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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re Brewster Heights Packing & Orchards, LP, *et al.*[1] Debtors.	Case No. 26-01136-FPC11 Chapter 11 LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION FOR FINAL ORDER AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING

The Official Committee of Unsecured Creditors (the "Committee") files this limited objection to the *Debtors' Motion for Interim Order (I) Authorizing the Debtors to Obtain (A) Senior Secured Postpetition Financing and (B) Use of Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Status; (III) Granting Adequate Protection of the*

[1] The debtors are Brewster Heights Packing & Orchards, LP (Case No. 26-01136); Gebbers Farms Inc. (Case No. 26-01140); Gebbers Orchards, Inc. (Case No. 26-01141); C&M II, LLC (Case No. 26-01137); D&E Storage, LLC (Case No. 26-01138); Eastco, LLC (Case No. 26-01139); GF SA, LLC (Case No. 26-01142); Northco, LLC (Case No. 26-01143); P&G Orchards, LLC (Case No. 26-01144); REPO, LLC (Case No. 26-01145); TJF Properties, LLC (Case No. 26-01146); Westco Orchards, LLC (Case No. 26-01147); and Westco Sales, Inc. (Case No. 26-01148) (collectively, the "Chapter 11 Cases").

Prepetition Secured Parties; (IV) Setting a Final Hearing; and (V) Granting Related Relief [Doc 29] (the "DIP Motion").[2]

I. PRELIMINARY STATEMENT

The Committee appreciates the Debtors' need for postpetition financing, but the proposed DIP financing is insufficient to fund the Debtors through closing of the Debtors' proposed September 30 sale (let alone through a more reasonable postpetition marketing process). The proposed DIP financing also lacks funding for any post-closing wind-down of these estates. Unless the lenders are prepared to "pay the freight" of these chapter 11 cases—particularly where the cases are being run for the lenders' exclusive benefit—the lenders cannot be granted the benefits, waivers, and protections otherwise associated with DIP financing and cash collateral use.

In any chapter 11 case, it is a stretch to take the value of avoidance actions and commercial tort claims away from unsecured creditors. But in a scenario where the DIP financing is insufficient to bridge to a sale closing (thus dramatically increasing the possibility of default and meltdown which will leave vendors exposed), and where the Debtors are simultaneously pushing a sale process that offers *zero* recovery to general unsecured creditors, stripping avoidance actions and commercial tort claims away from unsecured creditors is clear overreaching. All avoidance actions, commercial tort claims, and the proceeds thereof must be preserved for general unsecured creditors and not subject to any postpetition liens. Similarly, with an underfunded DIP, the need for a post-default wind-down is very significant, and yet the proposed Final DIP Order includes only $250,000 for the entire wind-down process.

[2] Capitalized words used but not defined in this objection have the meanings given to them in the DIP Motion.

The Committee is also concerned that the DIP budget, coupled with the various milestones, challenge periods, releases, and stipulations effectively hamstring the Committee's exercise of its fiduciary duties.

In summary, although the Committee appreciates the need for DIP financing in these cases, the proposed financing should be approved only with several modifications.

II. BACKGROUND

A. General Background

On June 5, 2026, the Debtors filed the DIP Motion, attaching an Interim DIP Budget as Exhibit C, and a Final DIP Budget as Exhibit D. The Court entered an order approving the DIP Motion on an interim basis ("Interim DIP Order") on June 9, 2026, at Doc 71.

On June 12, 2026, the Debtors filed the Bidding Procedures Motions.[3]

On June 16, 2026, the United States Trustee appointed the Committee. On June 23, 2026, the Committee selected Ashurst Perkins Coie US LLP to serve as counsel to the Committee.

On June 24, 2026, the Debtors filed a *Notice of Filing of Proposed Final Order Authorizing the Debtors to Obtain Postpetition Financing, Secured Superpriority Debtor-in-Possession Loan Agreement, and Final DIP Budget* [Doc 146] ("Notice of Final DIP Order"). All references in this objection to the Final DIP Order shall refer to this updated version.

Also on June 24, 2026, the Debtors filed their *Notice of Filing of Form of Stalking Horse APA* [Doc 145] ("Stalking Horse APA").

On July 1, 2026, the Court entered an order extending the Interim DIP Order and continuing the hearing on the Final DIP Order to July 8, 2026, at 10:00 a.m. ("Final Hearing").

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[3] *Debtors' Motion for Entry of an Order (I) Approving Bid Procedures for the Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (II) Scheduling Certain Dates With Respect Thereto; (III) Approving the Sale of Substantially All of Debtors' Assets; (IV) Approving Assumption and Assignment Procedures; and (V) Granting Related Relief* [Doc 94] (the "Bidding Procedures Motion"). The Committee filed an objection to the Bidding Procedures Motion contemporaneously with this objection.

On July 6, 2026, the Debtors provided the Committee with an updated draft of the Final DIP Budget. Although this updated Final DIP Budget is not yet filed, all references in this objection to the Final DIP Budget refer to this updated version in an effort to reflect the latest and most accurate budget information.

B. The DIP Motion

The DIP Lender is committing to provide financing to the Debtors in the aggregate principal funded amount not to exceed $50 million, subject to the following material terms:

a) PIK Interest: 12.5% per annum;

b) Issuance Fee: 2% on each draw (capitalized to principal);

c) Exit Fee: 2% on all repaid principal;

d) Unused Line Fee: 2% per annum on undrawn commitment;

e) Minimum Multiple of Invested Capital (MOIC): 1.125x per draw, guaranteeing a 12.5% minimum return regardless of timing;

f) Default Interest: PIK rate plus 3%; and

g) Renewal Fee: 1% of total commitment for a 3-month extension.

See DIP Motion, p. 13–14.

The DIP Motion also seeks a waiver of the estate's rights under § 506(c) of the Bankruptcy Code or to assert the doctrine of marshaling. Final DIP Order, at ¶ H.xvi(a)–(b).

1. Final DIP Budget Concerns

The Final DIP Budget projects total draws of $46.75 million but a total payoff of over $55 million. The delta between draws and payoff is attributable to PIK, MOIC, and assorted fees.

The next forecasted draw is a $10 million draw in the week ending July 18, the proceeds of which are primarily tied to rolling up and repaying the $8.3 million prepetition "friends and family" bridge loan from Backstop Ag Capital (ostensibly, a non-debtor affiliate). *See* Notice of Final DIP Order, Ex. D.

Under the proposed Final DIP Order and the lien priority and subordination agreements, all net proceeds from the packing and sale of the Debtors' 2025 produce inventory, whether received by any Debtor or held by third-party sales agents, are directed to BMO and automatically applied to reduce BMO's prepetition secured debt. Final DIP Order, ¶ H.v. The Final DIP Budget reflects approximately $19 million in such payments to BMO related to 2025 crop collections. Because BMO sweeps virtually all operating revenue from the 2025 Crop Collateral (as defined in the Final DIP Order), the Debtors have no operating cash other than DIP funds.

Accordingly, taking into account the payments to BMO and Backstop Ag Capital, approximately $27.3 million of DIP funds flows to prepetition secured lenders on account of prepetition claims.

The most recent Final DIP Budget shared with the Committee projects an ending cash balance of just $75,000, which the Committee believes is actually overstated and, in any event, leaves virtually no margin for any operational variance.[4]

III. OBJECTION

Debtor-in-possession financing should only be approved if it is fair and reasonable under the circumstances, comports with basic notions of fairness and equity, and will ultimately inure to the benefit of the debtor's estate.[5] Courts routinely recognize that "[d]ebtors in possession generally enjoy little negotiating power with a proposed lender, particularly when the lender has a prepetition lien on cash collateral."[6] As a result, courts are hesitant to approve financing terms that are considered harmful to an estate and its creditors. As one court summarized:

> [T]he court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that

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[4] For perspective, $75,000 is just one-tenth of one percent (0.10%) of the total projected cash disbursements from operations over the budget period.

[5] *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37-40 (Bankr. S.D.N.Y. 1990).

[6] *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (9th Cir. B.A.P. 1992).

> leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.[7]

The burden of making such a showing is on the debtor.[8] Thus, although certain favorable terms may be permitted as a reasonable exercise of the debtor's business judgment, bankruptcy courts have declined to approve financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the sole (or primary) benefit of the lender.[9]

Critically, a debtor's obligations to justify the terms of a given financing and to administer the estate for the benefit of all creditors are not abrogated simply because its financing options are limited. As one court put it:

> The standard here is not that there's only one option available to the Debtor, and therefore the Court has to approve it. In my view such an arrangement has to be fair and reasonable under the circumstances. And I don't think this proposed DIP financing is.[10]

A. DIP Facility is Inadequate

One of the Committee's principal concerns is that the DIP Facility does not provide sufficient liquidity to fund the Debtors' operations through the closing of the proposed sale, let

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[7] *Ames Dep't Stores*, 115 B.R. at 40.

[8] *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987).

[9] *See, e.g.*, *Ames Dep't Stores*, 115 B.R. at 38 (citing *In re Tenny Vill. Co.*, 104 B.R. 562, 568 (Bankr. D.N.H. 1989) (holding that the terms of a postpetition financing facility must not "pervert the reorganizational process from one designed to accommodate all classes of creditors . . . to one specially crafted for the benefit" of one creditor)); *see also Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) ("In Chapter 11 cases where no trustee is appointed, § 1107(a) provides that the debtor-in-possession, *i.e.*, the debtor's management, enjoys the powers that would otherwise vest in the bankruptcy trustee. Along with those powers, of course, comes the trustee's fiduciary duty to maximize the value of the bankruptcy estate."); *In re Penn Traffic Co.*, 524 F.3d 373, 382 (2d Cir. 2008) ("The interests of the creditors collectively and the bankrupt estate as a whole will not yield easily to the convenience or advantage of one creditor out of many.") (citations omitted); *In re R.H. Macy & Co.*, 170 B.R. 69, 74 (Bankr. S.D.N.Y. 1994) (a debtor in possession has "an affirmative, overarching duty to reorganize and maximize estate assets for the benefit of all creditors," not just a select few).

[10] *See In re LandSource Communities Development, LLC*, Case No. 08-11111 (KJC) [Doc 331] (Bankr. D. Del. July 14, 2008), Hr'g Tr. 206:12-16.

alone through a robust postpetition marketing process or through the 2026 harvest season when the Debtors' orchards would begin producing revenue. Indeed, the Final DIP Budget covers only 17 weeks (through October 3, 2026—well before the 2026 crop harvest is expected to begin generating revenue in November 2026) and projects a terminal cash balance of just $75,000.

But the Committee believes even the paltry $75,000 projected cash balance is overstated as the Committee does not believe that projection fully accounts for postpetition accounts payable remaining at period end, prepetition tax claims, § 503(b)(9) claims, PACA claims, accrued payroll, or buyer's expense reimbursement. The Committee believes that properly accounting for all these (and other postpetition) expenses would compel the conclusion that these estates likely will become administratively insolvent.

At the same time, the Debtors' proposed sale to Heritage Orchard Alliance remains elusive weeks following the Debtors' filing of its bidding procedures and sale motion. Although currently presented as a sale to close September 30th, Heritage Orchard Alliance has yet to even agree to a form of asset purchase agreement. Nor has Heritage Orchard Alliance come to an agreement with BMO (at least not to the Committee's knowledge). Any delay due to those issues, or any delay in closing (based on title issues, regulatory approval, non-debtor consent rights, or other issues) would push the Debtors past their available liquidity and potentially crater these cases. As such, the proposed DIP Facility should be viewed for what it is: an incomplete bridge that piles on ~$55 million in priming superpriority debt and faint hope that Heritage Orchard Alliance's indication of interest actually comes together. If the sale does not close by September 30th, the Debtors will have exhausted their DIP availability, have no access to operating revenue, and no mechanism to fund continued operations. This creates a scenario in which the estate massively subordinates unsecured creditors while achieving no cognizable benefit for unsecured creditors—precisely the type of financing that courts have declined to approve.[11] "[A] proposed financing will not be approved where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate."[12]

The Committee requests that the Court require the Debtors to demonstrate that the DIP Facility provides adequate liquidity to fund operations through either (a) the closing of the proposed sale, inclusive of reasonable contingencies for closing delays, or (b) the commencement of the 2026 harvest season in November 2026 when the Debtors' operations might begin generating revenue to service ongoing obligations.

B. Avoidance Action and Commercial Tort Proceeds Must be Preserved for Estate

Although the Final DIP Order's collateral definition excludes avoidance actions from DIP Collateral,[13] the proposed Final DIP Order expressly *includes* <u>proceeds</u> of avoidance actions in the adequate protection provided to BMO, Prudential, and the DIP Lender. Specifically, the Final DIP Order provides that BMO's and Prudential's § 507(b) claims shall be "payable from all prepetition and postpetition property of the Debtors and all proceeds thereof, excluding claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code, but including . . . any proceeds or property recovered, unencumbered or otherwise, from such avoidance actions, whether by judgment, settlement or otherwise."[14] This is a distinction without a difference, ostensibly leaving unsecured creditors to prosecute avoidance actions only to turn the proceeds over to BMO and Prudential.

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[11] *In re Crouse*, 71 B.R. at 550-51 (holding debtors had not established that terms of proposed stipulation, under which postpetition credit was to be obtained in exchange for lien, were fair, reasonable, and adequate, particularly given relationship between debtors and proposed lender).
[12] *In re Ames Dep't Stores*, 115 B.R. at 39.
[13] Final DIP Order, ¶ 2(c).
[14] Final DIP Order, ¶ 2(c).

Additionally, the DIP Collateral definition expressly includes "commercial tort claims" as DIP Collateral.[15] The Committee's initial review of the perfection documents, however, confirms that none of the prepetition lenders identified any specific commercial tort claims in their prepetition loan documents. Although the Prudential mortgage and UCC-1 filing broadly covers claims and causes of action related to the property, it does not identify any specific commercial tort claims. Similarly, the BMO Loan and Security Agreement includes only a generic description of "Commercial Tort Claims" in the collateral without identifying any specific claims, and the BMO UCC-1 filings use a generic "all assets" description. Under the Uniform Commercial Code, a security interest in commercial tort claims requires specific identification of those claims. *See* RCW 62A.9A-108(e)(1). Accordingly, any commercial tort claims held by the Debtors are likely unencumbered by prepetition liens and represent a potentially valuable asset for unsecured creditors.

Moreover, given the extraordinary return expected for the DIP Lender (discussed below), it is particularly unjustifiable for the DIP Lender to capture proceeds from the estate's avoidance actions—potentially the only meaningful source of recovery for unsecured creditors. The DIP Lender (who is apparently willing to swell the size of the DIP Facility to more than $70 million) appears to be more than adequately collateralized. Permitting the DIP Lender to also sweep the estate's independent claims against third parties is gilding the lily.

The Committee insists that both avoidance actions and commercial tort claims, and their proceeds, be excluded from DIP Collateral and unavailable for satisfying superpriority claims, replacement liens, and adequate protection claims. These are the primary potential sources of recovery for unsecured creditors, particularly given the very real possibility that the proposed DIP financing will not provide sufficient liquidity to keep the Debtors operating as a going concern through closing.

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[15] Final DIP Order, ¶ 2(c).

C. Challenge Period Must be Extended

Per the Final DIP Order, the general challenge period for the Committee runs 60 days from the *formation* of the Committee (*i.e.*, August 15, 2026, following the Committee's June 16, 2026 appointment).

Starting the challenge-period clock from *formation* of the Committee is an unreasonable attempt to truncate the challenge period particularly where, as here, no Final DIP Order has yet been entered. Consider that the local rules of the Delaware bankruptcy court provide that, where there are "[p]rovisions or findings of fact that (i) bind the estate or other parties in interest as to the validity, perfection, or amount of a prepetition claim or lien or that waive claims against a prepetition creditor," the parties in interest, including any official committee, shall have "*at least* 75 days from the entry of the first interim order to commence a challenge[.]"[16] Applied here, Delaware's bare-minimum challenge period would still be 8 days longer than the one provided for in these cases.

The Committee's 60-day challenge period seems to apply to challenges to the claims of all prepetition secured lenders, but the Committee's professionals have not yet had an opportunity to conduct the investigation necessary to evaluate potential challenges. The Committee requests that the challenge period be extended to 60 days from entry of the Final DIP Order to ensure the Committee has adequate time to investigate all prepetition secured claims.

D. Post-Closing Wind-Down Reserve Is Needed

Under the proposed Final DIP Order and Section 2.06 of the DIP Loan Agreement, the DIP Lender receives 100% of net sale proceeds at closing with nothing reserved for accrued administrative claims, wind-down expenses, or plan funding. The Committee believes, based on information provided to the Committee, that these chapter 11 cases will be administratively insolvent immediately upon closing of the sale (if not sooner). The Court should not countenance

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[16] Del. Local Rule 4001-2(a)(i)(Q) (emphasis added).

a half-baked chapter 11 process that facilitates complete value extraction by the DIP Lender and prepetition lenders at the expense of administrative creditors and the estate.

The Committee requests that the Final DIP Order include a requirement for a reasonable post-closing reserve sufficient to fund administrative claims and estate wind-down costs, to be established and funded from sale proceeds.

E. DIP Facility Is Costly

The all-in cost of the DIP facility is extraordinary and exceeds market terms for agricultural DIP financing. In particular, the minimum MOIC of 1.125x ensures that the DIP Lender receives at least a 12.5% return—exclusive of fees and regardless of how quickly the loan is repaid. *See* DIP Motion, p. 14. If the Debtors' sale closes on September 30, as the Debtors project, the DIP Lender's IRR will be roughly 60%, far exceeding the stated 12.5% interest rate. Additionally, the default rate of 15.5% is high and should be reduced to remain in line with market norms.

Using the Debtors' own projections, the estate will be obligated to pay \$55 million but will only receive approximately \$46.75 million in draws. The difference of approximately \$8.3 million represents the capitalized cost of the DIP Facility over just 17 weeks.

F. Conditioning Repayment of Backstop Ag Capital

The DIP Motion describes Backstop Ag Capital as "a Washington Joint Venture comprising a group of non-debtor individuals with family or personal relationships with the Debtors' equity holders."[17] Under the proposed Final DIP Order, the Debtors will repay Backstop Ag Capital's \$8 million prepetition bridge loan (plus interest) in full in Week 6.

The Committee objects to this proposed repayment in Week 6. The Backstop Ag Capital loan should not be repaid until the Debtors demonstrate, in consultation with the Committee, that the repayment can be made without adversely affecting ongoing operations or the estates' ability

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[17] DIP Motion, p. 6.

to fund a wind-down. The Committee also objects to any repayment of the Backstop Ag Capital loan until after the Committee has had an opportunity to investigate the validity, extent, perfection, and priority of the Backstop Ag Capital loan and the Challenge Period (as defined in the Final DIP Order) expires.

G. Full BMO Cash Sweep is Inappropriate

The Final DIP Order perpetuates the prepetition BMO sweep mechanism under which 100% of the Debtors' net 2025 crop proceeds are automatically transferred to BMO and applied to BMO's prepetition secured debt. This is problematic for the estates.

First, because the BMO sweep directs virtually all 2025 crop sale proceeds (approximately $19 million over the budget period) to reduce BMO's prepetition secured debt, the estates retain no operating cash from their primary revenue source. That leaves the estates overly dependent on DIP borrowings at extraordinary cost.

Second, the sweep mechanism, combined with BMO's consent rights over budget modifications and its Permitted Senior Lien status on the vast majority of its prepetition collateral, gives BMO outsized control over the estates' finances and the trajectory of these cases.

Finally, BMO has not demonstrated that its collateral position is diminishing in value to justify the full sweep of 2025 crop proceeds as adequate protection. The 2025 crop is already harvested and in the process of being sold. BMO's security interest in that crop and its proceeds is protected by its Permitted Senior Lien status, replacement liens, and superpriority adequate protection claims. BMO also has substantial collateral owned by non-debtor affiliates. Before continuing the sweep at its current level, BMO should be required to demonstrate that a full cash sweep is necessary, fair, and reasonable to protect its interests.

H. BMO's Concessions are Not "Fair and Reasonable"

In practical effect, BMO is not being primed on the vast majority of its prepetition collateral. The DIP Order contains an extensive list of "Permitted Senior Liens" that are expressly excluded from priming. This is true with respect to BMO's security interest in 2025 crop inventory and proceeds, marketing agreement payments, crop allotments and government program rights, real property at 125 North Star Road, and all vehicles, rolling stock, and farm machinery.[18] Despite being excluded from most of the DIP Facility's priming, BMO receives: a full cash sweep of nearly $19 million in 2025 crop collections; replacement liens on its prepetition collateral; permitted senior lien status on an extensive list of assets; superpriority adequate protection claims; milestones that effectively dictate the case timeline; and consent rights over budget modifications and the marketing agreement.

In return, BMO provides no meaningful concessions in exchange for the robust adequate protection it receives. By comparison, Prudential, which holds the real estate and orchard collateral, is being primed on virtually all of its collateral and is providing far more in the way of subordination for the adequate protection it receives. BMO subordinates to the DIP Lender only on the limited subset of collateral that is not already designated as BMO Senior Collateral—which is to say, very little. The Court should not grant BMO this level of protection at the expense of the estates and unsecured creditors.

I. Post-Default Carve-Out is Grossly Inadequate

The updated Final DIP Budget currently includes a post-default professional fee carve-out of only $250,000.[19] This cap would be consumed within days and effectively precludes a reasonable post-default wind-down. Additionally, the proposed carve-out does not apply to BMO's collateral without BMO's written consent, effectively negating the carve-out as to a significant portion of estate assets. The Committee requests that the professional fee carve-out apply to all collateral (including BMO's, without requiring BMO's consent), and that the carve-

[18] Final DIP Order, ¶ 2(d).
[19] Final DIP Order, ¶ 8.

out amount be increased to $1.5 million (commensurate with the complexities of this case and consistent with carve-outs approved in cases of comparable size).[20]

J. Funding for Committee Professionals is Inadequate

Independent of the post-default carve-out, the current Final DIP Budget fails to adequately fund Committee professionals. The last-filed Final DIP Budget from June 24, 2026, proposed Committee professional fees equal to $1,200,000 (roughly 16% of the $7,345,000 in budgeted Debtors' professional fees).

The Committee has been advised that the Debtors have agreed to revise the Final DIP Budget to reflect Committee professional fees at one third of the Debtors' professional fees.[21] This would budget Committee professional fees (legal and financial) at $2,423,850, which would be a fair and reasonable amount, commensurate with the complexity of these cases. The Committee reserves all rights and requests sign off on the final form of Final DIP Budget.

K. Committee Must Have Standing to Prosecute Challenges

The Final DIP Order does not confer standing on the Committee to prosecute challenges to secured claims. Indeed, it expressly states: "Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges."[22] Moreover, the order provides that "any ruling on standing, if appealed, shall not

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[20] *See, e.g.*, *In re TPI Composites Inc.*, Case No. 25-34655 (CML) (Bankr. S.D. Tex April 10, 2026) (Final DIP Order establishes a post-default notice carve-out of $2,250,000 for allowed professional fees of debtor and committee professionals combined, with an additional $250,000 per week if wind-down is not completed within four weeks of default.)

[21] *In re BBGI US, Inc.*, Case No. 20-11785 (CSS) (Bankr. D. Del. May 20, 2021) (aggregate fees of professionals of the official committee of unsecured creditors amounting to approximately 31% of aggregate fees of comparable debtor professional counterparts); *see also In re Cal Dive Int'l, Inc.*, Case No. 15-10458 (CSS), 2015 WL 9487852 at *3 (Bankr. D. Del. Dec. 28, 2015) (granting committee counsel's first interim fee application and noting that committee counsel fees were approximately 30% of debtors' counsel).

[22] Final DIP Order, ¶ 9.

stay or otherwise delay the Chapter 11 Cases or confirmation of any plan of reorganization."[23] This creates a procedural trap: the Committee must obtain standing before the challenge deadline expires, but the standing motion itself takes time to litigate. The Final DIP Order should expressly grant the Committee standing to prosecute challenges to prepetition liens, claims, and transactions without the requirement that the Committee file a standing motion.

L. § 506(c), Marshaling, and § 552(b) Waivers Must Not Bind the Committee

The Final DIP Order waives the estates' rights under §§ 506(c), 552(b)(1), and the marshaling doctrine as to BMO collateral absent BMO's written consent,[24] and extends the marshaling and § 552(b) waivers to all Prepetition Secured Lenders.[25] These waivers were initially granted in the Interim DIP Order without Committee input and strip the Committee of essential tools to ensure that secured creditors bear their fair share of administrative costs.

Notably, the Interim DIP Order's marshaling and § 552(b) waivers were originally stated to be "without prejudice to any provisions of the Final Order," meaning they are explicitly subject to revision at the Final Hearing. *See* Interim DIP Order, ¶ 9(e). The proposed Final DIP Order seeks to make these waivers absolute.

The Committee objects to these waivers and requests that the Final DIP Order expressly preserve the Committee's independent rights related to these provisions. The Committee further requests that not only the waivers, but all of the Debtors' stipulations, admissions, agreements, and findings in favor of both BMO and Prudential, including the stipulations set forth in Findings G and H of the proposed Final DIP Order, be expressly non-binding on the Committee, subject to the Challenge Period.

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[23] *Id.*
[24] Final DIP Order, ¶ H.xvi(a)–(b).
[25] Final DIP Order, ¶ 10(e).

M. Milestones are Unduly Compressed and Effectively Predetermine the Sale

The DIP Loan Agreement and the proposed Final DIP Order impose overlapping milestone regimes that, when read alongside the Debtors' Bidding Procedures Motion and the proposed Stalking Horse APA, reveal a tightly choreographed sale timeline that leaves the Committee virtually no room to investigate alternatives, develop competing bids, or meaningfully participate in the process. Accordingly, the Committee requests that the DIP milestones be extended by at least 30 days to allow adequate investigation and market testing.

Section 6.18(e) of the DIP Loan Agreement requires the Debtors to file a bid procedures motion that establishes a bid deadline no later than 75 days after the Petition Date (*i.e.*, August 18, 2026). The Bidding Procedures Motion (filed June 12, 2026), just 6 business days after the Petition Date and prior to the appointment of the Committee, establishes a Bid Deadline of August 7, 2026, which is 11 days earlier than even the DIP milestone requires.

The BMO Milestones impose yet another layer of constraint. Under the proposed Final DIP Order,[26] BMO and Prudential require: (a) entry of a final adequate protection order no later than July 2, 2026; (b) the filing of a plan of reorganization or a § 363 sale motion no later than 90 days after the Petition Date (or September 2, 2026); and (c) the entry of an order confirming such plan or approving a sale no later than 150 days after the Petition Date (*i.e.*, November 1, 2026). Failure to satisfy any BMO Milestone constitutes an immediate Event of Default not subject to any cure period unless BMO and Prudential agree in writing.

The interplay among these regimes creates a cascading set of pressures that effectively predetermines the sale outcome. The Bidding Procedures Motion proposes the following key dates: Bid Deadline of August 7, 2026; Auction on August 12, 2026; Sale Hearing on September 1, 2026; Entry of Sale Order no later than September 4, 2026; and a Target Closing Date no later than September 30, 2026. These dates align precisely with (and in some cases are

[26] Paragraph H.xiv

more aggressive than) the DIP and BMO Milestones, confirming that the milestones were crafted to lock in this specific sale to Heritage Orchard Alliance rather than to provide a reasonable outer boundary for estate administration.

The Stalking Horse APA compounds this problem. The proposed agreement defines the "Outside Date" as 90 days following the Petition Date (i.e., September 2, 2026), which is the same date as the BMO Milestone for filing a sale motion. If the Sale Order is not entered by September 2, the stalking horse may terminate the agreement and walk away. This creates an artificial urgency that benefits the proposed stalking horse bidder and the secured lenders at the expense of the estates: the Debtors must consummate the sale on the stalking horse's schedule or risk both a DIP Event of Default and loss of the only bid currently on the table.

The Committee requests that the Court: (i) extend the DIP milestones by at least 30 days to allow adequate investigation, market testing, and consultation with its financial advisor; (ii) extend the BMO Milestones to align with any extended DIP milestones, or at minimum, provide that the Committee's challenge period does not expire until at least 30 days after the Sale Hearing; and (iii) condition entry of the Final DIP Order on the Debtors' agreement that any milestone relating to the sale process may be extended by the Court for cause upon motion of the Committee, without requiring the consent of BMO, Prudential, or the DIP Lender.

N. Budget Transparency and Committee Reporting

The Committee requests that the Final DIP Order require: (a) that the DIP Budget be provided to the Committee; (b) that all weekly variance reports be simultaneously provided to the Committee; and (c) that any budget modifications require notice to the Committee and an opportunity to object.

Section 10(j) of the Final DIP Order permits material amendments to the DIP Loan Documents without court approval, which limits the Committee's ability to weigh in on changes to the financing terms that may prejudice unsecured creditors. The Committee requests that the

Final DIP Order require that any material amendment to the DIP Loan Documents be subject to Court approval after notice and an opportunity to be heard, and that the Committee have a consent right over any material amendment.

Finally, the DIP Lender's professional fees are currently uncapped and are not included as a line item in the DIP Budget. The Committee requests that: (i) DIP Lender professional fees be capped or subject to reasonableness review; (ii) the Committee receive redacted copies of all invoices for DIP Lender and prepetition lender professional fees paid from estate funds or as adequate protection; and (iii) the Committee's financial advisor receive the same regular call rights with the Debtors as are afforded to the DIP Lender under the proposed Final DIP Order.

IV. RESERVATION OF RIGHTS

The Committee expressly reserves all of its rights and arguments with respect to the DIP Motion, the Final DIP Order, and the propriety of the proposed DIP Financing including the findings of facts and conclusions of law contained in any proposed Final DIP Order until the Final Hearing on the DIP Motion. The Committee further reserves the right to supplement or amend this Objection at or before the Final Hearing.

V. CONCLUSION AND REQUESTED RELIEF

The Committee respectfully requests that the Court: (i) require the Debtors to demonstrate that the DIP Facility provides adequate liquidity to fund operations through closing of the proposed sale (inclusive of a reasonable contingency for closing delays) and a post-closing wind-down; (ii) exclude avoidance actions, commercial tort claims, and related proceeds from DIP Collateral, DIP Superpriority Claims, BMO Superpriority Claims, Replacement Liens, and § 507(b) adequate protection claims; (iii) condition the Backstop Ag Capital repayment upon a demonstration that repayment will not adversely affect operations or the estate's ability to fund a wind-down, and provide that repayment shall not occur prior to expiration of the Challenge Period and shall be subject to notice to the Committee and an opportunity to object; (iv) require a reasonable post-closing wind-down reserve funded from sale proceeds before any distribution to the DIP Lender; (v) provide that all stipulations, admissions, findings, waivers, and releases in favor of Prudential, BMO, and the DIP Lender are not binding on the Committee and are subject to the Challenge Period; (vi) modify or limit the Final DIP Order consistent with this objection; and (vii) grant such other and further relief as is just and proper.

Dated: July 6, 2026

ASHURST PERKINS COIE US LLP

By: */s/ Alan D. Smith*

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CERTIFICATE OF SERVICE

I certify that on July 6, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System which in turn automatically generated a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF system in this case. The Notice of Electronic Filing for the foregoing identifies all recipients.

By *\/s\/ Alan D. Smith*
Alan D. Smith