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Attorneys for Dot Foods, Inc.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

- ☐ ITTELLA INTERNATIONAL LLC, a California limited liability company
- ☐ ITTELLA'S CHEF, LLC, a California limited liability company
- ☐ TATTOOED CHEF, INC., a Delaware corporation
- ☐ MY JOJO, INC., a Delaware corporation
- ☐ NEW MEXICO FOOD DISTRIBUTORS INC., a New Mexico corporation
- ☐ KARSTEN TORTILLA FACTORY, LLC, a New Mexico limited liability company
- ☐ BCI ACQUISITION, INC., a Delaware corporation
- ☐ TTCF-NM HOLDINGS INC., a New Mexico corporation
- ☒ All Debtors

Case No. 2:23-bk-14154-SK

Jointly Administered with Case Nos.:
2:23-bk-14159-SK; 2:23-bk-14161-SK;
2:23-bk-14157-SK; 2:23-bk-14158-SK;
2:23-bk-14155-SK; 2:23-bk-14156-SK; and
2:23-bk-14160-SK

Chapter 11

**OBJECTION OF DOT FOODS, INC. TO
THE DEBTORS' FIRST AMENDED
PLAN OF REORGANIZATION**

Date: May 8, 2024
Time: 9:00 a.m.
Place: Courtroom 1575
255 East Temple Street
Los Angeles, CA 90012

FRANZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

Dot Foods, Inc. (“Dot”) objects (“Objection”) to the Debtors’ First Amended Plan of Reorganization (“Plan”) (Dkt. 892).

I. BACKGROUND

On July 2, 2023 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

Prior to the Petition Date, Dot and Debtors entered into a supplier agreement (the “Agreement”). *See* Declaration of Jake Kohut (“Kohut Declaration”), Exh. A.

Pursuant to the terms of the Agreement, the Debtors and the Official Committee of Unsecured Creditors assert that Dot owes the Debtors’ estate the sum of \$920,205.19.

Dot contends that the Debtors owe Dot an amount of at least \$655,448.73 (and more credits may be due) in credits for product returns and deductions (the “Set Off Claim”). Kohut Decl. ¶ 8.

On November 9, 2023, Dot filed its Motion for Relief from Stay (the “Motion”) (Dkt. 548) in order to allow it to apply the Set Off Claim under the Agreement to reduce its account payable owed to Debtors. The Motion is still pending and is scheduled for hearing on April 11, 2024.

On November 16, 2023, the Official Committee of Unsecured Creditors filed a complaint (the “Complaint”), initiating adversary number 2:23-ap-01467-SK, seeking the return of \$920.205.19 from Dot. (D.I. No. 584).

On April 1, 2024, Dot answered the Complaint. Adv. Dkt. 28.

II. OBJECTION

A. The Plan Cannot be Confirmed Because it Does Not Comply With Sections 1129(a)(1),(2), and/or (3).

Sections 1129(a)(1),(2) and (3) provide, respectively, that in order for a chapter 11 plan to be confirmed, (1) the plan itself must comply with the applicable provisions of this title, (2) the plan proponent must comply with the applicable provisions of this title, and (3) plan must be proposed by means not forbidden by law. 11 U.S.C. § 1129(a)(1)–(3); *see also In re Sabine Oil & Gas Corp.*, 555 B.R. 180, 310, 311–13 (Bankr. S.D.N.Y. 2016) (citation omitted).

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As discussed below, neither the Plan nor the Debtors are complying with the “applicable provisions” of the Bankruptcy Code, i.e. title 11, and the Plan is being “proposed by means ... forbidden by law.”

B. The Plan purports to extinguish Dot’s rights to setoff and recoupment.

Dot’s right to setoff and recoupment cannot be eliminated through the Plan. However, certain provisions of the Plan apparently attempt to do just that. For example, the Plan purports to transfer the Debtor’s assets free and clear of liens, claims and encumbrances, effectively eviscerating Dot’s right to setoff and recoupment. *See* Plan §§ III.B, III .B.3, III.C.4.

The discharge granted in connection with confirmation of a chapter 11 plan cannot extinguish a creditor’s setoff rights which are statutorily preserved under § 553 of the Bankruptcy Code. *See United States v. Cont’l Airlines (In re Cont’l Airlines)*, 134 F.3d 536, 541–42 (3d. Cir. 1998) (allowing for waiver of setoff rights only where a creditor fails to object to such a plan provision); *In re Bousa Inc.*, Case No 89-B-13380, 2006 Bankr. LEXIS 2733 at *22, 2006 WL 2864964 (Bankr. S.D.N.Y. Sept 29, 2006) (collecting cases, including *In re Lykes Bros. S.S. Co.*, 217 B.R. 304, 310 (Bankr. M.D. Fla. 1997) and *IRS v. Driggs*, 185 B.R. 214,215 (D. Md. 1995)); *In re Twins, Inc.*, 318 B.R. 90,96 (Bankr. D.S.C. 2004) (same); *cf. In re Bare*, 284 B.R. 870, 874 (Bankr N.D. Ill. 2002) (holding that IRS was not barred from affecting a setoff after plan confirmation, notwithstanding that it had asserted an unsecured, priority tax claim and had not objected to confirmation of the plan).

The Plan may not lawfully circumvent § 553’s express preservation of Dot’s setoff rights by prohibiting Dot’s post-confirmation exercise of setoff rights against the Debtors and any successor parties.

Moreover, Dot’s rights of setoff are to be treated as secured claims that cannot be unilaterally stripped or rendered unsecured. *See* 11 U.S.C. § 506(a); *see also Lee v. Schweiker*, 739 F. 2d 870, 875 (3d Cir. 1984) (“Setoff, in effect, elevates an unsecured claim to secured status, to the extent that the debtor has a mutual, pre-petition claim against the creditor.”); *Szymanski v. Wachovia Bank, N.A. (In re Szymanski)*, 413 B.R. 232, 241 (Bankr. E.D. Pa. 2009) (“[B]y virtue of [S]ection 506(a) a setoff right gives rise to an allowed secured claim.”). The

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improper extinguishment of setoff rights under the Plan, especially without any corresponding adequate protection, renders it unconfirmable, and as such, the Plan cannot be approved.

The Plan also fails to define “Secured Claim” to include a claim that is subject to setoff under §§ 506(a) and 553 of the Bankruptcy Code.

Additionally, the Plan may not extinguish Dot’s recoupment rights, which applies here because Dot is seeking to apply credits against payables related to the same transaction from which those same credits arose. A discharge does not destroy recoupment rights. *See* 11 U.S.C. § 524(a)(2); *see also In re Jones*, 289 B.R. 188 (Bankr. M.D. Fla. 2002) (holding that the State Patrol could properly recoup disability overpayments made to former state trooper without violating discharge injunction).

The Plan may not extinguish such setoff and recoupment rights of Dot.

III. RESERVATION OF RIGHTS

Dot continues to review the Plan, and, as such this Objection is submitted without prejudice to, and with a full reservation of, Dot’s right to supplement this Objection in advance of, or in connection with the hearing on the confirmation of the Plan.

Dot hereby incorporates, and join in, any and all objections filed to the Plan, to the extent not inconsistent herein, as if fully set forth herein.

IV. CONCLUSION

WHEREFORE, Dot respectfully requests that this Court (a) deny confirmation of the Plan unless and until the Debtors amend the Plan to address the issues set forth in this Objection and (b) grant Dot such other and further relief as the Court deems just and proper.

DATED: April 17, 2024

FRANDZEL ROBINS BLOOM & CSATO, L.C.
MICHAEL J. GOMEZ

By: /s/ Michael J. Gomez

MICHAEL J. GOMEZ
Attorneys for Dot Foods, Inc.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1000 Wilshire Boulevard, Nineteenth Floor, Los Angeles, CA 90017-2427.

A true and correct copy of the foregoing document entitled (*specify*): **OBJECTION OF DOT FOODS, INC. TO THE DEBTORS' FIRST AMENDED PLAN OF REORGANIZATION** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) April 17, 2024 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) April 17, 2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Brinkman Law Group, PC
543 Country Club Drive, Suite B
Wood Ranch, CA 93065

Stretto
410 Exchange, Suite 100
Irvine, CA 92602

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) April 17, 2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Sandra R. Klein
U.S. Bankruptcy Court
Roybal Federal Building
Bin outside of Suite 1582
255 E. Temple Street
Los Angeles, CA 90012

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 17, 2024
Date

David T. Moore
Printed Name

/s/ David T. Moore
Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

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5 Attorneys for Dot Foods, Inc.

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7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **LOS ANGELES DIVISION**

11 In re

Case No. 2:23-bk-14154-SK

- 12 ☐ ITTELLA INTERNATIONAL LLC, a
California limited liability company
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21 ☒ All Debtors
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2:23-bk-14160-SK

Chapter 11

**DECLARATION OF JAKE KOHUT IN
SUPPORT OF OBJECTION OF DOT
FOODS, INC. TO THE DEBTORS' FIRST
AMENDED PLAN OF
REORGANIZATION**

Date: May 8, 2024
Time: 9:00 a.m.
Place: Courtroom 1575
255 East Temple Street
Los Angeles, CA 90012

FRANZEL ROBINS BLOOM & CSATO, L.C.
1000 WILSHIRE BOULEVARD, NINETEENTH FLOOR
LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

1 I, Jake Kohut, declare as follows:

2 1. I am corporate counsel to Dot Foods, Inc. (“Dot”) a creditor and party-in-interest in the
3 instant bankruptcy case of Ittella International LLC (“Ittella”), Tattooed Chef, Inc. (“TCI”) Ittella’s Chef,
4 LLC (“ICLLC”), Myjojo, Inc. (“Myjojo”), New Mexico Food Distributors, Inc. (“NMFD”), Karsten
5 Tortilla Factory, LLC (“Karsten”), BCI Acquisition, Inc. (“BCI”), and TTCF-NM Holdings Inc. (“TTCF”,
6 and, collectively with TCI, Ittella, ICLLC, Myjojo, NMFD, Karsten, and BCI, the “Debtors”).

7 2. I am over the age of 18 years.

8 3. Except where otherwise stated, I have personal knowledge of the facts set forth below and
9 if called to testify would and could competently testify thereto.

10 4. I make this declaration in support of Dot’s Objection (“Objection”) (Dkt. *pending*) to the
11 Debtor’s First Amended Chapter 11 Plan (“Plan”) (Dkt. 892). By making this declaration, I do not intend
12 to waive any attorney-client privilege or work product doctrine protections available to Dot or its attorneys,
13 and I intend to assert those privileges/protections should it be necessary. The filing of this declaration
14 should not be construed as a waiver by me, Dot, or Dot’s outside counsel of any attorney-client privilege or
15 work product protections available under the law. I am merely submitting this declaration as an employee
16 of Dot who is a custodian of its records.

17 **Custodian of Records**

18 5. In my employment with Dot, I am required to know, and in fact am familiar with the jobs
19 of various employees of Dot who are involved in the handling of its books, files, documents and records
20 (collectively “Records”) pertaining to the loans and recordation of information about Dot’s customers. I
21 am one of the custodians of Dot’s Records as those records pertain to its customer, TCI and related entities.
22 I have personally worked with and on Dot’s Records and have personal knowledge that the records are kept
23 in the usual and ordinary course of its business and that entries therein are made at or about the time of the
24 events recorded by individual employees of Dot who have had personal knowledge thereof and who have
25 had a continuing business duty to make those entries and record those entries at or about the time of the
26 events recorded.

27 ///

28 ///

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LOS ANGELES, CALIFORNIA 90017-2427
(323) 852-1000

The Agreement

6. Prior to the Petition Date, Dot and Debtors entered into a supplier agreement (the “Agreement”). A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

The Set Off Amount

7. Pursuant to the terms of the Agreement, the Official Committee of Unsecured Creditors and the Debtors assert that Dot owes the Debtors’ estate the sum of \$920,205.19.

8. The Debtors owe Dot an amount of at least \$655,448.73 (and more credits may be due) in credits for product returns and deductions (the “Set Off Amount”).

Adoption and Incorporation of Liz Tracy Declarations

9. I hereby adopt and incorporate the prior testimony of Liz Tracy as set forth in declarations filed in this jointly-administered bankruptcy case, including, that certain *Supplemental Declaration of Liz Tracy in Support of Limited Objection by Dot Foods, Inc. to Debtors’ Motion for Entry of an Order (1) Approving Sale of Substantially All of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (2) Approving Cure Amounts and Approving the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts; (3) Waiving the 14-day Stay Periods Set Forth in Bankruptcy Rule 6004(h) and 6006(d); and (4) Granting Related Relief* (Dkt. 419); *Supplemental Declaration of Elizabeth A. Tracy in Support of Dot Foods, Inc.’s Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (Dkt. 548-2); and *Declaration of Elizabeth A. Tracy in Support of Dot Foods, Inc.’s Application for Allowance and Payment of Administrative Claim* (Dkt. 779-1).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this ___ day of April, 2024, at St. Louis, Missouri.

Jake Kohut

1. Jake Kohut, declare as follows:

Declaration of Jake Kohut Page 4 of 8

1. I am corporate counsel to Dot Foods, Inc. ("Dot") a creditor and party-in-interest in the instant bankruptcy case of Ittella International LLC ("Ittella"), Tattooed Chef, Inc. ("TCI") Ittella's Chef, LLC ("ICLLC"), Myjojo, Inc. ("Myjojo"), New Mexico Food Distributors, Inc. ("NMFD"), Karsten Tortilla Factory, LLC ("Karsten"), BCI Acquisition, Inc. ("BCI"), and TTCF-NM Holdings Inc. ("TTCF, and, collectively with TCI, Ittella, ICLLC, Myjojo, NMFD, Karsten, and BCI, the "Debtors").

2. I am over the age of 18 years.

3. Except where otherwise stated, I have personal knowledge of the facts set forth below and if called to testify would and could competently testify thereto.

4. I make this declaration in support of Dot's Objection ("Objection") (Dkt. *pending*) to the Debtor's First Amended Chapter 11 Plan ("Plan") (Dkt. 892). By making this declaration, I do not intend to waive any attorney-client privilege or work product doctrine protections available to Dot or its attorneys, and I intend to assert those privileges/protections should it be necessary. The filing of this declaration should not be construed as a waiver by me, Dot, or Dot's outside counsel of any attorney-client privilege or work product protections available under the law. I am merely submitting this declaration as an employee of Dot who is a custodian of its records.

Custodian of Records

5. In my employment with Dot, I am required to know, and in fact am familiar with the jobs of various employees of Dot who are involved in the handling of its books, files, documents and records (collectively "Records") pertaining to the loans and recordation of information about Dot's customers. I am one of the custodians of Dot's Records as those records pertain to its customer, TCI and related entities. I have personally worked with and on Dot's Records and have personal knowledge that the records are kept in the usual and ordinary course of its business and that entries therein are made at or about the time of the events recorded by individual employees of Dot who have had personal knowledge thereof and who have had a continuing business duty to make those entries and record those entries at or about the time of the events recorded.

///

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The Agreement

6. Prior to the Petition Date, Dot and Debtors entered into a supplier agreement (the "Agreement"). A true and correct copy of the Agreement is attached hereto as **Exhibit A**.

The Set Off Amount

7. Pursuant to the terms of the Agreement, the Official Committee of Unsecured Creditors and the Debtors assert that Dot owes the Debtors' estate the sum of \$920,205.19.

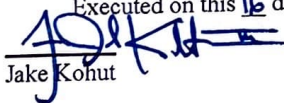
8. The Debtors owe Dot an amount of at least \$655,448.73 (and more credits may be due) in credits for product returns and deductions (the "Set Off Amount").

Adoption and Incorporation of Liz Tracy Declarations

9. I hereby adopt and incorporate the prior testimony of Liz Tracy as set forth in declarations filed in this jointly-administered bankruptcy case, including, that certain *Supplemental Declaration of Liz Tracy in Support of Limited Objection by Dot Foods, Inc. to Debtors' Motion for Entry of an Order (1) Approving Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests; (2) Approving Cure Amounts and Approving the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts; (3) Waiving the 14-day Stay Periods Set Forth in Bankruptcy Rule 6004(h) and 6006(d); and (4) Granting Related Relief* (Dkt. 419); *Supplemental Declaration of Elizabeth A. Tracy in Support of Dot Foods, Inc.'s Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (Dkt. 5482); and *Declaration of Elizabeth A. Tracy in Support of Dot Foods, Inc.'s Application for Allowance and Payment of Administrative Claim* (Dkt. 779-1).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 16 day of April, 2024, at St. Louis, Missouri.


Jake Kohut

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1000 Wilshire Boulevard, Nineteenth Floor, Los Angeles, CA 90017-2427.

A true and correct copy of the foregoing document entitled (*specify*): **DECLARATION OF JAKE KOHUT IN SUPPORT OF OBJECTION OF DOT FOODS, INC. TO THE DEBTORS' FIRST AMENDED PLAN OF REORGANIZATION** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) April 17, 2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

2. SERVED BY UNITED STATES MAIL:

On (*date*) April 17, 2024, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Brinkman Law Group, PC
543 Country Club Drive, Suite B
Wood Ranch, CA 93065

Stretto
410 Exchange, Suite 100
Irvine, CA 92602

☐ Service information continued on attached page.

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) April 17, 2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Sandra R. Klein
U.S. Bankruptcy Court
Roybal Federal Building
Bin outside of Suite 1582
255 E. Temple Street
Los Angeles, CA 90012

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 17, 2024

Date

David T. Moore

Printed Name

/s/ David T. Moore

Signature

ADDITIONAL SERVICE INFORMATION (if needed):

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)

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