IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

IN RE:	)	
	)	
BELLE FOODS, LLC,	)	**Chapter 11**
	)	**Case No. 13-81963-JAC11**
Debtor.	)	

JOINT MOTION OF THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS PURSUANT TO BANKRUPTCY RULE 9019 FOR APPROVAL OF COMPROMISE AND SETTLEMENT RESOLVING CERTAIN DISPUTES

Belle Foods, LLC (the "Debtor") and Official Committee of Unsecured Creditors (the "Committee") of the Debtor, (the Debtor and Committee, together, the "Movants"), by and through their respective undersigned counsel, hereby submit the *Joint Motion of the Debtor and Official Committee of Unsecured Creditors Pursuant to Bankruptcy Rule 9019 for Approval of Compromise and Settlement Resolving Certain Disputes* (the "Motion"). In support of the Motion, the Movants respectfully represent as follows:

PRELIMINARY STATEMENT

By this Motion, the Movants seek approval of a settlement as set forth in the Settlement Agreement (the "Settlement Agreement"), dated as of February 19, 2013, by and among the Debtor, Committee, and Lenders. A copy of the Settlement Agreement[1] is attached as **Exhibit A** to this Motion.

Of course, this is not the first time the Debtor, Committee, and Lenders have attempted to resolve this case in a consensual manner and attempt to devise a path forward. On December 23,

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Settlement Agreement and/or the Final DIP Order (as defined herein), as applicable.

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2014, the Committee and Lenders filed the *Joint Motion of the Official Committee of Unsecured Creditors and the Lenders Pursuant to Bankruptcy Rule 9019 for Approval of Compromise and Settlement Resolving Certain Disputes* (the "First Settlement Motion"). The First Settlement Motion sought approval of the First Settlement Agreement between the Lenders and Committee that was the culmination of extensive and arms' length negotiations between and among the Committee and the Lenders. The Settlement Agreement sought to, among other things, settle potential estate causes of action against the Lenders, provide a "gift" to certain creditors of the Debtor's estate and preserve certain other estate causes of action against various insiders and directors and officers of the Debtor's. Despite the good faith efforts of the Committee and Lenders embodied in the Settlement Agreement, on January 21, 2014, after sufficient notice and a hearing to consider the First Settlement Motion, the Court denied the First Settlement Motion. Among other things, the Court voiced concerns that the distribution scheme set forth in the First Settlement Agreement did not comply with the priority structure embodied in the Bankruptcy Code. The Lenders and Committee engaged in further discuss and, mindful of the Court's admonishment at the January 21, 2014 hearing, engaged in further negotiations with each other and the Debtor to cure the various objections to the First Settlement Agreement.

As set forth in more detail below, the Settlement Agreement provides for various benefits to unsecured creditors, consisting principally of a trust to be established for the benefit of unsecured creditors (the GUC Trust, as defined in the Settlement Agreement) funded by the Lenders in the amount of $1.5 million to be used to make distributions to creditors and to prosecute certain causes of action, the fruits of which may further enhance recoveries to creditors. *Importantly, all distributions made by the GUC Trust will fully comply with the priority distribution scheme embodied in the Bankruptcy Code.* Thus, the Settlement Agreement

not only will fully comply with the Bankruptcy Code's priority distribution scheme but will also provide creditors with the certainty of a recovery in a case where the amount of the senior secured claim held by the Lenders potentially *far exceeds* the value of the Debtor's assets and there is no certainty of a recovery for creditors without the benefits of the Settlement Agreement. Accordingly, the Movants believe that the structure of the Settlement Agreement will enable creditors to achieve a distribution, consistent with the Bankruptcy Code's priority scheme, regardless of the direction the bankruptcy case takes in the future, as it is premised on distributions funded by the Lenders' Collateral. Thus, and for the reasons set forth below, the Movants request that the Court approve the Settlement Agreement.

BACKGROUND

1. On July 1, 2013 (the "Petition Date"), Belle Foods, LLC (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code") commencing chapter 11 Case No. 13-81963-JAC11 (the "Chapter 11 Case") in the United States Bankruptcy Court for the Northern District of Alabama (the "Court").

2. On July 17, 2013, the Court appointed the Committee on the recommendation of the United States Bankruptcy Administrator for the Northern District of Alabama.

The Final DIP Order, Releases, and Challenge Period

3. On July 24, 2013, the Debtor filed the *Debtor's Motion for Interim and Final Orders (I) Authorizing Debtor (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Scheduling Final Hearing Pursuant to*

Bankruptcy Rules 4001(b) and (c) [Doc 186] (the "DIP Motion"), in which the Debtor sought approval of a postpetition debtor in possession financing facility to be provided by the Lenders.

4. On August 12, 2013, the Court entered the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (A) Authorizing Postpetition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, and (D) Granting Related Relief* [Doc 340] (the "Final DIP Order") (as modified by the *Modification of Final DIP Order* [Doc 674] entered by the Court on October 18, 2013), in which, among other things, the Court approved the postpetition debtor in possession financing facility proposed by the DIP Motion.

5. Pursuant to paragraphs F and 24 of the Final DIP Order, unless prior to the expiration of the Challenge Period the Committee commences a Challenge, files a motion to extend the Challenge Period, or files a motion for standing to prosecute a Challenge: all payments made to or for the benefit of the Lenders pursuant to, or otherwise authorized by, the Final DIP Order or otherwise (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to claims, counterclaims, set-off, subordination, recharacterization, defenses, or avoidance; any and all such Challenges shall be deemed to be forever released, waived, and barred; the Prepetition Obligations owed by Debtor to any of the Lenders shall be deemed to be a fully allowed secured claim (subject only to final calculation and reconciliation by the Lenders) within the meaning of section 506 of the Bankruptcy Code; and Debtor's stipulations and acknowledgements contained in the Final DIP Order shall be binding on all parties in interest, including the Committee, any other official committee, or any trustee appointed in the Chapter 11 Case and any successor case. In addition, as set forth in greater detail in the Final DIP Order, upon the expiration of the Challenge Period, certain

avoidance actions (if not preserved in accordance with the terms of the Final DIP Order), shall be released.

6. On October 16, 2013, the Challenge Period Expiration Date occurred with respect to all parties other than the Committee.

7. By successive stipulations, most recently by the *Eleventh Stipulation Regarding Extension of Challenge Period* filed on February 11, 2014 [Doc 860], the Lenders and Committee agreed to extend, with respect to the Committee only, the Challenge Period through and including February 14, 2014, at 12:00 (midnight) prevailing Central Time.

Lenders' Secured Claim and Sale of the Debtor's Assets

8. As of the Petition Date, the Debtor was indebted to the Lenders on account of various Prepetition Obligations (as defined in the Final DIP Order) that, according to the Lenders, were (and are) secured by valid, duly perfected liens against substantially all of the Debtor's property. As provided in the Final DIP Order, the amount of the Prepetition Obligations on the Petition Date was not less than $33.3 million. As further noted in the Final DIP Order, the amount of $33.3 million was not final or exclusive and may not include certain amounts that were then or in the future would be owed with respect to the Prepetition Obligations, including contingent and/or unliquidated amounts or other amounts that may later be determined to be owed. By the Final DIP Order, the Court approved the refinancing of the Prepetition Obligations in the amount of $33.3 million, the extension of $5 million in new postpetition financing, reimbursement of the Lenders' fees and expenses, and other relief related to the DIP Facility and the Debtor's use of Cash Collateral (each as defined in the Final DIP Order). Per the Final DIP Order, the DIP Obligations (as defined in the Final DIP Order) are secured by first priority liens against substantially all of the Debtor's property.

9. As of the date hereof, the Lenders' have asserted an allowed secured claim against the Debtor's estate in the amount in excess of $40,000,000.

10. On September 27, 2013, the Court entered the *Order (A) Approving Asset Purchase Agreement by and Between Belle Foods, LLC and Associated Wholesale Grocers, Inc., (B) Authorizing (I) Sale of Certain of the Debtor's Assets Free and Clear of Liens, Claims, Encumbrances and Interests and (II) Assumption and Assignment of Leases and (III) Buyer's Lease Designation Rights and (C) Related Relief* [Doc 605] (the "Sale Order"). Pursuant to the Sale Order and the Asset Purchase Agreement (the "APA") with Associated Wholesale Grocers, Inc. ("AWG" or "Buyer") approved thereby, substantially all of the Debtor's assets—including, but not limited to, its interests in its remaining operating retail grocery stores (the "Stores")—were sold. The closing (the "Closing") of the sale (the "Sale") approved by the Sale Order occurred on a rolling basis throughout October 2013 with respect to certain Stores or groups of Stores. As of the date of this Motion, the Closings have been substantially completed.

11. On October 18, 2013, the Court entered the *Modification of Final DIP Order* [Doc 674] (the "DIP Modification Order") pursuant to which the total amount of the DIP Facility was increased to $39.05 million and substantially all of the Debtor's property (i.e., the Lenders' Collateral) not sold pursuant to orders of the Court was ordered to be transferred to the Lenders. The DIP Modification Order also required the Lenders to provide, on or before November 4, 2013, a report (the "Claim Report") to counsel to Debtor and counsel to the Committee setting forth the total estimated amount of the Lenders' claim(s) against the estate (including, but not limited to, the DIP Obligations and any claims for rejection damages) and the total amount of credits applied against those claims (including, but not limited to, adequate protection payments, allowed setoffs, and proceeds received from the sale of Collateral). On November 4, 2013, the

Lenders produced the Claim Report as required by the DIP Modification Order, which reflected that the known amounts of the Lenders' asserted secured claims against the Debtor's estate—which include, among other things, the DIP Obligations, damages from the rejection of executory contracts and leases (including the Supply Agreement, as defined in the Final DIP Order), and professionals' fees—at that time, to the best of the Lenders' knowledge, totaled more than $80 million (the "Lenders' Secured Claim").

12. Pursuant to paragraph 28 of the Sale Order, as well as in accordance with the Final DIP Order and the *Modification of Final DIP Order* entered by the Court on October 18, 2013 [Doc 674], the net proceeds of the Sales from the Closings have been remitted to the Lenders. These payments, together with other payments, setoffs, and transfers of property ordered by the Court in connection with the DIP Facility and the Debtor's use of Cash Collateral, resulted in a total credit of more than $35 million as of the date of the Claim Report, reducing the liquidated, outstanding amount of the secured claims asserted by the Lenders to approximately $46.8 million.

Investigation and Settlement

13. Following its appointment, the Committee has diligently investigated potential Claims and Challenges against the Lenders, which investigation has included an extensive review of the Lenders' voluntary document production, interviews of potential witnesses, and research of applicable law. As with the First Settlement Agreement, the Settlement Agreement was reached after an extensive investigation by the Committee with respect to potential claims of the Debtor's estate against the Lenders. To that end, the Lenders voluntarily produced in excess of 9,000 pages of documents responsive to discovery requests propounded by the Committee. The Committee also conducted numerous interviews with employees and officers of the Debtor.

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Among other things, the Committee investigated whether there were viable causes of action against the Lenders for fraudulent transfers, preferential transfers, the avoidance of the Lenders liens and equitable subordination. After conducting the investigation, the Committee commenced negotiations with the Lenders with the goal of providing some recovery to unsecured creditors in this case. The Committee, in consultation with its professionals, concluded that any potential litigation recovery against the Lenders was, at best, remote. Additionally, any litigation commenced by the Committee against the Lenders would be costly and time consuming and ultimately impracticable given the lack of funding necessary to prosecute such litigation. Taken together, the Committee has concluded that the Settlement Agreement provides the highest value to creditors and is in the best interests of the creditors of the Debtor's estate.

14. The Committee has engaged the Lenders in extensive arms' length negotiations regarding potential Claims and Challenges against the Lenders, which negotiations have culminated in the Settlement Agreement that the Movants seek approval of pursuant to this Motion.

15. On December 23, 2013, the Committee and Lenders filed the First Settlement Motion. By Order dated January 21, 2014, the Court denied the First Settlement Motion.

16. The Settlement Agreement includes, among other pertinent provisions, the following:[2]

- **Resolution of Claims and Challenges**. Upon the Effective Date, the Challenge Period Expiration Date (as defined in paragraph 24 of the Final DIP Order) shall be deemed to have occurred, notwithstanding any prior stipulated extension thereof to the contrary. For the avoidance of doubt,

[2] This summary is provided for the convenience of the Court and is not intended to alter or affect in any way the terms of the Settlement Agreement. In the event of a conflict or inconsistency between this summary and the terms of the Settlement Agreement, the Settlement Agreement controls.

upon the Effective Date and deemed occurrence of the Challenge Period Expiration Date, the waivers and releases of Claims and Challenges in favor of the Lenders that are effected pursuant to paragraphs 24 and 25 of the Final DIP Order—including, but not limited to, the Debtor's Stipulations (as defined in the Final DIP Order)—shall become permanently binding on the Committee, as set forth more fully in the Final DIP Order, except for Avoidance Actions that are identified on Exhibit A of the Settlement Agreement and that are otherwise timely preserved by the Committee in accordance with paragraph 25 of the Final DIP Order. The Committee shall not take any act to commence or prosecute any Claim or Challenge against the Lenders prior to the Effective Date.

- **Carveouts**: As soon as practicable following the occurrence of the Effective Date, the Lenders shall carve out of the proceeds of their Collateral and transfer to the GUC Trust (as defined below), for the sole benefit of creditors (as defined in Bankruptcy Code section 101(10) "Creditors", and each a "Creditor") holding unsecured claims (whether or not entitled to priority under Bankruptcy Code sections 503 or 507, "Unsecured Claims", and each an "Unsecured Claim") against the Debtor's estate, the following:

    - $1,300,000.00, to be distributed consistent with the terms of this Settlement Agreement and the terms of the GUC Trust Agreement (as defined below) (the "GUC Funds Carveout");

    - $200,000.00, to be used by the GUC Trustee (as defined below) as seed funding (the "Seed Funding") for the prosecution or settlement of any claims and causes of action belonging to the Debtor's estate that are not otherwise released and are transferred to the GUC Trust (defined below) (the "GUC Causes of Action") and the White Claims (defined below). The first $200,000.00 of recoveries from GUC Causes of Action and/or White Claims shall be repaid to the Lenders (the "Seed Funding Reimbursement"); and

    - Following the Effective Date, the Lenders also shall carve out of the proceeds of their Collateral, for the benefit of the Parties and Creditors, the Committee Professional Fee Payment and the Service Cost.

- **Creditor Releases**. As set forth in greater detail in the Settlement Agreement, for good and valuable consideration, to the fullest extent permissible under applicable law, each Creditor who receives a distribution from the GUC Trust (as defined below) pursuant to the Settlement Agreement shall be deemed to have irrevocably and unconditionally, fully, finally and forever waived and released the Debtor, Committee and the Lenders, as well as the respective professionals,

members, officers, directors, shareholders, and affiliates[3] of each of the foregoing, from any and all claims and causes of action related to or in connection with the Debtor.

- **GUC Trust**. Promptly after the Effective Date, the Parties shall form a trust for the benefit of the Debtor, Creditors and the Lenders (the "GUC Trust") pursuant to a trust agreement among the Parties. The Committee, in consultation with the Debtor, whose consent shall not be unreasonably withheld, shall select a trustee to serve under the GUC Trust (the "GUC Trustee"). The GUC Trustee shall file quarterly reports in the Bankruptcy Case listing the assets and liabilities of the GUC Trust, and all amounts received and expended during the relevant period, and further shall upon reasonable terms and conditions report to the Debtor and the Lenders following their request. Any information or documents provided by the GUC Trustee to the Debtor or Lenders shall be deemed protected by a joint or common interest privilege. The GUC Trustee also shall obtain Court approval of any settlement of any GUC Causes of Action or White Claims where the amount in dispute exceeds $1,000,000.00, and shall provide notice of any such approval motion to the Debtor and the Lenders at least twenty (20) days prior to any hearing thereon and entry of any order approving or disapproving such settlement. The GUC Trustee shall administer the GUC Trust and hold in trust and distribute for the benefit of the Creditors and Lenders the GUC Assets (as defined herein) in a manner consistent with this Settlement Agreement and the GUC Trust Agreement. Upon the establishment of the GUC Trust, the assets of the GUC Trust (the "GUC Assets")[4] shall include the following:

    - the Seed Funding;

    - the Lenders' rights and claims under the White Guaranty (the "White Claims");[5]

    - the GUC Funds Carveout; and

    - the GUC Causes of Action identified on Exhibit A of the Settlement Agreement.[6]

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[3] The Lenders' affiliates include, but are not limited to, the non-debtor counterparties to the C&S Agreements, as defined in the Final DIP Order.

[4] For the avoidance of doubt, the GUC Assets available for distribution to creditors shall be net of reasonable legal fees and expenses incurred by the GUC Trustee in carrying out his or her duties under the GUC Trust.

[5] The Lenders' rights and claims under the White Guaranty are subject to that certain Settlement Agreement dated July 25, 2013, by and among William D. White, Rebecca J. White, Jeffrey D. White, Kelli A. White, C&S Wholesale Grocers, Inc., and Southern Family Markets LLC.

[6] The GUC Causes of Action identified on Exhibit A of the Settlement Agreement are Avoidance Actions that, pursuant to the Final DIP Order, the Committee has identified, in consultation with the Lenders, as Avoidance

- **Distribution of GUC Assets**. Consistent with the terms of the agreement establishing the GUC Trust, the GUC Trustee shall distribute the GUC Assets as follows:

  - the GUC Fund Carveout shall be distributed first to all Creditors holding allowed claims arising under Bankruptcy Code section 503 pro rata until such Claims are fully satisfied, then to Creditors holding allowed Unsecured Claims arising under Bankruptcy Code section 507 in order of priority pro rata until such Claims are fully satisfied, and then to Creditors holding allowed general Unsecured Claims pro rata. For the avoidance of doubt, the Lenders shall not share in any distribution of the GUC Fund Carveout.

  - To the Lenders, on account of:

  - on account of the Seed Funding Reimbursement, $200,000.00 from first proceeds recovered from the GUC Causes of Action and/or White Claims;

  - on account of the Committee Professional Fee Advance, 50%, not to exceed $25,000.00, of the Committee Professional Fee Advance from first proceeds recovered from the GUC Causes of Action and/or White Claims;

  - on account of the Service Cost Advance, 50% of the total amount of the Service Cost Advance from first proceeds recovered from the GUC Causes of Action and/or White Claims; provided however, that the Lenders shall provide reasonable documentation of the amount of the Service Cost Advance to the GUC Trustee; and

  - on account of the D&O Premium Advance, $70,000.00 from first proceeds, net of reasonable expenses and reasonable contingency counsel fees, of any settlement or judgment paid or recovered in whole or in part from or under the D&O Policy.

  - Any proceeds of GUC Assets in excess of the Lenders Reimbursement Amount recovered from the GUC Causes of Action and/or the White Claims shall be distributed first to Creditors holding allowed Unsecured Claims arising under Bankruptcy Code section 503 pro rata until such Claims are fully satisfied, then to Creditors holding allowed Unsecured Claims

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Actions that shall not be released. For the avoidance of doubt, the GUC Causes of Action will also include claims and avoidance actions against the Debtor's directors, officers and "insiders" (as that term is defined in the Bankruptcy Code), which, pursuant to the Final Order, are not deemed to be released upon the expiration of the Challenge Period.

arising under Bankruptcy Code section 507 in order of priority pro rata until such Claims are fully satisfied, and then 90% to the Lenders and 10% to Creditors holding allowed general Unsecured Claims pro rata.

- **Dissolution of Committee.** On the date that is five (5) business days after the date of formation of the GUC Trust, the Committee shall be dissolved, provided, however, that the Committee shall exist, and its professionals shall be retained and entitled to reasonable compensation from the Debtor's estate, solely with respect to applications filed pursuant to section 330 and 331 of the Bankruptcy Code and any related hearings up to and including any hearing on the Committee professionals' final application for compensation.

JURISDICTION AND VENUE

17. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein are Bankruptcy Code section 105and Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9019.

RELIEF REQUESTED

18. By this Motion, the Movants seek entry of an order under section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 approving the Settlement Agreement.

BASIS FOR RELIEF

19. Bankruptcy Rule 9019(a) provides, in relevant part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Bankruptcy Rule 9019(a). Settlements and compromises are generally favored in bankruptcy cases. *See, e.g., Collier on Bankruptcy* ¶ 9019.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Indeed, settlements are "'a normal part of the process of reorganization.'" *Group of Institutional Investors v. Chicago, M., S. P. & P. R. Co.,* 318 U.S. 523, 565 (1943).

20. The responsibility of a bankruptcy judge evaluating a settlement proposal under Rule 9019 is to determine whether the settlement falls below the "lowest point in the range of

reasonableness." *Anaconda-Ericsson, Inc. v. Hessen (In re Teltronics Servs., Inc.)*, 762 F.2d 185, 189 (2nd Cir. 1985) (cited and quoted by *In re Aloha Racing Found., Inc.,* 257 B.R. 83, 88 (Bankr. N.D. Ala. 2000)). To approve a compromise and settlement under Bankruptcy Rule 9019(a), a bankruptcy court must make an independent determination that the compromise and settlement is in the best interests of the debtor's estate. *See In re Marvel Entnm't Group, Inc.,* 222 B.R. 243, 249 (D. Del. 1998); s*ee also Vaughn v. The Drexel Burnham Lambert Group, Inc. (In re The Drexel Burnham Lambert Group, Inc.)*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991) (decision to either accept or reject a compromise and settlement is within the sound discretion of the bankruptcy court). The bankruptcy court may exercise its discretion "in light of the general public policy favoring settlements*." In re Hibbard Brown & Co.,* 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998).

21. A bankruptcy court need not decide the numerous issues of law and fact raised by a settlement, but rather "should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness." *Key3Media Group, Inc. v. Pulver.com, Inc. (In re Key3Media Group, Inc.*), 336 B.R. 87, 93 (Bankr. D. Del. 2005) (citing *In re Jasmine, Ltd.*, 258 B.R. 119, 123 (D.N.J. 2000)); *In re Coram Healthcare Corp*., 315 B.R. 321, 330 (Bankr. D. Del. 2004) ("[C]ourt must only conclude that the compromise or settlement falls within the reasonable range of litigation possibilities.") (citing *In re Penn Central Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979)).

22. In the Eleventh Circuit, a bankruptcy court evaluating a proposed settlement under Rule 9019 must consider:

> "(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily

> attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises."

Chira v. Saal (In re Chira), 567 F.3d 1307, 1312-13 (11th Cir. 2009) (quoting *In re Justice Oaks II, Ltd.,* 898 F.2d 1544, 1549 (11th Cir. 1990)). Courts consider these factors to determine "the fairness, reasonableness and adequacy of a proposed settlement agreement." *Id.* (citation and internal quotation marks omitted).

23. In this case, the Settlement Agreement should be authorized and approved by this Court because it provides significant benefits to the Debtor's unsecured creditors including distributions on account of allowed claims, consistent with the Bankruptcy Code's priority distribution scheme, the potential for enlarged recoveries through the funding of litigation to prosecute potential estate causes of action, and other benefits. Given that the remaining amount of the Lenders' Secured Claim exceeds the remaining assets of the estate, the Settlement Agreement will provide unsecured creditors with a significant benefit because unsecured creditors otherwise may not receive any amounts on account of their claims against the estate. The Settlement Agreement also avoids significant costs and uncertainty that would attend protracted litigation in the event the Committee elected to pursue Claims and Challenges against the Lenders.

24. The Committee and its counsel and financial advisors have reviewed the universe of potential claims that could be asserted against the Lenders. The Committee undertook a significant investigation of the Lenders' relationship with the Debtor and evaluated numerous potential claims against the Lenders. As part of the investigation, the Lenders voluntarily produced in excess of 9,000 pages of documents. The Committee also reviewed documents produced by the Debtor and interviewed numerous employees of the Debtor. The Committee considered and evaluated potential claims, including claims for fraudulent transfers, preferential

transfers, avoidance of the Lenders' liens and equitable subordination. After completing the investigation, the Committee, in consultation with its professionals, determined that any claims against the Lenders would be highly speculative in nature and unlikely to exceed the consideration to be paid by the Lenders through the Settlement Agreement. In addition to the speculative nature of the claims that could be asserted against the Lenders, any litigation would be expensive to prosecute and would likely take years to resolve. The Settlement Agreement provides for immediate distribution to creditors, consistent with the Bankruptcy Code's priority distribution scheme, with the potential to realize additional distributions from litigation recoveries. Finally, at the hearing to consider the Motion, the Committee intends to present evidence as necessary on the economic justification for the preference waiver.

25. When measured against an uncertain recovery, or no recovery at all, for the unsecured creditors in the absence of the Settlement Agreement (including an expensive investment in fees and costs to prosecute potential claims), the Settlement Agreement is fair and reasonable, falling well above "the lowest point in the range of reasonableness." Accordingly, the Settlement Agreement should be approved under Bankruptcy Rule 9019 as being in the best interests of the Debtor's estate and its creditors.

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WHEREFORE, the Movants respectfully request that the Court enter an order approving the Settlement Agreement and granting such other and further relief as is just and proper.

Dated this the 21st day of February, 2014.

OTTERBOURG P.C.

By: */s/ David M. Posner*
David M. Posner, Esq.
Gianfranco Finizio, Esq.
230 Park Avenue
New York, New York 10169-0075
Telephone: (212) 661-9100

and

R. Scott Williams, Esq.
Jennifer Kimble, Esq.
Rumberger, Kirk & Caldwell, P.C.
2204 Lakeshore Drive
Birmingham, AL 35209
Telephone: (205) 327-5550

Attorneys for Committee

Burr & Forman LLP

By: /s/ D. Christopher Carson
D. Christopher Carson, Esq.
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Telephone: (205) 458-5372

Attorneys for Debtor, Belle Foods, LLC

Exhibit A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

IN RE:	)	
	)	
BELLE FOODS, LLC,	)	**Chapter 11**
	)	**Case No. 13-81963-11**
Debtor.	)	

SETTLEMENT AGREEMENT

This settlement agreement (the "Settlement Agreement") dated as of February __, 2014 is by and between Belle Foods, LLC (the "Debtor") in Chapter 11 Case No. 13-81963-JAC11 (the "Chapter 11 Case"), the Official Committee of Unsecured Creditors of Belle Foods, LLC (the "Committee") and a lender group that includes Southern Family Markets LLC ("SFM"), for itself and as agent, and C&S Wholesale Grocers, Inc. ("C&S", and together with SFM and subsidiaries and affiliates of either of the foregoing who are counterparties to the Prepetition Obligations (as defined herein), the "Lenders", and together with the Debtor and Committee, the "Parties").

RECITALS

WHEREAS on July 1, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") commencing a Chapter 11 Case in the United States Bankruptcy Court for the Northern District of Alabama (the "Court").

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WHEREAS, as of the Petition Date, the Debtor was indebted to the Lenders in an amount not less than $33,300,000.00 (the "Prepetition Obligations").[1] The Lenders have asserted that they have a perfected prepetition security interest in substantially all of the Debtor's assets including cash and deposit accounts (the "Collateral").

WHEREAS on July 17, 2013, the Court appointed the Committee on the recommendation of the United States Bankruptcy Administrator for the Northern District of Alabama.

WHEREAS on July 24, 2013, the Debtor filed the *Debtor's Motion for Interim and Final Orders (I) Authorizing Debtor (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c)* [Doc 186] (the "DIP Motion").

WHEREAS, on August 12, 2013, the Court entered the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (A) Authorizing Postpetition Financing, (B) Authorizing Use of Cash Collateral, (C) Granting Adequate Protection, and (D) Granting Related Relief* [Doc 340] (the "Final DIP Order").

[1] The Prepetition Obligations arise from and/or are evidenced by, without limitation, the following agreements: (i) that certain Asset Purchase Agreement dated February 3, 2012 by and between Debtor, SFM and certain affiliates of SFM; (ii) that certain $4,776,032 Purchase Money Promissory Note dated as of June 29, 2012, as amended by that certain Allonge to Purchase Money Promissory Note dated as of December 21, 2012, executed by Debtor in favor of certain affiliates of SFM; (iii) that certain Unitary Lease with Debtor, dated June 29, 2012 and that certain Intellectual Property License Agreement dated June 29, 2012; (iv) that certain Supply Agreement by and between C&S and Debtor, dated June 29, 2012; (v) that certain Transition Services Agreement, dated as of June 29, 2012, as amended by that certain First Amendment to Transition Services Agreement dated as of January 1, 2013; (vi) that certain Lease Agreement, dated as of June 29, 2012 by and between the Debtor and Birmingham Logistics LLC; (vii) that certain Loan Agreement dated June 29, 2012 by and between SFM and Debtor; (viii) that certain Allonge to Revolving Line of Credit Promissory Note and Loan Agreement dated June 22, 2013 by and between SFM and Debtor; and (ix) that certain Revolving Line of Credit Promissory Note dated as of June 19, 2012 by and between Debtor and SFM.

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WHEREAS, pursuant to paragraphs F and 24 of the Final DIP Order, unless prior to the expiration of the Challenge Period[2] the Committee commences a Challenge, files a motion to extend the Challenge Period, or files a motion for standing to prosecute a Challenge: all payments made to or for the benefit of the Lenders pursuant to, or otherwise authorized by, the Final DIP Order or otherwise (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to claims, counterclaims, set-off, subordination, recharacterization, defenses, or avoidance; any and all such Challenges shall be deemed to be forever released, waived, and barred; the Prepetition Obligations owed by Debtor to any of the Lenders shall be deemed to be a fully allowed secured claim (subject only to final calculation and reconciliation by the Lenders) within the meaning of Bankruptcy Code section 506; and Debtor's stipulations and acknowledgements contained in the Final DIP Order shall be binding on all parties in interest, including the Committee, other official committee, or any trustee appointed in the Chapter 11 Case and any successor case.

WHEREAS, upon the expiration of the Challenge Period, the following claims (the "Claims") are released if not preserved in accordance with the terms of the Final DIP Order: (A) any and all claims, counterclaims, causes of action, defenses, recoupment rights, or setoff rights of the estate against the Lenders and each of their officers, directors, principals, and beneficiaries, in their respective capacities as set forth in the C&S Agreements, arising prior to the Petition Date, whether arising at law or in equity, including without limitation any claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or similar provisions of applicable nonbankruptcy law; (B) any cause of action against any or all of the Lenders (in any capacity) in connection with or related to (i) the Prepetition Obligations owed by the Debtor to any of the Lenders, (ii) the pre-petition business relationship between or conduct of

[2] Capitalized terms used but not defined in these recitals have the meanings ascribed to them in the Final DIP Order.

any of the Lenders with the Debtor, (iii) the actions or inactions of any of the Lenders arising out of or related to the Prepetition Obligations owed by the Debtor to any of the Lenders or otherwise, (iv) any setoff, counterclaim, or defense to the Prepetition Obligations owed by the Debtor to any of the Lenders (including, but not limited to, any cause of action in the nature of "lender liability", and those under Bankruptcy Code sections 506, 544, 547, 548, 549, 550, and/or 552) or (v) any avoidance of or challenge (whether pursuant to Chapter 5 of the Bankruptcy Code or otherwise) to any transfer made by or on behalf of the Debtor to or for the benefit of any of the Lenders, and (C) all Avoidance Actions, but excluding: (X) challenges related to whether the Lenders are oversecured or undersecured with respect to the DIP Obligations and/or Prepetition Obligations including, but not limited to, conducting a valuation or similar analysis of the Debtor and raising valuation issues relating to such analysis but limited solely to determining whether the Lenders are oversecured or undersecured with respect to the Prepetition Obligations, (Y) claims against insiders (as that term is defined in the Bankruptcy Code) or any other third parties other than the Lenders, their officers, directors, principals, and beneficiaries, and (Z) Avoidance Actions against "insiders" (as defined in Bankruptcy Code section 101(31)).

WHEREAS, upon the occurrence of the Challenge Period Expiration Date, all Avoidance Actions shall be irrevocably waived and relinquished and may not thereafter be commenced or prosecuted by the Committee, the Debtor, or any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for the Debtor), except: (i) any Avoidance Action commenced prior to the Challenge Period Expiration Date; (ii) any Avoidance Action the Committee has moved the Court for standing to prosecute before the Challenge Period Expiration Date; (iii) Avoidance Actions against "insiders" (as defined in

Bankruptcy Code section 101(31)); (iv) subject to paragraph 24 of the Final DIP Order, Avoidance Actions that the Committee, in consultation with the Lenders, identifies as Avoidance Actions that shall not be released, provided, however, that the Committee provides notice of such identification to the Debtor and Lenders prior to the Challenge Period Expiration Date; and (v) as otherwise ordered by the Court except as limited by the terms of Paragraph 24 of the Final DIP Order.

WHEREAS, the Lenders are party to that certain Personal Guaranty entered into by the Lenders and William D. White and Rebecca J. White, dated as of June 29, 2012 (the "White Guaranty").

WHEREAS, on October 3, 2013, the Court entered the *Order Approving Modification of the Post-Petition Debtor in Possession Financing Budget* [D.I. 613] which provided that the Lenders would advance $70,000.00 for the payment of the D&O Policy Extension Premium (the "D&O Premium Advance") and be entitled to repayment of the D&O Policy Advance from the first proceeds recovered under the D&O Policy.

WHEREAS, on August 29, 2013, the Court entered the *Order Setting Deadline to File a Proof of Claim* [D.I. 428] (the "General Bar Date Order") setting October 29, 2013 as the date whereby creditors could file proofs of claim.

WHEREAS, on November 13, 2013, the Court entered the *Order Granting Motion to Set Bar Date for Certain Landlord Claims Determined after Sale Order* [D.I. 428] (the "Landlord Bar Date Order", together with the General Bar Date Order, the "Bar Date Orders") setting December 2, 2013 as date whereby certain landlord creditors could file proofs of claim.

WHEREAS, on October 16, 2013, the Challenge Period Expiration Date occurred with respect to all parties other than the Committee.

WHEREAS, subject to the occurrence of the Effective Date (defined below) the Lenders have agreed to advance up to $50,000.00 to satisfy fees and expenses incurred by professionals retained by the Committee and approved under the applicable administrative procedures of the Court, and that were not otherwise included in the DIP Budget or advanced subsequent to December 31, 2013 (the "Committee Professional Fee Payment").

WHEREAS, subject to the occurrence of the Effective Date (defined below) the Lenders have agreed to advance the costs of serving the motion to approve this Settlement Agreement on all Creditors (defined below) and parties-in-interest (the "Service Cost Advance").

WHEREAS, by successive stipulations, most recently by the *Eleventh Stipulation Regarding Extension of Challenge Period* filed on February 10, 2014 [D.I. 1031], the Lenders and Committee agreed to extend, with respect to the Committee only, the Challenge Period through and including February 14, 2014, at 12:00 (midnight) prevailing Central Time.

WHEREAS, the Parties have met and conferred and determined to resolve any and all potential Claims and Challenges on the terms set forth below.

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, the Parties agree as follows:

AGREEMENT

1. **Effective Date**. The terms of this Settlement Agreement shall be effective upon the Court's entry of a final, non-appealable order approving this Settlement Agreement (the "Effective Date").

2. **Carve Out of Proceeds of the Lenders' Collateral for the Sole Benefit of Unsecured Creditors**. As soon as practicable following the occurrence of the Effective Date,

the Lenders shall carve out of the proceeds of their Collateral and transfer to the GUC Trust (as defined below), for the sole benefit of creditors (as defined in Bankruptcy Code section 101(10), "Creditors", and each a "Creditor") holding unsecured claims (whether or not entitled to priority under Bankruptcy Code sections 503 or 507, "Unsecured Claims", and each an "Unsecured Claim") against the Debtor's estate, the following:

(A) $1,300,000.00, to be distributed consistent with the terms of this Settlement Agreement and the terms of the GUC Trust Agreement (as defined below) (the "GUC Funds Carveout"); and

(B) $200,000.00, to be used by the GUC Trustee (as defined below) as seed funding (the "Seed Funding") for the prosecution or settlement of any claims and causes of action belonging to the Debtor's estate that are not otherwise released and are transferred to the GUC Trust (defined below) (the "GUC Causes of Action") and the White Claims (defined below). The first $200,000.00 of recoveries from GUC Causes of Action and/or White Claims shall be repaid to the Lenders (the "Seed Funding Reimbursement").

Following the Effective Date, the Lenders also shall carve out of the proceeds of their Collateral, for the benefit of the Parties and Creditors, the Committee Professional Fee Payment and the Service Cost Advance, and shall pay each amount pursuant to the terms of this Settlement Agreement.

3. **Settlement of GUC Causes of Action and/or White Claims**. The GUC Trustee shall not settle or otherwise compromise any GUC Cause of Action and/or White Claims without the Lenders' consent, which consent shall not be unreasonably withheld; provided, however, that

after the Lenders' Reimbursement Amount[3] has been paid in full to the Lenders, no consent of the Lenders to any compromise or settlement by the GUC Trustee shall be required.

4. **GUC Trust**. Promptly after the Effective Date, the Parties shall form a trust for the benefit of the Debtor, Creditors and the Lenders (the "GUC Trust") pursuant to a trust agreement among the Parties. The GUC Trust shall be governed by a three-member board (the "GUC Trust Board") appointed by the Committee. The GUC Trust Board shall select a trustee, with the consent of the Debtor, whose consent shall not be unreasonably withheld, to act under the GUC Trust (the "GUC Trustee"). The GUC Trustee shall file quarterly reports in the Bankruptcy Case listing the assets and liabilities of the GUC Trust, and all amounts received and expended during the relevant period, and further shall upon reasonable terms and conditions report to the Debtor and the Lenders following their request. Any information or documents provided by the GUC Trustee to the Debtor or Lenders relating to any litigation being contemplated or pursued by the GUC Trust shall be deemed protected by a joint or common interest privilege. The GUC Trustee also shall obtain Court approval of any settlement of any GUC Causes of Action or White Claims where the amount in dispute exceeds $1,000,000.00, and shall provide notice of any such approval motion to the Debtor and the Lenders at least twenty (20) days prior to any hearing thereon and entry of any order approving or disapproving such settlement. The GUC Trustee shall administer the GUC Trust and hold in trust and distribute for the benefit of the Creditors and Lenders the GUC Assets (as defined herein) in a manner consistent with this Settlement Agreement and the GUC Trust Agreement. Upon the

[3] The Lenders' Reimbursement Amount consists of the sum of the Seed Funding Reimbursement, the D&O Premium Advance, 50% of the Service Cost Advance, and 50%, up to $25,000.00, of the Committee Professional Fee Payment.

establishment of the GUC Trust, the assets of the GUC Trust (the "GUC Assets")[4] shall include the following:

(A) the Seed Funding;

(B) the Lenders' rights and claims under the White Guaranty (the "White Claims");[5]

(C) the GUC Funds Carveout; and

(D) the GUC Causes of Action identified on Exhibit A hereto[6].

Upon the establishment of the GUC Trust and the transfer to the GUC Trust of the Seed Funding and GUC Funds Carveout, all GUC Assets shall be deemed to have been transferred, assigned, and vested fully, completely, automatically and indefeasibly to and in the GUC Trust without further action by the Parties or the Court, and the GUC Assets and proceeds therefrom shall not thereafter be or be deemed to be assets of the Debtor's estate. For the avoidance of doubt, the Seed Funding and GUC Funds Carveout shall be paid into the GUC Trust directly by the Lenders; neither the Seed Funding nor GUC Funds Carveout shall be deemed at any time to be assets of the Debtor's estate.

5. **Distribution of GUC Assets.** Consistent with the terms of the agreement establishing the GUC Trust, the GUC Trustee shall distribute the GUC Assets as follows:

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[4] For the avoidance of doubt, the GUC Assets available for distribution to creditors shall be net of reasonable legal fees and expenses incurred by the GUC Trustee in carrying out his or her duties under the GUC Trust.

[5] The Lenders' rights and claims under the White Guaranty are subject to that certain Settlement Agreement dated July 25, 2013, by and among William D. White, Rebecca J. White, Jeffrey D. White, Kelli A. White, C&S Wholesale Grocers, Inc., and Southern Family Markets LLC.

[6] The GUC Causes of Action identified on Exhibit A are Avoidance Actions that, pursuant to the Final DIP Order, the Committee has identified in consultation with the Lenders as Avoidance Actions that shall not be released. For the avoidance of doubt, the GUC Causes of Action also include, but are not limited to (i) any and all claims and Avoidance Actions of the Debtor or its estate against the Debtor's present and former directors, members, officers and "insiders" (as that term is defined in Bankruptcy Code section 101(31)); and (ii) claims under any of the Debtors' directors' and officers' insurance policies, which, pursuant to the Final Order, are not deemed to be released upon the expiration of the Challenge Period.

(A) the GUC Fund Carveout shall be distributed first to all Creditors holding allowed claims arising under Bankruptcy Code section 503 *pro rata* until such Claims are fully satisfied, then to Creditors holding allowed Unsecured Claims arising under Bankruptcy Code section 507 in order of priority *pro rata* until such Claims are fully satisfied, and then to Creditors holding allowed general Unsecured Claims *pro rata*. For the avoidance of doubt, the Lenders shall not share in any distribution of the GUC Fund Carveout.

(B) To the Lenders:

(i) on account of the Seed Funding Reimbursement, $200,000.00 from first proceeds recovered from the GUC Causes of Action and/or White Claims;

(ii) on account of the Committee Professional Fee Advance, 50%, not to exceed $25,000.00, of the Committee Professional Fee Advance from first proceeds recovered from the GUC Causes of Action and/or White Claims;

(iii) on account of the Service Cost Advance, 50% of the total amount of the Service Cost Advance from first proceeds recovered from the GUC Causes of Action and/or White Claims; provided however, that the Lenders shall provide reasonable documentation of the amount of the Service Cost Advance to the GUC Trustee; and

(iv) on account of the D&O Premium Advance, $70,000.00 from first proceeds, net of reasonable expenses and reasonable contingency counsel fees, of any settlement or judgment paid or recovered in whole or in part from or under the D&O Policy.

(C) Any proceeds of GUC Assets in excess of the amounts listed above recovered from the GUC Causes of Action and/or the White Claims shall be distributed first to Creditors holding allowed Unsecured Claims arising under Bankruptcy Code section 503 *pro rata* until such Claims are fully satisfied, then to Creditors holding allowed Unsecured Claims arising under Bankruptcy Code section 507 in order of priority *pro rata* until such Claims are fully satisfied, and then 90% to the Lenders and 10% to Creditors holding allowed general Unsecured Claims *pro rata*.

6. **Standing to Pursue Claims**. The Parties agree and stipulate that, consistent with Bankruptcy Code sections 1103(c)(5) and 1109(b), the GUC Trust shall have standing to pursue the GUC Causes of Action and/or White Claims in the Chapter 11 Case. The Parties further agree and stipulate that any applicable privileges, evidentiary or otherwise, that could be asserted by the Debtor shall be transferred to the GUC Trust for the purpose of pursuing the GUC Causes of Action and/or White Claims. The GUC Trustee shall have standing to object, settle and otherwise resolve Unsecured Claims pursuant to any claims allowance process that is established.

7. **Dissolution of Committee**. On the date that is five (5) business days after the date of formation of the GUC Trust, the Committee shall be dissolved, provided, however, that the Committee shall exist, and its professionals shall be retained and entitled to reasonable

compensation from the Debtor's estate, solely with respect to applications filed pursuant to Bankruptcy Code sections 330 and 331 and any related hearings up to and including any hearing on the Committee professionals' final application for compensation.

8. **Resolution of Claims and Challenges**. Upon the Effective Date, in exchange for the consideration and upon the terms set forth in this Settlement Agreement, the Challenge Period Expiration Date (as defined in paragraph 24 of the Final DIP Order) shall be deemed to have occurred, notwithstanding any prior stipulated extensions thereof to the contrary. For the avoidance of doubt, upon the Effective Date and deemed occurrence of the Challenge Period Expiration Date, the waivers and releases of Claims and Challenges in favor of the Lenders that are effected pursuant to paragraphs 24 and 25 of the Final DIP Order—including, but not limited to, the Debtor's Stipulations (as defined in the Final DIP Order)—shall become permanently binding on the Committee as set forth more fully in the Final DIP Order, and any claims or challenges relating to whether the Lenders are or were over or undersecured with respect to the Prepetition Obligations shall be deemed to be and shall be released by the Debtor's estate and the Committee and not otherwise preserved, except for Avoidance Actions against persons or entities other than the Lenders or any affiliates thereof preserved by this Settlement Agreement. The Committee shall not take any action to commence or prosecute any Claim or Challenge against the Lenders prior to the Effective Date.

9. **Creditor Releases of Claims**. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to the fullest extent permissible under applicable law, any person or entity that receives a distribution from the GUC Trust (as defined below), and each of its respective affiliates, on their own behalf and on behalf of any assignee, transferee, and anyone claiming through them, shall be deemed to have irrevocably and

unconditionally, fully, finally and forever waived and released the Debtor, Committee and Lenders, as well as the respective professionals, members, officers, directors, shareholders, and affiliates[7] of each of the foregoing, from any and all manners of action, causes of action, judgments, executions, debts, demands, rights, damages, costs, expenses, and claims of any kind, nature, and character whatsoever, whether at law or in equity, whether based on contract (including without limitation, quasi-contract or estoppel), statute, regulation, tort (including without limitation, intentional torts, fraud, recklessness, gross negligence and willful misconduct) or otherwise, accrued or unaccrued, known or unknown, matured or unmatured, liquidated or unliquidated, certain or contingent, whether held directly or derivatively, related to or in connection with the Debtor. The Lenders may, in their discretion and at their cost, in consultation with the GUC Trustee (as defined herein), require such persons or entities to execute a release form and/or receive notice of the foregoing releases (other than by service of the motion required to obtain Court approval of this Settlement Agreement, which service the Parties believe is appropriate and sufficient notice of the foregoing releases) in a manner that is satisfactory to the Lenders as a condition precedent to any person or entity receiving a payment from the GUC Trust. Any order approving this Settlement Agreement shall provide that Creditors and any other parties in interest shall not take any action inconsistent with this Settlement Agreement.

10. **<u>Chapter 11 Fees</u>**. Following the Effective Date, and during the pendency of the Chapter 11 Case, the minimum quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) shall be paid by the GUC Trust. For the avoidance of doubt, payments made from the

[7] The Lenders' affiliates include, but are not limited to, the non-debtor counterparties to the C&S Agreements, as defined in the Final DIP Order.

GUC Trust pursuant to this Settlement Agreement and the GUC Trust Agreement shall not be deemed to be distributions from the Debtor's estate.

11. **Extension of Challenge Period.** The filing of this Settlement Agreement shall automatically extend the Challenge Period as provided for in the *Eleventh Stipulation Regarding Extension of Challenge Period* up to and through the Effective Date. In the event this Settlement Agreement is not approved by the Court on or before March __, 2014 or is terminated or withdrawn, the Challenge Period shall be deemed to continue to be in effect and shall be automatically extended until a date that is five (5) business days following (a) March __, 2014 or (b) the date upon which the Settlement Agreement is terminated or withdrawn, whichever occurs first.

12. **Dismissal or Conversion of Case**. The Committee shall not request dismissal or conversion of the Chapter 11 Case. Neither the GUC Trustee nor the Debtor shall request dismissal or conversion of the Chapter 11 Case except following consultation with and after receiving the consent of the Lenders, whose consent shall not be unreasonably withheld, with an order approving such dismissal in a form approved by the Lenders in their reasonable discretion.

13. **No Further Commitment**. Except as expressly provided herein, nothing in this Settlement Agreement is or shall be deemed to be a commitment by the Lenders to provide financing, funding, or other support, in any form or amount to any entity or person, including but not limited to the Debtor, Committee, or GUC Trust during the pendency of the Chapter 11 Case or otherwise.

14. **Commitment to Support Approval**. The Parties agree and stipulate that each Party to this Settlement Agreement shall use its reasonable best efforts to obtain Court approval of this Settlement Agreement on or before March __, 2014, including making available informed

and qualified witnesses to testify in support of the motion to be filed seeking Court approval of this Settlement Agreement.

15. **Bankruptcy Court Approval**. In the event this Settlement Agreement is not approved by the Court, the Parties' rights and obligations under this Settlement Agreement shall be null and void *ab initio* and the Final DIP Order shall govern the respective rights and obligations of the Parties.

16. **Termination**. In the event the Effective Date has not occurred by March __, 2014, the Settlement Agreement may, at the option of any Party, be declared null and void *ab initio*. Any Party may terminate this Settlement Agreement, upon written notice, in the event that any Party causes a material breach of this Settlement Agreement to occur.

17. **No Admission of Liability**. Neither the negotiation, nor the performance, nor the terms and conditions of this Settlement Agreement shall be deemed or construed to be an admission of wrongdoing or liability by any Party for any purpose.

18. **Construction**. This Settlement Agreement has been jointly drafted by the Parties' at arms' length and each Party has had access to and the opportunity to consult with the independent legal counsel and to comment fully on the Settlement Agreement. No Party shall be deemed to be the drafter of this Settlement Agreement for any purpose. Accordingly, this Settlement Agreement shall be interpreted and construed in a neutral manner in accordance with the plain meaning of the language contained herein and shall not be presumptively construed against any Party.

19. **Entire Agreement**. This Settlement Agreement, in connection with the term sheets referenced herein, contains the entire agreement among the Parties with respect to the subject matter hereof and upon the Effective Date, supersedes all other prior agreement,

understanding, representation or warranties between the Parties. No representations have been made or relied upon by the Parties with respect to the subject matters hereof, except as set forth herein.

20. **Modification**. This Settlement Agreement may not be modified, amended or supplemented by the Parties except by written agreement of the Parties.

21. **Non-Severability**. Should any provision of this Settlement Agreement be held by a court of competent jurisdictions to be illegal, invalid, or unenforceable for any reason, the Parties shall have the right to terminate the entire Settlement Agreement if the removal of such provision adversely affects such Party.

22. **Authority**. Each of the undersigned represents and warrants that it has the full power to and is authorized and empowered to bind the Party on whose behalf that person has executed this Settlement Agreement. The Lenders further represent and warrant that it they are the valid, legal owner of all of the Prepetition Obligations.

23. **Governing Law/Jurisdiction**. This Settlement Agreement and the rights and duties of the Parties hereunder will be governed by and construed, enforced and performed in accordance with the Bankruptcy Code (to the extent applicable) and the laws of the state of Alabama, without giving effect to the principles of conflicts of laws that would require the application of the law of any other jurisdiction. The Parties acknowledge and agree that the Court shall have the exclusive jurisdiction over this Settlement Agreement that any claims, causes of action or other legal proceedings in connection with or related in any manner to this Settlement Agreement may be brought only before the Court and expressly waive any right to trial by jury, if any.

24. **Successors and Assigns**. This Settlement Agreement and all of the terms, conditions and provisions hereof, shall be binding upon and inure to the benefit of the Parties hereto and their respective employees, agents, representatives, heirs, successors and assigns, including any trustee appointed in the Chapter 11 Case, any chapter 7 bankruptcy trustee if the Chapter 11 Case are converted, and/or any litigation trust or similar representative.

25. **Counterparts**. This Settlement Agreement may be executed in counterparts, by either an original signature or signature transmitted by facsimile transmission or other similar electronic process and each copy so executed shall be deemed to be an original and all copies executed shall constitute one and the same agreement.

26. **Titles and Headings**. All titles and headings contained in this Settlement Agreement are for convenience of reference only and will not be construed to limit or extend the terms of this Settlement Agreement.

27. **Specific Performance**. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Settlement Agreement and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach, including, without limitation, an order of the Court requiring any Party to comply promptly with any of its obligations hereunder.

28. **Reservation of Rights**. This Settlement Agreement is part of a proposed compromise and settlement. Except as expressly provided in this Settlement Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair or restrict the ability of each of the Parties hereto to protect and preserve their rights, remedies and interests. Except as expressly set forth herein, nothing herein shall be deemed an admission of any kind. If the transactions contemplated herein are not consummated, or if this Settlement Agreement is terminated for any

reason, the Parties fully reserve any and all of their rights pursuant to Federal Rule of Evidence 408 and any applicable state rules.

[Signature Pages Follow]

Belle Foods, LLC

____
By:
Its:
Date:

Southern Family Markets, LLC, as Agent and Lender

____
By:
Its:
Date:

Official Committee of Unsecured Creditors of Belle Foods, LLC

____
By:
Its:
Date:

C&S Wholesale Grocers, Inc., as Lender

____
By:
Its:
Date:

SIGNATURE PAGE TO SETTLEMENT AGREEMENT

EXHIBIT A

1. All claims under Section 544, 547, 548 and 550 of the Bankruptcy Code where the defendant is alleged to have received more than $100,000 in a transfer or transfers where (i) there was zero new value received by the Debtor from the defendant as reflected by the Debtor's books and records and the Committee's review and analysis thereof, or (ii) the Debtor's records and the Committee's review and analysis thereof reflect that the transfer or transfers were not made in the ordinary course of business as defined in Section 547(b)(2). All determinations of whether a claim is preserved hereunder shall be made in the sole and absolute discretion of the Committee. The Committee explicitly reserves the right to modify the claims preserved. Any modifications to any of the foregoing will be filed with the Court at least five days prior to the hearing on the Settlement Agreement.

2. Any and all claims and Avoidance Actions of the Debtor or its estate against the Debtor's present and former directors, members, officers and "insiders" (as that term is defined in Bankruptcy Code section 101(31)).