

DAVID L. NEALE (SBN 141225)
TODD M. ARNOLD (SBN 221868)
ROBERT M. CARRASCO (SBN 334642)
LEVENE, NEALE, BENDER, YOO
& GOLUBCHIK L.L.P.
2818 La Cienega Avenue
Los Angeles, California 90034
Telephone: (310) 229-1234
Facsimile: (310) 229-1244
Email: DLN@LNBYG.COM; TMA@LNBYG.COM; RMC@LNBYG.COM



Proposed Attorneys for Debtors and Debtors in Possession

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
☐ MYJOJO, 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 Delaware corporation
☒ All Debtors

Debtors and Debtors-in-Possession.

Lead 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 Cases

**FINAL ORDER GRANTING DEBTORS'
EMERGENCY MOTION FOR ENTRY
OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO
OBTAIN POSTPETITION FINANCING,
(II) AUTHORIZING DEBTORS TO USE
CASH COLLATERAL, (III) GRANTING
LIENS AND PROVIDING
SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS, (IV) GRANTING
ADEQUATE PROTECTION,
(V) MODIFYING AUTOMATIC STAY,
AND (VI) GRANTING RELATED
RELIEF**

Final Hearing

Date: August 16, 2023
Time: 9:00 a.m.
Location: Courtroom 1575
255 East Temple Street
Los Angeles, California 90012

1 An emergency hearing (the “Initial Hearing”) was held on July 6, 2023, at 9:00 a.m., and a
2 final hearing (the “Final Hearing” and, with the Initial Hearing, the “Hearings”) was held on August
3 16, 2023, at 9:00 a.m., before the Honorable Sandra R. Klein, United States Bankruptcy Judge for
4 the Central District of California in her Courtroom “1575,” located at 255 E. Temple Street, Los
5 Angeles, CA 90012, and via Zoom, to consider the *Emergency Motion of Debtors for Entry of*
6 *Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II)*
7 *Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority*
8 *Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay,*
9 *(VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the “Motion”)¹ [Doc. No. 8]
10 filed by the debtors and debtors in possession (collectively, the “Debtors”) in the above captioned,
11 jointly administered, chapter 11 cases (collectively, the “Chapter 11 Cases”), pursuant to sections
12 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the
13 United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9014 of the Federal
14 Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 4001-2 of the Local Bankruptcy
15 Rules for the United States Bankruptcy Court for the Central District of California (the “Local
16 Rules” or “LBR”), for entry of an Interim Order, among other things:

17 i. authorizing Ittella International, LLC, a California limited liability company
18 (“Ittella”) Ittella’s Chef, LLC, a California limited liability company (“ICLLC”), New Mexico Food
19 Distributors, Inc., a New Mexico corporation (“NMFD”), Karsten Tortilla Factory, LLC, a New
20 Mexico limited liability company (“Karsten”), BCI Acquisition, Inc., a Delaware corporation
21 (“BCI”) and TTCF-NM Holdings, Inc., a Delaware corporation (“TTCF-NM” and together with
22 Ittella, ICLLC, NMFD, Karsten and BCI, collectively “DIP Borrowers”) to obtain postpetition
23 financing , and for Tattooed Chef, Inc., a Delaware corporation (the “DIP Guarantor” and, together
24 with the DIP Borrowers, the “DIP Loan Parties”) to guarantee unconditionally on a joint and several
25 basis, the Borrowers’ obligations in connection with a superpriority senior secured credit facility

27 ¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms elsewhere this
28 Final Order, in the Court’s previously entered Interim Order [Doc. No. 77] granting the Motion on an interim basis,
or in the Motion.

(the “DIP Facility”) consisting of (a) an aggregate principal amount of up to \$3,000,000 in “new money” revolving loans (the “New Money DIP Loans”), and (b) rolled-up loans under the Prepetition Credit Agreement, as further described in the DIP Credit Agreement held by the Lender, in an aggregate amount of \$3,000,000 in principal upon entry of this Interim Order (collectively, the “DIP Roll-Up Loans” and, together with the New Money DIP Loans, the “DIP Loans”), in accordance with the terms and conditions set forth in the DIP Credit Agreement, and all other terms and conditions of the DIP Documents;

ii. authorizing the DIP Loan Parties to enter into that certain Senior Secured Super-Priority Priming Debtor-in-Possession Loan and Security Agreement among the DIP Loan Parties and Lender, a copy of which is attached as **Exhibit 2** to the *Omnibus Declaration of Edward Bidanset in Support of Emergency First Day Motions* [Doc. No. 15] (as the same may be amended, restated, supplemented, waived, or otherwise modified from time to time, the “DIP Credit Agreement” and, together with this Interim Order, this Final Order (with the Interim Order the “DIP Orders”), and all agreements, documents, and instruments delivered or executed in connection therewith, and other security documentation, collectively, the “DIP Documents”), and to perform such other and further acts as may be required in connection with the DIP Documents;

iii. authorizing the Debtors to use the proceeds of the DIP Loans and the Prepetition Collateral, including Cash Collateral, in accordance with the Approved DIP Budget, subject to permitted variances set forth herein and in the DIP Credit Agreement, to provide working capital for, and for other general corporate purposes of, the Debtors, including for payment of any Adequate Protection Payments and reasonable and documented transaction costs, fees, and expenses incurred in connection with any transactions to be implemented through the Chapter 11 Cases subject to approval of any such costs, fees, or expenses as may be required by the Bankruptcy Code;

iv. granting adequate protection to the Lender to the extent of any Diminution in Value of its interests in the Prepetition Collateral as set forth in the DIP Orders;

v. granting valid, enforceable, binding, non-avoidable, and fully perfected first priority priming (as applicable) liens on and senior security interests in substantially all of the property, assets, and other interests in property and assets of the DIP Loan Parties, whether such property is presently owned or after-acquired, and each DIP Loan Party's estate as created by section 541 of the Bankruptcy Code, of any kind or nature whatsoever, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, whether existing before or arising after the Petition Date, subject only to the (a) Carve-Out, (b) certain liens permitted pursuant to the terms of the DIP Credit Agreement, and (c) other valid, perfected, and unavoidable liens, including, without limitation, statutory liens, possessory liens, and rights of recoupment and offset, if any, existing as of the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) (the "Permitted Prior Liens"), in each case, that are senior in priority to the Prepetition Lender Liens, on the terms and conditions set forth herein and in the DIP Documents;

vi. granting superpriority administrative expense claims against each of the Debtors' estates to the Lender with respect to the DIP Obligations over any and all administrative expenses of any kind or nature subject and subordinate only to the payment of the Carve-Out on the terms and conditions set forth herein and in the DIP Documents;

vii. subject to and upon entry of the Final Order and to the extent set forth herein and therein, waiving the Debtors' and the estates' right to surcharge against the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code;

viii. subject to and upon entry of the Final Order and to the extent set forth herein, for the "equities of the case" exception under section 552(b) of the Bankruptcy Code to not apply to the Prepetition Lender Liens with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the DIP Collateral, as applicable;

ix. pursuant to Bankruptcy Rule 4001, holding an interim hearing (the "Interim Hearing") on the Motion before this Court to consider entry of this Interim Order, among other things, (a) authorizing the DIP Loan Parties to, on an interim basis, borrow from the Lender a principal amount of up to \$3,000,000 in New Money DIP Loans, (b) authorizing the incurrence of \$3,000,000 of DIP Roll-Up Loans, (c) authorizing the Debtors' use of Prepetition

Collateral (including Cash Collateral), (d) granting the adequate protection described in this Interim Order, and (e) authorizing the DIP Loan Parties to execute and deliver the DIP Documents to which they are a party and to perform their respective obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

x. scheduling a final hearing (the “Final Hearing”) to consider the relief requested in the Motion and the entry of the Final Order, and approving the form of notice with respect to the Final Hearing; and

xi. granting related relief.

On July 6, 2023, the Court entered its Interim Order [Doc. No. 77] granting the Motion on an interim basis.

This Court having considered the Motion, the *Declaration of Edward Bidanset in Support of Chapter 11 Petitions and First Day Motions* [Doc. No. 15] (the “First Day Declaration”), any oppositions to the Motion, any replies to any oppositions to the Motion, other evidence submitted or adduced in regard to the Motion, and the arguments of counsel made at the Interim Hearing and Final Hearing on the Motion; and this Court having heard and resolved or overruled any objections to the Motion that were not resolved by agreement among relevant parties; and this Court having noted the appearances of all parties in interest; and it appearing that that the Motion and the relief requested therein is fair and reasonable and in the best interests of the Debtors, their estates, all parties-in-interest, and the continued operation of the Debtors’ business and the preservation of the value of the Debtors’ assets; and it appearing that the Debtors’ entry into the DIP Credit Agreement and the other DIP Documents is a sound and prudent exercise of the Debtors’ business judgment; and the Debtors having provided notice of the Motion as set forth in the Motion and related proofs of service and as required by the Interim Order, and it appearing that no other or further notice of the Motion need be given; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

1 BASED UPON THE RECORD ESTABLISHED AT THE HEARINGS, THIS COURT
2 HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:²

3 A. Petition Date. On July 2, 2023, the (“Petition Date”), each of the Debtors filed a
4 voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy
5 Court for the Central District of California commencing the Chapter 11 Cases.

6 B. Debtor in Possession. The Debtors continue to manage and operate their business
7 and properties as debtors in possession pursuant to sections 1107 and 1108 of the
8 Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

9 C. Jurisdiction and Venue. This Court has jurisdiction over these proceedings, and the
10 persons and properties affected hereby, pursuant to 28 U.S.C. § 157(b) and 1334. Venue is
11 proper pursuant to 28 U.S.C. § 1408 and 1409. The Motion is a core proceeding pursuant to
12 28 U.S.C. § 157(b). This Court may enter a final order consistent with Article III of the
13 United States Constitution.

14 D. Committees. As of the date hereof, statutory committees were appointed in the Ittella
15 and NMFD Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (each of the
16 foregoing committees and any statutory committees formed at a later date are referred to
17 herein as a “Committee” and collectively as the “Committees”).

18 E. Prepetition Loan Documents. The Debtors shall be bound by the following
19 stipulations (collectively, the “Debtors’ Stipulations”) as follows (provided that clauses (4),
20 (5) and (6) below shall only be effective upon the expiration of the Challenge Period, as
21 defined below, unless Claims and Defenses, as defined below, have been timely filed):

- 22 1. Cash Collateral. Any and all of the Debtors’ cash consisting of Prepetition
23 Collateral (as defined below) on the Petition Date, including the Debtors’ cash and
24 other amounts on deposit or maintained in any account or accounts by the Debtors,
25 and any amounts generated by the collection of accounts receivable or other
26 disposition of the Prepetition Collateral existing as of the Petition Date, and the
27 proceeds of any of the foregoing is the Lender’ cash collateral within the meaning of
28 Bankruptcy Code section 363(a) (the “Cash Collateral”).

² Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052.

2. Prepetition Credit Agreement and Obligations. Ittella International, LLC, a California limited liability company ("Prepetition Borrower"), ICLLC, NMFD, Karsten, BCI (ICLLC, NMFD, Karsten and BCI are collectively, "Guarantors" and together with Prepetition Borrower, collectively, "Prepetition Credit Parties") and UMB Bank, n.a. ("Lender") are parties to an Amended and Restated Loan and Security Agreement dated as of June 30, 2022 (as the same has been and may be amended, restated, supplemented or otherwise modified from time to time, the "Prepetition Credit Agreement," together with all other loan documents, security instruments, and other documents related to, referenced in or executed in connection with the Prepetition Credit Agreement prior to the Petition Date, the "Prepetition Loan Documents"), pursuant to which the Lender provided Prepetition Borrower with access to a revolving credit facility in an amount of up to \$25,000,000 (the "Prepetition Facility").
3. To secure the Prepetition Lender Claim, and pursuant to the Prepetition Loan Documents, the Prepetition Credit Parties granted to the Lender security interests in and liens on substantially all assets of the Prepetition Credit Parties as described in the Prepetition Loan Documents (the "Prepetition Lender Liens"), including, without limitation, (1) all accounts, (2) all inventory, (3) all equipment and fixtures, (4) all contract rights, (5) all farm products, (6) all general intangibles, including without limitation payment intangibles and software, (7) all Intellectual Property (as defined in the Prepetition Credit Agreement), (8) all securities accounts, deposit accounts, cash, money, drafts, certificates of deposit, and general and special deposits, (9) all investment property and financial assets (other than margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), (10) all instruments, (11) all chattel paper, including without limitation, electronic chattel paper, (12) all goods and all accessions thereto, (13) all healthcare-insurance receivables, (14) all leases, (15) all reporting obligations, (16) all documents, (17) all letter of credit rights, (18) all insurance and certificates of insurance pertaining to any and all items of collateral, (19) all books and records, (20) all files, correspondence, computer programs, tapes, disks and related data processing software and other media which contain information identifying or pertaining to any of the collateral or any account debtor or showing the amounts thereof or payments thereon or otherwise necessary or helpful in the realization thereon or the collection thereof, (21) all cash deposited with any affiliate of Lender, (22) all commercial tort claims, including, without limitation, those described on Schedule 1.1 to the Prepetition Credit Agreement, if any, and (23) any and all products and cash and non-cash proceeds of the foregoing (including, but not limited to, any claims to any items referred to in this definition and any claims against third parties for loss of, damage to or destruction of any or all of the collateral or for proceeds payable under or unearned premiums with respect to policies of insurance) in whatever form; (collectively, the "Prepetition Collateral") provided, however, that Prepetition Collateral does not include the Excluded Property (as defined in the Prepetition Credit Agreement) and provided, further, that Lender's security interest in Equity Interests (as defined in the Prepetition Credit Agreement) of any Foreign Subsidiary (as defined in the Prepetition Credit Agreement) will not exceed 65% of the Equity Interests of such Foreign Subsidiary if such Foreign Subsidiary acting as a Guarantor would cause a Deemed Dividend Problem (as defined in the Prepetition Credit Agreement).
4. As of the Petition Date, the amount of Lender's claim is (a) \$18,180,313.49 in principal, and (b) \$44,284.50 in accrued interest, plus (c) approximately \$50,000 in reimbursable attorneys' fees, plus (d) \$558,120 in contingent letter of credit reimbursement expenses, plus (d) other fees, costs, indemnities (the "Prepetition Lender Claim"). Lender is entitled to default interest, fees and expenses (including

reimbursement of its reasonably, documented, out-of-pocket attorneys' fees) after the Petition Date pursuant to section 506(b) of the Bankruptcy Code (the "Postpetition Expenses," together with the Prepetition Lender Claim, collectively, the "Lender Allowed Claim").

5. The Prepetition Lender Liens granted to the Lender in the Prepetition Collateral pursuant to and in connection with the Prepetition Loan Documents, (i) are valid, binding, perfected, and enforceable first priority liens and security interests in the Prepetition Collateral, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in the Bankruptcy Code) of any kind, (iii) as of the Petition Date are subject and/or subordinate only to valid, perfected, and unavoidable liens and security interests existing as of the Petition Date that are senior in priority to the Prepetition Lender Liens of the Lender as permitted by the terms of the Prepetition Loan Documents, and (iv) constitute the legal, valid, and binding obligation of the Prepetition Credit Parties, enforceable in accordance with the terms of the applicable Prepetition Loan Documents.
6. The Debtors and their estate have no claims, objections, challenges, offsets, causes of action and/or choses in action of any kind against the Lender, or any of its respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees (in each case, in their respective capacities as such), including, without limitation, Avoidance Actions.

F. Findings Regarding the DIP Facility and Use of Cash Collateral.

(i) The Debtors had an immediate need to obtain the DIP Facility and have a continuing need to use Cash Collateral (solely to the extent consistent with the Approved DIP Budget, subject to permitted variances as set forth in the DIP Orders and the DIP Documents) to, among other things, (a) permit the orderly sale of their business; (b) pay certain Adequate Protection Payments; and (c) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the Debtors' assets. The Debtors will not have sufficient sources of working capital and financing to operate their business throughout the Chapter 11 Cases without access to the DIP Facility and authorized use of Cash Collateral.

(ii) The Debtors are unable to obtain financing on more favorable terms from sources other than the Lender under the DIP Documents and are unable to obtain unsecured

1 credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense.
2 The Debtors also are unable to obtain secured credit allowable under sections 364(c)(1),
3 364(c)(2), and 364(c)(3) of the Bankruptcy Code for the purposes set forth in the DIP
4 Documents without the Debtors granting to the DIP Secured Parties, subject to the Carve-
5 Out as provided for herein, the DIP Liens (as defined below) and the DIP Superpriority
6 Claims (as defined below) under the terms and conditions set forth in the DIP Orders and
7 the DIP Documents.

8 (iii) The DIP Facility has been negotiated in good faith and at arm's length
9 among the Debtors and the Lender, and all of the DIP Loan Parties' obligations and
10 indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP
11 Documents, including, without limitation, all loans made to and guarantees issued by the
12 DIP Loan Parties pursuant to the DIP Documents and all other obligations under the DIP
13 Documents (collectively, the "DIP Obligations") shall be deemed to have been extended by
14 the Lender in good faith as that term is used in section 364(e) of the Bankruptcy Code and in
15 express reliance upon the protections offered by section 364(e) of the Bankruptcy Code. The
16 DIP Obligations, the DIP Liens, and the DIP Superpriority Claims shall be entitled to the
17 full protection of Bankruptcy Code section 364(e) in the event that the DIP Orders or any
18 provision thereof are vacated, reversed, or modified on appeal or otherwise, and any liens or
19 claims granted to, or payments made to, or payments made to Lender hereunder arising
20 before the effective date of any such vacatur, reversal, or modification of the DIP Orders
21 shall be governed in all respects by the original provisions of the DIP Orders, including
22 entitlement to all rights, remedies, privileges, and benefits granted therein, unless such
23 authorization and the incurring of such debt or the granting of such priority lien is stayed
24 pending appeal.

25 (iv) Subject to the Challenge Period, Lender is entitled, pursuant to sections 105,
26 361, 362 and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the
27 Prepetition Collateral, including Cash Collateral, for any diminution in the value thereof.
28

1 (v) In light of the Lender's agreement to subordinate its Prepetition Lender
2 Liens and its superpriority claims to the DIP Obligations and the Carve-Out and to permit
3 the use of Cash Collateral as set forth herein, the Lender is entitled to the rights and benefits
4 of section 552(b) of the Bankruptcy Code and, subject to and upon entry of this Final Order,
5 (a) a waiver of any "equities of the case" claims under section 552(b) of the Bankruptcy
6 Code and (b) a waiver of the provisions of section 506(c) of the Bankruptcy Code, subject to
7 the Challenge Period.

8 (vi) Lender has consented to, conditioned on the entry of the Interim Order, the
9 Debtors' incurrence of the DIP Facility and the proposed use of Cash Collateral on the terms
10 and conditions set forth in the Interim Order, including, without limitation, the terms of the
11 adequate protection and the roll-up embodied in the DIP Roll-Up Loans, in each case, as
12 provided for in the DIP Orders.

13 (vii) Lender has consented to, conditioned on the entry of the DIP Orders, the
14 Debtors' proposed continued use of Cash Collateral on the terms and conditions set forth in
15 Motion and the DIP Orders, including, without limitation, the terms of the adequate
16 protection and the roll-up embodied in the DIP Roll-Up Loans, in each case, as provided for
17 in the Motions and the DIP Orders.

18 G. Good Cause Shown; Best Interest. Good cause has been shown for entry of the DIP
19 Orders, and entry of the DIP Orders is in the best interests of the Debtors' respective estates
20 and creditors as implementation of the DIP Orders and the transactions contemplated therein
21 will, among other things, allow for the continued operation of the Debtors' existing business
22 and enhance the Debtors' prospects for a successful sale process.

23 H. Notice. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and
24 the Local Rules, notice of the Interim Hearing and the emergency relief requested in the
25 Motion was provided by the Debtors to: (i) the thirty (30) largest unsecured creditors of the
26 Debtors on a consolidated basis; (ii) the Office of the United States Trustee for the Central
27 District of California (the "U.S. Trustee"); (iii) Sheppard, Mullin, Richter & Hampton LLP,
28 as counsel to the Lender; (iv) all other parties with liens of record on assets of the Debtors

(as disclosed in lien searches completed by the Debtors prior to the Petition Date); and (v) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or is required to receive notice under Bankruptcy Rules 2002, 4001, or 9014 and any applicable Local Rules. The Debtors also provided notice of the Final Hearing on the Motion as required by the Interim Order. Therefore, requisite notice of the Motion and the relief requested thereby has been provided and no other notice need be provided for entry of the Interim Order or this Final Order.

I. Arm's Length, Good Faith Negotiations. The terms of the DIP Orders were negotiated in good faith and at arm's length between the Debtors and Lender, including with respect to negotiating, implementing, documenting, or obtaining requisite approvals of the Debtors' incurrence of the DIP Facility and the Debtors' use of Cash Collateral, including in respect of all of the terms of the DIP Orders, all documents related thereto, and all transactions contemplated by the foregoing.

Based upon the foregoing findings and conclusions, the Motion and the record before this Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. DIP Financing Approved. The Motion is granted on a final basis as set forth in the DIP Orders, and the use of Cash Collateral on a final basis is authorized, subject to the terms of the DIP Orders.

2. Objections Overruled. Any objections with respect to entry of the DIP Orders, to the extent not withdrawn or resolved, as noted on the record at the Final Hearing, are overruled on the merits. This Final Order shall become effective immediately upon its entry.

3. Authorization of the DIP Facility and the DIP Documents.

a. The Debtors were authorized and empowered on an interim basis following entry of the Interim Order, and the Debtors are hereby immediately authorized and empowered, on a final basis, to enter into, and execute and deliver, the DIP Documents consistent with the relief granted in the DIP Orders, and such additional documents, instruments, certificates, and agreements as may be reasonably required or requested by the Lender to implement the terms or effectuate the

1 purposes of the DIP Orders and the DIP Documents. To the extent not entered into as of the date
2 hereof, the Debtors and the Lender shall negotiate the DIP Documents in good faith, and in all
3 respects such DIP Documents shall be, subject to the terms of the DIP Orders, consistent with the
4 terms of the DIP Orders and the DIP Credit Agreement and otherwise acceptable to the Lender.
5 Until execution and delivery of the DIP Credit Agreement and other DIP Documents required or
6 requested by the Lender, the DIP Loan Parties and Lender shall be bound by (i) the terms and
7 conditions and other provisions set forth in the other executed DIP Documents, with the same force
8 and effect as if duly executed and delivered to the Lender by the DIP Loan Parties, and (ii) the
9 Interim Order, this Final Order, and the other executed DIP Documents shall govern and control the
10 DIP Facility. Upon entry of the Interim Order and continuing with the entry of this Final Order, the
11 Interim Order, this Final Order, the DIP Credit Agreement, and other DIP Documents shall govern
12 and control the DIP Facility. The Lender is hereby authorized to execute and enter into its
13 respective obligations under the DIP Documents, subject to the terms and conditions set forth
14 therein and the DIP Orders. Upon execution and delivery thereof, the DIP Documents shall
15 constitute valid and binding obligations of the Debtors enforceable in accordance with their terms.
16 To the extent there exists any conflict among the terms and conditions of the DIP Documents and
17 the DIP Orders, the terms and conditions of the DIP Orders shall govern and control.

18 b. Upon entry of the Interim Order, the DIP Borrowers were, and continuing
19 with the entry of this Final Order, the DIP Borrowers are, authorized to borrow, and the DIP
20 Guarantor was/is authorized to guaranty, borrowings up to an aggregate principal amount of
21 \$6,000,000 of DIP Loans — which consist of (i) \$3,000,000 in New Money DIP Loans and (ii) the
22 immediate, automatic, and subject to the Challenge Period, irrevocable conversion of \$3,000,000 of
23 prepetition loans into an equal amount of DIP Roll-Up Loans, in each case subject to the occurrence
24 of the “Closing Date” (as defined in the DIP Credit Agreement) and subject to and in accordance
25 with the DIP Orders, without any further action by the Debtors or any other party.

26 c. In accordance with the terms of the Interim Order, this Final Order, and the
27 DIP Documents, proceeds of the DIP Loans shall be used solely for the purposes permitted under
28 the DIP Documents and the Interim Order and this Final Order, and in accordance with the

1 Approved DIP Budget, subject to permitted variances as set forth in the DIP Orders and the DIP
2 Documents. Attached as **Exhibit 1** to the *Notice of Debtors' Submission of Amended Initial DIP*
3 *Budget* [Doc. No. 54] and incorporated herein by reference is a budget prepared by the Debtors and
4 approved by the Lender (the "Initial DIP Budget").

5 d. In furtherance of the foregoing and without further approval of this Court,
6 each Debtor is authorized, and the automatic stay imposed by section 362 of the Bankruptcy Code
7 is hereby lifted to the extent necessary to, perform all acts and to make, execute, and deliver all
8 instruments and documents (including, without limitation, the DIP Credit Agreement, any security
9 and pledge agreement, and any mortgage to the extent contemplated thereby, or the DIP Credit
10 Agreement), and to pay all fees (including all amounts owed to the Lender under the DIP
11 Documents and the Prepetition Loan Documents) that may be reasonably required or necessary for
12 the Debtors' performance of their obligations under the DIP Orders and the DIP Facility, including,
13 without limitation:

14 i. the execution, delivery, and performance of the DIP
15 Documents, including, without limitation, the DIP Credit Agreement, any
16 security and pledge agreement, and any mortgage (including, in addition to
17 all Prepetition Collateral, a lien on all leasehold interests, purchase options
18 and other interests in certain real property located in the City of
19 Albuquerque, Bernalillo County, New Mexico and 100% of each Foreign
20 Subsidiary) to the extent contemplated thereby;

21 ii. the execution, delivery, and performance of one or more
22 amendments, waivers, consents, or other modifications to and under the DIP
23 Documents (in each case in accordance with the terms of the applicable DIP
24 Documents), it being understood that no further approval of this Court shall
25 be required for amendments, waivers, consents, or other modifications to and
26 under the DIP Documents or the DIP Obligations that do not shorten the
27 maturity of the extensions of credit thereunder or modify the commitments
28 or the rate of interest or other amounts payable thereunder;

1 iii. subject to the Review Period, the non-refundable payment to
2 the Lender of the fees referred to in the DIP Documents, including (x) all
3 fees and other amounts owed to the Lender under the DIP Documents and
4 (y) all reasonable and documented costs and expenses as may be due from
5 time to time, including, without limitation, the reasonable and documented
6 fees and expenses of counsel and other professionals retained as provided for
7 in the DIP Documents and the DIP Orders (whether incurred before or after
8 the Petition Date, including, for the avoidance of doubt, Sheppard, Mullin,
9 Richter & Hampton LLP (as counsel) and one counsel to the Lender in each
10 local jurisdiction (collectively, the “Lender Advisors”), which such fees and
11 expenses shall not be subject to the approval of this Court (except as
12 provided in paragraph 18 below), nor shall any recipient of any such
13 payment be required to file with respect thereto any interim or final fee
14 application with this Court, *provided* that any fees and expenses of a
15 professional shall be subject to the Review Period; and

16 iv. the performance of all other acts required under or in
17 connection with the DIP Documents.

18 e. Upon entry of this Final Order, the DIP Documents, the DIP Obligations
19 (provided that the roll-up of the DIP Roll Up Loans shall be subject to the Challenge Period), and
20 the DIP Liens shall constitute valid, binding, and non-avoidable obligations of the Debtors
21 enforceable against each Debtor party thereto in accordance with their respective terms and the
22 terms of the DIP Orders for all purposes during the Chapter 11 Cases, any subsequently converted
23 Chapter 11 Case of any Debtor to a case under chapter 7 of the Bankruptcy Code or after the
24 dismissal of any Chapter 11 Case. No obligation, payment, transfer, or grant of security under the
25 DIP Credit Agreement, the other DIP Documents, or the DIP Orders shall be stayed, restrained,
26 voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable law
27 (including, without limitation, under sections 502(d), 548, or 549 of the Bankruptcy Code or under
28 any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act,

Uniform Voidable Transactions Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, or counterclaim. All payments or proceeds remitted to Lender pursuant to the DIP Documents, the provisions of the DIP Orders, or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) or the “equities of the case” exception of section 552(b) of the Bankruptcy Code.

4. Budget and Reporting.

a. Updated Budget. Not later than 5:00 p.m. prevailing Pacific time on each Friday following the Petition Date (the “Updated Budget Deadline”), the DIP Loan Parties shall deliver to the Lender and Lender Advisors a supplement to the Initial Budget or most-recently delivered updated version of the same (each such supplement, an “Updated Budget”), covering the 13-week period that commences with Friday of the calendar week immediately preceding such Updated Budget Deadline, consistent with the form and level of detail set forth in the Initial Budget and including a forecasted unrestricted cash balance, projected borrowing base, as well as a line-item report setting forth the estimated fees and expenses to be incurred by each professional advisor on a weekly basis; *provided* that the Updated Budget shall be, in each case, subject to the approval of the Lender (which approval may be provided by the Lender Advisors on behalf of the Lender and will be deemed to be given unless an objection by the Lender or the Lender Advisors has been delivered to the Borrowers by no later than 5:00 p.m. prevailing Pacific time on the third (3rd) Business Day following Lender’s receipt of the Updated Budget (which objection may be provided via email)). Upon (and subject to) the approval, or deemed approval, of any such Updated Budget by the Lender in its sole and absolute discretion (which may be provided by the Lender Advisors), such Updated Budget shall constitute the “Approved Budget”; *provided* that in the event such Updated Budget is not so approved (or deemed approved) by the Lender, the prior Approved Budget shall remain in effect, provided that any change to the Permitted Overformula Amount shall require the express written consent of Lender, which written consent may be provided by the Lender Advisors.

b. Variance Reporting. Not later than 5:00 p.m. prevailing Pacific time every Friday (commencing with Friday of the week immediately following the week in which the Petition Date occurs) (each such Friday, a “Variance Report Deadline”), the Debtors shall deliver to the Lender and the Lender Advisors a variance report (each, a “Variance Report”), in form and substance satisfactory to the Lender, showing:

i. the difference between (x) total budgeted revenue as set forth in the Approved Budget, *minus* (y) total actual revenue, *divided* by (z) total budgeted revenue as set forth in the Approved Budget (the “Sales Variance”);

ii. the difference between (x) total budgeted operating receipts as set forth in the Approved Budget, *minus* (y) total actual operating receipts, *divided* by (z) total budgeted operating receipts as set forth in the Approved Budget (the “Receipts Variance”);

iii. the difference between (x) total actual operating disbursements, *minus* (y) total budgeted operating disbursements as set forth in the Approved Budget, *divided* by (z) total budgeted operating disbursements as set forth in the Approved Budget (the “Disbursements Variance”); and

iv. the difference between (x) Weekly Fee Estimates (as defined below), *minus* (y) total budgeted professional fees and expenses as set forth in the Approved Budget, *divided* by (z) total budgeted professional fees and expenses as set forth in the Approved Budget (the “Professional Fee Variance”),

v. in each case, for the Applicable Period,³ together with a reasonably detailed explanation of such Sales Variance, Receipts Variance,

³ “Applicable Period” means, (a) with respect to the first Variance Report, the one-week period beginning on the Petition Date and ending on the Friday of the week immediately preceding the first Variance Report Deadline, (b) with respect to each Variance Report thereafter, the period beginning on the Petition Date and ending on the Friday of the week immediately preceding the applicable Variance Report Deadline.

Disbursements Variance and Professional Fee Variance. Commencing with the third Variance Report, the Debtors shall not permit the Receipts Variance, the Disbursements Variance or the Professional Fee Variance with respect to any Applicable Period to exceed 10%.

c. Borrowing Base Reporting. Not later than the Variance Report Deadline, the Debtors shall deliver to the Lender and the Lender Advisors a Borrowing Base Certificate (as defined in the Prepetition Credit Agreement) including: (i) a detailed calculation of the Borrowing Base; and (ii) all supporting documents and information (including, without limitation, sales journals, credit memos, cash receipts journals, reconciliation of changes from the most recent certificate delivered to Lender).

d. Additional Reporting. Monthly, not later than the fifteenth (15th) day of each calendar month (or in the case of clause (iv) the thirtieth (30th) day of each calendar month):

i. an aging of Debtors' accounts receivable and accounts payable as of the last day of the preceding calendar month;

ii. inventory reports as of the last day of the preceding calendar month, by category and location, with detail showing additions to and deletions from inventory, together with a reconciliation to the general ledger; and

iii. upon request, copies of invoices in connection with the Debtors' accounts, customer statements, warehouse receipts, credit memos, remittance advices and reports, deposit slips, shipping and delivery documents in connection with the Debtors accounts and inventory.

5. Borrowing Base Compliance. The Debtors shall deposit all Cash Collateral in their possession or hereinafter received into a blocked account established solely for the purpose of receiving and holding such deposits (the "Cash Collateral Account"). The Debtors shall not have access to and shall not be permitted to use funds held in the Cash Collateral Account, except pursuant to the terms of the DIP Orders. At the end of each Business Day, all amounts held in the Cash Collateral Account shall be: (a) first applied to reduce the outstanding balance of the DIP

Loans, until all such DIP Loans are fully repaid, and (b) thereafter, to the extent the DIP Borrowing Base⁴ exceeds the Revolving Loans made under the DIP Facility such funds shall be transferred to the Debtors' primary operating account (the "Operating Account"). The Debtors may only use Cash Collateral after it is transferred to the Operating Account and such use must be in compliance with the Approved Budget. Except on the terms and conditions of the DIP Orders, the Debtors shall be enjoined and prohibited from at any time using the Cash Collateral.

6. Access to Records. The Debtors shall provide the Lender with all reporting and other information required to be provided to the Lender under the DIP Documents. In addition to, and without limiting, whatever rights to access the Lender has under the DIP Documents, upon reasonable notice to Debtors' counsel (email being sufficient), at reasonable times during normal business hours, the Debtors shall permit representatives, agents, and employees of the Lender to have reasonable access to (a) inspect the Debtors' assets, and (b) all information (including historical information and the Debtors' books and records) and personnel, including regularly scheduled meetings as mutually agreed with senior management of the Debtors and other company advisors (during normal business hours), and Lender shall be provided with access to all information it shall reasonably request, excluding any information for which confidentiality is owed to third parties, information subject to attorney client or similar privilege, or where such disclosure would not be permitted by any applicable requirements of law.

7. DIP Superpriority Claims. To the extent the Pre-Petition Collateral and DIP Collateral are insufficient to repay the DIP Obligations in full, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors' estates (the "DIP Superpriority Claims") (without the need to file any proof of claim), jointly and severally, with priority over any and all administrative expenses, adequate protection claims, diminution claims, and all other claims against the Debtors and their estates, now existing or hereafter arising, of any kind whatsoever, including, without

⁴ "DIP Borrowing Base" means (a) the Borrowing Base (as defined in the DIP Credit Agreement), minus (b) the outstanding Prepetition Obligations and Roll-Up Loans (each as defined in the DIP Credit Agreement), plus the (c) Permitted Overformula Amount (as defined in the DIP Credit Agreement), plus (d) funds held in the Cash Collateral Account.

1 limitation, administrative expenses of the kind specified in sections 503(b) and 507(b) of the
2 Bankruptcy Code, and over any and all administrative expenses or other claims arising under
3 sections 105, 326, 328, 330, 331, 365, 503(a), 506(c), 507(a), 507(b), 546(c), 726(b), 1113, or 1114
4 of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured
5 by a judgment lien or other non-consensual lien, levy, or attachment, which allowed claims shall for
6 the purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative
7 expenses allowed under section 503(b) of the Bankruptcy Code and which shall be payable from all
8 prepetition and postpetition property of the Debtors and all proceeds thereof, and the foregoing shall
9 be subject to the Challenge Period, and shall be subject to and subordinated in all respects to
10 payment of the Carve-Out. Except as set forth in the DIP Orders, no other superpriority claims shall
11 be granted or allowed in the Chapter 11 Cases.

12 8. DIP Liens. As security for the DIP Obligations, effective and perfected upon the
13 date of the Interim Order, and without the necessity of the execution, recordation of filings by the
14 Debtors of mortgages, security agreements, control agreements, pledge agreements, financing
15 statements, or other similar documents, or the possession or control by the Lender, or over, any DIP
16 Collateral (as defined below), the following security interests and liens are hereby granted by the
17 DIP Loan Parties to the Lender (all property identified in clause (a)(i) and (ii) below being
18 collectively referred to as the “DIP Collateral”), subject only to (x) Excluded Assets (as defined
19 below), (y) the Permitted Prior Liens, and (z) the Carve-Out (all such liens and security interests
20 granted to the DIP Agent, for the benefit of the DIP Lenders, pursuant to the Interim Order and this
21 Final Order and the DIP Documents, the “DIP Liens”):

22 a. DIP Collateral.

23 i. all assets and properties of each of the DIP Loan Parties and
24 their estates, of any kind or nature whatsoever, whether tangible or
25 intangible, real, personal or mixed, whether now owned or consigned by or
26 to, or leased from or to, or hereafter acquired by, or arising in favor of, any of
27 the DIP Loan Parties (including under any trade names, styles or derivations
28 thereof), whether before or after the Petition Date, and wherever located,
including, without limitation, (i) all of the DIP Loan Parties’ rights, title and
interests in all “Collateral” (as defined in the DIP Credit Agreement) and
Prepetition Collateral (including Cash Collateral) to the extent such assets or
properties are assets or property, as applicable, of the Debtors under
applicable law;

1 ii. all money, cash and cash equivalents, all funds in any deposit
2 accounts, securities accounts, commodities accounts or other accounts
3 (together with and all money, cash and cash equivalents, instruments and
4 other property deposited therein or credited thereto from time to time), all
5 accounts receivable and other receivables (including those generated by
6 intercompany transactions), all rights to payment, contracts and contract
7 rights, all instruments, documents and chattel paper, all securities (whether or
8 not marketable), all goods, furniture, machinery, plants, equipment, vehicles,
9 inventory and fixtures, all real property interests, all interests in leaseholds,
10 purchase options (including all leasehold interests, purchase options and
11 other interests in certain real property located in the City of Albuquerque,
12 Bernalillo County, New Mexico), all franchise rights, all patents,
13 tradenames, trademarks, copyrights, licenses and all other intellectual
14 property, all general intangibles, tax or other refunds, or insurance proceeds,
15 all equity interests or capital stock (including 100% of all equity interests in
16 Foreign Subsidiaries), limited liability company interests, partnership
17 interests and financial assets, all investment property, all supporting
18 obligations, all letters of credit and letter of credit rights, all commercial tort
19 claims, all books and records (including, without limitation, customers lists,
20 credit files, computer programs, printouts and other computer materials and
21 records), and all rents, products, offspring, profits, and proceeds of each of
22 the foregoing and all accessions to, substitutions and replacements for, each
23 of the foregoing, including any and all proceeds of any insurance (including
24 any business interruption and property insurance), indemnity, warranty or
25 guaranty payable to any DIP Loan Party from time to time with respect to
26 any of the foregoing.

27 Notwithstanding the foregoing, DIP Collateral shall not include the
28 following ("Excluded Assets"): any proceeds of or property recovered,
whether by judgment, settlement, or otherwise, on account of all avoidance
actions brought pursuant to chapter 5 of the Bankruptcy Code or section
724(a) of the Bankruptcy Code or any other avoidance actions under the
Bankruptcy Code or applicable state law or foreign law equivalents
("Avoidance Actions").

1 b. First Priority Liens on Previously Unencumbered Property. Pursuant to
2 section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, non-avoidable,
3 fully and automatically perfected, first priority liens and security interests in all DIP Collateral,
4 whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not
5 subject to valid, perfected, and non-avoidable liens (or perfected after the Petition Date to the extent
6 permitted by section 546(b) of the Bankruptcy Code) (subject to the Carve-Out), (collectively, the
7 "Previously Unencumbered Property").

8 c. Liens Priming the Prepetition Lender Liens. Pursuant to sections 364(c)(3)
9 and 364(d)(1) of the Bankruptcy Code, the DIP Liens shall be valid, binding, continuing,
10 enforceable, non-avoidable, fully and automatically perfected liens and security interests in all DIP

Collateral, which DIP Liens shall be (i) subject and subordinate to Permitted Prior Liens and the Carve-Out, and (ii) senior to any and all other liens and security interests in the DIP Collateral, including, without limitation, all Prepetition Lender Liens on the DIP Collateral (including, without limitation, any liens securing the Prepetition Lender Claims and all Adequate Protection Liens), subject to the Challenge Period.

9. SACMI Liens, the Preservation Thereof, and Adequate Protection. SACMI USA, Ltd. (“SACMI”) asserts that it has Permitted Prior Liens on the Equipment Lines (as defined in SACMI’s limited objection to the Motion [Doc No. 179]). Notwithstanding anything to the contrary in the DIP Orders, (a) SACMI’s alleged lien rights, including any alleged Permitted Prior Liens on the Equipment Lines, are expressly preserved, (b) the DIP Orders are without prejudice to any right of SACMI to establish that its liens on the Equipment Lines are Permitted Prior Liens or other liens, and to exercise all associated rights and remedies to the extent permitted by applicable law, and (c) the DIP Orders shall not limit or otherwise affect the rights or remedies of any party to challenge or defend the amount, extent, validity, or priority of any SACMI’s alleged lien rights, including any alleged Permitted Prior Liens on the Equipment Lines. As adequate protection of SACMI’s alleged Permitted Prior Liens or other liens on the Equipment Lines, under the DIP Orders(a) the Debtors shall make monthly payments in the amount of \$15,979.51 to SACMI on the first day of each month commencing with a payment for the month of August (which first payment shall be made upon entry of this Final Order) and continuing on the first day of each month thereafter and (b) notwithstanding any provision of the DIP Orders, all proceeds of any lease, sale or other disposition of the Equipment Lines shall be set aside and escrowed until a final determination is made regarding SACMI’s asserted liens against the Equipment Lines as Permitted Prior Liens or other liens. In order to determine the assertion of SACMI that it has Permitted Prior Liens or other liens efficiently and timely, and to preserve all parties’ resources, any such determination can be made by stipulation of SACMI, the Debtors, the Lender and any Creditors’ Committee that may be appointed for BCI, or, in the alternative, by motion filed by SACMI, the Debtors, or any such Creditors’ Committee to be heard and resolved by order of this Court. The DIP Liens shall be

subject and subordinate to any Permitted Prior Liens established by SACMI on the Equipment Lines as set forth in Section 8(c) of this Final Order.

10. Possessory and Statutory Liens, Rights of Setoff and Recoupment, and Preservation Thereof. Certain cold storage providers, including Americold Logistics, LLC and its affiliates and Lineage Logistics, LLC and its affiliates, and certain freight providers, assert that they maintain valid statutory or possessory lien rights and or rights of setoff or recoupment against one or more of the Debtors, which liens or rights constitute Permitted Prior Liens under the DIP Orders (“Logistics Asserted Liens”). In addition to those protections afforded to the holders of Logistics Asserted Liens in the *Final Order Granting, In Part, Debtors’ Emergency Motion For Entry Of An Order Authorizing Debtors To Honor Pre-Petition Obligations To Critical Vendors And To Provide Adequate Protection For Warehouse And Carrier Liens* [Doc. No. 92], as adequate protection of any Logistics Asserted Liens held on the Petition Date such cold storage providers or freight providers are hereby granted a replacement lien and/or right of setoff or recoupment with the same validity, enforceability and priority as existed on the Petition Date, on any new inventory that such cold storage providers or freight providers receive from the Debtors subsequent to the Petition Date. Notwithstanding anything to the contrary, nothing herein shall limit or otherwise affect the rights or remedies of any party to challenge or defend the amount, extent, validity, or priority of any such Logistics Asserted Liens. The DIP Liens shall be subject and subordinate to any Logistics Asserted Liens that constitute Permitted Prior Liens as set forth in Section 8(c) of this Final Order.

11. Adequate Protection for the Lender. Subject only to the Carve-Out, the Permitted Prior Liens, the Challenge Period, and the terms of the DIP Orders, and only until the Prepetition Lender Claims are indefeasibly repaid and/or deemed repaid in full under the DIP Facility, including the roll-up and conversion of amounts under the Prepetition Credit Agreement into the DIP Facility, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of its interest in the Prepetition Collateral (including Cash Collateral), solely for and equal in amount to the postpetition diminution in value of such interests (each such diminution, a “Diminution in Value”), resulting from, among other things, the imposition of the priming DIP Liens on the Prepetition

Collateral, the Carve-Out, the Debtors' use of the Prepetition Collateral (including Cash Collateral), and the imposition of the automatic stay, the Lender is hereby granted the following (collectively, the "Adequate Protection Obligations"):

a. Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value, additional and replacement, valid, binding, enforceable, non-avoidable, and effective and automatically perfected postpetition security interests in and liens as of the date of the Interim Order (together, the "Adequate Protection Liens"), without the necessity of the execution by the Debtors (or recordation or other filing), of security agreements, control agreements, pledge agreements, financing statements, mortgages, or other similar documents, on all DIP Collateral. Subject to the terms of the DIP Orders, the Adequate Protection Liens shall be subordinate only to the (i) Carve-Out, (ii) the DIP Liens, and (iii) Permitted Prior Liens. The Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral (including, for the avoidance of doubt, any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code).

b. Adequate Protection Claims. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, allowed administrative expense claims in each of the Chapter 11 Cases ahead of and senior to any and all other administrative expense claims in such Chapter 11 Cases to the extent of any postpetition Diminution in Value (the "Adequate Protection Claims"), but junior to the Carve-Out and the DIP Superpriority Claims. Subject to the Carve-Out and the DIP Superpriority Claims in all respects, the Adequate Protection Claims will not be junior to any claims and shall have priority over all administrative expense claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 506(c), 507(a), 507(b), 546(c), 726(b), 1113, and 1114 of the Bankruptcy Code.

c. Adequate Protection Fees. As further adequate protection, the Debtors are authorized and directed to pay from Cash Collateral and/or the DIP Facility proceeds, subject to the

1 Review Period, all reasonable and documented fees and out-of-pocket expenses
2 (the “Adequate Protection Fees”), whether incurred before or after the Petition Date, including all
3 reasonable and documented fees and expenses of counsel and other professionals retained by
4 Lender as provided for in the DIP Documents and the DIP Orders, including, for the avoidance of
5 doubt, of the Lender Advisors and, to the extent necessary to exercise and fulfill its obligations
6 under the Prepetition Loan Documents, one counsel to the Lender in each local jurisdiction. None of
7 the Adequate Protection Fees shall be subject to separate approval by this Court, and no recipient of
8 any such payment shall be required to file any interim or final fee application with respect thereto or
9 otherwise seek this Court’s approval of any such payments.

10 d. Adequate Protection Payments. As further adequate protection to the Lender,
11 the Prepetition Lender Claim (excluding the portion of such claim that is rolled up as a DIP Rollup
12 Loan) shall be paid interest at the default contract rate set forth in the Prepetition Loan Agreement
13 on the first business day of each month (the “Adequate Protection Payments”).

14 e. Reporting Requirements. As additional adequate protection to the Lender,
15 the Debtors shall provide all reporting set forth in paragraph 4 and 5 above and otherwise provided
16 for in the DIP Documents.

17 f. Right to Seek Additional Adequate Protection. The DIP Orders are without
18 prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Lender to
19 request further or alternative forms of adequate protection at any time or the rights of the Debtors or
20 any other party to contest such request. Nothing herein shall impair or modify the application of
21 section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the
22 Lender is insufficient to compensate for any Diminution in Value of Lender’s interest in the
23 Prepetition Collateral during the Chapter 11 Cases.

24 g. Other Covenants. The DIP Loan Parties shall comply with all covenants and
25 agreements contained in the DIP Documents.

26 h. Miscellaneous. Except for the Carve-Out, the DIP Liens, the DIP
27 Superpriority Claims and the Permitted Prior Liens, the Adequate Protection Liens and the
28 Adequate Protection Claims granted to the Lender shall not be subject, junior, or *pari passu*, to any

lien, security interest or claim granted in the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code (“Successor Cases”), including (i) any lien, security interest, or claim that is avoided and preserved for the benefit of the Debtors’ estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, (ii) any intercompany or affiliate claim, lien, or security interest of the Debtors or their affiliates, or (iii) any lien, security interest, or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 363, section 364 or otherwise, *provided* that the Adequate Protection Liens and the Adequate Protection Claims shall be subject to the Challenge Period.

12. Carve-Out for Professionals. Subject to the terms and conditions contained herein, each of the DIP Liens, DIP Superpriority Claims, Prepetition Lender Liens, Adequate Protection Liens, and Adequate Protection Claims shall be subject and subordinate to the Carve-Out. As used in the DIP Orders, the “Carve-Out” means the sum of (i) all fees required to be paid to the Clerk of this Court and to the Office of the United States Trustee for the Central District of California (the “U.S. Trustee”) pursuant to 28 U.S.C. § 1930(a) (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code in an amount not exceed \$25,000 (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time but incurred at any time before or on the first business day following delivery by the Lender of a Carve-Out Trigger Notice in amounts not to exceed \$30,000 per week from the Petition Date through the week ended August 11, 2023 and thereafter not to exceed \$50,000 per week (the “Budget Cap”) through the end of the week in which a Carve-Out Trigger Notice is sent, (A) subject to the Budget Cap, all unpaid fees and expenses (including any restructuring, sale, success, or other transaction fee of any investment bankers or financial advisors of the DIP Loan Parties) (the “Allowed Debtor Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the “Debtor Professionals”) and (B) subject to the Budget Cap, all unpaid fees and expenses (the “Allowed Committee Professional Fees” and together with the Allowed Debtor Professional Fees, the “Allowed Professional Fees”) incurred by persons or firms retained by a Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals”

1 and, together with the Debtor Professionals, the “Professional Persons”) (these clauses (i) through
2 (iii), the “Pre-Carve-Out Trigger Amounts”); and (iv) Allowed Professional Fees not to exceed
3 \$200,000 plus (without duplication) any transaction-based fee of any investment bankers incurred in
4 accordance with the applicable engagement letter approved in writing by Lender in its sole and
5 absolute discretion (the amounts set forth in this clause (iv) being the “Post-Carve-Out Trigger
6 Notice Cap,” and together with the Pre-Carve-Out Trigger Amounts, the “Carve-Out Amount”).
7 For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by
8 email (or other electronic means) by Lender to the Debtors, their lead restructuring counsel, the U.S.
9 Trustee, and counsel to any Committee, which notice may be delivered following the occurrence
10 and during the continuation of an Event of Default (as defined below). Each Professional Person
11 shall apply the amount of any prepetition retainers received by any such Professional Person and not
12 previously returned or applied to fees and expenses before such Professional Person receives any
13 payment out of the Carve-Out.

14 13. Reservation of Certain Committee and Third Party Rights and Bar of Challenges and
15 Claims. Subject to the Challenge Period (as defined below), the stipulations, admissions, releases,
16 and waivers contained in the DIP Orders, including the Debtors’ Stipulations (collectively, the
17 “Prepetition Lien and Claim Matters”), shall be binding upon the Debtors, their estates, and any of
18 their respective successors in all circumstances and for all purposes, and the Debtors are deemed to
19 have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date.
20 Subject to and upon entry of this Final Order, the Prepetition Lien and Claim Matters shall be
21 binding upon all other parties in interest, including any Committee and any other person acting on
22 behalf of the Debtors’ estates, unless and to the extent that a party in interest with proper standing
23 granted by order of this Court (or other court of competent jurisdiction) has timely and properly
24 filed an adversary proceeding or contested matter under the Bankruptcy Rules before (i) September
25 19, 2023 (or, solely in the case of the stipulations, admissions, releases, and waivers of NMFD,
26 October 7, 2023) after entry of the Interim Order (the “Challenge Period” and the date of expiration
27 of such Challenge Period, the “Challenge Period Termination Date”); *provided, however*, that if a
28 party in interest files a standing motion before the end of the Challenge Period, then the Challenge

1 Period shall be tolled during the pendency of such motion (but solely for the party seeking
2 standing); and *provided, further*, that if, before the end of the Challenge Period, (x) the cases
3 convert to chapter 7, or (y) a chapter 11 trustee is appointed, then, in each such case, the Challenge
4 Period shall be extended by the later of (A) the time remaining under the Challenge Period plus ten
5 days or (B) such other time as ordered by this Court solely with respect to any such trustee,
6 commencing on the occurrence of either of the events discussed in the foregoing clauses (x) and (y),
7 and any such trustee so appointed shall not be bound by the Prepetition Lien and Claim Matters
8 until the Challenge Period, as so extended, has expired; (ii) seeking to avoid, object to, or otherwise
9 challenge the Prepetition Lien and Claim Matters regarding: (a) the validity, enforceability, extent,
10 priority, or perfection of the Prepetition Lender Liens; or (b) the validity, enforceability,
11 allowability, priority, secured status, or amount of the Prepetition Lender Claims (any such
12 challenge, a “Challenge”), and (iii) in which this Court enters a final order in favor of the plaintiff or
13 movant sustaining any such Challenge in any such timely filed adversary proceeding or contested
14 matter. Upon the expiration of the Challenge Period Termination Date without the filing of a
15 Challenge (or if any such Challenge is filed and overruled): (a) any and all such Challenges by any
16 party (including any Committee, any chapter 11 trustee, and/or any examiner or other estate
17 representative appointed or elected in the Chapter 11 Cases, and any chapter 7 trustee and/or
18 examiner or other estate representative appointed or elected in any Successor Case) shall be deemed
19 to be forever barred; (b) the Prepetition Lender Claims shall constitute allowed claims, not subject
20 to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or
21 avoidance for all purposes in the Debtors’ Chapter 11 Cases and any Successor Cases; (c) the
22 Prepetition Lender Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding,
23 and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (e)
24 all of the Debtors’ stipulations and admissions contained in this the DIP Orders, including the
25 Debtors’ Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the
26 priority, extent, and validity as to the Prepetition Secured Parties’ claims, liens, and interests
27 contained in the DIP Orders shall be of full force and effect and forever binding upon the Debtors,
28 the Debtors’ estates, and all creditors, interest holders, and other parties in interest in the Chapter 11

Cases and any Successor Cases. If any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules and remains pending and the Chapter 11 Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors' estates. Furthermore, if any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in the DIP Orders, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on the Committees and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such adversary proceeding or contested matter before the Challenge Period Termination Date. Nothing in the DIP Orders vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, the Committees appointed in the Chapter 11 Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation any challenges (including a Challenge) with respect to the Prepetition Loan Documents, the Prepetition Lender Liens, the Prepetition Lender Claims and a separate order of this Court conferring such standing on the Committees or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee(s) or such other party-in-interest.

14. Release of Lender. Subject to the Challenge Period, Lender and each of its attorneys, accountants, consultants, agents, servants, members, officers, directors, shareholders, employees, predecessors, parents, subsidiaries, affiliates, successors and assigns, and all persons acting by, through, under, or in concert with any of them (the foregoing individuals and entities herein referred to as the "Releasees") is released from all charges, complaints, claims, and liabilities of any kind which any Debtor currently has against Releasees (whether known or unknown) against any one or more of the Releasees, including, without limitation, claims under Chapter 5 of the Bankruptcy Code or other Avoidance Actions, including all attorneys' fees, interest, expenses, and costs actually incurred or of any nature whatsoever, known or unknown, suspected or unsuspected. All rights and benefits conferred by Section 1542 are hereby waived, which section provides as follows:

1 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
2 **THAT THE CREDITOR OR RELEASING PARTY DOES**
3 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
4 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
5 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
6 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
7 **WITH THE DEBTOR OR RELEASED PARTY.”**

8 15. Termination Events. Each of the following events constitutes a termination event
9 (each a “Termination Event”) unless waived by the Lender:

10 a. August 17, 2023, unless this Final Order is entered on or before that date;
11 b. August 25, 2023, unless Debtors shall have delivered to Lender a revised
12 Updated Budget in form and substance acceptable to Lender which demonstrates adequate liquidity
13 to fund the Debtors’ operations through October 12, 2023;

14 c. October 17, 2023, unless the Debtors have closed a sale of TCI’s equity
15 interests in any of its direct subsidiaries and/or indirect subsidiaries, ICLLC’s equity interests in
16 Ittella Italy SRL, and/or substantially all of the Debtors’ other assets generating a credit bid from
17 Lender plus net cash proceeds sufficient in the aggregate to satisfy the payment, in full, of the
18 Debtors’ obligations to the Lender after giving effect to the payment of all administrative and
19 priority claims;

20 d. The occurrence of an “Event of Default” as defined in the DIP Loan
21 Agreement and the passage of any applicable cure period set forth therein;

22 e. The failure of Debtors to comply with Section 4 or Section 5 of the DIP
23 Orders;

24 f. Failure to comply with any of the milestones⁵ set forth in any order granting
25 the Debtors’ *Motion To: (1) Approve Auction(S) And Bid Procedures For The Sale Of Equity*
26 *And/Or Assets And (2) Set Scheduling For A Motion To Approve The Sale Of Equity And/Or Assets*
27 [Doc No.174];

28

⁵ The milestones set forth in Section 15(a), (b) and (c) and those referred to in Section 15(f) are
the “Milestones” defined in the DIP Credit Agreement.

g. Any other material breach by the Debtor of any other obligations, representations, warranties or covenants in the DIP Orders, which material breach is not cured on or within three (3) business days after written notice of such breach is given to the Debtor; or

h. Reversal, vacatur, or modification (without consent of the Lender) of the DIP Orders.

16. Rights and Remedies Upon Event of Default. Immediately upon the occurrence and during the continuation of an Event of Default, notwithstanding the provisions of section 362 of the Bankruptcy Code, without any application, motion, or notice to, hearing before, or order from this Court, but subject to the terms of the DIP Orders, subject to the Remedies Notice Period (defined below), (a) the Lender may declare (any such declaration shall be referred to herein as a “Termination Declaration”) (i) all DIP Obligations owing under the DIP Documents to be immediately due and payable, (ii) the termination, reduction, or restriction of any further commitment to extend credit to the Debtors to the extent any such commitment remains under the DIP Facility, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the Lender, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the Carve-Out is triggered, through the delivery of the Carve-Out Trigger Notice to the Borrowers and (b) subject to the Carve-Out, the Lender may declare a termination, reduction or restriction on the ability of the Debtors to use Cash Collateral (the date on which a Termination Declaration is delivered to counsel to the Debtors, counsel to any Committee, and the U.S. Trustee, the “DIP Termination Date”). The automatic stay in the Chapter 11 Cases otherwise applicable to the Lender is hereby modified so that five business days after the DIP Termination Date (the “Remedies Notice Period”): (x) the Lender shall be entitled to exercise its rights and remedies in accordance with the DIP Documents and the DIP Orders to satisfy the DIP Obligations, DIP Superpriority Claims, and DIP Liens, subject to the Carve-Out; (y) subject to the foregoing clause (x), the Lender shall be entitled to exercise its rights and remedies to the extent available in accordance with the applicable Prepetition Loan Documents and the DIP Orders with respect to the Debtors’ use of Cash Collateral. During the Remedies Notice Period, the Debtors, any Committee, and/or any party in interest shall be entitled to seek an emergency hearing within the Remedies

1 Notice Period with this Court for the sole purpose (unless this Court orders otherwise) of contesting
2 whether an Event of Default has occurred or is continuing. Unless this Court orders otherwise
3 before the expiration of the Remedies Notice Period, the automatic stay, as to Lender shall
4 automatically be terminated at the end of the Remedies Notice Period without further notice or
5 order. Upon expiration of the Remedies Notice Period, the Lender shall be permitted to exercise all
6 remedies set forth herein, and in the DIP Documents, and as otherwise available at law without
7 further order of or application or motion to this Court consistent with the DIP Orders.

8 17. Limitation on Charging Expenses Against Collateral. No expenses of administration
9 of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in
10 bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered
11 from (a) the DIP Collateral (except to the extent of the Carve-Out), or the Lender or (b) subject to
12 and upon entry of this Final Order, the Prepetition Collateral (except to the extent of the Carve-Out)
13 or the Lender, in each case, pursuant to sections 105(a) or 506(c) of the Bankruptcy Code or any
14 similar principle of law or equity, without the prior written consent of the Lender, and no such
15 consent shall be implied from any other action, inaction, or acquiescence by the Lender.

16 18. Expenses and Indemnification.

17 a. The Debtors are hereby authorized and directed to pay, in accordance with
18 the DIP Orders, the principal, interest, fees, payments, expenses, and other amounts described in the
19 DIP Documents as such amounts become due and without need to obtain further Court approval.

20 b. The Debtors shall be jointly and severally obligated to pay all fees and
21 expenses described above, which obligations shall constitute DIP Obligations. The Debtors shall
22 pay the reasonable and documented professional fees, expenses, and disbursements of Lender
23 Advisors no later than ten (10) business days (the "Review Period") after the receipt by counsel for
24 the Debtors, counsel for any Committee and the U.S. Trustee of each of the invoices therefor (the
25 "Invoiced Fees"), which Invoiced Fees may be sent by email, and without the necessity of filing
26 formal fee applications, including such amounts arising before the Petition Date. Invoiced Fees
27 shall be in the form of a one-page summary invoice for professional fees and expenses incurred
28 during the Chapter 11 Cases, and such invoice summary shall not be required to contain time

1 entries, and if additional fee detail is requested, may be redacted or modified to the extent necessary
2 to delete any information subject to the attorney-client privilege, any work product doctrine,
3 privilege or protection, common interest doctrine privilege or protection, any other evidentiary
4 privilege or protection recognized under applicable law, or any other confidential information, and
5 the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work
6 product doctrine, privilege or protection, common interest doctrine privilege or protection, or any
7 other evidentiary privilege or protection recognized under applicable law. The Debtors, any
8 Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the
9 “Disputed Invoiced Fees”) if, within the Review Period, a Debtor, any Committee that may be
10 appointed in the Chapter 11 Cases, or the U.S. Trustee notifies the submitting party in writing
11 setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with
12 this Court, if necessary, of a motion or other pleading, with at least ten days prior written notice to
13 the submitting party of any hearing on such motion or other pleading). For avoidance of doubt, the
14 Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

15 c. The Debtors will indemnify the Lender and its affiliates, successors, and
16 assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and
17 members of each of the foregoing (each, an “Indemnified Person”) and hold them harmless from
18 and against all costs, expenses (including but not limited to reasonable and documented legal fees
19 and expenses), and liabilities arising out of or relating to the transactions contemplated hereby and
20 any actual or proposed use of the proceeds of any loans made under the DIP Facility, which
21 indemnity shall have equal priority and lien status to the DIP Superpriority Claims; provided that no
22 such person will be indemnified for costs, expenses, or liabilities to the extent determined by a final,
23 non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason
24 of the gross negligence, fraud, or willful misconduct of such person (or their related persons). No
25 Indemnified Person shall have any liability (whether direct or indirect, in contract, tort, or
26 otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with
27 the transactions contemplated hereby, except to the extent such liability is found in a final non-
28 appealable judgment by a court of competent jurisdiction to have resulted solely from such

1 Indemnified Person's gross negligence, fraud, or willful misconduct or breach of their obligations
2 under the DIP Facility.

3 19. No Third Party Rights. Except as explicitly provided for herein, the DIP Orders do
4 not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect,
5 or incidental beneficiary.

6 20. Section 507(b) Reservation. Subject to the Carve-Out, nothing herein shall impair or
7 modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate
8 protection provided to the Lender is insufficient to compensate for any Diminution in Value of its
9 interests in the Prepetition Collateral during the Chapter 11 Cases. Nothing contained herein shall
10 be deemed a finding by this Court, or an acknowledgment by any of the Prepetition Secured Parties
11 that the adequate protection granted herein does in fact adequately protect Lender against any
12 Diminution in Value of its interests in the Prepetition Collateral (including the Cash Collateral).

13 21. Insurance. As set forth in more detail in the DIP Credit Agreement, at all times the
14 Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral and the
15 DIP Collateral on substantially the same basis as maintained before the Petition Date and shall name
16 the Lender as loss payee or additional insured, as applicable, thereunder.

17 22. No Waiver for Failure to Seek Relief. The failure or delay of the Lender to exercise
18 rights and remedies under the DIP Orders, the DIP Documents, or applicable law, as the case may
19 be, shall not constitute a waiver of its rights hereunder, thereunder, or otherwise.

20 23. Perfection of the DIP Liens and Adequate Protection Liens.

21 a. Without in any way limiting the automatically effective perfection of the DIP
22 Liens and the Adequate Protection Liens, the Lender is hereby authorized, but not required, to file
23 or record financing statements, intellectual property filings, mortgages, deeds of trust, depository
24 account control agreements, notices of lien, or similar instruments in any jurisdiction in order to
25 validate and perfect the liens and security interests granted hereunder. Whether or not the Lender
26 chooses to file such financing statements, intellectual property filings, mortgages, deeds of trust,
27 notices of lien, or similar instruments, such liens and security interests shall be deemed valid,
28 perfected, allowed, enforceable, non-avoidable, and not, subject to the Challenge Period, subject to

challenge, dispute, or subordination as of the date of entry of the Interim Order. If the Lender determines to file or execute any financing statements, agreements, notice of liens, or similar instruments, the Debtors shall cooperate and assist in any such execution and/or filings as reasonably requested by the Lender, and the automatic stay shall be modified to allow such filings.

b. A certified copy of the DIP Orders may be filed with or recorded in filing or recording offices by the Lender in addition to or in lieu of such financing statements, mortgages, deeds of trust, notices of lien, or similar instruments, and all filing offices are hereby authorized to accept such certified copy of the DIP Orders for filing and recording; provided, however, that notwithstanding the date of any such filing, the date of such perfection shall be the date of the Interim Order.

24. Minimum Sale Price for Purchase Option Regarding New Mexico Property.

Without Lender's prior written consent, the Debtors shall not sell the estates' interest in the purchase option for the real property located at 2810 Karsten Court SC, Albuquerque, NM 87102 for less than six million dollars (\$6,000,000).

25. Credit Bidding & Sale Provisions. Subject to (a) section 363(k) of the Bankruptcy Code, (b) the requirement that, on the closing date of any sale of assets subject to a credit bid by Lender, the Lender shall pay, or reserve cash sufficient to pay, any asserted Permitted Prior Liens, including any Logistics Asserted Liens and any Permitted Prior Liens of SACMI, on any assets subject to a credit bid, and (c) the Challenge Period, the Lender shall have the right to credit bid (either directly or through one or more acquisition vehicles), up to the full amount of the Lender's claims, including, for the avoidance of doubt, Adequate Protection Claims, in any sale of all or any portion of the Prepetition Collateral or the DIP Collateral including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii)-(iii). To the extent the Lender is the successful bidder for any asset(s) which the Lender (a) does not assert or (b) is later determined to not hold, a properly perfected lien upon, the Lender shall be required to pay in cash in full for such asset(s).

26. Proceeds of Sale or Subsequent Financing. In the event of any sale, lease, transfer, license or other disposition of property of the Debtors that constitutes DIP Collateral outside the ordinary course of business (to the extent permitted by the DIP Orders or any other order of this Court), the Debtors are authorized to pay, without further notice or order of this Court, such amount (if any) of net cash proceeds resulting therefrom to the Lender, up to the amount which indefeasibly pays in full, in cash, the DIP Obligations. Any amounts in excess of the DIP Obligations shall be deposited in the Cash Collateral Account and may be used in accordance with the terms of the DIP Orders. Notwithstanding the forgoing or anything in the DIP Orders, the Debtors shall not pay any sale proceeds from the sale of assets subject to any asserted Permitted Prior Liens, including any Logistics Asserted Liens and any Permitted Prior Liens of SACMI, to the Lender unless it first pays, or reserves cash sufficient to pay, any asserted Permitted Prior Liens, including any Logistics Asserted Liens and any such asserted Permitted Prior Liens of SACMI. For purposes of this Section, a filed secured proof of claim (with the Court or any Court approved Claims and Noticing Agent) shall constitute an asserted Permitted Prior Lien.

27. Preservation of Rights Granted Under the DIP Orders.

a. In the event the DIP Orders or any provision thereof are vacated, reversed, or modified on appeal or otherwise, any liens or claims granted to the Lender hereunder arising before the effective date of any such vacatur, reversal, or modification of the DIP Orders shall be governed in all respects by the original provisions of the DIP Orders, including entitlement to all rights, remedies, privileges, and benefits granted herein, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges, and benefits afforded in section 364(e) of the Bankruptcy Code and 363(m) of the Bankruptcy Code with respect to all uses of the Prepetition Collateral (including Cash Collateral) and all Adequate Protection Obligations.

b. Unless and until all DIP Obligations, Prepetition Lender Claims, and Adequate Protection Payments are indefeasibly paid in full, in cash, and all Commitments are terminated, the Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly (i) except as permitted under the DIP Documents (including the Carve-Out) or, if not provided for therein, with the prior written consent of the Lender, (A) any modification, stay,

1 vacatur, or amendment of the DIP Orders or (B) a priority claim for any administrative expense or
2 unsecured claim against any of the Debtors (now existing or hereafter arising of any kind or nature
3 whatsoever, including, without limitation, any administrative expense of the kind specified in
4 sections 503(b), 507(a), or 507(b) of the Bankruptcy Code) in any of the Chapter 11 Cases, pari
5 passu with or senior to the DIP Superpriority Claims, the Adequate Protection Claims, or the
6 Prepetition Lender Claims, or (C) any other order allowing use of the DIP Collateral; (ii) except as
7 permitted under the DIP Documents (including the Carve-Out), any lien on any of the DIP
8 Collateral or the Prepetition Collateral with priority equal or superior to the DIP Liens, the
9 Adequate Protection Liens or the Prepetition Lender Liens, as applicable; (iii) the use of Cash
10 Collateral for any purpose other than as permitted in the DIP Documents and the DIP Orders; or (iv)
11 except as set forth in the DIP Documents, the return of goods pursuant to section 546(h) of the
12 Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any
13 creditor of any Debtor.

14 c. Subject to the Challenge Period, notwithstanding any order dismissing any of
15 the Chapter 11 Cases entered at any time, (i) the DIP Liens, the DIP Superpriority Claims, the
16 Adequate Protection Liens, the Adequate Protection Claims, and the other administrative claims
17 granted pursuant to the DIP Orders shall continue in full force and effect and shall maintain their
18 priorities as provided in the DIP Orders until all DIP Obligations and Adequate Protection
19 Payments are indefeasibly paid in full in cash (and such DIP Liens, DIP Superpriority Claims,
20 Adequate Protection Liens, Adequate Protection Claims, and the other administrative claims
21 granted pursuant to the DIP Orders, shall, notwithstanding such dismissal, remain binding on all
22 parties in interest).

23 d. Subject to the Challenge Period, except as expressly provided in the DIP
24 Orders or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate
25 Protection Liens, the Adequate Protection Claims, and all other rights and remedies of the Lender
26 granted by the provisions of the DIP Orders and the DIP Documents shall survive, and shall not be
27 modified, impaired, or discharged by (i) the entry of an order converting any of the Chapter 11
28 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint

1 administration of the Chapter 11 Cases or by any other act or omission, (ii) the entry of an order
2 approving the sale of any Prepetition Collateral or DIP Collateral pursuant to section 363(b) of the
3 Bankruptcy Code, or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter
4 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any
5 discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and
6 provisions of the DIP Orders and the DIP Documents shall continue in the Chapter 11 Cases and in
7 any Successor Cases. The DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens,
8 the Adequate Protection Claims, and all other rights and remedies of the Lender granted by the
9 provisions of the DIP Orders shall continue in full force and effect until the DIP Obligations and the
10 Adequate Protection Payments are indefeasibly paid in full, in cash or on such other terms as may
11 be acceptable to the Lender in its sole and absolute discretion (or, with respect to the DIP
12 Obligations, otherwise satisfied in a manner agreed to by the Lender).

13 e. Other than as set forth in the DIP Orders, neither the DIP Liens nor the
14 Adequate Protection Liens shall be made subject to or pari passu with any lien or security interest
15 granted in any of the Chapter 11 Cases or arising after the Petition Date, and neither the DIP Liens
16 nor the Adequate Protection Liens shall be subject or junior to any lien or security interest that is
17 avoided and preserved for the benefit of the Debtors' estates under Bankruptcy Code section 551.

18 28. Limitation on Use of DIP Facility Proceeds, DIP Collateral, Cash Collateral, and
19 Carve-Out. Notwithstanding anything to the contrary set forth in the DIP Orders, none of the DIP
20 Facility, the DIP Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve-Out
21 or proceeds thereof may be used: (a) to investigate (including by way of examinations or discovery
22 proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or
23 prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion,
24 objection, defense, adversary proceeding, or other litigation of any type (i) against Lender or its
25 affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial
26 advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission,
27 action, or other matter (including formal discovery proceedings in anticipation thereof), including,
28 without limitation, any so-called "lender liability" claims and causes of action, or seeking relief that

1 would impair the rights and remedies of the Lender under the DIP Documents, the Prepetition Loan
2 Documents, or the DIP Orders, including, without limitation, for the payment of any services
3 rendered by the professionals retained by the Debtors or any Committee appointed in the Chapter
4 11 Cases in connection with the assertion of or joinder in any claim, counterclaim, action, suit,
5 arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other
6 contested matter, the purpose of which is to seek, or the result of which would be to obtain, any
7 order, judgment, determination, declaration, or similar relief that would impair the ability of Lender
8 to recover on the DIP Collateral or the Prepetition Collateral or seeking affirmative relief against
9 Lender related to the DIP Obligations or the Prepetition Lender Claims; (ii) invalidating, setting
10 aside, avoiding, or subordinating, in whole or in part, the DIP Obligations or the Prepetition Lender
11 Claims, or the Lender's liens or security interests in the DIP Collateral or Prepetition Collateral, as
12 applicable; or (iii) for monetary, injunctive, or other affirmative relief against the Lender or the
13 Lender's liens on or security interests in the DIP Collateral or the Prepetition Collateral that would
14 impair the ability of Lender to assert or enforce any lien, claim, right, or security interest or to
15 realize or recover on the DIP Obligations or the Prepetition Lender Claims, to the extent applicable;
16 (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or
17 enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf
18 of Lender related to the Prepetition Lender Claims, or by or on behalf of the Lender related to the
19 DIP Obligations; (c) for asserting, commencing, or prosecuting any claims or causes of action
20 whatsoever, including, without limitation, any Avoidance Actions related to the DIP Obligations,
21 the DIP Liens, the Prepetition Lender Claims, or the Prepetition Liens; or (d) for prosecuting an
22 objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount,
23 perfection, priority, or enforceability of: (x) any of the DIP Liens or any other rights or interests of
24 the Lender related to the DIP Obligations or the DIP Liens, or (y) any of the Prepetition Liens or
25 any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition
26 Lender Claims or the Prepetition Liens, provided that no more than \$50,000 of the proceeds of the
27 DIP Facility, the DIP Collateral, or the Prepetition Collateral, including the Cash Collateral, in the
28 aggregate, may be used by any Committee appointed in the Chapter 11 Cases, if any, solely to

investigate, within the Challenge Period, the claims, causes of action, adversary proceedings, or other litigation against the Lender solely concerning the legality, validity, priority, perfection, enforceability or extent of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of Lender related to the Prepetition Lender Claims and the Prepetition Liens. Nothing contained in this paragraph shall prohibit the Debtors from responding or objecting to or complying with discovery requests of any Committee, in whatever form, made in connection with such investigation or the payment from the DIP Collateral (including Cash Collateral) of professional fees related thereto or from contesting or challenging whether a Termination Declaration has in fact occurred.

29. Conditions Precedent. Lender shall have no obligation to make any DIP Loan under the respective DIP Documents unless all of the conditions precedent to the making of such extensions of credit under the applicable DIP Documents have been satisfied in full or waived in accordance with such DIP Documents.

30. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of the DIP Orders, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including, without limitation, the Lender, any Committee appointed in the Chapter 11 Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the Lender; provided that, except to the extent expressly set forth in the DIP Orders, the Lender shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreement or otherwise) to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to the DIP Orders or the DIP Documents, the Lender shall not (a) be deemed to be in control of the operations of the Debtors, or (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

31. Limitation of Liability. In determining to make any loan under the DIP Documents, permitting the use of Cash Collateral, the Lender shall not, be deemed in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq. as amended, or any similar federal or state statute). Furthermore, nothing in the DIP Orders shall in any way be construed or interpreted to impose or allow the imposition upon the Lender of any liability for any claims arising from the prepetition or post-petition activities of any of the Debtors.

32. No Requirement to File Proof of Claim.

a. Notwithstanding anything to the contrary contained in any prior or subsequent order of this Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, the Lender shall not be required to file any proof of claim or request for payment of administrative expenses with respect to any of the DIP Obligations, all of which shall be due and payable in accordance with the DIP Documents without the necessity of filing any such proof of claim or request for payment of administrative expenses, and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the DIP Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the Lender’s rights, remedies, powers, or privileges under any of the DIP Documents, the DIP Orders, or applicable law.

b. Notwithstanding anything to the contrary contained in any prior or subsequent order of this Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, Lender shall not be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Lender Claims; and the failure to file any such proof of claim or request for payment of administrative expenses shall not

1 affect the validity, priority, or enforceability of any of the Prepetition Loan Documents or of any
2 indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise
3 adversely affect the Lender's rights, remedies, powers, or privileges under any of the Prepetition
4 Loan Documents, the DIP Orders or applicable law.

5 c. Notwithstanding the foregoing, the Lender will comply with reasonable
6 requests of the Committees to provide documents evidencing the Prepetition Lender Claims.

7 33. No Marshaling. The Lender shall not be subject to the equitable doctrine of
8 "marshaling" or any other similar doctrine with respect to any of the DIP Collateral, and proceeds
9 of the DIP Collateral shall be received and applied pursuant to the DIP Orders, the DIP Documents
10 and the Prepetition Loan Documents, notwithstanding any other agreement or provision to the
11 contrary, but without prejudice to paragraph 11 of the DIP Orders, the Lender shall not be subject to
12 the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the
13 Prepetition Collateral. For the avoidance of doubt, the Debtors shall preserve all subrogation rights,
14 provided that such rights shall be junior to the rights of Lender and shall not be exercised until the
15 Lender Allowed Claim has been fully repaid.

16 34. Application of Proceeds of DIP Collateral. The DIP Obligations, at the option of the
17 Lender, to be exercised in its sole and absolute discretion, shall be repaid (a) first, from the DIP
18 Collateral comprising Previously Unencumbered Property and (b) second, from all other DIP
19 Collateral.

20 35. Equities of the Case. The Lender shall be entitled to all the rights and benefits of
21 section 522(b) of the Bankruptcy Code, and the "equities of the case" exception under section
22 552(b) of the Bankruptcy Code shall not apply to the Lender with respect to proceeds, product,
23 offspring, or profits of any of the Collateral (including the Prepetition Collateral).

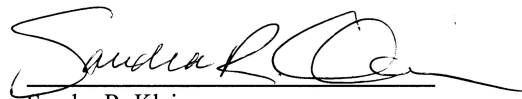
24 36. Effect of this Final Order. This Final Order shall constitute findings of fact and
25 conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable
26 immediately upon execution hereof.

27 37. Retention of Jurisdiction. This Court retains exclusive jurisdiction with respect to all
28 matters arising from or related to the implementation of this the DIP Orders.

38. Copies to Committees. From the date of the entry of this Final Order, whenever the Debtors or the Lender are required by this Final Order or any of the Prepetition Loan Documents or the DIP Documents to provide any documents, reports, information or notices, each of such shall be contemporaneously copied to counsel to the Committees by the sender.

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Date: August 16, 2023


Sandra R. Klein
United States Bankruptcy Judge