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Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO

|                  |   |                       |
|------------------|---|-----------------------|
| In Re:           | ) | Case No. 11-40836-JDP |
|                  | ) | (Chapter 11)          |
| ROCHA DAIRY, LLC | ) |                       |
| aka ROCHA FARMS, | ) |                       |
|                  | ) |                       |
| Debtor.          | ) |                       |

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**FOURTH AMENDED DISCLOSURE STATEMENT**

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**I. INTRODUCTION**

**1. GENERAL**

Rocha Dairy, LLC, aka Rocha Farms, hereinafter referred to as the debtor, provides this Disclosure Statement to all of its known creditors in order to disclose the information necessary for the creditors to arrive at a reasonably informed decision in exercising their right to vote for acceptance or rejection of the Plan of Reorganization on file with the United States Bankruptcy Court for the District of Idaho (Section 1125 of the United States Bankruptcy Code). The debtor's address is 3164 South 2050 East, Wendell, Idaho 83355. The debtor operates a dairy and its dairy and farm ground is all located in Gooding County, Idaho.

No representations concerning the debtor (particularly as to the value of its

property) are authorized by the debtor other than as set forth in this Amended Disclosure Statement. Any representations or inducements made to secure your acceptance which are other than as contained herein should not be relied upon by you in arriving at your decision, and such additional representations and inducements should be reported to counsel for the debtor, who in turn shall deliver such information to the Court for such action as may be deemed appropriate.

Under the Plan, the claims of creditors, depending upon the classification of the respective claims (see Plan of Reorganization-Classes of Claims and Interest), will either be paid in full or part; or, have transferred to them property in which they hold a lien.

Since the 25<sup>th</sup> day of May, 2011, the debtor has operated as debtor-in-possession. When the Plan is confirmed, the debtor will continue to administer the debtor's estate in compliance therewith until such time as the necessary procedures are implemented for disposition of property and distribution of funds. Thereafter, the debtor will be revested with its property subject to the conditions and requirements of the Plan.

## 2. FILING OF THE CASE

On the 25<sup>th</sup> day of May, 2011, the debtor filed its Petition in the United States Bankruptcy Court under Chapter 11 of the United States Bankruptcy Code. Automatically upon such filing, the debtor became debtor-in-possession.

### 2A. DEFINITIONS

The debtor provides the following definitions for creditors so they can better understand the Plan:

A. "Petition" shall mean the voluntary petition under Chapter 11 filed with this Court on May 25, 2011.

B. "Case" shall mean the bankruptcy action filed by the debtor for reorganization of the debtor commenced by a voluntary petition under Chapter 11 on May 25, 2011, now pending

in the United States Bankruptcy Court, District of Idaho.

C. "Filing Date" shall mean the date the debtor filed for relief under Chapter 11 of the United States Bankruptcy Code, or May 25, 2011.

D. "Effective Date" shall be fifteen (15) days after confirmation unless there is a pending appeal regarding confirmation. If there is a pending appeal, then the effective date shall be the date the appeal is ultimately resolved.

On and after the effective date, which shall be fifteen (15) days after confirmation, unless there is an appeal pending regarding confirmation. If the appeal is pending, then the effective date shall be the date the appeal is ultimately resolved.

E. "Date of Distribution" shall be that date selected by the debtor for the initial distribution under the Plan, or if the date of confirmation is after the date selected by the debtor, then the date of distribution shall be fifteen (15) days after the date of confirmation, which shall be the effective date of the Plan unless otherwise indicated in the Plan.

F. "Disbursing Agent" shall mean Elcidio "Al" Rocha and Barbara Rocha, who will be duly authorized and appointed upon approval of the Plan.

### 3. APPROVAL OF THE DISCLOSURE STATEMENT

This Disclosure Statement, approved by the United States Bankruptcy Court in accordance with Section 1125 of the Bankruptcy Code, is provided to each creditor whose claim has been scheduled by the debtor or who has filed a proof of claim against the debtor and to each interested party of record as of the date of approval of this Disclosure Statement.

The Disclosure Statement is intended to assist creditors and parties in interest in evaluating the Plan and in determining whether to accept the Plan. Under the Bankruptcy Code, acceptance of the Plan may not be solicited unless a copy of this approved Disclosure Statement is received prior to or concurrently with such solicitation.

#### 4. CREDITORS ENTITLED TO VOTE ON PLAN

Only votes of classes of claimants (creditors), which are impaired by the Plan or are unsecured are counted in connection with the confirmation of the Plan. Both creditors holding priority claims and debtor holding an interest will be unaffected by the Plan; therefore, their votes on the Plan are not necessary in connection with confirmation of the Plan.

#### 5. MANNER OF VOTING

All claimants entitled to vote on the Plan may cast votes for or against the Plan by completing, dating, signing and causing the ballot form accompanied by this Disclosure Statement to be filed with the Clerk of the United States Bankruptcy Court for the District of Idaho in accordance with the Court's order. See *Order Approving Disclosure Statement, Fixing Time for Acceptance or Rejection of Plan [Return of Ballots], and Setting Date for Hearing on Confirmation*.

#### 6. DETERMINING ACCEPTANCE OF PLAN

In determining the acceptance of the Plan, votes will only be counted if submitted by a claimant whose claim is duly scheduled by the debtor as undisputed, non-contingent and liquidated, or who, prior to the hearing on confirmation, has filed with the Court a proof of claim which has not been disallowed or suspended prior to the computation of the vote on the Plan. A class that is unimpaired is deemed to have accepted the Plan and solicitation of acceptance is not required under Section 1126(f). The ballot form you receive does not constitute a proof of claim. If you are in any way uncertain whether or not your claim has been correctly scheduled, you should check the debtor's schedules, which are on file in the office of the Clerk of the United States Bankruptcy Court for the District of Idaho. Due to the business of the Clerk of the Bankruptcy Court, it is believed this information will not be given by telephone.

#### 7. HEARING ON CONFIRMATION OF PLAN

The Court will set a hearing to determine whether the Plan has been accepted by

the requisite number of creditors and whether the other requirements for confirmation of the Plan have been satisfied. Each claimant will receive, either with this Disclosure Statement or separately, a Notice of Hearing on confirmation of the Plan. (PRESENCE OF CREDITORS AT THE CONFIRMATION HEARING IS INVITED BUT NOT REQUIRED IN ORDER FOR THEIR BALLOT TO BE CONSIDERED.)

#### 8. ACCEPTANCE NECESSARY TO CONFIRM PLAN

At the scheduled hearing, the Bankruptcy Court must determine, among other things, whether the Plan has been accepted by each impaired class. Under Bankruptcy Code Section 1126, an impaired class is deemed to have accepted the Plan if at least two-thirds (2/3) in amount (dollar value) and more than one-half (1/2) in number of the allowed claims of class members who have voted on the Plan, have voted for acceptance of the Plan. Further, unless there is unanimous acceptance of the Plan by an impaired class, the Bankruptcy Court must determine whether the Plan provides class members property of a value that is not less than the amount such class members would receive or retain if the estate of the debtors was liquidated under Chapter 7 of the Bankruptcy Code on the effective date of the Plan as set forth in Section 1129(a)(7)(A)(ii).

#### 9. CONFIRMATION OF PLAN WITHOUT NECESSARY ACCEPTANCE

Pursuant to Bankruptcy Code Section 1129(b), the Plan may be confirmed even if it is not accepted by one or all of the impaired classes provided the Bankruptcy Court finds that the Plan does not discriminate unfairly and is fair and equitable to such class or classes. This provision requires, among other things, that the claimants (creditors) in the impaired classes must either receive the full value of the property of their claims or, if they receive less, no class with junior liquidation priority may receive anything. The debtor may choose to rely upon the provision commonly known as the "cramdown" to seek confirmation of the Plan if it is not accepted by all classes of creditors. "The test to be applied by the Court is set forth in

various paragraphs of Section 1129(b)... the Court is not permitted to alter the terms of the Plan. It must merely decide whether the Plan complies with Section 1129(b). If so, the Plan is confirmed, if not, the Plan is denied confirmation." H.R. 95-595, 95th Cong., 1st Sess., 413 et seq. (1977).

**II. THE PLAN OF REORGANIZATION**

**1. CLASSES OF CLAIMS AND INTEREST AND PAYMENT**

The Plan divides the claims and interests into various and separate classes. The classes are as follows:

| <b>Class</b> | <b>Creditor</b>                             | <b>Payment Amount</b>   | <b>Term</b>   |
|--------------|---|---|---|
| 1            | <b>Administrative</b>                       |   |   |
|              | (a) Attorney's Fees—Robinson Anthon & Tribe | \$15,000  | Upon application  |
|              | (b) Accountant's Fees                       | Unknown   | Upon application  |
|              | (c) Chapter 11 Quarterly Fees               | Pursuant to 11 USC 1129(a)(12)  |   |
| 2            | <b>Section 507 Priority Claims</b>          |   |   |
|              | (a) Internal Revenue Service                | \$1,525.18  | 44 monthly  |
|              | (b) Gooding County Treasurer                | \$296   | 72 monthly  |
|              | (c) Idaho Department of Labor               | \$56.31   | 24 monthly  |
| 3            | D. L. Evans Bank                            | \$26,678  | 240 monthly with a balloon on the balance of the obligation owed at the end of 12 years, namely, April 20, 2025 |
| 4            | MetLife-Ag Investments (MLIC)               | \$24,205  | 240 monthly   |
| 6            | Rocky Mountain Merchandising                | As a secured or unsecured creditor—that determination has not yet been made. There is an objective claim outstanding. | 72 monthly payments of \$2,294.76   |
| 7            | West Side Chopping                          | As an unsecured creditor  |   |

|   |  |                          |  |
|---|--|--------------------------|--|
| 8 | Blue Mud, Inc.   | As an unsecured creditor |  |
| 9 | <b>Unsecured Claims</b> (It is anticipated that unsecured creditors will receive approximately 100% of their claim and interest at the rate of 2%) | \$8,400                  | Amortized over 240 months, with a balloon in the 145 <sup>th</sup> month |

The Plan contemplates an effective reorganization of the debtor’s property, treatment of contingent claims, treatment of certain claims upon Court approval and treatment of property returned to owners by Court approval. Debtor reserves the right, in the event that negotiations require such to occur, to change the amount of the aforementioned monthly payments. This reorganization will commence upon the “effective date,” as defined in paragraph 2A above.

Distributions will be made by the disbursing agent, Elcidio “Al” Rocha and Barbara Rocha, as provided in the Plan.

**2. RISKS ASSOCIATED WITH THE PLAN**

The Plan contemplates an effective reorganization of the debtor’s property, treatment of contingent claims, treatment of certain claims upon Court approval and treatment of property returned to owners by Court approval; HOWEVER, reorganization will commence upon the date of confirmation, the date of distribution and the effective date.

**3. TREATMENT OF CLAIMS**

Treatment of the various classes of claims and individual persons or entities within the class is discussed in detail in the Plan. Priority claims will be paid in full; secured debts will be paid to the extent of their values; unsecured debts will be paid (in a fair and equitable manner) to the extent the unsecured property of the estate reaches to those creditors or that the cash flow allows, and other properties will be disbursed and addressed as approved by the Court.

4. COMPLIANCE WITH 11 U.S.C. 1129(b)

Treatment of various classes and claims comply with Section 1129(a). Notwithstanding Section 510(a), if all the applicable requirements are met other than with respect to a class or classes who have accepted the Plan or are unimpaired by the Plan, the Court, on request of the proponent of the Plan (debtor), shall confirm the Plan. The proponents deem that the Plan does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired under the Plan even though such class may not have accepted the Plan.

**III. INFORMATION PERTAINING TO DEBTOR CONSIDERED**

**RELEVANT TO APPROVAL OF THE PLAN**

The debtor who presents this Plan for confirmation recommends an affirmative vote for acceptance of the Plan. This recommendation is based upon information contained in the following sections of the Disclosure Statement and the belief that when claims are restructured and coordinated with the liquidation values of the estate, the cash flow will sustain payments in the reorganized schedules. This Disclosure Statement provides adequate information in regard to costs of production, gross income and funds available for interest payments and debt reduction.

The debtor maintains that no creditors have had sufficient information presented to them prior to this Disclosure Statement; any previously presented Plans, disclosure statements or informational documents, including those presented at any informational meeting regarding the financial status of the debtors are to be ignored. Creditors should base decisions to vote for or against the Plan solely upon information provided herein and in the Plan itself.

**IV. HISTORY OF THE DEBTOR**

Growing up, Elcidio "Al" Rocha (hereafter "Al Rocha"), a member of Rocha Dairy, LLC, worked along side his father in his father's dairy business. The dairy in Chino, California



was on 30 acres with four houses. Al's family members and employees lived on the dairy and Al and his father ran the dairy. Al did the relief milking and fed the calves. They also brought in their own hay and stacked it themselves. Al served in the Army for two years and upon his return he married his wife, Barbara Rocha, also a member of Rocha Dairy, LLC. The two lived at the dairy and became partners with Al's father in the dairy operation. Operating a dairy is a 24/7 business, so every day is a new venture. The dairy business was and is their life. Al's sister, Dolores, married Dennis Coelho in 1970. Dennis joined the dairy and started feeding cows and helping with other chores. The Rochas and Coelhos raised their families on the dairy and kept working. In 1973, Al's mother, who did the bookwork, handed it over to Dolores and Barbara. Dolores also started a career as a hairdresser. Both Barbara and Dolores worked part-time doing the bookkeeping for the dairy.

As dairy farming became more challenging in Southern California, as well as limitations for expansion, Al and Barbara Rocha researched the opportunities for dairy expansion in Idaho. In 1989, Al and Barbara Rocha sold the dairy in California to their neighbor and moved 820 cows and three families to Idaho. The dairy and two houses were built on 120 acres. Two houses were already on the property they purchased in Idaho. Their families continued to grow as did Rocha Dairy with the purchase of more acreage and a few cows, plus their own heifers coming into the milking herd. The family dairy operation was doing well. It increased to 550 acres and 3,100 animals. Children from the grade school came to the dairy to learn about calves being born and fed and about where milk comes from. The Rochas served milk and cookies to the "tourists" and the children and parents who came enjoyed the tour of all that was at Rocha Dairy. The Rochas always supported the community and everything was going well.

In 1999, the Holstein Association picked Rocha's dairy and a few others to show their cows and the family operation. People from all over the United States, as well as a few

foreign countries, came to the Idaho convention.

In 2002, the dairy cows began to have some problems with High Somatic Cell count. Al knew there was a problem somewhere, but finding it was not easy. After a year of trying different things, it was discovered that stray voltage from Idaho Power's grounding on the dairy was the problem. The cows couldn't drink water from the water troughs because they would be shocked. When the cows came into the barn for milking, they would start to kick the milkers. In fact, one milker sustained a broken arm from such a kick and was in a cast for a few months. The problem, as determined by a special electrician from Wisconsin, was that when the cows came into the barn, they were also being shocked from the barn equipment. The dairy lost about 150 cows and \$800,000 to get the problem resolved. After the problem was solved with isolation for \$300,000 and getting cows back to normal, Jose C. Rocha Dairy continued. The dairy tried to get Idaho Power to help with the expenses and even had an attorney from Kansas help with the issue. Idaho Power never helped, but the dairy moved on and continued to keep the cows and dairy operating.

The Rochas were getting advice from their accountant in California on how to contract their milk. With the new CME Stock Market coming in, they knew nothing about stocks, let alone applying it to their milk. However, the Rochas asked a lot of questions and learned quite a bit, but it seemed they never got the price they needed. Feed costs were also a factor.

At the time, their bank account was at Wells Fargo in California. With contracting and high interest rates, they looked into obtaining a local bank and a local accountant. In 2003, they obtained the services of Cooper Norman and D. L. Evans Bank. Cooper Norman helped with their business and their budget and showed them ways to reduce their debt. With this assistance, they were able to get the better pricing for their milk, as well as better feed contracts. They were then able to make progress.

The dairy had saved some \$205,000 to buy cows and hay for the year. Heifers at that time cost \$2,400. They received a call from the Hansens in Arizona asking if they would purchase 40 acres close to their dairy. The Rochas had their own heifers coming into the milking herd and still had hay. So, they decided to purchase the 40 acres for more feed and corn silage, which is always a necessity. They used the \$205,000 to buy the 40 acres. There was no lender on this property and it was debt free.

In September, 2008, with the U. S. economy declining, more people without jobs and many foreclosures on homes, it began to look grim. Their milk price went from \$15.50 to \$10.50, making a difference in their milk checks of \$150,000 to \$175,000 a month. Grain and hay prices also kept going higher. Al Rocha knew this would not soon be over so he went to the loan officer at D. L. Evans Bank because they needed to get more hay before winter and with the high prices, their feed line was not in order. The loan officer was advised of the 40-acre parcel and if they could borrow funds against this land to get them through the winter, maybe the crises would be over. At that time, farm ground was about \$6,000 an acre. The loan officer took it to the loan committee for review and this went back and forth for about a month, until it was finally approved and the paperwork was prepared. When the Rochas signed the loan documents, they were under the impression that they were granting a lien in 40 acres of real estate, not all of the real estate.

In February, 2009, the dairy industry was at a stand still. Dairy men, the Rochas included, had never seen anything like this take so long. The Rochas decided to go to their property lender, MetLife and Clear Creek Mortgage Co for help. They needed to try to get a loan from their property value. Clear Creek Mortgage started the paperwork. They discussed \$1 million to help keep the dairy operating. The Rochas didn't know how long this crisis would last as it was something Al Rocha had never seen in the 55 years he'd been in the dairy business. The debtor claims about one month later MetLife informed them they could not get

the loan. MetLife informed them, to Rocha's surprise, that D. L. Evans had a 2<sup>nd</sup> on their property. Rochas claim that they went back and forth with D. L. Evans over this issue since the Rochas thought the documents they signed were only for the 40-acres. They also asked MetLife to help with this because D. L. Evans Bank did not consult with MetLife before putting a second on Rocha's mortgage. The MetLife mortgage had a provision that required their consent of it to a second in the same collateral. Except for the 40 acres, MetLife had a first in the rest of the property. Rochas tried to get another bank to get the 2<sup>nd</sup> off that D. L. Evans Bank had put on their mortgage. Rabo Bank in Twin Falls was working with them. In about three months, they had all the paperwork done, had a bank account and just needed to order checks. Cheese and milk markets dropped to \$9.50. The Rochas then received a phone call that Rabo Bank could not work with their business. Still, the Rochas continued to find another bank, in fact, they went to five different banks. The economy was getting worse. Dairies were closing or they were being handed over to the banks. The Rochas persevered. They kept up with the loan payments, cut back on a lot of items. Their D. L. Evans loan officer retired in December, 2009.

Beginning in 2010, things got worse. Debtor's cows dropped in value from \$1,800 down to \$1,200, therefore, the loan-to-value ratio was changed due to the reduction in the value of the animals by \$600 per milk and dry cow, which dropped their feed line by approximately \$1,200,000. This drop in value precluded debtor from getting a feed loan for more feed. The Rochas were left to purchase grain and hay from their cash flow and keeping up with their loan payments to the bank and property. They tried to continue but got behind on their other businesses and friends that helped Rocha Dairy stay in business.

Debtors claim in October, 2010, their new loan officer tried another option to keep the operation going. The loan officer told them they needed to try a new option of not having a cow line and to put more on a feed line and that they would need \$100,000 to get

some hay from a farmer and that they could get this if they signed the paperwork. The Rochas took the documents to an attorney in Jerome and in Rupert for review. In November 2010 they signed more documents expecting D. L. Evans would help them with a feed line. They waited seven months for this to happen. In the meantime, four others dairies handed over their animals and dairy to their lenders. The Rochas then believed with these things happening that D.L. Evans probably wasn't going to help Rocha Dairy. Rocha Dairy claims that it tried to meet with D. L. Evans to no avail.

The Rochas never wanted to file any kind of bankruptcy. They needed feed and farmers weren't helping anybody unless money was available. They needed corn silage. Rocha Dairy believes and claims if the loans had been available, the bankruptcy filing on May 25, 2011, would not have occurred. The Rochas claim they told their loan officer to let the loan committee know that if they would take off the 2<sup>nd</sup> mortgage so they could get a loan from MetLife, Rocha Dairy would pay D. L. Evans half of the money collected from Met Life and if need be, then put on the second. These two financial institutions provided no assistance. The Rochas desire to come up with a Plan because they believe in their dairy, their family, their employees and their animals. Changes happen all the time in their lives and in the dairy business. Based upon the attached information (Attachment No. 1) pertaining to the new Chobani yogurt plant coming to Twin Falls, the milk contract was awarded to Dairy Farmers of America. However, Rochas believe the new Chobani plant will increase the need for more milk and milk with quality. The Rochas have never used BST, the grown hormone on their cows, and that is what this yogurt plant wants. Even if Chobani does not agree to purchase milk from debtor, Rochas believe the new plant will increase the demand and, therefore, should cause an increase in the price to milk providers in the Magic Valley area.

In addition to the information regarding Chobani, on August 8, 2012, and November 14, 2012, Magic Valley Quality Milk Producers sent out a statement, a copy of which is also attached (Attachment No. 2).

#### **V. MERGER**

With respect to the merger and information pertaining to the entities involved in this matter, in addition to the Timeline attached hereto (Attachment No. 3), please be further aware of the following:

The Rochas had long talked about getting the operating assets into a LLC, with the real property remaining in a partnership. The goal was to create some limited liability for the entity that had the major operational risks and thereby insulate the real property from non-contractual claims that might arise.

The first attempt at this was made in 2007 when the partnership name was changed from Rocha Dairy to Rocha Farms. Neither the banker nor the CPA liked this, so Rochas amended the partnership name back to Rocha Dairy and changed the name of the LLC to "Old Rocha Dairy, LLC". Assets were never transferred to Old Rocha Dairy, all operations continued under Rocha Dairy. The changeover lost its momentum and nothing more was done until 2009.

In April, 2009, the Rochas desired to achieve the transfer of the operating assets to an LLC, change the name of the partnership, and retain the ownership of the real property in the partnership. The Secretary of State had changed its policy from 2007 and would not allow an amendment of the partnership statement of authority changing the partnership name from Rocha Dairy to Rocha Farms without first filing a statement of dissolution for Rocha Dairy. Rochas filed the statement of partnership dissolution for Rocha Dairy, along with a new statement of partnership authority for Rocha Farms, and a Certificate of Organization for Rocha Dairy, LLC, on the same date, namely, April 30, 2009. An Amended and Restated partnership

Agreement for Rocha Farms, aka Rocha Dairy, and an Operating Agreement for Rocha Dairy, LLC, were signed the next day, May 1, 2009, along with an assignment of the operating assets (cows, feed, equipment, etc.) from what was now Rocha Farms to Rocha Dairy, LLC.

The Rocha's intent was to keep "Rocha Dairy" associated with their operational entity to avoid confusion with their vendors and others, which made a lot of sense. The statement of dissolution was filed because the Rochas were asked to do such by the Secretary of State, but in reality, the partnership did not dissolve and continued to operate seamlessly under its new name. Likewise, the new operational entity, Rocha Dairy, LLC, continued to conduct the dairy business in a seamless fashion until the entities were merged just prior to bankruptcy.

That prior to the forming of Rocha Dairy, LLC and Rocha Dairy Farms, which were merged together prior to the filing of this Chapter 11, the individuals who are part of both entities farmed as a de facto partnership for many, many years. Initially, as provided before, it was known as the Jose C. Rocha Dairy. It then came to be known as the Rocha Dairy. Subsequent to the Answer of the defendants being filed in the matter of *Wolfe Brothers, Inc., v. Rocha Dairy, et al*, it was discovered that the General Partnership Rocha Dairy does not exist, as it was dissolved by the Secretary of State of the State of Idaho on April 30, 2009. As it has previously been explained, Rocha Dairy, LLC, is the operating entity for the dairy and Rocha Dairy partnership assigned all of its personal property to Rocha Dairy, LLC, and Rocha Dairy, LLC, assumed all of the debt. Rocha Farms partnership is the property-holding entity that was created on April 30, 2009. Because of the interrelationship and overlapping between Rocha Farms and Rocha Dairy, Rocha Farms was merged in Rocha Dairy, LLC, just before filing bankruptcy.

## **VI. STATEMENT OF FINANCIAL AFFAIRS**

### **1. BOOKS AND RECORDS**

The books and records of the debtor have been kept by and are now in the possession of Barbara Rocha.

### **2. BANK ACCOUNTS**

Debtor maintains its cash collateral account at Magic Valley Bank in Gooding, Idaho.

### **3. SUITS PENDING**

*J. D. Heiskell Holdings v. Elcidio & Barbara Rocha & Rocha Dairy, LLC*, Fifth Judicial District Court, Gooding County Case No. CV 2011-98 – stipulated judgment entered.

*Gary Eldredge v. Elcidio “Al” Rocha, et ux, dba Rocha Dairy, LLC*, Fifth Judicial District Court, Twin Falls County Case No. CV 09-4499 – case still pending.

*Wolfe Brothers, Inc. v. Rocha Dairy, et al*, Fifth Judicial District Court, Gooding County Case No. CV 11-135 – case still pending.

*Kurt Wiersema, d.b.a. Kurt Wiersema Trucking v. Rocha Dairy, et al*, Fifth Judicial District Court, Gooding County Case No. CV 2012-278 – case still pending.

Each of the plaintiffs noted in the pending cases are included as creditors of the debtor and it is the intent of the debtor that they will be paid in full as unsecured creditors. Wolfe Brothers and Kurt Wiersema both claim that some, if not all, of the debt they claim owing in the State Court case existed prior to the coming into existence of Rocha Dairy, LLC, on April 30, 2009.

### **4. INCOME AND EXPENSES PAST SIX (6) YEARS**

Attached hereto (Attachment No. 4) are parts of debtor's income tax returns for 2006, 2007, 2008, 2009, 2010 and 2011, which show debtor's actual income and expenses for the past six years. Also attached hereto (Attachment No.5) is a profit and loss statement for the



Year 2012. Some of the attached tax returns are from the predecessor in interest to the entity of Rocha Dairy, LLC, but were the same members or owners of the prior entities and, therefore, management was, and still is, the same.

#### 5. LEASES AND EXECUTORY CONTRACTS

Debtor has a one-year farm lease with Chris and Bernadette Chandler for 405 acres for \$200 per acre, which lease expired December 1, 2011. Debtor entered into a one-year 400-acre farm lease on March 19, 2012, with Chris and Bernadette Chandler at \$250 per acre for 335 acres and \$300 per acre for 65 acres. Bernadette Chandler is the daughter of Al and Barbara Rocha and Chris Chandler is their son-in-law. The lease of the property became necessary since Rocha Dairy had no funds in which to operate the same. Through the lease, Rocha Dairy gets lease payments. In addition to being able to get lease payments, Rocha also gets the opportunity to purchase corn silage, which saves significant funds for the dairy. The Chandlers have no interest in Rocha Dairy, LLC.

Debtor had an eleven-month fixed milk price agreement with Magic Valley Quality Milk Producers, Inc., which was to expire on December 31, 2011. However, said contract was rejected and an Order rejecting said contract was entered by the Bankruptcy Court on August 8, 2011 (Doc. 78).

#### 6. ADMINISTRATIVE EXPENSES

Robinson Anthon & Tribe, attorneys at law, have been paid the sum of \$15,000. Of that amount \$4,304.57 was applied to pre-petition fees and costs, and the balance is being held in trust with the understanding said sum will be applied to post-petition fees and costs incurred in this case. Brent T. Robinson of the firm Robinson Anthon & Tribe is handling this matter at a rate of \$200 per hour and Kelly Arthur Anthon at a rate of \$160 per hour. Any fees and costs incurred in excess of the \$10,695.45 being held in trust will be paid in full within two (2) years after the date of confirmation, but only after Court approval of the fees has been

obtained.

7. FINANCIAL STATEMENTS

During the two years immediately preceding the commencement of this case, debtors have issued financial statements to: MetLife-Ag and DL Evans Bank.

8. CREDITORS HAVING PRIORITY CLAIMS

|                           |             |
|---------------------------|-------------|
| Internal Revenue Service  | \$63,473.79 |
| Gooding County Treasurer  | \$15,137.61 |
| Idaho Department of Labor | \$ 1,351.26 |

9. CREDITORS HAVING UNSECURED CLAIMS WITHOUT PRIORITY, DISPUTED

|                         |              |
|-------------------------|--------------|
| Wolfe Brothers, Inc., * | \$337,000.00 |
|-------------------------|--------------|

\* Note: The basis for the dispute regarding Wolfe Brothers, Inc., is that said creditor claims more is owed than the \$337,000.

10. UNSECURED, UNCONTESTED CLAIMS

**NOTE:** It is the position of the debtor that all of the unsecured creditors are creditors of Rocha Dairy, LLC

|   |             |
|---|-------------|
| The Amalgamated Sugar Co., LLC                    | \$12,306.25 |
| Blue Mudd   | 39,078.31   |
| Cesco   | 10,316.91   |
| CNH Capital America, LLC                          | 15,195.52   |
| Crozier Enterprises                               | 9,504.00    |
| Electrical Contractors                            | 4,448.45    |
| Evans Grain, Feed and Seed                        | 157,586.92  |
| Evans Mineral & Nutrition                         | 94,908.11   |
| John Deere Financial, f.s.b., f/k/a FPC Financial | 2,754.62    |
| Gary Eldredge                                     | 11,826.38   |
| High Mountain Hay, LLC                            | 52,012.78   |
| Holstein Association                              | 215.00      |
| Idaho Udder Health Systems, PC                    | 9,355.04    |
| J.R. Simplot Company                              | 14,731.32   |
| d/b/a Western Stockmen's                          |             |
| J. D. Heiskell & Co.                              | 193,510.28  |
| Jeff Lund   | 53,972.00   |
| Kurt Wiersema Trucking                            | 116,217.00  |
| Magic Valley Quality Milk Producers, Inc.         | 94,648.54   |
| Mary Lou Alves                                    | 300,000.00  |
| Pat M. Richards, DVM                              | 22,151.00   |
| Paul S. Niehaus, DVM, PC                          | 23,135.10   |
| PHI Financial Services, Inc.                      | 30,507.37   |

|  |            |
|--|------------|
| ProFlame                               | 2,797.89   |
| Progressive Bovine Supply              | 49,573.67  |
| Progressive Dairy Service and Supplies | 10,631.63  |
| Rangen, Inc.                           | 11,907.87  |
| Reis Plumbing                          | 1,660.97   |
| Reitsma Holsteins                      | 3,254.00   |
| Rocky Mountain Merchandising           | 155,572.80 |
| Standlee Hay Company                   | 49,070.37  |
| Standley & Co.                         | 32,514.50  |
| Valley Co-op                           | 82,839.92  |
| Van Dyk Truck Parts                    | 16,115.57  |
| Walco                                  | 25,336.13  |
| Wendell O. K. Tire                     | 10,501.39  |
| Wendell Truck & Auto                   | 1,070.98   |
| Western Ag Enterprises, Inc.           | 12,948.05  |
| Western Truck & Equipment, LLC         | 4,875.16   |
| *Westside Chopping                     | 101,691.47 |
| Williams, Meservy & Lothspeich         | 3,509.40   |

The unsecured creditors shall receive approximately 100% of their unsecured claim and interest at 2%.

\*Westside Chopping is an entity consisting of five partners and only one of such is Chris Chandler. Westside Chopping has no interest in Rocha Dairy, LLC.

Attachment No. 8 shows on the same line as the creditor's name the amount that was owed at the time of the creation of Rocha Dairy, LLC. The amount directly under the name is the amount that has been paid since Rocha Dairy, LLC, came into existence.

#### 11. SECURED CLAIMS

|                               |                |
|-------------------------------|----------------|
| D. L. Evans Bank              | \$4,055,757.37 |
| MetLife-Ag Investments (MLIC) | \$3,276,755.28 |

Both D. L. Evans Bank and MetLife-Ag Investments are fully secured.

#### 12. INCONSEQUENTIAL OR BURDENSOME PROPERTY

The debtor intends to quitclaim their interest in property that is burdensome, inconsequential and unnecessary to an effective reorganization under Section 554 of the Bankruptcy Code. Debtor will relinquish any redemption rights they might have in the subject property and will not be subject to action for any resulting deficiency.

13. EXEMPT PROPERTY

None.

14. LIQUIDATION ANALYSIS

Debtor believes the 20% liquidation value assigned is accurate. DL Evans believes the percentage would be lower. Debtor alleges the 20% cost of sale is based upon closing costs being approximately 10%, the Trustee's fee being between 5% and 10%, and the balance of the 20% is based upon the sale by a Chapter 7 Trustee not being in the regular course of events where property is marketed over a longer period and, therefore, expects that it will be sold for somewhat less, namely, approximately 5%:

The property being retained is as follows:

1. Real Property

|                          |                |         |
|--------------------------|----------------|---------|
| Value:                   | \$7,000,000.00 |         |
| Less Debt:               |                |         |
| MetLife                  | 3,276,755.28   |         |
| D. L. Evans Bank         | 2,323,244.72   |         |
| Less Costs of Sale (20%) | 1,400,000.00   |         |
| EQUITY                   |                | \$00.00 |

**NOTE:** With respect to use of the value of \$7 million vs. \$8.1 million, the \$8.1 million was the figure MetLife had indicated as the value of the dairy. That value came into existence as of 2009. Since then, MetLife has appraised the property but has not provided a copy of such appraisal or even indicated what that value is. Therefore, the reason debtor now uses a value of \$7 million is based upon what has been occurring with respect to feed costs and milk prices and it has been determined by the debtor that the value should be lower than before, and, therefore, opted for a value of \$7 million. The value however, may be higher based on the MetLife appraisal.

2. Automobiles, Trucks, Trailers and Other Vehicles

|                          |                                 |              |
|--------------------------|---------------------------------|--------------|
| Value:                   | \$182,000.00                    |              |
| Less Debt:               | 00.00                           |              |
| Less Costs of Sale (20%) | 36,400.00                       |              |
| EQUITY                   |                                 | \$145,600.00 |
| <u>Basis of Value:</u>   | Debtor's best estimate of value |              |

4. Equipment

|  |              |              |
|--|--------------|--------------|
| Value:   | \$312,300.00 |              |
| Less Debt:   | 00.00        |              |
| Less Costs of Sale (20%)                               | 62,460.00    |              |
| EQUITY   |              | \$249,840.00 |
| <u>Basis of Value:</u> Debtor's best estimate of value |              |              |

5. Animals

|                          |                |                |
|--------------------------|----------------|----------------|
| Value:                   | \$3,443,820.00 |                |
| Less Debt: (D. L. Evans) | 1,732,512.65   |                |
| Less Costs of Sale (20%) | 611,600.00     |                |
| EQUITY                   |                | \$1,099,707.35 |

Basis of Value:

|                              |             |
|------------------------------|-------------|
| 1,500 milk cows @ \$1,400    | \$2,100,000 |
| 356 dry cows @ \$1,500       | 534,000     |
| 156 spring heifers @ \$1,500 | 234,000     |
| 100 bred heifers @ \$1,000   | 100,000     |
| 100 heifers – 15m @ \$900    | 90,000      |
| 200 heifers – 13m @ \$800    | 160,000     |
| 100 heifers – 9m @ \$575     | 57,500      |
| 167 heifers – 5m @ \$460     | 76,820      |
| 300 heifers – 3m @ \$250     | 75,000      |
| 27 steers @ \$500            | 13,500      |
| 10 bulls – 250 lb. @ \$300   | 3,000       |

**NOTE:** Even though the numbers are down, there are actually more milk cows and the reason for such is that with D. L. Evans Bank's permission, debtor traded 103 excess 700-pound heifers for 61 milk cows, which brought the overall numbers down but actually increased the amount of milk cows, which also includes dry cows.

Farming Equipment

|                          |              |              |
|--------------------------|--------------|--------------|
| Value:                   | \$445,000.00 |              |
| Less Debt:               | 00.00        |              |
| Less Costs of Sale (20%) | 89,000.00    |              |
| EQUITY                   |              | \$356,000.00 |

**NOTE:** The amount listed as value is debtor's best indication of the value. It should be noted, however, D. L. Evans Bank believes the value of the equipment is to be approximately \$522,478.

The Debtor believes the amount available for priority and unsecured creditors, if this case were a Chapter 7, is the sum of \$2,883,660 which is based upon the debtor's

liquidation figures. DL Evans Bank believes the liquidation costs of sale would be less than that suggested by debtors. The values on the foregoing liquidation analysis are based upon present values; however, taxes in regard to liquidation could be as high as 25%, which could reduce the amount to unsecured creditors to \$2,162,745, or they could be lower.

#### **VII. ACCOUNTING METHOD**

The debtor uses a cash basis for their accounting method. The tax years are from January 1<sup>st</sup> of each year to December 31<sup>st</sup> of each year.

#### **VIII. ATTACHMENT TO THIS DISCLOSURE STATEMENT**

Attachment to this Disclosure Statement makes reference to the following:

Chobani information

Magic Valley Quality Milk Producers' Statement

Timeline

Parts of 2006 through 2011 tax returns

Profit & Loss Statement for January 1 through May 25, 2011;  
May 26 through December 31, 2011; and January through December, 2012

Feed Cost Breakdown

Herd Summary

Analysis of amount owed vs. paid

Balance Sheet as of June 30, 2011, and as of November 28, 2012

Milk Production - 2006 through February 12, 2013

Budget vs. Actual comparing June, 2011 through October 31, 2012

Budgets ending March 31, 2014

Summary of Lab Reports

#### **1. STANDLEE HAY COMPANY**

Standlee Hay Company was paid \$100,000 for pre-petition debt based upon

Standlee Hay Company's willingness to provide feed to the debtor. For approximately two months, the debtor obtained hay from Standlee Hay Company, but then found a source from which they could obtain hay at a less expensive amount and, therefore, opted to no longer purchase hay from Standlee Hay Company but to purchase the same from another party.

**2. FUNDS FOR OPERATION**

Debtor shall obtain funds for operation from the operation of its dairy.

**3. REASONS FOR FILING BANKRUPTCY**

The reason for filing bankruptcy is the inability to continue to make payments and feed the animals. It was imperative that a bankruptcy could be filed so that debtor could get relief from payments so debtor could feed the cows properly and increase production, all of which has occurred, and also could increase the number of animals.

**IX. DISCHARGE**

Debtor is an LLC and as such, will receive a discharge at the time the Plan is confirmed.

DATED this 15th day of February, 2013.

ROCHA DAIRY, LLC

APPROVED BY:

By: /S/ Elcidio Al Rocha  
Elcidio "Al" Rocha, Member

/S/ Brent T. Robinson  
Brent T. Robinson  
Attorney for Debtor