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11
12 **UNITED STATES BANKRUPTCY COURT**
13
14 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**
15

16 In re
17
18 FARGO TRUCKING COMPANY, INC.,
19
20 Debtor and Debtor-in-Possession.

Case No.2:17-bk-23714-NB

Chapter 11

**DEBTOR AND DEBTOR-IN-
POSSESSION'S MOTION TO EXTEND
EXCLUSIVITY PERIOD; DECLARATION
OF LANE K. BOGARD IN SUPPORT**

[No Hearing Required]

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MOTION

**TO THE HONORABLE NEIL W. BASON, UNITED STATES BANKRUPTCY JUDGE; THE
UNITED STATES TRUSTEE, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS;
AND ALL PARTIES IN INTEREST:**

FARGO TRUCKING COMPANY, INC., Debtor and Debtor-in-Possession herein (hereinafter referred to as "Debtor"), hereby moves this court to extend the exclusivity period (the "Motion").

This Court has jurisdiction over this Motion, which constitutes a core proceeding, under 28 U.S.C. § 157(b)(2)(A). This Motion is based on the facts and law as set forth in the attached Memorandum of Points and Authorities, the Declaration of Lane K. Bogard, and such additional evidence and argument as properly may be considered by the Court.

By the Motion, Debtor seeks to extend the exclusivity period from March 6, 2018 to at least until June 4, 2018.

On November 6, 2017, Debtor filed a petition for Chapter 11 Bankruptcy. Debtor hopes to emerge from this bankruptcy by confirming a plan of liquidation or reorganization. In order to file a plan and disclosure statement, enough time needs to pass to (1) allow Debtor to work with the Official Committee of Unsecured Creditors (the "Committee"), judgment holders, the California Department of Labor Standards Enforcement, Office of the Labor Commissioner (the "Labor Commissioner"), and the Joe Murez Exempt Trust (the "Landlord") to resolve any concerns they have as to the Settlement Motion, (2) allow Debtor sufficient time to resolve the fraudulent conveyance claims through the Settlement Motion which will provide funds with which Debtor can fund a plan, (3) to allow Debtor sufficient time to resolve the claims filed against it, (4) to allow Debtor sufficient time to assess profitability and provide projections supporting feasibility of any proposed plan, and (5) to allow Debtor time to engage in settlement negotiations with the Committee regarding a joint plan. Due to these issues, Debtor will be unable to file a plan and disclosure statement before the expiration of the exclusivity period, March 6, 2018. While Debtor is unsure when it will be able to file a plan and disclosure statement, Debtor believes a 90-day extension of the exclusivity period will allow Debtor to continue to work with the Committee and other parties to resolve their objections to the Settlement Motion, negotiate a reorganization, and start the process to resolve the claims filed against it. Further, this period is short


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1 enough that creditors and the Committee can have assurance that Debtor will continue diligently on the
2 path of reorganization. Additionally, the Settlement Motion is set for hearing on May 1, 2018 and no
3 party will be able to file a plan before the Settlement Motion is resolved. Therefore, Debtor requests that
4 the Court extend the exclusivity period for 90 days from March 6, 2018 to June 4, 2018. Given the
5 circumstances of Debtor's bankruptcy case, cause exists to extend the exclusivity period.

6 Wherefore, Debtor requests that the Court extend the exclusivity period to at least until June 4,
7 2018. In the event Debtor is unable to file a plan and disclosure statement by this date, Debtor may seek
8 an extension of the exclusivity period

9 Respectfully submitted

10 HABERBUSH & ASSOCIATES, LLP

11
12
13 By: 
14 LANE K. BOGARD, ESQ., Attorneys for
15 Debtor and Debtor-in-Possession

16 Dated: March 6, 2018

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND FACTUAL BACKGROUND**

3 On November 6, 2017, Debtor filed a voluntary petition for relief under the Bankruptcy Code
4 (the "Petition Date"). Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, Debtor retains possession
5 and control of its assets and is authorized to continue the operation and management of its business.

6 Debtor is a trucking company located in Los Angeles, California that provides trucking services
7 throughout California. Debtor is limiting its operations for purposes of this bankruptcy to an
8 administrative function of employing trucking companies to haul loads for various customers.

9 **A. What Precipitated the Bankruptcy**

10 Prior to the Petition Date, the Debtor operated as a drayage company in the ports of Long Beach
11 and Los Angeles. The Debtor hired individual truck drivers to haul cargo from the port to offsite
12 warehouses. For many years, the truck drivers provided their own vehicles and were considered
13 independent contractors. Most of the drivers' trucks were old, high-pollutant vehicles.

14 In the 2000s, drayage companies in the ports of Los Angeles and Long Beach were ordered to
15 use new, cleaner vehicles so as to reduce their pollution imprint. A side effect of this policy was that
16 the individual drivers could no longer use their own vehicles because those machines did not meet the
17 new clean-air requirements. At the same time, these individuals generally could not afford the newer
18 vehicles that could qualify under the new standards. Accordingly, many drayage companies, including
19 the Debtor, were essentially forced to expend their own funds to acquire fleets of the new vehicles,
20 which they in turn leased to the individual drivers. Like other drayage companies, the Debtor thereafter
21 deducted "lease payments" (among other deductions) from the drivers' paychecks. So long as the drivers
22 were independent contractors, these deductions were arguably permissible.

23 Unfortunately for the Debtor, the California Department of Labor Standards Enforcement, Office
24 of the Labor Commissioner (the "Labor Commissioner") did not share the Debtor's view on the truckers'
25 employment status. Between January 2013 and June 2014, approximately fifty (50) separate truck
26 drivers filed complaints with the Labor Commissioner, alleging that they were, in truth, employees rather
27 than independent contractors. The Labor Commissioner agreed. In July 2015, it issued a 307-page
28 Order, Decision, or Award (the "Award") finding in favor of all 50 individual truck drivers and ordering

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1 the Debtor to pay those drivers a collective award of more than \$8.6 million. The Award is the largest
2 award to have even been issued to a drayage company, and it has received nationwide news coverage.

3 The deadline to appeal the ODAs to the Superior Court of California, Los Angeles County for
4 de novo review expired and the ODAs became final non-appealable judgments. In or about 2017, many
5 of the drivers began to enforce their judgments by scheduling and attempting to conduct judgment debtor
6 examinations of Debtor through its representatives (Philip Ting and June Ou). In addition, the Labor
7 Commissioner, who was assigned several of the judgments, issued an investigative subpoena and notices
8 of levy to entities who it alleges hold assets of the Debtor. Further, the judgment holders began
9 attempting to hold Debtor's shareholders, officers, and directors, along with other entities, liable for the
10 judgments by using a number of different legal theories. For example, one of the drivers commenced an
11 action seeking to enforce his judgment against Debtor's shareholders and several entities. The action
12 alleges conspiracy to commit fraud to avoid paying the judgment and alleges that fraudulent transfers
13 to several entities were made to avoid paying the judgment. This action is entitled *Laurencio Hernandez*
14 *v. Fargo Trucking Company, Inc., et al.*, styled case number NC061346 filed in the Superior Court of
15 the State of California, County of Los Angeles (the "Fraudulent Transfer Action").

16 Debtor commenced this Chapter 11 bankruptcy case to stop enforcement of the judgments and
17 stay the Fraudulent Transfer Action to give Debtor time to negotiate a settlement with the judgment
18 holders, to resolve Debtor's outstanding liabilities, and reorganize its affairs in a manner that most
19 benefits creditors.

20 **B. Background of Actions Taken in Bankruptcy**

21 Debtor is paying its bills as they become due. This is reflected in the Debtor's Monthly
22 Operating Reports on file with the Court. Declaration of Lane K. Bogard at ¶ 3.

23 An official committee of unsecured creditors (the "Committee") was appointed on December 19,
24 2017. The Committee filed an Application to Employ Levene, Neale, Bender, Yoo & Brill L.L.P., as
25 general bankruptcy counsel for the Committee (the "Application"). Debtor filed a limited opposition
26 to the Application. A hearing is set on the Application for March 6, 2018. As discussed below, Debtor
27 is currently working with the Committee to provide the Committee's attorneys with the documents it has
28 requested. Declaration of Lane K. Bogard at ¶ 4.

1 On February 15, 2018, the Committee filed an Application to Employ Cohnreznick LLP, as
2 Financial Advisor to the Official Committee of Unsecured Creditors [Dkt. No. 77]. The Court has not
3 entered an order on the Committee's Application to Employ Cohnreznick LLP, as Financial Advisor to
4 the Official Committee of Unsecured Creditors yet. Declaration of Lane K. Bogard at ¶ 5.

5 To emerge from this bankruptcy, Debtor's intention was to enter into a settlement with various
6 entities that may have liabilities to Debtor based on fraudulent conveyance and other theories. Debtor
7 reached a settlement with the various entities. On January 10, 2018, Debtor filed a motion for an order
8 approving settlement between Debtor and CKT Logistics, Inc., Fargo International, LLC, Fargo
9 Transport, LLC, Fargo Trucking Logistic Co., LLC, Express FTC, Inc., Hancore Brokerage Services,
10 Inc., W3 International, Inc., June H. Ou, Philip H. Ting, Gershom Shing, Robert F. Wallace, Kurt Oliver,
11 and Sigmund H. Ting Pursuant to Federal Rule of Bankruptcy Procedure 9019 (the "Settlement
12 Motion"). As stated in the Settlement Motion, the proposed settlement provides for payment of the total
13 sum of \$2,000,000 and transfer of 52 trucks to Debtor's estate and the waiver of a claim of at least
14 \$1,200,000 (a settlement having a value to the estate of \$5,000,000 - not taking into account the value
15 of the waived claim). This settlement will provide funds with which Debtor can fund a plan. Declaration
16 of Lane K. Bogard at ¶ 6.

17 Several parties, including the Committee, Labor Commissioner, and Landlord (defined
18 hereinbelow), objected to the Settlement Motion. The Court held a hearing on the Settlement Motion
19 on February 13, 2018. At the hearing the Court determined that the Settlement Motion would be a
20 contested matter. The Court continued the hearing to March 6, 2018 to allow the parties time to begin
21 discovery. Since the hearing on the Settlement Motion, Debtor has provided the Committee with many
22 documents it has requested. In addition, Debtor is in the process of producing additional documents to
23 the Committee. At the hearing on March 6, 2018, the Court continued the hearing to May 1, 2018 to
24 allow the parties additional time to complete discovery and engage in settlement negotiations.
25 Declaration of Lane K. Bogard at ¶ 7.

26 On January 10, 2018, Debtor filed a motion to assume and assign the Non-Residential Lease of
27 Real Property located at 2727 E. Del Amo Blvd., Rancho Dominguez, CA 90221 pursuant to 11 U.S.C.
28 § 365 (the "Lease Motion"). Pursuant to the Lease Motion, Debtor sought an order to assume and assign

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1 the nonresidential lease of real property located at 2727 E. Del Amo Blvd., Rancho Dominguez, CA
2 90221 between Debtor and the Joe Murez Exempt Trust (the "Lease") "as is." The Landlord filed an
3 Opposition to the Lease Motion. On February 13, 2018 the Court held a hearing on the Lease Motion.
4 At the hearing the Court denied the Lease Motion without prejudice. Debtor and the Landlord have been
5 working to consensually resolve the Landlord's concerns as raised in the Landlord's opposition to the
6 Lease Motion. As a result, Debtor and the Landlord stipulated to extend the deadline to assume or reject
7 the Lease from March 6, 2018 to April 10, 2018. The Court entered an order approving the stipulation
8 on March 2, 2018. Declaration of Lane K. Bogard at ¶ 8.

9 The Court held a status conference on December 5, 2017 (the "Status Conference"). Due to the
10 circumstances of Debtor's bankruptcy case, at the Status Conference, the Court did not set a deadline
11 to file objections to claims. The Court held a second status conference on February 13, 2018. Again,
12 due to the circumstances of Debtor's bankruptcy case, the Court did not set a deadline to file objections
13 to claims or a deadline to file a plan and disclosure statement. The Court continued the status conference
14 to March 6, 2018. Declaration of Lane K. Bogard at ¶ 9.

15 **C. Resolution of the Bankruptcy**

16 As discussed above, Debtor's main disputes are with the judgment holders and other drivers who
17 may have claims against Debtor. The Labor Commissioner was assigned several judgments against the
18 Debtor. Since Debtor's Bankruptcy was filed, the Labor Commissioner has conducted an examination
19 of Robert Wallace, the current president of the Debtor, and an examination of Philip Ting, Debtor's
20 former president, pursuant to Federal Rule of Bankruptcy Procedure 2004. Attorneys for the Committee
21 were present at both examinations. Declaration of Lane K. Bogard at ¶ 10.

22 Prior to the bankruptcy filing, Debtor began settlement communications with a large number of
23 the drivers holding the Judgments. While these negotiations did not result in a settlement, Debtor intends
24 to continue these negotiations during the bankruptcy process to see if a settlement can be made with
25 these creditors. Further, due to the judgment holders' allegations that attempt to hold third parties liable
26 for Debtor's debts, Debtor negotiated a settlement with these third parties to try to resolve any liability
27 that those entities may have to Debtor so that the Judgments can be paid from a settlement with these
28 entities. Declaration of Lane K. Bogard at ¶ 11.

1 In addition to the judgments, there are potential claims against Debtor that are, as of yet,
2 unknown and disputed. Due to the employment law claims for which drivers have already filed cases
3 and obtained judgments, Debtor believes additional drivers have and may assert similar employment
4 claims against Debtor for which they could seek awards against Debtor. Therefore, Debtor has included
5 these drivers as disputed and unliquidated creditors in its bankruptcy filing so that all drivers may obtain
6 any funds available through this bankruptcy. Declaration of Lane K. Bogard at ¶ 12.

7 After the commencement of this Chapter 11 bankruptcy case, Debtor sought and obtained an
8 order of the Court fixing a deadline for the filing of proofs of claim, other than those of governmental
9 entities, of March 16, 2018. As of March 6, 2018, fifty-three proofs of claim have been filed in Debtor's
10 bankruptcy case. Debtor anticipates that any claims of these drivers will be determined after proofs of
11 claims are filed by these individuals and the claims are allowed or disallowed. Declaration of Lane K.
12 Bogard at ¶ 13.

13 In order to file a plan and disclosure statement, enough time needs to pass to (1) allow Debtor
14 to work with the Committee, judgment holders, Labor Commissioner, and Landlord to resolve any
15 concerns they have as to the Settlement Motion, (2) allow Debtor sufficient time to resolve the
16 fraudulent conveyance claims through the Settlement Motion which will provide funds with which
17 Debtor can fund a plan, (3) to allow Debtor sufficient time to resolve the claims filed against it, (4) to
18 allow Debtor sufficient time to assess profitability and provide projections supporting feasibility of any
19 proposed plan, and (5) to allow Debtor time to engage in settlement negotiations with the Committee
20 regarding a joint plan. Due to these issues, Debtor will be unable to file a plan and disclosure statement
21 before the expiration of the exclusivity period, March 6, 2018. While Debtor is unsure when it will be
22 able to file a plan and disclosure statement, Debtor believes a 90-day extension of the exclusivity period
23 will allow Debtor to continue to work with the Committee and other parties to resolve their objections
24 to the Settlement Motion, negotiate a reorganization, and start the process to resolve the claims filed
25 against it. Further, this period is short enough that creditors and the Committee can have assurance that
26 Debtor will continue diligently on the path of reorganization. Additionally, the Settlement Motion is set
27 for hearing on May 1, 2018 and no party will be able to file a plan before the Settlement Motion is
28 resolved. Therefore, Debtor requests that the Court extend the exclusivity period for 90 days from

1 March 6, 2018 to June 4, 2018. In the event Debtor is unable to file a plan and disclosure statement by
2 this date, Debtor may seek an extension of the exclusivity period. Declaration of Lane K. Bogard at ¶
3 14.

4 **II. CAUSE EXISTS TO EXTEND THE EXCLUSIVITY PERIOD**

5 Pursuant to section 1121(b) of the Bankruptcy Code, unless a trustee has been appointed or the
6 Court otherwise orders, only a Chapter 11 Debtor-in-Possession has the right to propose a plan during
7 the first 120 days after a voluntary Chapter 11 petition is filed. 11 U.S.C. § 1121(b). For “cause” and
8 after notice and hearing, the Court may either extend or shorten the exclusivity period as long as the
9 extended date is not beyond a date that is eighteen months after the petition date. 11 U.S.C. § 1121(d)(1)
10 and (2). As demonstrated below, good cause exists to extend the exclusivity period to at least until June
11 4, 2018.

12 When determining whether “cause” exists to extend the exclusivity period, a key inquiry is
13 whether the extension will “facilitate movement towards a fair and equitable resolution of the case,
14 taking into account all the divergent interests involved.” *Official Comm. of Unsecured Creditors v.*
15 *Henry Mayo Newhall Mem'l Hosp. (In re Henry Mayo Newhall Mem'l Hosp.)*, 282 B.R. 444, 453 (9th
16 Cir. B.A.P. 2002). Further, while the Bankruptcy Code does not define “cause,” courts take into
17 consideration nine factors as listed in *In re Dow Corning Corp.*, 208 B.R. 661 (Bankr. E.D. Mich. 1997).
18 *See In re Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. at 453 (applying the *Dow Corning* factors). The
19 relevant factors include:

- 20 1. the size and complexity of the case;
- 21 2. the necessity of sufficient time to permit the debtor to negotiate a plan of
reorganization and prepare adequate information;
- 22 3. the existence of good faith progress toward reorganization;
- 23 4. the fact that the debtor is paying its bills as they become due;
- 24 5. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- 25 6. whether the debtor has made progress in negotiations with its creditors;
- 26 7. the amount of time which has elapsed in the case;
- 27 8. whether the debtor is seeking an extension of exclusivity in order to
pressure creditors to submit to the debtor's reorganization demands; and
- 28 9. whether an unresolved contingency exists.

26 *In re Dow Corning Corp.*, 208 B.R. at 664-65.

27 Here, factors 1, 2, 3, 4, 5, 6, 7, 8, and 9 all demonstrate that “cause” for an extension of the
28 exclusivity period exists.

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1 Factor 1: The size and complexity of the case. Regarding the first factor, Debtor's bankruptcy
2 case presents complex issues related to resolution of fraudulent transfer claims against third parties.
3 Debtor must resolve the fraudulent transfer claims before preparing a plan of liquidation or
4 reorganization. As discussed above, Debtor has reached a settlement with third parties, which would
5 resolve the fraudulent transfer claims and provide significant funds for a plan, but the Committee,
6 judgment holders, Labor Commissioner, and Landlord objected to the Settlement Motion on the basis
7 that they needed additional information to evaluate the proposed settlement. Consequently, the Court
8 ordered the Settlement Motion to be a contested matter and therefore, allowed the parties to begin
9 discovery. Due to the amount of discovery the Committee has indicated it requires to analyze the
10 Settlement Motion, resolving the fraudulent transfer claims will take time. Further, as of March 6, 2018,
11 fifty-three proofs of claim have been filed, fifty of which filed by Debtor's drivers and the California
12 Labor Commissioner. Some of these creditors have filed their claims as secured claims; based on
13 Debtor's information regarding these claims, Debtor believes that they are under-secured and their
14 priority and secured status will need to be determined pursuant to a motion brought under 11 U.S.C. §
15 506. Moreover, because the Bar Date has not passed, it is possible that more of Debtor's drivers will file
16 proofs of claim. Once the Bar Date passes, Debtor will need to evaluate the legitimacy of the claims and
17 determine whether Debtor has any objection to the claims. Due to the number of claims that have been
18 filed, and the number of possible claims that may still be filed, Debtor believes it will need
19 approximately 30 days to evaluate the legitimacy of the claims and determine whether Debtor has any
20 objection to the claims. Debtor expects the claim objections to be resolved within 45 days after the
21 objections are filed. These claims should be adjudicated by the bankruptcy court prior to the filing of
22 a plan and disclosure statement. Finally, since the Committee was recently appointed on December 19,
23 2017, Debtor has been working with the Committee and its financial advisors to resolve the
24 Committee's concerns, as well as work toward consensual resolution of this case. Thus, the first factor
25 shows cause exists to extend the exclusivity period.

26 Factor 2: The necessity of sufficient time to permit the debtor to negotiate a plan of
27 reorganization and prepare adequate information. Regarding the second factor, Debtor needs time to
28 negotiate with the judgment holders to resolve their claims and to resolve the fraudulent conveyance

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1 claims. As discussed above, Debtor began settlement communications with a large number of the
2 drivers holding the judgments prior to the bankruptcy filing. Debtor intends to continue these
3 negotiations during the bankruptcy to try and reach an agreement with these creditors. In addition,
4 Debtor needs time to evaluate the claims filed against it and object to the filed claims, if necessary. The
5 drivers' claims should be resolved before Debtor can prepare a plan and disclosure statement. Finally,
6 enough time to pass to allow Debtor to settle the fraudulent conveyance claims with third parties, which
7 allow Debtor to recover funds with which it can fund a plan. As stated above, the Committee has
8 requested Debtor provide it with several documents in relation to the Settlement Motion. Debtor is in
9 the process of providing the Committee and its financial advisors with the documents they have
10 requested. Therefore, the second factor shows cause exists for an extension of the exclusivity period.

11 Factor 3: The existence of good faith progress toward reorganization. Regarding the third factor,
12 Debtor is making good faith progress toward reorganization. As discussed above, Debtor is working
13 with the newly-appointed Committee to provide the Committee with all the information it has requested.
14 Thus, this factor also shows cause exists for an extension.

15 Factor 4: The fact that the debtor is paying its bills as they become due. The fourth factor also
16 shows cause exists because Debtor is paying its bills as they become due. This is reflected in Debtor's
17 Monthly Operating Reports. Declaration of Lane K. Bogard at ¶ 3.

18 Factor 5: Whether the debtor has demonstrated reasonable prospects for filing a viable plan.
19 Regarding the fifth factor, Debtor has filed the Settlement Motion. As stated in the Settlement Motion,
20 the proposed settlement provides for payment of the total sum of \$2,000,000 and transfer of 52 trucks
21 to Debtor's estate and the waiver of a claim of at least \$1,200,000 (a settlement having a value to the
22 estate of \$5,000,000 - not taking into account the value of the waived claim). This settlement will
23 provide funds with which Debtor can fund a plan. Therefore, Debtor has demonstrated reasonable
24 prospects for filing a viable plan.

25 Factor 6: Whether the debtor has made progress in negotiations with its creditors. Regarding the
26 sixth factor, Debtor is making progress toward negotiating with its creditors. As discussed above,
27 Debtor filed a Settlement Motion, which seeks to resolve fraudulent transfer claims. The Court has
28 ordered the Settlement Motion to be a contested matter. The Committee and its financial advisors have

1 requested several documents from Debtor. Debtor is in the process of providing the Committee with all
2 of the requested information. Additionally, Debtor intends to continue to negotiate with the judgment
3 holders to attempt to resolve their claims consensually. Therefore, this factor also supports an extension
4 of the exclusivity period.

5 Factor 7: The amount of time which has elapsed in the case. Regarding the seventh factor, less
6 than four months have elapsed since Debtor filed its petition. The Bar Date has not passed thus Debtor
7 is in the early stages of its bankruptcy. Therefore, this factor shows cause exists to extend the exclusivity
8 period.

9 Factor 8: Whether the debtor is seeking an extension of exclusivity in order to pressure creditors
10 to submit to the debtor's reorganization demands. The eighth factor also shows cause exists because
11 Debtor is not seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's
12 reorganization demands. Rather, Debtor is seeking an extension of the exclusivity deadline to allow
13 Debtor sufficient time to resolve the Committee, Landlord, Labor Commissioner, and judgment holders'
14 objections to the Settlement Motion and resolve any objections to proofs of claim. Further, extending
15 the exclusivity period keeps administrative costs down so that the Committee does not prematurely
16 present a competing plan and disclosure statement. Debtor hopes it and the Committee can work
17 together to consensually agree to plan terms. Therefore, this factor shows cause exists to extend the
18 exclusivity period.

19 Factor 9: Whether an unresolved contingency exists. Finally, the ninth factor also supports an
20 extension of the exclusivity period. There are certainly several unresolved contingencies because
21 resolution of the claims addressed in the Settlement Motion must be resolved before Debtor (or any
22 party) could file a plan and disclosure statement. If the claims addressed in the Settlement Motion are
23 not resolved through settlement, the claims must be litigated. Whether the claims are litigated or
24 resolved in the Settlement Motion is outcome determinative as to whether a plan is proposed and
25 approved by the Court. Additionally, because fifty-three proofs of claim have been filed, fifty of which
26 were filed by Debtor's drivers and the Labor Commissioner, and some of which are under-secured.
27 Debtor must analyze these claims and determine if it has objections to the claims. Debtor also anticipates
28 bringing a motion pursuant to 11 U.S.C. § 506 to determine the extent and priority of the secured

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1 creditors' claims. Further, if Debtor has any objections to the claims, the objections must be resolved
2 before Debtor can propose a plan of reorganization. These proofs of claim make up the majority of
3 Debtor's claims and therefore, their resolution is essential to formulating a plan and disclosure statement.
4 Therefore, this factor supports an extension of the exclusivity period.

5 In sum, factors 1, 2, 3, 4, 5, 6, 7, 8, and 9 all demonstrate that ample cause exists to extend the
6 exclusivity period. Debtor therefore respectfully requests that this Court extend the Debtor's exclusivity
7 period for 90 days, to at least until June 4, 2018.

8 **III. THE COURT HAS THE AUTHORITY TO EXTEND THE EXCLUSIVITY PERIOD**
9 **PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9006(b).**

10 Federal Rule of Bankruptcy Procedure ("FRBP") 9006(b) states, in relevant part:

11 [W]hen an act is required or allowed to be done at or within a specified period by these
12 rules or by a notice given thereunder or by order of court, the court for cause shown may
13 at any time in its discretion (1) with or without motion or notice order the period enlarged
14 if the request therefor is made before the expiration of the period originally prescribed
15 or as extended by a previous order . . .

16 FRBP 9006(b)(1) (emphasis added).

17 Debtor's exclusivity period expires March 6, 2018. As discussed in detail above, cause exists
18 to extend the exclusivity period from March 6, 2018 to at least until June 4, 2018. This Court has the
19 authority to extend the exclusivity period pursuant to FRBP 9006(b) because the Motion was timely filed
20 before the expiration of the exclusivity period and Debtor has aptly demonstrated that cause exists to
21 extend the exclusivity period. Therefore, Debtor respectfully requests that this Court extend the Debtor's
22 exclusivity period for 90 days, to at least until June 4, 2018.

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ATTORNEYS AT LAW
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LONG BEACH, CA 90802

1 **IV. CONCLUSION**

2 While Debtor will be unable to file a plan and disclosure statement by the conclusion of the
3 exclusivity period, March 6, 2018, good cause exists to extend the exclusivity period. Therefore, Debtor
4 hereby requests that this Court extend the exclusivity period from the current deadline of March 6, 2018
5 to at least until June 4, 2018, and for any other such relief that is just and proper.

6 Respectfully submitted

7 HABERBUSH & ASSOCIATES, LLP

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10 Dated: March 9, 2018

11 By: 
12 LANE K. BOGARD, Esq., Attorneys for
13 Debtor and Debtor-in-Possession

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DECLARATION OF LANE K. BOGARD

I, LANE K. BOGARD, hereby declare and state:

1. I am an individual over the age of 18 years and have personal knowledge of the facts stated herein. If I were called as a witness I would and could competently testify to the following facts under penalty of perjury.

2. I am an attorney at law duly licensed to practice in the State of California and before this Court. I am an associate of Haberbush & Associates, LLP, the attorneys for Fargo Trucking Company, Inc., Debtor and Debtor-in-Possession herein ("Debtor").

3. As reflected in the Debtor's Monthly Operating Reports on file with the Court, Debtor is paying its bills as they become due.

4. An official committee of unsecured creditors (the "Committee") was appointed on December 19, 2017. The Committee filed an Application to Employ Levene, Neale, Bender, Yoo & Brill L.L.P., as general bankruptcy counsel for the Committee (the "Application"). Debtor filed a limited opposition to the Application. A hearing is set on the Application for March 6, 2018. As discussed below, Debtor is currently working with the Committee to provide the Committee's attorneys with the documents it has requested.

5. On February 15, 2018, the Committee filed an Application to Employ Cohnreznick LLP, as Financial Advisor to the Official Committee of Unsecured Creditors [Dkt. No. 77]. The Court has not entered an order on the Committee's Application to Employ Cohnreznick LLP, as Financial Advisor to the Official Committee of Unsecured Creditors yet.

6. To emerge from this bankruptcy, Debtor's intention was to enter into a settlement with various entities that may have liabilities to Debtor based on fraudulent conveyance and other theories. Debtor reached a settlement with the various entities. On January 10, 2018, Debtor filed a motion for an order approving settlement between Debtor and CKT Logistics, Inc., Fargo International, LLC, Fargo Transport, LLC, Fargo Trucking Logistic Co., LLC, Express FTC, Inc., Hancore Brokerage Services, Inc., W3 International, Inc., June H. Ou, Philip H. Ting, Gershom Shing, Robert F. Wallace, Kurt Oliver, and Sigmund H. Ting Pursuant to Federal Rule of Bankruptcy Procedure 9019 (the "Settlement Motion"). As stated in the Settlement Motion, the proposed settlement provides for payment of the total

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1 sum of \$2,000,000 and transfer of 52 trucks to Debtor's estate and the waiver of a claim of at least
2 \$1,200,000 (a settlement having a value to the estate of \$5,000,000 - not taking into account the value
3 of the waived claim). This settlement will provide funds with which Debtor can fund a plan.

4 7. Several parties, including the Committee, Labor Commissioner, and Landlord (defined
5 hereinbelow), objected to the Settlement Motion. The Court held a hearing on the Settlement Motion
6 on February 13, 2018. At the hearing the Court determined that the Settlement Motion would be a
7 contested matter. The Court continued the hearing to March 6, 2018 to allow the parties time to begin
8 discovery. Since the hearing on the Settlement Motion, Debtor has provided the Committee with many
9 documents it has requested. In addition, Debtor is in the process of producing additional documents to
10 the Committee. At the hearing on March 6, 2018, the Court continued the hearing to May 1, 2018 to
11 allow the parties additional time to complete discovery and engage in settlement negotiations.

12 8. On January 10, 2018, Debtor filed a motion to assume and assign the Non-Residential
13 Lease of Real Property located at 2727 E. Del Amo Blvd., Rancho Dominguez, CA 90221 pursuant to
14 11 U.S.C. § 365 (the "Lease Motion"). Pursuant to the Lease Motion, Debtor sought an order to assume
15 and assign the nonresidential lease of real property located at 2727 E. Del Amo Blvd., Rancho
16 Dominguez, CA 90221 between Debtor and the Joe Murez Exempt Trust (the "Lease") "as is." The
17 Landlord filed an Opposition to the Lease Motion. On February 13, 2018 the Court held a hearing on
18 the Lease Motion. At the hearing the Court denied the Lease Motion without prejudice. Debtor and the
19 Landlord have been working to consensually resolve the Landlord's concerns as raised in the Landlord's
20 opposition to the Lease Motion. As a result, Debtor and the Landlord stipulated to extend the deadline
21 to assume or reject the Lease from March 6, 2018 to April 10, 2018. The Court entered an order
22 approving the stipulation on March 2, 2018.

23 9. The Court held a status conference on December 5, 2017 (the "Status Conference"). Due
24 to the circumstances of Debtor's bankruptcy case, at the Status Conference, the Court did not set a
25 deadline to file objections to claims. The Court held a second status conference on February 13, 2018.
26 Again, due to the circumstances of Debtor's bankruptcy case, the Court did not set a deadline to file
27 objections to claims or a deadline to file a plan and disclosure statement. The Court continued the status
28 conference to March 6, 2018.

1 10. As discussed above, Debtor's main disputes are with the judgment holders and other
2 drivers who may have claims against Debtor. The Labor Commissioner was assigned several judgments
3 against the Debtor. Since Debtor's Bankruptcy was filed, the Labor Commissioner has conducted an
4 examination of Robert Wallace, the current president of the Debtor, and an examination of Philip Ting,
5 Debtor's former president, pursuant to Federal Rule of Bankruptcy Procedure 2004. Attorneys for the
6 Committee were present at both examinations.

7 11. Prior to the bankruptcy filing, Debtor began settlement communications with a large
8 number of the drivers holding the Judgments. While these negotiations did not result in a settlement,
9 Debtor intends to continue these negotiations during the bankruptcy process to see if a settlement can
10 be made with these creditors. Further, due to the judgment holders' allegations that attempt to hold third
11 parties liable for Debtor's debts, Debtor negotiated a settlement with these third parties to try to resolve
12 any liability that those entities may have to Debtor so that the Judgments can be paid from a settlement
13 with these entities.

14 12. In addition to the judgments, there are potential claims against Debtor that are, as of yet,
15 unknown and disputed. Due to the employment law claims for which drivers have already filed cases
16 and obtained judgments, Debtor believes additional drivers have and may assert similar employment
17 claims against Debtor for which they could seek awards against Debtor. Therefore, Debtor has included
18 these drivers as disputed and unliquidated creditors in its bankruptcy filing so that all drivers may obtain
19 any funds available through this bankruptcy.

20 13. After the commencement of this Chapter 11 bankruptcy case, Debtor sought and obtained
21 an order of the Court fixing a deadline for the filing of proofs of claim, other than those of governmental
22 entities, of March 16, 2018. As of March 6, 2018, fifty-three proofs of claim have been filed in Debtor's
23 bankruptcy case. Debtor anticipates that any claims of these drivers will be determined after proofs of
24 claims are filed by these individuals and the claims are allowed or disallowed.

25 14. In order to file a plan and disclosure statement, enough time needs to pass to (1) allow
26 Debtor to work with the Committee, judgment holders, Labor Commissioner, and Landlord to resolve
27 any concerns they have as to the Settlement Motion, (2) allow Debtor sufficient time to resolve the
28 fraudulent conveyance claims through the Settlement Motion which will provide funds with which

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1 Debtor can fund a plan, (3) to allow Debtor sufficient time to resolve the claims filed against it, (4) to
2 allow Debtor sufficient time to assess profitability and provide projections supporting feasibility of any
3 proposed plan, and (5) to allow Debtor time to engage in settlement negotiations with the Committee
4 regarding a joint plan. Due to these issues, Debtor will be unable to file a plan and disclosure statement
5 before the expiration of the exclusivity period, March 6, 2018. While Debtor is unsure when it will be
6 able to file a plan and disclosure statement, Debtor believes a 90-day extension of the exclusivity period
7 will allow Debtor to continue to work with the Committee and other parties to resolve their objections
8 to the Settlement Motion, negotiate a reorganization, and start the process to resolve the claims filed
9 against it. Further, this period is short enough that creditors and the Committee can have assurance that
10 Debtor will continue diligently on the path of reorganization. Additionally, the Settlement Motion is set
11 for hearing on May 1, 2018 and no party will be able to file a plan before the Settlement Motion is
12 resolved. Therefore, Debtor requests that the Court extend the exclusivity period for 90 days from
13 March 6, 2018 to June 4, 2018. In the event Debtor is unable to file a plan and disclosure statement by
14 this date, Debtor may seek an extension of the exclusivity period.

15 EXECUTED AT LONG BEACH, CALIFORNIA THIS 6 TH DAY OF MARCH, 2018.

16 I declare under penalty of perjury the foregoing to be true and correct.

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18 By:



19 LANE K. BOGARD, Declarant
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

444 West Ocean Boulevard, Suite 1400, Long Beach, CA 90802

A true and correct copy of the foregoing document entitled (*specify*): **DEBTOR AND DEBTOR-IN-POSSESSION'S MOTION TO EXTEND EXCLUSIVITY PERIOD; DECLARATION OF LANE K. BOGARD IN SUPPORT** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **March 6, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Lane K Bogard** lbogard@lbinsolvency.com, dhaberbush@lbinsolvency.com, ahaberbush@lbinsolvency.com, abostic@lbinsolvency.com, haberbush.assistant@gmail.com, vhaberbu sh@lbinsolvency.com, jscarborough@lbinsolvency.com, jborin@lbinsolvency.com
- **Alan J Friedman** afriedman@shbllp.com, lgauthier@shbllp.com
- **John-Patrick M Fritz** jpf@lnbyb.com, JPF.LNBYB@ecf.inforuptcy.com
- **Richard H Golubow** rgolubow@wcghlaw.com, pj@wcghlaw.com; sly@wcghlaw.com
- **David R Haberbush** dhaberbush@lbinsolvency.com, ahaberbush@lbinsolvency.com, abostic@lbinsolvency.com, vhaberbush@lbinsolvency.com, haberbush.assistant@gmail.com, jborin@l binsolvency.com
- **Vanessa M Haberbush** vhaberbush@lbinsolvency.com, dhaberbush@lbinsolvency.com, ahaberbush@lbinsolvency.com, abostic@lbinsolvency.com, haberbush.assistant@gmail.com, jborin@l binsolvency.com
- **Dare Law** dare.law@usdoj.gov, Kenneth.g.lau@usdoj.gov, Alvin.mar@usdoj.gov, ron.maroko@usdoj.gov
- **Daniel H Reiss** dhr@lnbyb.com, dhr@ecf.inforuptcy.com
- **Jay J Shin** jay@wagejustice.org, jayshin2003@hotmail.com
- **Thomas W Slattery** slatterylawfirm@gmail.com
- **United States Trustee (LA)** ustpreion16.la.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On _____ I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method

for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

March 6, 2018

Alexander S. Bostic



Date

Printed Name

Signature