**TYDINGS & ROSENBERG LLP**
Stephen B. Gerald (*pro hac vice* pending)
Legal Arts Building
1225 N. King Street, Suite 600
Wilmington, Delaware 19801
Telephone: (302) 587-6985
sgerald@tydings.com

*Co-Counsel to The J. M. Smucker Company*

**RIKER DANZIG LLP**
Joseph L. Schwartz, Esq.
Daniel A. Bloom, Esq.
7 Giralda Farms, Suite 250
Madison, New Jersey 07940
Telephone: (973) 538-0800
jschwartz@riker.com
dbloom@riker.com

*Co-Counsel to The J. M. Smucker Company*

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF NEW JERSEY**

| | |
|---|---|
| In re:<br><br>Del Monte Foods Corporation II, Inc., *et al.*,<br><br>Debtors.[1] | Chapter 11<br><br>Case No.: 25-16984 (MBK)<br><br>(Jointly Administered) |

**THE J. M. SMUCKER COMPANY'S LIMITED OBJECTION AND RESERVATION OF RIGHTS WITH RESPECT TO THE FIRST AMENDED JOINT CHAPTER 11 PLAN OF DEL MONTE FOODS CORPORATION II INC. AND ITS DEBTOR AFFILIATES**

The J. M. Smucker Company ("Smucker"), by undersigned counsel, hereby files this *Limited Objection and Reservation of Rights with Respect to the First Amended Joint Chapter 11 Plan of Del Monte Foods Corporation II Inc. and Its Debtor Affiliates* (the "Objection"), and in support thereof, states as follows.

[1] The last four digits of Debtor Del Monte Foods Corporation II Inc.'s tax identification number are 1894. A complete list of the Debtors in these Chapter 11 Cases and their respective tax identification numbers may be obtained on the website of the Debtors' Claims and Noticing Agent, at https://cases.stretto.com/DelMonteFoods. The location of the Debtor Del Monte Foods Corporation II Inc.'s principal place of business and the Debtors' service address is 205 North Wiget Lane, Walnut Creek, California 94598.

## BACKGROUND

### A. The Legacy Pension Plan

1. On October 9, 2013, Del Monte Corporation, as seller, Del Monte Foods Consumer Products, Inc. ("DMFCP"),[2] as purchaser, and Del Monte Pacific Limited ("DMPL"), as guarantor, entered into a Purchase Agreement (the "Project Bay Purchase Agreement"), pursuant to which DMFCP purchased the equity interests in certain entities and assets from Del Monte Corporation. Following the consummation of the transactions contemplated by the Project Bay Purchase Agreement, Del Monte Corporation changed its name to Big Heart Pet Brands ("BHPB"), which was subsequently purchased by Smucker.

2. Section 6.2 of the Project Bay Purchase Agreement provides, in pertinent part,[3]

> (a) It is the intention of the Parties that all employment-related Liabilities associated with Business Employees and Former Business Employees, whether arising or incurred prior to, on or after the Closing Date, are to be assumed by Acquiror or one of its Affiliates, except as otherwise specifically set forth herein.
>
> (b) Except as otherwise expressly provided in this Agreement, effective as of the Closing, Acquiror or one of its Affiliates shall assume, and none of the Company or its Affiliates shall have any further Liability with respect to, or under:
>
> * * *
>
> (v) any nonqualified deferred compensation Company Plan pursuant to which any Business Employee or Former Business Employee has any legally binding rights to payments, whether vested or unvested, as of the Closing Date;
>
> * * *
>
> (c) With respect to unpaid covered claims by any Business Employee or Former Business Employee under any Company Plan

[2] Upon information and belief, DMFCP was absorbed into Debtor, Del Monte Foods, Inc.

[3] For the avoidance of doubt, under the Project Bay Purchase Agreement, DMFCP is the "Acquiror" and Del Monte Corporation is the "Company."

> that provides welfare benefits or nonqualified deferred compensation, which are either incurred but not processed or that are incurred but unreported prior to the Closing Date, including claims that are self-insured and claims that are fully insured through third-party insurance, the Company or one of its Affiliates shall contine [*sic*] to be responsible for the payment for such claims. Acquiror shall reimburse the Company for its net after-tax cost of paying any such benefit that is not insured….

3. Among the nonqualified deferred compensation Company Plans assumed by DMFCP pursuant to the Project Bay Purchase Agreement was an unfunded nonqualified deferred compensation obligation to former executives and their beneficiaries (as applicable) that, upon information and belief, Del Monte Corporation had assumed in connection with prior acquisitions (the "Legacy Pension Plan").

4. Following Smucker's purchase of BHPB, Smucker, as successor to Del Monte Corporation, continued to administer the Legacy Pension Plan and to act as paying agent to pay the monthly benefits to the Legacy Pension Plan participants and their beneficiaries, as applicable, on DMFCP's behalf. DMFCP (and Del Monte Foods, Inc. as its successor) provided the pension registers to Smucker for this purpose. The current aggregate gross monthly payment paid by Smucker is approximately $5,875.00.

5. In accordance with section 6.2 of the Project Bay Purchase Agreement, to the extent that Del Monte Foods, Inc. (as successor to DMFCP) has liabilities under the Legacy Pension Plan, Smucker (as successor to Del Monte Corporation) makes payments to the participants or beneficiaries and Del Monte Foods, Inc. (as successor to DMFCP) is obligated to reimburse Smucker for its net after-tax cost of paying any such benefit. Consistent with the Project Bay Purchase Agreement and the parties' past practices, Smucker would regularly submit invoices to Del Monte Foods, Inc. for reimbursement, and Del Monte Foods, Inc. paid Smucker the invoiced

amounts as reimbursement. The current net after-tax cost amounts to approximately $4,388 per month.

**B. The Bankruptcy Case**

6. The Debtors filed voluntary chapter 11 petitions on July 1, 2025 (the "Petition Date"). Among other requests for first day relief, the Debtors filed the *Debtors' Motion for Interim and Final Orders (I) Authorizing (A) Payment of Prepetition Wages, Salaries and Related Workforce Obligations, and (B) Continuation of Benefits Programs, and (III) Granting Related Relief* [Docket No. 10] (the "Wage Motion"). The Wage Motion provided, in relevant part,

> 66. Legacy Pension Plan. In addition, the Debtors maintain an Unfunded Plan [the Legacy Pension Plan] inherited from J.M. Smucker Company [ ]. As of the Petition Date, there are approximately 15 Employees who were grandfathered in and are currently participating in the Legacy Pension Plan. Smucker[ ] pays the monthly disbursements to the Legacy Pension Plan participants, and the Debtors thereafter reimburse Smucker[ ]. Based on historical averages, the Debtors pay approximately $4,700 per month in obligations under the Legacy Pension Plan. The Debtors seek authority to pay such prepetition amounts promptly and to continue to maintain the Legacy Pension Plan in the ordinary course on a postpetition basis.

Wage Motion, ¶ 66.

7. Following Smucker's provision of informal comments to the Debtors regarding paragraph 66 of the Wage Motion, on August 13, 2025, the Court entered a *Final Order (I) Authorizing (A) Payment of Prepetition Wages, Salaries and Related Workforce Obligations, and (B) Continuation of Benefits Programs, and (III) Granting Related Relief* [Docket No. 364] (the "Wage Order"). The Wage Order revised the language in paragraph 66 of the Wage Motion, providing, in relevant part,

> Paragraph 66 of the Motion is amended to read as follows:
>
> 66. Legacy Pension Plan. In addition, the Debtors maintain an Unfunded Plan [the Legacy Pension Plan], the administration of which is maintained by The J.M. Smucker Company [ ], as a result of various divestiture and acquisition activity involving former Del Monte employees. As of the Petition Date, there are approximately 12 Employees who were grandfathered in and are currently receiving disbursements as participants in the Legacy Pension Plan. Smucker[ ] pays the monthly disbursements to the Legacy Pension Plan participants, and the Debtors thereafter reimburse Smucker[ ]. Based on historical averages, the Debtors pay approximately $4,700 per month in obligations under the Legacy Pension Plan. The Debtors seek authority to pay such prepetition amounts promptly and to continue to maintain the Legacy Pension Plan in the ordinary course on a postpetition basis.

Wage Order, ¶ 6.

8. While the Debtors started to make reimbursement payments to Smucker in accordance with their obligation under section 6.2(c) of the Project Bay Purchase Agreement during these chapter 11 cases, the last payment received by Smucker was for the month of August 2025. The Debtors have not made any payments to Smucker since that time despite Smucker's continued monthly payments to the Legacy Pension Plan participants on the Debtors' behalf.

9. Pursuant to various orders entered by the Court, the Debtors sold their Multi-Business Segment,[4] their Fruit Business, and their Broth & Stock Business pursuant to respective sale agreements. It is Smucker's understanding that none of the respective sale agreements included the assumption and assignment of the Project Bay Purchase Agreement or the Legacy Pension Plan. When Smucker inquired whether the Debtors were providing the Legacy Pension Plan participants with notice that the Legacy Pension Plan was being rejected pursuant to section 365 of Bankruptcy Code, the Debtors took the position that the obligation thereunder had been assumed by Smucker and that the Debtors did not owe the participants any further obligation.

[4] Capitalized terms not defined herein shall have the meaning ascribed to them in the Plan.

10. On February 25, 2026, the Debtors filed the *Joint Chapter 11 Plan of Del Monte Foods Corporation II Inc. and Its Debtor Affiliates* [Docket No. 1229] (as amended, the "Plan") and accompanying disclosure statement [Docket No. 1230], along with a motion seeking interim approval of that disclosure statement [Docket No. 1232]. At a hearing on March 18, 2026, the Court conditionally approved the disclosure statement on an interim basis.

11. Pursuant to section V.A of the first amended Plan [Docket No. 1336], "[o]n the Effective Date, except as otherwise provided [t]herein, all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code …."

12. Both the Project Bay Purchase Agreement and Legacy Pension Plan are Executory Contracts as each had material unperformed obligations on both sides as of the Petition Date. *See Spyglass Media Grp., LLC v. Bruce Cohen Prods. (In re Weinstein Co. Holdings, LLC)*, 997 F.3d 497, 504 (3d Cir. 2021) ("[An executory contract is] a contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.") (citation omitted).

13. It is unclear whether the Debtors listed any of the agreements with the Legacy Pension Plan participants that created the underlying obligation in Schedule G of their Schedules of Assets and Liabilities or whether the Debtors otherwise provided the participants with notice of the bankruptcy or of the filing of the Plan. Nonetheless, Smucker is providing the Legacy Pension Plan participants and their beneficiaries, as applicable, with notice of this Limited Objection and Reservation of Rights.

**LIMITED OBJECTION AND RESERVATION OF RIGHTS**

14. Smucker does not object to confirmation of the Plan or to the Debtor's rejection of the Project Bay Purchase Agreement or the Legacy Pension Plan. Rather, Smucker files this Limited Objection and Reservation of Rights as to the Debtors' position that Smucker is obligated to continue to fund payments under the Legacy Pension Plan, which Debtors admitted in the Wage Motion, as amended by the Wage Order, that they "maintain" and must "reimburse."

15. Smucker has paid the Legacy Pension Plan participants based on the provisions in the Project Bay Purchase Agreement. Unless the Debtors determine to assume the Project Bay Purchase Agreement, it will be deemed rejected under the default language of the Plan. In that instance, Smucker will be relieved of its obligations thereunder, including its obligations to continue to administer the Legacy Pension Plan and continue to act as paying agent to pay the monthly benefits to the Legacy Pension Plan participants and their beneficiaries, as applicable, on the Debtor's behalf as of the Effective Date of the Plan. *See Sharon Steel Corp. v. National Fuel Gas Distribution Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).[5]

16. Smucker has no obligation to the Legacy Pension Plan participants independent of the Project Bay Purchase Agreement, nor have Smucker's payments to the Legacy Pension Plan participants on the Debtors' behalf pursuant to the Project Bay Purchase Agreement created an independent obligation to the Legacy Pension Plan participants or their beneficiaries, as applicable. In furtherance of the foregoing, because the provisions of Article VI of the Project Bay Purchase Agreement "are solely for the benefit of the parties to [the Project Bay Purchase Agreement], and no current or former employee, director or independent contractor or any other individual

[5] Even if it is determined that the Project Bay Purchase Agreement is not an executory contract, the Debtors' post-petition breach of its reimbursement obligation relieves Smucker from any obligation under the Project Bay Purchase Agreement to administer the Legacy Pension Plan or to act as paying agent to pay the monthly benefits to the Legacy Pension Plan participants and their beneficiaries, as applicable, on the Debtors' behalf.

associated therewith shall be regarded for any purpose as a third-party beneficiary," Project Bay Purchase Agreement, § 6.11, the participants of the Legacy Pension Plan do not have any recourse against Smucker with respect to any obligations under the Project Bay Purchase Agreement.

17. **ACCORDINGLY, UPON THE EFFECTIVE DATE, SMUCKER WILL CEASE TO MAKE ANY FURTHER PAYMENTS TO THE LEGACY PENSION PLAN PARTICIPANTS OR THEIR BENEFICIARIES, AS APPLICABLE. FOR THE AVOIDANCE OF DOUBT, SMUCKER WILL CONTINUE TO MAKE MONTHLY PAYMENTS TO THE LEGACY PENSION PLAN PARTICIPANTS OR THEIR BENEFICIARIES, AS APPLICABLE, ON THE DEBTORS' BEHALF, UNTIL THE EFFECTIVE DATE.**

18. Smucker reserves its rights to seek reimbursement from non-Debtor DMPL in its capacity as a guarantor under the Project Bay Purchase Agreement for any payments previously made by Smucker that were not reimbursed by the Debtor and for any payments that may be made in the future.

19. Section VIII.D of the Plan provides for a third-party release by Releasing Parties of all claims and Causes of Action against Released Parties. The definition of Released Party includes DMPL. Plan, § I.A.168, while the definition of Releasing Party includes:

> (k) all Holders of Claims that are deemed to accept the Plan and who do not affirmatively opt out of the releases provided by the Plan; (l) all Holders of Claims who abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan; (m) all Holders of Claims who vote to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan; (n) each current and former Affiliate of each Entity in clauses (a) through (j); and (o) each Related Party of each Entity in clauses (a) through (j).

Plan, § I.A.169.

20. Not only will Smucker be filing a request for allowance and payment of an administrative expense claim for unpaid amounts that accrued during these chapter 11 cases that the Debtors were required to pay to Smucker pursuant to section 6.2(c) of the Project Bay Purchase Agreement, but Smucker will also be filing a rejection damages claim on account of the Debtors' rejection of the Project Bay Purchase Agreement which will occur under the default provisions of section V.A of the Plan.

21. Accordingly, in its capacity as a creditor in these chapter 11 cases, Smucker opts out of the Third-Party Release and objects to any provision in the Plan that impairs its ability to assert a reimbursement claim against DMPL on account of DMPL's obligations as guarantor under the Project Bay Purchase Agreement.

22. Smucker reserves the right to modify or amend this Limited Objection and Reservation of Rights and to raise additional arguments at the confirmation hearing, including with respect to the Plan, the disclosure statement, the Plan Supplement and the proposed confirmation order.

[*Remainder of Page Intentionally Left Blank*]

May 4, 2026
Madison, New Jersey

**RIKER DANZIG LLP**

By: /s/ *Joseph L. Schwartz*
Joseph L. Schwartz, Esq.
Daniel A. Bloom, Esq.
7 Giralda Farms, Suite 250
Madison, New Jersey 07940
Telephone: (973) 538-0800
jschwartz@riker.com
dbloom@riker.com

-and-

**TYDINGS & ROSENBERG LLP**

Stephen B. Gerald (*pro hac vice* pending)
Legal Arts Building
1225 N. King Street, Suite 600
Wilmington, Delaware 19801
Telephone: (302) 587-6985
sgerald@tydings.com

*Attorneys for The J. M. Smucker Company*