

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re: COUNTRY FRESH HOLDING COMPANY INC., et. al.¹ Debtor(s).	§ § § § §	Chapter 11 Case No.: 21-30574 (MI) [Joint Administration Requested]
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DECLARATION OF STEPHEN MAROTTA IN SUPPORT OF FIRST-DAY MOTIONS

I, Stephen Marotta, state and declare as follows:

1. I am the Chief Restructuring Officer (“**CRO**”) of Country Fresh Holding Company Inc. (“**CF Holding**”), a corporation organized under the laws of the State of Delaware, as well as its affiliated entities that are also debtors and debtors-in-possession (all such entities being, together with CF Holding, the “**Debtors**” and each a “**Debtor**”) in the above-captioned chapter 11 cases. I have been in this position since February 15, 2021. As described in more detail below, my involvement with CF Holding and its affiliated entities dates back to November 2020 with Ankura (defined below)

2. I am a Senior Managing Director of Ankura Consulting Group, LLC (“**Ankura**”) with more than 30 years of experience consulting and working with financially troubled companies. For example, I am currently serving as the chief restructuring officer in the Brooks Brothers chapter 11 proceeding, and I have previously served in similar capacities with multiple

¹ The Debtors in these Chapter 11 cases and the last four digits of each Debtors’ taxpayer identification number are as follows: Country Fresh Holding Company Inc. (7822); Country Fresh Midco Corp. (0702); Country Fresh Acquisition Corp. (5936); Country Fresh Holdings, LLC (7551); Country Fresh LLC (1258); Country Fresh Dallas, LLC (7237); Country Fresh Carolina, LLC (8026); Country Fresh Midwest, LLC (0065); Country Fresh Orlando, LLC (7876); Country Fresh Transportation LLC (8244) CF Products, LLC (8404) Country Fresh Manufacturing, LLC (7839); Champlain Valley Specialty of New York, Inc. (9030); Country Fresh Pennsylvania, LLC (7969); Sun Rich Fresh Foods (NV) Inc. (5526); Sun Rich Foods (USA) Inc. (0429); and Sun Rich Fresh Foods (PA) Inc. (4661). The Debtors’ principal place of business is 3200 Research Forest Drive, Suite A5, The Woodlands, TX, 77381.

large companies inside and outside of bankruptcy. I am a Certified Public Accountant and a Certified Insolvency and Restructuring Advisor.

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge of the Debtors, their business operations, history, industry, and books and records, information contained in the Debtors' books and records, and information supplied to me by other members of the Debtors' management and/or their advisors. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors.

4. On February 15, 2021 (the "**Petition Date**"), the Debtors filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), thereby initiating the above-captioned bankruptcy cases and creating their bankruptcy estates (the "**Estates**"). I submit this Declaration to assist the Court in understanding the circumstances that led to the filing of these chapter 11 cases (the "**Chapter 11 Cases**") and in support of the motions filed by the Debtors contemporaneously with their petitions as described in more detail below.

I. **INTRODUCTION**

5. Each of the Debtors is one part of what is referred to generally as the "Fresh Food Group" (sometimes, the "**Company**"), a premier, full-service provider of branded and private-label offerings of fresh-cut fruits and vegetables, ready-to-go meals and meal kits, behind-the-glass salads, snacks, and ingredients/bulk food components to supermarkets, club stores, convenience stores, industrial, and food-service customers in the United States and Canada. Historically, the Company focused exclusively on fresh-cut fruit and vegetables; recently, it expanded its product offerings into *sous vide* and kettle cooking of chicken, fish, and beef entrees as well as pasta. The Company believes that the market for retail-ready fresh meal kits and ready-to-go meals will also

continue to grow in addition to its staple offerings of fresh-cut fruits and vegetables and fresh snacking solutions.

6. The organizational chart attached hereto as **Exhibit A** reflects the entirety of the Company's structure; however, only the seventeen (17) entities organized or located in the United States filed chapter 11 bankruptcy proceedings and are Debtors in the above-enumerated cases. TGF Acquisition Parents Ltd., Tiffany Gate Foods Inc., and Sun Rich Fresh Foods Inc. (collectively, the "**Canadian Debtors**"), entities formed under the laws of the province of British Columbia, did not file chapter 11 bankruptcy proceedings. I anticipate the Canadian Debtors will file proceedings in Canada under the *Companies' Creditors Arrangement Act* (the "**CCAA**") in the coming days (the "**CCAA Proceeding**").

7. Due to significant economic pressures arising in large part due to the COVID-19 global pandemic over the last year as well as additional causes outlined below, the Company, as a whole, faced significant near-term liquidity and capital-structure challenges throughout 2020. The demand for the Company's largest product segments—fruit and vegetable trays—declined significantly as federal, state, and local governments in the United States reacted to the pandemic, restaurants and businesses closed, schools switched to virtual learning, and consumers began avoiding the fresh food sections of grocery stores and canceling large gatherings. This paired with the temporary closure of the Dallas production facility (described in detail below), the idling of the Reading, Pennsylvania production facility, and labor issues related to the global pandemic and the facility closures, resulted in a significantly constrained liquidity position for which the Company had few readily available solutions. The Company also faced supply-chain problems related to the pandemic (due to similar economic and labor issues among its suppliers) that forced it to pay a premium for certain products and a higher marginal shipping cost for products due to

lower volume and less efficient shipping, which also contributed to the Company's liquidity problems through calendar year 2020.

8. To solve the liquidity problem, ensure the Company's survival through the pandemic, and position it for the post-COVID marketplace, management and the Board of Directors explored numerous alternatives, including additional financing and potential M&A transactions. At the same time the Debtors took steps to remedy some of the short-term problems they faced, including working with the USDA to get the Dallas facility back online for production and negotiating and securing additional long-term customer agreements in order to enhance the value of their businesses as going concerns. The Dallas facility was cleared to resume operations in January 2021.

9. Ultimately, after careful consideration of all the options available to it, the Company determined that a sale of all, or substantially all, of its assets in both the United States and Canada, is the best course of action under the circumstances. Accordingly, as outlined in more detail below, the Company engaged Stout Risius Ross, LLC ("**Stout**") as investment bankers on or about October 30, 2020 to identify potential interested purchasers. Shortly thereafter, on December 7, 2020, the Company engaged Ankura Consulting Group, LLC ("**Ankura**") as financial advisors and expanded the role of Foley & Lardner, LLP, existing corporate counsel, to include investigation and advising in matters related to, among other things, strategic alternatives and potential debt restructuring options. Stout's efforts on behalf of the Company culminated in a non-binding Letter of Intent (a "**LOI**") dated December 14, 2020 from an interested party whose name has been withheld for confidentiality reasons (for purposes of this Declaration, the "**Prior Interested Purchaser**"). Thereafter, the Prior Interested Purchaser and the Company began negotiating a definitive Asset Purchase Agreement for substantially all of the Company's non-real

estate assets in the United State and Canada while the Prior Interested Purchaser conducted due diligence. Ankura and Foley assisted the Company throughout this process.

10. As calendar year 2020 drew to a close, the Company's liquidity situation deteriorated further, resulting in the need for additional financing from its prepetition secured lenders. To avoid an immediate and value destructive liquidation of the Company, the Company engaged with a subset of its lenders to provide rescue financing. The lenders formed an unaffiliated ad hoc group of lenders (the "**Ad Hoc Group of Lenders**"), and negotiated with the Company regarding a potential rescue financing, eventually culminating in an initial \$5.6 million of bridge financing on December 29, 2020 that was approved by the Independent Committee. One of the conditions of this financing was that the Company prepare for a chapter 11 filing for its domestic entities and a possible CCAA (defined below) filing for those in Canada. As part of this bridge financing arrangement, the Company would continue to negotiate definitive sale documents with the Prior Interested Purchaser.

11. Unfortunately, late on January 7, 2021, the Prior Interested Purchaser decided to withdraw its LOI, leaving the Company with a plan to enter chapter 11 (at least for its American entities) in order to sell its assets pursuant to section 363 but no willing buyer. The Company's management and professionals then began to implement contingency plans to try to keep the enterprise afloat while Stout either identified a new buyer to serve as a stalking-horse bidder in a section 363 sale or found new financing willing to take out all or a portion of the old financing and recapitalize the enterprise. Management also considered going forward with the chapter 11 filings absent a stalking-horse bidder but decided not to do so.

12. On January 20, 2021, the Company received a Letter of Intent from Stellex Capital Management ("**Stellex**"), a global private equity firm, regarding a potential transaction whereby

Stellex would acquire all or substantially all of the Company's assets in United States and Canada and assume certain liabilities, roll those assets into a to-be-formed company, and provide cash consideration, a note payable, and the assumption of certain liabilities. Concurrently, the Company engaged with the Ad Hoc Group of Lenders again regarding a liquidity infusion to avoid an immediate cessation of operations and liquidation. On February 4, 2021, upon approval by the Independent Committee (as defined below), the Ad Hoc Group of Lenders agreed to provide additional rescue financing in the amount of \$2.4 million to enable the Debtors to continue their discussions with Stellex. The Company also engaged with the Ad Hoc Group of Lenders and certain other prepetition lenders to provide potential debtor-in-possession financing, resulting in a proposed debtor-in-possession financing facility with a subset of those lenders (in such capacity, the "**DIP Lenders**") that would provide a new money post-petition financing facility in the amount of \$13,416,000 (inclusive of the Upfront Fee) (the "**DIP Facility**") that will satisfy all projected operational and administrative needs during these Chapter 11 Cases.

13. On February 15, 2021, the Company's Board of Directors appointed me as CRO of the Company and further expanded Ankura's role to include providing my services and other personnel and resources to assist me. At that point, I became responsible for and took control of all matters relating to the Company's restructuring efforts.

14. The purpose of these bankruptcy cases is to allow the Debtors to stabilize their operations under the aegis of the Bankruptcy Court and the CCAA Court and explore their options for a potential reorganization through a plan process or a sale pursuant to section 363 of the Bankruptcy Code and section 36 of the CCAA. The purpose of this Declaration is to familiarize the Court with the Company. Section II of this Declaration provides background information about the Company's history, growth, structure, operations, prior restructuring in 2019, and further

details about the events leading up to the filing of these bankruptcy cases. Section III provides evidentiary support for the First Day Motions filed by the Debtors.

II. BACKGROUND

A. The Fresh Food Group's Origins and Growth

15. What eventually became the Fresh Food Group began in 1999 with the inception of Country Fresh, LLC, whose corporate headquarters was established in The Woodlands, Texas, where it remains to this day. Initially, Country Fresh focused on fresh-cut fruit—including apples, which continue to be a staple of the Company's product offerings—and vegetables in a variety of blends, sizes, and packaging options. From its inception in 1999 to 2017, Country Fresh operated a single processing facility in Houston, Texas near its corporate headquarters.

16. In 2017 Kainos Capital ("**Kainos**") acquired Country Fresh, LLC and its affiliated entities operating under the Country Fresh brand and, shortly thereafter, acquired entities operating under the Sun Rich Fresh Foods brand in the United States and Canada. The following year Kainos acquired Canadian entities operating under the Tiffany Gate brand and rolled all of the companies together to create the Fresh Food Group. The combined Fresh Food Group boasts 11 processing facilities, 8 in the United States and 3 in Canada, as set forth in more detail below.

17. The Debtors' management team is comprised of seasoned industry veterans, some of whom have been with the Company since the expansion from Country Fresh alone to the combined Fresh Food Group. The Company's Board of Directors is comprised of five (5) individuals, two of which were appointed by the Debtors' lenders, following the 2019 restructuring discussed below. In December 2020, due to potential conflicts arising from certain Board members affiliations with the largest stakeholders in these Chapter 11 cases, the Board established an independent committee and designated three (3) of its members as disinterested directors (the

“**Independent Committee**”) empowered to oversee the restructuring process and determine where and when a conflict existed regarding a matter that would ordinarily have been decided by the entire Board of Directors. To the extent the Independent Committee determines that a conflict exists with respect to any approval, authorization or determination requested of the Board, the Independent Committee is empowered to make all decisions with respect to such approval, authorization or determination. As stated above on February 14, 2021, I was appointed as CRO by the Board of Directors and report directly to the Independent Committee with respect to the oversight and management of the Company’s restructuring process.

B. The 2019 Restructuring

18. In 2019, the Company faced significant liquidity and other economic pressures that caused its existing (at that time) secured lenders to take precipitous action. On April 29, 2019, the Company executed a debt restructuring and exchange transaction in order to de-leverage its balance sheet and convert certain long-term obligations (described below) to its secured lenders into equity. Through the 2019 Exchange, the lenders (who continue to be the largest stakeholders in the Company) equitized more than \$300 million of senior secured debt.

19. Following this restructuring, Kainos no longer owned the company; rather, the Company’s first and second-lien lender groups took ownership of 95% and 5%, respectively, of the Company’s common stock in exchange for the satisfaction of significant secured debt. The result of this restructuring was an improvement in the Company’s liquidity and debt leverage ratios and improvement of the consolidated balance sheet for the entire Company. Contemporaneously with this restructuring, the Company executed new agreements with its lenders described in more detail below that refinanced existing indebtedness and made available new funds for investment and continued operations.

C. The Company's Facilities, Real Property Ownership and Leases

20. The Company operates eleven (11) processing facilities— eight (8) in the United States and three (3) in Canada. The chart below reflects the locations of each facility, whether that facility is owned or leased, whether the facility is certified by the USDA/FDA, the FDA, or the CFIA (the Canadian equivalent to the USDA/FDA certification), and its primary capabilities.

Facility Location	Owned or Leased	Certifications	Facility Capabilities
Orlando, Florida	Owned	USDA/FDA	Cut fruit, cut vegetables, retail packing, food service, snacking, and component packing
Gray Court, South Carolina	Owned	FDA	Cut fruit, cut vegetables, retail packing, food service, snacking, and component packing
Toronto, Ontario	Owned	FCIA	Cut vegetables, retail packing, food service, component packing, sous vide cooking, pasta making, and kettle cooking
Dallas, Texas	Leased	USDA/FDA	Cut fruit, cut vegetables, retail packing, snacking, and component packing
Houston, Texas	Owned	FDA	Cut fruit, cut vegetables, retail packing, and snacking
Hatfield, Pennsylvania	Owned	USDA/FDA	Cut fruit, cut vegetables, retail packing, snacking, component packing, and sous vide cooking
Oswego, New York	Owned	FDA	Cut fruit, cut vegetables, retail packing, food service, and snacking
Reading, Pennsylvania	Leased	FDA	Cut fruit, cut vegetables, retail packing, food service, and snacking
Brampton, Ontario	Leased	CFIA	Cut fruit, cut vegetables, retail packing, food service, snacking, and component packing
Corona, California	Leased	USDA/FDA	Cut fruit, cut vegetables, retail packing, food service, snacking, and component packing

Vancouver, British Columbia	Leased	CFIA	Cut fruit, cut vegetables, retail packing, food service, snacking, and component packing
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21. Along with its headquarters in The Woodlands and an office devoted solely to sales in Arkansas, the Company's production facilities form the backbone of the Company's operations across North America. In 2019 alone the Company's eleven (11) production facilities processed more than 230 million pounds of fruit, vegetables, and other food products. Since 2017, the Company has invested approximately \$25 million in its various facilities in an attempt to upgrade and automate production lines. The Dallas facility, for example, has received substantial upgrades that have improved its infrastructure and automation capabilities, allowing it to save labor costs, and the Debtors' Oswego complex in New York houses a 45,500 square foot state-of-the-art apple processing facility and 52,000 square foot dry storage and sorting facility, each of which are critical to one of the largest product segments in the Company's offerings. Overall, the Company's geographical coverage on both coasts of the United States, near major population centers in Texas, in the heart of New York apple country, and in Ontario and British Columbia in Canada, allow its fleet of more than seventy (70) tractors, supplemented by a network of nationwide shipping companies, to quickly and efficiently service customers across both countries, the United States and Canada.

22. The Company employs approximately 2,500 individuals at its various offices and facilities in the United States and Canada, of which approximately 890 are "direct" employees and the remainder (approximately 1,700) are provided by staffing agencies. The Debtors, specifically, employ approximately 2,118 employees in facilities located in the United States, of which approximately 330 are direct employees. These employees range from personnel involved in food safety and production to those focusing on product development and innovation, shipping, supply-

chain management, and/or warehousing. All of the Company's employees are highly trained and essential to ongoing operations at each of the Company's facilities.

D. The Debtors' Prepetition Corporate and Capital Structure

23. In connection with the 2019 Restructuring described in Section B above, in April 2019, certain entities in the larger Fresh Food Group executed new agreements with their secured lenders (and now equity) beginning with that certain *Credit Agreement*, dated as of April 29, 2019 (as amended, supplemented or otherwise modified from time to time, the "**First Lien Credit Agreement**" and the credit facilities and all obligations thereunder, including all prepayment premiums, collectively, the "**First Lien Credit Facility**"), by and among Country Fresh Acquisition Corp., Country Fresh Holdings, LLC, and TGF Acquisition Parent Ltd. as borrowers (together, the "**Borrowers**"), certain of their affiliated entities as guarantors (the "**Guarantors**," and, together with the Borrowers, the "**Loan Parties**"), certain lenders (the "**First Lien Lenders**"), and Cortland, as administrative agent and collateral agent (in such capacities, the "**First Lien Agent**" and collectively with the First Lien Lenders, the "**First Lien Secured Parties**"). The First Lien Credit Facility included a new money term loan in the amount of \$10 million and a \$25 million revolver commitment.

24. That same date the Loan Parties entered into that certain *Second Lien Credit Agreement*, dated as of April 29, 2019 (as amended, supplemented or otherwise modified from time to time, the "**Second Lien Credit Agreement**" and the credit facility and all obligations thereunder, including all prepayment premiums, collectively, the "**Second Lien Credit Facility**") with the same lenders (in this capacity, the "**Second Lien Lenders**" with Cortland, as administrative agent and collateral agent for this credit facility being the "**Second Lien Agent**" and the Second Lien Lenders and Second Lien Agent being, collectively, the "**Second Lien Secured Parties**"). The Second Lien Credit Facility included a \$60 million term loan.

25. On June 1, 2020, the Loan Parties entered into that certain *Term Loan Credit Agreement (Super Senior)*, dated as of June 1, 2020 (as amended, supplemented or otherwise modified from time to time, the “**Super-Senior Credit Agreement**” and the credit facility and all obligations thereunder, collectively, the “**Super-Senior Facility**”) with the same lenders (in this capacity, the “**Super-Senior Lenders**” and Cortland, as administrative agent and collateral agent for this credit facility being the “**Super-Senior Agent**” and the Super-Senior Lenders and the Super-Senior Agent being the “**Super-Senior Secured Parties**”). The Super-Senior Facility included an initial \$16 million term loan.

26. On December 29, 2020, the Loan Parties entered into that certain *First Amendment to Term Loan Credit Agreement (Super Senior)*, dated as of December 29, 2020 (as may be further amended, supplemented, or otherwise modified from time to time, the “**Bridge Credit Facility**”) with certain of the Prepetition Lenders (in this capacity, the “**Bridge Lenders**” and Cortland as the administrative agent and collateral agent for this credit facility being the “**Bridge Agent**” and the Bridge Lenders and the Bridge Agent being the “**Bridge Secured Parties**”). The Bridge Facility included a \$5.6 million term loan with two lending tranches, the second of which occurred on January 7, 2021.

27. On February 4, 2021 the Loan Parties entered into that certain *Second Amendment to Term Loan Credit Agreement (Super Senior)*, dated as of February 4, 2020 (as may be further amended, supplemented, or otherwise modified from time to time, the “**Second Bridge Credit Facility**”) with certain of the Prepetition Lenders (in this capacity, the “**Second Bridge Lenders**” and Cortland as the administrative agent and collateral agent for this credit facility being the “**Second Bridge Agent**” and the Second Bridge Lenders and the Second Bridge Agent being the “**Bridge Secured Parties**”). The Second Bridge Credit Facility included a \$2.4 million term loan

funded the same day. For purposes of this Declaration, the First Lien Lenders, the Second Lien Lenders, the Super-Senior Lenders, the Bridge Lenders, and the Second Bridge Lenders shall be referred to collectively as the “**Prepetition Lenders**,” and, together with Cortland in the capacities described above as the “**Prepetition Agent**,” the “**Prepetition Secured Parties**.” The First Lien Credit Facility, the Second Lien Credit Facility, the Senior-Secured Credit Facility, the Bridge Credit Facility, and the Second Bridge Credit Facility and all obligations thereunder are, together, the “**Prepetition Credit Facilities**” and the “**Prepetition Obligations**.” The Prepetition Credit Facilities were fully funded.

28. As a result of the loans listed above, the Debtors’ capital structure as of February 14, 2021, not including capitalized interest, was as follows (organized in order of the execution of the documents):

Facility (in millions)	Amount	Interest Rate	Maturity
First Lien Revolver	\$25.0	7.1%	April 2023
First Lien Term Loan	\$10.0	7.1%	April 2023
Second Lien Term Loan	\$60.0	10.6%	April 2024
Senior-Secured Facility	\$16.0	8.0%	June 2023
Bridge Facility²	\$5.6	8.0%	June 2023
Second Bridge Facility	\$2.4	8.0%	June 2023
Total Debt	\$119.0		

29. In addition to the foregoing secured debt and senior-secured debt, on March 5, 2020, the Company received a loan under the Payroll Protection Program (“**PPP**”) in the amount of \$5.8 million that remains outstanding. The PPP funds have been fully utilized by the Company.

² As set forth above, the bridge financing of \$5.6 million occurred through an amendment to the Senior-Secured Facility and carries the same terms.

E. Events Leading to the Debtors' Restructuring Efforts

30. In early 2020, an extremely virulent form of the coronavirus, which became known as COVID-19, began to spread from China to other countries, primarily in Europe and North America, sparking a global pandemic. Beginning in March 2020, federal, state, and local governments began to respond to the pandemic by enacting regulations restricting the operations of or outright closing non-essential businesses, including restaurants. The Company was deemed an essential business in every jurisdiction in which it operates, allowing it to continue to do business.

31. Unfortunately, as schools transitioned to virtual learning (a significant problem for the Company given its partnership with New York schools, in particular, in a program that provides apples to students in New York schools), restaurants shut down or significantly curtailed their operations, consumers began to avoid the fresh-food sections of grocery and similar stores, and, most importantly, large social and other gatherings began to be canceled due to state provincial, and local regulations and consumer preferences, the Company's revenue dropped precipitously. As a result, the Company was forced to idle its Reading, Pennsylvania facility and furlough the employees based there. The Company's other facilities across the country saw their utilization rates begin to fall, and input prices from suppliers of fresh foods and vegetables rose as those suppliers faced problems of their own.

32. To make matters worse, in October 2020, the FDA closed the Dallas facility due to the presence of listeria on one of the surfaces within the facility found during a routine inspection of the facility by regulators. The Company has since taken all appropriate steps to remedy the situation and comply with applicable FDA regulations, pass all necessary tests, and re-open the facility for production. The facility reopened in January 2021, but the production capacity lost

while it was closed further constricted the Company's revenue, and the Debtors have not yet been able to realize the increased production capacity.

F. The Debtors' 2020-2021 Marketing Efforts

33. Several months prior to the filing of these bankruptcy cases, several interested parties approached the Company unsolicited to discuss the terms of a potential purchase of the Company as a going concern. Partially in response to these indications of interest, in October 2020, the Company engaged Stout to begin conducting a marketing process for the Debtors' operations as a going concern. Stout initially reached out to nine (9) parties identified by the Company as likely to be interested, including those that approached the Company on their own, then expanded the search to include twenty (20) additional parties.

34. In late November 2020, Stout set up a virtual data room and began signing potential interested parties to non-disclosure agreements in order to allow access. During this first phase of the marketing process, Stout informed potential parties that the goal was to have a signed asset purchase agreement with a stalking horse bidder by mid-January 2021 followed by an auction and closing by the end of March 2021. The liquidity constraints that required this timeline continue to exist, and despite the existence of debtor in possession financing to fund the operations of the Debtors and Canadian Debtors prior to a sale, the Company intends to progress along a similar timeline in these Chapter 11 Cases as described below.

35. By the end of 2020, Stout had reached out to over thirty (30) potential parties in connection with the first phase of its marketing process. Of this first phase group, many parties contacted passed on this opportunity for a variety of reasons, including the distressed nature of the business, lack of strategic fit and their own financial challenges. Others, however, indicated that they were interested in the Debtors' assets, in whole or in part, including potentially participating in an auction, and continued their due diligence of the Debtors' assets.

36. In early January 2021, Stout launched a broad marketing process, sending market teasers to an additional one hundred seventy (170) parties. The types of parties contacted ranged from other entities in the food/beverage industry, strategics in the consumer/retail sector, and packaged food processors and food distributors. Stout informed interested parties that the Company was receptive to a wide range of transaction structures including a potential sale in bankruptcy, plan sponsorship, an out-of-court sale, structured deals involving “take back” debt and/or equity. In addition, Stout solicited bids for the Company as a whole, as well as discrete portions of the Debtors’ (and Canadian Debtors’) assets, recognizing that the selling in pieces could potentially yield the highest possible value to the estate, although the Company’s preference was to sell all of its operations as a going concern. Stout articulated to interested parties that the intent was to have a signed asset purchase agreement in January 2021, with a closing in late March 2021.

37. As of the date of this filing, Stout has contacted approximately 213 potential buyers including nearly 90 strategic parties, 20 “hybrids” (private equity firms with strategic portfolio companies in the sector), and over 100 purely financial buyers. Of that amount, approximately 83 executed non-disclosure agreements allowing them access to confidential information, 74 reviewed the teaser, 37 progressed to review the confidential information memorandum prepared in connection with the proposed sale, and approximately 20 reviewed the CIM and the data room. Among those parties that Stout believes are still interested at this time, several have indicated that they are considering purchases of the Company as a whole while others are interested in select assets or entities.

G. The Proposed Sale to Stellex

38. One of the parties most interested in acquiring the Company’s operations throughout the marketing process has been Stellex, a global private equity firm that has teamed

with certain of the Company's prior owners. As described briefly above, on January 20, 2021, the Company received a letter of intent from Stellex and began negotiating the terms of definitive documents with Stellex regarding the acquisition by Stellex of virtually all of the Company's American and Canadian assets with the exception of the facility in Vancouver, British Columbia and its associated operations. Contemporaneously with the filing of these Chapter 11 Cases, the Company is entering into an Asset Purchase Agreement with Stellex (the "**Stellex APA**") by which the Company will sell those assets to Stellex in exchange for \$30 million in cash considerations and \$25 million in a secured note. Pursuant to the Stellex APA, Stellex will also assume certain liabilities of the Company as described in the Stellex APA. After a diligent search, the Company, in consultation with its advisors, believes this to be the best price attainable in the market for the assets to be sold to Stellex at this time, and though the total anticipated consideration is less than the debt owed to the Prepetition Lenders, such Prepetition Lenders are currently willing to accept that price subject to a fair and competitive bidding process during these Chapter 11 Cases and the CCAA Proceeding.

39. The Stellex APA contemplates Stellex's participation in that process as a stalking-horse bidder subject to Bankruptcy Court approval of bid and sale procedures to be proposed by the Debtors in their *Emergency Motion For Entry of an Order: (I) (A) Authorizing and Approving Bid Procedures; (B) Authorizing and Approving the Stalking Horse Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assumption and Assignment Procedures; and (E) Approving Notice Procedures; (II) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear Of All Liens, Claims, Encumbrances And Interests; and (III) Granting Related Relief* (the "**Bid Procedures Motion**").

40. Generally, the Bid Procedures Motion contemplates the continued marketing of the Company's assets, including the assets of the Debtors (the "**Sale Process**") followed by an auction (if necessary) to determine the highest and best price under the circumstances for those assets. At the conclusion of the Sale Process, the Company intends to close the sale of the applicable assets to the highest and best bidder, whether that party is Stellex or otherwise. The Bid Procedures Motion will request approval of standard bid protections for Stellex in its role as stalking-horse bidder in the Sale Process. If any of the Company's assets remain, whether those assets belong to the Debtors or Canadian affiliates, the Company will take appropriate next steps to liquidate those assets, as well, and formulate an appropriate exit strategy for the Chapter 11 Cases and the CCAA Proceeding.

H. The Proposed DIP Financing

41. As described above, the Company engaged in fulsome and arm's-length negotiations regarding a debtor-in-possession financing package with the Ad Hoc Group of Lenders, eventually resulting in that certain *Superpriority Senior Secured Debtor-In-Possession Credit Agreement* (the "**DIP Credit Agreement**") and, together with the related interim and final orders, and all related ancillary documents, the "**DIP Documents**") that will provide new money in the amount of \$13,416,000 (inclusive of the Upfront Fee), allow the consensual use of cash collateral, and grant adequate protection to the Prepetition Secured Parties. The proceeds of the DIP Facility will fund the Debtors' operations and administrative expenses during the Sale Process. Following the filing of the CCAA Proceeding, the Canadian Debtors expect to be able to fund their post-filing expenditures from operations; however, as more fully set forth in the DIP Motion (defined below), the Canadian Debtors will have the ability to access proceeds of the DIP Facility to fund operations, if necessary, via secured intercompany transactions from the Debtors. In order to reflect this arrangement, the Canadian Debtors are parties to the DIP Credit Agreement

and that certain Canadian Guaranty and Security Agreement, which provides that the Canadian Debtors will guarantee the obligations of the DIP Borrower (as defined therein) under to the DIP Credit Agreement, up to any amount equivalent to any such intercompany advances to the Canadian Debtors. The proposed DIP Facility was negotiated at arm's length and in good faith between the Company and the DIP Lenders, and it is my opinion that those terms are fair and reasonable, and the best available terms obtainable by the Company under the circumstances and approved by the Independent Committee. Moreover, the Company and their advisors were unable to find alternate financing on equal, more favorable, or less favorable terms. No other parties were willing to provide funding on an unsecured basis or a secured basis with liens solely on unencumbered property (if any). Nor were any lenders willing to provide funding with liens junior to the Prepetition Lenders. Finally, the Prepetition Lenders themselves were unwilling to allow any third parties to prime their liens and would not consent to the use of Cash Collateral—which would be insufficient to fund the Debtors' operations in any event—absent an agreement with those same lenders to provide debtor in possession financing.

42. The proposed DIP Facility is critical to the continuation of the Company's operations in bankruptcy and the success of the Sale Process. Because the Debtors currently operate at a loss and have extremely limited liquidity, they require immediate access to debtor in possession financing to, among other things, fund employee payroll, make payments to vendors and suppliers, pay their lease and mortgage obligations on their facilities, and keep the lights on and the water flowing by paying utilities. It is my opinion that without the DIP Facility, the Debtors would be unable to operate in the ordinary course of their businesses and would be forced to immediately close down production facilities and face a value destructive liquidation. In that event, the Debtors' going-concern value would virtually disappear, jeopardizing any prospect of a

worthwhile sale, and the Chapter 11 Cases and the CCAA Proceeding would devolve into a “free fall” bankruptcy and probable liquidation. In sum, if the DIP Facility is not approved, and the Debtors are not allowed to borrow funds and use cash collateral, they will suffer immediate and irreparable harm. The only viable path forward for the Company is the Sale Process with the support of their Prepetition Lenders and the DIP Lenders. Despite their best efforts, the Company has no other options.

III. THE FIRST DAY MOTIONS

43. Contemporaneously herewith, the Debtors have filed the following motions seeking orders granting various forms of relief intended to stabilize the Debtor’s business operations, minimize the adverse effects of the commencement of these Chapter 11 Cases, facilitate the efficient administration of these Chapter 11 Cases (collectively, the “**First Day Motions**”).

- (i) *Emergency Motion for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 2] (the “**Joint Administration Motion**”);
- (ii) *Emergency Motion for Entry of an Order: (I) Authorizing the Debtors to File a Consolidated List of Creditors and a Consolidated List of the 30 Largest Unsecured Creditors, (II) Authorizing the Debtors to Redact Certain Personal Identification Information, (III) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Cases and Other Information, and (IV) Granting Related Relief* [Docket No. 3] (the “**Consolidated Creditor Lists Motion**”);
- (iii) *Emergency Motion for Order Extending Time to File Schedules of Assets and Liabilities and Statements of Financial Affairs* [Docket No. 4] (the “**Schedules Extension Motion**”);
- (iv) *Emergency Application for Entry of an Order Authorizing the Retention and Application of Epiq Corporate Restructuring, LLC as Claims, Noticing, Solicitation, and Administrative Agent* [Docket No. 5] (the “**Epiq Retention Application**”);

- (v) *Emergency Motion for Order (i) Deeming Utilities Adequately Assured of Future Performance; and (ii) Establishing Procedures for Determining Requests for Additional Adequate Assurance Pursuant to Bankruptcy Code Section 366* [Docket No. 6] (the “**Utilities Motion**”);
- (vi) *Emergency Motion for Order Authorizing the Debtors to Pay Prepetition Taxes and Related Obligations* [Docket No. 7] (the “**Taxes Motion**”);
- (vii) *Emergency Motion for Authority to (i) Pay Prepetition Insurance Obligations, (ii) Continue Administering Insurance Policies, and (iii) Continue to Pay Claims to the Extent They Become Due and Payable* [Docket No. 8] (the “**Insurance Motion**”);
- (viii) *Emergency Motion for Authority to Pay Prepetition Wages and Other Employee-Benefit Claims* [Docket No. 9] (the “**Prepetition Wages Motion**”);
- (ix) *Emergency Motion for Authority to Pay or Honor Prepetition Obligations to Limited Critical Vendors* [Docket No. 13] (the “**Critical Vendors Motion**”);
- (x) *Emergency Motion for Authority to Pay or Honor Prepetition PACA Claims* [Docket No. 11] (the “**PACA Claims Motion**”);
- (xi) *Emergency Motion for Authority to Pay or Honor Certain Prepetition Shipping Charges* [Docket No. 12] (the “**Shipping Motion**”);
- (xii) *Emergency Motion for Interim and Final Orders Authorizing Continued Use of Existing (i) Cash Management System; (ii) Accounts and Business Forms; and (iii) Deposit Practices; (B) For an Extension of Time to Comply with Section 345 of the Bankruptcy Code; and (C) Scheduling a Final Hearing* [Docket No. 10] (the “**Cash Management Motion**”); and,
- (xiii) *Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Post-Petition Financing; (II) Authorizing the Debtors to Use Cash Collateral; (III) Granting Liens and Providing Superpriority Administrative Expense Claims; (IV) Granting Adequate Protection to Prepetition Secured Parties; (V) Modifying the Automatic Stay; (VI) Scheduling a Final Hearing; and (VII) Granting Related Relief* [Docket No. 16] (the “**DIP Motion**”).

44. In connection with the preparation for these Chapter 11 Cases, I have reviewed each of the First Day Motions and believe that the entry of orders granting the relief requested in these Motions is critical to the administration of these Chapter 11 Cases, the Debtors’ ability to continue in operation maximize the value of their estates for the benefit of creditors and parties in interest,

and ultimately, to effectuate a sale of substantially all of the Company's assets for the highest and best price possible under the circumstances.

45. The First Day Motions can be divided into three (3) categories: Administrative, Operational, and Financing as follows:

(i) *Administrative Motions*—the Joint Administration, Consolidated Creditor Lists, and Schedules Extension Motions, and the Epiq Retention Application. These pleadings are designed to streamline the administration of the Debtors' Chapter 11 Cases by, among other things: procedurally consolidating the Debtors' seventeen (17) bankruptcy cases into one case and granting related relief; extending the deadline by which the Debtors must file required Schedules and Statements of Financial Affairs by forty five (45) days for a total of fifty nine (59) days from the Petition Date; allowing the Debtors to file consolidated creditor lists and matrices, redact confidential information of creditors, and approving a single Notice of Commencement to be sent to creditors and parties in interest in lieu of seventeen (17) separate notices; and approving the retention of Epiq Corporate Restructuring, LLC as claims and noticing agent for the Debtors. It is my opinion that the relief sought in the Administrative Motions will streamline the administration of these Chapter 11 Cases through procedural consolidation, facilitate the noticing process to interested parties, reduce the administrative expenses ultimately incurred by the Debtors, and reduce confusion. It is my understanding that the Administrative Motions seek non-substantive relief that is routinely granted in larger chapter 11 cases in this District and that is necessary and appropriate under the circumstances.

(ii) *Operational Motions*—the Utilities, Taxes, Insurance, Prepetition Wages, Critical Vendors, PACA Claims, and Shipping Motions. These pleadings seek relief intended to stabilize the Debtors' operations in bankruptcy by, among other things, establishing procedures

for providing adequate assurance to the Debtors' utility providers, thus ensuring the continued provision of utility services; authorizing the payment of certain prepetition claims arising from the Debtors' insurance policies, to or relating to the Debtors' employees, of various taxing authorities, of creditors that are critical to the Debtors' operations, of creditors that provide perishable agricultural commodities to the Debtors, and of certain freight and shipping companies; as well as relief related to the foregoing. Several of the Operational Motions (and other First Day Motions) request authority to pay certain prepetition claims, such as those owed to employees and certain vendors and suppliers. It is my understanding that Federal Rule of Bankruptcy Procedure 6003 provides, in relevant part, that the Court shall not consider motion to pay prepetition claims during the first twenty days following the filing of a chapter 11 petition "except to the extent relief is necessary to avoid immediate and irreparable harm." During the process of preparing for these Chapter 11 Cases, the Debtors narrowly tailored their requests for immediate authority to pay certain prepetition claims to those circumstances where the failure to pay such claims would cause immediate and irreparable harm to the Debtors and their estates. The Operational Motions also seek approval of certain procedures, such as the establishment of a segregated account for the benefit of the Debtors' utilities, that are essential to the Debtors' continued operations.

(iii) *Financing*—the Cash Management Motion and DIP Motion. These pleadings seek authority for the Debtors to continue using their prepetition cash management system, including their prepetition bank accounts and business forms; and to incur senior secured post-petition financing to fund their operations during these Chapter 11 Cases in the form of the DIP Facility described above. Absent the relief granted in these motions, particularly the DIP Motion, it is my opinion that the Debtors would be forced to shut down their operations and liquidate their assets in short order. The Debtors have an immediate need for the funds to be

provided in the DIP Facility to, among other things, satisfy their payroll obligations, make payments to vendors and suppliers, pay their utilities, make mortgage and lease payments for their production facilities, pay professional fees, and satisfy all other projected expenses of the Debtors and their bankruptcy estates.

Pursuant to 28 U.S.C. § 1746(2) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 15, 2021.

/s/ Stephen Marotta

Stephen Marotta, Chief Restructuring Officer