

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In re : Chapter 11

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AFA INVESTMENT INC., *et al.*,¹ : Case No. 12-11127 (MFW)

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Debtors. : Jointly Administered

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: **Re: Docket No. 1070**

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ORDER APPROVING REVISED GLOBAL SETTLEMENT

This matter coming before the Court on the Amended Joint Motion of:

(A) Debtors; (B) Official Committee of Unsecured Creditors; (C) Term B Loan Lenders; (D) Second Lien Agent; (E) Beef Products Inc.; (F) American Capital Limited; (G) the Other Prepetition Second Lien Lenders; and (H) Nadia Sanchez, on Behalf of Herself and Others Similarly Situated, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 for an Order Authorizing Global Settlement (Docket No. 1070) (the "Amended Motion")² filed by the Settlement Parties; the following responses (together, the "Responses") to the relief requested in the Amended Motion having been filed:

- (a) the Response (Docket No. 1092) of the Office of the United States Trustee; and

¹ The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): AFA Investment Inc. (0331); American Foodservice Corporation (1780); American Fresh Foods, Inc. (7389); American Fresh Foods, L.P. (7302); AFA Foods, Inc. (0429); American Fresh Foods, LLC (7301); Fairbank Reconstruction Corporation (2405); American Foodservice Investment Company, LLC (9525); and United Food Group LLC (7584). The address of each of the Debtors is 860 First Avenue, Suite 9A, King of Prussia, Pennsylvania 19406.

² Capitalized terms not otherwise defined herein have the meanings given to them in the Amended Motion.



- (b) the Objection (Docket No. 1094) of Greater Omaha Packing Co., Inc. and its insurers, Continental Casualty Company and its North American insurance affiliates.

The Court being advised that the Settlement Parties have agreed on certain modifications to the Revised Term Sheet (in such modified form, the "Settlement Term Sheet"), a copy of which is attached hereto as Annex A; the Court having reviewed the Amended Motion and the Settlement Term Sheet and the Responses and having considered the statements of counsel and the evidence adduced with respect to the Amended Motion and Settlement Term Sheet at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Amended Motion and the Hearing was sufficient under the circumstances and in full compliance with Bankruptcy Rule 2002 and the Local Rules of this Court, (d) the Revised Settlement (including the WARN Settlement),³ (i) is the product of good faith, arms' length negotiations among the Settlement Parties, without collusion, (ii) is fair, reasonable, appropriate and in the best interests of the Debtors' estates and (iii) represents a sound exercise of the Debtors' business judgment and (e) each of the Settlement Parties provides sufficient consideration for the transactions contemplated by the Revised Settlement (including the WARN Settlement), as set forth in the Settlement Term Sheet; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

³ For the avoidance of doubt, references herein to the "Revised Settlement" refer to the settlement as set forth in the Settlement Term Sheet and the WARN Settlement and any related document.

IT IS HEREBY ORDERED THAT:

1. The Amended Motion is GRANTED as set forth herein and on the record of the Hearing. The Responses are OVERRULED to the extent not resolved by the terms of this Order or on the record of the Hearing.

2. The terms of the Revised Settlement as set forth in the Settlement Term Sheet are APPROVED in their entirety, pursuant to Bankruptcy Rule 9019. All of the terms set forth in the Settlement Term Sheet are approved whether or not restated below in this Order. The Settlement Term Sheet and the Third Amendment are binding upon and enforceable against each of the parties thereto according to their terms. In the event of a conflict between the terms of the Settlement Term Sheet and this Order, the terms of this Order shall govern.

3. The Term B Loan Claim and the Second Lien Claim are deemed allowed secured claims against the Debtors' estates in an amount no less than \$1,400,000 and \$71,595,210, respectively, pursuant to section 502 of the Bankruptcy Code, and shall not be subject to reduction, disallowance, objection, set-off, recoupment, or reconsideration pursuant to section 502(j) of the Bankruptcy Code or otherwise. The Second Lien Claim shall be paid on the terms set forth in the Settlement Term Sheet and the Third Amendment.⁴

4. The ACAS Claims are deemed an allowed secured Second Lien Claim against the Debtors' estates in the amount of \$3,100,000 — which claim is part of the \$71,595,210 in Second Lien Obligations — pursuant to section 502 of the Bankruptcy Code, and shall not be subject to reduction, disallowance, objection, set-off, recoupment or reconsideration pursuant to section 502(j) of the Bankruptcy Code or otherwise. The ACAS Claims shall be paid on the terms set forth in the Settlement Term Sheet and the Third Amendment.

⁴ Yucaipa previously received payment on the Term B Loan Claim.

5. The Second Lien Agent is awarded a superpriority adequate protection claim in the amount of \$2,250,000 as adequate protection for the diminution in value of its security interest consistent with paragraph 6(ii) of the Interim Cash Collateral Order, provided, however, that (a) the Adequate Protection Claim shall be paid solely from the proceeds of Avoidance Actions and (b) the Second Lien Agent agrees to gift the first \$1,650,000 of any recovery on the Adequate Protection Claim to the WARN Claimants on the terms and conditions set forth in the Settlement Term Sheet.

6. As of the Settlement Effective Date, the Releases contained in the Revised Settlement shall become binding and enforceable.

7. This Court's approval of the Revised Settlement pursuant to Bankruptcy Rule 9019 authorizes the Debtors to enter into the WARN Settlement as part of the Revised Settlement, subject only to approval of the WARN Settlement in the WARN Action pursuant to Civil Rule 23(e), as made applicable in the WARN Action by Bankruptcy Rule 7023.

8. Without further order of the Court, the Debtors are authorized to enter into: (a) the Third Amendment and (b) a Settlement Document — on terms consistent with those of the Amended Motion and the Settlement Term Sheet — provided that any such Settlement Document is filed with the Court and served on the Bankruptcy Rule 2002 service list at least three business days prior to its execution by the Debtors. If no objections to the Settlement Document are filed with the Court during this three business day notice period, the Debtors shall be authorized to enter into the Settlement Document. If no Settlement Document is entered into, the Settlement Term Sheet and the Third Amendment shall nevertheless be binding upon and enforceable against the parties.

9. The Debtors and the Second Lien Agent will work in good faith to reach agreement on a modification to FTI's engagement, and its compensation, to address the additional responsibilities relating to Avoidance Actions called for under the Revised Settlement. The revised terms of engagement for FTI, and related compensation, must be acceptable to FTI and the Avoidance Action Committee and approved on motion to and order of this Court. In the absence of an order approving a modification of FTI's engagement, FTI's role with respect to the Avoidance Actions shall be limited to facilitating the Avoidance Action Counsel's access to the Debtors' books and records, including any analysis of Preference Claims previously performed by FTI.

10. The Debtors are hereby authorized to take such additional actions or execute such additional documents as are necessary or appropriate to implement the terms of the Revised Settlement.

11. The provisions of this Order and the Settlement Term Sheet (a) shall be binding on all successors and assigns of any of the Settlement Parties, all creditors and interest holders and other entities, including, without limitation, any chapter 11 or chapter 7 trustee, responsible officer, examiner, estate administrator or representative, plan administrator, or similar person to any of the foregoing, whether existing in this chapter 11 case or any chapter 7 case or otherwise, and pursuant to a chapter 11 plan or otherwise; and (b) shall survive entry of any order that may be entered: (i) confirming any plan of reorganization or liquidation in the Debtors' cases; (ii) converting any of the Debtors' cases to a case under chapter 7 of the Bankruptcy Code; (iii) dismissing any of the Debtors' cases; (iv) discharging any Debtor; or (v) pursuant to which the Bankruptcy Court abstains from hearing any of the Debtors' cases.

12. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement or interpretation of this Order.

Dated: July 2, 2013
Wilmington, Delaware


UNITED STATES BANKRUPTCY JUDGE

ANNEX A

AFA INVESTMENT, INC., ET AL.

TERMS AND CONDITIONS OF THE GLOBAL SETTLEMENT AMONG THE DEBTORS, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS, YUCAIPA CORPORATE INITIATIVES FUND II, L.P., YUCAIPA CORPORATE INITIATIVES (PARALLEL) FUND II, L.P., YCIF II SECOND LIEN HOLDINGS LLC, YUCAIPA CORPORATE INITIATIVES FUND II, LLC, AS ADMINISTRATIVE AGENT, BEEF PRODUCTS, INC., NBPCO HOLDINGS, LLC, AMERICAN CAPITAL, LTD. AND THE WARN CLASS REPRESENTATIVE

Parties:	The Debtors, the Committee, Yucaipa, the Second Lien Agent, the SPV, BPI, NBPCo, ACAS and the WARN Class Representative (all as defined below) (collectively, the “Parties”).
Effective Date:	The global settlement described in this term sheet (the “ <u>Global Settlement</u> ”) will be effective upon the last to occur of entry of: (a) a final, non-appealable order by the Bankruptcy Court (the “ <u>Global Settlement Order</u> ”) approving (i) this term sheet (the “ <u>Term Sheet</u> ”) under Federal Bankruptcy Rule 9019 and (ii) the Third Amendment (as defined below); and (b) a final, non-appealable order approving the Stipulation Re: Settlement of Class Action ¹ on a final basis (the “ <u>Effective Date</u> ”). The Parties agree to use their best efforts to seek entry of such orders by filing motions for such approvals within five business days of the parties’ mutual execution hereof.
The First Liens:	While the Parties seek approval of this Global Settlement, the deadline to bring a Challenge (as defined in the Final DIP Order) ² shall be deemed to be extended until the earliest of: (a) the Effective Date; (b) two business days after the entry of any order denying approval of the Global Settlement; or (c) two business days after entry of any order denying with prejudice approval of the Stipulation Re: Settlement of Class Action on a preliminary basis (such earliest date, the “ <u>Extended Challenge Deadline</u> ”). Unless and until an order is entered denying the approval of the Global Settlement, the withdrawal of a motion to seek approval of the Global Settlement, or an order is entered

¹ The Stipulation Re: Settlement of Class Action will be submitted in, and to resolve, the claims asserted or that could have been asserted in the adversary proceeding captioned *Nadia Sanchez, on behalf of herself and all others similarly situated v. AFA Foods, Inc., AFA Investment, Inc. and Yucaipa Corporate Initiatives Fund II, LLC*, Adv. Pro. No. 12-50710 (MFW) (Bankr. D. Del. 2012) (the “WARN Action”). The parties to the Stipulation Re: Settlement of Class Action are Debtors AFA Investment, Inc. and AFA Foods, Inc.; Yucaipa Corporate Initiatives Fund II, LLC; and Nadia Sanchez, by and through her attorneys, as class representative for the plaintiffs in the WARN Action (the “WARN Class Representative”).

² The Final DIP Order is the *Final Order (i) Authorizing the Debtors to (a) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) and (b) Utilize Cash Collateral of Prepetition Secured Entities, (ii) Granting Adequate Protection to Prepetition Secured Entities, and (iii) Granting Related Relief* [D.I. 199].

	<p>denying with prejudice approval on a preliminary basis of the Stipulation Re: Settlement of Class Action, no such Challenge shall be brought, and the right to make a Challenge shall expire on the Extended Challenge Deadline.</p> <p>On the Effective Date, AFA Investment, Inc., and its affiliated debtors and debtors in possession (collectively, the “<u>Debtors</u>”) and the Official Committee of Unsecured Creditors (the “<u>Committee</u>”) stipulate and agree for all purposes that: (i) Yucaipa Corporate Initiatives Fund II, L.P. and Yucaipa Corporate Initiatives (Parallel) Fund II, L.P., as the sole remaining first lien lenders and as assignees of General Electric Capital Corporation, in its former capacity as administrative agent for the first lien lenders, pursuant to the terms of the first lien credit agreement (including any successor thereto or appointee thereof as administrative agent for the first lien lenders, collectively, the “<u>First Lien Agent</u>”) hold prepetition and/or postpetition first liens and claims that are valid, perfected, enforceable and unavoidable with respect to and in all the Debtors’ assets of any kind, including, but not limited to, the Debtors’ cash (including, but not limited to, all cash received from the sale of the Debtors’ assets), the Litigation Claims (as defined below), the Miscellaneous Assets (as defined below) and the proceeds from all such assets other than the Avoidance Actions and Avoidance Action proceeds (each as defined in the Final DIP Order) (collectively, the “<u>Assets</u>”)³; and (ii) the Debtors were indebted to Yucaipa Corporate Initiatives Fund II, L.P. and Yucaipa Corporate Initiatives (Parallel) Fund II, L.P. (together with their general partner, Yucaipa Corporate Initiatives Fund II, LLC, “<u>Yucaipa</u>”) without defense, counterclaim, offset or challenge of any kind in the aggregate principal amount of \$1,400,000, plus accrued interest, on account of the Term B Loans (the “<u>Term B Loan Claim</u>”). The Term B Loan Claim is deemed allowed for all purposes in an amount no less than \$1,400,000, plus accrued interest through the date it was paid. Yucaipa has received payment on the Term B Loan Claim.</p>
<p>Liens and Claims of the Second Lien Agent:</p>	<p>The deadline to bring a Second Lien Challenge (as defined in the Final DIP Order) shall be deemed to be extended until the Extended Challenge Deadline while the Parties seek approval of this Global Settlement. Unless and until an order is entered denying the approval of the Global Settlement, the withdrawal of a motion to seek approval of the Global Settlement, or an order is entered denying with prejudice approval on a</p>

³ Pursuant to the Final DIP Order, the First Lien Agent was also granted a Prepetition Superpriority Claim (as defined in the Final DIP Order) in, among other things, the Avoidance Action Proceeds, but not a lien on Avoidance Action Proceeds. When addressing liens under this “The First Liens” section of the Term Sheet, the term “Assets” does not include the Avoidance Actions or the Avoidance Action Proceeds.

	<p>preliminary basis of the Stipulation Re: Settlement of Class Action, no such Challenge shall be brought, and the right to make a Second Lien Challenge shall expire on the Extended Challenge Deadline.</p> <p>On the Effective Date, the Debtors and the Committee stipulate and agree for all purposes that: (i) Yucaipa Corporate Initiatives Fund II, LLC, as administrative agent (the "<u>Second Lien Agent</u>") holds prepetition and/or postpetition second liens that are valid, perfected, enforceable and unavoidable with respect to and in all the Assets; (ii) the Debtors are indebted to the Second Lien Agent, without defense, counterclaim, offset or challenge of any kind in the aggregate principal amount of not less than \$71,595,210 on account of the Second Lien Obligations (as defined in the Final DIP Order); (iii) the liens and claims of the Second Lien Agent, granted under the Second Lien Documents, the Final DIP Order, the Cash Collateral Order (as defined below), or otherwise, (collectively, the "<u>Second Lien Claim</u>"), have a value in excess of the value of the Assets, and therefore apply and attach to all Assets; and (iv) the Adequate Protection Liens (as defined in the Cash Collateral Order (defined below)) and the Adequate Protection Claims (as defined in the Cash Collateral Order) are liquidated and allowed in the amount of \$2,250,000 (the "<u>Allowed Adequate Protection Claim</u>"). The Allowed Adequate Protection Claim shall be satisfied solely from the first \$2,250,000 in net recoveries on account of the Avoidance Actions (defined below), as described below. The Second Lien Claim is deemed allowed for all purposes in an amount no less than \$71,595,210. Notwithstanding the foregoing sentence, the Second Lien Note held by American Capital, Ltd. ("<u>ACAS</u>"), dated February 9, 2010 (the "<u>ACAS Second Lien Note</u>"), is deemed an allowed secured claim for all purposes in the amount of \$3,100,000, which claim is part of the \$71,595,210 in Second Lien Obligations.</p>
<p>Miscellaneous Assets:</p>	<p>The term "Miscellaneous Assets" means, collectively: (i) money in the possession of any Debtor as of the Petition Date; (ii) cash retainers held as of the Petition Date by any professional retained by any of the Debtors' in these chapter 11 cases to the extent not applied to pay fees and expenses as approved by an order of the Bankruptcy Court; (iii) any and all shares of stock of Churchill Casualty Ltd., an offshore insurance company located in the Cayman Islands, owned by American Foodservice Corporation or any other Debtor; (iv) any and all automobiles, trucks, trailers, lifts or other vehicles owned by any of the Debtors; and (v) any sale proceeds in excess of \$2.3 million generated from the sale of American Foodservice Corporation's real property located in Montgomery County, Pennsylvania.</p>

Recovery on the General Assets:

The following applies to all Assets, including, but not limited to, the Miscellaneous Assets, but shall not apply to the Litigation Claims or the Avoidance Actions (collectively, the "General Assets"): The Debtors will make the payments authorized by the Cash Collateral Order and the Budget (defined below), including the payment of reasonable fees and expenses of the Second Lien Agent. The Debtors, the Committee, and the Second Lien Agent will agree on a reasonable reserve for amounts in the Budget for the period after the Effective Date (the "Reserve"), which will be set aside from the General Assets, and which in no event shall be of an amount that could impair the ability of the Debtors' estates to pay all amounts payable to ACAS as and when provided for herein and on the terms set forth in the Third Amendment (as defined below). The Litigation Recovery Fund (as defined below) is included as part of the Reserve. The Second Lien Agent, Yucaipa, and the SPV shall not have any obligation to fund any amounts beyond the Second Lien Agent's portion of the Reserve. The Creditor Recovery Pool shall not have any obligation to fund any amounts beyond the Creditor Recovery Pool's portion of the Reserve. Notwithstanding the foregoing, in no event shall the payments authorized by the Cash Collateral Order, the Budget, and the Reserve, be of an amount that, individually or in the aggregate, could impair the ability of the Debtors' estates to pay all amounts payable to ACAS as and when provided for herein and on the terms set forth in the Third Amendment. Recoveries of \$3,100,000 received from the General Assets will be applied to payment of the ACAS Second Lien Note, on the terms set forth in that certain Third Amendment to Credit Agreement to be executed and delivered simultaneously with the Global Settlement and this Term Sheet (the "Third Amendment"), in full and final satisfaction of the ACAS Second Lien Note and all claims that ACAS or any ACAS Lender (as defined in Second Lien Credit Agreement) may have against the Debtors, including any claim based on the ACAS Offset Note dated February 9, 2010. For the avoidance of doubt, and notwithstanding anything to the contrary herein, such payment shall be paid, without offset or deduction of any sort, as follows:

(1) on the second business day following the Effective Date, the Debtors' estates shall pay to ACAS the amount of Two Million Four Hundred Thousand Dollars (\$2,400,000), by wire transfer of immediately available funds to the account of ACAS set forth below:

Bank:	The Bank of New York Mellon, Brooklyn, NY
ABA#:	21000018
SWIFT Code:	IRVTUS3N

Account Name:	American Capital Ltd.
Account #:	8900700815
Reference:	AFA

(2) on the first date on which the Debtors make a payment to the SPV (or any transferee, successor or assign of the SPV), pursuant to the terms of the Global Settlement Order (such date, the "Initial SPV Distribution Date"), the Debtors' estates shall pay to ACAS the amount of Three Hundred Fifty Thousand Dollars (\$350,000), by wire transfer of immediately available funds to the account of ACAS set forth above in clause (1); and

(3) on the Initial SPV Distribution Date, the Debtors' estates shall also pay directly to Yucaipa on behalf of ACAS, the amount of Three Hundred Fifty Thousand Dollars (\$350,000), by wire transfer of immediately available funds to the account of Yucaipa set forth below:

Yucaipa Corporate Initiatives Fund II, LP – 76.1667%	
Bank:	Union Bank of California Corporate Deposit Services 445 South Figueroa St Los Angeles, CA 90071
ABA#	122000496
Account#	44800-06181
Account Name:	YUCAIPA CORPORATE INITIATIVES FUND II, LP
Yucaipa Corporate Initiatives (Parallel) Fund II, LP – 23.8333%	
Bank:	Union Bank of California Corporate Deposit Services 445 South Figueroa St Los Angeles, CA 90071
ABA#	122000496
Account#	44800-06203
Account Name#	YUCAIPA CORPORATE INITIATIVES (PARALLEL) FUND II, LP

As of and following the payment to ACAS of the amounts contemplated in clauses (1) and (2) above, and the payment to Yucaipa of the amount contemplated in clause (3) above, (such amounts totaling \$3,100,000 in the aggregate), (A) the ACAS Lenders Claim shall be deemed fully and finally satisfied and extinguished, and (B) neither ACAS nor any ACAS Lender shall have any additional or further claims against the Debtors or their estates, or against any other party to the Third Amendment (including the Second Lien Agent), and, similarly,

no such party shall have any claim against ACAS or any ACAS Lender, related to assets of the Debtors or to the Credit Agreement, the Second Lien Obligations or the Loan Documents, nor shall ACAS or any ACAS Lender be, or be deemed to be, a Lender under or other party to the Credit Agreement or any other Loan Document, and all of the rights and obligations of ACAS and any other ACAS Lender under the Credit Agreement and the Loan Documents shall be deemed terminated and replaced in their entirety with the rights and obligations of ACAS set forth in the Term Sheet, the Global Settlement Order, and the Third Amendment. For the avoidance of doubt, as of the Effective Date, the rights of ACAS and any ACAS Lender to receive payments or any other amounts from the Debtors or their estates, or from any other Party to the Third Amendment (including the Second Lien Agent), or from any affiliate, transferee, successor or assign thereof, from or related to assets of the Debtors, shall be limited to the rights to the payments to ACAS set forth in clauses (1) and (2) above. Nothing in this paragraph shall limit any rights of ACAS to enforce the provisions of and obligations under the Third Amendment, the Global Settlement Order, or the Term Sheet, including without limitation ACAS's right to receive payments specified in clauses (1) and (2) above.

The remainder of all recoveries received from the General Assets will be paid to the SPV (defined below) and distributed immediately according to the following waterfall.

The first \$14,000,000 of recoveries received from the General Assets by YCIF II Second Lien Holdings LLC (the "SPV") will be divided as follows: (i) 80% to be paid over to NBPCo Holdings, LLC ("NBPCo") (such 80% amount, the "NBPCo General Asset Recovery"); and (ii) 20% to be gifted from the SPV to the Creditor Recovery Pool (defined below) (such 20% amount, the "First Creditor General Asset Recovery").

Second, any and all recoveries received from the General Assets by the SPV above \$14,000,000 will be divided as follows: (i) 90% to be paid over to Yucaipa; and (ii) 10% to be gifted from the SPV to the Creditor Recovery Pool (such 10% amount the "Second Creditor General Asset Recovery").

NBPCo agrees that its recovery from the General Assets on account of the NBPCo General Asset Recovery, the Second Lien Claim or otherwise is capped at \$11,200,000. NBPCo is also entitled to the NBPCo Litigation Claim Recovery, the Additional NBPCo Litigation Claim Recovery and, as set out below, certain recoveries from the Avoidance Actions, which are not subject to the \$11,200,000 cap.

<p>Recovery on the Litigation Claims:</p>	<p>Except with respect to the return of funds contributed to the Litigation Recovery Fund (defined below), the following applies to any and all recoveries the Debtors may become entitled to on account of the litigation claims involving Cargill and GOPAC (collectively, the "<u>Litigation Claims</u>"). For the avoidance of doubt, the Litigation Claims do not include the Avoidance Actions.</p> <p>Any and all recoveries received from the Litigation Claims by the Debtors will be paid over to the SPV and divided immediately as follows: (i) 50% to be paid over to Yucaipa; <u>provided, however</u>, (A) any recovery received by Yucaipa between \$2,000,000 and \$4,000,000 will be divided 50%-50% between Yucaipa and NBPCo until NBPCo receives \$1,000,000 (the "<u>Additional NBPCo Litigation Claim Recovery</u>"); and (B) any recovery received by Yucaipa above \$4,000,000 will be divided 96%-4% between Yucaipa and NBPCo, with Yucaipa receiving 96% and NBPCo receiving 4%, until NBPCo receives \$1,357,933.42; and (ii) 50% to be gifted from the SPV to the Creditor Recovery Pool (the "<u>Creditor Litigation Claim Recovery</u>"), <u>provided, however</u>, the first \$2,000,000 in Creditor Litigation Claim Recovery will be divided 50%-50% between NBPCo and the Creditor Recovery Pool until NBPCo receives \$1,000,000 (the "<u>NBPCo Litigation Claim Recovery</u>").</p> <p>The funds necessary to monetize the Litigation Claims shall be funded as follows: (i) an initial fund of \$250,000 (the "<u>Litigation Recovery Fund</u>") shall be established from recoveries received from the General Assets by the SPV and the Creditor Recovery Pool, with the SPV contributing 80% and the Creditor Recovery Pool contributing 20%; and (ii) if the SPV and the entity responsible for administering the Creditor Recovery Pool determine that additional funds must be contributed to the Litigation Recovery Fund in order to monetize the Litigation Claims, the SPV will contribute 80% of such funds and the Creditor Recovery Pool will contribute 20%. The first dollars of any recovery received from the Litigation Claims shall be used to return the funds contributed to the Litigation Recovery Fund, with the SPV receiving 80% of such returned funds and the Creditor Recovery Pool receiving 20%.</p>
<p>Creditor Recovery Pool:</p>	<p>The First Creditor General Asset Recovery, the Second Creditor General Asset Recovery, and the Creditor Litigation Claim Recovery represent a gift from the SPV and/or Yucaipa in consideration of the Committee's agreement to be bound to the provisions of the Term Sheet and will be combined along with the Creditor Avoidance Action Recovery (as defined below) into a fund (the "<u>Creditor Recovery Pool</u>") and distributed to the Debtors' creditors that are not Parties to this Term Sheet, (collectively, the "<u>Creditors</u>") consistent with the Bankruptcy</p>

	<p>Code and any further orders of the Bankruptcy Court. For the avoidance of doubt, the members of the Creditors Committee in their individual capacities as creditors of the Debtors are Creditors.</p> <p>No Creditor will receive a distribution from the Assets in excess of its appropriate share of the Creditor Recovery Pool.</p> <p>For the avoidance of doubt, Yucaipa, the Second Lien Agent, the SPV, BPI, NBPCo, ACAS, the WARN Class Representative, and any party asserting a claim against the Debtors under or related to the Federal Worker Adjustment and Retraining Notification Act or similar claims under state laws, including members of the WARN class, will not receive any distribution from the Creditor Recovery Pool, except as provided for regarding the NBPCo Litigation Claim Recovery, and nothing in this "<u>Creditor Recovery Pool</u>" section of this Term Sheet shall impair or otherwise affect the recovery Yucaipa, the Second Lien Agent, the SPV, BPI, NBPCo, ACAS and the WARN Class Representative are entitled to receive pursuant to other provisions of this Term Sheet and the Third Amendment.</p> <p>The Creditor Recovery Pool will be structured and managed in a manner chosen by the Committee, subject to approval by the Debtors, which approval shall not be unreasonably withheld.</p>
<p>Cash Collateral:</p>	<p>The Second Lien Agent will consent to use of its cash collateral in accordance with (i) a budget approved by the Second Lien Agent in its sole discretion (the "<u>Budget</u>") and (ii) a final cash collateral order approved by the Bankruptcy Court, the form of which is acceptable to the Second Lien Agent in its sole discretion (the "<u>Cash Collateral Order</u>"). The term Cash Collateral Order includes the <i>Interim Order (i) Authorizing the Debtors to Use Cash Collateral of the Second Lien Secured Parties and (ii) Providing Adequate Protection to the Second Lien Secured Parties</i> [D.I. 662].</p>
<p>Release and Waiver:</p>	<p>On the Effective Date, the Debtors, each of their respective bankruptcy estates and the Committee, on behalf of themselves, their parents, subsidiaries and affiliates, and, in their capacity as such, each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns, successors, and any person claiming, or who could claim, by, through, or on behalf of any of them (collectively, the "<u>Releasing Parties</u>") will, and as of the Effective Date, hereby do irrevocably and unconditionally</p>

	<p>waive, release and discharge with prejudice Yucaipa, ACAS, all ACAS Lenders, Beef Products, Inc. ("<u>BPI</u>"), NBPCo, the SPV, the First Lien Agent, the Second Lien Agent and the Second Lien Lenders and their parents, subsidiaries and affiliates, and each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns, and successors (collectively, the "<u>Released Parties</u>") from any and all claims, liens, causes of action or suits at law or in equity (including, but not limited to, any and all causes of action arising under sections 502(d), 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code), damages, liabilities, demands, grievances, rights of setoff or recoupment, indemnification obligations, losses and costs (including costs of suit and attorneys' fees and expenses), existing or contingent, known or unknown, and whether arising by contract, statute, common law or otherwise, of whatsoever kind or nature, that the Releasing Parties have or might have from the beginning of time to the Effective Date, in any way arising out of or related to the Debtors or the Debtors' chapter 11 cases; <i>provided, however</i>, that the obligations under this Term Sheet, the Global Settlement Order, the Third Amendment and the Cash Collateral Order and claims for the enforcement thereof are not released hereby. Any Creditor that accepts a distribution from the Creditor Recovery Pool shall be deemed a Releasing Party. The Parties intend that this Term Sheet effectuate a mutual release, and on the Effective Date the Released Parties will irrevocably and unconditionally waive, release, and discharge with prejudice the Releasing Parties to the same extent that the Releasing Parties released the Released Parties; <i>provided, however</i>, that the obligations under this Term Sheet, the Global Settlement Order, the Third Amendment and the Cash Collateral Order and claims for the enforcement thereof are not released hereby.</p>
<p>Release and Waiver Among BPI, NBPCo, ACAS and Yucaipa:</p>	<p>On the Effective Date, each of ACAS, all ACAS Lenders, BPI, NBPCo, the SPV, the SPV Members and the Agent, for and on behalf of itself and each of their respective parents, subsidiaries and affiliates (other than, for the avoidance of doubt, any Debtor), and each of their respective directors, managing directors, officers, trusts, trustees, members, attorneys, consultants, other professionals, partners, associates, principals, divisions, employers, employees, insurers, agents, representatives, consultants, guarantors, indemnitors, indemnitees, sureties, heirs, assigns, and successors (collectively, the "<u>Release Parties</u>", and each, a "<u>Release Party</u>"), does hereby irrevocably remise, release, and forever discharge each other Release Party, and each of their respective heirs, executors, administrators, trustees and personal</p>

	<p>representatives, of and from all, and all manner of, actions and causes of action, proceedings, orders, obligations, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims, demands, and liabilities (whether liquidated, contingent, or otherwise) whatsoever, whether known or unknown, suspected or unsuspected, both at law or in equity (individually and collectively, a “<u>Claim</u>” or “<u>Claims</u>”), that any Release Party now has, has ever had or may hereafter have against any other Release Party, in each case in any way arising out of or related to the Credit Agreement, the Second Lien Obligations, the Loan Documents, the Debtors or the Debtors’ chapter 11 cases. Nothing in this section shall release (i) any Release Party of its obligations under this Term Sheet, the Third Amendment or the Global Settlement Order, or (ii) any Debtor of any of its obligations under this Term Sheet, the Third Amendment, the Loan Documents, the Global Settlement Order, the Debtors’ chapter 11 cases or otherwise. Unless defined in this Term Sheet or in this “Release and Waiver Among BPI, NBPCo, ACAS and Yucaipa” section of this Term Sheet, capitalized terms used in this section shall have the meanings ascribed to them in the Third Amendment.</p>
<p>Prosecution of the Avoidance Actions:</p>	<p>On the Effective Date, a committee of three members (the “<u>Avoidance Action Committee</u>”) shall be appointed to manage the prosecution of the Debtors’ causes of action under sections 542, 543, 544, 545, 547, 548, 550, 551 and 553 of the Bankruptcy Code (collectively, the “<u>Avoidance Actions</u>”). Yucaipa, the WARN Class Representative and the Committee shall each appoint one member of the Avoidance Action Committee; <i>provided, however</i>, the member appointed by the Committee shall not have received a preferential transfer. All decisions of the Avoidance Action Committee shall be subject to a majority vote (unless specifically provided otherwise herein), with each member of the Avoidance Action Committee having equal voting power. The Court shall retain jurisdiction to resolve any dispute among the members of the Avoidance Action Committee.</p> <p>The Avoidance Actions shall be prosecuted on behalf of the Debtors’ estates by ASK LLP on a contingency fee basis; <i>provided, however</i>, that ASK LLP’s bid must be market as determined by the Avoidance Action Committee. ASK LLP will select its own Delaware counsel (ASK LLP and its Delaware counsel, the “<u>Avoidance Action Counsel</u>”), which selection shall be subject to (i) majority approval by the Avoidance Action Committee and (ii) confirmation that the proposed Delaware counsel is free from conflict; <i>provided, further</i>, that Delaware counsel’s fees shall not exceed \$250/hour for counsel and \$150/hour for paraprofessionals.</p>

Upon selection of the Avoidance Action Counsel, the Avoidance Action Counsel (if not previously retained) shall file a retention application(s) with the Bankruptcy Court to serve as special counsel to the Debtors for the purposes of evaluating, prosecuting and/or settling the Avoidance Actions.

The Avoidance Action Committee shall at all times act as the fiduciary to the Debtors' estates with respect to the Avoidance Actions and seek to maximize the return to creditors from such actions.

The Debtors' financial advisor, FTI, will cooperate fully in the prosecution and settlement of the Avoidance Actions.

The Avoidance Action Counsel initially shall only make demands and/or file complaints for the avoidance of transfers under section 547 of the Bankruptcy Code (and related section 550 claims); *provided, however*, any complaints filed by the Avoidance Action Counsel shall be without prejudice to subsequent amendments in order to include other Avoidance Actions prior to the section 546 statutory deadline.

Avoidance Actions other than those under section 547 of the Bankruptcy Code (and related section 550 claims) will not be brought without majority approval of the Avoidance Action Committee and will not be brought prior to February 10, 2014, without unanimous approval of the Avoidance Action Committee.

Each member of the Avoidance Action Committee will have standing in the Bankruptcy Court to object to any decision by the Avoidance Action Committee not to prosecute an Avoidance Action.

Each member of the Avoidance Action Committee may independently request any information from Avoidance Action Counsel and/or FTI with a copy of such request and response being provided to other members of the Avoidance Action Committee.

No section 547 demands or complaints will be settled unless and until the defendant and/or FTI shares information related to all transfers received by the defendant in the 2 years prior to the Petition Date.

All settlements of Avoidance Actions are subject to (i) the majority approval of the Avoidance Action Committee and (ii) Court approval, and each member of the Avoidance Action Committee will have standing in the Bankruptcy Court to object to any proposed settlement of an Avoidance Action.

<p>Recovery on Avoidance Actions:</p>	<p>Avoidance Action Counsel shall solely be compensated on a contingency basis and paid from the gross proceeds of the Avoidance Actions. After payment of fees and expenses of the Avoidance Action Counsel, the first \$1,650,000 of net recoveries received from the Avoidance Actions shall be paid to fund the maximum settlement amount in the WARN Action. This shall be the only source of funding for the settlement in the WARN Action, and neither the Debtors nor any other Party, including, but not limited to the Sanchez Released Parties (as defined in the Stipulation Re: Settlement of Class Action), shall have any obligation to separately fund the settlement.</p> <p>Once this payment is completed, or it is determined that only a partial payment will be possible and thus the maximum settlement amount will be lowered, the member of the Avoidance Action Committee appointed by WARN Class Representative shall resign from the Avoidance Action Committee.</p> <p>Any and all net recoveries received from the Avoidance Actions between \$1,650,001 and \$2,250,000 will be divided 55%-45% between Yucaipa and NBPCo, with NBPCo receiving 55% and Yucaipa receiving 45%. Such funds shall be paid to the Second Lien Agent for distribution to Yucaipa and NBPCo.</p> <p>Any and all net recoveries received from the Avoidance Actions above \$2,250,000 will be paid to the Creditor Recovery Pool; <i>provided, however</i>, following the payment of all claims asserted against the Debtors arising under section 503(b)(9) of the Bankruptcy Code and any other priority claim, any and all net recoveries received from the Avoidance Actions above \$2,250,000 will be divided 50%-50% between Yucaipa and the Creditor Recovery Pool (the "<u>Creditor Avoidance Action Recovery</u>").</p> <p>In the event of any conflict between the Term Sheet and the Stipulation Re: Settlement of Class Action, the Term Sheet shall control in all respects.</p>
<p>Binding Effect:</p>	<p>The provisions of this Term Sheet, any order approving it, and any actions taken pursuant to the Term Sheet or any order approving the Term Sheet shall survive entry of any order that may be entered: (a) confirming any plan of reorganization or liquidation in the Debtors' cases; (b) converting any of the Debtors' cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Debtors' cases; (d) discharging any Debtor; or (e) pursuant to which the Bankruptcy Court abstains from hearing any of the Debtors' cases.</p>

Dated: _____, 2013

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