EXHIBIT A
(DIP Term Sheet)
BORDEN DAIRY COMPANY

SUPERPRIORITY SECURED
DEBTOR-IN-POSSESSION CREDIT FACILITY
TERM SHEET

Summary of Proposed Terms and Conditions

Parties: Borrower: Borden Dairy Company, the borrower, in its capacity as debtor and debtor-in-possession in Chapter 11 Cases commenced on January 5, 2020 (the “Petition Date”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), main case No. 20-10010 (CSS) (jointly administered).

Guarantors: The Guarantors under the Prepetition Credit Agreement and other Loan Documents, in their respective capacities as debtors and debtors-in-possession in Chapter 11 Cases (the “DIP Guarantors”).

Agent: PNC Bank, National Association (“PNC”), as administrative and collateral agent (in such capacity, the “DIP Agent”).

DIP Loan Facility: A senior secured delayed-draw debtor-in-possession credit facility (the “DIP Loan Facility”) provided by PNC and certain funds advised by KKR Credit Advisors (US) LLC or their respective affiliates (collectively, “KKR” and together with PNC, the “DIP Lenders”) with a maximum principal availability of $[_______].

1 This Summary of Proposed Terms and Conditions (this “DIP Term Sheet”) outlines certain terms of the DIP Loan Facility (as defined herein) to be provided under a credit agreement for the DIP Loan Facility (the “DIP Credit Agreement”) proposed to be provided by the DIP Lenders (as defined herein) subject to the conditions herein and as set forth below. This DIP Term Sheet is preliminary, non-binding, and is subject to continued due diligence and internal approvals by the DIP Lenders, and remains subject to the execution of definitive documentation in form and substance acceptable to the DIP Lenders. This DIP Term Sheet does not constitute a commitment, a contract to provide a commitment, or any agreement by the DIP Lenders. This DIP Term Sheet does not attempt to describe all of the terms, conditions, and requirements that would pertain to the financing described herein, but rather is intended to outline certain basic items around which the DIP Lenders and Borden Dairy Company and its affiliated debtors and debtors-in-possession (together, the “Debtors”) in cases (the “Chapter 11 Cases”) under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) believe a financing could be structured.

2 Reference is hereby made to that certain Financing Agreement dated as of July 6, 2017 between Borden Dairy Company, as borrower, Borden Dairy Holdings, LLC, as parent, the other borrowers thereto, the guarantors thereto, the lenders thereto (the “Prepetition Lenders”), and PNC Bank, National Association, a national banking association, as collateral agent and administrative agent for the lenders thereto (the “Prepetition Agent”; together with the Prepetition Lenders, collectively, the “Prepetition Secured Parties”) (as amended, modified, restated or otherwise supplemented from time to time, the “Prepetition Credit Agreement”).

3 Sizing and formulas applicable to the facility shall be negotiated in connection with evaluation of Debtor’s Budget.
(the “Total Aggregate Commitment” and the loans thereunder, the “DIP Loans”) to be made available as follows: (a) up to $[____] million made available not later than one business day following the entry of an interim order authorizing and approving the DIP Loan Facility (the “Interim DIP Order”); and (b) the remainder of the Total Aggregate Commitment made available in delayed draws (not more than once per week) commencing one business day following the entry of a final order of the Bankruptcy Court authorizing and approving the DIP Loan Facility (the “Final DIP Order” and together with the Interim DIP Order, the “DIP Orders”), in each case, subject to the terms and conditions described herein and in the DIP Credit Agreement and related documents and agreements contemplated therein and in accordance with the Budget (as defined below) and the DIP Orders.

The proceeds of the DIP Loan Facility shall be used to provide working capital and for general corporate purposes, subject to the Budget and the terms and conditions of the DIP Credit Agreement and the DIP Orders.

For the avoidance of doubt (x) the Total Aggregate Commitment shall be allocated equally between PNC and KKR, and (y) all DIP Loans held by DIP Lenders shall be pari passu in priority and right of payment and senior in priority to all claims arising under the Prepetition Credit Agreement.

Closing Date: As soon as possible and in any event no later than January [__], 2020 (the “Closing Date”).

Budget: 13-week operating budget setting forth all forecasted receipts and disbursements on a weekly basis for such 13 week period, which shall be acceptable to the DIP Lenders (the “Initial Budget”; as updated in accordance with the next succeeding sentence, the “Budget”). Thereafter, every four weeks the Debtors shall provide a proposed updated version of the Budget for approval by the DIP Agent and the Required DIP Lenders (as defined below), which updated Budget, upon approval by such parties, shall constitute the Budget for all purposes under the DIP Loan Facility. The Debtors shall be required to comply with the applicable Budget at all times and compliance with the applicable Budget shall be tested on a weekly basis, subject to permitted variances therefrom at levels to be agreed.

Interest: [TBD]

Fees: [TBD]

Maturity: The earliest of (i) [180] days after the Petition Date, (ii) the consummation of any sale of all or substantially all of the assets of the Debtors pursuant to section 363 of the Bankruptcy Code, (iii) if the Final Order has not been entered on or before the date that is [30] calendar days after the date the Interim DIP Order is entered, (iv) the acceleration of the DIP Loans and the termination of all commitments under the DIP Loan Facility in accordance with the terms thereof, and (v) the effective date of any plan of reorganization that pays all of the obligations of the Debtors under the DIP Loan Facility in full, and that is otherwise acceptable to the DIP Agent and DIP Lenders.
DIP Loan Liens and Claims:

All obligations of the Debtors under the DIP Loan Facility shall (subject to a customary carve out (as described below)):

i. **364(d) Liens**: be secured by first priority perfected senior priming lien on, and security interest in, the Collateral (as defined in the Prepetition Credit Agreement), which shall prime all prepetition liens on the Collateral (subject to Permitted Liens pursuant to, and as defined in, the Prepetition Credit Agreement).

ii. **364(c)(2) Liens**: be secured by security interests on all of the Debtors’ unencumbered property (together with the Collateral, the “DIP Collateral”).

iii. **364(c)(3) Liens**: be secured by junior security interests on property of the Debtors that is subject to a perfected lien or security interest on the Petition Date.

iv. **364(c)(1) Claims**: constitute allowed superpriority administrative expense claims.

v. **Information and Access Rights**: Information rights and the provision of documents and information, in each case as requested by, and acceptable to, the DIP Agent and DIP Lenders, and access to the Debtors, their management and board of directors, on terms and conditions acceptable to the DIP Agent and DIP Lenders.

The carve out shall be defined as: the sum of (i) all fees required to be paid to the Clerk of the U.S. Bankruptcy Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses up to $[25,000] incurred by a trustee under section 726(b) of the Bankruptcy Code; (iii) to the extent allowed at any time, subject to, and in accordance with, the Budget, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the “Allowed Professional Fees”) of persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”), or by any statutory committees appointed pursuant to section 328 or 1103 of the Bankruptcy Code (collectively, the “Professional Persons”), at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the applicable Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons, in an aggregate amount not to exceed [$______] incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to any statutory committees, which notice may be delivered following the occurrence and during the continuation of an event of default (as defined in the DIP Credit Agreement) and acceleration of the...
obligations of the Debtors under the DIP Credit Agreement, stating that the Post-
Carve Out Trigger Notice Cap has been invoked.

**Milestones:**

The DIP Credit Agreement will include milestones (the “Case Milestones”) related to the Chapter 11 Cases and acceptable to the DIP Agent and DIP Lenders, including, without limitation, the following:

- No later than January [__], 2020, the Debtors shall file a motion to approve the DIP (the “DIP Motion Filing Date”)
- No later than [3] calendar days after the DIP Motion Filing Date, the Bankruptcy Court enters the Interim DIP Order.
- No later than [25] calendar days after the DIP Motion Filing Date, the Bankruptcy Court shall have entered the Final DIP Order.
- No later than [60] calendar days after the DIP Motion Filing Date, the filing of a plan of reorganization for the Debtors (the “Plan”), and a disclosure statement (the “Disclosure Statement”) relating to same, each in form and substance acceptable to the DIP Lenders;
- No later than [95] calendar days after the DIP Motion Filing Date, a hearing on approval of the Disclosure Statement;
- No later than [98] calendar days after the DIP Motion Filing Date, entry of an order by the Bankruptcy Court approving the Disclosure Statement;
- No later than [128] calendar days after the DIP Motion Filing Date, the Bankruptcy Court shall have held a hearing on approval of the Plan;
- No later than [130] calendar days after the DIP Motion Filing Date, entry of an order by the Bankruptcy Court approving the Plan; and
- No later than [135] calendar days after the DIP Motion Filing Date, the Plan has gone effective pursuant to its terms.

**Independent Directors; Special Committee:**

On the Closing Date, the Debtors shall appoint two (2) independent directors reasonably satisfactory to the DIP Lenders, on terms and conditions satisfactory to the DIP Lenders, who shall be the exclusive members of a special committee of the Debtors’ board of directors (the “Special Committee”). The Special Committee shall be delegated exclusive authority, subject to approval by the Bankruptcy Court as applicable, to make any material decisions of the board relating to the Chapter 11 Cases, including without limitation: (i) any chapter 11 plan / 363 sale for any of the Debtors; (ii) other non-ordinary course or significant transactions; (iii) any changes to the Debtors’ governance documents; (iv) any inter-company transactions or settlements; and (v) the retention of additional legal, financial or other advisors to advise the Special Committee in the performance of its duties.

**CRO:**

On the Closing Date, a designee of [Conway Mackenzie] (or another firm reasonably acceptable to the DIP Lenders) shall be engaged to serve as Chief
Restructuring Officer of the Debtors (the “CRO”) pursuant to an engagement letter on terms and conditions reasonably satisfactory to the DIP Lenders. The Debtors hereby acknowledge and agree that (w) the CRO shall be authorized and empowered with sole authority (subject to oversight by the Special Committee) to manage and oversee all current and future executive officers of the Debtors, and all current and future executive officers of the Debtors shall report directly to the CRO in the performance of his or her duties, (x) the CRO shall report directly to the Special Committee, (y) the CRO shall (i) manage all day-to-day aspects of the Debtors’ restructuring efforts and strategies (including, without limitation, approving all disbursements by the Debtors), and (ii) cooperate fully with the DIP Lenders, the Prepetition Secured Parties and their advisors in connection with their ongoing examination of the Debtors’ financial affairs, finances, financial condition, business and operations, and (z) the Debtors shall not terminate the CRO’s engagement or materially modify or reduce the CRO’s role or responsibilities without the prior written consent of the DIP Lenders.

The DIP Loan Facility will contain representations and warranties, affirmative covenants and negative covenants customarily found in loan agreements for similar debtor in possession financings and other representations and warranties, affirmative covenants, and negative covenants acceptable to the DIP Agent and the DIP Lenders.

The Debtors shall continue to prepare and submit to the Agent a Borrowing Base Certificate, together with all supporting schedules, eligibility and availability calculations and reports in respect thereof, as required under the Prepetition Credit Agreement, with such detail and frequency as shall be reasonably satisfactory to the Agent. In addition, the Debtors shall continue to prepare (or cause to be prepared, in the case of any financial statements prepared by their auditors) and deliver to the Agent and the DIP Lenders such interim financial statements and year end financial statements as required under the Prepetition Credit Agreement, with such detail and frequency, including such comparative and year-to-date financial reports and financial calculations, as shall be reasonably satisfactory to the Agent and the DIP Lenders.

The DIP Loan Facility will contain customary and usual events of default for financings of this type, including, without limitation, failure to (i) make payments when due, (ii) failure to comply with the Budget (subject to permitted variances), or (iii) meet a Milestone.

The Prepetition Agent and the Prepetition Lenders shall receive adequate protection to the extent of any diminution in value of their respective interests in their respective prepetition collateral from and after the Petition Date, which may include the provision of replacement liens, superpriority administrative claims, current cash payment of reasonable fees and expenses, including attorneys’ fees, and monthly cash payments in an amount equal to the [non-default] rate of interest on the Obligations under (and as defined in) the Prepetition Credit Agreement.

DIP Lenders holding loans and commitments in excess of 50% of the total loans and commitments outstanding under the DIP Loan Facility; provided that Required DIP Lenders shall include each of PNC and KKR.
Expenses: Debtors shall pay all out-of-pocket fees, costs, disbursements and expenses of the DIP Agent and DIP Lenders (including all out-of-pocket fees, costs, disbursements and expenses of (i) Blank Rome LLP, as counsel to the DIP Agent, (ii) King & Spalding LLP and Morris, Nichols, Arsht & Tunnell LLP, as counsel to certain of the DIP Lenders, and (iii) any financial advisor retained by the DIP Agent and/or DIP Lenders incurred in connection with the Chapter 11 Cases).

Governing Law: Except as governed by the Bankruptcy Code, the laws of the State of New York.