



ATTORNEYS AT LAW

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November 24, 2020

NOTE: ANY PORTIONS OF THIS LETTER DISCUSSING DEFENDANT'S POTENTIAL DEFENSES AND SETTLEMENT BASED ON THOSE DEFENSES ARE PROTECTED SETTLEMENT COMMUNICATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ARE NOT ADMISSIBLE FOR ANY PURPOSE.

[REDACTED] (ACH)

Re: NOTICE OF INTENDED LITIGATION AND SETTLEMENT OFFER
In re: Southern Foods Group, LLC, *et al.*,¹ Bankr. Case No. 19-36313

Payments Received in Preference	
Period from the Debtors:	\$89,982.64
Less Allowed New Value (if any):	\$70,662.70
Plus Post-Petition Transfers (if any):	\$.00
Net Avoidance Claim:	\$19,319.94
Settlement Offer of 90% of Net Avoidance Claim:	\$17,387.95
File No: 2245227	

Matter Assigned To: Krista Waters, 651-289-3848
e-mail: kwaters@askllp.com

Litigation Will Be Commenced Unless This Matter Is Resolved By December 24, 2020

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southern Foods Group, LLC (1364); Dean Foods Company (9681); Alta-Dena Certified Dairy, LLC (1347); Berkeley Farms, LLC (8965); Cascade Equity Realty, LLC (3940); Country Fresh, LLC (6303); Dairy Information Systems Holdings, LLC (9144); Dairy Information Systems, LLC (0009); Dean Dairy Holdings, LLC (9188); Dean East II, LLC (9192); Dean East, LLC (8751); Dean Foods North Central, LLC (7858); Dean Foods of Wisconsin, LLC (2504); Dean Holding Company (8390); Dean Intellectual Property Services II, Inc. (3512); Dean International Holding Company (0785); Dean Management, LLC (7782); Dean Puerto Rico Holdings, LLC (6832); Dean Services, LLC (2168); Dean Transportation, Inc. (8896); Dean West II, LLC (9190); Dean West, LLC (8753); DFC Aviation Services, LLC (1600); DFC Energy Partners, LLC (3889); DFC Ventures, LLC (4213); DGI Ventures, Inc. (6766); DIPS Limited Partner II (7167); Franklin Holdings, Inc. (8114); Fresh Dairy Delivery, LLC (2314); Friendly's Ice Cream Holdings Corp. (7609); Friendly's Manufacturing and Retail, LLC (9828); Garelick Farms, LLC (3221); Mayfield Dairy Farms, LLC (3008); Midwest Ice Cream Company, LLC (0130); Model Dairy, LLC (7981); Reiter Dairy, LLC (3675); Sampson Ventures, LLC (7714); Shenandoah's Pride, LLC (2858); Steve's Ice Cream, LLC (6807); Suiza Dairy Group, LLC (2039); Tuscan/Lehigh Dairies, Inc. (6774); Uncle Matt's Organic, Inc. (0079); and Verifine Dairy Products of Sheboygan, LLC (7200). The debtors' mailing address is 2711 North Haskell Avenue, Suite 3400, Dallas, TX 75204.

November 24, 2020

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Dear Sir or Madam:

This firm has been retained by Southern Foods Group, LLC and its debtor affiliates, the debtors and debtors in possession in the above-referenced case (the "Debtors"). The Debtors filed voluntary chapter 11 bankruptcy petitions on November 12, 2019 (the "Petition Date") in the U.S. Bankruptcy Court for the Southern District of Texas (the "Court"), which cases are being jointly administered in case number 19-36313 (the "Bankruptcy Case"). The Debtors are operating their business and managing their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Additional information about the Debtors' Bankruptcy Case can be obtained by visiting: <https://dm.epiq11.com/case/southernfoods/info/>.

As provided in sections 547, 548, 549, 550, 704(a), 1106, and 1007 of the Bankruptcy Code, the Debtors have a duty and have the authority to investigate, pursue, commence, prosecute, compromise, settle, or otherwise resolve certain causes of action under chapter 5 of the Bankruptcy Code to avoid and recover payments made to the Debtors' creditors prior to the Petition Date. Even though these payments may have been proper when made by the Debtors, under the Bankruptcy Code, the Debtors may seek the return of such funds for the benefit of the Debtors' creditors.

Specifically, Section 547(b) of the Bankruptcy Code provides for the avoidance of transfers made to creditors during the ninety (90) day period prior to the Petition Date (the "Preference Period"), which in this case covers transfers that cleared between August 14, 2019 through and including the Petition Date. In addition, to the extent that there are any unauthorized transfers made by the Debtors after the Petition Date (the "Post-Petition Transfers"), they are avoidable under Section 549 of the Bankruptcy Code.

The Basis of the Debtors' Claim

According to our records, [REDACTED] (ACH) received not less than \$89,982.64 (the "Transfers") during the Preference Period from the Debtors. Please review the enclosed Statement of Account listing checks, ACHs, and/or wire transfers issued to you by the Debtors within the Preference Period. If you did not receive one or more of these checks and/or wire transfers, please notify us immediately.

Certain Post-Petition Transfers, if any, to [REDACTED] (ACH) for which we have not been able to confirm authorization by the Court or under the Bankruptcy Code also are identified on the enclosed Statement of Account. If you believe that one or more of these transfers was authorized by the Court or under the Bankruptcy Code, please notify us immediately.

The Court May Disallow Your Claim Unless the Transfers are Returned to the Estate

Section 502(d) of the Bankruptcy Code provides that the Court shall disallow any claims of a party who fails to return an avoidable transfer. This means that if you assert an existing claim against the Debtors, you may not receive a distribution on account of that claim unless your liability for the Transfers is resolved. The Debtors reserve their right to object to your proof of claim and seek its disallowance, which may preclude you from receiving any distributions at all on account of your claim.

Potential Defenses to The Preference Claim

In certain cases, there may be a defense to liability with respect to a preference claim based on various exceptions under 11 U.S.C. § 547(c). Two of the most common affirmative defenses to preference actions are listed below. Additional instructions concerning these defenses are also provided as an attachment to this letter.

Subsequent New Value: We have reviewed the Debtors' records and considered whether you may have a defense to this action under the "subsequent new value" defense codified in subsection 547(c)(4). If the Debtors' books and records indicate that you provided goods or services to the Debtors after the Transfer(s) were made, we have reduced your liability by the value of such goods and services. We refer to this amount as your "new value credit." In this case, that amount is \$70,662.70.

If the amount of the new value credit does not reflect all unpaid goods and services you provided to the Debtors *after receipt of the first Transfer* and prior to the Petition Date, please contact us within twenty-one (21) days hereof with invoices and delivery receipts (or comparable evidence) for our review.

Ordinary Course of Business: A second common exception is the ordinary course of business defense under subsection 547(c)(2) of the Bankruptcy Code. If you believe you qualify for this defense, please send us your analysis (in Excel format, if possible), and your vendor historical ledger of invoices and payments between the Debtors and you for the Preference Period and the 15-month period prior to the Petition Date. Please include the following fields in your spreadsheet: Inv. No., Inv. Date, Inv. Terms, Inv. Amt., Amt. Paid, Check No., and Check Receipt Date.

Please provide the requested documentation within twenty-one (21) days hereof (the "Response Date") so that the Debtors may evaluate any impact on your potential liability.

Debtors' Demand for Payment

BY THIS LETTER, THE DEBTORS DEMAND PAYMENT OF THE TOTAL AMOUNT OF THE NET AVOIDANCE CLAIM SHOWN ABOVE ON OR BEFORE THE RESPONSE DATE.

Settlement Offer

Our firm specializes in avoidance recovery work, and we appreciate the difficulty of accepting the notion that the bankruptcy laws require the return of payments made during the Preference Period. It is no doubt a "bitter pill" to swallow that the law requires the return of payments received on account of legitimate obligations owed to your company. However, pursuant to the Bankruptcy Code, the Debtors are exercising their authority to seek to avoid and recover such funds for redistribution according to the priority of claims per the Code. It is not relevant to the preference liability issue whether the Debtors intentionally preferred you or whether you knew the Debtors were insolvent.

To encourage settlement before a lawsuit is filed, our client has authorized a settlement offer based on the following calculation:

Transfers From the Debtors During The Preference Period	\$89,982.64
Less Subsequent New Value (if any):	\$70,662.70
Plus Post-Petition Transfers (if any):	\$.00
Net Avoidance Claim:	\$19,319.94
Settlement Offer of 90% of Net Avoidance Claim:	\$17,387.95

The Settlement Offer will remain open through December 24, 2020. Please complete and return the **enclosed settlement form** and your payment made payable to Dean Foods Company by the Response Date. (Detailed instructions are set forth on the enclosed Settlement Offer and Acceptance Form.).

The Debtors do not waive and hereby expressly reserve all of their rights and remedies with respect to the matters set forth herein, including the right to pursue litigation to recover the full value of the Transfers unless this matter is otherwise resolved by agreement of the parties. Therefore, unless the matter is resolved or you provide us with the requested payment and invoice records, a complaint will be filed in the week following the deadline for acceptance of this offer. We encourage you to give this matter your early attention so that you can make an informed decision without the added burden of time pressure. Please contact the collection paralegal handling this matter, Krista Waters, at 651-289-3848, or via email at kwaters@askllp.com.

Sincerely,

ASK LLP

/s/ Richard Reding, Esq.

Richard Reding, Esq.
*Counsel for Southern Foods Group, LLC, et al.,
Debtors and Debtors in Possession*

Encl: Settlement Offer and Acceptance Form
Additional Instructions Re: Defenses

In re: Southern Foods Group, LLC, et. al.
Bankr. Case No. 19-36313

Southern Foods Group, LLC, et. al.,

vs.

[REDACTED] T (ACH)

SETTLEMENT OFFER AND ACCEPTANCE FORM File No: 2245227

I/We have read the letter and enclosures sent on behalf of Southern Foods Group, LLC, *et. al.*, the debtors and debtors in possession in the above-referenced case (the "Debtors") with this offer, which reflect that I/we received transfer(s) in the amount of \$89,982.64 (the "Transfers") during the ninety (90) day preference period and \$.00 in unauthorized post-petition transfers, for a total of (collectively the "Avoidance Claims"). The net amount after allowance for conceded new value, if any, of the Avoidance Claims is \$19,319.94 (the "Net Avoidance Amount").

OFFER

The Debtors herein offer to settle and release their claims against you under Sections 547-550 of the Bankruptcy Code based upon the Avoidance Claims upon receipt and bank clearance of a settlement payment equal to \$17,387.95 (the "Settlement Amount"), which is 90% of the Net Avoidance Amount. This offer requires that payment of the full Settlement Amount be received on or before December 24, 2020. If required, we will submit this settlement to the Bankruptcy Court for its approval. If the Bankruptcy Court does not approve the settlement, this settlement agreement shall be null and void, and the Debtors shall immediately refund the Settlement Amount to you.

ACCEPTANCE OF SETTLEMENT OFFER

Having considered the Settlement Offer and our rights and liabilities, I/we hereby accept the offer to settle the Avoidance Claims on the terms set forth above and herein enclose a check payable to Southern Foods Group, LLC for the Settlement Amount of \$17,387.95.

I/We waive my/our right(s) under Section 502(h) of the Bankruptcy Code to file a proof of claim (or to modify an existing proof of claim) for the Settlement Amount in the Southern Foods Group, LLC, *et. al.* bankruptcy cases (the "Bankruptcy Cases"). Any existing claim in the Bankruptcy Cases shall not be allowed, disallowed, modified, or otherwise affected by this settlement.

Executed on this _____ day of _____, 2020.

Defendant [REDACTED] T (ACH)

Our File No.: 2245227

By: _____
Print: _____ Title: _____
Phone Number: _____

RETURN WITH CHECK FOR	\$17,387.95
PAYABLE TO:	Dean Foods Company
PRIOR TO:	December 24, 2020
MAIL TO:	ASK LLP
	2600 Eagan Woods Drive, Suite 400
	St. Paul, MN 55121

Additional Instructions Re: Defenses

You should make a copy of this letter and all enclosures to send to your attorney should you choose to defend this matter rather than settle and return the payments.

Under certain circumstances you may have a defense warranting settlement of this action at less than the settlement offer extended. We will be happy to consider your defenses and explore settlement. The two most common defenses are set forth below, with instructions on how to proceed with settlement discussions as to each.

1. New Value Defense

If you believe that you have a defense pursuant to Section 547(c)(4) of the Bankruptcy Code, *i.e.*, that you extended additional credit **after receipt of the first transfer** made to you during the preference period that we have not credited, please send proof of supporting invoices and invoices and delivery receipts along with an excel spreadsheet to substantiate your new value defense.

For case support on new value and how Section 547(c)(4) applies, *see*

In re Wadsworth Building Components, Inc., 711 F.2d 122 (9th Cir. 1983) ("If the creditor and the Debtors have more than one exchange during the 90-day period, the exchanges are netted out according to the formula in paragraph 4 [of 547(c)]");

In re Meredith Manor, Inc., 902 F.2d 257, 258 (4th Cir. 1990) (Garland allows the creditor to calculate the difference between the total preferential transfers and the total advances, providing that "each advance issued to offset only prior (although not necessarily immediately prior) preference...[This] permits preference to be carried forward until exhausted by subsequent advance.")

2. Ordinary Course of Business Defense

11 U.S.C. § 547(c)(2) provides a limited defense for transfers that were in payment of debts incurred and paid in the ordinary course of business of the Debtors and the transferee, or that were made according to ordinary business terms. To qualify for the ordinary course of business defense under Section 547(c)(2), a creditor must prove by a preponderance of the evidence that either 1) the debt and its payment are ordinary in relation to past practices between the Debtors and the creditor; or 2) the payment was made according to ordinary business terms in your respective industries.

Please send any analysis supporting your ordinary course of business defense in excel format. Please include the following documents to support your assertions.

- A. Your vendor historical ledger of invoices and payments between your company and the Debtors for the Preference Period and the 15 month period prior to the Petition Date. An example of the fields that should be included in a spreadsheet containing this information is as follows:

InvNo, InvDate, Term, InvAmt, AmtPaid, CheckNo, Check Receive Date
This data should be supported by paper copies of the invoices.

- B. Should you claim the payments were made according to ordinary business terms for your industry, provide your analysis to support this defense, *i.e.*, that the number of days and manner of payment between your invoices and payment thereof was customary for your industry.