

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	Chapter 11
	)	
Oberweis Dairy, Inc., <i>et al.</i> , <sup>1</sup>	)	Case No. 24-05385
	)	(Joint Administration Requested)
Debtors.	)	
	)	Honorable David D. Cleary
	)	
	)	<b>Hearing Date: Thursday, April 18, 2024</b>
	)	<b>Hearing Time: 9:00 a.m.</b>

---

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on Thursday, April 18, 2024 at 9:00 a.m. CDT we will appear before the Honorable David D. Cleary, or any judge sitting in that judge’s place, **either** in courtroom 644 of the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, 60604 or electronically as described below, and present the **MOTION OF DEBTORS (A) FOR AUTHORITY TO (I) PAY CERTAIN PREPETITION EMPLOYEE WAGES, SALARIES AND OTHER COMPENSATION, (II) PAY AND HONOR EMPLOYEE MEDICAL AND OTHER BENEFITS, AND (III) CONTINUE EMPLOYEE BENEFIT PROGRAMS; (B) TO OBTAIN RELATED RELIEF; AND (C) FOR SHORTENED AND LIMITED NOTICE THEREOF**, a copy of which is attached.

**Important: Only parties and their counsel may appear for presentment of the motion electronically using Zoom for Government. All others must appear in person.**

**To appear by Zoom using the internet**, go to this link: [https:// www.zoomgov.com/](https://www.zoomgov.com/). The enter the meeting ID and passcode.

**To appear by Zoom using a telephone**, call Zoom for Government at 1-669-254-5252 or 1-646-828-7666. Then enter the meeting ID and passcode.

**Meeting ID and passcode.** The meeting ID for this hearing is **161 122 6457**, and the passcode is **Cleary644**. The meeting ID and passcode can also be found on the judge’s page on the court’s web site.

**If you object to this motion** and want it called on the presentment date above, you must file a Notice of Objection no later than two (2) business days before that date. If a Notice of

---

<sup>1</sup> The Debtors in this case, and the last four digits of their respective federal employer identification numbers, are Oberweis Dairy, Inc. (‘7516); The Oberweis Group, Inc. (‘1378); North Aurora Ice Cream, LLC (‘8506); TOGI RE I, LLC (‘5952); Third Millennium Real Estate L.L.C. (‘1589); and TOGI Brands, LLC (‘7072).

Objection is timely filed, the motion will be called on the presentment date. If no Notice of Objection is timely filed, the court may grant the motion in advance without calling it.

By: /s/ Steven B. Chaiken  
Proposed Counsel for the Debtors

HOWARD L. ADELMAN, ESQ. (ARDC# 0015458)  
ADAM P. SILVERMAN, ESQ. (ARDC #6256676)  
STEVEN B. CHAIKEN, ESQ. (ARDC #6272045)  
ALEXANDER F. BROUGHAM, ESQ. (ARDC #6301515)  
TEVIN D. BOWENS, ESQ. (ARDC #6338559)  
ADELMAN & GETTLEMAN, LTD.  
53 West Jackson Blvd., Suite 1050  
Chicago, Illinois 60604  
Tel (312) 435-1050  
Fax (312) 435-1059

**Proposed Counsel for the Debtors and Debtors in Possession**

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he served a copy of this notice and the attached motion on each entity shown on the attached list at the address shown and by the method indicated on the list on April 15, 2024, at or before 11:59 p.m.

By: /s/ Steven B. Chaiken  
Steven B. Chaiken

**SERVICE LIST**

**VIA CM/ECF**

Patrick S. Layng  
Office of the U.S. Trustee, Region 11

Eric Rein  
Counsel for CIBC Bank USA

**VIA OVERNIGHT DELIVERY**

**20 Largest Creditors**

1836 Farms  
1149 S. Virginia Street  
Terrell, TX 75160

Hiretech  
200 Westlake Park Blvd #501  
Houston, TX 77079

Altium Packaging  
2500 Windy Ridge Pkwy,  
Suite 1400  
Atlanta, GA 30339

International Food Products  
29205 Network Place  
Chicago, IL 60602

Associated Electrical Contractors, LLC  
319 Lamb Road  
Woodstock, IL 60098

Katies Pizza And Pasta  
10650 Gateway Blvd  
St Louis, MO 63132

Cook County Treasurer  
118 N. Clark Street  
Unit 112  
Chicago, IL 60602

Labrynth Ventures, LLC  
Attn: Patrick McCoy  
6942 N Keystone  
Lincolnwood, IL 60712

Ecolab  
26252 Network Place  
Chicago, IL 60673

Nussbaum Transportation Services  
19336 N. 1425 E Road  
Hudson, IL 61748

Greco & Sons  
1550 Hecht Road  
Bartlett, IL 60103

Pearl Valley Eggs  
968 S. Kent Rd.  
Pearl City, IL 61062

Penske Truck Leasing Co. L.P.  
13690 Lakefront Drive  
Earth City, MO 63045

Plymouth Foam Inc.  
1800 Sunset Drive  
Plymouth, WI 53073

QCS Purchasing Cooperative  
901 Warrenville Road Unit 405  
Lisle, IL 60532

RSM McGladrey  
5155 Paysphere Circle  
Chicago, IL 60674

Senscient Flavors  
2800 W. Higgins Rd.  
Hoffman Estates, IL 60169

St Charles Trading  
1400 Madeline Lane  
Elgin, IL 60124

Stanpac  
C/O Adriana Lopez  
801 Mangrum Street  
Brenham, TX 77833

Tocco-Greco  
3850 Mueller Rd.  
Suite 200  
St Charles, MO 63301

Trico Mechanical Inc.  
1980 Rt 30 Suite 11  
Sugar Grove, IL 60554

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
Oberweis Dairy, Inc., <i>et al.</i> , <sup>1</sup>	)	Case No. 24-05385
	)	(Joint Administration Requested)
Debtors.	)	
	)	Honorable David D. Cleary
	)	
	)	<b>Hearing Date: Thursday, April 18, 2024</b>
	)	<b>Hearing Time: 9:00 a.m.</b>

---

**MOTION OF DEBTORS (A) FOR AUTHORITY TO (I) PAY CERTAIN PREPETITION EMPLOYEE WAGES, SALARIES AND OTHER COMPENSATION, (II) PAY AND HONOR EMPLOYEE MEDICAL AND OTHER BENEFITS, AND (III) CONTINUE EMPLOYEE BENEFIT PROGRAMS; (B) TO OBTAIN RELATED RELIEF; AND (C) FOR SHORTENED AND LIMITED NOTICE THEREOF**

NOW COMES Oberweis Dairy, Inc., an Illinois corporation (“**ODI**”); The Oberweis Group, Inc., a Delaware corporation (“**TOGI**”); North Aurora Ice Cream, LLC, an Illinois limited liability company (“**NAIC**”); TOGI RE I, LLC, an Illinois limited liability company (“**TRI**”); Third Millennium Real Estate L.L.C., an Illinois limited liability company (“**TMRE**”); and TOGI Brands, LLC, an Illinois limited liability company (“**Brands**” and, together with ODI, TOGI, NAIC, TRI, and TMRE, the “**Debtors**”) as debtors and debtors in possession herein, by and through their undersigned proposed counsel and, pursuant to sections 363, 507, 1107(a), and 1108 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), and hereby move this Court: (a) for authority to (i) pay certain prepetition employee wages, salaries and other compensation; (ii) pay and honor employee medical and other benefits; and (iii) continue employee benefit programs; (b) to obtain related relief; and (c) for shortened and

---

<sup>1</sup> The Debtors in this case, and the last four digits of their respective federal employer identification numbers, are Oberweis Dairy, Inc. (‘7516); The Oberweis Group, Inc. (‘1378); North Aurora Ice Cream, LLC (‘8506); TOGI RE I, LLC (‘5952); TOGI Brands, LLC (‘7072); and Third Millennium Real Estate L.L.C. (‘1589).

limited notice thereof (the “**Motion**”). In support of the Motion, the Debtors respectfully state as follows:

**I. FACTUAL BACKGROUND**

1. On April 12, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Contemporaneously therewith, the Debtors filed motion seeking joint administration of their bankruptcy cases (the “**Chapter 11 Cases**”).

2. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to maintain their operations or financial affairs as debtors in possession in accordance with 11 U.S.C. §§ 1107 and 1108.

3. Neither a trustee nor a committee of unsecured creditors has been appointed in the Chapter 11 Cases.

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (M), and (O). The statutory predicates for the relief requested herein are sections 363, 507, 1107, and 1108 of the Bankruptcy Code and the applicable Rules are Rule 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

5. The nature of the Debtors’ business and the factual background relating to the commencement of the Chapter 11 Cases, and the facts supporting this Motion, are set forth in detail in that certain *Declaration of Adam Kraber in Support of Chapter 11 Petitions and First-Day Motions* filed on the Petition Date and incorporated herein by reference.

## II. RELIEF REQUESTED

6. The Debtors employ over 1100 full-time and part-time employees (the “**Employees**”). The skills, training and institutional knowledge of the Employees are essential to the Debtors’ ability to effectively administer their business during the Chapter 11 Cases and to maximize the value of the Debtors’ assets.<sup>2</sup>

7. As of the Petition Date, there are amounts accrued and owing under or related to the Debtors’ compensation and benefit programs. A large portion of the Employees are dependent on their compensation and benefits to pay their daily living expenses and provide for their households.

8. The Employees (and their families) would be exposed to significant financial harm if the payment of compensation (including obligations related to benefits) and other programs benefiting the Employees were interrupted. Should their compensation and other benefits be suspended or terminated, the Employees will likely be required to find work elsewhere. And given the Debtors’ reliance upon the Employees, the viability of these Chapter 11 Cases would suffer irreparable harm if the Debtors lost or had to replace the Employees.

9. Accordingly, to ensure retention of their Employees and to maintain employee morale, by this Motion, the Debtors request that the Court enter an order, pursuant to sections 363(b)(1), 507(a)(4), 507(a)(5), 1107(a), and 1108 of the Bankruptcy Code, authorizing, but not directing, the Debtor to pay certain prepetition wage and salary claims of the Employees, to pay and honor all employee benefits, and to continue employee benefit programs after the Petition Date, consistent with the Debtors’ ordinary course of business prior to the Petition Date. The Debtors request authority to pay outstanding wages, salary and/or commissions accruing prior to

---

<sup>2</sup> The only Debtor with employees is ODI. For the sake of administrative efficiency, however, this Motion seeks relief on behalf of, and refers to the Debtors collectively.

and including the Petition Date in the estimated total gross amount of approximately \$340,000 (collectively, the “**Prepetition Wage Claims**”)<sup>3</sup>; to pay other prepetition claims arising in connection with, and otherwise maintain in effect, as applicable, the Debtors’ employee medical benefits, health and other insurance, accrued prepetition vacation time, reimbursable expenses, and accrued prepetition contributions to employee benefit plans as detailed further below (the “**Employee Benefit Programs**,” and together with the Prepetition Wage Claims and all related withholdings and taxes and all costs incident thereto, the “**Prepetition Employee Obligations**”).

**A. Employee Wages and Salaries**

10. The Debtors’ workforce comprises a total of approximately 1149 employees, consisting of: (a) approximately 100 full-time salaried employees (“**Salaried Employees**”); (b) approximately 66 full-time hourly employees (the “**Hourly Employees**”); (c) approximately 50 full-time commission employees (the “**Commission Employees**,” and together with the Salaried Employees and the Hourly Employees, the “**Full-Time Employees**”); and (d) approximately 933 part-time employees (“**Part-Time Employees**”).<sup>4</sup> Nearly all Full-Time Employees regularly work at least forty (40) hours per week. In addition, the Debtors utilize one independent contract employee (the “**Plant Manager**”).

11. The Plant Manager provides critical support to the Debtors, including overseeing all plant, cooler and laboratory operations. The Plant Manager is paid once a month on the first of each month for services to be rendered the following month. As such, the Debtors do not believe the Plant Manager is owed any prepetition amounts. Notwithstanding, as part of this

---

<sup>3</sup> To protect the confidentiality of employee information, the names, addresses, and specific wage claims of individual employees have not been disclosed herein. Such information will be provided to the Court and/or the United States Trustee (or other interested parties, provided sufficient guaranties of confidentiality are in place), upon request.

<sup>4</sup> Employee data, including total employees, wages, and salaries, are approximated as of the Petition Date.

motion the Debtors seek authority to continue to pay and honor, in their discretion, any prepetition obligations to the Plant Manager.

12. None of the Employees are party to a collective bargaining agreement or similar labor agreement.

13. Other than Adam Kraber, the President of ODI, and possibly James Blaylock, the Chief Operation Officer of ODI's dairy stores, none of the Employees are "insiders" as defined in Section 101(31) of the Bankruptcy Code. Prior to the filing of the Chapter 11 Cases, the Debtors made a payment to Adam Kraber and to James Blaylock covering the wages earned through and including the Petition Date. As such, the Debtors are not seeking in this Motion to pay any prepetition wages for any potential "insiders".

14. The Debtors provide overtime pay to Hourly Employees and Part-Time Employees in accordance with applicable state and federal law. Overtime hours are paid at the rate of 1.5 times the hourly base rate for any hours in excess of forty (40) hours per week.

15. The Debtors pay their Employees every two weeks, either by check or direct deposit into their bank accounts. The aggregate payroll during the months of January – March 2024 averaged approximately \$891,000 per pay period.

16. An Employee's wages or salary accruing in any given 2-week period is paid the Friday following the completion of such 2-week period. ADP, Inc. ("ADP") processes the Debtors' payroll and provides a mechanism for paying employee wages and benefits, and calculating all proper employer and employee withholdings from the payroll. ADP also remits tax withholdings directly to the applicable taxing authorities.

17. The Debtors' last regularly schedule payroll was set to occur on the Petition Date, but due to the filing of these Chapter 11 Cases was moved up one day and occurred on April 11,

2024, for wages accruing through April 7, 2024. The next payroll is scheduled to be made on April 26, 2024, for compensation accruing between April 8, 2024 and April 21, 2024. As this pay period straddles the Petition Date, it includes four (4) days of work performed prior to the Petition Date (i.e. April 8, 2024 through and including April 11, 2024). As set forth above, the Debtors' estimate that approximately \$340,000 constitutes Prepetition Wage Claims.<sup>5</sup>

18. The Debtors seek authority to satisfy all Prepetition Wage Claims in the amounts finally determined using the Debtors' customary and ordinary methods heretofore utilized. As part of this relief, the Debtors seek authority to honor all prepetition checks issued to Employees who do not receive direct deposits.<sup>6</sup> The Debtors believe that payment of the Prepetition Wage Claims is critical to the retention of the Employees and to the continued operation of their business pending a going concern sale. No single Employee is owed prepetition wages in excess of the \$15,150 priority limit provided under section 507(a)(4) of the Bankruptcy Code.

**B. Social Security, Income Taxes, and Other Withholdings and Deductions**

19. Attendant to the payment of the Debtors' payroll obligations, the Debtors are also obligated to withhold and pay federal, state and local withholding taxes (including Social Security, Medicare taxes, and federal and state unemployment insurance) for themselves and the Employees.

---

<sup>5</sup> On the last pay period of each month, store managers, assistant managers and district managers receive dairy store bonuses based on formula-driven sales for the prior month (the "**Dairy Store Monthly Bonuses**"). The range of the aggregate Dairy Store Monthly Bonuses is \$30,000 - \$50,000 per month. The last Dairy Store Monthly Bonuses were paid on March 29<sup>th</sup> for sales based on the month of February 2024.

<sup>6</sup> There is approximately \$86,000 in prepetition checks for prepetition wages that were issued in the last six months and which have not yet been cashed. In addition, there were three direct deposits for prepetition wages that were rejected in the most recent payroll totaling approximately \$900.00, for which checks will need to be issued.

20. As part of its payroll processing services, ADP automatically withholds from Employee paychecks the taxes that the Debtors are required to withhold and remits them to the applicable taxing authorities.

21. As part of their request to pay Prepetition Employee Obligations, the Debtors seek authorization to pay all employer and employee federal, state, and local withholding and payroll-related taxes relating to prepetition periods, including, but not limited to, all withholding taxes, Social Security taxes, Medicare taxes and all other miscellaneous withholdings. The Debtors estimate that the amount of the employer-side prepetition withholding and payroll-related taxes to be approximately \$80,000.

22. Additionally, the Debtors have been authorized, from time to time, to make deductions from employees' wages, including contributions to various benefit programs (many of which are described below) and wage garnishments. To the extent that any of these are considered property of the Debtors' estates, the Debtors request permission to allow such deductions to continue, and to be paid to their designated recipients, consistent with and in the ordinary course of their business.

**C. Employee Benefit Programs**

23. The Debtors offer the Employees access to health, dental, vision, disability, life and worker's compensation insurance and other benefits, as described below. Certain of the benefits require payments by the Debtors and may be unpaid as of the Petition Date because certain obligations may have accrued in whole or in part prior to the Petition Date, but do not become payable in the ordinary course of the Debtors' business until after the Petition Date.

**1. Health Insurance**

24. Full-Time Employees may enroll in a health insurance plan (for themselves, spouses and dependent children) and have a choice between a Preferred Provider Organization (PPO) or a Health Maintenance Organization (HMO), if available, at different costs to the employee. The costs of this coverage is subsidized in part by the Debtors. The Debtors pay approximately 50% of the overall costs, and the Employee pays approximately 50% of the overall costs.<sup>7</sup> The total monthly premium for the month of March was approximately \$106,000, of which the Debtors' share was approximately \$53,000. The health insurance program is administered by Blue Cross Blue Shield of Illinois (“**BCBS**”). The costs of the Employee health claims, as well as applicable fees for the administration of the plan, are billed to the Debtors by BCBS.

25. Employees covered under the BCBS health plan are eligible to participate in a Flexible Spending Account (“**FSA**”) administered by Employee Benefits Corporation. Employees are able to set aside pre-tax dollars for qualified medical, dental and vision expenses not covered by insurance up to certain amounts. The FSA is funded solely by the Employees.

**2. Dental**

26. The Debtors offer a self-funded dental coverage plan to Full-Time Employees through Delta Dental of Illinois (“**Delta Dental**”). The Debtors pay an administrative fee to Delta to manage the claims in the amount of \$6.10 per month per each Employee that has opted into the dental coverage.

---

<sup>7</sup> As of the Petition Date, there are five (5) Hourly Employees that are referred to as shift leaders (“**SL 40s**”) who are eligible for a slightly different medical plan and there is one additional SL 40 who will become eligible in May. Currently, none of the SL 40s are utilizing the Debtors' medical plan, but the Debtors anticipate that, post-petition, at least one of the SL 40s will enroll in these offerings.

27. Delta Dental provides premium equivalent rates to the Debtors in amounts estimated to cover the projected claims for the following year upon the annual renewal of the policy. The Debtors withhold a portion of the premium equivalent rates from the applicable Employee depending on the plan selected by the Employee.<sup>8</sup>

28. Claims are paid by Delta Dental weekly and billed to and reimbursed by the Debtors on a weekly basis one week in arrears through an ACH auto debit. The Debtors seek authority to reimburse Delta Dental for any claims incurred prior to the Petition Date. The average weekly claims over the last 4 months were approximately \$1,250.00, of which the Debtors are responsible for all amounts after applying the contributions withheld from the Employees.

### **3. Vision**

29. The Debtors also offer vision coverage to all Full-Time Employees through EyeMed. It is a voluntary program in which the Employees are solely responsible for payment of the premiums. The Debtors are not responsible for paying any portion of the premiums for vision insurance, though the Debtors withhold required premium amounts from the applicable Employees and remit same to the carrier.

### **4. Term Life Insurance, Accidental Death and Dismemberment and Short-Term and Long-Term Disability**

30. The Debtors provide term-life coverage, Accidental Death and Dismemberment (“AD&D”), and short-term and long-term disability coverage to all eligible Full-Time Employees through Mutual of Omaha. The policy for life insurance coverage is \$25,000 and \$25,000 for AD&D. In the event of a qualified disability, the eligible Employee will receive up to 60% of the Employee’s regular pay (not to exceed \$1,000 per week) for a 13-week period

---

<sup>8</sup> SL 40s can opt into the dental coverage and the Debtors would withhold 100% of the administrative fee and premium equivalent rates.

beginning on the 15<sup>th</sup> day after illness or injury. After the 13-week period, eligible Employees can continue to receive up to 60% of the Employee's regular pay (not to exceed \$5,000 per month). The Debtors pay 100% of the premiums for this coverage, which averaged approximately \$7,200 per month over the last three months. Employees may supplement and increase the coverage under these policies at their sole cost and expense.

**5. Worker's Compensation**

31. The Debtors also have a workers' compensation policy with The Travelers Indemnity Company. The Debtors make premium payments of approximately \$61,695.00 per month to maintain this policy.

**6. Maintenance of Employee Insurance Benefits**

32. As a fundamental component of the Employee Benefit Programs, the Debtors intend to maintain employee health, dental, life, disability, workers' compensation, and similar insurance for their Employees ("**Employee Insurance Benefits**") during the Chapter 11 Cases.<sup>9</sup> To the extent there are any claims relating to Employee Insurance Benefits which arose prior to the Petition Date and remain unpaid, the Debtors request authority to pay such claims, consistent with and in the ordinary course of their business. The Debtors seek authority to pay all obligations related to Employee Insurance Benefits incurred prior to the Petition Date, as well as any health insurance coverage obligations that arose prepetition even in the event such amounts exceed the statutory limits provided in section 507(a)(5) of the Bankruptcy Code.

---

<sup>9</sup> To the extent mandated by the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. §§ 1161 *et seq.* and other state and federal laws, and consistent with their ordinary business practices prior to the Petition Date, the Debtors also desire to maintain Employee Insurance Benefits for eligible former employees who have left the service of the Debtors prior to the Petition Date.

**D. Paid Time Off**

33. In addition to wages and salaries, the Debtors provide eligible Employees (i.e. regular full time Employees) paid time off (“PTO”) for holidays, vacations and other time off. For example, depending on the length of their full-time employment, Employees can accrue 10, 15 or 20 days of paid vacation time annually. Vacation time must be taken no later than one year after it vests. As of the Petition Date, the Employees have accrued unpaid PTO in the approximate amount of \$356,000. The Debtors intend to honor any accrued, unpaid PTO. In addition to PTO, all of the Debtors’ Employees in the states of Illinois and Nevada are allowed to earn up to five (5) days of leave from work each year, pursuant to applicable state law.

**E. Reimbursable Business Expenses**

34. The Debtors reimburse certain Employees for reasonable business expenses incurred in the performance of their respective duties, such as mileage, parking and tolls, airfare, lodging, and meal expenses while performing company business. The Debtors request authority to reimburse all unpaid business expenses incurred by its Employees prior to the Petition Date (estimated to be in a total amount of less than \$2,000), consistent with and in the ordinary course of the Debtors’ business.

**F. 401(k) Plan**

35. After 60 days of full-time employment (or after meeting certain hours-of-service eligibility criteria for temporary full time and temporary or regular part time Employees), Employees are entitled to contribute to a 401(k) plan sponsored by the Debtors, a safe harbor plan into which such Employees may contribute pretax earnings for retirement savings. The Debtors do not contribute to Employees’ 401(k) accounts. The Debtors are investigating whether to continue, alter, or terminate the 401(k) plan and request authority to make deposits of

prepetition Employee earnings in to their 401(k) plan, consistent with and in the ordinary course of their business.

### **III. AUTHORITY FOR RELIEF REQUESTED**

36. Ample authority exists to pay prepetition employee obligations where doing so will benefit a debtor's estate. The benefit of paying the Prepetition Employee Obligations can be measured against the adverse impact to the Debtors' estates if the Employees do not remain in the Debtors' employ.

37. Authority to pay Prepetition Employee Obligations is found in sections 1107(a) and 1108 of the Bankruptcy Code, which vest debtors in possession with authority to continue operating their businesses. Sometimes this authority and the concomitant duty to maximize estate value may be fulfilled only through the pre-plan payment of certain unsecured claims. *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); (authorizing debtors in possession to exercise business judgment to pay certain critical prepetition claims) *cf. In re Commercial Mortg. & Fin., Co.*, 414 B.R. 389, 394 (Bankr. N.D. Ill. 2009) (noting that a debtor in possession "has the discretionary authority to exercise [its] business judgment in operating the debtor's business similar to the discretionary authority to exercise business judgment given to an officer or director of a corporation").

38. Additionally, the Court may authorize payment of the Prepetition Employee Obligations under section 363(b)(1) of the Bankruptcy Code, which provides that, after notice and a hearing, a debtor in possession may "use . . . other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In *In re Kmart Corp.*, the Seventh Circuit Court of Appeals suggested that section 363(b)(1) of the Bankruptcy Code is an appropriate mechanism for payment of certain necessary prepetition debts, provided such payments will

ultimately benefit all creditors. *In re Kmart Corp.*, 359 F.3d 866, 874 (7th Cir. 2004). The United States Supreme Court favorably cited *Kmart* for its analysis in justifying the payment of prepetition claims of critical vendors early in a chapter 11 case. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 468, 137 S.Ct. 973, 985 (2017) (noting that courts have approved critical vendor payments where “the distributions at issue would ‘enable a successful reorganization and make even the disfavored creditors better off’”). A debtor’s business judgment as to the use, sale, or lease of estate property is appropriate if supported by “sound business reasons.” *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991).

39. Paying the Prepetition Employee Obligations is supported by sound business reasons. The Debtors rely on the services of the Employees as detailed above. Missed or reduced paychecks would likely induce significant numbers of the Employees to find work elsewhere, at a time when the Debtors need them the most. And replacing the Employees, in whole or in part, is not a viable option, considering their familiarity with the operations and affairs of the Debtors.

40. Further, the objective of the Chapter 11 Cases is to effectuate a prompt going concern sale while simultaneously preserving the jobs of more than 1,100 Employees. Failing to fulfill the Prepetition Employee Obligations would cause irreparable harm to and jeopardize the success of this objective. Consequently, in addition to satisfying the “sound business reasons” standard for motions under section 363 of the Bankruptcy Code generally, payment of the Prepetition Employee Obligations also satisfies the more specific “benefit to all creditors” standard articulated in *Kmart*. *See* 359 F.3d at 874. Paying the Prepetition Employee Obligations will greatly help the Debtors in maintaining necessary operations and activities while the Debtors seek to implement a going concern sale to maximize the potential recovery for the benefit of all creditors.

41. The *Kmart* court cautioned that “it is prudent to read, and use, § 363(b)(1) to do the least damage possible to priorities established by contract and by other parts of the Bankruptcy Code.” *Id.* at 872. Payment of the Prepetition Employee Obligations will provide minimal damage to the priorities under the Bankruptcy Code because the Bankruptcy Code itself prioritizes a significant number of the claims being paid.

42. Section 507(a)(4) and (5) of the Bankruptcy Code requires that certain claims for prepetition wages, salaries, vacation, sick leave, and employee benefit plan contributions be accorded a priority in payment, up to \$15,150 per employee. 11 U.S.C. § 507(a)(4)-(5). By this Motion, the Debtors do not seek to pay any single Employee more than the \$15,150 limit. The relief sought herein, therefore, does not “rearrange priorities among creditors” in any meaningful way. *See In re Kmart Corp.*, 359 F.3d at 872.

43. Courts in this jurisdiction regularly authorize Chapter 11 debtors in possession to pay prepetition employee wages and benefits in instances where employee retention is critical to the success of their bankruptcy cases. *See, e.g., In re St. Margaret’s Health – Peru, et al.*, No. 23-11641 (Bankr. N.D.Ill. Sep. 13, 2023), ECF No. 40; *In re Arro Corporation, f/k/a Arro Packaging Company*, No. 19-35238 (Bankr. N.D.Ill Dec. 20, 2019), ECF No. 35; *In re Caesars Entm’t Operating Co.*, No. 15-01145 (Bankr. N.D. Ill. Mar. 6, 2015), ECF No. 617; *In re Balmoral Racing Club, Inc., et al.*, No. 14-45711 (Bankr. N.D. Ill. Jan. 8, 2015), ECF No. 70; *In re ITR Concession Co.*, No. 14-34284 (Bankr. N.D. Ill. Oct. 28, 2014), ECF No. 175; *In re SGK Ventures, LLC*, No. 13-37603 (Bankr. N.D. Ill. Sept. 26, 2013), ECF No. 26; *In re Edison Mission Energy*, No. 12-49219 (Bankr. N.D. Ill. Jan. 17, 2013), ECF No. 319.

44. For the foregoing reasons, the Debtors respectfully request that they be granted authority to pay the Prepetition Employee Obligations, if and when they are due and owing, after the Petition Date, consistent with the Debtors' prepetition practices.

**IV. SATISFACTION OF BANKRUPTCY RULE 6003**

45. Rule 6003 of the Bankruptcy Rules empowers a court to grant relief in the first 21 days after the filing of a bankruptcy petition "to the extent that relief is necessary to avoid immediate and irreparable harm." As discussed in more detail above, failure to pay the Prepetition Employee Obligations timely would likely jeopardize the success of the Chapter 11 Cases. Accordingly, the Debtors submit that, to the extent Bankruptcy Rule 6003 applies to the relief granted herein, its requirements are satisfied.

**V. WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)**

46. Because the Debtors, their estates, and creditors will suffer immediate and irreparable harm if all Prepetition Employee Obligations are not timely paid, and in light of the relatively small expenditure required to do so, the Debtors request that the notice provisions of Bankruptcy Rule 6004(a) and the 14-day stay under Bankruptcy Rule 6004(h) be excused, to the extent they are applicable to the relief sought herein.

**VI. AUTHORIZATION TO HONOR CHECKS AND ELECTRONIC FUND TRANSFERS**

47. The Debtors currently maintain funds sufficient to pay all Prepetition Employee Obligations as they come due in the ordinary course. The Debtors request that the Court authorize and direct all applicable financial institutions to process, honor, and pay any and all checks or wire transfer requests, as may be requested by the Debtors to effectuate payment of the Prepetition Employee Obligations, including but not limited to checks issued and wire transfers initiated prior to the Petition Date on account of Prepetition Employee Obligations.

## **VII. NOTICE**

48. Notice of the filing of this Motion and the hearing scheduled therefor has been provided by CM/ECF, overnight delivery, and/or facsimile to: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) the 20 largest unsecured creditors of ODI pursuant to Bankruptcy Rule 1007(d); (c) counsel to the Debtors' primary secured lender, CIBC Bank USA, an Illinois state-chartered bank; and (d) all other parties who have requested notice and service of pleadings via the Court's CM/ECF system in the Chapter 11 Cases.

49. Bankruptcy Rule 2002(a)(2) provides that, "unless the court for cause shown shortens the time or directs another method of giving notice," a motion seeking to use property of the estate other than in the ordinary course of business must be served upon "the debtor, the trustee, all creditors and indenture trustees" on 21 days' notice. Fed. R. Bankr. P. 2002(a)(2). Likewise, this Court's Local Rule 9013-1 requires that a "notice of motion served personally must be served no later than 4:00 p.m. on the third day before the date of presentment." L.R. 9013-1(D)(2). Both of these requirements, however, may be modified at the Court's discretion. *See* Fed. R. Bankr. P. 2002(m) (authorizing the Court to "enter orders designating the manners in respect to which, the entity to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules"); *see also* Fed. R. Bankr. P. 2002(a)(2).

50. As discussed in more detail above, if the Debtors were required to adhere strictly to the notice requirements of the federal and local bankruptcy rules, the Employees would not timely receive their anticipated and needed compensation. Given the critical and time-sensitive nature of the relief requested herein, the Debtors submit that "cause" exists to shorten and limit the notice requirements applicable to the Motion, and to deem the notice period and parties set

forth above and in the attached certificate of service to be adequate and sufficient under the circumstances.

WHEREFORE, Oberweis Dairy, Inc., The Oberweis Group, Inc., TOGI Brands, LLC, North Aurora Ice Cream, LLC, Third Millennium Real Estate L.L.C., and TOGI RE I, LLC, debtors and debtors in possession herein, respectfully request the entry of an order in accordance with the foregoing recommendations in the form filed herewith and made a part hereof without further notice, and for such other and further relief as is just.

Respectfully Submitted:

OBERWEIS DAIRY, INC., *et al.*,

By: /s/ Steven B. Chaiken  
Proposed Counsel for the Debtors

HOWARD L. ADELMAN, ESQ. (ARDC# 0015458)  
ADAM P. SILVERMAN, ESQ. (ARDC #6256676)  
STEVEN B. CHAIKEN, ESQ. (ARDC #6272045)  
ALEXANDER F. BROUGHAM, ESQ. (ARDC #6301515)  
TEVIN D. BOWENS, ESQ. (ARDC #6338559)  
ADELMAN & GETTLEMAN, LTD.  
53 West Jackson Blvd., Suite 1050  
Chicago, Illinois 60604  
Tel (312) 435-1050  
Fax (312) 435-1059

**Proposed Counsel for the Debtors and Debtors in Possession**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

In Re: ) Case Number: 24-05385  
)  
Oberweis Dairy, Inc., et al., ) Chapter: 11  
) Honorable David D. Cleary  
)  
)  
Debtor(s) )

**ORDER GRANTING MOTION OF DEBTORS (A) FOR AUTHORITY  
TO (I) PAY CERTAIN PREPETITION EMPLOYEE WAGES, SALARIES  
AND OTHER COMPENSATION, (II) PAY AND HONOR EMPLOYEE MEDICAL  
AND OTHER BENEFITS, AND (III) CONTINUE EMPLOYEE BENEFIT PROGRAMS; (B)  
TO OBTAIN RELATED RELIEF; AND (C) FOR SHORTENED  
AND LIMITED NOTICE THEREOF**

THIS CAUSE coming to be heard on the motion of Oberweis Dairy, Inc.; The Oberweis Group, Inc.; North Aurora Ice Cream, LLC; TOGI RE I, LLC; Third Millennium Real Estate L.L.C.; and TOGI Brands, LLC (the “Debtors”), pursuant to 11 U.S.C. §§ 363, 507, 1107(a), and 1108 for an order authorizing the Debtors to pay certain prepetition employee wage, health insurance, and other related obligations, and for shortened and limited notice thereof (the “Motion”); any capitalized terms not otherwise defined herein having the same meaning as ascribed by the Motion; the Court having reviewed the Motion and having determined that cause exists to grant the relief requested therein; and the Court having jurisdiction and the subject matter of the Motion;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Motion be and hereby is granted at set forth herein.
2. The Debtors are authorized, but not directed, to pay, perform, and honor, as applicable, the Prepetition Employee Obligations, including payment to any third parties that provide or aid in the monitoring, processing, or administration of the Prepetition Employee Obligations, as and when such obligations are due; provided, however, that payments of wages and salary to any individual Employee after the Petition Date on account of amounts accrued prior to the Petition Date shall not exceed amounts afforded priority status by sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.
3. The Debtors are authorized, but not directed, in their sole discretion to perform, honor and continue the Employee Insurance Benefits and the Employee Benefit Programs in the ordinary course.
4. The relief granted herein shall not constitute or be deemed an assumption or an authorization to assume any executory contract or agreement to which the Debtors is a party, including any benefit plans or employment agreements.
5. Due to the immediate and irreparable harm that would occur if the Motion were not granted, the requirements set forth in Bankruptcy Rule 6003(b) are satisfied with respect to the relief granted herein.
6. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon its entry.

7. The Debtors are authorized to take all steps necessary to carry out this order.
8. All applicable financial institutions are authorized and directed to process, honor, and pay any and all checks or wire transfer requests, as may be requested by the Debtors to effectuate payment of the Prepetition Employee Obligations.
9. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this order, any authorization contained in this order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors and any budget in connection therewith.
10. Nothing in this order may be construed as approving any transfer pursuant to 11 U.S.C. § 503 (c), and a separate motion shall be filed for any request that could fall within section 503(c).
11. Shortened and limited notice of the Motion is granted, such that the notice period and parties reflected in the certificate of service attached to the Motion are deemed adequate and sufficient under the circumstances, and no other or further notice of the Motion need be given.

Enter:

Dated:

United States Bankruptcy Judge

**Prepared by:**

HOWARD L. ADELMAN, ESQ. (ARDC# 0015458)  
ADAM P. SILVERMAN, ESQ. (ARDC #6256676)  
STEVEN B. CHAIKEN, ESQ. (ARDC #6272045)  
ALEXANDER F. BROUGHAM, ESQ. (ARDC #6301515)  
TEVIN D. BOWENS, ESQ. (ARDC #6338559)  
ADELMAN & GETTLEMAN, LTD.  
53 West Jackson Blvd., Suite 1050  
Chicago, Illinois 60604  
Tel (312) 435-1050  
Fax (312) 435-1059  
Proposed Counsel for the Debtors and Debtors in Possession