

**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> , ¹)	Case No. 24-05385
)	(Joint Administration Requested)
Debtors.)	
)	Honorable David D. Cleary
)	
)	Hearing Date: Thursday, April 18, 2024
)	Hearing Time: 9:00 a.m.

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 FOR ENTRY OF AN ORDER: (I) AUTHORIZING (A) MAINTENANCE OF EXISTING BANK ACCOUNTS, (B) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (C) CONTINUED USE OF EXISTING BUSINESS FORMS, AND (D) CONTINUED USE OF EXISTING BOOKS AND RECORDS; (II) FINDING THE INVESTMENT AND DEPOSIT REQUIREMENTS OF 11 U.S.C. § 345(b) ARE SATISFIED OR OTHERWISE EXCUSED; AND (III) GRANTING RELATED RELIEF**, 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

¹ 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/Adam P. Silverman
Proposed Counsel for the Debtors

HOWARD L. ADELMAN, ESQ. (ARDC# 0015458)
ADAM P. SILVERMAN, ESQ. (ARDC #6256676)
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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/Adam P. Silverman
Adam P. Silverman

SERVICE LIST

VIA CM/ECF

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

Eric Rein
Counsel for CIBC USA

VIA OVERNIGHT DELIVERY

20 Largest Creditors

1836 Farms
1149 S. Virginia Street
Terrell, TX 75160

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

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

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

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

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

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

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

Ecolab
26252 Network Place
Chicago, IL 60673

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

Greco & Sons
1550 Hecht Road
Bartlett, IL 60103

Plymouth Foam Inc.
1800 Sunset Drive
Plymouth, WI 53073

Hiretech
200 Westlake Park Blvd #501
Houston, TX 77079

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

International Food Products
29205 Network Place
Chicago, IL 60602

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
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In re:)	Chapter 11
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Oberweis Dairy, Inc., <i>et al.</i> , ¹)	Case No. 24-05385
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Debtors.)	
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MOTION OF DEBTORS FOR ENTRY OF AN ORDER: (I) AUTHORIZING (A) MAINTENANCE OF EXISTING BANK ACCOUNTS, (B) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (C) CONTINUED USE OF EXISTING BUSINESS FORMS, AND (D) CONTINUED USE OF EXISTING BOOKS AND RECORDS; (II) FINDING THE INVESTMENT AND DEPOSIT REQUIREMENTS OF 11 U.S.C. § 345(b) ARE SATISFIED OR OTHERWISE EXCUSED; AND (III) GRANTING RELATED RELIEF

NOW COME 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, debtors and debtors in possession (collectively, the “**Debtors**”), by and through their undersigned proposed counsel and, pursuant to 11 U.S.C. §§ 105, 345, 363, and 1108 and in support of the *Motion of Debtors for Entry of an Order (I) Authorizing: (A) Maintenance of their Existing Bank Accounts, (B) Continued use of Their Existing Cash Management System, (C) Continued use of Their Existing Business Forms, and (D) Continued use of Their Existing Books and Records; (II) Finding the Investment and Deposit Requirements of 11 U.S.C. § 345(b) are Satisfied or Otherwise Excused; and (III) Granting Related Relief* (the “**Motion**”), respectfully state as follows:

¹ 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).

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105, 345, 363, and 1107 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”).

II. RELIEF REQUESTED

3. The Office of the United States Trustee (the “UST”) has established certain operating guidelines for debtors in possession, the most recent of which was published in December 2023. *See* Patrick Layng, United States Trustee, *Chapter 11 Operating Instructions and Reporting Requirements*, https://www.justice.gov/d9/2023-12/region11_oirr_1.pdf. Among other things, these guidelines require a chapter 11 debtor to: (a) close all existing bank accounts and open new debtor-in-possession bank accounts; (b) establish one debtor-in-possession account for all estate monies required for the payment of taxes, including payroll taxes; (c) maintain a separate debtor-in-possession account for cash collateral; and (d) open a new set of books and records as of the commencement date of the case. *Id.*

4. These guidelines are designed to provide a clear line of demarcation between prepetition and postpetition transactions and operations, and to prevent the inadvertent postpetition payment of prepetition claims. As detailed herein, however, the Debtors request that these guidelines be excused in the Chapter 11 Cases (as defined below), as the Debtors can operate their business within the dictates of the Bankruptcy Code without incurring the

significant time and expense of implementing new system of cash management and bank accounts.

5. The Debtors therefore seek entry of an order: (a) authorizing: (i) maintenance of their existing bank accounts, (ii) continued use of their existing cash management system, (iii) continued use of their existing business forms, and (iv) continued use of their existing books and records; and (b) granting such other and further relief as warranted.

III. FACTUAL BACKGROUND

6. On April 12, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors have moved for the joint administration of their bankruptcy cases (the “**Chapter 11 Cases**”). Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate their business as debtors in possession in accordance with 11 U.S.C. §§ 1107 and 1108.

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

8. The nature of the Debtors’ business and the factual background relating to the commencement of the Chapter 11 Cases are set forth in more detail in the *Declaration of Adam Kraber in Support of Chapter 11 Petitions and First-Day Motions* (the “**Declaration**”) filed on the Petition Date and incorporated herein by reference.²

9. As stated in the Declaration, the primary business of the Debtors consists of manufacturing dairy products and selling those and other food products through three distinct segments (collectively, the “**ODI Business**”): (a) owning and operating 40 dairy stores (each a “**Dairy Store**”) throughout 4 states in the Midwestern United States (the “**Dairy Store**

² Any capitalized term not otherwise defined in the Motion shall have the same meaning as ascribed in the Declaration.

Segment"); (b) selling dairy products to retailers or distributors to facilitate sales to consumers in approximately 850 grocery stores across 7 states; (the "**Grocery Retail Segment**"); and (c) delivering dairy and other food products directly to consumers in 5 states (the "**Home Delivery Segment**"). The ODI Business is largely run through Oberweis Dairy, Inc., the primary operating Debtor ("**ODI**"), and hence the cash management system described below pertains largely to ODI.

IV. THE DEBTORS' EXISTING CASH MANAGEMENT SYSTEM

10. As of the Petition Date, the Debtors maintain 49 active bank accounts (collectively, the "**Bank Accounts**") in the ordinary course of business. All Bank Accounts maintained by the Debtors as of the Petition Date are listed on **Exhibit A** hereto. Together, the inflows and outflows of funds in the Bank Accounts make up a centralized cash management system the Debtors use to collect, transfer, and disburse funds, and to accurately record such collections, transfers, and disbursements, as explained in more detail below (the "**Cash Management System**").

A. Inflows to Operating Account

11. The Debtors centralize the Cash Management System through a singular operating account maintained at CIBC Bank USA, an Illinois state-chartered bank ("**CIBC**"), designated account number xxx7722 (the "**Operating Account**"). All revenue from sales through the Dairy Store, Grocery Retail, and Home Delivery Segments are ultimately funneled into the Operating Account in the manner forth below.

i. Dairy Store Segment

12. Each Dairy Store maintains an account at a bank other than CIBC to deposit cash payments from retail customers (the "**Dairy Store Accounts**"). The banks utilized by the Dairy

Stores were generally selected based upon the proximity of each specific Dairy Store to the nearest commercial bank. While the Debtors operate 40 Dairy Stores, two of the Dairy Stores share an account at Fifth Third Bank and another two Dairy Stores share a different account at Fifth Third Bank. ODI utilizes procedural mechanisms to ensure proper allocation of deposits among these Dairy Stores. As of the Petition Date, the 38 Dairy Store Accounts were maintained at 15 financial institutions.

13. Approximately 6 to 7 times per week, managers of the Dairy Stores make manual deposits of cash from daily sales into the Dairy Store Accounts. Prior to the Petition Date, cash deposits into the Dairy Store Accounts generally varied from \$90,000 to \$200,000 weekly, on an aggregate basis for all 40 Dairy Stores.

14. In addition to the cash deposits into the Dairy Store Accounts, payment for products sold by the Dairy Stores and delivered to consumers through services such as Uber Eats, Door Dash, and Grub Hub are electronically deposited into the Dairy Store Accounts. These deposits are net of delivery service charges and fees. Prior to the Petition Date, electronic deposits from delivery services into the Dairy Store Accounts generally varied from \$49,000 to \$64,000 weekly, on an aggregate basis for all 40 Dairy Stores.

15. Approximately three times per week, the Debtors' financial controller manually sweeps funds from the Dairy Store Accounts into the Operating Account. The controller typically leaves \$300.00 in each of the Dairy Store Accounts as a source of miscellaneous petty cash to be used on an as-needed basis. The Dairy Store Accounts do not have check stock, and store managers are limited to using funds in the Dairy Store Accounts via cash deposits and withdrawals.

16. Sales at the Dairy Stores are also made by credit card. The Debtors use JPMorgan Chase Bank, NA. as the credit card processor for each of the Dairy Stores. All credit card receipts for sales from the Dairy Stores are deposited into an account at CIBC established for receipt of credit and charge card payments, designated account number xxx7730 (the “**Merchant Card Account**”), and not the Dairy Store Accounts. Funds in the Merchant Card Account are automatically swept into the Operating Account daily. The Dairy Stores monitor and reconcile sales by credit card using “Toast,” a point-of-sale platform. Prior to the Petition Date, electronic deposits from credit card sales into the Merchant Card Account occurred four times per week in amounts generally ranging from \$500,000 to \$945,000 weekly, on an aggregate basis for all 40 Dairy Stores.

ii. Grocery Retail Segment

17. The Grocery Retail Segment encompasses sales directly to grocery retailers or through a distributor, which then sells product for its own account to different grocery retailers. In either case, sales through the Grocery Retail Segment are typically paid by check or electronic funds transfer directly into the Operating Account; credit card payments are discouraged. Prior to the Petition Date, deposits into the Operating Account from the Grocery Retail Segment generally ranged from \$200,000 to \$500,000 weekly.

iii. Home Delivery Segment

18. The Home Delivery Segment encompasses sales directly to consumers, with products delivered to their doorsteps on either a recurring or single-order basis. Home delivery orders are typically placed through the internet through ODI’s website or mobile application (collectively, the “**E-Commerce Platform**”). Through the E-Commerce Platform, customers are given the option to pay for products by electronic funds transfer, check, or credit card. The

Debtors typically discourage payment in cash for home delivery sales. Generally speaking, revenues generated through the E-Commerce Platform are as follows: (a) for payment by check, approximately \$21,000 a week; (b) for payment through automatic daily charges to customer credit cards or bank accounts, approximately \$555,000 a week; and (c) for payment by manual funds transfers from customers, \$63,000 per week.

19. For all sales by the Home Delivery Segment, payments are collected as follows: (a) electronic funds transfer are collected directly into the Operating Account; (b) checks are made payable to “Oberweis Dairy” and are manually deposited by the Debtors into the Operating Account; and (c) payments by credit card are remitted by each credit card issuer directly into the Merchant Card Account and then transferred into the Operating Account daily. Prior to the Petition Date, deposits into the Operating Account and the Merchant Card Account from Home Delivery Sales generally ranged from \$560,000 to \$690,000 weekly.

iv. Additional Revenue Sources

20. The ODI Business, through TOGI Brands, is a party to that certain *Oberweis Franchise Systems, LLC Franchise Agreement* (the “**Franchise Agreement**”) with Happy Cows, LLC (the “**Franchisee**”), under which the Franchisee operates an “Oberweis Dairy” branded store in Bradley, Illinois, and also operates its own small-scale home delivery program. The Franchisee’s home delivery customers place orders through the E-Commerce Platform. The Debtors then collect such payments consistent with the above-described Home Delivery Segment sales for the benefit of the Franchisee and arrange to ship the purchased items to the Franchisee, who then delivers products to its customers. The Franchisee also purchases products from the Debtors for use in the Franchisee’s retail operations. On a weekly basis, the Debtors and Franchisee true-up the foregoing transactions, as well as royalty fees under the Franchise

Agreement. Prior to the Petition Date, the amount of funds collected by the Debtors in connection with royalties from sales by the Franchisee generally ranged from \$850 to \$1,850 weekly.

21. Last, the Debtors own a parcel of improved real estate in Lincolnwood, Illinois where a Giordano's restaurant is located. The parcel is leased to Labyrinth Ventures, LLC, which subleases it to the operator of the Giordano's restaurant. Monthly rent is \$4,589.15 and is paid to Third Millenium, which deposits the funds into its Bank Account maintained at CIBC.

B. Outflows from Operating Account

22. As described above, all of ODI's revenue is ultimately funneled into the Operating Account. From there, ODI disburses funds to pay obligations in the ordinary course of business from the Operating Account, as well as several other accounts consisting of: the "Controlled Disbursement Account," the "Payroll Account," and multiple "Affiliate Accounts" (each as defined below).

i. Electronic Funds Transfers Directly from Operating Account

23. Debtors remit payment to certain of their creditors and payees through electronic funds transfers ("EFT's") directly from the Operating Account. As of the Petition Date, EFT's were typically made by the Debtors on a manual or automatic basis. For manual transfers, the Debtors assessed each invoice and, if approved, affirmatively *pushed* money out of the Operating Account to the applicable vendor through an EFT.

24. For automatic payments, certain vendors were given authority to *pull* funds out of the Operating Account without any prior assessment or approval by the Debtors. The Debtors did not, however, provide *carte blanche* to its vendors to be paid via EFT. Instead, the Debtors

implemented certain maximum dollar thresholds on a per vendor basis which dictated whether CIBC could process an EFT without any further permission from the Debtors.

25. Immediately prior to the Petition Date, the Debtors reset all of the dollar thresholds for EFT's to vendors at \$0.00, such that there will be no EFT's to vendors (or any other payee) absent prior review and approval of the Debtors.

ii. Check Drafts from Controlled Disbursement Account

26. The Debtors use a controlled disbursement account maintained at CIBC to remit payment to certain vendors and payees via check, as opposed to EFT's, designated as account number xxx1461 (the "**Controlled Disbursement Account**"). The Controlled Disbursement Account permits the Debtors to monitor payments and short-term liquidity needs in real time, specifically by identifying checks presented to CIBC on a particular day and approving same. The Controlled Disbursement Account has an overnight threshold of \$0.01, meaning virtually all funds needed to honor outstanding checks are funded or drawn through the Operating Account, and there are never separate funds above one cent held in the Controlled Disbursement Account overnight.

iii. Payroll Account

27. The Debtors use a dedicated payroll account maintained at CIBC to remit payroll to its employees, designated as account number xxx7072 (the "**Payroll Account**"). The Payroll account is funded by monies in the Operating Account. On the Thursday before payroll, ADP calculates and draws funds from the Payroll Account for general pay; on Friday, ADP draws funds out of the Payroll Account for payroll taxes. Like the Controlled Disbursement Account, the Payroll has an overnight threshold of \$0.01.

iv. Affiliate Accounts

28. As set forth in the Declaration and herein, ODI is the primary operating Debtor, with certain affiliated debtors constituting real estate holding entities or other aspects of the ODI Business. Those Debtors maintain various accounts at CIBC (collectively, the “**Affiliate Accounts**”). ODI Generally transfers funds to the Affiliate Accounts for payments of rent, real estate taxes, cash receipts from licensing agreements, or similar transactions on an as-needed basis. The Affiliate Accounts are otherwise of limited use, and do not typically hold more than a de minimis balance.

V. ARGUMENT

29. The Debtors should be permitted to use their existing: Bank Accounts; Cash Management System; business forms; and books and records. As a whole, the Bank Accounts; Cash Management System; existing business forms; and books and records constitute the Debtors’ ordinary business practice. Because of the Debtors’ integrated financial structure, it would not be possible to establish an entirely new way of transacting business and balance the financial challenges associated with the filing for bankruptcy protection.

A. The Debtors Should be Granted Authority to Maintain Their Existing Bank Accounts

30. Notwithstanding the UST Guidelines that new bank accounts be opened, the Debtors respectfully submit that they would experience undue hardship if required to close the Bank Accounts and open new accounts at one or more banks. Among other things, resultant delays, confusion, and disruption of the Debtors’ daily collection of receivables is expected if the Debtors were forced to close their forty-eight existing Bank Accounts and open new accounts in like number.

31. To ensure immediate access to receivables, to avoid delays in payments to administrative creditors, and ensure as smooth a transition into Chapter 11 as possible with minimal disruption, it is important that the Debtors be permitted to maintain the Bank Accounts. Subject to a prohibition against honoring prepetition checks without specific authorization from this Court, the Debtors request that the Bank Accounts be deemed debtor-in-possession accounts and that their maintenance and continued use, in the same manner and with the same account numbers, styles, and document forms as those employed during the prepetition period, be authorized.

32. To protect against inadvertent payment of prepetition claims: (a) the Debtors will cause the cancellation of any and all checks in float as of the Petition Date, except to the extent the payment of such claims is authorized by the Court; (b) the Debtors have removed EFT authority, or have taken such other steps as are necessary to ensure that no EFT withdrawals occur on account of prepetition claims, except to the extent payment of such claims is authorized by the Court; and (c) the Debtors' personnel and the personnel at the Bank with whom the Debtors customarily deal will be instructed how to distinguish readily between prepetition and postpetition obligations without closing existing accounts and opening new ones. The Debtors have been in contact with the Bank prior to the Petition Date, in part to address such concerns.

33. Further, to ease the task of distinguishing between prepetition and postpetition checks, the Debtors will: (a) leave a gap in their check numbers (rounding subsequent check numbers up to the next hundred) such that check numbers preceding the gap will be readily identifiable as prepetition checks and the check numbers following the gap will be readily identifiable as postpetition checks; or (b) otherwise utilize their existing software to implement a monitoring system which has the same effect.

34. The Debtors submit that if the relief requested in this Motion is granted, they will use commercially reasonable efforts not to pay, and the Bank will not be directed to pay, any debts incurred before the Petition Date, except to the extent the Court may authorize the payment of such debts. The Debtors are confident they can avoid such prepetition payments and have been particularly attuned to this issue prior to the Petition Date. For example, the Debtors have taken great care to ensure that prior to the Petition Date their employees received paychecks for prepetition work in the ordinary course; and have calculated the small prepetition “stub period” of work between the pay period and the Petition Date, for which court authority is required, before corresponding paychecks are issued post-petition in the upcoming weeks. Such payments are subject to a separate motion filed by the Debtors for appropriate court authority.

35. The Debtors therefore seek to be excused from the UST’s requirement that the Bank Accounts be closed.

B. The Debtors Should be Authorized to Continue Using their Existing Cash Management System

36. In order to lessen the disruption caused by the Chapter 11 Cases and maximize the value of the Debtors’ estates, the Debtors also request authority to continue to use their existing Cash Management System, as it may be modified as required by the Debtors in the exercise of their business judgment.

37. The Cash Management System allows the Debtors to manage all of their cash flow and disbursement needs and includes the necessary account mechanisms to enable the Debtors to trace funds, ensure that all transactions are adequately documented and readily ascertainable, and comply with applicable requirements. The Debtors will continue to maintain detailed records reflecting any transfers of funds.

38. The Debtors have employed the Cash Management System for almost 15 years, and the Cash Management System constitutes their ordinary business practice. Because of the Debtors' integrated financial structure, it would not be possible to establish a new system of accounts and a new cash management and disbursement system without incurring substantial additional costs and expenses, and imposing delays and inconveniences that could threaten the viability of the Debtors' ongoing operations.

39. Bankruptcy courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems. *See In re The Charter Co.*, 778 F.2d 617, 621 (11th Cir. 1985) (stating that it was "entirely consistent" with the requirements of section 363 of the Code for the bankruptcy court to authorize the debtor to use its prepetition "routine cash management system"); *see also, e.g., In re UNR Indus., Inc.*, 46 B.R. 25, 27 (Bankr. N.D. Ill. 1984) (noting that the debtors "utilize[d] a court approved and common cash management system").

40. As one bankruptcy court has explained, a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1993), *aff'd in part, rev'd in part*, 997 F.2d 1039, 1061 (3d Cir. 1993) (emphasizing the bankruptcy court's reasoning that a requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient."); *see also Southmark Corp. v. Grosz (In re Southmark Corp.)*, 49 F.3d 1111, 1114 (5th Cir. 1995) (noting that a cash management system allowed the debtor "to administer more efficiently and effectively its financial operations and assets").

41. For the foregoing reasons, the Debtors' maintenance of the Cash Management System is not only essential but is also in the best interests of their estates, all creditors, and other parties in interest.

C. The Debtors Should be Granted Authority to Continue to Use Their Existing Business Forms

42. In order to minimize the expenses borne by their estates, the Debtors also request that they be permitted to continue to use their existing correspondence and business forms (including but not limited to letterhead, invoices, etc.) without alteration or change to those used before the Petition Date. Changing correspondence and business forms would be unnecessary, burdensome to the Debtors' estates, expensive, and disruptive to business operations. *See In re Gold Standard Baking, Inc.*, 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995) (holding Bankruptcy Administrator's requirement prohibiting issuance of checks without "Debtor in Possession" designation to be unenforceable); *In re Johnson*, 106 B.R. 623, 625 (Bankr. D. Neb. 1989) (holding that debtor was not required to obtain new checks imprinted with "debtor in possession").

43. If the Debtors are not permitted to continue to use their existing checks and business forms, the resulting prejudice will include significant delay in the administration of the Debtors' business operations and unnecessary cost to the Debtors' estates to print new checks and forms. For these reasons, the Debtors request that they be authorized to use existing business forms without placing the label "Debtor in Possession" on such forms.

D. The Debtors Should be Granted Authority to Continue to Use Their Existing Books and Records.

44. In order to minimize expenses to the Debtors' estates and avoid time-consuming administrative burdens, the Debtors also request that they be authorized to continue using their

existing books and records. Opening new books and records would be burdensome to the estate and disruptive to the Debtors' business operations.

45. For the reasons set forth above, the Debtors request that they be authorized to continue using their existing books and records, provided that the Debtors make appropriate notations in the books and records to reflect the Petition Date and the commencement of the Chapter 11 Cases.

E. The Debtors Satisfy the Investment and Deposit Guidelines of Section 345(B) of The Code

46. Section 345(b) of the Code authorizes deposits or investments of money of a bankruptcy estate, such as cash, in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) provides that the trustee or debtor in possession must require, from the entity with which the money is deposited or invested, a bond in favor of the United States secured by the undertaking of an adequate corporate surety. 11 U.S.C. § 345(b).

47. A court may, however, relieve a debtor in possession of the restrictions imposed by section 345(b) for cause. *Id.*

48. As reflected in Exhibit A hereto, all of the Bank Accounts other than the Dairy Store Accounts are located at CIBC. A list published by the UST identifies CIBC as an “authorized depository,” meaning that it has agreed to satisfy the requirements of section 345 of the Bankruptcy Code with respect to deposits of debtors in possession. *See* United States Trustee, *Authorized Depositories Northern District of Illinois Chicago as of January 2021* https://www.justice.gov/ust/ust-regions-r11/file/chicago_authorized_depositories.pdf/dl.

Therefore, all of the Debtors' accounts at CIBC satisfy the investment and deposit requirements of section 345 of the Code and no further bond is required.

49. Likewise, the Debtors' non-CIBC accounts also satisfy the requirements of section 345 of the Code, because the funds held in each do not, and will not, exceed the \$250,000 deposit insurance provided by the U.S. Federal Deposit Insurance Corporation (the "FDIC"). As described above, all but \$300 in each Dairy Store Account is swept into the Operating Account three times per week. Given that weekly cash deposits and proceeds from sale conducted through delivery services (*e.g.*, Uber Eats) into *all* Dairy Store Accounts generally total between \$139,000 to \$264,000 weekly, *on an aggregate basis for all 40 Dairy Stores*, it is virtually impossible that any particular Dairy Store Account will ever come close to exceeding the FDIC's \$250,000 insurance limit. Because the bond requirement of section 345 only applies to deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," 11 U.S.C. § 345(b), the requirement is inapplicable to the Dairy Store Accounts.

50. Because no additional bond is required to maintain any of the Bank Accounts, the Debtors request a finding that all Bank Accounts satisfy the investment and deposit requirements of section 345 of the Code.

VI. NOTICE

51. 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) each of the Debtors' 20 largest unsecured creditors pursuant to Federal Rule of Bankruptcy Procedure 1007(d); (c) counsel to the Debtors' secured lender, CIBC; and (d) all other parties who have requested notice and service of

pleadings in any of the Chapter 11 Cases. In light of the nature of the relief requested, the Debtors submit that no other or further notice is required.

VII. CONCLUSION

52. The Debtors respectfully submit that the requested relief is critical to avoid immediate and substantial disruption to their operations and is necessary to preserve business continuity and avoid the operational and administrative paralysis that would occur without such relief.

WHEREFORE, Oberweis Dairy, Inc., The Oberweis Group, Inc., North Aurora Ice Cream, LLC, TOGI RE I, LLC, TOGI Brands, LLC, and Third Millennium Real Estate L.L.C., debtors 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.*, Debtors

By: /s/Adam P. Silverman
Proposed Counsel for the Debtors

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Proposed Counsel for the Debtors and Debtors in Possession

Exhibit A to

Motion of Debtors for Entry of an Order:

(I) Authorizing (A) Maintenance of Existing Bank Accounts, (B) Continued Use of Existing Cash Management System, (C) Continued Use of Existing Business Forms, and (D) Continued Use of Existing Books and Records; (II) Finding the Investment and Deposit Requirements of 11 U.S.C. § 345(B) are Satisfied or Otherwise Excused; and (III) Granting Related Relief

Bank Accounts

	Account Type	Bank	Account #	Debtor
1.	Operating Account	CIBC	XXX7722	ODI
2.	Controlled Disbursements Account	CIBC	XXX1461	ODI
3.	Merchant Card Account	CIBC	XXX7730	ODI
4.	Payroll Account	CIBC	XXX7072	ODI
5.	Oberweis Dairy Inc. (money market) ¹	CIBC	XXX9406	ODI
6.	North Aurora Ice Cream, LLC	CIBC	XXX5419	NAIC
7.	Togi RE I, LLC	CIBC	XXX3166	TOGI RE I
8.	Togi Brands, LLC	CIBC	XXX3383	TOGI Brands
9.	Third Millennium Real Estate, LLC	CIBC	XXX2420	TMRE
10.	The Oberweis Group Incorporated	CIBC	XXX7748	TOGI
	Dairy Store Account	Bank	Account #	Debtor
11.	Arlington Heights	Old National Bank	XXX005607	ODI
12.	Ballwin, MO	PNC	XXX2565609	ODI
13.	Bartlett	Old Second Bank	XXX0019721	ODI
14.	Bloomington	Fifth Third	XXX6423	ODI
15.	Bloomington	Busey Bank	XXX605407	ODI
16.	Bolingbrook	Old Second Bank	XXX0039253	ODI
17.	Bolingbrook East	PNC	XXX7288998	ODI
18.	Champaign	Busey Bank	XXX605068	ODI
19.	Downers Grove	Old National Bank	XXX0596157	ODI
20.	Elgin	PNC	XXX1365568	ODI
21.	Elmhurst	Elmhurst Bank	XXX4000915	ODI
22.	Evergreen Park	BMO	XXX4380914	ODI
23.	Geneva	Fifth Third	XXX4201682	ODI
24.	Glen Ellyn	PNC	XXX7232183	ODI
25.	Glenview	Busey Bank	XXX2756	ODI
26.	Gurnee	BMO	XXX2386281	ODI
27.	Joliet	BMO	XXX0065690	ODI
28.	Kirkwood, MO	Lindell Bank	XXX0401269	ODI
--	Lake Zurich ²	Fifth Third	XXX6423	ODI
--	Lakeview ³	Fifth Third	XXX4201682	ODI
29.	Lincolnwood	Fifth Third	XXX0002062	ODI
30.	Mokena	BMO	XXX1167942	ODI
31.	Naperville South	Bank of America	XXX015139319	ODI
32.	Naperville North	First Secure Community Bank	XXX7720	ODI
33.	North Aurora	First State Bank	XXX0315	ODI
34.	Oak Park ⁴	US Bank	XXX081260	ODI

¹ Established to receive PPP funds; currently *de minimis* activity, if any.

² This Bank Account is shared with the Bloomington Dairy Store; line item 14.

³ This Bank Account is shared with the Geneva Dairy Store; line item 23.

⁴ This location has ceased operating, but the account has not yet been closed.

35.	Oakville, MO	Midwest Bank Centre	XXX8336	ODI
36.	O'Fallon, MO	PNC	XXX6995708	ODI
37.	Orland Park	PNC	XXX3141353	ODI
38.	Oswego	BMO	XXX3009503	ODI
39.	Park Ridge	PNC	XXX6922437	ODI
40.	Rolling Meadows	Parkway Bank	XXX505	ODI
41.	Royal Oak	PNC	XXX3056814	ODI
42.	Schaumburg	BMO	XXX0164231	ODI
43.	Schererville, IN	Old National Bank	XXX1017	ODI
44.	Skokie	PNC	XXX1444853	ODI
45.	St. Charles	BMO	XXX4110758	ODI
46.	St. Peters, MO	Commerce Bank	XXX317791	ODI
47.	Troy, MI	PNC	XXX3056814	ODI
48.	Western Springs	BMO	XXX1555107	ODI
49.	Wheaton	PNC	XXX7232191	ODI

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 (I) AUTHORIZING (A) MAINTENANCE OF EXISTING BANK ACCOUNTS, (B) CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, (C) CONTINUED USE OF EXISTING BUSINESS FORMS, AND (D) CONTINUED USE OF EXISTING BOOKS AND RECORDS; (II) FINDING THE INVESTMENT AND DEPOSIT REQUIREMENTS OF 11 U.S.C. § 345(B) ARE SATISFIED OR OTHERWISE EXCUSED; AND (III) GRANTING RELATED RELIEF

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. §§ 105, 345, 363, and 1108 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), for an order (I) authorizing (a) maintenance of existing bank accounts, (b) continued use of existing cash management system, (c) continued use of existing business forms, and (d) continued use of existing books and records; (II) finding the investment and deposit requirements of 11 U.S.C. § 345(b) are satisfied or otherwise excused; and (III) granting related relief (the “Motion”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”); 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 is granted to the extent provided herein.
2. Pursuant to sections 363(c)(1) and 1108 of the Bankruptcy Code, the Debtors are authorized to designate, maintain, and continue to use, with the same numbers, all of the bank accounts listed on Exhibit A hereto (the “Bank Accounts”) in the ordinary course of business, subject to the terms of, and any restrictions set forth in, this Order.
3. Pursuant to sections 363(c)(1) and 1108 of the Bankruptcy Code, the Debtors are authorized to (a) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession, and (b) continue their management of the inflows and outflows of funds in the Bank Accounts (the “Cash Management System”).
4. All financial institutions at which the Bank Accounts are maintained (collectively, the “Banks”), are authorized to continue to service and administer the Bank Accounts as accounts of the Debtors, as debtors in possession, without interruption and in the ordinary course of business, and to receive, process, and honor and pay, any and all checks, drafts, wires, automated clearing house transfers, or electronic funds transfers, drawn on the Bank Accounts on or after April 12, 2024 (the “Petition Date”), by the holders or makers thereof, as the case may be; provided, however, the Debtors shall take all commercially reasonable actions to stop payment on any checks, drafts, wires, automated clearing

house transfers, or electronic funds transfers from any Bank Account that were not honored prior to the Petition Date, except to the extent such payments are approved by the Court in any order.

5. The Banks are authorized to accept and to honor all representations from the Debtors as to which checks, drafts, wires, automated clearing house transfers, or electronic funds transfers should be honored or dishonored, consistent with any order(s) of this Court, whether the checks, drafts, wires, automated clearing house transfers, or electronic funds transfers are dated prior to, on, or subsequent to the Petition Date, and whether or not the Banks believe the payment is or is not authorized by any order (s) of the Court.

6. The Banks are authorized to “charge back,” offset, and/or debit the Bank Accounts in the ordinary course of business without need for further order of this Court for: (a) all checks drawn on the Debtors’ accounts which were cashed at the Banks’ counters or exchanged for cashier’s checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of Debtors’ accounts with the Banks prior to the Petition Date which have been dishonored or returned unpaid, including dishonored checks, wires, drafts, automated clearing house transfers, or electronic funds transfers (credits or debits), for any reason, together with any fees and costs in connection therewith; and (c) all prepetition amounts outstanding as of the date hereof, if any, owed to the Banks for the maintenance of the accounts at the Banks.

7. The Banks are authorized to return all prepetition checks drawn on the Bank Accounts and the Debtors are authorized to reissue such checks on a post-petition basis, subject to (a) the requirements imposed on the Debtors under the terms of any order authorizing the Debtors to obtain debtor-in-possession financing and use cash collateral, and any other orders of the Court and (b) the entry of any order(s) of the Court authorizing such payment. Notwithstanding the foregoing, the Banks are authorized to accept and honor all prepetition checks drawn on the Bank Accounts to the extent such payments are approved by the Court.

8. The Debtors are hereby authorized and directed to pay, and the Banks are hereby authorized to debit the Bank Accounts in the ordinary course of business without need for further order of this Court for all ordinary course adjustments to the accounts maintained with the Banks (including with respect to returned checks, “charge backs” and similar items, and any fees and costs in connection therewith).

9. The Banks shall not be liable to any party on account of: (a) following the Debtors’ representations, instructions, or presentations as to any order of the Court (without any duty of further inquiry); (b) the honoring of any prepetition checks, drafts, wires, automated clearing house transfers, or electronic funds transfers in a good faith belief or upon a representation by the Debtors that the Court has authorized such prepetition check, draft, wire, automated clearing house transfers, or electronic funds transfers; or (c) an innocent mistake made despite implementation of reasonable handling procedures.

10. The Debtors are authorized to continue to use their existing checks and other business forms, without any requirement that the Debtors’ checks or forms include the legend “Debtor in Possession” or a “debtor in possession number,” provided the Debtors shall: (a) leave a gap in their check numbers (rounding subsequent check numbers up to the next hundred) such that check numbers preceding the gap will be readily identifiable as prepetition checks and the check numbers following the gap will be readily identifiable as postpetition checks; or (b) otherwise utilize their existing software to implement a monitoring system which has the same effect.

11. Without the need to seek further order of the Court, the Debtors may open any new bank accounts or close any existing accounts, as the Debtors may deem necessary and appropriate, and any new account, for all purposes under this Order, shall be deemed a Bank Account (as if it had been opened prior to the Petition Date and identified on Exhibit A hereto), and, as with the existing Bank Accounts, the Banks (or if applicable, a new bank) shall be subject to the rights and obligations of this Order with respect thereto; provided, however, that any new account(s) shall be with a financial institution which is recognized by the UST as an institution which has qualified under the UST's Depository Program for cases filed in the Northern District of Illinois.

12. The Debtors and the Banks are hereby authorized and directed to continue to perform pursuant to the terms of any prepetition agreements governing the Bank Accounts that may exist between them, except and to the extent otherwise directed by the terms of this Order. The parties to such agreements shall continue to enjoy the rights and remedies afforded them under such agreements, except to the extent modified by the terms of this Order, any other order entered in these Chapter 11 Cases, or by operation of the Bankruptcy Code.

13. Notwithstanding anything to the contrary contained in this Order, 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.

14. For Bank Accounts at CIBC Bank USA, or any affiliate thereof, 11 U.S.C. § 345(b) is deemed satisfied. For all other Bank Accounts, 11 U.S.C. § 345(b) is hereby excused for cause.

15. Notice of the Motion on a shortened and expedited basis is allowed and approved.

16. The terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

Enter:

Dated:

United States Bankruptcy Judge

Prepared by:

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ADAM P. SILVERMAN, ESQ. (ARDC #6256676)
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