER (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

This matter having come on to be considered upon the *Motion of Entry of Interim Order (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* dated February 17, 2009 (the "Motion") filed by Forward Foods LLC, debtor and debtor-in-possession herein (the "Debtor") (a) seeking this Court's authorization pursuant to sections 105, 362, and 364 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the "Bankruptcy Code") and Rules 2002, 4001(b), (c) and (d) and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for the Debtor, to obtain on an interim basis, among other things:

- (1) secured post-petition loans, advances and other accommodations pursuant to the DIP Financing (defined below), from Emigrant Capital Corporation (the "Lender"), secured by (i) first priority security interests in and liens upon the Post-Petition Collateral (defined herein); and (ii) junior liens and security interests in and upon the

Prepetition Collateral (defined herein), pursuant to sections 105, 364(c)(1), 364(c)(2), and 364(c)(3) ~~and 364(d)~~ of the Bankruptcy Code;

- (2) this Court's approval, pursuant to Bankruptcy Code section 362, to grant limited relief from the automatic stay to: (i) allow CIT (defined herein) to collect and apply proceeds of Prepetition Accounts Receivable and Prepetition Inventory (defined herein) to the outstanding balance of the Prepetition Indebtedness (defined herein); and (ii) allow the Lender to exercise its rights under the DIP Loan Documents (defined herein), upon the occurrence of a Default or an Event of Default (defined below);
- (3) this Court's approval, pursuant to Bankruptcy Code sections 361 and 363, of adequate protection;
- (4) a Final Hearing (defined herein) on the Motion (this "Order"); and
- (5) any related relief this Court deems as appropriate, and

The Court having reviewed the Motion and having heard the statements of counsel in support of the relief requested therein and any objections and any evidence offered at the interim hearing (the "Hearing") on the Motion, and the Court being fully advised of the parties premises; and it appearing that due and sufficient notice under the circumstances of the Motion and the Hearing having been provided to all required parties; based upon the Motion, the pleadings filed in this case and the entire record made at the Hearing, and this Court having found good and sufficient cause appearing therefor,

IT IS FOUND AND DETERMINED THAT:

A. The Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code on February 17, 2009 (the "Petition Date").

B. This Court has jurisdiction over the Debtor's bankruptcy proceedings (the "Chapter 11 Case") and this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2).

C. The procedure set forth in Paragraph J of this Order constitutes sufficient "notice and hearing" under sections 102, 363, and 364 of the Bankruptcy Code, Rules 2002, 4001, 6004, 6007, and 9006, and all applicable local rules of this Court.

Prepetition Loans

D. Forward Foods commenced operations on September 1, 2006, when a group of investors led by Emigrant purchased the assets of a protein bar business from Next Proteins, Inc. ("NP"), David A. Jenkins and Bluegrass Bars, LLC ("Sellers"). The purchase of the assets was financed through a senior financing agreement with The CIT Group/Commercial Services, Inc. ("CIT") which provided a working capital line of credit and a senior secured Term A loan of \$8.9 million as a 5-year credit facility (the "Prepetition Loans"). Comerica Bank ("Comerica") is a participant in that Credit Facility. The Sellers participated in the financing with a limited, subordinated Term B loan in an original principal balance of \$4 million. Forward Foods also entered into a subordinated note with NP in the original principal amount of \$2.5 million.

E. ~~As of the Petition Date~~ Subject to paragraph 11 of this Order, the Debtor stipulates that, as of the Petition Date, it was indebted to CIT and Comerica in respect of the Prepetition Loans in the aggregate outstanding principal amount of approximately \$7,473,637.00, exclusive of interest and fees accrued and unpaid thereon and other costs, expenses (shall be referred to hereinafter as, the "Prepetition Indebtedness"). ~~The~~ Subject to paragraph 11 of this Order, the Debtor further stipulates that the Prepetition Indebtedness constitutes legal, valid and binding obligations of the Debtor, enforceable in accordance with the terms of the prepetition loan

documents (the “Prepetition Loan Documents”) (subject to the stay arising from section 362 of the Bankruptcy Code).

F. ~~Under~~ Subject to paragraph 11 of this Order, the Debtor stipulates that, under the Prepetition Loan Documents and as security for repayment of the Prepetition Indebtedness, the Debtor granted to CIT and Comerica (the “Prepetition Lenders”) security interests in, and liens upon (the “Prepetition Liens”), substantially all of the Debtor's assets, including among other things, inventory, and the products and proceeds thereof (“Prepetition Inventory”), and accounts receivable and the products and proceeds thereof (the “Prepetition Accounts Receivable”), all as more fully described in the Prepetition Loan Documents, which are incorporated herein by reference (all of foregoing, ~~except the Prepetition Inventory,~~ shall be referred to hereinafter as, the “Prepetition Collateral”).

Post-Petition Loans

Findings Regarding Financing

G. The Debtor does not have sufficient available sources of working capital and financing to operate its business in the ordinary course of business or operate its business and maintain its property in accordance with state and federal laws without debtor-in-possession financing. The Debtor's ability to maintain business relationships with vendors, suppliers and customers, to pay employees and otherwise finance its operations, is essential to the Debtor's continued viability. In addition, the Debtor's need for post-petition financing is immediate. In the absence of the proposed DIP Financing the continued operation of the Debtor's businesses would not be possible, causing serious and irreparable harm to the Debtor and its estate.

H. The Debtor and the Lender have exchanged fair consideration for the rights each obtained in this Order and each acted in good faith in its negotiations over the terms of this Order.

I. Given the Debtor's current financial condition, financing arrangements and capital structure, the Debtor cannot obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. Financing on a post-petition basis is not otherwise available without the Debtor (i) granting, pursuant to Bankruptcy Code section 364(c)(1), claims having priority over any and all administrative expenses of the kinds specified in Bankruptcy Code sections 503(b) and 507(b), (ii) securing, pursuant to Bankruptcy Code sections 364(c) and (d), such indebtedness and obligations with security interests in and liens on substantially all (if not all) of the Debtor's personal property, real property, the Prepetition Collateral and the Post-Petition Collateral as described below, (iii) providing for adequate protection of CIT's and Comerica's alleged interests in the Prepetition Collateral pursuant to sections 363(c) and 361, (iv) granting limited relief from the automatic stay to allow CIT and Comerica to collect and apply the proceeds of the Prepetition Accounts Receivable and the Prepetition Inventory to the outstanding Prepetition Indebtedness, and (v) granting the limited relief from the automatic stay, to allow the Lender to exercise its rights under the DIP Loan Documents.

J. Notice of the Hearing and the relief requested in the Motion has been given to (i) the Office of the United States Trustee, (ii) counsel to the Lender, CIT, and Comerica, (iii) the Debtor's twenty largest unsecured creditors, and (iv) all other known parties asserting a lien on or security interest in the Debtor's assets or property. Under the circumstances, such notice of the Hearing and the relief requested in the Motion constitutes adequate and sufficient notice under Bankruptcy Code sections 105, 361, 362, 363 and 364, and Bankruptcy Rules 2002 and 4001, and no other notice need be given.

K. At the Hearing, the Court considered representations made by counsel, offers of proof, and/or testimony regarding:

- (i) the negotiations pertaining to this Order;

- (ii) the necessity for this Order;
- (iii) the Debtor's need for credit to the extent necessary to avoid immediate and irreparable harm to its estate; and
- (iv) those expenses necessary to avoid immediate and irreparable harm to its estate.

L. Based on the record presented to the Court by the Debtor at the Hearing, the DIP Financing has been negotiated in good faith and at arm's length between the Debtor and the Lender, and any credit extended, and loans made to the Debtor pursuant to the DIP Loan Documents shall be deemed to have been extended, issued or made, as the case may be, in good faith by the Lender as required by, and within the meaning of Bankruptcy Code section 364(e).

M. Based on the record presented to the Court by the Debtor and the Lender at the Hearing, the terms of the DIP Loan Documents are fair and reasonable, are ordinary and appropriate for secured financing under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and isare supported by reasonably equivalent value and fair consideration.

N. The Debtor has requested immediate entry of this Order. The permission granted herein to enter into the DIP Loan Documents, and obtain funds thereunder to apply the proceeds of Post-Petition Collateral (as defined herein) to the obligations under the DIP Loan Documents is necessary to avoid immediate and irreparable harm to the Debtor and its estate and to allow the Debtor to maximize its ability to reorganize under Chapter 11. This Court concludes that entry of this Order is in the best interest of the Debtor's estate and creditors as its implementation will, among other things, provide the Debtor with the necessary liquidity to sustain the operation of the Debtor's business.

O. The Debtor has also made the Court aware of litigation among it, the Lender and the Sellers, in which litigation a proposed settlement (the "Settlement") is being memorialized in writing. The Debtor has, or promptly will, file a 9019 motion seeking approval by the Court of the settlement. The terms of the settlement have been explained to this Court, and the Court has been made aware that in order for the Lender to extend the DIP Financing to the Debtor, the ~~settlement~~Settlement must be approved by this Court. Nothing herein prejudices the right of any party in interest to object to the Settlement.

P. No committee of unsecured creditors has been appointed in this case (the "Committee").

IT IS HEREBY ORDERED, DECREED AND ADJUDGED, ON AN INTERIM BASIS, THAT:

1. The Motion is granted, subject to the terms and conditions set forth in this Order.
2. Authorization to Borrow and Use of DIP Financing Proceeds. The Debtor is authorized and empowered to borrow money, incur indebtedness, and seek other financial accommodations from the Lender effective as of the Petition Date pursuant to the terms and conditions of this Order and the DIP Loan Documents, as modified herein.
3. Post-Petition Loans. The Debtor is authorized to borrow money from the Lender and use the proceeds of the DIP Financing fully in accordance with the DIP Agreements, including, without limitation, in the operation of its business; *provided however*, that the use of the DIP Financing must be consistent with the terms of the DIP Loan Documents, this Order, and otherwise consistent with, the disbursements set forth in the budget attached to the Motion as Exhibit "C" (the "Budget"); and to provide adequate protection to CIT and Comerica (all of the post-petition obligations, liabilities and indebtedness owed by the Debtor to the Lender, of whatever kind, nature

or description now or hereafter arising in accordance with this Order and the DIP Loan Documents, is referred to herein as the “Post-Petition Indebtedness”).

4. The Debtor shall use proceeds of the loans and advances made by the Lender to the Debtor under the DIP Financing solely for the payment of the costs and expenses set forth on the Budget and to pay the principal, interest, fees, costs, expenses, indemnities and other charges payable by the Debtor to the Lender under or in connection with the DIP Loan Documents (regardless of whether such items are set forth in the Budget). The Budget may be modified by the written agreement of the Debtor and the Lender. In no event shall the proceeds of the DIP Financing or the Post-Petition Collateral (as hereinafter defined) be used by any person or entity to prosecute, challenge or pursue any claims or causes of action against or with respect to the Lender, the DIP Loan Documents, or any payments received or recoveries made by the Lender under the DIP Loan Documents; provided, however, that the foregoing shall not restrict any official committee or an authorized party-in-interest from using such proceeds to investigate claims, causes of action, or potential recoveries.

5. During the term of this Order, the Prepetition Loan Documents shall continue in full force and effect with respect to the Prepetition Indebtedness, except as otherwise modified herein.

6. The Debtor is authorized and directed to execute, deliver, perform and comply with the terms and covenants of the DIP Loan Documents. The Debtor and the Lender are further authorized to enter into (i) non-material amendments to the DIP Loan Documents, the Customer Agreements and the Budget, without further order of this Court, provided that written notice of such amendment is provided to the Committee¹ (once formed) in advance, or (ii) material amendments to the DIP Loan Documents and the Budget, upon further order of this Court. The terms and

¹ All notices and reporting provided to the Lender and the Committee pursuant to this Order, must also be provided to CIT and Comerica.

conditions of the DIP Loan Documents and the Budget (as same may be amended from time to time in accordance with this paragraph), and the Prepetition Loan Documents are incorporated into the terms and conditions of this Order and shall be sufficient and conclusive evidence of the borrowing arrangements among the Debtor, the Lender, CIT and Comerica.

7. As security for the Post-Petition Indebtedness ~~and (to the same extent, validity and priority of the liens in the Prepetition Collateral as of the Petition Date)~~ under the DIP Loan Documents, the Lender shall have and is hereby granted as of the Petition Date (without the necessity of entering into or the recordation of mortgages, security agreements, pledge agreements, assignments, control agreements, financing statements or otherwise):

- (a) valid and perfected **senior** security interests in, and liens on all property and interests in property acquired by the Debtor and the Debtor's estate from and after the Petition Date ~~(or, in the case of the Prepetition Inventory, prior to the Petition Date)~~, and wherever located, including, without limitation, the following: (i) accounts receivable, (ii) equipment, (iii) inventory (including the Prepetition Inventory when purchased post-petition by the Debtor) and other goods, (iv) instruments and documents of title, (v) general intangibles (including, without limitation, all trademarks, patents, rights under licenses (whether as licensor or licensee) and other intellectual property, rights with respect to insurance policies, state, federal and foreign tax and duty refunds, open purchase orders, customer lists rights under leases), (vi) investment property, (vii) real estate owned by the Debtor, (viii) all deposit accounts and all monies, securities, cash, cash equivalents contained in deposit accounts maintained by the Debtor, (ix) commercial tort claims, (x) letter of credit rights, (xi) rights under leases of real property, (xii) all books and records (including electronic media) pertaining to the foregoing, (xiii) equity interests in any

subsidiaries or affiliates, and (xiv) the proceeds and products of all of the foregoing. The Lender's senior security interest excludes recoveries, claims and causes of action, and the proceeds of such recoveries, claims and causes of action arising under the avoidance provisions of chapter 5 of the Bankruptcy Code ("Avoidance Actions") and Prepetition ~~Accounts-Receivable~~Collateral; and

- (b) subject only to Prepetition Liens, valid and perfected **junior** security interests in, and liens on all property and interests in property acquired by the Debtor and the Debtor's estate prior to the Petition Date, wherever located, including, without limitation, the following: all Prepetition Collateral (all of such property described in this Paragraph 87 herein shall collectively be referred to as the "Post-Petition Collateral").

Except for the Prepetition Liens and the Carve-Out (defined herein), and to the extent otherwise expressly set forth in this Order, the liens granted to the Lender pursuant to this Order and the DIP Financing (the "DIP Liens") to secure the Post-Petition Indebtedness shall not be subordinated to or made *pari passu* with any other lien or security interest. The Prepetition Collateral will not be surcharged for the Carve-Out.

8. The Debtor shall use the proceeds of the DIP Financing solely for the payment of the costs and expenses set forth on the Budget and to pay the principal, interest, fees, costs, expenses, indemnities and any and all other charges payable by the Debtor to the Lender under the DIP Agreements (regardless of whether such items are set forth in the Budget). Nothing in the Budget or herein shall (a) constitute a finding that Debtor is entitled to use the proceeds of the Settlement or (b) prejudices any party in interest's assertion of a security interest in the Settlement.

9. Superpriority Claims. In accordance with Bankruptcy Code section 364(c), the Post-Petition Indebtedness shall constitute claims with priority in payment over any and all administrative expenses of the kinds specified in or ordered pursuant to ~~any provision of the Bankruptcy Code, including, without limitation,~~ Bankruptcy Code sections ~~105, 326, 328, 330, 331, 503(b), 506(e), 507(a),~~ or 507(b), ~~546(e), 726, 1112 and 1114~~ (the “Superpriority Claims”), ~~and shall at all times be senior to the rights, if any with regards to administrative expenses of the Debtor, CIT, Comerica, any subsequently appointed chapter 7 or chapter 11 trustee, and any of the Debtor’s creditors,~~ with the sole exception of the right to payment of professional fees pursuant to paragraph 14(b) hereof. No cost or expense of administration under Bankruptcy Code sections 105, 364(c)(1), 503(b), 507(b) or otherwise, including those resulting from the conversion of the Chapter 11 Case pursuant to Bankruptcy Code section 1112, shall be senior to, or *pari passu* with, the Superpriority Claims of the Lender arising out of the Post-Petition Indebtedness.

10. Permitted Liens. Notwithstanding anything to the contrary set forth herein or in the DIP Loan Documents, the DIP Liens granted by this Order or otherwise do not have priority over valid, perfected and unavoidable security interests in and liens on the Debtor’s property existing as of the Petition Date and having priority over the DIP Liens, including, without limitation, claims asserted by creditors with a “purchase money security interest” (as that term is used §9-103 of the Uniform Commercial Code) and statutory liens arising under applicable law, if any (“Statutory Lien Creditors”). The security interests and liens granted by this Order to the Lender shall, to the extent that any Statutory Lien Creditors have a valid, enforceable, properly perfected, unavoidable prepetition lien and security interest in any portion of the Prepetition Collateral and Post-Petition Collateral having priority over the security interests and liens of the Lender, be a lien and security interest in the Prepetition Collateral, junior in priority only to such liens and security interests pursuant to section 364(c)(3) of the Bankruptcy Code. Nothing contained herein shall preclude the

Debtor or the Lender from contesting the validity, priority or amount of any liens held by the Statutory Lien Creditors.

11.

(i) ~~11.~~The amount, extent, validity, perfection, priority and enforceability of the DIP Liens or any other claims whatsoever ~~of~~against the Lender, including any claims arising from or related to the principal, fees, charges, interest, commissions, costs, indemnities and expenses chargeable by the Lender pursuant to the terms of the DIP Loan Documents, are and shall be for all purposes binding upon all parties in interest, unless (a) a party in interest (other than the Debtor), including a chapter 7 trustee or a chapter 11 trustee, has ~~properly~~ commenced an adversary proceeding or a contested matter with respect to foregoing on or before the ~~earlier of seventy five (75) days after the Petition Date or sixty (60) days after the appointment of a Committee (the “Investigative Deadline”~~Objection Deadline (defined in Paragraph 35 herein) (or such later date agreed to in writing by the Lender); and (b) an order is entered ruling in favor of the plaintiff in any such ~~timely and properly filed~~ adversary proceeding or contested matter and as to which no stay has been entered and which has not been reversed, modified, vacated or overturned. The Debtor and the Lender each acknowledge that the Committee (when formed) has standing to commence such an adversary proceeding or contested matter. If no such adversary proceeding is properly commenced by the expiration of the ~~Investigative~~Objection Deadline, the Post-Petition Indebtedness, the DIP Loan Documents and the DIP Liens in the Post-Petition Collateral, shall be recognized as valid, binding and in full

force and effect, not subject to defense, counterclaim, or offset of any kind, upon all parties in this proceeding, including, without limitation, the Committee, any chapter 7 or chapter 11 trustee (or any successor chapter 7 or chapter 11 trustee) appointed hereafter, allowed as a fully secured allowed claim pursuant to sections 506(a) and (b) of the Bankruptcy Code, without further order of this Court and all parties in interest shall forever be barred from asserting any claims against the Lender or otherwise challenge the DIP Loan Documents or any payments received or recoveries made by the Lender thereunder.

(ii) The amount, extent, validity, perfection, priority and enforceability of the Prepetition Indebtedness, the Prepetition Liens or any other claims whatsoever against the Prepetition Lenders are and shall be for all purposes binding upon all parties in interest, unless (a) a party in interest (other than the Debtor), including a chapter 7 trustee or a chapter 11 trustee, has commenced an adversary proceeding or a contested matter with respect to foregoing on or before the earlier of seventy-five (75) days after the Petition Date or sixty (60) days after the appointment of a Committee (the "Investigative Deadline") and (b) an order is entered ruling in favor of the plaintiff in any such adversary proceeding or contested matter and as to which no stay has been entered and which has not been reversed, modified, vacated or overturned. The Debtor and the Prepetition Lenders each acknowledge that the Committee (when formed) has standing to commence such an adversary proceeding or contested matter. If no such adversary proceeding is

commenced by the expiration of the Investigative Deadline, the Prepetition Indebtedness, the Prepetition Loan Documents, and the Prepetition Liens shall be recognized as valid, binding and in full force and effect, not subject to defense, counterclaim, or offset of any kind, upon all parties in this proceeding, including, without limitation, the Committee, any chapter 7 or chapter 11 trustee (or any successor chapter 7 or chapter 11 trustee) appointed hereafter, allowed as a fully secured allowed claim pursuant to sections 506(a) and (b) of the Bankruptcy Code, without further order of this Court and all parties in interest shall forever be barred from asserting any claims against the Prepetition Lenders or otherwise challenge the Prepetition Loan Documents or any payments received or recoveries made by the Prepetition Lenders thereunder.

12. Fees and Costs of Lender and Professionals Retained by the Estate. The Debtor is authorized and directed, without further order of this Court, promptly to pay or reimburse the Lender for all present and future fees, out-of-pocket costs, indemnities, charges and expenses paid or incurred by Lender (including, without limitation, any fees and expenses of Lender's in-house or outside counsel, auditors, appraisers, accountants, etc.) respecting the filing of the Chapter 11 Case, including, without limitation, respecting the financing transactions contemplated by this Order and the DIP Loan Documents (including, without limitation, fees, costs, indemnities, charges and expenses incurred prior to the Petition Date). The Lender may continue to charge, without further order of the Court, all of such costs, fees, indemnities, charges and expenses to the DIP Financing, ~~and accordingly, all~~ in accordance with the DIP Loan Documents; provided, however, that the Lender shall provide copies of invoices for such costs, fees, indemnities, charges and expenses

~~may be included as part of the principal amount of the Post-Petition Indebtedness~~ to both the Office of the United States Trustee and any official committee appointed in this case at the same time they are provided to the Debtor, and the Lender agrees that any disputes regarding such invoices shall be submitted to this Court for adjudication.

13. To facilitate payment to the Retained Professionals (as that term is defined below), the following procedures shall be implemented:

a. On the first day of each month until an Event of Default (as defined herein) has occurred and subject to the terms of this Order and sufficient borrowing availability under the DIP Financing, the Lender will make funds available, in the amount set forth in the Budget under the line items “Debtor’s Professionals” and “Committee’s Professionals” to be held in escrow ~~by Debtor’s counsel~~, pursuant to the terms of this Order (the “Professional Fee Escrow”). The Professional Fee Escrow will be deemed to be held in trust solely for purpose of paying allowed interim and final fees and costs of the Retained Professionals and no other expenses or obligations of the Debtor. Any portion of the Professional Fee Escrow not used to pay allowed fees and costs of the respective professionals shall be held by counsel as cash collateral for the Post-Petition Indebtedness.

b. Except for fees payable to the United States Trustee pursuant to 28 U.S.C. §1930, the DIP Liens and the Superpriority Claims and the Prepetition Liens shall, following the occurrence and during the continuation of an Event of Default, be subject to: (a) unpaid professional fees and expenses up to the amounts disclosed in the Budget through the date of the Event of Default plus four weeks that are allowed pursuant to the applicable provisions of the Bankruptcy Code (the “Carve-Out”) which may be used by the Retained Professionals for Court approved post-petition services. The Carve-Out shall only be applicable in the event, and to the extent, that there are no unencumbered assets of the Debtor's estate which may be used to satisfy such fees and expenses; recourse for repayment of such fees and expenses shall be made first to such unencumbered assets. Moreover, the Carve-Out shall also exclude any fees and expenses incurred in connection with the prosecution of any claims or causes of action against the Lender for the DIP Liens or other claims, including any challenges or claims relating to the Customer Guaranties. If no Event of Default (as defined herein) exists, the Debtor may pay such professional fees and expenses as are authorized by the Bankruptcy Court; *provided, however*, that any such allowed fees and expenses incurred consistent with the Budget prior to an Event of Default shall be paid in conformity with the Budget after the Event of Default.

c. ~~No~~ Upon entry of an order after the Final Hearing, no costs and expenses incurred in connection with the administration of the Chapter 11 Case or any conversion of the Chapter 11 Case pursuant to section 1112 of the Bankruptcy Code, or in any future proceedings related hereto, whether incurred pursuant to

section 726(b) of the Bankruptcy Code or otherwise, shall be charged against the Post-Petition Indebtedness, or the Post-Petition Collateral, pursuant to section 506(c) of the Bankruptcy Code or otherwise, without the express written consent of the Lender, subject to the Final Order.

d. Neither the DIP Financing (including funds deposited in the Professional Fee Escrows) nor the Carve-Out may be used to (a) contest, hinder or delay the Lender's enforcement of this Order or the DIP Loan Documents, as the case may be, or the realization upon any of the Post-Petition Collateral (subject to the terms of this Order); (b) use or seek to use cash collateral or sell Prepetition Collateral or Post-Petition Collateral over an objection of the Lender; (c) prosecute any claim or action, the primary purpose of which is to invalidate, set aside avoid or subordinate, in whole or in part, the Prepetition Indebtedness or the Post-Petition Indebtedness, Lender's security interests in the Prepetition Collateral and/or Post-petition Collateral; (d) object to, contest or raise any defense to the validity, perfection, priority, extent or enforceability of the Prepetition Indebtedness, the Post-Petition Indebtedness, Lender's security interest in the Prepetition Collateral, the Post-Petition Collateral, or the DIP Liens securing the same; or (e) assert any claims, counterclaims, defenses or causes of action against the Lender or any of the DIP Loan Documents; provided, however, that the foregoing shall not restrict any official committee or an authorized party-in-interest from using such proceeds to investigate claims, causes of action, or potential recoveries.

e. Nothing herein shall be construed as consent to the allowance of any fees and expenses of the Retained Professionals, or shall affect the rights of the Lender or any other interested party to object to the allowance and payment of such fees and expenses.

Adequate Protection; Limited Relief from the Automatic Stay

14. Upon entry of this Order, and subject to the provisions of paragraph 11 hereof,

CIT and Comerica shall be and hereby are granted the following adequate protection:

- (i) ~~The~~ Upon entry of this Interim Order, the Debtor shall ~~be, and hereby is, authorized to abandon~~ turnover to CIT and Comerica ~~the Prepetition Inventory and any proceeds of~~ the Prepetition Accounts Receivable; that the Debtor receives.
- (ii) Upon entry of this Interim Order, the Debtor shall first use the Prepetition Inventory and pay CIT and Comerica as follows:
 - (a) with regard to finished goods inventory, the wholesale value;
 - (b) with regard to raw inventory, the cost value.
- (iii) (ii) CIT and Comerica are hereby granted limited relief from the automatic stay and are further authorized to collect the Prepetition Accounts Receivable and sell the Prepetition Inventory, and apply the proceeds thereof to their

secured claim, the Debtor represents that it intends to purchase such Prepetition Inventory in the ordinary course from CIT and Comerica;

- (iv) ~~(iii)~~—As adequate protection for the Debtor’s use of its equipment and intangible property, CIT and Comerica shall retain their prepetition liens and receive a monthly payment of \$5,000.00 on the 1st day of each month, commencing on March 1, 2009;
- (v) ~~(iv)~~—The Debtor shall maintain its equipment in good working order and maintain insurance on the equipment;
- (vi) ~~(v)~~—Effective upon the date of this Order and without the necessity of the execution by the Debtor of mortgages, security agreements, pledge agreements, financing statements or otherwise, CIT and Comerica are granted valid and perfected, replacement security interests in, and liens on, all of the Debtor's right, title and interest in, to and under the Prepetition Collateral, with the same priority as their Prepetition Liens.

15. Under the circumstances, the adequate protection and limited relief from stay provided herein is reasonable and sufficient to protect the interests of CIT and Comerica, *provided, however,* CIT and Comerica retain all rights and nothing herein contained shall affect or impair CIT’s or Comerica’s right to seek additional adequate protection of its interest, or the Debtor’s right to seek to reduce the amount of adequate protection provided for herein in Paragraph 14(iii) above.

Events of Default

16. ~~In the event of the occurrence of any~~ For purposes of this Order, each of the following is an “Event of Default” and, collectively, “Events of Default”: (a) the failure of the Debtor to perform in any material respect any of its obligations pursuant to this Order, including, without limitation, payments to the Lender contemplated in the Budget or in the Order; (b) conversion of the Chapter 11 Case of the Debtor to a case under chapter 7 of the Bankruptcy Code, without the consent of the Lender; (c) the appointment of a trustee appointed pursuant to sections 1104(a)(1) and 1104(a)(2) of the Bankruptcy Code; (d) dismissal of the Chapter 11 Case; (e) the entry of any order modifying, reversing, revoking, staying, rescinding, vacating or amending this

Order without the express prior written consent of the Lender (and no such consent shall be implied from any other action, inaction or acquiescence by the Lender); (f) the entry of the Final Order shall not have occurred within 45 days after the Petition Date; (g) the Debtor's filing, without the express written consent of the Lender, of (i) a motion for the use of cash collateral, (ii) a motion requesting authority to incur indebtedness either (A) having administrative expense priority equal or superior to the administrative expense priority granted to the Lender under this Order with respect to its claims other than debt incurred in the ordinary course of business, or (B) secured by a security interest or lien with priority equal or superior to the priority of Lender's security interests in or liens on the Prepetition Collateral and the Post-Petition Collateral; (h) the Debtor filing a motion or application for an order seeking to (i) revoke, reverse, stay the implementation of, modify, supplement or amend this Order, or (ii) invalidate, raise defenses to, or otherwise challenge the extent, amount, validity, perfection, priority or enforceability of the security interests and liens of Lender in the Prepetition Collateral or the Post-Petition Collateral; or (i) the occurrence of a Default or an Event of Default (as such terms are defined in the DIP Loan Documents) under the DIP Loan Documents ~~(the foregoing events being referred to in this Order, individually, as an "Event of Default" and, collectively, as "Events of Default").~~

17. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the Lender to exercise its rights, upon the occurrence of a Default or an Event of Default (as such terms are defined in the DIP Loan Documents and in this Order). If a Default or an Event of Default (as such terms are defined in the DIP Loan Documents and in this Order) occurs, the Lender may cease further advances under the DIP Agreement and this Order and upon three (3) business days written notice from the Lender to counsel for the Debtor, the Office of the United States Trustee, any official committee appointed in this case, and the parties which received notice of the Motion ("Default Notice"), the Lender

may (a) terminate the DIP Financing (the date of any such termination, the “Termination Date”) and declare the Post-Petition Indebtedness to be immediately due and payable, (b) require the Debtor to immediately segregate and not use cash collateral without further order of this Court, (c) setoff amounts in any accounts maintained with the Lender which are the proceeds of Post-petition Receivables, or otherwise enforce rights against all or part of any Post-Petition Collateral in the possession of the Lender to the extent that such Event of Default would permit such relief under the DIP Loan Documents, as amended hereby; and/or (d) take any other action or exercise any other right or remedy of the Lender under the DIP Financing, the DIP Loan Documents this Order or by operation of law.

18. Upon the Debtor’s receipt of a Default Notice, it shall immediately cease making any disbursements pursuant to the Budget or otherwise without further order of the Court; *provided, however,* that the obligations and rights of the Lender and the Debtor with respect to all transactions which have occurred prior to the Termination Date shall remain unimpaired and unaffected by any such termination and shall survive such termination; and *provided further* that upon such termination the Lender shall be deemed to have retained all of its rights and remedies, including, without limitation, as provided in the DIP Agreements and under the Bankruptcy Code; ~~*provided however that subsequent to the issuance of the Default Notice and prior to the Termination Date, the Debtor may not seek entry of an order, after notice and hearing, allowing use of cash collateral and prohibiting the Lender from taking the actions contemplated in this paragraph, but the Court shall only grant such relief upon a finding that no Default or Event of Default exists.*~~

Miscellaneous Provisions

19. Notwithstanding anything to the contrary in this Order, the Lender shall be under no obligation to extend the DIP Financing to the Debtor ~~if~~ on or after the Final Hearing unless and until, the Settlement is approved by an Order of this Court becoming final.

20. Subject to the provisions of paragraph 11 of this Order, upon entry of a final order, CIT and Comerica are hereby granted limited relief from the automatic stay as of the Petition Date to allow it to collect and apply the proceeds of the Prepetition Accounts Receivable and Prepetition Inventory to the outstanding Prepetition Indebtedness.

21. ~~The Debtor shall~~ Subject to the requirements of 11 U.S.C. § 345 and any cash management order entered by this Court, the Debtor is authorized to establish a cash management system with the Lender, which shall include a lockbox/blocked account agreement in a form and substance reasonably acceptable to the Lender, pursuant to which the Lender will have full dominion and control over cash collateral and the Cash Proceeds (defined herein) of the Post-Petition Collateral.

22. Immediately upon the entry of this Order, the Debtor shall account to the Lender for all cash, checks, notes, drafts, instruments, acceptances or other property representing cash or other proceeds of the Post-Petition Collateral in the Debtor's possession, custody or control. All cash, checks, notes, drafts, instruments, acceptances and other property in the nature of items of payment representing proceeds of property and interests in property of the Debtor (collectively, "Cash Proceeds") currently in the possession of the Debtor or in any accounts in financial institutions, including any lock box established in accordance with the DIP Financing or depository accounts, ~~shall be deemed~~ must be determined to be either proceeds of the Prepetition Collateral or proceeds of the Post-Petition Collateral. All Cash Proceeds shall be remitted to the ~~Lender~~ appropriate creditor in accordance with the terms of this Order.

23. The agreement by the Lender to make any DIP Financing available to the Debtor under the DIP Loan Documents and to allow the use of cash collateral pursuant to the terms of this Order shall continue until the earlier of (a) the conclusion of the Final Hearing, (b) the date Post-Petition Indebtedness is repaid in full, and (c) December 31, 2009 (the "Term"), unless terminated

prior to this date upon the occurrence of the Termination Date or otherwise pursuant to the terms of the DIP Loan Documents or this Order.

24. The Debtor is required to deliver to the Lender such other financial and other information concerning the business and affairs of the Debtor as the Lender shall reasonably request from time to time, including, without limitation, the financial reports and information provided to the Lender under the DIP Loan Documents, as well as all material documents relating to any proposed sale or restructuring (including without limitation, solicitation materials, disclosure statements, solicitation for new financing, valuations, business plans, sale materials and projections) provided to third parties at such time as such documents and information are provided to such third parties, as well as such other information reasonably requested by Lender. The Debtor shall fully cooperate with and permit the Lender to perform physical inventories of all assets in the Debtor's facilities at any reasonable times requested by the same.

25. The Debtor shall further provide the Lender, upon request, with: (i) detailed information as to the extent and composition of the Post-Petition Collateral and any collections thereon; (ii) a daily report, with information reasonably satisfactory to the Lender, identifying and differentiating accounts receivable; (iii) a weekly revenue report (including reports of sales); and (iv) a weekly variance report of actual expenditures versus projected expenditures versus projected Budget expenditures and all other information set forth in the DIP Loan Documents.

26. Having been found to be extending credit and making loans to the Debtor in good faith, the Lender shall be entitled to the full protection of Bankruptcy Code section 364(e) with respect to the DIP Financing and the liens and priorities created or authorized by this Order in the event that this Order or any authorization contained herein is ~~stayed, vacated,~~ reversed or modified on appeal. Any stay, modification, reversal or vacation of this Order shall not affect the validity of any obligation of the Debtor to the Lender incurred pursuant to this Order. Notwithstanding any

such stay, modification, reversal or vacation, all loans made pursuant to this Order, all use of cash collateral and all DIP Financing incurred by the Debtor pursuant hereto or the DIP Loan Documents prior to written notice to the Lender of the effective date of any such stay, modification, reversal or vacation, shall be governed in all respects by the provisions hereof and the Lender shall be entitled to all the rights, privileges and benefits of this Order, including, without limitation, the DIP Liens and Superpriority Claims granted herein.

27. The transactions contemplated by the DIP Financing are not intended to provide the Lender with sufficient control over the Debtor so as to subject the Lender to any liability (including, without limitation, environmental liability as an “owner,” “operator,” or “responsible person” as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorizations Act of 1986) in connection with the management of the Debtor’s business or any of the Debtor’s properties. ~~By~~ Upon entry of an order after the Final Hearing, by providing the DIP Financing or taking any actions pursuant to this Order, the Lender shall not: (1) be deemed to be in control of the operations or liquidation of the Debtor; or (2) be deemed to be acting as a “responsible person” or “owner or operator” with respect to the operation, management or liquidation of the Debtor.

28. The provisions of this Order and any actions taken pursuant hereto shall survive entry of any order which may be entered including without limitation (a) converting either of the Chapter 11 Case to chapter 7; or (b) dismissing either of the Chapter 11 Case, and the terms and provisions of this Order as well as the Superpriority Claims, DIP Liens granted pursuant to this Order, ~~and~~ replacement liens granted to CIT and Comerica shall continue in full force and effect notwithstanding the entry of such order, and such Superpriority Claims, DIP liens shall maintain their priority as provided by this Order until all Post-Petition Indebtedness is indefeasibly paid in full and discharged.

29. The Lender's obligations under this Order are subject to delivery to the Lender of evidence satisfactory to the Lender that the Post-Petition Collateral is insured for the full replacement value thereof and the Lender is named as loss payee and/or as additional insured on all insurance policies upon request of the Lender, as its interest appears. CIT and Comerica shall remain as additional insureds on all insurance policies as their interest appears.

30. The Lender may retain a restructuring consultant or additional third party consultants to review matters pertaining to the business and properties of the Debtor at its sole reasonable expense (collectively, the "Lender's Consultants"). The Debtor shall permit the Lender's Consultants to examine the respective corporate, financial and operating records, and, at the Debtor's reasonable expense, make copies thereof, inspect the assets, properties, operations and affairs of the Debtor, visit any or all of the offices of the Debtor to discuss such matters with their officers, independent auditors, accountants or consultants (and the Debtor hereby authorizes such independent auditors, accountants and consultant to discuss such matters with the Lender's Consultants), and the Debtor will cooperate with the Lender's Consultants in all reasonable respects.

31. In consideration for the DIP Financing, the Debtor on behalf of itself and its successors and assigns (collectively, the "Releasors"), but without prejudice to the rights of other parties in interest to assert claims, if any, on behalf of the Debtor's estates in accordance with Paragraph 12 hereof, shall forever release, discharge and acquit the Lender and their respective officers, directors, employees, agents, attorneys and predecessors in interest (collectively, the "Releasees") of and from any and all claims, demands, damages, liabilities, responsibilities, disputes, remedies, actions, causes of action, indebtedness and obligations, of every type, including, without limitation, any so-called "lender liability" claims or defenses, which arose on or prior to the date this Order is entered with respect to the Debtor, the Post-Petition Indebtedness or the DIP

Financing; provided, however, the foregoing release shall not release the Lender from its obligations under this Order.

32. **Notice of Intent to Seek Waiver of Claims Under 11 U.S.C. § 506(c)**. This shall serve as notice that at the Final Hearing (defined herein) the Debtor shall seek a waiver of all claims under section 506(c) of the Bankruptcy Code until the occurrence of an Event of Default, except to the extent of the Carve-Out , no expenses of administration of the Debtor's bankruptcy proceeding or any other proceedings or cases that may result therefrom, including liquidation in bankruptcy or any other proceeding of the Bankruptcy Code, shall be charged against or recovered from the collateral utilized to secure the DIP Agreement pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without prior written consent of the Lender and no such consent shall be implied from any other action, inaction, or acquiescence by the Lenders.

33. Entry of this Order shall be without prejudice to any and all rights, remedies, claims and causes of action which the Lender may have against the Debtor or any third parties, and without prejudice to the right of the Lender to seek further relief from the automatic stay in effect pursuant to Bankruptcy Code section 362, or any other relief in this Chapter 11 Case, and the right of the Debtor and parties in interest to oppose any such relief by contesting the existence of a Default or an Event of Default and as otherwise consistent with the terms of this Order. The provisions of this Order shall be binding upon and inure to the benefit of the Lender, CIT, Comerica and ~~its~~their successors and assigns, the Debtor, and its successors and assigns, including any trustee or other fiduciary hereafter appointed in these cases as a legal representative of the Debtor's estate.

34. The Debtor is authorized to perform all acts, and execute and comply with the terms of such other documents, instruments and agreements in addition to the DIP Loan Documents, as the Lender may reasonably require, as evidence of and for the protection of the DIP Financing, or

which otherwise may be deemed reasonably necessary by the Lender to effectuate the terms and conditions of this Order and the DIP Loan Documents.

35. This matter is set for a final hearing at ~~_____~~ 4:30 p.m. (EST) on ~~_____~~ March 18, 2009 (the "Final Hearing"), before a United States Bankruptcy Judge, U.S. Bankruptcy Court, District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, at which time any party in interest may appear and state its objections, if any, to relief requested in Motion. Objections shall be in writing and shall be filed with the Clerk of the Bankruptcy Court with a copy served upon (a) **William I. Kohn, Esq.**, Benesch Friedlander Coplan & Aronoff LLP, 2300 BP Tower, 200 Public Square, Cleveland, OH 44114-2378, fax (216) 363-4588; (b) **Bradford J. Sandler, Esq.**, Benesch Friedlander Coplan & Aronoff LLP, 222 Delaware Avenue, Suite 801, Wilmington, DE 19801, fax (302) 442-7012; (c) counsel for Emigrant Capital Corp., Attn: Ed. Burns and Ken Walters, 6 E. 43rd, New York, NY 10017; (d) counsel for Next Proteins, Inc.: Allen Matkins Leck Gamble Mallory & Natsis LLP, Attn: Debra A. Riley, 501 West Broadway, 15th Floor, San Diego, CA 92101-3541; (e) counsel for The CIT Group/Commercial Services, Inc.: Buchalter Nemer, Attn: ~~Matthew W. Kavanaugh~~ Bernard Bollinger, Jr., 1000 Wilshire Boulevard, Suite 1500, Los Angeles, CA 90017-2457; (f) counsel for Comerica Bank: Bodman LLP, Attn: David J. Nowaczewski, 1901 St. Antoine Street, 6th Floor at Ford Field, Detroit, MI 48226; (f) **The Office of the United States Trustee**, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, fax (302) 573-6497; and (g) any other parties requesting notice in this case; so as to be received **on or before 4:00 p.m. (EST) on ~~_____~~, 2009** March 11, 2009 **(the "Objection Deadline")**; any objections by creditors or other parties in interest to any of the provisions of this Order shall be deemed waived unless filed and served in accordance with the notice on or before the close of business on such date. Counsel for the Debtor shall promptly serve

a copy of this Order on the parties that received notice of this Interim Hearing and those parties requesting notice in this Chapter 11 Case.

36. Except as otherwise provided herein, the terms of this Order shall be valid and binding upon the Debtor, all of its creditors, and all other parties in interest from and after the date of this Order. In the event this Court modifies any of the provisions of this Order and the DIP Agreements following such further hearing, such modifications shall not affect the rights and priorities of the Lender pursuant to this Order with respect to the Post-Petition Collateral and any portion of the DIP Financing which arises, or is incurred or is advanced prior to such modifications (or otherwise arising prior to such modifications), and this Order shall remain in full force and effect except as specifically amended or modified at such final hearing.

37. To the extent there exists any conflict between the DIP Loan Documents, and the terms of this Order, this Order shall govern.

Dated: Wilmington, Delaware
_____, 2009

Kevin J. Carey
Chief United States Bankruptcy Judge

Document comparison by Workshare Professional on Wednesday, February 18, 2009
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Moved to	0
Style change	0
Format changed	0
Total changes	124