

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

	:	
In re:	:	Chapter 11
	:	
FRESH & EASY, LLC, ¹	:	Case No. 15-12220 (BLS)
	:	
Debtor.	:	Related to Docket No. 2130
	:	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER CONFIRMING AMENDED COMBINED DISCLOSURE STATEMENT
AND JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR FRESH & EASY, LLC**

Fresh & Easy, LLC, the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), having filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) on October 30, 2015 (the “Chapter 11 Case”);² and the Debtor and the Official Committee of Unsecured Creditors in the Chapter 11 Case (the “Committee” and, with the Debtor, the “Plan Proponents”) having proposed the Amended Combined Disclosure Statement (the “Disclosure Statement”) and Joint Chapter 11 Plan of Liquidation of Fresh & Easy, LLC (the “Plan”) [Docket No. 2130] (as amended, supplemented or otherwise modified, collectively the “Combined Plan and Disclosure Statement”);³ and the Plan Proponents having filed the Plan Supplement [Docket No. 2066]; and

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8906. The Debtor’s mailing address is Howard Hughes Center, 6080 Center Drive, 6th Floor, Los Angeles, CA 90045.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Combined Plan and Disclosure Statement.

³ On February 1, 2017, the Plan Proponents filed the Combined Plan and Disclosure Statement [Docket No. 1831], as well as the Combined Plan and Disclosure Statement under seal [Docket No. 1832], which contained an unredacted copy of Exhibit A, the Settlement and Release Agreement. The Plan Proponents also filed a joint motion requesting authority to file a provision of the Settlement and Release Agreement under seal [Docket No. 1834]. By Order dated February 21, 2017 [Docket No. 1899], this Court authorized the filing of the unredacted copy of the Settlement and Release Agreement under seal. Following the entry of the Interim Approval and Procedures Order, on February 22, 2017, the Plan Proponents filed a conformed copy of the Combined Plan and Disclosure Statement, dated February 21, 2017 [Docket No. 1908]. On April 25, 2017, the Plan Proponents filed the Amended Combined Plan and Disclosure Statement [Docket No. 2130].

on February 21, 2017, the Court having entered the Order (A) Approving the Disclosure Statement on an Interim Basis; (B) Scheduling Combined Hearing on Final Approval of the Disclosure Statement and Confirmation of Plan; (C) Establishing Deadlines and Procedures for (I) Filing Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan, (II) Claim Objections and (III) Temporary Allowance of Claims for Voting Purposes; (D) Determining Treatment of Certain Unliquidated, Contingent or Disputed Claims for Notice, Voting and Distribution Purposes; (E) Setting a Record Date; (F) Approving (I) Solicitation Packages and Procedures for Distribution, (II) Form of Notice of Hearing on Confirmation and Related Matters and (III) Forms of Ballots; (G) Establishing Voting Deadline and Procedures for Tabulation of Votes; and (H) Granting Related Relief [Docket No. 1900] (the “Interim Approval and Procedures Order”), approving, among other things, the Disclosure Statement on an interim basis and procedures for the solicitation and tabulation of votes to accept or reject the Plan; and the Court having established, in the Interim Approval and Procedures Order, April 27, 2017 at 11:00 a.m. (prevailing Eastern Time) as the date and time for the hearing to consider: (i) final approval of the Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code; and (ii) confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code (the “Confirmation Hearing”); and the Affidavit of Service of Solicitation Materials, executed by Joseph Arena, Manager, Solicitation Services, Epiq Bankruptcy Solutions, LLC (“Epiq”) [Docket No. 2008] (the “Affidavit of Service”), with respect to the mailing of the notice of the Confirmation Hearing and the other solicitation materials in accordance with the Interim Approval and Procedures Order, having been filed with the Court; and notice of the Confirmation Hearing having been filed on the docket in the Chapter 11 Case [Docket No. 1909] and having been posted on the website dedicated to the Chapter 11 Case,

<http://dm.epiq11.com/fre>; and a certification of publication of the Confirmation Hearing and related objection deadline having been filed with the Court [Docket No. 1988] (the “Certificate of Publication”) with respect to the publication of the notice of the Confirmation Hearing in The Los Angeles Times and the national edition of The New York Times in accordance with the Interim Approval and Procedures Order; and the deadline for voting to accept or reject the Plan having passed; and the Debtor having filed the Declaration of Jane Sullivan on behalf of Epiq Bankruptcy Solutions, LLC, Regarding Voting and Tabulation of Ballots Cast on the Joint Chapter 11 Plan of Liquidation for Fresh & Easy, LLC [Docket No. 2105] (the “Voting Certification”); and the deadline for filing objections to final approval of the Disclosure Statement and confirmation of the Plan having passed and the following objections having been filed: (1) Limited Objection of National Union Fire Insurance Company of Pittsburgh, PA, American Home Assurance Company, and Certain Other Entities Related to AIG Property Casualty, Inc. f/k/a Chartis Inc. to Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation [Docket No. 2094]; and (2) Limited Objection of the Chubb Companies to the Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation for Fresh & Easy, LLC [Docket No. 2095]; and the Court having reviewed the Combined Plan and Disclosure Statement, the Interim Approval and Procedures Order, the Affidavit of Service, the Certificate of Publication, the Voting Certification and all other papers before the Court in connection with the confirmation of the Plan; and the Court having considered the Declaration of Amir Agam, Chief Restructuring Officer, in Support of the Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation of Fresh & Easy, LLC [Docket No. 2132] (the “Agam Declaration”); and any testimony presented and evidence admitted at the Confirmation Hearing; and the Court having taken judicial notice of the papers and pleadings on file in the Chapter 11 Case; and the

Court finding that (i) notice of the Confirmation Hearing and the opportunity of all parties in interest to object to confirmation of the Plan were adequate and appropriate, in accordance with Rules 2002(b) and 3017(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 2002-1 and 3017-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) and the Interim Approval and Procedures Order, as to all parties to be affected by the Plan and the transactions contemplated thereby and (ii) the legal and factual bases for confirmation, including as set forth in the Agam Declaration, and this Confirmation Order, establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, the Court hereby makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW⁴

A. Jurisdiction, Venue, Core Proceeding (28 U.S.C. §§ 175(b)(2) and 1334(a)). The Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012. Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Bankruptcy Court has jurisdiction to enter a final order with respect thereto. Venue was proper as of the Petition Date and is proper before the Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Burden of Proof. The Plan Proponents have the burden of proving the elements of 11 U.S.C. § 1129(a) and (b) by a preponderance of the evidence and, as set forth herein, the Plan Proponents have met that burden.

⁴ The findings of fact and the conclusions of law stated in this Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to the proceeding by Fed. R. Bankr. P. 9014. To the extent any finding of fact shall be determined to be a conclusion of Law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

C. Judicial Notice. The Court takes judicial notice of the docket in the Chapter 11 Case maintained by the Clerk of Court and/or its duly-appointed agent, including, without limitation, all pleadings, notices and other documents filed with, all orders entered by, and all evidence and argument made, proffered or adduced at the hearings held before the Court during the pendency of the Chapter 11 Case.

D. Compliance with Fed. R. Bankr. P. 3016. The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b). Further, the Plan and the Notice of Confirmation Hearing describe in specific and conspicuous language all acts to be enjoined and identify the entities that are subject to the injunction, satisfying Bankruptcy Rule 3016(c) to the extent applicable.

E. Compliance with Fed. R. Bankr. P. 3017. The Debtor has given notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d), Local Rule 3017-2 and the Interim Approval and Procedures Order.

F. Transmittal and Mailing of Solicitation Materials; Notices. The solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. The Combined Plan and Disclosure Statement was transmitted to all Creditors entitled to vote on the Plan, and sufficient time was prescribed for such Creditors to accept or reject the Plan, thereby satisfying the requirements of Bankruptcy Rule 3018 and Local Rule 3017-2. The solicitation materials used, including the Ballot without an opt-out election, and solicitation procedures followed comply with 11 U.S.C. §§ 1125 and 1126 and the Interim Approval and Procedures Order, thereby satisfying the requirements of Bankruptcy Rule 3018 and Local Rule 3018-2.

G. Adequacy of Solicitation Procedures. All procedures used to distribute the solicitation materials to the appropriate Creditors entitled to vote on the Plan and to receive and tabulate the Ballots of Holders of Claims in the voting Class, including the tabulation of opt-out elections with respect to Consensual Third Party Releases, as set forth in the Voting Certification, were fair and properly conducted in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Interim Approval and Procedures Order, and all other applicable rules, laws and regulations. As described in the Voting Certification, which certified both the method and results of the voting, the Plan was accepted by Class 4 (General Unsecured Claims), the only Class of Claims entitled to vote on the Plan. The Plan Proponents, therefore, obtained the requisite acceptance both in number and amount for Confirmation of the Plan.

H. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based upon the record before the Court in the Chapter 11 Case, the Plan Proponents, and their respective members, officers, directors, agents, financial advisors, attorneys, and other retained professionals (i) have acted in “good faith” within the meaning of 11 U.S.C. §§ 1125(e) and 1129(a)(3), and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Interim Approval and Procedures Order and all other applicable non-bankruptcy laws, rules and regulations governing the adequacy of disclosure in connection with all of their respective activities relating to the Plan and the solicitation of acceptances to the Plan, their respective activities relating to providing all Holders in Class 4 with the opportunity to opt-out of the Consensual Third Party Releases, and their participation in the activities described in 11 U.S.C. § 1125; and (ii) shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and are entitled to the protections afforded by 11

U.S.C. § 1125(e) and, to the extent applicable, the exculpation and injunctive provisions set forth in Article XVI of the Plan.

I. Impaired Class that has Voted to Accept or Reject the Plan. Class 4 (General Unsecured Claims), which is divided into two subclasses, is impaired under and entitled to vote on the Plan. As evidenced by the Voting Certification, which certified both the method and results of the voting, Classes 4A and 4B have each voted to accept the Plan pursuant to the requirements of 11 U.S.C. §§ 1124 and 1126.

J. Classes Deemed to Accept Plan. Classes 2 Other Miscellaneous Secured Claims) and 3 (Priority Non-Tax Claims) are unimpaired under the Plan. Pursuant to 11 U.S.C. § 1126(f), holders of such unimpaired Claims are conclusively presumed to have accepted the Plan.

K. Classes Deemed to Reject the Plan. Classes 5 (Subordinated Claims) and 6 (Equity Interests) are impaired and will not receive or retain any property under the Plan. Pursuant to 11 U.S.C. § 1126(g), holders of such impaired Claims are conclusively presumed to have rejected the Plan.

L. Eliminated Class. Class 1 (Wells Fargo) has been eliminated from the Plan, as amended and modified.

M. The Global Settlement. The Plan and the Global Settlement, as memorialized in the Settlement and Release Agreement (the "Settlement Agreement") annexed to the Combined Plan and Disclosure Statement as Exhibit A, and as discussed in detail in the Combined Plan and Disclosure Statement, are the result of good faith arms' length negotiations among the Debtor, the Committee, the YFE Parties and Yucaipa (each a "Party" and collectively, the "Settlement Parties"). Approval of the Global Settlement ensures the prompt resolution of the Chapter 11

Case, provides sufficient funds to consummate the Plan, allows for the wind down of the Debtor's estate, ensures that funds will be provided to the Liquidating Trust for the benefit of holders of Allowed Claims, and is in the best interests of Creditors. Accordingly, the Global Settlement is fair and reasonable.

N. Releases, Exculpations and Injunctions. The release, exculpation and injunction provisions set forth in Articles XVI of the Plan: (i) are within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (ii) are essential to the successful implementation of the Plan pursuant to 11 U.S.C. § 1123(a)(5); (iii) are an integral element of the transactions incorporated into the Plan; (iv) confer material benefits on, and are in the best interests of, the Debtor, the Estate and its Creditors; and (v) are consistent with 11 U.S.C. §§ 105, 1123 and 1129, and other applicable provisions of the Bankruptcy Code. With respect to the Consensual Third Party Releases provided pursuant to Article XVI.A.2 of the Plan by all (i) Holders of Claims (except Holders of Claims in Class 4A who timely exercised the opt-out election to such releases) and (ii) all Holders of Interests, such releases are (a) consensual, (b) in exchange for the good and valuable consideration, representing a good faith settlement and compromise of any claims released therein; (c) in the best interests of the Debtor and all holders of Claims; (d) narrowly tailored; (e) fair, equitable and reasonable; and (f) a bar to any of the releasing parties' assertion of any claim released by such provisions. The record of the Confirmation Hearing and the Chapter 11 Case is sufficient to support the release, exculpation and injunction provisions contained in the Plan.

O. Bar Provision. Approval of the Bar Provision set forth in Article XVI of the Plan (i) is within this Court's authority pursuant to section 105(a) of the Bankruptcy Code; (ii) is a material component of the Settlement Agreement; (iii) serves strong public policies in favor of

settlements; and (iv) assists in preserving assets for the benefit of the Debtor's Creditors. The record of the Confirmation Hearing and the Chapter 11 Case is sufficient to support the Bar Provision contained in the Plan.

Compliance with Bankruptcy Code Section 1129

P. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth and demonstrated below, the Plan complies with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the orders of this Court with respect to the Plan, thus satisfying the requirements of 11 U.S.C. § 1129(a)(1).

(i) Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). The Plan complies with the requirements of sections 1122 and 1123(a)(1) of the Bankruptcy Code. With the exception of the Administrative Claims and Priority Tax Claims, which need not be classified, the Plan designates five (5) Classes of Claims and Interests in the Debtor. (The sixth Class of Claims, Class 1, has been eliminated from the Plan, as amended and modified). The Plan's Classifications conform to the requirements of the Bankruptcy Code and separately classify Claims and Interests based on valid business, factual and legal reasons, and such Classes do not unfairly discriminate among holders of Claims and Interests. Article VIII of the Plan designates the classifications.

(ii) Unimpaired Classes Specified (11 U.S.C. § 1123(a)(2)). The Plan complies with the requirements of section 1123(a)(2) of the Bankruptcy Code. Article VIII of the Plan specifies that Classes 2 (Other Miscellaneous Secured Claims) and 3 (Priority Non-Tax Claims) are unimpaired under the Plan, thereby satisfying 11 U.S.C. § 1123(a)(2).

(iii) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan complies with the requirements of section 1123(a)(3) of the Bankruptcy Code.

Article XI of the Plan specifies that Classes 4 (General Unsecured Claims) and its two subclasses, 5 (Subordinated Claims) and 6 (Equity Interests) are impaired, and specifies the treatment of Claims and Interests in these Classes, thereby satisfying 11 U.S.C. § 1123(a)(3).

(iv) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan complies with the requirements of section 1123(a)(4) of the Bankruptcy Code. As reflected in the treatment set forth in Article XI of the Plan, the Plan provides for the same treatment by the Debtor for each Claim or Equity Interest in each respective Class unless the holder of a General Unsecured Claim has agreed to a less favorable treatment by opting out of the Consensual Third Party Releases and thereby electing not to share in its Pro Rata share of the Release Consideration distributed on account of the General Unsecured Claims of Releasing Creditors, thereby satisfying 11 U.S.C. § 1123(a)(4).

(v) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan complies with the requirements of section 1123(a)(5) of the Bankruptcy Code. The Plan and the Liquidating Trust Agreement provide adequate and proper means for the implementation of the Plan, without limitation, (i) the creation of the Liquidating Trust and vesting of certain assets therein; (ii) the appointment of the Liquidating Trustee; and (iii) the procedures for making distributions to Holders of Allowed Claims, thereby satisfying 11 U.S.C. § 1123(a)(5).

(vi) Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan is a liquidating plan that provides for the disposal and conveyance of the Debtor's remaining assets and for the distribution of the proceeds thereof to the Holders of Allowed Claims

in accordance with the terms thereof. Accordingly, the Debtor will not issue any securities. Therefore, 11 U.S.C. § 1123(a)(6) is not applicable.

(vii) Designation of Officers, Directors or Trustee (11 U.S.C. § 1123(a)(7)).

Article XV.A.3 provides that on the Effective Date, the directors, officers, members and managers of Fresh & Easy LLC shall be deemed to have resigned, except for Michael J. Brewer of Alcohol Beverage Consulting Service who shall continue to serve as the Chief Licensing Officer. Article XIII.F of the Plan provides for the selection and appointment of the Liquidating Trustee and is consistent with the interests of Holders of Allowed General Unsecured Claims and with public policy, thus satisfying the requirements of 11 U.S.C. § 1123(a)(7).

(viii) Discretionary Plan Provisions (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code.

Q. Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). As discussed above and except as otherwise provided for or permitted by order of the Bankruptcy Court, the Plan Proponents have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the Interim Approval and Procedures Order with respect to the solicitation of acceptances or rejections of the Plan, thus satisfying the requirements of 11 U.S.C. § 1129(a)(2).

R. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Plan Proponents have proposed the Combined Plan and Disclosure Statement, including all documents necessary to effectuate the Plan, in good faith and not by any means forbidden by law, as evidenced, by

among other things, the totality of the circumstances surrounding the formulation of the Plan and the record in this Chapter 11 Case, thus satisfying the requirements of 11 U.S.C. § 1129(a)(3).

S. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). All payments made or to be made by the Plan Proponents or the Liquidating Trust under the Plan or by any Person or Entity acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, have been approved by, or are subject to the approval of, the Court as reasonable, thus satisfying the requirements of 11 U.S.C. § 1129(a)(4).

T. Director, Officers and Insiders (11 U.S.C. § 1129(a)(5)). Immediately upon the Effective Date, the Debtor's directors and officers shall be deemed to have resigned, except for Michael J. Brewer of Alcohol Beverage Consulting Service, who shall continue to serve as the Chief Licensing Officer. Article XIII.D of the Plan provides that the Liquidating Trustee shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code and shall have all the rights and powers set forth in the Plan and Liquidating Trust Agreement, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004. As set forth in Article XIII.F, the Plan Proponents have properly and adequately disclosed the identity of the initial Liquidating Trustee.

U. No Rate Changes (11 U.S.C. § 1129(a)(6)). There is no regulatory commission having jurisdiction after confirmation of the Plan over the rates of the Debtor and no rate change provided for in the Plan requiring approval of any such commission. Thus, 11 U.S.C. § 1129(a)(6) is not applicable to the Chapter 11 Case.

V. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). Section 1129(a)(7) of the Bankruptcy Code requires that each Holder of a Claim or Interest in an Impaired Class accept the

Plan, or receive or retain under the Plan property having a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive on account of such Claim or Interest if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. The Combined Plan and Disclosure Statement, including, but not limited to the liquidation analysis in Article VII thereof, and the other evidence proffered or adduced at, or otherwise submitted in connection with, the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence or challenged in any pending objection to Confirmation of the Plan, and (iii) establish that each Holder of an Impaired Claim or Interest, as the case may be, in such Impaired Classes has either accepted the Plan, or will receive or retain under the Plan, on account of such Claim, property having a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date, thus satisfying the requirements of 11 U.S.C. § 1129(a)(7).

W. Acceptance or Rejection by Certain Classes (11 U.S.C. § 1129(a)(8)). Section 1129(a)(8) of the Bankruptcy Code requires that for each Class of Claims or Interests under the Plan, such Class has either accepted the Plan or is not impaired under the Plan. Classes 2 (Other Miscellaneous Secured Claims) and 3 (Priority Non-Tax Claims) are unimpaired and are conclusively presumed to have accepted the Plan without solicitation of acceptances or rejections pursuant to 11 U.S.C. § 1126(f). Class 4 (General Unsecured Claims) is impaired and has voted to accept the Plan. Because Holders of Claims in Class 5 (Subordinated Claims) and Interests in Class 6 (Equity Interests) neither receive nor retain any property under the Plan, they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code, and the requirements of section 1129(a)(8) of the Bankruptcy Code have not been met, thereby requiring the application

of section 1129(b) of the Bankruptcy Code. The Plan satisfies the requirements of 11 U.S.C. § 1129(b) with respect to Classes 5 and 6.

X. Treatment of Administrative Claims, Priority Tax Claims, and other Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims, Priority Tax Claims and other Priority Claims is set forth in Article X of the Plan, thus satisfying the requirements of 11 U.S.C. § 1129(a)(9).

Y. Acceptance by at Least one Impaired Class (11 U.S.C. § 1129(a)(10)). As set forth in the Voting Certification, the only Class entitled to vote has voted to accept the Plan by the requisite majorities in accordance with 11 U.S.C. § 1126(c). Holders of Claims in Impaired Class 4 (General Unsecured Claims) and its two subclasses have voted to accept the Plan by at least two-thirds in amount and one-half in number, determined without inclusion of any acceptance of the Plan by any insider, thus satisfying the requirement of 11 U.S.C. § 1129(a)(10) that at least one Class of Claims against the Debtor that is impaired under the Plan has accept the Plan.

Z. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan provides for the transfer and assignment to the Liquidating Trust of the Liquidating Trust Assets, Cash in the amount of the Administrative, Priority and Secured Claims Estimate, the WARN Reserve, and the Release Consideration. On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) investigating and, if appropriate, pursuing Liquidating Trust Claims; (ii) administering and pursuing the Liquidating Trust Assets; (iii) resolving all Disputed Claims and any Claim objections pending as of the Effective Date; (iv) prosecuting any objections to Claims that the Liquidating Trustee deems appropriate and resolving such objections; (v) making Distributions from the Liquidating Trust

to Holders of Allowed Claims as provided for in the Plan and/or the Liquidating Trust Agreement; (vi) exercising such other powers as necessary or prudent to carry out the provisions of the Plan and the Liquidating Trust Agreement; and (vii) taking such other actions as may be necessary or appropriate to effectuate the Plan and the Liquidating Trust Agreement. The Combined Plan and Disclosure Statement, the Agam Declaration and the evidence proffered or adduced at, or otherwise submitted in connection with, the Confirmation Hearing with respect to feasibility (i) are persuasive and credible, (ii) have not been controverted by other evidence or challenged in any pending objection to Confirmation of the Plan, and (iii) establish that the Plan is feasible and that confirmation of the Plan is not likely to be followed by the need for further liquidation or financial reorganization of the Debtor, thus satisfying the requirements of 11 U.S.C. § 1129(a)(11).

AA. Payment of Statutory Fees (11 U.S.C. § 1129(a)(12)). The Debtor has paid, or will pay, prior to the Effective Date, all amounts due under 28 U.S.C. § 1930, thus satisfying the requirements of 11 U.S.C. § 1129(a)(12). The Liquidating Trust shall pay, from and after the Effective Date, statutory fees due to the U.S. Trustee in accordance with 28 U.S.C. § 1930 until the closing the Chapter 11 Case. In addition, the Liquidating Trustee shall file post-confirmation quarterly reports or any pre-confirmation monthly operating reports not filed as of the Effective Date in conformance with the U.S. Trustee Guidelines.

BB. Miscellaneous Provisions (11 U.S.C. § 1129(a)(13)-(16)). Sections 1129(a)(13)-(16) of the Bankruptcy Code are inapplicable as the Debtor (i) does not provide “retiree benefits”⁵ as such term is defined in section 1144 of the Bankruptcy Code (11 U.S.C.

⁵ As defined in section 1114 of the Bankruptcy Code, “retiree benefits” means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under

§ 1129(a)(13)), (ii) has no domestic support obligations (11 U.S.C §1129(a)(14)), (iii) is not an individual (11 U.S.C §1129)(a)(15)), and (iv) is a for-profit business (11 U.S.C § 1129(a)(16)).

CC. No Unfair Discrimination as to Rejecting Classes; Fair and Equitable (11 U.S.C. § 1129(b)). Holders of Claims and Interests in Classes 5 and 6 will receive no Distributions under the Plan and, accordingly, are deemed to reject the Plan pursuant to 1126(g) of the Bankruptcy Code pursuant to section 1126(g) of the Bankruptcy Code. The Plan Proponents presented uncontroverted evidence that the Plan does not discriminate unfairly and is fair and equitable with respect to the treatment of Claims and Interests in Classes 5 and 6 because, as required by section 1129(b)(2)(C) of the Bankruptcy Code, there are no Holders of Claims or Interests junior to the Holders of Claims and Interests in Classes 5 and 6 that will receive or retain under the Plan any property on account of such junior Claims or Interests. Thus, the Plan satisfied section 1129(b) of the Bankruptcy Code and may be confirmed notwithstanding its failure to satisfy section 1129(a)(8) of the Bankruptcy Code. The Plan shall be binding upon the members of Classes 5 and 6 upon confirmation and the occurrence of the Effective Date.

DD. Confirmation of Only One Plan (11 U.S.C. § 1129(c)). The Plan, including previous versions thereof, is the only Plan that has been filed in the Chapter 11 Case which has been found to satisfy the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code. Accordingly, the requirements of 11 U.S.C. § 1129(c) have been satisfied.

EE. Principal Purpose of the Plan (11 U.S.C. §1129(d)). The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of the application of section 5 of the Securities Act of 1933, and no governmental unit has objected to the confirmation of the Plan on any such grounds. The Plan, therefore, satisfies the requirements of 11 U.S.C. § 1129(d).

any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case” under the Bankruptcy Code.

FF. No Objection to Disposition of Contracts and Leases. No party to an executory contract or unexpired lease to be assumed by the Debtor pursuant to the Plan or rejected by the Debtor pursuant to the Plan has objected to the assumption or rejection thereof. Each rejection of an executory contract or unexpired lease under the Plan shall be legal, valid and binding upon the Debtor, the Trust and all non-Debtor parties to such executory contract or unexpired leases, all to the same extent as if the rejection had been effectuated by motion.

GG. Retention and Preservation of Causes of Action. It is in the best interests of the Debtor's Estate and the Creditors that Causes of Action be retained by, and transferred to, the Liquidation Trust, which shall have the sole and exclusive right to litigate (or abandon) any such Retained Causes of Action. The Liquidating Trust may pursue such Liquidating Trust Claims, as appropriate, in accordance with the best interests of the Liquidating Trust beneficiaries.

HH. Engagement in Business. Because the Debtor will not engage in business following consummation of the Plan, 11 U.S.C. § 1141(d)(3) is not applicable.

II. Satisfaction of Confirmation Requirements. Based upon the foregoing, all other pleadings, documents, exhibits, statements, declarations and affidavits filed in connection with Confirmation of the Plan, and all evidence and arguments made, proffered or adduced at the Confirmation Hearing, the Plan satisfies the requirements for confirmation set forth in Bankruptcy Code section 1129.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Adequacy of the Disclosure Statement. The Disclosure Statement is hereby approved on a final basis as containing adequate information within the meaning of 11 U.S.C. § 1125 and contains sufficient information of a kind necessary to satisfy the disclosure requirements of any applicable non-bankruptcy laws, rules and regulations.

2. Confirmation of the Plan. The Plan (including, but not limited to, those exhibits filed in the Plan Supplement), provisions, terms and conditions thereof, is hereby approved and confirmed as having satisfied all of the requirements of chapter 11 of the Bankruptcy Code. A copy of the Amended Combined Plan and Disclosure Statement, dated April 25, 2017, is attached hereto as **Exhibit 1**.

3. Incorporation of Terms and Provisions of Plan. The terms and provisions of the Plan are incorporated by reference into and are an integral part of this Confirmation Order. Each term and provision of the Plan is valid, binding and enforceable as though fully set forth herein. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are non-severable and mutually dependent. The failure specifically to include or reference any particular term or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such term and provision, it being the intent of the Court that the Plan be confirmed in its entirety.

4. Overruling of Objections. Any formal or informal objections or responses, and statements and comments, in opposition to or inconsistent with the Plan, to the extent not already withdrawn, waived or settled, and all reservations of rights included therein, shall be, and hereby are overruled in their entirety. All withdrawn objections are deemed withdrawn with prejudice.

5. Binding Effect. Pursuant to section 1141 of the Bankruptcy Code, effective on the Effective Date, and except as expressly provided in this Confirmation Order, the Plan and its provisions shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims and Interests, whether or not such Holders shall receive or retain any property or interest in property under the Plan, and their respective successors and assigns, including, but not limited to, the Liquidating Trust and all other parties in interest in the Chapter 11 Case.

6. Notice. Good and sufficient notice of the Confirmation Hearing and the deadline for filing and serving objections to the (i) final approval of the Disclosure Statement and (ii) confirmation of the Plan (including the deadline for opting-out of the Consensual Third Party Releases) has been provided, which notice is hereby approved.

7. Plan Classification Controlling. Unless otherwise set forth herein, the terms of the Plan shall solely govern the classification of Claims and Interests for purpose of the distributions to be made thereunder. The classification set forth on the Ballot in connection with voting on the Plan: (a) was set forth on the Ballot solely for purposes of voting to accept or reject the Plan; (b) does not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims under the Plan for distribution purposes, (c) may not be relied upon by any Creditor as representing the actual classification of such claims under the Plan for distribution purposes, and (d) shall not be binding on the Debtor, the Liquidating Trust, Liquidating Trustee for purposes other than voting.

8. The Settlement Agreement. The Settlement Agreement, and each component thereof, is hereby approved pursuant to Bankruptcy Code section 1123 and Bankruptcy Rule 9019 as fair and reasonable and in the best interests of the Debtor, its Estate, and Creditors. The Global Settlement and the related releases of claims and causes of action, distributions (including the distribution of the Release Consideration to the Releasing Creditors who did not timely exercise the right to opt-out of the Consensual Third Party Releases), and the Bar Provision are authorized and approved in all respects, subject to, and in accordance with, the terms and conditions thereof, the Plan and this Confirmation Order; and the terms of the Settlement Agreement shall be binding upon all Persons, including the Debtor, the Liquidating Trust, the Liquidating Trustee, any and all Holders of Claims or Interests (irrespective of whether such

Claims and Interests are Impaired under the Plan or whether the Holders of such Claims and Interests accepted, rejected or are deemed to have accepted or rejected the Plan), any and all Persons who are parties to or are subject to the settlement, compromises, releases, waivers, and injunctions described herein or in the Plan or the Settlement Agreement, and their respective heirs, executors, administrators, trustees, affiliates, if any, of the foregoing.

9. Releases. The release provisions of Articles XVI of the Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

10. Consensual Third Party Releases. The Consensual Third Party Releases contained in Article XVI.A.2 of the Plan are approved, and incorporated by reference into and are an integral part of this Confirmation Order. Creditors holding claims in Class 4 (General Unsecured Claims) were entitled to vote on the Plan and entitled to opt-out of the Consensual Third Party Releases by completing the opt-out election included in the Ballot. Creditors holding claims in Class 2 (Other Miscellaneous Secured Claims), and Class 3 (Priority Non-Tax Claims) under the Plan are unimpaired, deemed to have accepted the Plan, and deemed to have granted the releases. Class 5 (Subordinated Claims) is a vacant Class and Class 1 has been eliminated. Holders in Class 6 (Equity Interest) under the Plan are impaired and are deemed to have rejected the Plan. The 100% equity interest holder in Class 6 is a Released Party (as defined in the Plan). Creditors in Class 4 who did not timely opt-out of the Consensual Third Party Releases are entitled to their Pro Rata share of the Release Consideration as provided in the Settlement Agreement and Article XII.A.4 of the Plan.

11. Exculpation. The exculpation provisions of Article XVI.A.3 of the Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

12. Injunction. The injunction provisions of Article XVI.B of the Plan are approved, are incorporated by reference into and are an integral part of this Confirmation Order. Such provisions shall be effective in accordance with their terms.

13. Bar Provision. The Bar Provision set forth in Article XVI.C of the Plan is hereby approved, is incorporated by reference into and is an integral part of this Confirmation Order. Such provision shall be effective in accordance with its terms.

14. Plan Implementation Authorization. All implementing actions required or contemplated by the Plan, including the appointment of the Liquidation Trustee, and the vesting of the Liquidation Trust Assets in the Liquidating Trust, are hereby authorized and approved in all respects in accordance with the Plan. The Liquidating Trust shall be deemed for all purposes to have been created in connection with the Plan and this Confirmation Order. The Liquidating Trustee is authorized to take any action as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, whether or not specifically referred to in the Plan or any exhibit thereto, without further order of the Court or further action by the Debtor or the Liquidating Trust or Liquidating Trustee (as applicable) or any other person.

15. Governmental Approvals Not Required. This Confirmation Order shall constitute all approval and consent required, if any, by the laws, rules or regulations of any State or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto,

and any other acts referred to in or contemplated by the Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

16. Dissolution of the Committee. Upon the occurrence of the Effective Date, the Creditors' Committee shall dissolve automatically, whereupon its members, professionals and agents shall be released from any duties and responsibilities in this Chapter 11 Case and under the Bankruptcy Code (except with respect to (a) obligations arising under confidentiality agreements, which shall remain in full force and effect, (b) applications for payment of fees and reimbursement of expenses of Professionals, and (c) any pending motions or motions for other actions seeking enforcement of implementation of the provisions of the Combined Plan and Disclosure Statement).

17. Dissolution of the Debtor. Immediately following the distribution of all of the Debtor's and the Estate's property pursuant to the terms of the Plan, on the Effective Date, (a) the Debtor's directors and officers and any remaining employees shall be deemed to have resigned, except for Michael J. Brewer of Alcohol Beverage Consulting Service, who shall continue to serve as the Chief Licensing Officer, and (b) after the Effective Date, the Liquidating Trustee, in consultation with the Liquidating Trust Committee, shall take all actions necessary to effect the dissolution of the Debtor, without the need for any further Bankruptcy Court action or approval.

18. Exemption from Certain Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Combined Plan and Disclosure Statement shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate

state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment. For the avoidance of doubt, all pre-confirmation transfers or sales do not qualify for an exemption pursuant to section 1146(a) of the Bankruptcy Code.

19. Applicable Non-Bankruptcy Law. Pursuant to 11 U.S.C. §§ 1123(a) and 1142(a), the provisions of this Confirmation Order, the Plan, or any other amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

20. Approval of Rejection of Executory Contracts and Unexpired Leases. Except as otherwise provided in the Plan, an order of this Court, or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, each of the Executory Contracts and Unexpired Leases to which the Debtor is a party shall be deemed automatically rejected by the Debtor as of the Effective Date pursuant to this Confirmation Order, unless such contract or lease (a) previously has been assumed or rejected by the Debtor, (b) expired or terminated pursuant to its own terms, (c) is a subject of a motion to assume or reject pending before the Court as of the Confirmation Date or (d) is identified on Exhibit D to the Plan as a Contract to be assumed; provided, however, that nothing contained in the Plan shall constitute an admission by the Debtor that any such contract is an Executory Contract or that the Debtor or its successor and assigns has any liability thereunder. For the avoidance of doubt, no interest of the Debtor or its Estate in any policy of insurance is rejected.

21. Claims Based on Rejection of Executory Contracts and Unexpired Leases. Claims created by the rejection of Executory Contracts and Unexpired Leases pursuant to Article

XVII of the Plan must be filed with the Claims Agent by no later than thirty (30) days after the later of (a) the Effective Date, or (b) other notice that the Executory Contract or Unexpired Lease has been rejected. Except as expressly provided in the Plan or this Confirmation Order, any Claims arising from the rejection of an Executory Contract or unexpired lease pursuant to Article XVII for which proofs of Claim are not timely filed within that time period will be forever barred from assertion against the Debtor and its Estate. Unless otherwise ordered by the Court, all Claims arising from the rejection of Executory Contracts and Unexpired Leases shall be treated as General Unsecured Claims under the Plan.

22. Transfers by Debtor; Vesting of Assets. On the Effective Date, or as soon as reasonably practicable thereafter, the Debtor shall transfer and assign to the Liquidating Trust all of its right, title and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidating Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the Holders of Liquidating Trust Interests as set forth in the Plan and the expenses of the Liquidating Trust as set forth in the Plan and in the Liquidating Trust Agreement. All transfers of property of the Estate, including, without limitation, the vesting of the Liquidating Trust Assets in the Liquidating Trust, (a) are legal, valid and effective transfers of property, (b) vest the transferees with good title to such property free and clear of all Claims, interests, Liens, charges or other encumbrances, except as expressly provided in the Plan or this Confirmation Order, (c) do not and will not constitute avoidable transfers under the Bankruptcy Code or under applicable law, (d) do not and will not subject the Liquidating Trust or the Liquidating Trustee to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including, without limitation, any laws affecting successor, transferee or stamp or recording tax

liability, and (e) are for good consideration and value. All Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Claims, interests, Liens, charges and other encumbrances. Such vesting does not constitute a voidable transfer under the Bankruptcy Code or applicable non-bankruptcy law.

Pursuant to Article XIII of the Combined Plan and Disclosure Statement, on or before the Effective Date, the Debtor shall transfer to the Liquidating Trust Cash in the amount of the Administrative, Priority and Secured Claims Estimate, which Cash shall be used by the Liquidating Trustee to fund the Administrative Claims Reserve.

Pursuant to Article XIII of the Combined Plan and Disclosure Statement, on the Effective Date, the Debtor shall transfer to the Liquidating Trust Cash remaining in the WARN Reserve, which Cash shall be used by the Liquidating Trust to satisfy any and all remaining WARN Act Liability.

Pursuant to Article XIII of the Combined Plan and Disclosure Statement, on the Effective Date, the Debtor shall transfer to the Liquidating Trust the Release Consideration and the Liquidating Trust shall disburse the Release Consideration to the Releasing Creditors on a Pro Rata basis in accordance with the Plan, Settlement Agreement and this Confirmation Order.

23. WARN Reserve. The WARN Defendants (as defined Article III.D.9.b of the Plan) shall collectively reserve a total of \$4 million to settle any and all WARN Act Liability, to be funded as agreed by the WARN Defendants. The \$4 million WARN Reserve is an agreed upon cap on the amount of all WARN Liability. The establishment of a WARN Reserve shall be a reserve for potential distribution purposes only. The establishment of the WARN Reserve shall not be construed in any manner to determine, or have any affect whatsoever on, the validity, priority or amount of the asserted WARN Act Liability or claims asserted in the WARN

Litigation and all of the parties' rights with respect thereto are expressly reserved. To the extent the total WARN Liability is less than \$4 million, the balance of the WARN Reserve shall be returned pro rata to the WARN Defendants based on their respective contributions to the WARN Reserve.

24. AIG Insurance. Notwithstanding anything to the contrary herein, nothing in the Plan, the Liquidating Trust Agreement, or this Order shall affect any party's rights under any insurance policies, related payment agreements, endorsements, or related documents between National Union Fire Insurance Company of Pittsburgh, PA, American Home Assurance Company, and certain other entities related to AIG Property Casualty, Inc. f/k/a Chartis Inc. (together "AIG") and the Debtor (collectively, the "Insurance Agreements") and applicable law regarding the Insurance Agreements.

25. Chubb Insurance. Nothing in this Order, the Plan or any documents related thereto (including any other provision that purports to be preemptory or supervening), shall alter any Entities' rights or obligations under any insurance policies issued by ACE American Insurance Company, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, Federal Insurance Company and/or any affiliated companies ("Policies") and/or the Settlement Agreement.

26. Vesting of Assets in the Liquidating Trust. Notwithstanding Bankruptcy Code section 1141(b), the Liquidating Trust Assets shall vest in the Liquidating Trust, under the exclusive control of the Liquidating Trustee, in accordance with the provisions of the Plan, this Confirmation Order and the Liquidating Trust Agreement.

27. The Liquidating Trust Agreement. Except as otherwise expressly provided in the Plan, this Confirmation Order or the Liquidating Trust Agreement, pursuant to Bankruptcy Code

sections 1123(a)(5), 1123(b)(3), 1141(b) and (c) and other applicable provisions of the Bankruptcy Code, on and after the Effective Date, all Liquidating Trust Assets shall vest in the Liquidating Trust free and clear of all Interests, Claims and Liens and contractually imposed restrictions. On and after the Effective Date, the Liquidating Trust may object to any Claim or Interest regardless of whether such Claim or Interest was Disputed on the Effective Date, other than Professional Fee Claims or Claims or Interests that are Allowed pursuant to the Plan, and compromise or settle any Causes of Action, Claims or Interests regardless of whether such Claim or Interest was Disputed on the Effective Date, in each case without notice to, supervision of or approval by this Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, the Local Rules, and the guidelines and requirements of the United States Trustee, other than restrictions expressly imposed by the Plan, the Liquidating Trust Agreement or this Confirmation Order.

28. The Liquidating Trust. The Liquidating Trust shall be established on the Effective Date and shall be maintained thereafter in accordance with the terms of the Plan and the Liquidating Trust Agreement. The Liquidating Trust Agreement, in the form substantially similar to the one annexed as Exhibit B to the Combined Plan and Disclosure Statement, all provisions therein, are hereby approved by this Confirmation Order. The designation of Peter Kravitz of Province, Inc. as the Liquidating Trustee is approved. Pending the occurrence of the Effective Date, the Debtor is authorized to take all actions as may be necessary to facilitate the creation and implementation of the Liquidating Trust. The Liquidating Trust is authorized and empowered, pursuant to the Plan, including, without limitation, Article XIII of the Plan and the Liquidating Trust Agreement, to liquidate or otherwise administer the Liquidating Trust Assets.

29. The Liquidating Trust Committee. The appointment of (i) Michael Rodgers (DPI Specialty Foods, Inc.); (b) Jeff Fontaine (United Natural Foods West, Inc.); and (c) Michael Mandell (Ryder Integrated Logistics) (collectively, the “Members”) to the Liquidating Trust Committee is hereby approved. Each of the Members of the Liquidating Trust Committee shall have all rights, powers, duties and protections afforded the Liquidating Trust Committee and its members under the Plan and Liquidating Trust Agreement.

30. Retention and Preservation of Causes of Action. Pursuant to the Plan, the Causes of Action, the list of which is annexed to the Combined Plan and Disclosure Statement as Exhibit C, shall be and are hereby preserved and retained, and shall, upon the Effective Date, be transferred to, the Liquidating Trust. The Liquidating Trust shall have the right to prosecute any and all Liquidating Trust Claims against any Entity, except as otherwise expressly provided in the Combined Plan and Disclosure Statement. Unless any Liquidating Trust Claims against an entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Plan or a Court order, the Liquidating Trust expressly reserves all Liquidating Trust Claims for later adjudication, and, therefore, no preclusion doctrine shall apply to such Liquidating Trust Claims upon, after or as a consequence of the Confirmation or Consummation of the Plan. Notwithstanding anything to the contrary in the Confirmation Order or the Plan, claims against the YFE Released Parties shall (a) not be included in the definition of Liquidating Trust Claims and (b) not be included as Causes of Action that can be prosecuted by the Liquidating Trust.

31. Ratification of Distribution Record Date. To facilitate the distribution process, the Court hereby confirms that the Distribution Record Date applicable to Holders of Allowed Claims means the record date for the purpose of determining Holders of Allowed Claims entitled to receive Distributions under the Plan on account of Allowed Claims, which date shall be the

Confirmation Date or such other date designated in the Confirmation Order or any subsequent Court order.

32. Effect of Conflict Between Plan and Confirmation Order. The provisions of the Plan and of this Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of this Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Confirmation Order shall govern and any such provision of this Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

33. Modification. The Plan may be modified in accordance with Article XXI of the Plan.

34. Reversal. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified or vacated by subsequent order of the Court or any other court, in the absence of a stay of this Confirmation Order, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken in good faith under or in connection with the Plan prior to the Debtor's, the Liquidating Trust's or the Liquidating Trustee's receipt of written notice of any such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, in the absence of a stay of this Confirmation Order, any such act or obligation incurred or undertaken in good faith pursuant to, and in reliance on, this Confirmation Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan or any amendments or modifications thereto.

35. Authorization to Consummate Plan. The Plan Proponents are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to the satisfaction or waiver (by the required parties) of all other conditions precedent to the Effective Date set forth in the Plan. The Plan shall only become effective on the Effective Date.

36. Supplemental Administrative Claims Bar Date. Requests for payment of Administrative Claims (other than Professional Fee Claims and 503(b)(9) Claims) that arose, accrued or otherwise became due and payable at any time subsequent to December 31, 2015 but on or before the Effective Date (the “Supplemental Administrative Claims Period”) must be filed with the Court and served on the Debtor or Liquidating Trustee, as applicable, no later than the Supplemental Administrative Claims Bar Date (e.g., the thirtieth (30) day following the Effective Date). Holders of Administrative Claims that arose, accrued or otherwise become due during the Supplemental Administrative Claims Period that do not file requests for the allowance and payment thereof on or before the Supplemental Administrative Claims Bar Date shall forever be barred from asserting such Administrative Claims against the Debtor or its Estate. Unless the Debtor or the Liquidating Trust, as applicable, or any other party in interest objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Debtor or the Liquidating Trust, as applicable, or any other party in interest objects to an Administrative Claim, and the Administrative Claim is not otherwise resolved, the Court shall determine the Allowed amount of such Administrative Claim.

37. Bar Date for Professional Fee Claims. All final requests for payment of a Professional Fee Claim (the “Final Fee Applications”) must be filed no later than forty-five (45) days after the Effective Date; provided, however, that (a) any professional who may receive

compensation or reimbursement of expenses pursuant to the OCP Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Court review or approval, pursuant to the OCP Order; and (b) pursuant to the FTI Order, Amir Agam, as CRO, and FTI, shall not be required to File a Final Fee Application unless seeking success fees, transaction fees or other back-end fees.

38. Notice of Entry of the Confirmation Order and the Occurrence of the Effective Date. Within five (5) Business Days following the occurrence of the Effective Date, the Liquidating Trustee shall serve notice of the entry of this Confirmation Order and the occurrence of the Effective Date (the "Notice of Effective Date"), substantially in the form attached hereto as **Exhibit 2**, which form is hereby approved, on all Creditors and parties in interest in the Chapter 11 Case. Notwithstanding the foregoing, no service of the Notice of Effective Date shall be required to be made upon any Person to whom the Debtor mailed a (a) notice of the meeting of Creditors under section 341 of the Bankruptcy Code, (b) notice of the bar date for filing Proofs of Claim, or (c) a solicitation package or other solicitation-related notice and received any such notice or materials returned by the United States Postal Service marked "undeliverable as addressed," "moved-left no forwarding address," "forwarding order expired" or similar marking or reason, unless the Debtor has been informed in writing by such person of that Person's new address. Service of the Notice of Effective Date described herein in the time and manner set forth herein shall constitute due, adequate and sufficient notice, and no other or further notice shall be necessary.

39. Post-Effective Date Notice Pursuant to Bankruptcy Rule 2002. After the Effective Date, to continue to receive notice of documents pursuant to Bankruptcy Rule 2002, all Creditors and other parties in interest (except those listed in the following sentence) must file a

renewed notice of appearance requesting receipt of documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Liquidating Trustee is authorized to limit the list of parties in interest receiving notice of documents pursuant to Bankruptcy Rule 2002 to the Office of the United States Trustee and those parties in interest who have filed such renewed requests; provided, however, that the Liquidating Trustee also shall serve parties directly affected by or having a direct interest in, the particular filing in accordance with Local Rule 2002-1(b). Notice given in accordance with the foregoing procedures shall be deemed adequate pursuant to the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

40. Substantial Consummation. Substantial consummation of the Plan shall be deemed to occur on the Effective Date.

41. Final Decree; Dissolution. Upon the full liquidation, administration, and distribution of assets in accordance with the Liquidating Trust Agreement and the full performance of all other duties and functions of the Trustee, the Plan, and the Confirmation Order—including the dissolution of the Debtor—the Liquidating Trustee shall, to the extent not already done, request that the Court enter an order closing the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

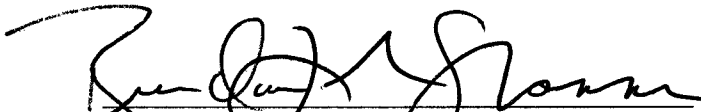
42. Continuation of Automatic Stay. Except as otherwise expressly provided in the Plan, this Confirmation Order, or a separate Order of this Court, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect.

43. Retention of Jurisdiction. Pursuant to sections 105(a) and 1127 of the Bankruptcy Code, this Court shall retain and have exclusive jurisdiction over any matters arising out of, or related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including,

without limitation, (a) all matters set forth in Article XX of the Plan, and (b) all other matters and for all such other purposes as may be necessary or useful to aid in the consummation and implementation of the Plan.

44. Final Order. Notwithstanding Bankruptcy Rules 3020(c), 6004(h), 6006(d) and 7062, or any other applicable Bankruptcy Rule, the Court finds that there is no reason for delay in the implementation of this Confirmation Order, and thus, this Confirmation Order shall be effective and enforceable immediately upon entry.

Dated: April 27, 2017



The Honorable Brendan Linehan Shannon
Chief United States Bankruptcy Judge

EXHIBIT 1

**AMENDED COMBINED DISCLOSURE STATEMENT AND
JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR FRESH & EASY, LLC**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
FRESH & EASY, LLC, ¹	:	Case No. 15-12220 (BLS)
	:	
Debtor.	:	

**AMENDED COMBINED DISCLOSURE STATEMENT AND
JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR FRESH & EASY, LLC**

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¹ The last four digits of the Debtor's federal taxpayer identification number are 8906. The Debtor's mailing address is Howard Hughes Center, 6080 Center Drive, 6th Floor, Los Angeles, CA 90045.

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**THE PLAN PROPONENTS HEREBY ADOPT AND INCORPORATE EACH EXHIBIT
ATTACHED TO THIS COMBINED PLAN AND DISCLOSURE STATEMENT BY
REFERENCE AS THOUGH FULLY SET FORTH HEREIN.**

NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED PLAN AND DISCLOSURE STATEMENT FOR FRESH & EASY, LLC EXCEPT AS EXPRESSLY INDICATED HEREIN. THIS COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT ON THE DEBTOR OR HOLDERS OF CLAIMS OR EQUITY INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED PLAN AND DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED PLAN AND DISCLOSURE STATEMENT AND THE TRANSACTIONS CONTEMPLATED THEREBY.

**FOR EASE OF REFERENCE ONLY, AND WITH CERTAIN EXCEPTIONS,
ARTICLES I THROUGH III HEREIN GENERALLY CONTAIN THE
DISCLOSURE STATEMENT PROVISIONS AND ARTICLES IV THROUGH XXI
HEREIN GENERALLY CONTAIN THE PLAN PROVISIONS OF THE
COMBINED PLAN AND DISCLOSURE STATEMENT.**

I.
INTRODUCTION²

Fresh & Easy, LLC, the debtor and debtor in possession in the above-captioned Chapter 11 Case, and the Official Committee of Unsecured Creditors hereby propose the Combined Disclosure Statement (the “Disclosure Statement”) and Joint Chapter 11 Plan of Liquidation for Fresh & Easy, LLC (the “Plan”) pursuant to sections 1125 and 1129 of the Bankruptcy Code. The Debtor and the Committee are the proponents of the Combined Plan and Disclosure Statement within the meaning of section 1129 of the Bankruptcy Code.

The Combined Plan and Disclosure Statement provides for the Debtor’s assets to be liquidated over time and for the proceeds of any assets already liquidated, or to be liquidated, to be distributed to Holders of Allowed Claims in accordance with the terms of the Combined Plan and Disclosure Statement and the priority of claims provisions of the Bankruptcy Code. The Combined Plan and Disclosure Statement also contemplates the creation of a trust, pursuant to the terms of this Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, for the benefit of all Holders of Allowed General Unsecured Claims. Except as otherwise provided by order of the Court, distributions will occur on the Distribution Date or as soon thereafter as practicable and at various intervals thereafter.

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Combined Plan and Disclosure Statement, the Plan Proponents expressly reserve the right to alter, amend or modify the Combined Plan and Disclosure Statement, one or more times, before its substantial consummation.

II.
DEFINITIONS AND CONSTRUCTION OF TERMS

A. **Definitions.**

As used in the Combined Plan and Disclosure Statement, the following terms have the respective meanings specified below, unless the context otherwise requires:

1. **“503(b)(9) Claim”** means a Claim arising under section 503(b)(9) of the Bankruptcy Code against the Debtor, which Claims were to be Filed against the Debtor on or before the 503(b)(9) Claims Bar Date.
2. **“503(b)(9) Claims Bar Date”** means February 26, 2016 at 5:00 p.m. (Pacific Time) as established by the PACA/PASA/503(b)(9) Bar Date Order.
3. **“Administrative, Priority and Secured Claims Estimate”** means, as of the Effective Date, the face amount, exclusive of Professional Fee Claims, of all unpaid Claims that will be Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims.

² Capitalized terms used in this Introduction shall have the meanings ascribed to such terms in Article II hereof.

4. **“Administrative Claim”** means a Claim for payment of an administrative expense of a kind specified in sections 503(b) or 1114(e)(2) of the Bankruptcy Code and entitled to priority in payment under sections 507(a)(2) or 507(b) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the Debtor (such as wages or salaries for services and payments for goods and other services and leased premises) and Claims by Governmental Units for taxes accruing after the Petition Date (but excluding Claims related to taxes accruing on or before the Petition Date); (b) Professional Fee Claims; (c) all fees and charges assessed against the Estate under 28 U.S.C. § 1930; (d) obligations designated as Administrative Claims pursuant to an order of the Court; and (e) 503(b)(9) Claims.

5. **“Administrative Claims Bar Date”** means February 19, 2016 at 5:00 p.m. (Pacific Time) for Administrative Claims (other than 503(b)(9) Claims and Professional Fee Claims) against the Debtor that arose, accrued or otherwise became due and payable at any time subsequent to the Petition Date but on or before December 31, 2015, as established by the Bar Date Order.

6. **“Administrative Claims Objection Deadline”** means the deadline for filing objections to any requests for payment of Administrative Claims, which deadline shall be one hundred twenty (120) days after the Effective Date, unless otherwise extended by order of the Court.

7. **“Administrative Claims Reserve”** means the reserve of Cash funded by the Debtor and maintained by the Liquidating Trust for the benefit of Holders of Allowed Administrative Claims (exclusive of Holders of Professional Fee Claims, the reserve for which Holders shall be the Professional Fee Reserve), Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims in an amount equal to the Administrative, Priority and Secured Claims Estimate. For the avoidance of doubt, when setting this reserve amount, the Debtor and/or Liquidating Trust may take into consideration any amounts reserved by other parties on account of the same claims.

8. **“Affiliate”** means **“affiliate”** as defined in section 101(2) of the Bankruptcy Code.

9. **“Allowed”** means, when used in reference to a Claim within a particular Class, an Allowed Claim in the specified Class or of a specified type.

10. **“Allowed Claim”** means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Court, (b) that has been Scheduled as a liquidated, non-contingent and undisputed Claim in an amount greater than zero in the Schedules, as the Schedules may have been amended with respect to such Claim on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Court, and that is not the subject of a Filed Proof of Claim, (c) that is the subject of a timely Filed Proof of Claim and either (i) no objection to its allowance has been Filed on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Court or (ii) any objection to its allowance has been settled, waived through payment or withdrawn, or has been denied by a Final Order, or (d) that is expressly allowed in a liquidated amount (x) in the Combined Plan and

Disclosure Statement or (y) after the Effective Date, by the Liquidating Trustee; provided, however, that with respect to an Administrative Claim, “Allowed Claim” means an Administrative Claim as to which a timely written request for payment has been made in accordance with applicable bar dates for such requests set by the Court (if such written request is required) in each case as to which (a) the Debtor or the Liquidating Trustee, as applicable, or any other party in interest (x) has not Filed an objection on or before the Administrative Claims Objection Deadline or the expiration of such other applicable period fixed by the Court or (y) has interposed a timely objection and such objection has been settled, waived through payment or withdrawn, or has been denied by Final Order, or (b) after the Effective Date, the Liquidating Trustee has allowed such Administrative Claim in a liquidated amount. For purposes of computing Distributions under the Combined Plan and Disclosure Statement, a Claim that has been deemed “Allowed” shall not include interest, fees, costs or charges on such Claim from and after the Petition Date, except as provided in section 506(b) of the Bankruptcy Code or as otherwise expressly set forth in the Combined Plan and Disclosure Statement or as agreed to by the Liquidating Trustee. Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed Claims” hereunder.

11. “**Avoidance Actions**” means any and all claims and causes of action of the Debtor arising under chapter 5 of the Bankruptcy Code, including, without limitation, sections 544, 545, 547, 548, 549 and 550 thereof, or their state law analogs.

12. “**Ballot**” means the ballot forms distributed with the Combined Plan and Disclosure Statement to Holders of Impaired Claims entitled to vote under Article IX herein in connection with the solicitation of acceptances of the Combined Disclosure Statement and Plan.

13. “**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, as such title has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Case.

14. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms and the Local Rules, as each has been, or may be, amended from time to time, to the extent that any such amendment is applicable to the Chapter 11 Case.

15. “**Bar Date**” means, with respect to any particular Claim, the specific date set by the Court as the last day for Filing Proofs of Claim against the Debtor in the Chapter 11 Case for that specific Claim.

16. “**Bar Date Order**” means the Order Pursuant to Sections 105, 501, 502, 503 and 1111(a) of the Bankruptcy Code, Bankruptcy Rules 2002 and 3003(c), and Local Rules 1009-2 and 2002-1(e), (I) Establishing Bar Dates for Filing Claims Against the Debtor and (II) Approving Form and Manner of Notice Thereof [Docket No. 457].

17. “**Books and Records**” means any and all books and records of the Debtor, including any and all documents and any and all computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books

and records or data, along with books and records of the Debtor maintained by or in the possession of third parties, wherever located.

18. “**Business Day**” means any day, other than a Saturday, Sunday or a legal holiday (as that term is defined in Bankruptcy Rule 9006(a)).

19. “**Cash**” means legal tender of the United States of America or equivalents thereof.

20. “**Causes of Action**” means any and all claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and Claims, whether known or unknown, reduced to judgment or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, in law, equity or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Case, through and including the Effective Date, that the Debtor and/or the Estate may hold against any Person or Entity, except those Persons and Entities released pursuant to Article XVI herein. A non-exclusive list of retained Causes of Action is set forth on **Exhibit C** hereto.

21. “**Chapter 11 Case**” means the chapter 11 case commenced by the Debtor and administered under case number 15-12220 (BLS) in the Court.

22. “**Chapter 11 Individual Releases**” means the releases provided to the YFE Released Parties from any claims held by any holder of a claim against or interest in the Debtor in such holder’s individual capacity (an “Individual Claim”) unless such holder affirmatively opts out from granting the YFE Released Parties a release of an Individual Claim, as more fully described in Articles IV and XII herein.

23. “**Claim**” means a claim against the Debtor, whether or not asserted, as such term is defined in section 101(5) of the Bankruptcy Code.

24. “**Claimholder**” means the Holder of a Claim.

25. “**Claims Agent**” means Epiq Bankruptcy Solutions, LLC, or any successor thereto.

26. “**Claims Objection Deadline**” means the last day for filing objections to Claims (other than Disallowed Claims for which no objection or request for estimation is required), which day shall be ninety (90) days after the Effective Date, or such later date as may be ordered by the Court.

27. “**Class**” means each category or group of Holders of Claims or Equity Interests that has been designated as a class in Articles VIII and XI herein.

28. “**Collateral**” means any property or interest in property of the Debtor’s Estate subject to a Lien to secure the payment or performance of a Claim, which Lien is not

subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

29. “**Combined Plan and Disclosure Statement**” means this combined Disclosure Statement and Plan, including, without limitation, all exhibits, supplements, appendices and schedules thereto, either in present form or as the same may be altered, amended or modified from time to time.

30. “**Committee**” means the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case.

31. “**Confirmation**” means the entry of the Confirmation Order, subject to all conditions specified in Article XIX having been satisfied or waived pursuant to Article XIX.D.

32. “**Confirmation Date**” means the date of entry of the Confirmation Order on the docket of the Chapter 11 Case within the meaning of Bankruptcy Rules 5003 and 9021.

33. “**Confirmation Hearing**” means the hearing(s) before the Court to consider (i) final approval of the Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code; and (ii) confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, and related matters pursuant to section 1128 of the Bankruptcy Code, as such hearing(s) may be adjourned or continued from time to time.

34. “**Confirmation Order**” means the order entered by the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

35. “**Consensual Third Party Releases**” means the releases set forth in Article XVI.A.2 herein.

36. “**Consummation**” means the occurrence of the Effective Date.

37. “**Contingent**” means, with reference to a Claim, a Claim that has not accrued or is not otherwise payable and the accrual of which, or the obligation to make payment on which, is dependent upon a future event that may or may not occur.

38. “**Court**” or the “**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware or such other court as may have jurisdiction over the Chapter 11 Case.

39. “**Creditor**” means any Person or Entity that holds a Claim against the Debtor.

40. “**CRO**” means Amir Agam, in his capacity as (i) financial advisor to the Debtor before the Petition Date, and (ii) Chief Restructuring Officer for the Debtor on and after the Petition Date.

41. “**Debtor**” or “**Company**” means Fresh & Easy, LLC, a Delaware Limited Liability Company, f/k/a Y-Opco, LLC.

42. **“DIP Facility Claim”** means a claim arising under or related to the Interim Order (I) Authorizing Debtor in Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364, (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. § 364; (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Credit Parties and Modifying Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364; and (IV) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and Local Rule 4001-2 [Docket No. 74] (the “Interim Order Authorizing Post-Petition Financing”).

43. **“Disallowed”** means, when used in reference to a Claim, a Claim or any portion thereof that (i) has been disallowed by a Final Order, (ii) is Scheduled at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been Filed by the Bar Date or deemed timely Filed with the Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, (iii) is not Scheduled, and as to which (a) no Proof of Claim has been Filed by the Bar Date or deemed timely Filed with the Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, and (b) no request for payment of an Administrative Claim has been Filed by the Administrative Claims Bar Date or deemed timely Filed with the Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (iv) after the Effective Date, has been disallowed in a written agreement by and between the Liquidating Trustee and the Holder of such Claim.

44. **“Disbursing Agent”** means (i) on or prior to the Effective Date, the Debtor, and (ii) after the Effective Date, the Liquidating Trustee; provided, however, that the Debtor or the Liquidating Trustee may, in its discretion, retain a third party to act as Disbursing Agent.

45. **“Disputed”** means, when used in reference to a Claim, a Claim or any portion thereof that is neither an Allowed Claim nor a Disallowed Claim. A Claim may be a Disputed Claim as a result of unresolved objections, set-offs, or potential Causes of Action related to the Claimant.

46. **“Disputed Claim Amount”** means (i) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (a) the liquidated amount set forth in the Proof of Claim relating to a Disputed Claim; (b) an amount agreed to by the Debtor or the Liquidating Trustee, as applicable, and the Holder of such Claim; or (c) if a request for estimation is Filed by any party, the amount at which such Claim is estimated by the Court; (ii) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (a) an amount agreed to by the Debtor or the Liquidating Trustee, as applicable, and the Holder of such Claim or (b) the amount estimated by the Court with respect to such Disputed Claim; or (iii) if the Claim is a Disallowed Claim, zero.

47. **“Disputed Claims Reserve”** means the reserve established and maintained by the Liquidating Trust pursuant to and in accordance with the terms of the Liquidating Trust Agreement for the payment of Disputed Claims that become Allowed Claims after the Effective Date. The Disputed Claims Reserve shall be maintained by the Liquidating Trust in a segregated account. For the avoidance of doubt, when setting this reserve amount, the

Debtor and/or Liquidating Trust may take into consideration any amounts reserved by other parties on account of the same claims.

48. **“Distributions”** means the distributions to be made by the Disbursing Agent in accordance with the Combined Plan and Disclosure Statement of, as the case may be: (i) Cash or (ii) any other consideration or residual value distributed to Holders of Allowed Claims under the terms and provisions of the Plan.

49. **“Distribution Date”** means the Effective Date or the date, occurring as soon as practicable after the Effective Date, on which the initial Distributions are made to Holders of Allowed Claims.

50. **“Distribution Record Date”** means the record date for the purpose of determining Holders of Allowed Claims entitled to receive Distributions under the Combined Plan and Disclosure Statement on account of Allowed Claims, which date shall be the Confirmation Date or such other date designated in the Confirmation Order or any subsequent Court order.

51. **“Effective Date”** means the first Business Day on which all conditions to the consummation of the Plan set forth in Article XIX.B hereof have been satisfied or waived in accordance with Article XIX.D.

52. **“Effective Date Free Cash”** means all Cash of the Debtor as of the Effective Date, other than Cash required to fund the Administrative Claims Reserve, the Professional Fee Reserve, the Disputed Claim Reserve and the WARN Reserve.

53. **“Entity”** has the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

54. **“Equity Interests”** means the legal interests, equitable interests, contractual interests, equity interests or ownership interests, or other rights of any Person or Entity in the Debtor, including all capital stock, stock certificates, common stock, preferred stock, partnership interests, limited liability company or membership interests, rights, treasury stock, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtor, partnership interests in the Debtor’s stock appreciation rights, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights, subscription rights and liquidation preferences, puts, calls, awards or commitments of any character whatsoever relating to any such equity, common stock, preferred stock, ownership interests or other shares of capital stock of the Debtor or obligating the Debtor to issue, transfer or sell any shares of capital stock whether or not certificated, transferable, voting or denominated stock or a similar security.

55. **“Estate”** means the estate of the Debtor created under section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case on the Petition Date.

56. **“Executory Contract”** means a contract to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

57. “**Exhibit**” means an exhibit attached to the Combined Plan and Disclosure Statement.

58. “**Face Amount**” means (i) when used in reference to a Disputed or Disallowed Claim, the Disputed Claim Amount, and (ii) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

59. “**FEFOS**” means FEFOS, LLC.

60. “**FF&E**” means furniture, fixtures and equipment.

61. “**File,**” “**Filed**” or “**Filing**” means, respectively, file, filed or filing with the Court or its authorized designee in the Chapter 11 Case.

62. “**Final Fee Applications**” means an application for final allowance of a Professional’s aggregate fee and expense claim in connection with this Chapter 11 Case.

63. “**Final Order**” means an order of the Court (x) as to which the time to appeal, petition for certiorari, or move for reargument, rehearing or new trial has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, rehearing or new trial shall then be pending; (y) as to which any right to appeal, petition for certiorari, reargue, rehear or retry shall have been waived in writing; or (z) in the event that an appeal, writ of certiorari, reargument, rehearing or new trial has been sought, as to which (i) such order of the Court shall have been affirmed by the highest court to which such order is appealed, (ii) certiorari has been denied as to such order, or (iii) reargument or rehearing or new trial from such order shall have been denied, and the time to take any further appeal, petition for certiorari or move for reargument, rehearing or new trial shall have expired without such actions having been taken.

64. “**Fresh & Easy**” means the Debtor, Fresh & Easy, LLC, a Delaware Limited Liability Company.

65. “**Fresh Foods**” means Fresh Foods, LLC, f/k/a Campus Opco, LLC.

66. “**General Bar Date**” means February 19, 2016 at 5:00 p.m. (Pacific Time) for Claims arising or deemed to arise on or before the Petition Date, except any governmental unit claims, as established by the Bar Date Order.

67. “**General Unsecured Claim**” means a Claim against the Debtor that is not an Administrative Claim, Priority Tax Claim, Miscellaneous Secured Claim, Priority Non-Tax Claim, or Subordinated Claim.

68. “**Global Settlement**” has the meaning set forth in Article IV of the Plan.

69. “**Governmental Unit**” has the meaning ascribed to such term in section 101(27) of the Bankruptcy Code.

70. “**Holder**” means an Entity holding a Claim, Equity Interest or Liquidating Trust Interest.

71. “**Impaired**” means, when used in reference to a Claim or Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

72. “**Impaired Class**” means a Class of Claims or Equity Interests that is Impaired.

73. “**Indemnified Persons**” means the (i) Liquidating Trustee, (ii) Liquidating Trust Committee, and (iii) members of the Liquidating Trust Committee in their capacities as such, and (iv) with respect to any of the foregoing, any such Entity’s current equity holders (including shareholders, partnership interest holders and limited liability company unit holders), affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals, together with their respective predecessors, successors and assigns (in each case, solely in their capacity as such).

74. “**Interim Approval and Procedures Order**” means the Order (A) Approving Disclosure Statement on an Interim Basis; (B) Scheduling Combined Hearing on Final Approval of the Disclosure Statement and Confirmation of Plan; (C) Establishing Deadlines and Procedures for (I) Filing Objections to Final Approval of the Disclosure Statement and Confirmation of Plan, (II) Claim Objections and (III) Temporary Allowance of Claims for Voting Purposes; (D) Determining Treatment of Certain Unliquidated, Contingent or Disputed Claims for Notice, Voting and Distribution Purposes; (E) Setting Record Date; (F) Approving (I) Solicitation Packages and Procedures for Distribution, (II) Form of Notice of Hearing on Confirmation and Related Matters and (III) Forms of Ballots; (G) Establishing Voting Deadline and Procedures for Tabulation of Votes; and (H) Granting Related Relief [Docket No. 1900].

75. “**IRS**” means the Internal Revenue Service.

76. “**Lien**” has the meaning ascribed to such term in section 101(37) of the Bankruptcy Code.

77. “**Liquidating Trust**” means the trust described in Article XIII of the Combined Plan and Disclosure Statement to be established under Delaware trust law that shall effectuate the wind down of the Debtor and make Distributions pursuant to the terms of the Combined Plan and Disclosure Statement and Liquidating Trust Agreement. With respect to any action required or permitted to be taken by the Liquidating Trust, the term includes the Liquidating Trustee or any other person authorized to take such action in accordance with the Liquidating Trust Agreement.

78. “**Liquidating Trust Agreement**” means the agreement, substantially in the form attached hereto as **Exhibit B**, establishing the Liquidating Trust in conformity with the provisions of the Combined Plan and Disclosure Statement, which shall be approved in the Confirmation Order and entered into by the Debtor, on behalf of the Liquidating Trust

beneficiaries, and the Liquidating Trustee on the Effective Date pursuant to the terms of the Combined Plan and Disclosure Statement.

79. “**Liquidating Trust Assets**” means (i) the Liquidating Trust Claims, (ii) the Effective Date Free Cash, (iii) the membership interest in Fresh & Easy, LLC and (iv) all other assets of the Debtor as of the Effective Date, with the exception of liquor licenses (as addressed below); provided, however, that, except as otherwise provided herein, the Liquidating Trust Assets shall not include Cash required to fund the Administrative Claims Reserve, the Professional Fee Reserve, and the WARN Reserve. For the avoidance of doubt, and to facilitate the sale and/or transfer of liquor licenses, all of the Debtor’s rights, title and interests in liquor licenses shall be retained by Fresh & Easy, LLC.

80. “**Liquidating Trust Claims**” means all Causes of Action.

81. “**Liquidating Trust Committee**” means the committee created hereunder and appointed pursuant to the terms of the Liquidating Trust Agreement that shall provide oversight and direction to the Liquidating Trustee in accordance with the terms of the Liquidating Trust Agreement.

82. “**Liquidating Trust Interests**” means the uncertificated beneficial interests in the Liquidating Trust representing the right of Holders of Allowed General Unsecured Claims to receive Distributions from the Liquidating Trust in accordance with Article XIII of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement.

83. “**Liquidating Trust Proceeds**” means the Cash proceeds generated by the Liquidating Trust after the Effective Date of the Plan.

84. “**Liquidating Trust Termination Date**” has the meaning ascribed to such term in Article XIII of the Combined Plan and Disclosure Statement.

85. “**Liquidating Trustee**” means Peter Kravitz of Province, Inc., or any successor appointed in accordance with the Liquidating Trust Agreement.

86. “**Local Rules**” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

87. “**Miscellaneous Asset Sale Order**” means the Order Authorizing and Approving Procedures for the Sale or Abandonment of Miscellaneous Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (II) Granting Certain Related Relief [Docket No. 288].

88. “**Miscellaneous Secured Claim**” means a Claim (i) that is secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected and enforceable under applicable law or by reason of a Final Order, or (ii) that is subject to setoff under section 553 of the Bankruptcy Code and such right of setoff has been asserted by the holder of such right prior to the Confirmation Date in a properly Filed motion for relief from the automatic stay, to the extent of the value of the Claimholder’s interest in the Estate’s interest in

such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

89. “**Objection(s)**” means any objection, application, motion, complaint or other legal proceeding seeking, in whole or in part, to disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim).

90. “**OCP Order**” means the Order Pursuant to 11 U.S.C. §§ 105(a), 327, 330, and 331, Fed. R. Bankr. P. 2014, and Del. Bankr. L.R. 2014-1 Authorizing the Employment and Payment of Professionals Used in the Ordinary Course of Business, *Nunc Pro Tunc* to the Petition Date [Docket No. 290].

91. “**Official Bankruptcy Forms**” means the Official Bankruptcy Forms, prescribed by the Judicial Conference of the United States, the observance and use of which are required pursuant to Bankruptcy Rule 9009, as such forms may be amended, revised or supplemented from time to time.

92. “**Opt-Out Election Deadline**” means April 17, 2017 at 4:00 p.m. (Pacific Time), the date and time by which all Ballots containing an election to opt-out of the Consensual Third Party Releases must be received by the Voting Agent in order to be considered, as set forth in the Interim Approval and Procedures Order.

93. “**Ordinary Course Professionals**” or “**OCP**” means those professionals authorized to be retained and compensated by the Debtor pursuant to the **OCP Order**.

94. “**PACA/PASA Bar Date**” means February 8, 2016 at 5:00 p.m. (Pacific Time) as established by the PACA/PASA/503(b)(9) Bar Date Order.

95. “**PACA/PASA/503(b)(9) Bar Date Order**” means the Order (1) Pursuant to Sections 105(a), 363(b), 503(b), 1107(a) and 1108 of the Bankruptcy Code, Establishing Exclusive Procedures for the Assertion, Resolution and Satisfaction of Prepetition Claims Arising Under the Perishable Agricultural Commodities Act and the Packers and Stockyards Act of 1921, and (2) Pursuant to Sections 105(a) and 503(b)(9) of the Bankruptcy Code, Establishing Exclusive Procedures for the Assertion, Resolution, Allowance and Satisfaction of Claims Arising Under Section 503(b)(9) of the Bankruptcy Code [Docket No. 472].

96. “**PACA/PASA Claim**” means a Claim arising under the Perishable Agricultural Commodities Act and/or the Packers and Stockyards Act of 1921 (“PASA”), which were to be Filed against the Debtor on or before the PACA/PASA Claims Bar Date.

97. “**PACA/PASA Escrow**” means the \$3.7 million in funds originally reserved for the payment of PACA/PASA Claims pursuant to the Interim Order Authorizing Post-Petition Financing [Docket No. 74] and any remaining amounts of those funds still in reserve.

98. “**Periodic Distribution Date**” means any date selected by the Liquidating Trustee, as approved by the Liquidating Trust Committee, for making a Distribution to Holders of Allowed Claims in accordance with Article 4.1 of the Liquidating Trust Agreement.

99. “**Person**” has the meaning ascribed to such term in section 101(41) of the Bankruptcy Code.

100. “**Petition Date**” means October 30, 2015, the date on which the Debtor Filed its petition for relief commencing the Chapter 11 Case.

101. “**Plan Proponents**” means the Debtor and the Committee.

102. “**Plan Supplement**” means the compilation(s) of documents and forms of documents, including any exhibits to the Plan not included herewith, that the Debtor shall File with the Court on or before the Plan Supplement Filing Date.

103. “**Plan Supplement Filing Date**” means the date on which the Plan Supplement shall be Filed with the Court, which date shall be at least ten (10) days prior to the Voting Deadline or such other date as may be approved by the Court without further notice to parties in interest.

104. “**Priority Claims**” means, collectively, Priority Non-Tax Claims and Priority Tax Claims.

105. “**Priority Non-Tax Claim**” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

106. “**Priority Tax Claim**” means any Claim accorded priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

107. “**Privilege**” means the attorney client privilege, work product protections or other immunities (including those related to common interests or joint defenses with other parties), or protections from disclosure of any kind held by the Debtor or its Estate.

108. “**Professional**” means any professional employed by the Debtor or the Committee in the Chapter 11 Case pursuant to sections 327, 328, 363 or 1103 of the Bankruptcy Code and any professionals seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code, other than Ordinary Course Professionals.

109. “**Professional Fee Bar Date**” means the deadline for Filing all applications for Professional Fee Claims, which shall be forty-five (45) days after the Effective Date, as set forth in Article X hereof.

110. “**Professional Fee Claim**” means a Claim of a Professional pursuant to sections 327, 328, 330, 331 or 503(b) of the Bankruptcy Code for compensation or reimbursement of costs and expenses (including any success fees, transaction fees, or other

back-end fees) relating to services performed after the Petition Date and prior to and including the Effective Date.

111. **“Professional Fee Estimate”** means (i) with respect to any Professional, a good-faith estimate of such Professional’s anticipated accrued unpaid Professional Fee Claims as of the Effective Date to be provided by each Professional in writing to the Debtor prior to the commencement of the Confirmation Hearing, or in the absence of such a writing, to be prepared by the Debtor, and (ii) collectively, the sum of all individual Professional Fee Estimates.

112. **“Professional Fee Order”** means the Order Establishing Procedures for Interim Compensation and Reimbursement of Professionals [Docket No. 291].

113. **“Professional Fee Reserve”** means the reserve of Cash funded by the Debtor (or the Liquidating Trust, if necessary) and maintained by Young Conaway Stargatt & Taylor, LLP for the benefit of Holders of Allowed Professional Fee Claims in an amount equal to the Professional Fee Estimate.

114. **“Proof of Claim”** means any proof of claim (which must be Filed before the applicable Bar Date), which term shall include a request for payment of an Administrative Claim (other than 503(b)(9) Claims and Professional Fee Claims).

115. **“Pro Rata”** means, at any time, the proportion that the Face Amount of a Claim in a particular Class bears to the aggregate Face Amount of all Claims (including Disputed Claims, but excluding Disallowed Claims) in such Class, unless the Plan provides otherwise.

116. **“Rejection Bar Date”** means, as defined in the Bar Date Order, the deadline by which a counterparty to a rejected Executory Contract or an Unexpired Lease of the Debtor must File a Proof of Claim for damages resulting from the rejection of such Executory Contract or Unexpired Lease by the Debtor, which deadline shall be the later of: (a) the General Bar Date; (b) thirty (30) days after the entry of an order by the Court authorizing such rejection; or (c) such other date, if any, as the Court may fix in the order authorizing such rejection. Notwithstanding the foregoing, if the rejection by the Debtor, pursuant to the Combined Plan and Disclosure Statement, of an Executory Contract or Unexpired Leases gives rise to a Claim, a proof of Claim must be filed with the Claims Agent, by no later than thirty (30) days after the later of (i) the Effective Date, or (ii) other notice that the Executory Contract or Unexpired Lease has been rejected. Any proofs of Claim not filed and served within such time periods will be forever barred from assertion against the Debtor and its Estate

117. **“Release Consideration”** means the \$2,500,000.00 of the Settlement Payment expressly earmarked solely for the Releasing Creditors (as defined in the Settlement Agreement), which Release Consideration shall be distributed on a Pro Rata basis to such Releasing Creditors.

118. **“Released Parties”** means the (a) Debtor, (b) the current and former directors, officers and managers of the Debtor, (c) employees or agents of the Debtor, (d) attorneys, financial advisors, accountants, investment bankers, investment advisors, consultants, agents, representatives and other Professionals of the Debtor, (e) the CRO, (e) the Special Committee, and (f) the YFE Released Parties.

119. **“Scheduled”** means, with respect to any Claim, the status and amount, if any, of that Claim as set forth in the Schedules.

120. **“Schedules”** means the schedules of assets and liabilities, schedules of executory contracts and statement of financial affairs Filed by the Debtor pursuant to section 521 of the Bankruptcy Code, Bankruptcy Rule 1007 and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended from time to time in accordance with Bankruptcy Rule 1009 or any orders of the Court.

121. **“Settlement Agreement”** means the Settlement and Release Agreement by and between the Debtor, the Committee, the YFE Parties and Yucaipa, as described in Article IV of the Plan.

122. **“Settlement Payment”** has the meaning set forth in Article IV hereof.

123. **“Special Committee”** means the committee comprised of two independent managers, Terrence Wallock and Richard E. Newsted (deceased November 5, 2015) (the “Independent Managers”), which subsequent to Mr. Newsted’s death, was comprised solely of Terrence Wallock.

124. **“Subordinated 510(b) Claim”** means any Claim subordinated pursuant to section 510(b) or 510(c) of the Bankruptcy Code, including pursuant to a Final Order of the Court.

125. **“Substantial Contribution Claim”** means a Claim under subsections 503(b)(3), (b)(4) or (b)(5) of the Bankruptcy Code for compensation or reimbursement of expenses incurred in making a substantial contribution in the Chapter 11 Case.

126. **“Supplemental Administrative Claims Bar Date”** means the date that falls on the thirtieth (30th) day following the Effective Date for Administrative Claims (other than 503(b)(9) Claims and Professional Fee Claims), against the Debtor that arose, accrued or otherwise became due and payable at any time subsequent to December 31, 2015 but on or before the Effective Date, by which Holders of Administrative Claims shall File with the Court and serve on the Debtor or the Liquidating Trustee, as applicable, requests for payment, in writing, together with supporting documents, substantially complying with the Bar Date Order, the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

127. **“Tax Code”** means the Internal Revenue Code of 1986, as amended.

128. **“Unclaimed Distributions”** means any undeliverable or unclaimed Distributions.

129. **“Unexpired Lease”** means a lease to which the Debtor is a party and that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

130. **“Unimpaired”** means, when used in reference to a Claim or a Class, a Claim or a Class that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

131. **“USDA”** means the United States Department of Agriculture.
132. **“UST”** means the United States Trustee for Region 3.
133. **“UST Fees”** means fees payable pursuant to 28 U.S.C. § 1930.
134. **“Voting Agent”** means Epiq Bankruptcy Solutions, LLC, or any successor thereto.
135. **“Voting Deadline”** means April 17, 2017, at 4:00 p.m. (Pacific Time), the date and time by which all Ballots to accept or reject the Plan must be received in order to be counted, as set forth by the Interim Approval and Procedures Order.
136. **“WARN Act”** means the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2100 *et seq.*
137. **“WARN Adversary Proceedings”** means the Cote Adversary and the Chan Adversary (as defined herein) Proceedings pending in the Court seeking to recover damages on account of alleged violations of the WARN Act and its California counterpart, California Labor Code §§ 1400 *et seq.*
138. **“WARN Act Liability”** means any and all claims, damages or other liability arising from or relating to any actual or alleged violations involving the Debtor, YFE, or Yucaipa of the WARN Act and/or California Labor Code §§ 1400 *et seq.*
139. **“WARN Litigation”** means the WARN Adversary Proceedings and any and all state or federal court litigation alleging violations of the WARN Act and its California counterpart, California Labor Code §§ 1400 *et seq.*
140. **“WARN Reserve”** means a cash reserve, in an amount not to exceed \$4 million, for the payment of any Allowed WARN Act Liability. The WARN Reserve is separate from the Administrative Claims Reserve, as set forth in Article XIII.J herein. For the avoidance of doubt, the WARN Defendants (as defined Article III.D.9.b herein) will collectively reserve a total of \$4 million to settle any and all WARN Act Liability, to be funded as agreed by the WARN Defendants.
141. **“YFE”** means YFE Holdings, Inc.
142. **“YFE Parties”** means YFE, Fresh Foods, FEFOS, Ronald W. Burkle, Ira L. Tochner, Robert P. Bermingham, and James W. Keyes.
143. **“YFE Released Parties”** means YFE Parties and Yucaipa, together with each of their respective predecessors, successors, and current and former affiliates, members, partners, shareholders, officers, directors, managers, agents, employees, attorneys (including Gibson, Dunn & Crutcher, LLP), insurers, reinsurers, and representatives, including, but not limited to, Peter McPhee, Stephanie Bond, Steve Mortensen, Derex Walker, Henry Orren, Mary Kasper, Mark Orr, Tom Dahlen, Terrence Wallock, and Catherine Schneider.

144. “Yucaipa” means The Yucaipa Companies, LLC.

B. Interpretation; Application of Definitions and Rules of Construction

Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and the plural and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter. Unless otherwise specified, all section, article, schedule or exhibit references in the Combined Plan and Disclosure Statement are to the respective section in, article of, schedule to, or Exhibit to the Combined Plan and Disclosure Statement. The words “herein,” “hereof,” “hereto,” “hereunder” and other words of similar import refer to the Combined Plan and Disclosure Statement as a whole and not to any particular section, subsection or clause contained in the Combined Plan and Disclosure Statement. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the construction of the Combined Plan and Disclosure Statement. A term used herein that is not defined herein, but that is used in the Bankruptcy Code, shall have the meaning ascribed to that term in the Bankruptcy Code. The headings in the Combined Plan and Disclosure Statement are for convenience of reference only and shall not limit or otherwise affect the provisions of the Combined Plan and Disclosure Statement.

III.

BACKGROUND AND DISCLOSURES

On the Petition Date, the Debtor filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code in the Court, initiating this Chapter 11 Case. After the Petition Date, the Debtor has continued in possession of its properties and has continued to wind down its business operations as a debtor and debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

A. The Debtor’s Corporate Structure and Business

1. The Debtor’s Corporate Structure

The Debtor is a Delaware limited liability company with YFE as its sole member. The Debtor’s affiliates include (i) non-debtor Fresh Foods and (ii) non-debtor FEFOS.

2. Overview of the Debtor’s Business³

The Debtor historically operated retail grocery stores in California, Nevada and Arizona that principally focused on offering high-quality, freshly prepared and ready-to-eat products.

The “Fresh & Easy” brand was founded in 2006 through affiliates of Tesco PLC (“Tesco”), a large grocery retailer based in the United Kingdom. The entities then comprising the “Fresh & Easy” branded enterprise filed voluntary petitions for chapter 11 bankruptcy relief on September 30, 2013, in the Court, which cases were jointly administered through the lead

³ The information contained in Article III.A-C is from the Declaration of Amir Agam in Support of Chapter 11 Petition and First Day Motions [Docket No. 10].

case *In re: Fresh & Easy Neighborhood Market Inc., et al.*, Case No. 13-12569 (KJC) (the “Prior Chapter 11 Case”).⁴

In accordance with a court-approved sale process and related bid procedures, the Debtor’s parent company, YFE, won the right for it, or one or more of its designees, to purchase assets sufficient to allow it to operate (i) 167 operating stores and 14 “work in progress” or otherwise nonoperating stores; (ii) production facilities in Riverside, California including a separate meat facility (the “Meat Facility”), a fresh produce facility (the “Produce Facility”) and a kitchen facility (the “Kitchen Facility,” and collectively with the Meat Facility and the Produce Facility, the “Campus Facilities”), each housed in its own building, providing “Fresh & Easy” branded fresh food products; and (iii) a 680,000 square foot distribution facility (the “Distribution Facility”) located near the Campus Facilities. An order approving the sale (the “Prior Sale”) to YFE was entered on November 22, 2013.⁵

After the Prior Sale was approved, but prior to its closing, YFE formed two subsidiaries to serve as its designees, each a Delaware limited liability company with YFE as its sole member: (i) the Debtor; and (ii) Fresh Foods. After the closing, YFE formed a third subsidiary, FEFOS, which was also a Delaware limited liability company with YFE as its sole member.

As part of the Prior Sale, the real estate comprising the Meat Facility, the Produce Facility and the Kitchen Facility was transferred to Fresh Foods, and individual store leases were each transferred to Fresh & Easy. The Distribution Facility and fourteen (14) store locations were sold by the debtors in the Prior Chapter 11 Case to EM-50 UAV SLBCO LLC (“Fortress”), an entity formed by Fortress Investment Group LLC, and which served as YFE’s designee in its purchasing rights. Fortress then entered into lease agreements with Fresh & Easy. Certain other real estate owned in fee simple was also transferred to Fresh & Easy directly, and was later transferred by Fresh & Easy to FEFOS pursuant to a Real Estate Purchase and Sale Agreement dated April 28, 2014, and effective as of such date (the “FEFOS Agreement”).

Under the FEFOS Agreement, FEFOS received the real estate at 19 locations listed therein, but did not obtain any ownership of intellectual property, signage, furniture, fixtures, equipment or inventory at these locations, all of which remained with Fresh & Easy. Substantially contemporaneous with the FEFOS transaction, Fresh & Easy entered into a rent-free lease with FEFOS for certain of the properties for two years, terminable on thirty days’ notice, but remained liable for the real property taxes relating to the properties sold to FEFOS.

Fresh Foods sold the Meat Facility to an affiliate of JBS S.A. (“JBS”) in August, 2015. Thereafter, the Debtor continued to purchase product from the Meat Facility pursuant to that certain Meat Supply Agreement dated November 18, 2014, entered into by and between the Debtor and JBS. The Debtor also continued production operations at the Produce Facility and Kitchen Facility.

⁴ Certain of the facts set forth in this paragraph are from the Declaration of James Dibbo in Support of Chapter 11 Petitions and First Day Motions and Applications, filed at Docket No. 3 in the Prior Chapter 11 Case.

⁵ See Prior Chapter 11 Case, Docket No. 378.

In an effort to mitigate operational losses, the Debtor closed 56 stores in late March 2015. Approximately four months later, an additional 14 stores were closed, leaving the Debtor with 97 operating stores, 70 “dark” stores, 13 “work in process” stores, and the ongoing operation of the Distribution Facility. Thereafter, but prior to the Petition Date, the Debtor affirmatively vacated a majority of the “dark” store locations by unequivocally surrendering possession to applicable landlords and successfully terminating its lease obligations with respect to 22 “dark” stores through three (3) negotiated terminations and 19 lease assignments.

The Debtor’s revenue from its retail operations, excluding sales taxes and deducting for coupons, in the 12 months ending September 2015 was \$653.3 million.

B. The Debtor’s Prepetition Indebtedness

The Debtor’s prepetition debt structure primarily consisted of (i) prepetition secured lenders, including Wells Fargo Bank, National Association (“Wells Fargo”) and capital lease lessors; (ii) a guaranty in favor of Tesco Treasury Services PLC, an affiliate of Tesco, unsecured by the Debtor but secured by certain property and cash held by Fresh Foods; (iii) unsecured debt owed to the Debtor’s affiliates on account of intercompany loans made by the Debtor’s affiliates to the Debtor; and (iv) other unsecured debt, including trade debt and claims of landlords for unpaid rent.

1. The Wells Fargo Facility

On November 25, 2013, the Debtor (as lead borrower), Fresh Foods (as a borrower), and YFE (as guarantor) entered into that certain Credit Agreement with Wells Fargo as administrative agent and letter of credit issuer (the “Wells Fargo Facility”). After its formation, FEFOS later guaranteed the obligations owing under the Wells Fargo Facility pursuant to its execution of that certain Joinder Agreement dated March 19, 2015. The Wells Fargo Facility contains a stated maturity date of November 26, 2018.

The Wells Fargo Facility provided a credit line of up to \$55 million, which could be borrowed in the form of: (i) revolving loans (“Committed Loans”); (ii) swing line revolving loans, subject to a sublimit of \$10 million (“Swing Line Loans”) and (iii) letters of credit (collectively, the “Wells Fargo LCs”). As of the Petition Date, approximately \$23.4 million was outstanding for obligations owed on account of the Wells Fargo LCs. Credit extensions made under the Wells Fargo Facility were governed by a Borrowing Base consisting of advances against credit card receivables, inventory and pledged cash. As of the Petition Date, the obligations owed under the Prepetition Credit Facility were fully cash collateralized.

The Wells Fargo Facility was secured by a first priority lien on substantially all personal property of the Debtor and Fresh Foods, subject to certain excluded property, which was the property of Fresh Foods and was instead subject to the lien of Tesco Treasury Services PLC, as discussed below. On October 22, 2015, by letter dated October 21, 2015, Wells Fargo declared an event of default under the Wells Fargo Facility. As a result of this event of default, Wells Fargo also declared a “Cash Dominion Event” (as defined in the Wells Fargo Facility) and imposed certain restrictions on the ability of the Debtor to transfer funds out of its bank accounts with Wells Fargo without the permission of Wells Fargo. As discussed below, Wells Fargo is

also the administrative agent for the Debtor's debtor-in-possession financing. Since the Debtor began winding down its operations certain of the letter of credit holders have drawn their letters of credit. In certain instances, the Debtor has negotiated partial draws of the letters of credit, resulting in return of cash collateral to the Debtor. Since the Petition Date, approximately \$4.7 million of cash collateral for the letters of credit has been returned to the Debtor from the Wells Fargo Facility. As of January 1, 2017, Wells Fargo still holds approximately \$0.5 million of cash collateral related to letters of credit. In addition, Wells Fargo holds \$250,000 and there is an additional \$250,000 held by Young Conaway Stargatt & Taylor, LLP as reserves pursuant to the Wells Fargo Facility.

2. Tesco Guaranty Debt

As a prerequisite to YFE's agreement to purchase those assets it acquired in the Prior Chapter 11 Case, Tesco Treasury Services PLC was obligated to provide YFE or its designee with a \$120 million loan. On November 25, 2013, Fresh Foods (then named Campus Opco, LLC) executed a secured promissory note (as modified by later documents, the "Original Tesco Note") in favor of Tesco Treasury Services PLC representing the obligation to repay the \$120 million borrowed thereunder. As originally executed, the Original Tesco Note bore interest at five percent per annum, compounded quarterly and payable in cash on the last business day of each of March, June, September and December during the term of the Original Tesco Note; provided, however, that during the first four years of the note, Fresh Foods received the option of capitalizing interest accruing that quarter rather than immediately paying such interest when due, and any interest so capitalized would accrue at seven percent per annum. The maturity date of the Original Tesco Note was the earlier of: (i) November 26, 2020 or (ii) the occurrence of certain events giving rise to a sale or change in control of any of the Campus Facilities or of Fresh Foods.

Pursuant to that certain Amended and Restated Secured Promissory Note dated as of August 6, 2015, amending and restating the Original Tesco Note (the "Tesco Secured Note"), Tesco Treasury Services PLC agreed to reduce the principal under the Original Tesco Note to \$100 million in exchange for certain consideration, including the issuance of 180,000 shares of Series A preferred stock in YFE to Tesco Treasury Services PLC and an earlier maturity date, which earlier date is the first to occur of: (i) May 29, 2018; or (ii) the closing of a sale on the remaining Campus Facilities. The Tesco Secured Note was secured by a first-priority mortgage on each of the Produce Facility and Kitchen Facility (as modified, the "Tesco Mortgage"), including fixtures and equipment but subject to certain permitted liens, as detailed in the Tesco Secured Note, the Tesco Mortgage, and that certain Security Agreement dated November 25, 2013 (as later modified). In August 2015, the Meat Facility was sold to JBS and a portion of the proceeds were used to pay down the Tesco Secured Note, reducing its balance to \$75 million. Prior to that sale, the Tesco Secured Note was secured by a mortgage on the Meat Facility, as well as the Produce Facility and Kitchen Facility.

The Tesco Secured Note is guaranteed by the Debtor and YFE through a guaranty dated November 25, 2013 and that certain Consent of Guarantor and Reaffirmation and Amendment of Guaranty dated August 6, 2015 (the "Tesco Guaranty"), but neither the Debtor nor YFE pledged an interest in any property to secure their respective guarantees.

3. **Affiliated Unsecured Debt**

As of the Petition Date, the Debtor's books and records indicated that it owed its parent, YFE, approximately \$89.8 million pursuant to a promissory note (the "YFE Closing Note") in the original principal amount of \$80 million dated November 25, 2013, with an effective date of November 26, 2013 (including accrued interest at the rate of seven percent per annum, compounded annually).

On or about September 11, 2015, the Debtor executed a promissory note in favor of Fresh Foods in the initial amount of \$4.15 million payable to Fresh Foods (the "Fresh Foods Note") in order to continue to fund the Debtor's prepetition operating losses and enable the Debtor to explore all restructuring alternatives. Per the terms outlined therein, the face amount of the Fresh Foods Note would increase as Fresh Foods made additional loans to the Debtor and if the Debtor elected to make in kind interest payments due under the Fresh Foods Note. Interest accrued at seven percent per annum under the Fresh Foods Note, payable in kind in arrears, compounding on the last day of each calendar quarter. The maturity date of the Fresh Foods Note was August 20, 2016. As of the Petition Date, the amount owed under the Fresh Foods Note was approximately \$9.4 million.

On or about October 2, 2015, FEFOS advanced the Debtor approximately \$4.9 million to fund the Debtor's operations so that the Debtor could continue to explore all restructuring alternatives and attempt to structure a sale of its assets.

4. **Other Unsecured Debt**

As of the Petition Date, the Debtor's books and records reflected accounts payable due and owing in the amount of approximately \$47.1 million on account of trade debt. Approximately \$53.1 million in total unsecured, non-intercompany debt was due and owing as of the Petition Date, including amounts owed to the Debtor's landlords.

C. **Events Precipitating the Chapter 11 Filing**

As evidenced by the Prior Chapter 11 Case and disclosures made in connection therewith, the debtors in the Prior Chapter 11 Cases were not profitable. Although the Debtor improved its operating performance by reducing its operating losses, and despite its best efforts to right-size its costs and implement sales and operational objectives, the Debtor was also unable to achieve profitability. In the two years prior to the Petition Date, the Debtor incurred substantial operational losses stemming from, among other things, onerous lease obligations, underperforming retail locations, and increased competition in the natural and organic fresh food industry in particular and the grocery retail industry in general. During this period and through the middle of October 2015, the Debtor, in regular consultation with its non-debtor affiliates who were funding the Debtor's losses prior to the Petition Date, explored many potential restructuring alternatives in hopes of consummating a going-concern transaction. The Debtor consulted with its legal and financial advisors, real estate professionals, and consultants to review possible strategies to help the Debtor achieve the primary goals of renegotiating burdensome leases (or altogether terminating such leases on favorable terms), preserving beneficial trade terms with vendors, and sufficiently streamlining operations to allow the Debtor to retain loyal customers,

attract new ones, and generate improved cash flows as its business model evolved. In that regard, the Debtor's parent company, YFE, hired an investment banker, Moelis & Company, to obtain prepetition financing (including equity infusions) and to explore a potential sale of all or substantial parts of the Debtor's businesses. The Debtor later hired Imperial Capital, LLC to explore a potential sale of the Debtor's business and potential debtor-in-possession financing options. In addition, the Debtor hired certain real estate professionals and experts to help the Debtor renegotiate, terminate, sell, or assign burdensome leases. Unfortunately, this process did not produce any viable sources of financing or any third-party buyers within the timeframe in which the Debtor had the ability to fund its business.

When it became apparent that the Debtor would not be able to obtain additional funding to continue operations outside of a chapter 11 process and, therefore, did not have adequate liquidity to fund its ongoing operations, the Debtor, through its Special Committee, determined that a sale process pursuant to section 363 of the Bankruptcy Code was the most likely way to preserve the Debtor's viability as a going-concern. To that end, the Special Committee, comprised of the two Independent Managers, appointed by the board of directors of the Debtor's sole equity holder, YFE, approved the pursuit of a going-concern sale, among other restructuring options, and marketing was conducted in conjunction therewith. The Debtor was unable to locate a third party willing to fund the administrative costs of a sale process through a debtor-in-possession financing facility, and therefore the Debtor was forced to abandon its going-concern sale efforts in favor of wind-down initiatives implemented through store closing sales (the "Store Closing Sales").

The Debtor believed that commencing this Chapter 11 Case to allow for the conclusion of an efficient and orderly wind down process, sanctioned by the Court, represented the best way to maximize value for its stakeholders. In furtherance of that process, the Debtor entered into an agreement with Hilco Merchant Resources, LLC ("Hilco") on or about October 20, 2015 to conduct the Store Closing Sales at all of its remaining open stores, and the Store Closing Sales commenced on October 23, 2015. The Debtor also began negotiating with its affiliates regarding a proposed settlement with general unsecured creditors that would: (i) enable the Debtor to complete the orderly wind down of its business and the liquidation of its assets; (ii) provide for the satisfaction of administrative claims; and (iii) propose a recovery for unsecured creditors. The Debtor also commenced negotiation of an agreement to sell its distribution center equipment with the intent of retaining DJM Realty Services, LLC ("DJM") and CBRE, Inc. ("CBRE"), jointly, to market its remaining leasehold interests.

D. The Chapter 11 Case

The Debtor commenced this Chapter 11 Case on the Petition Date. Following is a brief description of certain major events that have occurred during this Chapter 11 Case.

1. First Day Orders

Subsequent to the Petition Date, the Debtor filed a number of motions and applications (collectively, the “First Day Motions”) seeking certain “first day” relief. The Interim Order Authorizing Post-Petition Financing is discussed separately below. On or about November 5, 2015, the Court entered orders providing various first-day relief, including:⁶

- a) establishing procedures for resolving objections by utility companies and prohibiting utility companies from altering, refusing or discontinuing service [Docket No. 52]; Final Order entered December 3, 2015 [Docket No. 281];
- b) authorizing the Debtor to pay prepetition obligations incurred in the ordinary course of business in connection with liability, property, and other insurance programs, including payment of policy premiums and broker fees, and continuing insurance premium financing programs [Docket No. 55];
- c) authorizing the Debtor to pay certain prepetition taxes and fees and related obligations [Docket No. 57];
- d) authorizing the Debtor to honor certain prepetition obligations to its customers [Docket No. 59];
- e) authorizing the Debtor to pay prepetition wages, salaries and other compensation, including certain bonus payments; reimburse prepetition employee business expenses; contribute to prepetition employee benefit programs and continue such programs in the ordinary course; pay workers compensation obligations; continue payments for which prepetition payroll deductions were made; pay all costs and expenses incident to the foregoing payment and contributions; and pay to third parties all amounts incident to the foregoing payments and contributions, and authorizing banks to honor and process check and electronic transfer requests related thereto [Docket No. 54]; and

⁶ The descriptions of the relief sought or obtained in the first day orders and in the Chapter 11 Case set forth herein are summaries only and reference should be made to the actual pleadings and orders for their complete content.

- f) authorizing continued use of existing bank accounts, cash management systems, and checks and business forms and waiving investment and deposit requirements of 11 U.S.C. 345(b) on an interim basis [Docket No. 56].

2. **Interim Order Authorizing Post-Petition Financing**

On November 3, 2015, the Debtor filed a motion for entry of interim and final orders authorizing it to obtain postpetition financing and use cash collateral [Docket No. 18]. By the motion, the Debtor sought, among other things, to obtain secured, superpriority, debtor-in-possession financing with commitments in an aggregate principal amount up to \$6.75 million. On November 6, 2015, the Court entered the Interim Order Authorizing Post-Petition Financing. Following entry of the Interim Order Authorizing Post-Petition Financing, certain Holders of PACA/PASA Claims filed objections to the motion, which were later withdrawn. [Docket Nos. 248, 251, 994, and 1014]. The UST, and following its formation, the Committee, raised certain informal objections to the proposed final order approving the post-petition financing (the “DIP Financing”), including the necessity for and reasonableness of the DIP Financing, the scope of certain releases contained in the Interim Order Authorizing Post-Petition Financing, and the reasonableness of various claims asserted by YFE related to, among other things, professional fees, asserted in connection with the DIP Financing. Because the Debtor has not required post-petition financing outside the ordinary course of business and has therefore not utilized the DIP Financing, the parties have agreed to numerous continuances of the hearing to consider final approval of the Interim Order Authorizing Post-Petition Financing and associated objection deadline. The Debtor intends to seek the Court’s approval of a Final Order authorizing DIP Financing, which will, *inter alia* (a) acknowledge the fact that the Debtor has not drawn on any DIP Financing, (b) implement appropriate provisions on a final basis with respect to Wells Fargo, (c) eliminate YFE as a DIP lender retroactive to the Petition Date, and (d) provide for the release and waiver of certain YFE claims consistent with this Combined Plan and Disclosure Statement.

3. **Appointment of Committee**

On November 10, 2015, the UST appointed the Committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 101]. The members of the Committee as of that date were: DPI Specialty Foods, Inc., United Natural Foods West, Inc., Ignited, LLC, JBS USA, and Ryder Integrated Logistics. On November 18, 2016, the UST also appointed Empress Group and MJL Capital Partners, LLC to the Committee [Docket No. 165].

4. **Employment of Professionals and Advisors**

a) **Debtor’s Professionals**

On November 20, 2015, the Court entered an order authorizing the Debtor to retain Amir Agam of FTI Consulting, Inc. (“FTI”) as Chief Restructuring Officer and to utilize the services of other FTI personnel *nunc pro tunc* to the Petition Date (the “FTI Order”) [Docket No. 192]. On December 3, 2015, the Court entered an order authorizing the Debtor to retain Young Conaway Stargatt & Taylor, LLP as its special corporate and transactional counsel [Docket No.

287] and, on December 15, 2015, it entered an order authorizing the Debtor to retain Cole Schotz P.C., as its bankruptcy counsel [Docket No. 371], both *nunc pro tunc* to the Petition Date. On January 11, 2016, the Court entered an order authorizing the Debtor to retain Sheppard Mullin Richter & Hampton LLP as special counsel [Docket No. 456], which firm was subsequently replaced, and on June 29, 2016, the Court entered an order authorizing the Debtor to retain Kelley Drye & Warren LLP [Docket No. 1060] in its stead.

The Debtor has also retained ordinary course professionals in the Chapter 11 Case pursuant to the procedures set forth in the OCP Order.

b) Retention of Claims and Noticing Agent and Administrative Agent

By order entered November 5, 2015, the Court authorized the Debtor to retain Epiq Bankruptcy Solutions, LLC (“Epiq”) as its claims and noticing agent in the Chapter 11 Case [Docket No. 51]. Also, on November 20, 2015, the Court entered an order authorizing the Debtor to retain Epiq as its administrative advisor in the Chapter 11 Case [Docket No. 193].

c) Committee’s Professionals

On December 12, 2015, the Court entered an order authorizing the Committee to retain Province, Inc., as its financial advisor [Docket No. 352] and Fox Rothschild as its bankruptcy counsel [Docket No. 353]. Additionally, on May 23, 2016, the Court entered an order authorizing the Committee to retain Reid Collins & Tsai LLP, as its special contingency-fee counsel for the purpose of pursuing certain claims against YFE, FEFOS, and related parties [Docket No. 953]. On September 7, 2016, the Court entered an order authorizing the Committee to retain Ask, LLP as its special contingency-fee counsel for the purpose of pursuing certain avoidance actions [Docket No. 1191].

5. Sale of Assets

a) Store Closing Sale

As noted above, prior to the Petition Date, the Debtor retained Hilco as its exclusive agent for the liquidation sale of merchandise at the Debtor’s retail locations. On November 3, 2015, the Debtor filed an Emergency Motion for Interim and Final Orders (I) Authorizing the Continuation of Store Closing Sales in Accordance with the Disposition Agreement and Sale Guidelines, with Such Sales to be Free and Clear of All Liens, Claims, and Encumbrances; (II) Authorizing the Assumption of the Disposition Agreement; and (III) Granting Related Relief [Docket No. 19], pursuant to which the Debtor sought, among other things, authority to continue the Store Closing Sales that had commenced prior to the Petition Date at its retail locations. On November 5, 2015, the Court entered an interim order [Docket No. 53], and on November 24, 2015, the Court entered a final order [Docket No. 231] granting the Motion. Under the terms of a Letter Agreement Governing Inventory Disposition, Hilco served as the exclusive agent to the Debtor for the purpose of conducting the sale of certain merchandise at the closing stores in accordance with the terms of the agreement and the procedures outlined in the store-closing sale guidelines. In addition, Hilco conducted sales of FF&E.

The Store Closing Sales commenced on approximately October 23, 2015 and concluded on approximately November 13, 2015 and resulted in approximately \$28.8 million in proceeds.

b) Sale of Leases

On November 13, 2015, the Debtor filed the Motion for Entry of: (I) Order (A) Establishing Bidding Procedures in Connection with an Auction of Nonresidential Real Property Leases; (B) Authorizing and Scheduling an Auction With Respect Thereto; (C) Approving Cure Procedures; and (D) Scheduling a Hearing With Respect to the Outcome of the Auction; and (II) Order (A) Approving Assumption and Assignment of Leases; and (B) Waiving Stay Provisions Pursuant to Bankruptcy Rule 6006(d) [Docket No. 124] (the “Global Sale Process”). In conjunction therewith, the Court entered an order on November 24, 2015, establishing a timeline for the submission of bids by parties interested in taking assignment of the Debtor’s leases (such leases, the “Marketed Leases”) and purchasing related assets, and scheduling an auction and sale hearing with respect thereto [Docket N. 230]. On December 7, 2015, the Court approved various agreements entered into by and between the Debtor and third party purchasers or landlords, as applicable, which constituted the respective highest and best offers—and in some instances only offers—submitted for certain Marketed Leases.

As detailed on the record at the December 7, 2015 hearing and in pleadings related thereto, the Debtor determined, in consultation with the Committee, to withhold certain leases from both the Global Sale Process and the Court-approved rejection process, notwithstanding that such leases (collectively, the “Withheld Leases”) did not garner qualified bids by the bid deadline. The Withheld Leases were thoroughly evaluated by both the Debtor and the Committee’s advisors. As a result of that evaluation, the Withheld Leases were not rejected at that time because, in the Debtor’s business judgment, value could be generated through further marketing efforts and an extended due diligence period. Accordingly, the Debtor continued to pay rent and related charges under the Withheld Leases pending a further determination regarding rejection or assignment. The Debtor then entered into various agreements with landlords and third party purchasers regarding the Withheld Leases, and in some instances filed motions to reject Withheld Leases.

In total, during the Chapter 11 Case, as a result of the sale of certain leases, the assumption and assignment of certain leases, the termination of additional leases with landlord consent, and the rejection of other leases, the Debtor successfully disposed of more than 100 of its leased locations, resulting in over \$11 million in proceeds and returned collateral.

c) Auction of Assets at the Distribution Center

On November 5, 2015, the Debtor filed a motion for entry of an order: (i) approving an Auction Agreement (the “Auction Agreement”) by and between the Debtor and Industrial Assets Corp. and Maynard’s Industries (1991), Inc. (“IAC”) with respect to the sale of certain of the Debtor’s owned tractors, trailers, yard dogs, and material handling equipment located at the Debtor’s Distribution Center; (ii) authorizing the sale and liquidation of the assets free and clear of all liens, claims, and encumbrances through IAC; and (iii) waiving the information requirements of Local Rule 2016-2. Under the terms of the Auction Agreement, the sale was to commence no later than November 30, 2015 and terminate by December 31, 2015; provided,

however, that the sale term could be extended by IAC under certain circumstances until January 31, 2016. On November 20, 2015, the Court granted the Motion, approved the Auction Agreement and authorized the sale of assets [Docket No. 190].

The Auction occurred on December 12, 2015 and resulted in over \$5 million in proceeds.

d) Sale of Miscellaneous Assets

To facilitate the sale and abandonment of miscellaneous assets and to minimize unnecessary administrative expenses, the Debtor sought, and obtained a Court Order [Docket No. 288] (the “Miscellaneous Asset Sale Procedures Order”), authorizing and approving procedures for the sale or abandonment of miscellaneous assets free and clear of liens, claims, interests, and encumbrances. The Miscellaneous Asset Sale Procedures Order permits the sale of the miscellaneous assets in any individual transaction or series of related transactions to a single buyer or group of related buyers within certain dollar thresholds. Absent written objection in accordance with the notice requirements of the Miscellaneous Asset Sale Procedures Order, the Debtor was authorized to immediately consummate a proposed sale in accordance with the terms of the underlying contract or other document without further Court order.

During the Chapter 11 Case, the Debtor has sold various miscellaneous assets and abandoned certain miscellaneous assets in accordance with the Miscellaneous Asset Sale Procedures Order. [See e.g. Docket Nos. 764, 1022 and 1215]. As of January 1, 2017, the Debtor had sold approximately \$375,000 in miscellaneous assets pursuant to the Miscellaneous Asset Sale Procedures Order.⁷

e) Sale of Intellectual Property

On February 25, 2016, the Debtor filed a motion for an order authorizing the Debtor to employ and retain Hilco IP Services, LLC d/b/a Hilco Streambank (“Hilco Streambank”) to provide intellectual property disposition services *nunc pro tunc* to February 24, 2016 [Docket No. 628] and on March 15, 2016, the Court approved the motion [Docket No. 697].

As a result of a fairly extensive process and bid deadline extension, Hilco Streambank received an offer to purchase one of the Debtor’s wine brands, which sale has been consummated. In addition, on December 22, 2016, the Debtor filed a motion for entry of an order approving a purchase and sale agreement with Wild Oats Marketing LLC for the sale of certain intellectual property for \$100,000 [Docket No. 1735]. Oracle America, Inc. filed a reservation of rights requesting the Court deny the motion solely to the extent it sought authorization for the Debtor to assume and assign any Oracle agreement [Docket No. 1766]. The motion is scheduled for hearing on February 16, 2017.

⁷ With respect to the sale of certain liquor licenses, the purchase price is held in escrow until the approval of the transfer of the liquor license by the Liquor License Department, and, as a result, many of such reported sale amounts have not been realized by the Debtor.

f) **Sale of Corporate FF&E**

On February 25, 2016, Debtor's Motion for Entry of an Order: (I) Approving the Auction Agreement by and between the Debtor and Great American Global Partners, LLC with respect to the Sale of Certain of the Debtor's Property Located at the Debtor's Corporate Headquarters and Data Center; (II) Authorizing the Sale and Liquidation of Such Assets through Public Auction; and (III) Waiving One or More of the Information Requirements of Local Rule 2016-2 [Docket No. 629] (the "Corporate FF&E Sale Motion"), was filed with the Court. On March 15, 2016, the Court entered an order granting the Corporate FF&E Sale Motion and authorizing the Debtor to execute and deliver, and consummate and implement, the sale of the assets pursuant to the terms set forth in the auction agreement [Docket No. 698] (the "Corporate FF&E Sale Order"). On May 26, 2016, a Final Auction Report containing the results of the auction conducted pursuant to the Corporate FF&E Sale Order was filed with the Court reflecting net proceeds to the Debtor in the amount of \$51,113.00 [Docket No. 974]. On August 23, 2016, a Second Final Auction Report containing the results of the auction conducted pursuant to the Corporate FF&E Sale Order for property located at the Debtor's data center was filed with the Court reflecting net proceeds to the Debtor in the amount of \$42,535.00 [Docket No. 1151].

g) **Sale of Equipment**

On February 25, 2016, the Debtor filed a motion for entry of an order, *inter alia*, (i) authorizing the disposition of the Debtor's retired, used, end-of-life, and surplus IT and communications equipment (collectively, the "Equipment") located at Itek Services, Inc., 25501 Arctic Ocean Drive, Lake Forest, California, pursuant to the terms of an Asset Disposition Services Agreement by and between the Debtor and HiTech Assets, Inc.; (ii) approving the terms of that agreement; (iii) waiving the information requirements of Local Rule 2016-2, to the extent such requirements are applicable; and (iv) granting related relief [Docket No. 630]. On March 15, 2016, the Court entered an order granting the motion [Docket No. 701]. Pursuant to the agreement, the Debtor receives 50% of gross sales generated by assets resold by HiTech. As of December 2016, the Debtor had received \$ 28,615.06 in sale proceeds. HiTech's sale of the Equipment on consignment is ongoing.

6. **Rejection of Contracts and Unexpired Leases**

The Debtor has rejected numerous executory contracts and unexpired leases, both of personal property and real property, including nonresidential real property.

On November 13, 2015, the Debtor filed a motion [Docket No. 124] seeking, among other things, entry of an order approving procedures for rejecting unexpired leases and subleases of nonresidential real property and to abandon any personal property remaining on the premises to the leases or subleases. On November 24, 2015, after notice and a hearing, the Court entered the requested order [Docket No. 230]. Before those procedures expired, the Debtor used such procedures to reject many unexpired leases [Docket Nos. 241, 243, 244, 360, 361, and 362].

In addition, the Debtor has filed standalone motions for approval of the rejection of executory contracts [Docket Nos. 135, 424, 633, 883, and 975], and the Court has entered orders granting those motions [Docket Nos. 321, 502, 699, 960, and 1061].

7. **Claims Process and Bar Date**

a) **Section 341(a) Meeting of Creditors**

On December 3, 2015, the UST commenced the meeting of creditors in the Chapter 11 Case conducted pursuant to section 341(a) of the Bankruptcy Code. The meeting was adjourned to, and concluded on, January 14, 2016.

b) **Schedules and Statements**

On December 29, 2015, the Debtor filed its Schedules [Docket Nos. 410 and 411], which were amended on February 3, 2016 [Docket Nos. 557 and 558]. Among other things, the Schedules set forth the claims of known creditors against the Debtor as of the Petition Date, based upon the Debtor's books and records. The Debtor retains the right to amend the Schedules during the pendency of the Chapter 11 Case.

c) **Bar Dates**

On January 11, 2016, the Court entered the Bar Date Order [Docket No. 457] establishing the following Bar Dates for filing Claims against the Debtor:

General Bar Date. All persons and entities, except any governmental unit, holding or asserting a Claim against the Debtor that arose (or is deemed to have arisen) on or before the Petition Date, excluding any 503(b)(9) Claims, were required to file a Proof of Claim form so that it was actually received by the Claims Agent on or before February 19, 2016 at 5:00 p.m. (Pacific Time).

Governmental Bar Date. All Governmental Units holding or asserting a Claim against the Debtor that arose (or is deemed to have arisen) on or before the Petition Date were required to file a Proof of Claim form so that it was actually received by the Claims Agent on or before April 27, 2016 at 5:00 p.m. (Pacific Time).

Administrative Claims Bar Date. All persons or entities holding or asserting a Claim arising under sections 503(b)(1) through (8) and 507(a)(2) of the Bankruptcy Code against the Debtor that arose, accrued or otherwise become due and payable at any time subsequent to the Petition Date but on or before December 31, 2015 (the "Initial Administrative Claims Period") were required to file a Proof of Claim form so that it was actually received by the Claims Agent on or before February 19, 2016 at 5:00 p.m. (Pacific Time).

Amended Schedules Bar Date. If the Debtor amends its Schedules to change the amount, nature, classification or characterization of a Claim, or to schedule a new Claim, the affected claimant may dispute the amount, nature, classification or characterization of the Scheduled Claim by filing a Proof of Claim form with respect to the Scheduled Claim, so that the Proof of Claim form is actually received by the Claims Agent on or before the later of (i) the General Bar Date or (ii) twenty-one (21) days from the date of the notice that is served alerting the

affected creditor of the amendment to the Schedules. If the Debtor amends the Schedules with respect to the claim of a governmental unit, the affected governmental unit shall be permitted to dispute the amount, nature, classification or characterization of the Scheduled Claim by filing a Proof of Claim form with respect to the Scheduled Claim, so that the Proof of Claim form is actually received by the Claims Agent on or before the later of (i) the Governmental Bar Date or (ii) twenty-one (21) days from the date of the notice that is served alerting the affected governmental unit of the applicable amendment to the Schedules.

Rejection Bar Date. If the Debtor rejects any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, all persons or entities holding or asserting a Claim arising from such rejection (a “Rejection Damage Claim”) must file a Proof of Claim form so that it is actually received by the Claims Agent on or before the later of: (i) the General Bar Date or (ii) thirty (30) days after entry of any order authorizing the rejection of such executory contract or unexpired lease; provided, however, that persons or entities asserting claims with respect to contracts or leases that are not Rejection Damage Claims were required to file Proof of Claim forms on account of such claims by the General Bar Date.

d) **Claim Objections**

The Claims Agent received approximately 1,091 Proofs of Claim in response to the General Bar Date and 203 Proofs of Claim in response to the Administrative Claims Bar Date, including late filed claims. The Debtor and the Committee have commenced a review and analysis of Claims filed in the Chapter 11 Case, and have filed objections to certain claims and resolved others. The Debtor anticipates that it, the Committee, and the Liquidating Trustee will file additional objections to claims.

e) **PACA/PASA Claims**

1. **The PACA/PASA Order and Claims Process**

On January 13, 2016, the Court entered the PACA/PASA/503(b)(9) Bar Date Order. Pursuant to the PACA/PASA/503(b)(9) Order, any supplier or seller asserting a PACA/PASA Claim was required to file a notice of assertion of a PACA/PASA Claim (the “PACA/PASA Claim Notice”) so that it was actually received by the Claims Agent on or before the PACA/PASA Bar Date.

The Claims Agent received 79 PACA/PASA Claim Notices. On March 9, 2016, the Debtor filed a Notice of Filing of PACA/PASA Valid Claim Report and Amended PACA/PASA Disputed Claim Report [Docket No. 671] (the “PACA Report”) allowing 31 PACA/PASA Claims in the amount of \$2,070,757.31, and objecting to 44 PACA/PASA Claims in the amount of \$1,509,048. All Disputed PACA/PASA Claims have been resolved and all allowed PACA/PASA Claims have been satisfied.

2. The USDA PACA Investigation

In March 2016, the PACA Division of the USDA conducted a disciplinary investigation against the Debtor for alleged violations of section 2(4) of PACA for failure to make full payment promptly to certain sellers. The Debtor cooperated with the USDA investigation, including providing requested information. Following completion of the investigation in May 2016, the USDA informally notified the Debtor that it intended to file a complaint against the Debtor for failure to make full payment promptly to approximately 23 sellers in violation of section 2(4) of PACA, plus penalties. On December 14, 2016, the USDA filed a complaint with the Secretary of Agriculture against the Debtor for failure to make full payment promptly to 23 sellers for 380 lots of perishable agricultural commodities in violation of PACA, in the total amount of \$201,468.29 (the “PACA Amount”). Although the Debtor maintains that it resolved and satisfied all timely submitted PACA/PASA claims in accordance with the terms of the PACA/PASA Order, in order to avoid the expense, protracted litigation, and distraction associated with the complaint, the Debtor, with the authorization of the Bankruptcy Court [Docket No. 1755], agreed to enter into a consent order (the “Consent Order”) with the USDA. Pursuant to the terms of the Consent Order, which has been executed by the parties and approved by the USDA Administrative Judge, the Debtor will pay the PACA Amounts plus a \$30,000 penalty. Funds for payment are currently held in PACA/PASA Escrow.

f) **503(b)(9) Claims**

Also pursuant to the PACA/PASA/503(b)(9) Bar Date Order, any person or entity asserting a 503(b)(9) Claim was required to file a Proof of Claim so as to be actually received by the Claims Agent on or before the 503(b)(9) Bar Date.

The Claims Agent received approximately 191 Proofs of Claim asserting 503(b)(9) Claims.

On April 20, 2016, the Debtor, in consultation with the Committee, filed its Notice of Filing of (1) a Report of Allowed 503(b)(9) Claims and (2) Objections to Disputed 503(b)(9) Claims (the “Section 503(b)(9) Report”) [Docket No. 847]. By the Section 503(b)(9) Report, the Debtor allowed 95 503(b)(9) Claims in the total amount of \$3,063.186 and objected to approximately 96 503(b)(9) Claims in the total amount of approximately \$3,345,463.

g) **The Purported WARN Class Claims**

The Debtor filed an objection [Docket No. 1216] to three proofs of claim, filed as class proofs of claim (the “Class Claims”), alleging liability for violations of the WARN Act and its California counterpart, California Labor Code §§ 1400-1409. The Class Claims collectively assert approximately \$21.6 million as Administrative or Priority Claims against the Debtor [Docket No. 1216]. The objection to the Class Claims is currently pending before the Court. As noted in Article III.D.9 below, the Debtor disputes any liability related to the WARN Litigation and the Class Claims. The purported Class Claims will be resolved in conjunction with the settlement of the WARN Litigation as discussed in Article III.D.9.

8. The Committee Litigation

a) **The Committee Investigation**

Following its appointment, the Committee commenced an informal investigation and inquiry into potential estate claims relating to the transfer of the Debtor's fee-owned real estate to FEFOS for no consideration and other potential insider claims. As a result of the preliminary responses they received, on February 5, 2016 the Committee filed The Official Committee of Unsecured Creditor's Motion for Entry of an Order Requiring Certain Entities to Provide Information Pursuant to Bankruptcy Rule 2004 [Docket No. 568] seeking expedited discovery from the Debtor and YFE related to its investigation of, among other things, the Debtor's financial condition, the actions of its various insiders and affiliates, matters of corporate governance, duties of care and loyalty, and the transfer of at least \$40 million in real estate assets from the Debtor to FEFOS and various other intercompany claims among the Debtor and YFE. The Court entered two orders granting the Committee's motion and requiring certain entities to provide information pursuant to Bankruptcy Rule 2004 [Docket Nos. 659 and 787]. The Committee also obtained Court orders requiring Ernst & Young and Grant Thornton to provide information in support of its investigation. [See Docket Nos. 808 and 809] On March 3, 2016, and April 6, 2016, respectively, the Court entered the Order Approving Stipulation Regarding Production of Information Pursuant to Bankruptcy Rule 2004 by YFE Holding [Docket Nos. 659 and 787].

b) **Mediation**

Following the completion of discovery, the Committee, on behalf of the Debtor, and former officers, directors and other insiders or affiliates of the Debtor, including, but not limited to, Ronald W. Burkle, Robert P. Birmingham, James Keyes, Steven Mortensen, Peter McPhee, Ira Tochner, FAEMF, LLC, FEFOS, YFE, and Yucaipa (collectively, the "Mediation Parties") agreed to a mediation with Kenneth M. Klee (the "Mediator") with respect to all matters pending between the Mediation Parties, including, without limitation, the disputes set forth in the Stipulation By and Among the Official Committee of Unsecured Creditors, the Debtor, and YFE Regarding Selection of Mediator [Docket No. 887, Ex. A]. On May 2, 2015, the Court entered an Order approving Kenneth M. Klee as mediator [Docket No. 891]. On May 19, 2016, a mediation session occurred. The mediation was unsuccessful.

c) **The Committee Motion for Derivative Standing**

On May 31, 2016, the Committee filed a motion seeking standing, on behalf of the Debtor, to assert the claims and objections alleged in the Committee Complaint (as discussed below) arguing: (i) the Committee had alleged colorable claims and objections that would benefit the estate; and (ii) the Debtor was prohibited by the Interim Order Authorizing Post-Petition Financing from pursuing, such claims and objections and, therefore, had not pursued such claims [Docket No. 987]. On June 20, 2016, the Debtor filed a limited objection to the motion [Docket No. 1038]. On July 7, 2016, the Court entered an Order granting the motion for derivative standing to pursue claims on behalf of the Debtor [Docket No. 1068].

d) The Committee Complaint

On May 31, 2016, the Committee, asserting claims derivatively on behalf of the Debtor, filed an action (the “Committee Complaint”) against YFE, Fresh Foods, FEFOS, Ronald W. Burkle, Ira L. Tochner, Robert P. Bermingham, and James W. Keyes (collectively, the “Defendants”), titled Official Committee of Unsecured Creditors v. YFE Holdings, et al. [Adv. Proc. 16-50993-BLS, Adv. Proc. Docket No. 1]. The Committee Complaint alleges, among other things: (i) breach of fiduciary duty and corporate waste against YFE, Ronald Burkle, Ira Tochner, Robert Bermingham, and James Keyes (the “YFE Directors,” and collectively, with YFE, the “D&O Targets”); (ii) aiding and abetting and breach of fiduciary duty against Mr. Burkle and Mr. Tochner; (iii) actual fraudulent transfer against FEFOS and YFE; (iv) constructive fraudulent transfer against FEFOS and YFE; and (v) equitable subordination against FEFOS, YFE, and Fresh Foods. The Complaint also seeks the recharacterization of YFE’s claim from debt to equity and asserts objections to claims filed or scheduled on behalf of YFE, FEFOS, and Fresh Foods.⁸

e) The Committee’s Motion for Temporary Restraining Order

Following the initial mediation, the Committee requested that all parties enter into a mutual stand-still agreement while they continued negotiations and sought to schedule a second mediation session with the insurance carriers’ participation. The Defendants, however—having previously transferred some of the proceeds from the sale of fee-owned properties from FEFOS to YFE—declined to agree to refrain from further transfers of the fee-owned real estate or its proceeds. Concerned that the Defendants intended to divert additional funds from FEFOS (a real estate holding company) to be used for other purposes, contemporaneously with the filing of the Committee Complaint, the Committee filed an Ex Parte Motion for Temporary Restraining Order (“TRO”) and Motion for Preliminary Injunction requesting that the Court enter a TRO, on an ex parte basis, enjoining FEFOS and YFE from: (i) transferring any of the Fee-Owned Stores (as defined in the Committee Complaint), except as approved in advance by the Committee; (ii) transferring any proceeds from the sale of the Fee-Owned Stores, except as necessary to pay any reasonable expenses in the ordinary course of business or as approved in advance by the Committee; and (iii) commingling any proceeds from the sale of the Fee-Owned Stores with any other funds, except as approved in advance by the Committee. [Adv. Proc. No. 16-50993-BLS, Adv. Proc. Docket No. 2].

On the same date, the Court granted an ex parte TRO and: (i) immediately enjoined FEFOS from: (a) transferring any of the Fee-Owned Stores, except as approved in advance by the Court; (b) transferring any proceeds from the sale of the Fee-Owned Stores, except as necessary to pay any reasonable expenses in the ordinary course of business or as approved in advance by the Court; and (c) commingling any proceeds from the sale of the Fee-Owned Stores with any other funds, except as approved in advance by the Court; (ii) immediately enjoined YFE from: (a) transferring any funds received from FEFOS since January 2016, except as approved in advance by the Court; and (b) commingling any such funds with any other funds,

⁸ Robert P. Bermingham and James W. Keyes are members of the Board of Managers of the Debtor.

except as approved in advance by the Court; (iii) scheduled a preliminary injunction hearing for June 13, 2016 at 10:00 a.m. [Adv. Proc. No. 16-50993-BLS, Adv. Proc. Docket No. 3].

On June 17, 2016, the Court entered an Order approving a stipulation by and among the Committee, the Debtor, YFE and FEFOS that, *inter alia*, maintained the TRO and adjourned the hearing on the motion for the preliminary injunction to September 15, 2016. [Adv. Proc. No. 16-50993; Adv. Proc. Docket Nos.17 and 23]. On December 29, 2016, the Court entered an Order approving a stipulation by and among the Committee, the Debtor and the YFE Parties regarding modification and maintenance of the TRO [Adv. Proc. No. 16-50993; Adv. Proc. Docket No. 29]. The hearing on the substance of the preliminary injunction has been adjourned to a date to be determined.

f) **The Second Mediation**

On August 11, 2016, the original Mediation Parties, together with the Debtor's Director and Officer insurance carriers, participated in a second mediation session, with Jed Melnick, Esquire serving as mediator. Although after a full day of mediation, no agreement was reached among the parties, the mediator continued to facilitate discussions among the Mediation Parties and the D&O insurance carriers, and as a result of these efforts, the parties reached an agreement in principal. The parties will seek approval of a settlement, the terms of which are discussed in Article IV, the Global Settlement, below.

g) **The Committee's Standing to Pursue Preference Actions**

On August 16, 2016, the Committee filed a Certification of Counsel and Proposed Order Seeking Approval of a Stipulation By and Among The Official Committee of Unsecured Creditors and the Debtor for Leave, Standing, and Authority to Pursue, Prosecute, and Resolve Certain Preference Actions on Behalf of the Estate and Granting Related Relief [Docket No. 1138] with respect to roughly 400 avoidance actions unrelated to the YFE litigation. A list of those avoidance actions was filed with the Court under seal [Docket No. 1141]. On September 9, 2016, the Committee filed a proposed amended order for the Court's consideration [Docket No. 1201], and on September 12, 2016, the Court entered the amended order approving the Stipulation [Docket No. 1204]. The Committee, through special contingency-fee counsel, has issued demand letters with respect to a majority of the preference actions. To the extent the Committee was unable to resolve consensually such demands with the defendants, the Committee initiated adversary actions. More specifically, in December 2016, the Committee filed 307 preference complaints, with a gross amount demanded of \$30,968,042.44. There can be no guarantee or projection of the actual amount to be recovered with respect to preference complaints.

9. Other Adversary Proceedings

a) **WARN Adversary Proceedings**

Currently pending before the Court are two WARN Adversary Proceedings seeking damages on account of alleged violations of the WARN Act and its California counterpart, California Labor Code §§ 1400-1409. A summary of the WARN Adversary Proceedings is set

forth below. In addition, there is also separate federal and state court litigation pending against the Debtor and YFE alleging violations of the WARN Act, and certain former employees have filed proofs of claim asserting claims under the WARN Act (the “Employee Proofs of Claim”). The Debtor disputes any liability related to the WARN Litigation and the WARN Proofs of Claims (as defined below).

*Guadalupe Cote, on Behalf of Herself and All Others Similarly
Situated v. Fresh & Easy, et al., Adv. Proc. No.15-51906 (BLS)*

On November 22, 2015, Guadalupe Cote (“Cote”) filed a complaint on behalf of herself and a purported class of similarly situated former employees of the Debtor against YFE, Yucaipa and the Debtor (the “Cote Adversary”). The complaint seeks to recover damages on account of alleged violations of the WARN Act, and its California counterpart, California Labor Code §§ 1400-1409. Cote also filed a proof of claim in the amount \$6,679,942 on behalf of herself and similarly situated former employees of the Debtor (the “Cote Class Claim”) and a proof of claim in her individual capacity for \$7,808.22 (the “Cote Individual Claim”) and together with the Cote Class Claim, the “Cote Claims,” and together with the Class Claims and the Employee Proofs of Claim, the “WARN Proofs of Claim”). No discovery has taken place in the action.

On February 3, 2016, the Debtor filed a motion to compel arbitration of the Cote Claims on an individual basis, expunge the Cote Class Claim, and stay the Cote Adversary until completion of arbitration (the “Cote Motion to Compel”) [Adv. Proc. Docket No. 25].

On February 17, 2016, Cote opposed the Cote Motion to Compel [Adv. Proc. Docket No. 35] and, on February 29, 2016, Cote filed a motion for appointment of interim class counsel and dismissal of the Chan Action (the “Cote Appointment Motion”) [Adv. Proc. Docket No. 43]. Cote also requested oral argument on Chan’s Motion to Adjourn Briefing on Plaintiffs’ Motion for Appointment of Interim Class Counsel (“Oral Argument Request”) [Adv. Proc. Docket No. 53].

On June 2, 2016, the Court entered a Memorandum Order (the “Cote Decision”) [Adv. Proc. Docket No. 63] (i) granting the Cote Motion to Compel; (ii) denying the Cote Appointment Motion; and (iii) denying the Oral Argument Request. The effect of the Cote Decision was that the Cote Adversary would not be able to proceed on a class basis, but instead would be arbitrated individually with the Employee Proofs of Claim.

On September 20, 2016, the Debtor objected to, and sought to strike, the Cote Class Claim on the grounds that Cote did not seek Bankruptcy Court permission to file a class proof of claim as required by the Bar Date Order. On October 20, 2016, the Court heard argument on the objection, and took the matter under submission. The matter is pending before the Court.

On October 17, 2016, Cote filed a Motion for Reconsideration of the Court’s June 2, 2016 Order granting the Cote Motion to Compel, and on November 1, 2016, the Debtor filed an opposition to the motion. The motion is pending before the Court.

*Diana Chan, Individually and on Behalf of All Others Similarly
Situated v. Fresh & Easy, LLC, et al., Adv. Proc. No.15-51897
(BLS)*

On November 12, 2015, Diana Chan (“Chan”) filed a putative class action complaint against the Debtor and non-debtor defendants Yucaipa and YFE (the “Chan Adversary”), alleging violations of the WARN Act, and its California counterpart, California Labor Code §§ 1400-1409. The Chan Adversary asserts claims and a putative class essentially identical to the Cote action.

On January 25, 2016, the Debtor filed a motion to compel arbitration of the claims asserted by Chan and to stay the Chan Adversary until completion of arbitration (this motion was duplicative of the motion to compel arbitration filed in the Cote Adversary, which was granted by the Court). On February 18, 2016, Chan opposed the motion [Adv. Proc. Docket No. 34] and the Debtor replied on February 16, 2016 [Adv. Proc. Docket No. 36]. On October 11, 2016, the Court denied the Chan Motion to Compel [Adv. Proc. Docket No. 70].

On October 24, 2016, the Debtor appealed the order denying the Chan Motion to Compel to the U.S. District Court for the District of Delaware [Adv. Proc. Docket No. 72] (the “Chan Appeal”). The Chan Appeal, Case No. 16-cv-00990 (GMS), is currently pending before the Honorable Gregory M. Sleet and was referred to mediation, as discussed below.

b) Mediation and Settlement of the WARN Adversary Proceedings

On January 10, 2017, the Debtor, the Committee, Yucaipa, YFE, Chan and Cote mediated the WARN Adversary Proceedings before Chief Magistrate Judge Mary Pat Thyng and reached a settlement of the WARN Litigation (memorialized in a signed Memorandum of Understanding), subject to the execution of a comprehensive settlement agreement and Bankruptcy Court approval and other material terms and conditions. Under the terms of the proposed settlement, the Debtor, Yucaipa and YFE (the “WARN Defendants”) will pay the total gross sum of \$2.2 million with allocation payment among the three entities to be determined by the three entities (and which includes all payments related to the settlement, including but not limited to attorneys’ fees and costs, payroll taxes, and enhancement payments) (the “WARN Settlement Fund”), as full and complete payment for resolution of the WARN Adversary Proceedings and two of the state court cases. The cost of administering the settlement is to be paid by the WARN Defendants. Among other things, the settlement requires dismissal of the WARN Adversary Proceedings, two state court actions, the WARN Proofs of Claim, and an unfair labor practice charge filed by Cote with the National Labor Relations Board. In addition, the finalization of the settlement is expressly contingent on the resolution of two additional cases (one filed in California state court against the WARN Defendants, and one filed in federal district court in California against Yucaipa and YFE only) asserting WARN Act Liability, at the WARN Defendants’ sole discretion and to their satisfaction or the WARN Defendants have the option of voiding the settlement in its entirety. Upon resolution of these matters, the parties expect to file a motion to approve the proposed settlement.

c) **Other Actions**

Darlene Lewis, on Behalf of Herself and All Others Similarly Situated v. Fresh & Easy, LLC and DOES 1 through 25, Adv. Proc. No.16-50030 (BLS)

On January 13, 2016, Darlene Lewis (“Lewis”) filed a motion for class certification (“Motion for Class Certification”) [Docket No. 466] and a motion for order applying Fed. R. Bankr. P. 7023, pursuant to Fed. R. Bankr. P. 9014(c), to Motion for Class Certification (the “Rule 23 Motion” and together with the Motion for Class Certification, the “Lewis Motions”) [Docket No. 467]. On February 11, 2016, the Debtor filed an opposition to the Lewis Motions [Docket No. 575].

On February 17, 2016, Lewis, on behalf of herself and all others similarly situated, filed a Class Action Complaint for Determination of Amount and Priority of Claims and Violations of Nevada and Arizona Compensation, Wages, and Hours Statutes, Adv. Proc. No. 16-50030 (BLS) (the “Lewis Adversary”), seeking unspecified damages and other relief based on the Debtor’s alleged failure to pay accrued and unused paid time off (“PTO”) to former employees in Arizona and Nevada.

At a March 3, 2016 hearing, the Court orally denied the Rule 23 Motion and also found that because Rule 23 did not apply, the Court need not rule on the Motion for Class Certification.

Following several months of arm’s length negotiations, the Debtor and Lewis’ counsel reached an agreement to settle all PTO claims filed by former employees of the Debtor in Arizona and Nevada as a class, and to seek certification of this class for settlement purposes. Under the settlement, all proofs of claim for unpaid PTO are resolved in exchange for priority claims in the amount of 33.3% of the value of each claim per the Debtor’s records, in addition to an unsecured claim of \$10,000 for Lewis as the Class Representative, attorneys’ fees in an amount equal to 50% of the amount paid to class members, and costs not to exceed \$3,500. The amount of priority claims is not to exceed \$50,000. On November 8, 2016, the Debtor and Lewis filed the Joint Motion for an Order to (I) Approve Settlement Agreement, (II) Grant Class Certification for Settlement Purposes Only, (III) Appoint Class Counsel and Class Representative, (IV) Approve the Form and Manner of Notice Procedures, (V) Schedule a Fairness Hearing, (VI) Finally Approve the Settlement After the Fairness Hearing, and (VII) Grant Related Relief [Docket No. 1336], seeking approval of class certification and a proposed class action settlement that (i) resolves all proofs of claim seeking accrued and unused PTO filed by former employees of the Debtor in Arizona and Nevada, and (ii) the Lewis Adversary Proceeding. On November 29, 2016, the Court entered an order granting the joint motion and scheduling the “Fairness Hearing” for March 29, 2017.

10. The FEFOS Master Lease Termination

Prior to the Petition Date, the Debtor and FEFOS entered into that certain Lease Agreement, dated April 28, 2014 (the “FEFOS Master Lease”), pursuant to which FEFOS leased to the Debtor 19 retail stores in Arizona, California and Nevada. As of the Petition Date, the Debtor operated 8 of the stores and the remaining 11 stores were closed and not operating. The

FEFOS Master Lease provides that “[e]ither party shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other party” (the “Termination Provision”). On December 4, 2015, the Debtor and FEFOS entered into a Stipulation and Agreed Order with Respect to Termination of the FEFOS Master Lease and Relief from the Automatic Stay, as Needed, to Implement Such Termination [Docket No. 315] (the “Stipulation and Agreed Order”), which was approved by the Court on December 7, 2015 [Docket No. 322]. The Stipulation and Agreed Order provided, *inter alia*, that the FEFOS Master Lease shall be terminated and of no further force and effect, upon or by either party, effective as of November 30, 2015, provided that FEFOS waived claims for CAM and rent that came due following execution of the agreement, and that the Debtor had until December 30, 2015 to complete the sale of its FF&E located at the Stores and the Debtor and/or their agents would be provided with access to the Stores to review, inspect and sell its FF&E.

11. The Produce and Kitchen Facilities

Pre-petition, the Debtor conducted certain food production operations at facilities owned by Fresh Foods including a produce facility, a kitchen, and prior to its sale to JBS, a meat facility (the “Food Production Facilities”). Similar to the Debtor’s arrangement with FEFOS regarding the FEFOS owned stores, the Debtor paid no rent to Fresh Foods, but was responsible for all operating expenses at these facilities. However, unlike the FEFOS owned stores: (i) certain equipment at these facilities was owned by Fresh Foods; and (ii) the arrangement with Fresh Foods for use of the Food Production Facilities and related equipment was never documented through a lease (or any other formal documentation). As the Debtor commenced winding down its operations, it completed food production at these facilities and shut down its operations in a responsible manner. As of January 15, 2016, the Debtor returned these facilities to Fresh Foods (except for the meat facility which is now owned by JBS) and from that date forward it was no longer responsible for expenses incurred at these facilities.

12. The Post-Petition Services Agreement

Prior to the Petition Date, on November 23, 2013, Tesco Stores Limited (“TSL”) and YFE entered into a Transitional Services Agreement and related amendments (the “TSA”) that provided for, among other things, the provision of certain transition services by TSL to affiliates of YFE in exchange for the payment of certain service charges by YFE. The Debtor was a recipient of the services provided by and through the TSA.

The pre-petition cost of the TSA was approximately \$500,000 per month. After significant negotiation and operating temporarily under a post-petition extension agreement, on or about February 19, 2016, the Debtor and TSL entered into the Second Post-Petition Services Agreement (the “Second Services Agreement”), which was approved by the Court on March 2, 2016 [Docket No. 654], that provided, among other things, that: (i) TSL would provide the Debtor certain services through March 31, 2016 at significantly reduced cost; (ii) the Debtor and its estate, successors and assigns released and discharged TSL and its affiliates from claims and causes of actions, and (iii) except as expressly provided in the Second Services Agreement, TSL and its affiliates would not seek recovery from the Debtor, its estate or its employees, officers and directors on account of any claims that it may have had against the Debtor; provided, however, that nothing contained in the Second Services Agreement prevented TSL or its

affiliates from filing proofs of claim in the Chapter 11 case with the understanding that such claims should not be considered allowed for purposes of voting on any chapter 11 plan or for distributions under such plan. TSL and its affiliates did not waive any claims against, or agree not to seek recoveries from, the Debtor's affiliates. Consequently, the Plan does not provide for any Distribution to TSL or its affiliates, and any vote cast on the Plan by TSL or its affiliates shall not be counted.

IV. THE GLOBAL SETTLEMENT

The Combined Plan and Disclosure Statement reflects and incorporates the negotiated settlement (the "Global Settlement"), as noted above, between the Debtor, the Committee, the YFE Parties and Yucaipa (each a "Party" and collectively, the "Settlement Parties"), which was reached following extensive and arm's length negotiations, including two separate mediation proceedings, between the Settlement Parties. The Global Settlement is memorialized in a Settlement and Release Agreement (the "Settlement Agreement"), attached hereto as **Exhibit A** in a redacted form, which is incorporated by reference and constitutes a material part of the Plan. In addition, this Combined Plan and Disclosure Statement constitutes a motion, pursuant to Bankruptcy Rule 9019, and sections 105 and 1123 of the Bankruptcy Code, to approve the Global Settlement and the Settlement Agreement.

The complete terms of the Global Settlement are included in the Settlement Agreement. To the extent there are any inconsistencies between the summary of the Settlement provided herein and the Settlement Agreement, the terms of the Settlement Agreement shall control. The salient terms of the Settlement Agreement are as follows:⁹

- The Settlement Agreement and releases contained therein are not effective unless and until the Court enters a Final Order (as defined in the Settlement Agreement).
- No later than fifteen (15) business days after the Committee provides YFE with written notice of the Settlement Effective Date (as defined in the Settlement Agreement), the YFE Parties (and/or their insurers) shall make payment in the total amount of \$21,500,000 in consideration of the Settlement Agreement and the Chapter 11 Individual Releases (the "Settlement Payment") by wire transfer to the Debtor.¹⁰
- The Plan shall provide that \$2,500,000 (the "Release Consideration") of the Settlement Payment shall be expressly earmarked solely for those general unsecured creditors who do not opt-out (the "Releasing Creditors") of the Chapter

⁹ Capitalized terms used in Article IV but not otherwise defined shall have the meanings set forth in the Settlement Agreement or the Combined Plan and Disclosure Statement, as applicable.

¹⁰ The proposed Settlement Payment, along with the value of claim releases to be provided by the YFE Parties, is subject to the following tiered contingency fee: (a) 10% of the amount of "Gross Recoveries" up to \$15 million; (b) 25% of the amount of "Gross Recoveries" from \$15 million to \$30 million; and (c) 33.3% of the amount of "Gross Recoveries" over \$30 million. See Docket Nos. 907 and 953.

11 Individual Releases provided in the Settlement Agreement and to be incorporated into the Plan, which Release Consideration shall be distributed on a Pro Rata basis to such Releasing Creditors.

- Upon the Debtor's receipt of the Settlement Payment, the Debtor, the Committee, and the Debtor's bankruptcy estate on behalf of themselves, and each of their predecessors, successors, affiliates, each and every member of the Committee, current and former members, partners, shareholders, officers, directors, managers, agents, employees, consultants, attorneys, and representatives, fully release and forever discharge the YFE Released Parties (as defined in the Settlement Agreement), from any and all claims, causes of action, damages, debts, liabilities, obligations, promises, and agreements, of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or derivative, that are related to the Debtor, the Committee, or the Bankruptcy Case, including, but not limited to, all claims asserted in or that could have been asserted in, and those that are related to, or contingent upon, the Adversary Proceeding (as defined in the Settlement Agreement) and any claims in any way related to the operation of the Debtor's business and related entities, including Fresh Foods and FEFOS, and any claims or assertions made by the Committee in correspondence to the YFE Released Parties or its insurers, including, but not limited to, that correspondence sent by Eric Madden of Reid Collins & Tsai LLP dated March 24, 2016, and April 8, 2016. For the absence of doubt, each and every member of the Committee agrees it shall not "opt-out" of the Agreement, and shall be bound by the release provision set forth in Section 7 of the Settlement Agreement.
- Upon the Debtor's receipt of the Settlement Payment and the Committee's dismissal with prejudice of the Adversary Proceeding, the YFE Releasing Parties, fully release and forever discharge the Debtor, the Committee, and the Debtor's bankruptcy estate, together with each of their predecessors, successors, affiliates, and current and former members, partners, shareholders, officers, directors, managers, agents, employees, attorneys, and representatives, from any and all claims, causes of action, damages, debts, liabilities, obligations, promises, and agreements, of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or derivative, related to the Debtor, the Committee, or the Bankruptcy Case, including, but not limited to, all claims asserted in or that could have been asserted in, and those that are related to, or contingent upon, the Adversary Proceeding and any claims in any way related to the operation of the Debtor's business and related entities, including Fresh Foods and FEFOS. The releases in this paragraph include, but are not limited to, the following:
 - a. Any claims in the Bankruptcy Case filed by or scheduled on behalf of any of the YFE Parties, including: (i) the nonpriority unsecured claim in the amount of \$89,462,027.00 (plus any accrued interest

or fees) scheduled on behalf of YFE; (ii) the nonpriority unsecured claim in the amount of \$9,415,096.00 (plus any accrued interest or fees) scheduled on behalf of Fresh Foods; (iii) the nonpriority unsecured claim in the amount of \$4,902,183.00 (plus any accrued interest or fees) scheduled on behalf of FEFOS; (iv) the priority unsecured claim in an unknown amount (plus any accrued interest or fees) scheduled on behalf of James W. Keyes; (v) the nonpriority unsecured claim in the amount of \$438,065.39 (plus any accrued interest or fees) scheduled on behalf of Fresh & Easy Campus Produce Cut Fruit, to the extent that such entity is owned or controlled by any of the YFE Parties; and (vi) the nonpriority unsecured claim in the amount of \$596,057.02 (plus any accrued interest or fees) scheduled on behalf of Fresh & Easy Kitchen-Kitchen SC, to the extent that such entity is owned or controlled by any of the YFE Parties;

- b. Any claims in the Bankruptcy Case filed by or scheduled on behalf of Yucaipa;
- c. Any claims arising from or relating to any fees or expenses incurred by the YFE Parties in connection with the Bankruptcy Case, including in connection with any debtor-in-possession financing for the Debtor (the "DIP Financing"), and including any legal fees incurred by Gibson, Dunn & Crutcher, LLP, and other counsel; provided that upon entry of the Approval Order, any obligations of the YFE Parties in connection with the DIP Financing shall be terminated;
- d. Any claims by any of the YFE Parties relating to their employment by the Debtor, including any claims for unpaid wages, severance, indemnity or expense reimbursement;
- e. Any claims or liability by the YFE Parties, including based on contribution or indemnity, arising from or relating to any of the following agreements: (i) the Secured Promissory Note dated November 25, 2013, and as subsequently amended and restated, made by Fresh Foods in favor of Tesco Treasury Services, PLC; (ii) the Guaranty dated November 25, 2013, and as subsequently reaffirmed, made by the Debtor to guarantee the obligations under the foregoing promissory note; and (iii) the Transitional Services Agreement dated November 13, 2013, and as subsequently amended and modified, entered into between YFE and Tesco Stores Limited;
- f. Any claims or liability by the YFE Parties, including based on contribution or indemnity, arising from or relating to any of the

following: (i) the Consulting Services Agreement dated November 25, 2013, entered into between YFE and FAEMF, LLC; (ii) any services provided by FAEMF, LLC to YFE or the Debtor; and (iii) any services provided by Yucaipa to YFE or the Debtor;

- g. Any claims or liability by the YFE Parties, including based on contribution or indemnity, arising from or relating to any of the following: (i) any guaranties of store leases entered into by YFE or the Debtor; and (ii) the Debtor's use of any property owned or leased by YFE, FEFOS or Fresh Foods;
 - h. Any claims arising from or relating to any of the accounts receivable listed in the schedule attached to the Settlement Agreement as Exhibit A;
 - i. Any claims arising from or relating to any of the deposits, tax payments, insurance refunds, letters of credit or retainers listed on the schedule attached to the Settlement Agreement as Exhibit B;
 - j. Any claims or liability, including based on contribution or indemnity, arising from or relating to the Trademark License Agreement dated April 3, 2014, entered into between Yucaipa and the Debtor; and
 - k. Any claims or liability by the YFE Parties, including based on contribution or indemnity, arising from or relating to any actual or alleged violations involving the Debtor of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* and/or California Labor Code § 1400 *et seq.*, subject to the Debtor's obligations under Paragraph 5 of the Settlement Agreement.
- Pursuant to the Settlement Agreement, the Committee is required to request that the Approval Order contain a provision (the "Bar Provision") barring any person or entity (a "Barred Person") from commencing, prosecuting, asserting, or maintaining certain claims as set forth in Section 1(d) of the Settlement Agreement.
 - The Settlement Agreement contains certain other confidential provisions that are to be filed under seal.

The Settlement is in the Best Interests of the Estate

The Settlement Agreement is subject to approval by the Court under Bankruptcy Rule 9019(a). Pursuant to Bankruptcy Rule 9019(a), the Bankruptcy Court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interests of the estate. *See In re Marvel Entm't Grp., Inc.*, 222

B.R. 243, 249 (D. Del 1998) (“[T]he ultimate inquiry [is] whether ‘the compromise is fair, reasonable, and in the interest of the estate.’”) (citation omitted); *Key3Media Grp., Inc. v. Pulver.com, Inc. (In re Key3Media Grp., Inc.)*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) (“the bankruptcy court has a duty to make an informed, independent judgment that the compromise is fair and equitable”).

Courts traditionally favor compromises to minimize the effects and costs of litigation and expedite administration of the debtor’s estate. See *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (“To minimize litigation and expedite the administration of a bankruptcy estate, [c]ompromises are favored in bankruptcy.”) (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993)); *In re Penn Central Transp. Co.*, 596 F.2d 1102, 1113 (3d Cir. 1979) (“The Court has recognized that ‘(i)n administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts.’”) (quoting *Protective Comm. for Indep. Stockholders of TMT Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)).

Approval of a proposed settlement is within the “sound discretion” of the bankruptcy court. See *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986). Bankruptcy courts maintain wide discretion to approve settlements under Bankruptcy Rule 9019. See *In re World Health Alternatives, Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (approving a settlement pursuant to Bankruptcy Rule 9019 between the creditors’ committee and the debtor’s DIP lender, finding the DIP lender’s carve-out of \$1.6 million from its lien for the exclusive benefit of the debtor’s unsecured creditors did not violate the Bankruptcy Code).

In considering the approval of a proposed settlement under Bankruptcy Rule 9019, the bankruptcy court should not substitute its judgment for that of the debtor. See *In re Neshaminy*, 62 B.R. at 803. Nor is the court required to conduct a mini-trial or rule on multiple questions of law or fact; instead, the court should analyze whether the proposed settlement falls below the lowest point in the range of reasonableness. See *In re World Health Alternatives, Inc.*, 344 B.R. at 296 (“[T]he court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.”) (internal citations and quotations omitted); *In re Key3Media Grp., Inc.*, 336 B.R. 93 (stating that the settlement need only be above “the lowest point in the range of reasonableness”) (citation omitted). See also *In re Sea Containers Ltd.*, 2008 WL 4296562, at *5 (Bankr. D. Del. Sept. 19, 2008); *Official Comm. of Unsecured Creditors v. CIT Grp./Bus. Credit Inc. (In re Jevic Holding Corp.)*, 787 F.3d 173, 180 (3d Cir. 2015); *Mangano v. Warriner (In re ID Liquidation One, LLC)*, 555 Fed. App’x 202, 205–07 (3d Cir. 2014); *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983).

The Third Circuit has enumerated the following four-factor test to determine whether a settlement should be approved: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of creditors.” *In re Martin*, 91 F.3d at 393; see also *Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006). Each of these four factors weighs in favor of approving the Settlement Agreement.

Absent the settlement, litigation of the Committee's claims will be a complex, lengthy and expensive process requiring costly expert analysis and testimony, extensive motion practice and a potentially long and expensive trial and possible appeals. The likelihood of success of such litigation, and the collection of any judgment, is uncertain. Consequently, distributions to creditors will be uncertain and delayed absent approval of the settlement.

The paramount interest of Debtor's creditors will be best served by the Settlement Agreement. The proposed settlement provides an immediate and substantial monetary recovery on the disputed claims. More specifically, the proposed settlement eliminates more than \$104 million in claims against the Debtor's estate by the YFE Parties, thereby reducing the aggregate amount of unsecured claims by approximately one-half and effectively doubling the projected distributions to other unsecured creditors, while simultaneously increasing cash for distribution by over \$21 million. The proposed settlement also allows the Plan Proponents to collaboratively bring the bankruptcy case to an orderly and efficient conclusion.

In summary, the Plan Proponents believe that approval of the Global Settlement is the best way to ensure a prompt resolution of the Chapter 11 Case, provides sufficient funds to consummate the Plan, allows for the wind down of the Debtor's estate, ensures that funds will be provided to the Liquidating Trust for the benefit of holders of Allowed Claims, and is in the best interests of creditors. Accordingly, the Plan Proponents believe that, under applicable standards, the Bankruptcy Court can and should approve the Global Settlement embodied in the Plan.

The Court Should Approve the Bar Provision

This Court has the authority to approve the Bar Provision pursuant to section 105(a) of the Bankruptcy Code. *See In re Tribune Co.*, 464 B.R. 126, 176 (Bankr. D. Del. 2011) ("Bankruptcy courts have authority to enter settlement bar orders."). A contribution and indemnity bar order is a material component of the Settlement Agreement. In fact, the Settlement Agreement expressly requires the Committee to seek approval of the Bar Provision. Contribution and indemnity bar orders facilitate settlement because "[d]efendants buy little peace through settlement unless they are assured that they will be protected against codefendants' efforts to shift their losses through cross-claims for indemnity, contribution, and other causes related to the underlying litigation." *Munford v. Munford, Inc. (In re Munford, Inc.)*, 97 F.3d 449, 455 (11th Cir. 1996) (alterations in original) (quotations omitted). In addition, the Bar Provision also serves the strong public policies in favor of settlement and the equitable apportionment of damages among tortfeasors. *See Johnson v. United Airlines*, 784 N.E.2d 812, 821 (Ill. 2003). Finally, the Bar Provision assists in preserving assets for the benefit of the Debtor's creditors because, without it, for example, (a) the YFE Parties may not have settled, or (b) the creditors' recoveries may be diluted by claims for indemnification and contribution asserted by the YFE Parties.

In consideration of all these factors, the Plan Proponents respectfully request that the Court approve the Settlement Agreement, including the Bar Provision, pursuant to Bankruptcy Rule 9019.

V.

TAX CONSEQUENCES OF THE PLAN

The confirmation and execution of the Plan may have tax consequences to Holders of Claims and Equity Interests. The Plan Proponents do not offer an opinion as to the federal, state, local or other tax consequences to Holders of Claims and Equity Interests as a result of the confirmation of the Combined Plan and Disclosure Statement.

EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT WITH SUCH HOLDER'S TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES OF THE PLAN. THIS COMBINED PLAN AND DISCLOSURE STATEMENT IS NOT INTENDED, AND SHOULD NOT BE CONSTRUED, AS LEGAL ADVICE TO ANY CREDITOR, INTEREST HOLDER OR OTHER PARTY IN INTEREST.

VI.

CERTAIN RISK FACTORS TO BE CONSIDERED

A. **Risk Factors to Be Considered**

The Plan and its implementation are subject to certain risks, including, but not limited to, the risk factors set forth below. Prior to voting on the Plan, each Holder of a Claim entitled to vote should carefully consider the risk factors described below, as well as all of the information contained in this Combined Plan and Disclosure Statement, including the Exhibits hereto, before deciding whether to vote to accept or reject the Plan.

These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation. No representations concerning or related to the Debtor, the Chapter 11 Case, or the Combined Plan and Disclosure Statement are authorized by the Court or the Bankruptcy Code, other than as set forth in this Combined Plan and Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Combined Plan and Disclosure Statement that are other than as contained herein, should not be relied upon by you in arriving at your decision.

1. **The Plan May Not Be Accepted**

There can be no assurance that the requisite acceptances to confirm the Plan will be obtained. Thus, while the Plan Proponents believe the Plan is confirmable under the standards set forth in section 1129 of the Bankruptcy Code, there is no guarantee that the Plan will be accepted by the requisite number of Classes entitled to vote on the Plan.

2. **The Plan May Not Be Confirmed**

Even if the Holders of Claims who are entitled to vote accept the Plan, the Court, which may exercise substantial discretion as a court of equity, may choose not to confirm the Combined Plan and Disclosure Statement. Section 1129 of the Bankruptcy Code requires, among other things, that the value of Distributions to dissenting Holders of Claims or Equity Interests may not be less than the value such Holders would receive if the Debtor were liquidated under chapter 7

of the Bankruptcy Code. Although the Plan Proponents believe the Plan meets such requirements, there can be no assurance the Court will reach the same conclusion.

3. **Distributions to Holders of Allowed Claims Under the Plan**

On the Effective Date, each Holder of an Allowed General Unsecured Claim will, by operation of the Combined Plan and Disclosure Statement, receive its Pro Rata share of the Liquidating Trust Interests. Liquidating Trust Interests will be reserved for Holders of Disputed General Unsecured Claims and issued by the Liquidating Trust to, and held by the Liquidating Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Claims. A substantial amount of time may elapse between the Effective Date and the receipt of Distributions because of the time required to achieve final resolution of Disputed Claims.

4. **Global Settlement May Not Be Approved**

There can be no assurance that the Global Settlement which is incorporated into the Plan, and provides for sufficient funds to consummate the Plan, will be approved by the Court. Any denial or modification of the terms of the proposed Global Settlement could endanger or materially delay the ultimate consummation of the Plan.

5. **Conditions Precedent to Consummation of the Plan**

The Combined Plan and Disclosure Statement provides for certain conditions that must be satisfied (or waived) prior to its confirmation and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. There can be no assurance that any or all of the conditions in the Combined Plan and Disclosure Statement will be satisfied (or waived). Any delay in effectiveness of the Plan could result in, among other things, increased Administrative Claims that could endanger the ultimate consummation of the Plan.

6. **Certain Tax Considerations**

As noted above, there are tax considerations, risks and uncertainties associated with consummation of the Plan. Each Holder of a Claim or Equity Interest is urged to consult with such Holder's tax advisors concerning the federal, state, local, foreign and other tax consequences of the Plan.

B. **Alternative Plan**

If the Plan is not confirmed, the Debtor, the Committee or any other party in interest could attempt to formulate a different plan. However, the additional costs, all of which would constitute Administrative Claims, may be so significant that one or more parties in interest could request that the Chapter 11 Case be converted to chapter 7. Accordingly, the Plan Proponents believe that the Plan enables creditors to realize the best return under the circumstances.

VII.
BEST INTERESTS AND FEASIBILITY

A. Best Interests Test and Liquidation Analysis

As described above, section 1129(a)(7) of the Bankruptcy Code requires that each Holder of an Impaired Claim or Equity Interest either: (i) accept the Plan; or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. Under the Plan, Classes 4, 5 and 6 are Impaired. Classes 5 and 6 will not receive or retain any property under either the Plan or in a chapter 7 liquidation.

To determine if the Plan is in the best interests of the Impaired Classes in the Plan, the present value of the distributions from the proceeds of the liquidation of the Debtor's assets and properties, after subtracting the amounts attributable to the foregoing claims, is then compared with the value of the property offered to each such class under the Plan. The Plan provides for the orderly liquidation of the Debtor's remaining assets in a manner similar to what would occur in a chapter 7 liquidation.

Because the majority of the Debtor's assets, apart from Causes of Action, have already been liquidated to Cash, the value of any Distributions if the Debtor's Chapter 11 Case was converted to a case under Chapter 7 of the Bankruptcy Code would be less than the value of Distributions under the Plan. This is because conversion of the Chapter 11 Case to a chapter 7 case would require the appointment of a chapter 7 trustee, and in turn, the chapter 7 trustee would likely retain new professionals. The "learning curve" that the trustee and new professionals would be faced with comes with potential additional costs to the Estate and with a delay compared to the timing of Distributions under the Plan (and prosecution of Causes of Action). This learning curve would apply to the Debtor's remaining wind down efforts, the Claims filed against the Debtor, and Causes of Action that remain to be pursued, which are both complex and represent substantial potential recoveries. In addition, a chapter 7 trustee would be entitled to statutory fees based on the Distributions to creditors of assets that were actually liquidated during the pendency of the Chapter 11 Case. Accordingly, a portion of the cash currently available for Distribution to Holders of Claims, including unsecured creditors, would instead be paid to the chapter 7 trustee. Finally, the distributions of Cash from the estate to creditors could be delayed for several years until the chapter 7 case was fully administered, whereas it is anticipated that the Liquidating Trustee will make initial Distributions to Holders of Allowed Claims as soon as practicable after the Effective Date followed by periodic interim distributions pending final disposition of the Liquidating Trust. The Debtor and the Committee believe that in a chapter 7 liquidation, it is likely the total net after tax liquidation proceeds would be less than the proceeds under the Plan and the present value of that distribution would be further reduced by the delay in the distribution.

As a result, the Plan Proponents believe that the Estate would have fewer funds to be distributed, and that such distributions may be delayed, in a hypothetical chapter 7 liquidation than if the Plan is confirmed, and therefore Holders of Claims in all Impaired Classes (other than potentially Class 5 and 6) will recover less in the hypothetical chapter 7 case. The determination of the hypothetical proceeds from the sale of assets in a chapter 7 liquidation is an

uncertain process involving numerous assumptions and therefore there can be no assurance of the proceeds likely to be distributed in such a process or the timing of distributions.

B. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successors to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan. As set forth herein, the Debtor commenced this Chapter 11 Case to allow for an efficient and orderly wind down process and the Combined Plan and Disclosure Statement provides for the liquidation of the Debtor for the benefit of Creditors and the transfer of the Debtor's remaining assets, after Distributions to or reserves for Holders of Allowed Secured, Administrative, and Priority Claims, to the Liquidating Trust for the benefit of Holders of Allowed General Unsecured Claims. The Debtor will not be conducting any business operations after the Effective Date.

As such, provided that the Plan is confirmed and consummated, the Estate will not be subject to future reorganization or liquidation. Accordingly, the Plan Proponents believe that the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

VIII.
SUMMARY OF DEBTOR'S ASSETS; SUMMARY OF TREATMENT OF CLAIMS AND ESTIMATED RECOVERIES

The following chart provides a summary of treatment of each Class of Claims (other than Administrative, PACA/PASA, WARN Act Liability, Priority Tax and DIP Facility Claims) and an estimate of the recoveries of each class. The treatment provided in this chart is for information purposes only and is qualified in its entirety by Articles XI and XII of the Plan.

Class	Estimated Allowed Claims¹¹	Treatment	Estimated Recovery to Holders of Allowed Claims¹²
Class 1: Wells Fargo Secured Claim [Class 1 Eliminated]	\$0	Unimpaired Not Entitled to Vote Deemed to Accept	100%
Class 2: Other Miscellaneous Secured Claims	\$0 - \$300,000 ¹³	Unimpaired Not Entitled to Vote Deemed to Accept	100%
Class 3: Priority Non-Tax Claims	\$50,000 - \$150,000	Unimpaired Not Entitled to Vote Deemed to Accept	100%
Class 4: ¹⁴ General Unsecured Claims	\$103 - 115 million ¹⁵	Impaired Entitled to Vote	14 - 26%
Class 4A: General Unsecured Claims			
Class 4B: General Unsecured Claims of Releasing Creditors			
Class 5: Subordinated Claims	\$0	Impaired Deemed to Reject Not Entitled to Vote	No Distribution

¹¹ These amounts represent estimated Allowed Claims, and do not represent amounts actually asserted by the creditors in proofs of claim or otherwise. The Debtor has not completed its analysis of Claims in the Chapter 11 Case and objections to such Claims have not been fully litigated. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.

¹² The estimated percentage recovery is based upon, among other things, an estimate of the Allowed Claims in the Chapter 11 Case. As set forth in footnote 11 above, the actual amount of Allowed Claims may be greater or lesser than estimated. Thus, the actual recoveries may be higher or lower than projected depending upon, among other things, the amounts and priorities of Claims that are actually Allowed in the Chapter 11 Case, the outcome of any litigation, including any causes of action that are being pursued, and the cash received from monetizing remaining assets.

¹³ This estimate does not include Claims that the Debtor anticipates will be satisfied by collateral held by Creditors.

¹⁴ The aggregate estimated Allowed Claims in Classes 4A and 4B is \$103-115 million; the aggregate estimated recovery of Classes 4A and 4B is 14-26%, and Classes 4A Class 4B are impaired and entitled to vote on the Plan. No breakdown between Classes 4A and 4B can be estimated until such Creditors submit Ballots indicating their opt-out elections. The aggregate estimated recovery percentage includes the Release Consideration. Holders of Claims in Class 4A who make an opt-out election will forego any Distribution from the \$2.5 million Release Consideration and, consequently, may receive less than the estimated recovery as a result of the allocation of the Release Consideration to Holders of Allowed Claims in Class 4B.

¹⁵ This estimate of General Unsecured Claims does not include any Claims asserted by Tesco, TSL or related entities. As noted in Article III, TSL has agreed not to seek recovery on its claims from the Debtor. No claims from the YFE Parties are included in this estimate.

Class 6: Equity Interests	\$0	Impaired Deemed to Reject Not Entitled to Vote	Cancelled -- No Distribution
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IX.

CONFIRMATION AND VOTING PROCEDURESA. **Confirmation Procedures**1. **Confirmation Hearing**

A hearing before the Honorable Brendan Linehan Shannon, Chief Judge, has been scheduled for **April 27, 2017 at 11:00 a.m. (prevailing Eastern Time)** at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801 to consider: (i) final approval of the Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code; and (ii) confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code (the "Confirmation Hearing"). The Confirmation Hearing may be adjourned from time to time by the Court without further notice, except for an announcement of such adjourned date made at the Confirmation Hearing and the filing of a notice of adjournment with the Court.

2. **Procedures for Objections**

Any objection to the final approval of the Disclosure Statement and confirmation of the Plan must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim held by the objector. Responses and objections, if any, to the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware; and (iii) be filed with the Court and served so as to **be actually received on or before 4:00 p.m. (prevailing Eastern Time) on April 17, 2017** by (a) the Debtor, Fresh & Easy LLC, Howard Hughes Center, 6080 Center Drive, 6th Floor, Los Angeles, CA 90045; Attn: Amir Agam, CRO (amir.agam@fticonsulting.com); (b) Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, DE 19801, Attn: Norman L. Pernick, Esq. (npernick@coleschotz.com); (c) special counsel to the Debtor, Young Conaway Stargatt and Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor, Esq. (mnestor@ycst.com); (d) counsel to the Committee, Fox Rothschild LLP, 1800 Century Park East, Suite 300, Los Angeles, CA 90067-1506, Attn: Mette H Kurth, Esq. (mkurth@foxrothschild.com) and Fox Rothschild, LLP, 919 North Market Street, Suite 300, P.O. Box 2323, Wilmington, DE 19899-2323, Attn: L. John Bird, Esq. (jbird@foxrothschild.com); (e) counsel to Wells Fargo, Riemer & Braunstein, LLP, Three Center Plaza, Boston, MA 02108, Attn: Donald E. Rothman, Esq. (drothman@riemerlaw.com) and Womble Carlyle Sandridge & Rice PLLC, 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801, Attn: Morgan L. Patterson, Esq. (mpatterson@wcsr.com); (f) counsel to YFE and FEFOS, Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071-3197, Attn: Robert A. Klyman, Esq. (rklyman@gibsondunn.com) and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Robert J. Stearn, Jr., Esq. (stearn@rlf.com); and (g) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Hannah Mufson McCollum, Esq.

(Hannah.McCollum@usdoj.gov). Unless an objection is timely filed and served, it may not be considered by the Court.

3. **Requirements for Confirmation**

The Court will confirm the Plan only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among the requirements for confirmation in this Chapter 11 Case is that the Plan be: (i) accepted by all Impaired Classes of Claims and Equity Interests or, if rejected by an Impaired Class, that the Plan “does not discriminate unfairly” against and is “fair and equitable” with respect to such Class; and (ii) feasible. The Court must also find that:

- a. the Plan has classified Claims and Equity Interests in a permissible manner;
- b. the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code; and
- c. the Plan has been proposed in good faith.

4. **Classification of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code requires the Plan place a Claim or Equity Interest in a particular Class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests in such Class. The Plan creates separate Classes to deal respectively with secured claims, unsecured claims, and equity interests. The Debtor believes that the Plan’s classifications place substantially similar Claims or Equity Interests in the same Class, and thus, meets the requirements of section 1122 of the Bankruptcy Code.

5. **Impaired Claims or Equity Interests**

Pursuant to section 1126 of the Bankruptcy Code, only the Holders of Claims in Classes “Impaired” by the Plan and receiving a payment or Distribution under the Plan may vote on the Plan. Pursuant to section 1124 of the Bankruptcy Code, a Class of Claims may be “Impaired” if the Plan alters the legal, equitable or contractual rights of the Holders of such Claims or Equity Interests treated in such Class. The Holders of Claims not Impaired by the Plan are deemed to accept the Plan and do not have the right to vote on the Plan. The Holders of Claims or Equity Interests in any Class which will not receive any payment or Distribution or retain any property pursuant to the Plan are deemed to reject the Plan and do not have the right to vote.

6. **Eligibility to Vote on the Plan**

Unless otherwise ordered by the Court, only Holders of Claims in Class 4 may vote on the Plan. In order to vote on the Plan, you must hold a Claim in Class 4 and have timely filed a proof of Claim or have a Claim that is identified on the Schedules that is not listed as disputed, unliquidated, contingent or as zero or unknown in amount, or be the Holder of a Claim that is Allowed or has been temporarily Allowed for voting purposes only under Bankruptcy Rule 3018(a).

7. **Solicitation Notice**

All Holders of Claims in Class 4 will receive, among other documents: (i) Notice of (A) Interim Approval of the Disclosure Statement and (B) Combined Hearing to Consider Final Approval of the Disclosure Statement and Confirmation of the Joint Chapter 11 Plan of Liquidation for Fresh & Easy, LLC, and the Objection Deadline Related Thereto (the "Confirmation Hearing Notice"); (ii) a form of Ballot with an opt-out election provision in order to exercise the right to opt-out of the releases set forth in Article XVI of the Plan; and (iii) a copy of the Combined Plan and Disclosure Statement.

All other creditors and parties in interest are not entitled to vote on the Plan and will only receive: (i) the Confirmation Hearing Notice, and (ii) a non-voting notice containing (a) the website address, <http://dm.epiq11.com/fre>, where parties in interest may download electronic copies of the Combined Plan and Disclosure Statement and other pleadings related to the Chapter 11 Case, (b) the email address, tabulation@epiqsystems.com, at which parties in interest may request copies of the Combined Plan and Disclosure Statement, Ballot, and related documents; and (c) a telephone number, 646-282-2500, through which parties in interest can request paper copies of the Combined Plan and Disclosure Statement, Ballot, and other pleadings.

8. **Procedure/Voting Deadline and Opt-Out Election Deadline**

In order for your Ballot (including your opt-out election) to count, you must: (i) complete, date and properly execute the Ballot, and (ii) properly deliver the Ballot to the Voting Agent by either mail, messenger or overnight courier at the following address: if by first class mail, Fresh & Easy, LLC – Ballot Processing, c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4422, Beaverton, OR 97076-4422; and if by hand delivery or overnight courier, Fresh & Easy, LLC – Ballot Processing, c/o Epiq Bankruptcy Solutions, LLC, 10300 SW Allen Blvd, Beaverton, OR 97005.

Holders of Claims in Class 4 who do not want to provide the releases set forth in Article XVI herein must affirmatively indicate so by checking the "opt-out" box on the Ballot. Holders of Claims in Class 4 who make an "opt-out" election will forego any Distribution from the \$2.5 million Release Consideration.

The Voting Agent must ACTUALLY RECEIVE Ballots on or before **April 17, 2017 at 4:00 p.m. (Pacific Time)** (the "Voting Deadline" and "Opt-Out Election Deadline," respectively). Except as otherwise ordered by the Court, you may not change your vote or election once a Ballot is submitted to the Voting Agent.

Any Ballot that is timely received from a party entitled to vote, that contains sufficient information to permit the identification of the party casting the Ballot, and that is cast as an acceptance or rejection of the Plan will be counted and will be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan; provided, however, that the following Ballots will not be counted or considered for any purpose in determining whether the Plan has been accepted or rejected: (a) any Ballot received after the Voting Deadline (unless extended by the Plan Proponents); (b) any Ballot that is illegible or contains insufficient information to permit the identification of the claimant; (c) any Ballot cast by a person or entity that does not hold a

claim in a class that is entitled to vote to accept or reject the Plan; (d) any Ballot cast for a claim scheduled as contingent, unliquidated or disputed or as zero or unknown in amount and for which no timely Rule 3018(a) Motion has been filed; (e) any Ballot that indicates neither an acceptance nor a rejection, or indicates both an acceptance and rejection, of the Plan; (f) any Ballot that casts part of its vote in the same class to accept the Plan and part to reject the Plan; (g) any form of Ballot other than the official form sent by the Voting Agent, or a copy thereof; (h) any Ballot received that the Voting Agent cannot match to an existing database record; (i) any Ballot that does not contain an original signature; (j) any Ballot that is submitted by facsimile, email or by other electronic means; or (k) any Ballot sent only to the Chief Restructuring Officer or the Plan Proponents or their respective professionals and not the Voting Agent.

9. **Acceptance of the Plan**

As a Creditor, your acceptance of the Plan is important. In order for the Plan to be accepted by an Impaired Class of Claims, a majority in number (i.e., more than half) and two-thirds in dollar amount of the Claims voting (of each Impaired Class of Claims) must vote to accept the Plan. At least one impaired Class of Creditors, excluding the votes of insiders, must actually vote to accept the Plan. The Plan Proponents urge that you vote to accept the Plan.

YOU ARE URGED TO COMPLETE, DATE, SIGN AND PROMPTLY RETURN YOUR BALLOT. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND TO LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.

10. **Elimination of Vacant Class**

Any Class or sub-Class of Claims or Equity Interests that does not contain, as of the date of commencement of the Confirmation Hearing, at least one Holder of an Allowed Claim or Equity Interest, or at least one Holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Combined Plan and Disclosure Statement for all purposes, including for purposes of: (i) voting on the acceptance or rejection of the Plan; and (ii) determining acceptance or rejection of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

X.

TREATMENT OF UNCLASSIFIED CLAIMS

A. **Supplemental Administrative Expense Bar Date**

Requests for payment of Administrative Claims (other than Professional Fee Claims and 503(b)(9) Claims) against the Debtor that arose, accrued or otherwise became due and payable at any time subsequent to December 31, 2015 but on or before the Effective Date (the "Supplemental Administrative Claims Period") must be filed with the Court and served on the Debtor or Liquidating Trustee, as applicable, no later than the Supplemental Administrative Claims Bar Date (e.g., the thirtieth day following the Effective Date). Holders of Administrative Claims that arose, accrued or otherwise become due during the Supplemental Administrative Claims Period that do not file requests for the allowance and payment thereof on or before the Supplemental Administrative Claims Bar Date shall forever be barred from asserting such

Administrative Claims against the Debtor or its Estate. Unless the Debtor or the Liquidating Trust, as applicable, or any other party in interest objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Debtor or the Liquidating Trust, as applicable, or any other party in interest objects to an Administrative Claim, and the Administrative Claim is not otherwise resolved, the Court shall determine the Allowed amount of such Administrative Claim.

B. Administrative Claims

On or as soon as reasonably practicable after the later of: (i) the Distribution Date; or (ii) the date such Administrative Claim becomes an Allowed Administrative Claim, the Holder of an Allowed Administrative Claim (other than a Professional Fee Claim) will receive, in full satisfaction of such Allowed Administrative Claim: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim; or (b) such other treatment as to which such Holder and the Plan Proponents or the Liquidating Trustee, as applicable, have agreed upon in writing.

C. PACA/PASA Claims

All Allowed PACA/PASA Claims have been satisfied in full in cash in accordance with the procedures set forth in the PACA/PASA/503(b)(9) Bar Date Order and, in certain instances, by separate orders of this Court, and/or the consent order entered between the Debtor and the USDA. All requests for payment of PACA/PASA Claims that were not filed by the PACA/PASA Bar Date in accordance with the PACA/PASA procedures set forth in the PACA/PASA/503(b)(9) Bar Date Order shall be denied, barred, discharged and enjoined as untimely as established by the PACA/PASA/503(b)(9) Bar Date Order. Further, any claim or cause of action challenging the PACA/PASA/503(b)(9) Bar Date Order and the PACA/PASA procedures contained therein, including the resolution of such claims, and the Debtor's payment of PACA/PASA Claims, is hereby barred and enjoined. Any remaining funds in the PACA/PASA Escrow as of the Effective Date shall be released and returned to the Debtor's estate.

D. WARN Act Liability

For the purpose of satisfying Article XIV hereof, the WARN Reserve shall be established on account of any and all WARN Act Liability. The WARN Reserve shall be used to satisfy WARN Act Liability, including the contemplated settlement discussed in Article III.D.9 hereof. The establishment of a WARN Reserve shall be a reserve for potential distribution purposes only. The establishment of the WARN Reserve shall not be construed in any manner to determine, or have any affect whatsoever on, the validity, priority or amount of the asserted WARN Act Liability or claims asserted in the WARN Litigation and all of the parties' rights with respect thereto are expressly reserved. Notwithstanding the foregoing, the \$4 million WARN Reserve is an agreed upon cap on the amount of all WARN Liability. The establishment of the WARN Reserve shall be without prejudice to any and all defenses, counterclaims, rights, claims and interests that the Debtor may have with respect to any asserted WARN Act Liability under applicable bankruptcy and non-bankruptcy law.

E. Priority Tax Claims

On or as soon as reasonably practicable after the later of: (i) the Distribution Date; or (ii) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, the Holder of an Allowed Priority Tax Claim will receive, in full satisfaction of such Allowed Priority Tax Claim: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim; or (b) such other treatment as to which such Holder and the Plan Proponents or the Liquidating Trustee, as applicable, have agreed upon in writing.

F. DIP Facility Claims

On March 31, 2017, the Court entered the Final Order (I) Authorizing Debtor In Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364, (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. § 364; and (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Credit Parties and Modifying Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 [Docket No. 2045] (the “Final Order”). In accordance with the terms of the Final Order, the DIP Financing Documents and DIP Credit Agreement were immediately terminated, except as otherwise provided in the Final Order.

In addition, the Final Order, provided, among other things, that upon expiration of a Prepetition L/C (as defined in the Final Order) that had not been drawn by a beneficiary of such Prepetition L/C, any cash collateral securing such obligation shall be returned to the Debtor within five (5) days of entry of the Final Order. Further, if a Prepetition L/C had been drawn as of the date of the Final Order, then any excess collateral held by the Prepetition Agent on behalf of such L/C shall be returned to the Debtor within five (5) days of entry of the Final Order.

G. Payment of Statutory Fees

All fees payable pursuant to section 1930 of title 28 of the United States Code, to the extent unpaid through the Effective Date, shall be paid in Cash within seven (7) Business Days after the Effective Date. From and after the Confirmation Date through the closing of the Chapter 11 Case, all fees payable pursuant to section 1930 of title 28 of the United States Code, plus any interest under 37 U.S.C. § 3717, shall be paid by the Debtor (if prior to the Effective Date) or the Liquidating Trustee (if after the Effective Date).

H. Professional Fee Claims

1. Final Fee Applications

All final requests for payment of a Professional Fee Claim (the “Final Fee Applications”) must be filed no later than forty-five (45) days after the Effective Date; provided, however, that (i) any professional who may receive compensation or reimbursement of expenses pursuant to the OCP Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Court review or approval, pursuant to the OCP Order; and (2) pursuant to the FTI Order, Amir Agam, as CRO, and FTI, shall not be required to File a Final Fee Application unless seeking success fees, transaction fees or other

back-end fees. Objections, if any, to Final Fee Applications of such Professionals must be filed and served on the Liquidating Trustee, the requesting Professional, and the UST no later than twenty (20) days from the date on which each such Final Fee Application is served and filed. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Court, the Allowed amounts of such Professional Fee Claims will be determined by the Court.

2. **Substantial Contribution Compensation and Expenses Bar Date**

Any Person or Entity that wishes to make a Substantial Contribution Claim based on facts or circumstances arising after the Petition Date must File an application with the Clerk of the Court, on or before the Supplemental Administrative Claims Bar Date, and serve such application on the Debtor or the Liquidating Trust, as applicable, and the UST and as otherwise required by the Court and the Bankruptcy Code, or be forever barred from seeking such substantial contribution claim. Objections, if any, to a Substantial Contribution Claim must be filed no later than the Administrative Claims Objection Deadline, unless otherwise extended by Order of the Court.

XI.

CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

Claims, other than Administrative Claims, Priority Tax Claims, and DIP Lender Claims are classified for all purposes, including voting, confirmation and distribution pursuant to the Combined Plan and Disclosure Statement, as follows:

Class	Type	Treatment	Voting Status
1	Wells Fargo Secured Claim [Class 1 Eliminated]	Unimpaired	Not Entitled to Vote Deemed to Accept
2	Other Miscellaneous Secured Claims	Unimpaired	Not Entitled to Vote Deemed to Accept
3	Priority Non-Tax Claims	Unimpaired	Not Entitled to Vote Deemed to Accept
4A	General Unsecured Claims	Impaired	Entitled to Vote
4B	General Unsecured Claims of Releasing Creditors	Impaired	Entitled to Vote
5	Subordinated Claims	Impaired	Deemed to Reject Not Entitled to Vote
6	Equity Interests	Impaired	Deemed to Reject Not Entitled to Vote

XII.
TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Treatment of Claims

1. Class 1 - Wells Fargo Secured Claim

a) Classification

Class 1 consists of the Wells Fargo Secured Claim.

b) Impairment and Voting

Class 1 is Unimpaired by the Plan. The Holder of a Class 1 Wells Fargo Secured Claim is deemed to have accepted the Plan, and thus is not entitled to vote to accept or reject the Plan.

c) Treatment

Pursuant to the terms of the Final Order (I) Authorizing Debtor In Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363, and 364, (II) Granting Liens and Superpriority Claims to Post-Petition Lenders Pursuant to 11 U.S.C. § 364; and (III) Authorizing the Use of Cash Collateral and Providing Adequate Protection to Prepetition Credit Parties and Modifying Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364 [Docket No. 2045], entered March 31, 2017, the DIP Financing Documents and DIP Credit Agreement were terminated. Class 1 is eliminated.

2. Class 2 - Other Miscellaneous Secured Claims

a) Classification

Class 2 consists of all Other Miscellaneous Secured Claims.

b) Impairment and Voting

Class 2 is Unimpaired by the Plan. Holders of a Class 2 Other Miscellaneous Secured Claims are deemed to have accepted the Plan, and thus are not entitled to vote to accept or reject the Plan.

c) Treatment

On or as soon as reasonably practicable after the later of: (i) the Distribution Date; or (ii) the date a Class 2 Other Miscellaneous Secured Claim becomes an Allowed Secured Claim, at the option of the Debtor or the Liquidating Trustee, as applicable, the Holder of such Class 2 Other Miscellaneous Secured Claim will receive, in full satisfaction of such Allowed Secured Claim: (i) Cash from the Debtor equal to the value of such Secured Claim; (ii) a return of the Holder's Collateral securing the Secured Claim and payment of any interest required under section 506(c) of the Bankruptcy Code; (iii) such other treatment rendering such Claim Unimpaired; or (iv) such other treatment as to which such Holder and the Plan Proponents or the

Liquidating Trustee, as applicable, have agreed upon in writing. Each Miscellaneous Secured Claim receiving treatment under this provision shall be deemed to be in a separate Class for classification, Voting and Distribution purposes.

3. **Class 3 – Priority Non-Tax Claims**

a) **Classification**

Class 3 consists of Priority Non-Tax Claims.

b) **Impairment and Voting**

Class 3 is Unimpaired by the Plan. Holders of a Class 3 Priority Non-Tax Claim are deemed to have accepted the Plan, and thus are not entitled to vote to accept or reject the Plan.

c) **Treatment**

Except to the extent that a Holder of an Allowed Priority Non-Tax Claim has been paid by the Debtor before the Distribution Date or agrees to a less favorable treatment, as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) thirty (30) days after such date that the Claim becomes an Allowed Priority Non-Tax Claim, each Allowed Priority Non-Tax Claim will receive, in full satisfaction, discharge, exchange and release of such Allowed Priority Non-Tax Claim, Cash equal to the full amount of the Allowed Priority Non-Tax Claim.

4. **Class 4 – General Unsecured Claims**

a) **Classification**

Class 4 consists of General Unsecured Claims.

b) **Impairment and Voting**

Class 4 is Impaired. Holders of Allowed General Unsecured Claims in Class 4 are entitled to vote to accept or reject the Plan.

c) **Treatment**

Class 4A - General Unsecured Claims: On the Effective Date, each Holder of an Allowed General Unsecured Claim in **Class 4A**, who elects to opt-out of the Consensual Third Party Releases set forth in Article XVI.A.2 herein, and therefore does not grant the Consensual Third Party Releases, including the Chapter 11 Individual Releases, will receive, on account of such Allowed General Unsecured Claim, its Pro Rata share of the Liquidating Trust Interests.

Class 4B - General Unsecured Claims of Releasing Creditors: On the Effective Date, each Holder of an Allowed General Unsecured Claim in **Class 4B**, who elects **not** to opt-out of the Consensual Third Party Releases set forth in Article XVI.A.2 herein, and therefore consents to the Consensual Third Party Releases, including the Chapter 11 Individual Releases, will

receive, on account of such Allowed General Unsecured Claim, its Pro Rata share of the Liquidating Trust Interests, **plus** its Pro Rata share of the Release Consideration.

5. **Class 5 – Subordinated Claims**

a) **Classification**

Class 5 consists of all Subordinated Claims.

b) **Impairment and Voting**

Class 5 is Impaired. Because Holders of Subordinated Claims will receive no Distribution under the Plan, Class 5 shall be deemed to have voted to reject the Plan.

c) **Treatment**

On the Effective Date, Subordinated Claims shall not receive or retain any Distribution or property on account of such Subordinated Claims. Holders of Class 5 Claims shall receive no Distribution under the Plan.

6. **Class 6 – Equity Interests**

a) **Classification**

Class 6 consists of Equity Interests.

b) **Impairment and Voting**

Class 6 is Impaired. Because Holders of Equity Interests will receive no Distribution under the Plan, Class 6 shall be deemed to have rejected the Plan.

c) **Treatment**

On the Effective Date, all Equity Interests shall be deemed without monetary value as a result of the insolvency of the Debtor, and all Equity Interests will be cancelled, annulled and extinguished without any further action by the Debtor, the Liquidating Trustee or any other entity, and each Holder thereof shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such Equity Interests.

B. Modification of Treatment of Claims and Equity Interests

The Plan Proponents reserve the right to modify the treatment of any Allowed Claim or Equity Interest in any manner adverse only to the Holder of such Claim or Equity Interest at any time after the Effective Date upon the consent of the Holder of the Claim or Equity Interest whose Allowed Claim or Equity Interest, as the case be, is being adversely affected.

C. Cramdown and No Unfair Discrimination

In the event that any impaired Class of Claims or Equity Interests rejects the Plan or is deemed to have rejected the Plan, the Debtor hereby requests, without any delay in the occurrence of the Confirmation Hearing or Effective Date, that the Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code with respect to such non-accepting Class, in which case the Plan shall constitute a motion for such relief.

XIII.

PROVISIONS REGARDING THE LIQUIDATING TRUST

A. Establishment and Administration of the Liquidating Trust

1. On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of, among other things, (i) investigating and, if appropriate, pursuing Liquidating Trust Claims; (ii) administering and pursuing the Liquidating Trust Assets; (iii) resolving all Disputed Claims and any Claim objections pending as of the Effective Date; (iv) prosecuting any objections to Claims that the Liquidating Trustee deems appropriate and resolving such objections; (v) making Distributions from the Liquidating Trust to Holders of Allowed Claims as provided for in the Plan and/or the Liquidating Trust Agreement; (vi) exercising such other powers as necessary or prudent to carry out the provisions of the Plan and the Liquidating Trust Agreement; and (vii) taking such other actions as may be necessary or appropriate to effectuate the Plan and the Liquidating Trust Agreement.

2. Upon execution of the Liquidating Trust Agreement, the Liquidating Trustee shall be authorized to take all steps necessary to complete the formation of the Liquidating Trust. The Liquidating Trust shall be administered by the Liquidating Trustee in accordance with the Liquidating Trust Agreement.

3. It is intended that the Liquidating Trust be classified for federal income tax purposes as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4 and as a "grantor trust" within the meaning of Sections 671 through 679 of the Internal Revenue Code. In furtherance of this objective, the Liquidating Trustee shall, in its business judgment, make continuing best efforts not to unduly prolong the duration of the Liquidating Trust. All Liquidating Trust Assets held by the Liquidating Trust on the Effective Date shall be deemed for federal income tax purposes to have been distributed by the Debtor on a Pro Rata basis to Holders of Allowed General Unsecured Claims and then contributed by such Holders to the Liquidating Trust in exchange for the Liquidating Trust Interests. All Holders of Allowed General Unsecured Claims have agreed to use the valuation of the Liquidating Trust Assets transferred to the Liquidating Trust as established by the Liquidating Trustee for all federal income tax purposes. The beneficiaries under the Liquidating Trust shall be treated as the deemed owners of the Liquidating Trust. The Liquidating Trust shall be responsible for filing information on behalf of the Liquidating Trust as grantor trust pursuant to Treasury Regulation Section 1.671-4(a).

B. Assets of the Liquidating Trust

On the Effective Date, or as soon as reasonably practicable thereafter, the Debtor shall transfer and assign to the Liquidating Trust all of its right, title and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidating Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the Holders of Liquidating Trust Interests as set forth in the Plan and the expenses of the Liquidating Trust as set forth herein and in the Liquidating Trust Agreement. Thereupon, the Debtor shall not have any interest in or with respect to the Liquidating Trust Assets.

C. Other Funds to be Transferred to the Liquidating Trust

Pursuant to Article XIII of the Combined Plan and Disclosure Statement, on or before the Effective Date, the Debtor shall transfer to the Liquidating Trust Cash in the amount of the Administrative, Priority and Secured Claims Estimate, which Cash shall be used by the Liquidating Trustee to fund the Administrative Claims Reserve.

Pursuant to Article XIII of the Combined Plan and Disclosure Statement, on the Effective Date, the Debtor shall transfer to the Liquidating Trust Cash remaining in the WARN Reserve, which Cash shall be used by the Liquidating Trust to satisfy any and all remaining WARN Act Liability.

D. Rights and Powers of the Liquidating Trust and the Liquidating Trustee

1. The Liquidating Trustee shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code and shall have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Bankruptcy Rule 2004, and the right to: (i) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidating Trust Agreement; (ii) prosecute, settle, abandon or compromise any Liquidating Trust Claims; (iii) make Distributions contemplated by the Plan and the Liquidating Trust Agreement; (iv) establish and administer any necessary reserves that may be required, including the Disputed Claims Reserve and the Administrative Claims Reserve; (v) object to Disputed Claims and, without Court approval, settle, compromise, withdraw or resolve in any manner such objections; and (vi) employ and compensate professionals (including professionals previously retained by the Debtor and/or the Committee), provided, however, that any such compensation shall be made only out of the Liquidating Trust Assets and Liquidating Trust Proceeds. In addition, the Liquidating Trustee is authorized and empowered, and shall be responsible for (i) terminating the Fresh & Easy 401(k), including, but not limited to, filing all applicable forms required by the IRS, ERISA, the 401(k) and/or applicable nonbankruptcy law, and providing all applicable notices to plan participants; (ii) filing all federal, state and local tax returns on behalf of the Debtor; (iii) cooperating with the purchasers of liquor licenses (and the designated escrow holder) to whom the Debtor sold, assigned, transferred or conveyed its rights, title and interests in and to certain liquor licenses,

for the transfer of said liquor license; and (iv) taking all other actions required under the Plan to complete the liquidation, dissolution and wind-up of the Debtor.

2. The Liquidating Trustee has full authority to take any steps necessary to administer the Liquidating Trust Agreement, including without limitation, the duty and obligation to liquidate Liquidating Trust Assets, to make Distributions therefrom in accordance with the provisions of the Plan and to pursue, settle or abandon any Liquidating Trust Claims, all in accordance with the Liquidating Trust Agreement.

3. Except as otherwise set forth in this Combined Plan and Disclosure Statement, and any order of the Bankruptcy Court, the Liquidating Trust shall be the successor-in-interest to the Debtor with respect to all Trust Assets, including all Causes of Action that were or could have been commenced by the Debtor or Committee prior to the Effective Date, and the Liquidating Trustee shall be deemed substituted as the party in any such pending action.

E. Liquidating Trust Interests

1. On the Effective Date, each Holder of an Allowed General Unsecured Claim shall, by operation of the Plan, receive its Pro Rata share of the Liquidating Trust Interests. Liquidating Trust Interests shall be reserved for Holders of Disputed General Unsecured Claims and issued by the Liquidating Trust to, and held by the Liquidating Trustee in, the Disputed Claims Reserve pending allowance or disallowance of such Claims. No other entity shall have any interest, legal, beneficial or otherwise, in the Liquidating Trust Assets upon the assignment and transfer of such assets to the Liquidating Trust.

2. As set forth in the Liquidating Trust Agreement, Distributions from the Liquidating Trust on account of Liquidating Trust Interests shall be made from the Liquidating Trust Assets and Liquidating Trust Proceeds after paying, reserving against or satisfying, among other things, the operating and administrative expenses of the Liquidating Trust, including but not limited to all costs, expenses and obligations incurred by the Liquidating Trustee (or professionals who may be employed by the Liquidating Trustee in administering the Liquidating Trust) in carrying out their responsibilities under the Liquidating Trust Agreement, or in any manner connected, incidental or related thereto.

3. The Liquidating Trust Interests shall be uncertificated and shall be nontransferable except upon death of the Holder or by operation of law. Holders of Liquidating Trust Interests, in such capacity, shall have no voting rights with respect to such interests. The Liquidating Trust shall have a term of five (5) years from the Effective Date, without prejudice to the rights of the Liquidating Trust Committee to authorize the Liquidating Trustee to extend such term conditioned upon the Liquidating Trust not becoming subject to the Securities Exchange Act of 1934 (as now in effect or hereafter amended) (the "Liquidating Trust's Termination Deadline").

F. Appointment of a Liquidating Trustee

1. The initial Liquidating Trustee shall be Peter Kravitz of Province, Inc. or such other person as mutually acceptable to the Committee and Debtor. The appointment of the Liquidating Trustee shall be approved in the Confirmation Order, and such appointment shall be

as of the Effective Date. The Liquidating Trustee shall have and perform all of the duties, responsibilities, rights and obligations set forth in the Plan and Liquidating Trust Agreement.

2. The Liquidating Trustee shall not be obligated to obtain a bond but may do so, in his sole discretion, in which case the expense incurred by such bonding shall be paid by the Liquidating Trust.

3. The Liquidating Trustee and the members of the Liquidating Trust Committee and their professionals shall be exculpated and indemnified pursuant to and in accordance with the terms of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement.

G. Liquidating Trust Committee

1. Creation of Liquidating Trust Committee and Procedures Related Thereto

The Liquidating Trust Committee shall consist of not less than two (2) members, which shall be appointed by the Committee. The Debtor or the Committee shall File a notice on a date that is not less than ten (10) days prior to the Confirmation Hearing designating the Persons or Entities that have been selected to serve on the Liquidating Trust Committee. Each member of the Liquidating Trust Committee shall be entitled to vote on all matters in accordance with the terms of the Liquidating Trust Agreement. Members of the Liquidating Trust Committee shall receive a flat fee of \$2,500 as compensation, and shall be entitled to reimbursement of reasonable expenses.

2. Standing of the Liquidating Trust Committee

The Liquidating Trust Committee shall have independent standing to appear and be heard in the Court as to any matter relating to the Plan, the Liquidating Trust Agreement or the Estate, including any matter as to which the Court has retained jurisdiction pursuant to Article XI of the Plan.

3. Function and Duration of the Liquidating Trust Committee

The Liquidating Trust Committee shall have the rights and responsibilities set forth in the Plan and the Liquidating Trust Agreement, including instructing and supervising the Liquidating Trustee with respect to its responsibilities under the Plan and the Liquidating Trust Agreement. The Liquidating Trust Committee shall remain in existence until such time as the final Distributions under the Liquidating Trust Agreement have been made, as set forth more fully in the Liquidating Trust Agreement.

4. Indemnification of Liquidating Trustee and Liquidating Trust Committee

The Indemnified Persons shall be held harmless and shall not be liable for actions taken or omitted in their capacity as, or on behalf of, the Liquidating Trust, Liquidating Trust Committee or Liquidating Trustee (as applicable), except those acts that are determined by Final

Order of the Court to have arisen out of their own intentional fraud, willful misconduct or gross negligence. Each Indemnified Person shall be entitled to be indemnified, held harmless and reimbursed for fees and expenses including, without limitation, reasonable attorney's fees, which such Persons and Entities may incur or may become subject to or in connection with any action, suit, proceeding or investigation that is brought or threatened against such Persons or Entities in respect of that Person's or Entity's actions or inactions regarding the implementation or administration of the Plan, or the discharge of their duties under the Plan or Liquidating Trust Agreement, except for any actions or inactions that are determined by Final Order of the Court to have arisen from intentional fraud, willful misconduct or gross negligence. Any Claim of the Indemnified Persons to be indemnified, held harmless or reimbursed shall be satisfied solely from the Liquidating Trust Assets, Liquidating Trust Proceeds and any applicable insurance coverage.

5. Recusal of Liquidating Trust Committee Members

A Liquidating Trust Committee member shall recuse itself from any decisions or deliberations regarding actions taken or proposed to be taken by the Liquidating Trustee with respect to the Claims, Causes of Action or rights of such Liquidating Trust Committee member, the entity appointing such Liquidating Trust Committee member, or any affiliate of the foregoing.

H. Distributions to Holders of Allowed General Unsecured Claims

1. Initial Distributions. On the Distribution Date, the Liquidating Trustee shall make, or shall make adequate reserves in the Disputed Claims Reserve for, the Cash Distributions required to be made under the Combined Plan and Disclosure Statement to Holders of Allowed General Unsecured Claims. The Liquidating Trustee shall not make any Distributions of Liquidating Trust Assets to the beneficiaries under the Liquidating Trust unless the Liquidating Trustee retains and reserves in the Disputed Claims Reserve such amounts as are required under Article XIII of the Combined Plan and Disclosure Statement.

2. Interim Distributions. The Liquidating Trust Committee shall make interim Distributions of Cash in accordance with the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement to Holders of Liquidating Trust Interests if the Liquidating Trust Committee deems it appropriate in its sole discretion; provided, however, that the Liquidating Trust will not be required to make a distribution if doing so would leave the Trust without sufficient Available Trust Cash to maintain the value of the Assets or to meet Trust liabilities, or if the Trustee decides such distribution would be administratively burdensome.

3. Final Distributions. The Liquidating Trust shall be dissolved and its affairs wound up and the Liquidating Trustee shall make the final Distributions, upon the earlier of: (i) the expiration of the Liquidating Trust's Termination Deadline as it may be extended from time to time, and (ii) that date when, (A) in the reasonable judgment of the Liquidating Trustee, substantially all of the assets of the Liquidating Trust have been liquidated and there are no substantial potential sources of additional Cash for

Distribution; and (B) there remain no substantial Disputed Claims. The date on which the Liquidating Trustee determines that all obligations under the Plan and Liquidating Trust Agreement have been satisfied is referred to as the “Liquidating Trust Termination Date.” On the Liquidating Trust Termination Date, the Liquidating Trustee shall, to the extent not already done, request that the Court enter an order closing the Chapter 11 Case.

Upon dissolution of the Liquidating Trust, if the Liquidating Trustee reasonably determines that any remaining Liquidating Trust Assets are insufficient to render a further distribution practicable, or exceed the amounts required to be paid under the Plan, the Liquidating Trustee shall transfer such remaining funds to a charitable institution selected by the Liquidating Trustee, which charitable institution shall be qualified as a not-for-profit corporation under applicable federal and state laws.

I. Distributions to Holders of Administrative, Priority and Secured Claims

On or as soon as reasonably practicable after the later of (i) the Distribution Date or (ii) the date an Administrative Claim, Priority Tax Claim, Priority Non-Tax Claim or Secured Claim becomes an Allowed Claim, the Liquidating Trustee shall make the Distributions required to be made under the Plan to Holders of Allowed Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, and Secured Claims subject to the limitations set forth in Article V of the Liquidating Trust Agreement.

J. Requirement of Liquidating Trust

The Liquidating Trust’s formation documents shall require that financial statements or similar reports of the Liquidating Trust be sent to all Holders of Liquidating Trust Interests on an annual basis.

K. Accounts and Reserves

1. Professional Fee Reserve

On or before the Effective Date, the Debtor shall transfer to Young Conaway Stargatt & Taylor LLP (“YCS&T”) Cash in the Amount of the Professional Fee Estimate, which Cash shall be used to fund the Professional Fee Reserve. The Cash so transferred shall not be used for any purpose other than to pay Allowed Professional Fee Claims. YCS&T (i) shall segregate and shall not commingle the Cash held in the Professional Fee Reserve and (ii) subject to the terms and conditions of the Combined Plan and Disclosure Statement shall pay each Professional Fee Claim of a Professional employed by the Debtor or the Committee, on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim. After all Professional Fee Claims are Allowed or Disallowed and the Allowed amounts of such Claims are paid by YCS&T, any remaining Cash in the Professional Fee Reserve shall become a Liquidating Trust Asset and YCS&T shall remit the remaining Cash to the Liquidating Trust as soon as practical. Notwithstanding any other provision in the Plan, in the event the Cash held in the Professional Fee Reserve is insufficient to satisfy the Allowed Professional Fee Claims, the Liquidating Trust shall fund the Cash necessary to satisfy any shortfall. Only Professionals employed in the Chapter 11 Case by the Debtor or the Committee shall be entitled to payment from the

Professional Fee Reserve.

The Professionals employed by the Debtor and the Committee, as applicable, shall be entitled to reasonable compensation and reimbursement of actual, necessary expenses for post-Effective Date activities, including the preparation, filing and prosecution of Final Fee Applications, from the Professional Fee Reserve. Any time or expenses incurred in the preparation, filing and prosecution of Final Fee Applications shall be disclosed by each Professional in its final fee application and shall be subject to approval of the Court.

2. **Administrative Claims Reserve**

On or before the Effective Date, the Debtor shall transfer to the Liquidating Trust Cash in the Amount of the Administrative, Priority and Secured Claims Estimate (reducing such reserve for any amounts held by creditors or other parties to satisfy those claims), which Cash shall be used by the Liquidating Trustee to fund the Administrative Claims Reserve. The Cash so transferred shall not be used for any purpose other than to pay Allowed Administrative Claims (except Professional Fee Claims, which shall be paid from the Professional Fee Reserve) Allowed Priority Claims, and Secured Claims. The Liquidating Trustee (i) shall segregate and shall not commingle the Cash held in the Administrative Claims Reserve and (ii) subject to the terms and conditions of the Plan and the Liquidating Trust Agreement, shall pay each Administrative Claim (except Professional Fee Claims, which shall be paid from the Professional Fee Reserve) and Priority Claim on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim. After all Administrative Claims (except Professional Fee Claims), Priority Claims and Secured Claims are Allowed or Disallowed and the Allowed amounts of such Claims are paid by the Liquidating Trust, any remaining Cash in the Administrative Claims Reserve shall become a Liquidating Trust Asset.

3. **WARN Reserve**

If, as of the Effective Date, funds remain in the WARN Reserve, the Debtor shall transfer to the Liquidating Trust the WARN Reserve for the purposes of satisfying any and all remaining WARN Act Liability. The Liquidating Trustee (i) shall segregate and shall not commingle the WARN Reserve; and (ii) the WARN Reserve shall be subject to the terms and conditions of the Plan and Settlement Agreement. Any remaining Cash in the WARN Reserve after all Allowed WARN Claims are satisfied shall become a Liquidating Trust Asset.

4. **Other Reserves and Accounts**

The Liquidating Trust shall establish and administer any other necessary reserves and accounts that may be required under the Combined Plan and Disclosure Statement or Liquidating Trust Agreement, including the Disputed Claims Reserve and the segregated account holding the Release Consideration pending disbursement.

5. **Exemption from Certain Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Combined Plan and Disclosure Statement shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax,

mortgage recording tax or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents without the payment of any such tax or governmental assessment.

6. **Applicability of Section 1145 of the Bankruptcy Code**

Under section 1145 of the Bankruptcy Code, the issuance of the Liquidating Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities. If the Liquidating Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the registration and reporting requirements of the Securities and Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Liquidating Trustee shall take any and all actions to comply with such reporting requirements and file necessary periodic reports with the Securities and Exchange Commission.

7. **Effectuating Documents; Further Transactions**

The Liquidating Trustee, subject to the terms and conditions of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, shall be authorized to execute, deliver, file or record such contracts, instruments, releases, indentures and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

8. **Books and Records; Privilege Matters**

a) **Transfer of Debtor's Books and Records**

On or before the Effective Date, the Debtor shall transfer its Books and Records to the Liquidating Trust.

b) **Destruction of Records**

Effective the first (1st) year anniversary of the Effective Date, the CRO and FTI Consulting Inc. shall not be required to maintain any records related to Fresh & Easy LLC in physical and/or electronic form, including but not limited to (a) physical copies of documents; (b) data from the computers and/or laptops, (c) data from servers used to store information, and (d) data from computers, laptops, and servers that are duplicative of records otherwise available in either physical or electronic form or are already publicly available and may dispose of any such records related to Fresh & Easy, LLC at their discretion.

c) **Transfer of Evidentiary Privileges; Document Requests**

Notwithstanding anything to the contrary herein, on the Effective Date, the Liquidating Trustee shall succeed to the evidentiary privileges, including attorney-client privilege, formerly held by the Debtor. Privileged communications may be shared among the Liquidating Trustee

and the Liquidating Trust Committee without compromising the privileged nature of such communications, in accordance with the “joint interest” doctrine.

Accordingly, to the extent that documents are requested from current counsel to the Debtor by any Person or Entity, after the Effective Date, only the Liquidating Trustee shall have the ability to waive such attorney-client or other privileges. In addition, current counsel to the Debtor shall have no obligation to produce any documents currently in its possession as a result of or arising in any way out of its representation of the Debtor unless: (i) the Person or Entity requesting such documents serves its request on the Liquidating Trustee; (ii) the Liquidating Trustee consents in writing to such production and any waiver of the attorney-client or other privilege such production might cause; and (iii) the Liquidating Trustee or the Person or Entity requesting such production agrees to pay the reasonable costs and expenses incurred by current counsel for the Debtor in connection with such production.

XIV.

PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN

A. Method of Payment

Unless otherwise expressly agreed, in writing, all Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank or an electronic wire.

B. Distributions on Allowed Claims

Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date or become Allowed Claims thereafter shall be made by the Disbursing Agent pursuant to the terms and conditions of the Plan and the Liquidating Trust Agreement. Notwithstanding any other provision of the Combined Plan and Disclosure Statement to the contrary, no Distribution shall be made on account of any Allowed Claim or portion thereof that: (i) has been satisfied after the Petition Date; (ii) is listed in the Schedules as Contingent, unliquidated, Disputed or in a zero amount, and for which a Proof of Claim has not been timely Filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently Filed Proof of Claim.

C. Disbursing Agent

The Disbursing Agent shall make all Distributions required under the Plan, subject to the terms and provisions of the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement. If the Disbursing Agent is an independent third party designated to serve in such capacity, such Disbursing Agent shall receive, without further Court approval, reasonable compensation from the Liquidating Trust for distribution services rendered pursuant to the Combined Plan and Disclosure Statement and reimbursement of reasonable out-of-pocket expenses. No Disbursing Agent shall be required to give any bond or surety or other security for the performance of its duties. The Disbursing Agent shall be authorized and directed to rely upon the Debtor’s books and records and the Liquidating Trust’s representatives and professionals in determining Allowed Claims entitled to Distributions under the Combined Plan and Disclosure Statement in accordance with the terms and conditions of the Combined Plan and Disclosure Statement.

D. Objections to and Resolution of Claims

Subject to the terms and conditions of the Liquidating Trust Agreement, and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the Liquidating Trust shall have the authority to: (1) File, withdraw or litigate to judgment objections to and requests for estimation of Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Court; and (3) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Court; provided, however, that the objection to and settlement of Professional Fee Claims shall not be subject to this Article, but rather shall be governed by Article XIII.J. In the event that any objection Filed by the Debtor or the Committee remains pending as of the Effective Date, the Liquidating Trustee shall be deemed substituted for the Debtor or the Committee, as applicable, as the objecting party.

The Liquidating Trust shall be entitled to assert all of the Debtor's rights, claims, defenses, offsets, rights of recoupment, setoffs, rights of disallowance, subrogation, recharacterization and/or equitable subordination and counter-claims with respect to Claims.

E. Claim Objection Deadline

Except with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be Filed and served on the Holders of such Claims by the Claims Objection Deadline; provided, however, the Claims Objection Deadline may be extended by the Court upon motion and notice. Notice of any motion for an order extending the Claims Objection Deadline shall be required to be given only to those Persons or Entities that have requested notice in the Chapter 11 Case in accordance with Bankruptcy Rule 2002.

F. No Distribution Pending Allowance

Notwithstanding any other provision of the Combined Plan and Disclosure Statement or the Liquidating Trust Agreement, no payment or Distribution of Cash or other property shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order or as otherwise permitted by this Plan.

G. Escrow of Cash Distributions

On any date that Distributions are to be made under the terms of the Combined Plan and Disclosure Statement, the Liquidating Trustee shall deposit in one or more segregated accounts, Cash or property equal to 100% of the Cash or property that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto. The Liquidating Trustee shall also segregate any interest, dividends or proceeds of such Cash. Such Cash together with any interest, dividends or proceeds thereof, shall be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

H. Distributions After Allowance

Payments and Distributions to Holders of Disputed Claims that ultimately become Allowed Claims shall be made in accordance with provisions of the Liquidating Trust Agreement that govern Distributions to Holders of Allowed General Unsecured Claims (Article 4.3 of the Liquidating Trust Agreement).

I. Investment of Segregated Cash and Property

To the extent practicable, the Liquidating Trustee may invest any Cash or other property segregated on account of a Disputed Claim, undeliverable Distribution, or any proceeds thereof: (i) in a manner that will yield a reasonable net return taking into account the safety of the investment; or (ii) in any manner permitted by section 345 of the Bankruptcy Code; provided, however, that the Liquidating Trustee shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash, other property or proceeds.

J. Delivery of Distributions in General

Except as provided herein, distributions to Holders of Allowed Claims shall be made by the Disbursing Agent: (i) at the addresses set forth on the respective Proofs of Claim Filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is Filed or if the Debtor has been notified of a change of address); (ii) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim; or (iii) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address.

In making Distributions under the Combined Plan and Disclosure Statement, the Disbursing Agent may rely upon the accuracy of the Claims register maintained by the Claims Agent in the Chapter 11 Case, as modified by any Final Order of the Court disallowing Claims in whole or in part.

K. Undeliverable and Unclaimed Distributions

If the Distribution to any Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until the Disbursing Agent is notified in writing of such Holder's then-current address and such Holder provides sufficient evidence of such address as may be requested by the Disbursing Agent, at which time all missed Distributions shall be made to such Holder without interest, subject to the time limitations set forth below. Amounts in respect of undeliverable Distributions made by the Disbursing Agent shall remain in the possession of the Disbursing Agent until the earlier of: (i) such time as a distribution becomes deliverable; or (ii) such undeliverable distribution becomes an unclaimed distribution pursuant to Article XIV of the Combined Plan and Disclosure Statement. The Disbursing Agent shall segregate and, with respect to Cash, deposit in a segregated account designated as an unclaimed Distribution reserve, undeliverable and unclaimed Distributions for the benefit of all such similarly-situated Persons or Entities until such time as a Distribution becomes deliverable or is claimed, subject to the time limitations set forth below.

Any Holder of an Allowed Claim that does not assert a claim pursuant to the Combined Plan and Disclosure Statement for an undeliverable or unclaimed Distribution within three (3) months after the date such Distribution was returned undeliverable shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against the Debtor and its Estate, the Liquidating Trustee, the Liquidating Trust, and their respective agents, attorneys, representatives, employees or independent contractors, and/or any of its or their property. In the case of undeliverable or unclaimed Distributions on account of Administrative Claims, Priority Tax Claims or Priority Non-Tax Claims, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall revert to the Administrative Claims Reserve. In the case of undeliverable or unclaimed Distributions on account of Liquidating Trust Interests, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall revert to the Liquidating Trust, and all title to and all beneficial interests in the Liquidating Trust Assets represented by any such undeliverable Distributions shall revert to and/or remain in the Liquidating Trust and shall be distributed in accordance with Article XIV of the Liquidating Trust Agreement and the Plan. The reversion of such Cash to the Administrative Claims Reserve or the Liquidating Trust, as applicable, shall be free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary and shall be treated in accordance with the terms of the Plan and the Liquidating Trust Agreement. Nothing contained in the Plan or the Liquidating Trust Agreement shall require the Debtor, the Liquidating Trust, the Liquidating Trustee or any Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

L. Escheatment

Notwithstanding any State escheatment law, any State that was entitled to file a Claim in its own right in connection with claims for property that had been deemed abandoned and had escheated to the State prepetition, but failed to comply with the Bar Date and file a Proof of Claim, will be forever barred from assertion of such Claim against the Debtor and its Estate.

M. Minimum Distributions

The Liquidating Trust, as Disbursing Agent, shall not be required to make any distribution to a Holder of an Allowed Claim of less than fifty dollars (\$50.00) on account of such Allowed Claim. If a Holder of an Allowed Claim would be entitled to receive less than \$50 as of the time of a particular distribution, but would be entitled to receive more than \$50 in combination with later distributions, the Liquidating Trust, as Disbursing Agent, shall combine such distribution with later distributions so that the Holder may eventually be entitled to a distribution of at least \$50 in value.

N. Fractional Dollars

Any other provision of the Combined Plan and Disclosure Statement notwithstanding, the Disbursing Agent shall not be required to make Distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

O. Withholding and Reporting Requirements

In accordance with section 346 of the Bankruptcy Code and in connection with the Combined Plan and Disclosure Statement and all Distributions hereunder, the Disbursing Agent shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority. The Disbursing Agent shall be authorized to take any and all actions necessary and appropriate to comply with such requirements.

All Distributions hereunder shall be subject to withholding and reporting requirements. As a condition of making any Distribution under the Plan, each Entity holding an Allowed Claim is required to provide any information necessary in writing, including returning W-9 (or W-8, if applicable) statements, to effect the necessary information reporting and withholding of applicable taxes with respect to Distributions to be made under the Plan as the Disbursing Agent may request. The Disbursing Agent shall be entitled in its sole discretion to withhold any Distributions to a Holder of an Allowed Claim who fails to provide tax identification or social security information within the timeframe requested in writing by the Disbursing Agent to such Holder of an Allowed Claim, which timeframe shall not be less than thirty (30) days. The Distribution to any Holder of an Allowed Claim that fails to timely respond to the Disbursing Agent shall be treated as an undeliverable or unclaimed Distribution pursuant to Article XIV of the Combined Plan and Disclosure Statement.

Notwithstanding any other provision of the Combined Plan and Disclosure Statement, each Entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution.

P. Setoffs

Subject to the terms and conditions of the Liquidating Trust Agreement, the Debtor and/or the Liquidating Trust may, but shall not be required to, set off against any Claim and the payments or other Distributions to be made under the Plan on account of the Claim, claims of any nature whatsoever that the Debtor may have against the Holder thereof, provided that any such right of setoff that is exercised shall be allocated, first, to the principal amount of the related Claim, and thereafter to any interest portion thereof, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor and/or the Liquidating Trust of any such claim that the Debtor may have against such Holder.

Q. Interest on Claims

Unless otherwise specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Interest shall not accrue or be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Disputed Claim becomes an Allowed Claim.

R. Disputed Claims Reserve

On the Distribution Date and on each subsequent Periodic Distribution Date, the Liquidating Trust shall withhold on a Pro Rata basis from property that would otherwise be distributed to Holders of General Unsecured Claims entitled to Distributions under the Combined Plan and Disclosure Statement on such date, in a separate Disputed Claims Reserve, such amounts or property as may be necessary to equal one hundred percent (100%) of Distributions to which Holders of such Disputed General Unsecured Claims would be entitled under the Plan if such Disputed Claims were allowed in their Disputed Claim Amount. The Liquidating Trust may request, if necessary, estimation for any Disputed General Unsecured Claim that is contingent or unliquidated, or for which the Liquidating Trust determines to reserve less than the Face Amount. If the Liquidating Trust elects not to request such an estimation from the Court with respect to a Disputed General Unsecured Claim that is contingent or unliquidated, the Liquidating Trust shall withhold the applicable Disputed Claims Reserve based upon the good faith estimate of the amount of such General Unsecured Claim by the Liquidating Trust. If practicable, the Liquidating Trust shall invest any Cash that is withheld as the Disputed Claims Reserve in an appropriate manner to ensure the safety of the investment, in accordance with Article 1.4 of the Liquidating Trust Agreement. Nothing in the Plan, the Disclosure Statement or the Liquidating Trust Agreement shall be deemed to entitle the Holder of a Disputed General Unsecured Claim to postpetition interest on such Claim, however.

S. Allocation of Distributions Between Principal and Interest

To the extent that any Allowed Claim entitled to a Distribution under the Plan is composed of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

T. Distribution Record Date

The Disbursing Agent shall have no obligation to recognize the transfer of or sale of any participation in any Allowed Claim that occurs after the close of business on the Distribution Record Date. Instead, the Disbursing Agent shall be entitled to recognize and deal for all purposes under the Combined Plan and Disclosure Statement with only those record Holders stated on the official Claims register or the Debtor's Books and Records, as applicable, as of the close of business on the Distribution Record Date.

U. Claim Estimation

In order to effectuate distributions pursuant to this Plan and avoid undue delay in the administration of the Chapter 11 Case, the Debtor (if on or prior to the Effective Date) and the Liquidating Trustee (if after the Effective Date), after notice and a hearing (which notice may be limited to the holder of a such Disputed Claim), shall have the right to seek an Order of the Bankruptcy Court, pursuant to section 502(c) of the Bankruptcy Code, estimating or limiting the amount of (i) property that must be withheld from or reserved for distribution purposes on account of such Disputed Claim(s), (ii) such Claim for claim allowance or disallowance

purposes, or (iii) such Claim for any other purpose permitted under the Bankruptcy Code; provided, however, the Bankruptcy Court shall determine (i) whether such Claims are subject to estimation pursuant to section 502(c) of the Bankruptcy Code and (ii) the timing and procedures for such estimation proceedings, if any.

XV.

IMPLEMENTATION AND EFFECT OF CONFIRMATION OF THE PLAN

A. Means for Implementation of the Plan

In addition to the provisions set forth elsewhere in the Combined Plan and Disclosure Statement, the following shall constitute the means for implementation of the Plan:

1. **Funding of Liabilities and Distributions**

On the Effective Date, or as soon as reasonably practicable thereafter, the Debtor shall transfer and assign to the Liquidating Trust all of its right, title and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, all such assets shall automatically vest in the Liquidating Trust free and clear of all Claims and Liens, subject only to the Allowed Claims of the Holders of Liquidating Trust Interests as set forth in the Plan and the expenses of the Liquidating Trust as set forth herein and in the Liquidating Trust Agreement. Thereupon, the Debtor shall not have any interest in or with respect to the Liquidating Trust Assets.

2. **Other Funds to be Transferred to the Liquidating Trust**

Pursuant to Article XIII of the Plan, after all Allowed Professional Fee Claims are paid by Young Conaway Stargatt & Taylor LLC from the Professional Fee Reserve, any remaining Cash in the Professional Fee Reserve shall be transferred to the Liquidating Trust as soon as practical and become a Liquidating Trust Asset.

Pursuant to Article XIII of the Plan, on or before the Effective Date, the Debtor shall transfer to the Liquidating Trust Cash in the amount of the Administrative, Priority Claims, and Secured Claims Estimate, which Cash shall be used by the Liquidating Trustee to fund the Administrative Claims Reserve.

In accordance with Article IV of the Plan, on the Effective Date, the Debtor shall transfer to the Liquidating Trust the Release Consideration and the Liquidating Trust shall disburse the Release Consideration to the Releasing Creditors on a Pro Rata basis in accordance with the Plan, Settlement Agreement and Confirmation Order.

3. **Corporate Action; Effectuating Documents; Further Transactions**

a) **Corporate Action**

On the Effective Date, the directors, officers, members and managers of Fresh & Easy LLC shall be deemed to have resigned, except for Michael J. Brewer of Alcohol Beverage

Consulting Service, who shall continue to serve as the Chief Licensing Officer for the sole and limited purpose of maintaining, selling, and/or otherwise disposing of the Company's liquor licenses. Upon such resignations, the Liquidating Trust shall become the sole member of and the managing member of Fresh & Easy, LLC, the Liquidating Trustee shall serve as an officer and director of Fresh & Easy, LLC and the Amended and Restated Limited Liability Company Agreement shall be, and is deemed to be, amended and restated to reflect the foregoing.

b) Continued Corporate Existence

Fresh & Easy, LLC shall continue to exist after the Effective Date in accordance with the laws of the State of Delaware and pursuant to the Amended and Restated Limited Liability Company Agreement of Fresh & Easy, LLC, as last amended effective as of July 8, 2015, and in effect prior to the Effective Date, as amended, and in accordance with any and all such other documents as may be necessary to satisfy the provisions of this Combined Plan and Disclosure Statement and the Bankruptcy Code. The Debtor's continued existence is limited to facilitating the sale, assignment, transfer, conveyance and delivery of liquor licenses held by the Debtor. The Liquidating Trustee, acting pursuant to the terms and conditions of the Liquidating Trust Agreement, shall be authorized to execute, deliver, file or record such documents, instruments, releases and other agreements and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Combined Plan and Disclosure Statement.

c) Deemed Authorization

On the Effective Date, all matters and actions provided for under the Combined Plan and Disclosure Statement that would otherwise require approval of the directors and officers, or members or managers of the Debtor shall be deemed to have been authorized and to be effective in all respects as provided herein and shall be taken without any requirement for further action by the directors and officers, or members and managers of the Debtor. The Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

d) Dissolution of the Debtor

After the Effective Date, at the discretion of the Liquidating Trustee in consultation with the Liquidating Trust Committee, the Liquidating Trust shall be authorized to take all actions necessary to effect the dissolution of the Debtor, without the need for any further Bankruptcy Court action or approval.

4. Exemption from Securities Laws

Under section 1145 of the Bankruptcy Code, the issuance of beneficial interests in the Liquidating Trust under the Combined Plan and Disclosure Statement shall be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities.

5. **Exemption Under Certain Taxes and Fees**

Pursuant to section 1146(a) of the Bankruptcy Code, the making or assignment of any lease or sublease, or the making or delivery of any instrument or transfer from a Debtor to the Liquidating Trust, or to any other Person pursuant to the Combined Plan and Disclosure Statement, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp tax, real estate transfer tax, mortgage recording tax or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the forgoing instruments or other documents without the payment of any such tax or governmental assessment. Without limiting the forgoing, any issuance, transfer or exchange of a security or any making or payment of any and all transfer taxes (including but not limited to any and all stamp taxes or similar taxes and any interest, penalties and addition to the tax that may be required to be paid in connection with the consummation of the Combined Plan and Disclosure Statement and the Plan Documents) pursuant to sections 1146(a), 505(a), 106 and 1141 of the Bankruptcy Code.

XVI.

RELEASES, EXCULPATION, INJUNCTION AND BAR ORDER

A. **Releases and Exculpation**

1. **Releases by the Debtor**

Pursuant to the Plan, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, and any Person or Entity seeking to exercise the rights of the Debtor's Estate, including, without limitation, any successor to the Debtor, any Estate representative appointed or selected pursuant to section 1123(b)(3) of the Bankruptcy Code or the Liquidating Trust, whether pursuing an action derivatively or otherwise, shall be deemed to forever release, waive and discharge all liabilities, claims, actions, proceedings, causes of action, Avoidance Actions, suits, accounts, controversies, agreements, promises, rights to legal remedies, right to equitable remedies, rights to payment, or Claims whatsoever (other than for fraud, willful misconduct or gross negligence) in connection with or related to the Debtor, the Chapter 11 Case, the Store Closing Sales or the Combined Plan and Disclosure Statement (other than the rights of the Debtor and the Liquidating Trustee to enforce the Plan and the contracts, instruments, releases and other agreements or documents delivered thereunder), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are based in whole or part on any act, omission, transaction, event or other occurrence taking place on or prior to the Confirmation Date, against (a) the CRO, the Debtor's and Committee's Professionals and the Debtor's and Committee's Court-retained agents, including, but not limited to FTI Consulting, Inc., (b) the Special Committee, (c) any of the successors or assigns of any of the parties identified in the foregoing clauses (a) and (b); provided, however, that the release described in this paragraph shall not be a waiver of any defense,

offset or objection to any Claim Filed against the Debtor and its Estate by any Person or Entity.

2. **Consensual Third Party Releases by Certain Holders of Claims and Interests**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, (a) all Holders of Claims (except Holders of Claims in Class 4A who timely exercised their opt-out election to such releases set forth herein) and (b) all Holders of Interests shall be deemed to forever release, waive and discharge the Released Parties of all claims, obligations, suits, judgments, damages, demands, debts, rights, remedies, causes of action and liabilities of any nature whatsoever in connection with or related to the Debtor, the Chapter 11 Case, and/or the Combined Plan and Disclosure Statement, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise that are or may be based in whole or in part upon any act, omission, transaction, event, or other occurrence taking place or existing on or prior to the Effective Date (other than the rights of a Creditor holding an Allowed Claim to enforce the obligations under the Confirmation Order and the Plan); provided, however, that nothing in this section shall operate as a release, waiver or discharge of any causes of action or liabilities unknown to such person as of the Petition Date arising out of gross negligence, willful misconduct, fraud or criminal acts of any such released party as determined by a Final Order.

3. **Exculpation and Limitation of Liability**

Except as otherwise specifically provided in the Combined Plan and Disclosure Statement, none of (a) Debtor, (b) the current and former directors, officers and managers of the Debtor, (c) employees or agents of the Debtor, (d) attorneys, financial advisors, accountants, investment bankers, investment advisors, consultants, agents, representatives and other Professionals of the Debtor, (e) the CRO, (f) the Special Committee, (g) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee, or (h) any of the successors or assigns of any of the parties identified in the foregoing clauses (a) through (g) shall have or incur, and each is hereby released and exculpated from, any liability, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or assertable directly or derivatively in law or equity to any Holder of a Claim or an Interest, or any other party in interest, or any of their respective members, directors, officers, employees, advisors, attorneys, professionals, agents, partners, stockholders or affiliates, or any of their respective successors or assigns, for any act or omission in connection with, relating to or arising out of, the Chapter 11 Case, the Store Closing Sales, assets sales, the negotiation and implementation of the Settlement Agreement, the formulation, negotiation or implementation of the Combined Plan and Disclosure Statement, the solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence or willful misconduct, and

such parties in all respects will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Combined Plan and Disclosure Statement. Moreover, for the avoidance of doubt, this exculpation only applies to any acts or omissions of the exculpated parties that occurred on and after the Petition Date.

Notwithstanding any other provision of the Combined Plan and Disclosure Statement, no Holder of a Claim or an Interest, no other party in interest, none of their respective members, directors, officers, employees, advisors, attorneys, professionals, agents, partners, stockholders or affiliates, and none of their respective successors or assigns, shall have any right of action against: (a) Debtor, (b) the current and former directors, officers and managers of the Debtor, (c) employees or agents of the Debtor, (d) attorneys, financial advisors, accountants, investment bankers, investment advisors, consultants, agents, representatives and other Professionals of the Debtor, (e) the CRO, (f) the Special Committee, (g) the Committee and its Professionals and, solely in their respective capacities as members or representatives of the Committee, each member of the Committee, or (h) any of the successors or assigns of any of the parties identified in the foregoing clauses (a) through (g), for any act or omission in connection with, relating to or arising out of, the Chapter 11 Case, the Store Closing Sales, asset sales, the negotiation and implementation of the Settlement Agreement, the formulation, negotiation or implementation of the Combined Plan and Disclosure Statement, solicitation of acceptances of the Plan, the pursuit of Confirmation of the Plan, the Confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which are the result of fraud, gross negligence or willful misconduct. Moreover, for the avoidance of doubt, this paragraph only applies to any acts or omissions of such protected parties that occurred on and after the Petition Date.

B. Injunction

Confirmation of the Plan will have the effect of, among other things, permanently enjoining (a) all Entities or Persons that have held, hold or may hold or have asserted, assert or may assert Claims against or Equity Interests in the Estate with respect to any such Claim or Equity Interest, and (b) respecting (vi)(A) and (vi)(B) of this paragraph, the Estate and the Liquidating Trust, from and after the Effective Date, from taking any of the following actions (other than actions to enforce any rights or obligations under the Combined Plan and Disclosure Statement): (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Estate or the Liquidating Trust or any of its or their property on account of such Claims or Interests; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Estate or the Liquidating Trust or any of its or their property on account of such Claims or Interests; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Estate or the Liquidating Trust or any of its or their property on account of such Claims or Interests; (iv) asserting any right of setoff, directly or indirectly, against any obligation due the Estate

or the Liquidating Trust or any of its or their property, except with respect to any right of setoff asserted prior to the entry of the Confirmation Order, whether asserted in a Proof of Claim or otherwise, or as otherwise contemplated or allowed by the Plan; (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan; and (vi) prosecuting or otherwise asserting (A) any Claim or Interest, including any right, claim or Cause of Action, released pursuant to the Plan, or (B) any form of objection to any Claim that is Allowed by the Plan; provided, however, that this injunction will not apply to the commencement or continuation of an action or proceeding by a governmental unit to which section 362(b)(4) of the Bankruptcy Code would be applicable. Additionally, unless otherwise explicitly stated in the Plan, the injunction contemplated by this paragraph will prohibit the assertion against the Liquidating Trust, the Liquidating Trustee, the Liquidating Trust Committee, and the YFE Released Parties of all Claims or Interests, if any, related to the Debtor (and in addition, with respect to the YFE Released Parties, the assertion by any Entity of any Claims and Interests described as being released in the Settlement Agreement).

Confirmation of the Plan will further have the effect of permanently enjoining all Persons and Entities from obtaining any documents or other materials from current counsel for the Debtor and the Committee that are in the possession of such counsel as a result of or arising in any way out of their representations of the Debtor and/or the Committee, except in accordance with Article XIII of the Combined Plan and Disclosure Statement.

C. Bar Provision

In accordance with the terms of the Settlement Agreement, the confirmation of the Plan shall have the effect of barring any Barred Person from commencing, prosecuting, asserting, or maintaining: (i) claims against any of the YFE Released Parties where the claims are the property of the Debtor's bankruptcy estate, were or could have been asserted by the Debtor, the Committee, or the bankruptcy estate, or are derivative claims of the Debtor, the Committee, or the bankruptcy estate, including those claims that arise from or relate to the claims asserted or that could have been asserted in the Adversary Proceeding (as defined in the Settlement Agreement); and (ii) any claims for indemnity or contribution brought against any of the YFE Released Parties and relating to the claims and allegations set forth in the Committee's complaint filed in the Adversary Proceeding. With respect to claims for indemnity or contribution, it shall not matter whether such claims are explicitly characterized as claims for indemnity or contribution, but rather the Barred Person must look to the underlying nature of the claim, including where the injury to the Barred Person is the liability of the Barred Person to another person or entity arising out of or relating to the claims or allegations released pursuant to the Settlement Agreement, whether arising under state, federal, or foreign laws as claims, cross-claims, counterclaims, or third-party claims. Any joint tortfeasor barred pursuant to this Bar Provision shall be entitled to a judgment reduction (i.e., setoff) to the extent provided for by applicable law. See, e.g., Cal. Code Civ. Proc. § 877.

XVII.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejected Executory Contracts and Unexpired Leases

Except as otherwise provided in the Plan, an order of this Court, or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, each of the Executory Contracts and Unexpired Leases to which the Debtor is a party shall be deemed automatically rejected by the Debtor as of the Effective Date, unless such contract or lease (i) previously has been assumed or rejected by the Debtor, (ii) expired or terminated pursuant to its own terms, (iii) is the subject of a motion to assume or reject pending before the Court as of the Confirmation Date or (iv) is identified on **Exhibit D** hereto as a Contract to be assumed; provided, however, that nothing contained in the Plan shall constitute an admission by the Debtor that any such contract is an Executory Contract or that the Debtor or its successors and assigns has any liability thereunder. The Confirmation Order shall constitute an order of the Court approving the rejections described in this Article XVII.A, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date.

B. Deadline for Filing Proofs of Claim Relating to Executory Contracts Rejected Pursuant to the Combined Plan and Disclosure Statement

If the rejection by the Debtor, pursuant to the Plan, of an Executory Contract or Unexpired Leases gives rise to a Claim, a proof of Claim must be filed with the Claims Agent, at the following address: (i) if by mail, Fresh & Easy, LLC Claims Processing Center c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4421, Beaverton, OR 97076-4421; and (ii) if by messenger or overnight courier, Fresh & Easy, LLC Claims Processing Center, c/o Epiq Bankruptcy Solutions, LLC, 10300 SW Allen Blvd, Beaverton, OR 97005, by no later than thirty (30) days after the later of (i) the Effective Date, or (ii) other notice that the Executory Contract or Unexpired Lease has been rejected. Any proofs of Claim not filed and served within such time periods will be forever barred from assertion against the Debtor and its Estate. Unless otherwise ordered by the Court, all Claims arising from the rejection of Executory Contracts and Unexpired Leases shall be treated as General Unsecured Claims under the Combined Plan and Disclosure Statement.

XVIII.

CAUSES OF ACTION

A. Retention of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trust shall retain and may enforce all rights to commence and pursue, as appropriate, the Liquidating Trust Claims, and the Liquidating Trust's rights to commence, prosecute or settle such Liquidating Trust Claims shall be preserved notwithstanding the occurrence of the Effective Date or the dissolution of the Debtor. The Liquidating Trust may pursue such Liquidating Trust Claims, as appropriate, in accordance with the best interests of the Liquidating Trust beneficiaries. No Entity may rely on the absence of a specific reference in the Combined Plan and Disclosure Statement to any Liquidating Trust Claims against

them as any indication that the Liquidating Trust shall not pursue any and all available Liquidating Trust Claims against them.

The Liquidating Trust expressly reserves all rights to prosecute any and all Liquidating Trust Claims against any Entity, except as otherwise expressly provided in the Combined Plan and Disclosure Statement. Unless any Liquidating Trust Claims against an Entity are expressly waived, relinquished, exculpated, released, compromised or settled in the Combined Plan and Disclosure Statement or a Court order, the Liquidating Trust expressly reserves all Liquidating Trust Claims for later adjudication, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppels (judicial, equitable or otherwise) or laches, shall apply to such Liquidating Trust Claims upon, after or as a consequence of the Confirmation or Consummation of the Combined Plan and Disclosure Statement.

B. Reservation of Rights

Except as specifically provided in the Combined Plan and Disclosure Statement or in the Confirmation Order, nothing contained in the Combined Plan and Disclosure Statement or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, cause of action, right of setoff, or other legal or equitable defense that the Debtor had immediately prior to the Petition Date, against or with respect to any claim left unimpaired by the Combined Plan and Disclosure Statement. The Debtor or the Liquidating Trust, as the case may be, shall have, retain, reserve and be entitled to assert all such claims, causes of action, rights of setoff or other legal or equitable defenses which they or any of them had immediately prior to the Petition Date fully as if the Chapter 11 Case had not been commenced, and all legal and equitable rights of the Debtor respecting any claim left unimpaired by the Combined Plan and Disclosure Statement may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Case had not been commenced. The Liquidating Trustee's right to commence and prosecute Causes of Action shall not be abridged or materially altered in any manner by reason of confirmation of the Combined Plan and Disclosure Statement. No defendant party to any Causes of Action brought by the Debtor or the Liquidating Trustee shall be entitled to assert any defense based, in whole or in part, upon confirmation of the Combined Plan and Disclosure Statement, and confirmation of the Combined Plan and Disclosure Statement shall not have any res judicata or collateral estoppel effect upon the commencement and prosecution of the Causes of Action.

XIX.

CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Conditions Precedent to Confirmation

The following are conditions precedent to Confirmation, each of which must be satisfied:

- 1) the Confirmation Order will be in form and substance reasonably acceptable to the Plan Proponents;
- 2) the Confirmation Order will have been entered by the Court; and

- 3) any section of the Confirmation Order relating in any way to the YFE Parties or YFE Released Parties must be reasonably acceptable to the YFE Parties.

B. Conditions Precedent to Effective Date

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived:

- 1) at least fourteen (14) days shall have passed since the Confirmation Date;
- 2) the Confirmation Order shall not be stayed, vacated or reversed and shall not have been amended without the agreement of the Plan Proponents;
- 3) the Confirmation Order shall have become a Final Order in full force and effect with no stay thereof then in effect, and which is not subject to a pending appeal, and with respect to which the time to appeal or seek review or rehearing or leave to appeal has expired and as to which no appeal or petition for review or rehearing was filed or, if filed, remains pending;
- 4) all actions, documents and agreements necessary to implement the provisions of the Combined Plan and Disclosure Statement to be effectuated on or prior to the Effective Date will be reasonably satisfactory to the Plan Proponents, and such actions, documents and agreements will have been effected or executed and delivered;
- 5) the Liquidating Trust Agreement will be completed and in final form and, as applicable, executed by the parties thereto and all conditions precedent contained in any of the foregoing will have been satisfied or waived;
- 6) the Liquidating Trust will have been established and the Liquidating Trust Assets will have been transferred to and vested in the Liquidating Trust free and clear of all Claims and Liens, except as specifically provided in the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement;
- 7) the Professional Fee Reserve, the WARN Reserve and the Administrative Claims Reserve will have been funded in Cash in full;
- 8) the Liquidating Trustee will have been appointed and assumed his rights and responsibilities under the Combined Plan and Disclosure Statement and the Liquidating Trust Agreement, as applicable;

- 9) the Debtor will have retained and pre-paid appropriate professionals for the preparation of the Debtor's outstanding tax returns for 2016; and
- 10) the Debtor, in consultation with the Committee, will have determined in its reasonable discretion that sufficient Cash exists to: (i) satisfy all Administrative Claims, Professional Fee Claims, Priority Tax Claims, and Priority Non-Tax Claims, and Secured Claims; and (ii) transfer at least \$1 million in Cash to the Liquidating Trust; and
- 11) the Settlement Payment shall be received by the Debtor.

C. Establishing the Effective Date

The calendar date to serve as the Effective Date shall be a Business Day of, on or following the satisfaction or waiver of all conditions precedent to the Effective Date, which date will be selected by the Debtor, after reasonable consultation with the Committee.

D. Waiver of Conditions

Each of the conditions precedent to the Effective Date set forth above may be waived in whole or in part by the Debtor without any other notice to parties in interest or the Court, provided that the Debtor has received the prior written consent of: (i) the Committee, and (ii) the YFE Parties (solely with respect to the conditions precedent to the Effective Date identified in B.(1)-(4) above), which consent will not unreasonably be withheld. The failure to satisfy or waive any condition to the Effective Date may be asserted by the Plan Proponents regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of any party to exercise any of its foregoing rights will not be deemed a waiver of any of its other rights, and each such right will be deemed an ongoing right that may be asserted thereby at any time.

XX.

RETENTION OF JURISDICTION

A. Retention of Jurisdiction

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order, substantial consummation of the Plan and occurrence of the Effective Date, the Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case, the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement and the Liquidating Trust to the fullest extent permitted by law, including, among other things, jurisdiction:

- 1) to the extent not otherwise determined by the Combined Plan and Disclosure Statement, to determine (i) the allowance, classification or priority of Claims upon objection by any party in interest entitled to file an objection, or (ii) the validity, extent, priority and nonavoidability of consensual and nonconsensual Liens and other encumbrances against assets of the Estate, Causes of Action, or property of the Estate or the Liquidating Trust;
- 2) to issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Combined Plan and Disclosure Statement or its execution or implementation by any Entity or Person, to construe and to take any other action to enforce and execute the Combined Plan and Disclosure Statement, the Confirmation Order or any other order of the Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of the Combined Plan and Disclosure Statement and all matters referred to in the Plan, and to determine all matters that may be pending before the Court in the Chapter 11 Case on or before the Effective Date with respect to any Entity or Person;
- 3) to protect the assets or property of the Estate and/or the Liquidating Trust, including Causes of Action, from claims against, or interference with, such assets or property, including actions to quiet or otherwise clear title to such property or to resolve any dispute concerning Liens or other encumbrances on any assets of the Estate;
- 4) to determine any and all applications for allowance of Professional Fee Claims;
- 5) to determine any Priority Tax Claims, Priority Non-Tax Claims or Administrative Claims entitled to priority under section 507(a) of the Bankruptcy Code;

- 6) to resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Combined Plan and Disclosure Statement and the making of Distributions under the Combined Plan and Disclosure Statement;
- 7) to hear and determine such other matters as may be set forth in the Confirmation Order or other orders of the Bankruptcy Court, or which may arise in connection with the Plan, the Confirmation Order, the Settlement Order or the Effective Date, as may be authorized under the provisions of the Bankruptcy Code or any other applicable law;
- 8) to determine any and all motions related to the rejection, assumption or assignment of Executory Contracts or Unexpired Leases or determine any issues arising from the deemed rejection of Executory Contracts and Unexpired Leases set forth in Article XVII of the Combined Plan and Disclosure Statement;
- 9) except as otherwise provided in the Combined Plan and Disclosure Statement, to determine all applications, motions, adversary proceedings, contested matters, actions and any other litigated matters instituted in and prior to the closing of the Chapter 11 Case, including any remands;
- 10) to enter a Final Order closing the Chapter 11 Case;
- 11) to modify the Combined Plan and Disclosure Statement under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out their intent and purposes;
- 12) to issue such orders in aid of consummation of the Combined Plan and Disclosure Statement, the Settlement Agreement, and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Entity or Person, to the full extent authorized by the Bankruptcy Code;
- 13) to determine any tax liability pursuant to section 505 of the Bankruptcy Code;
- 14) to enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- 15) to resolve any disputes concerning whether an Entity or Person had sufficient notice of the Chapter 11 Case, the applicable Bar Date, the hearing to consider approval of the Disclosure Statement or the Confirmation Hearing or for any other purpose;

- 16) to resolve any dispute or matter arising under or in connection with any order of the Court entered in the Chapter 11 Case;
- 17) to authorize, as may be necessary or appropriate, sales of assets as necessary or desirable and resolve objections, if any, to such sales;
- 18) to resolve any disputes concerning any release, injunction, exculpation or other waiver or protection provided in the Combined Plan and Disclosure Statement;
- 19) to approve, if necessary, any Distributions, or objections thereto, under the Combined Plan and Disclosure Statement;
- 20) to approve, as may be necessary or appropriate, any Claims settlement entered into or offset exercised by the Liquidating Trust;
- 21) to resolve any dispute or matter arising under or in connection with the Liquidating Trust;
- 22) to order the production of documents, disclosures or information, or appearance at deposition in response to discovery demands pursuant to Bankruptcy Rule 2004; and
- 23) to determine such other matters, and make rulings for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code.

Except with respect to actions to approve the Settlement Agreement and implement the Plan, the Bankruptcy Court shall not have exclusive jurisdiction with respect to any matter relating to the YFE Released Parties.

B. Retention of Non-Exclusive Jurisdiction by the Court

Notwithstanding anything else in the Combined Plan and Disclosure Statement: (i) the Court will retain non-exclusive jurisdiction over all Liquidating Trust Claims prosecuted by the Liquidating Trust; and (b) except with respect to actions to approve the Settlement Agreement and implement the Plan, the YFE Released Parties do not consent, and are not deemed to have consented, to the jurisdiction of the Bankruptcy Court for any matter.

XXI.

MISCELLANEOUS PROVISIONS

A. Amendments or Modifications of the Combined Plan and Disclosure Statement

The Plan Proponents may alter, amend or modify the Combined Plan and Disclosure Statement and any Exhibits thereto under section 1127(a) of the Bankruptcy Code at any time

prior to the Confirmation Date provided that the Debtor has received the prior written consent of the Committee, which consent will not unreasonably be withheld. After the Confirmation Date and prior to substantial consummation of the Combined Plan and Disclosure Statement as defined in section 1101(2) of the Bankruptcy Code, the Debtor may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Combined Plan and Disclosure Statement or the Confirmation Order, and to address such matters as may be necessary to carry out the purpose and effect of the Combined Plan and Disclosure Statement so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Court.

Any amendment or modification of the Plan affecting any of the YFE Released Parties must be approved in writing by the YFE Parties.

B. Severability of Plan Provisions

Subject to the subsequent paragraph dealing with the YFE Released Parties, if, prior to Confirmation, any term or provision of the Combined Plan and Disclosure Statement is held by the Court to be invalid, void or unenforceable, then the Court, at the request of the Plan Proponents, will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Combined Plan and Disclosure Statement will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order will constitute a judicial determination and will provide that each term and provision of the Combined Plan and Disclosure Statement, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

If, prior to Confirmation, any term or provision of the Combined Plan and Disclosure Statement that affects the YFE Released Parties is held by the Court to be invalid, void or unenforceable, then the Court, at the request of the Plan Proponents and the YFE Released Parties, will have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and, subject to the consent of the YFE Released Parties, such term or provision will then be applicable as altered or interpreted.

C. Successors and Assigns

The rights, benefits and obligations of any Person or Entity named or referred to in the Combined Plan and Disclosure Statement will be binding on, and will inure to the benefit of, any heir, executor, administrator, successor or assign of that Person or Entity.

D. Revocation, Withdrawal or Non-Consummation

The Plan Proponents reserve the right to revoke or withdraw the Combined Plan and Disclosure Statement prior to the Confirmation Date and to file subsequent plans. If the Plan Proponents revoke or withdraw the Combined Plan and Disclosure Statement, or if Confirmation or consummation of the Combined Plan and Disclosure Statement does not occur, then (a) the Combined Plan and Disclosure Statement will be null and void in all respects, (b) any settlement or compromise embodied in the Combined Plan and Disclosure Statement (including the fixing or limiting to an amount certain of any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by the Combined Plan and Disclosure Statement, and any document or agreement executed pursuant to the Combined Plan and Disclosure Statement, except the Global Settlement and the Settlement Agreement as discussed in Article IV, will be deemed null and void, and (c) nothing contained in the Combined Plan and Disclosure Statement, and no acts taken in preparation for consummation of the Combined Plan and Disclosure Statement, will (i) constitute or be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person or Entity, (ii) prejudice in any manner the rights of such Debtor or any other Person or Entity or (iii) constitute an admission of any sort by the Debtor or any other Person or Entity. For the avoidance of doubt, the Global Settlement and the Settlement Agreement as discussed in Article IV of the Combined Plan and Disclosure Statement, if approved by the Bankruptcy Court, shall not be null and void. Moreover, to the extent the Plan Proponents withdraw the Plan, the Plan Proponents shall seek separate approval of the Global Settlement and the Settlement Agreement as set forth in the Settlement Agreement.

E. Supplements to Combined Plan and Disclosure Statement

Exhibits to the Combined Plan and Disclosure Statement not attached thereto when Filed will be Filed in the Plan Supplements by the Plan Supplement Filing Date. Substantially contemporaneously with their filing, the Plan Supplements may be viewed and downloaded, free of charge, at the Debtor's case website, <http://dm.epiq11.com/fre>, or for a fee, at the Court's website (www.deb.uscourts.gov) (PACER account required). Copies of case pleadings also may be examined between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding federal holidays, at the Office of the Clerk of the Bankruptcy Court, 824 N. Market St., 3rd Floor, Wilmington, Delaware 19801. Plan Supplements and other case pleadings may be obtained by written request to the Voting Agent, tabulation@epiqsystems.com, or by telephone 646-282-2500.

F. Binding Effect

The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims and Interests, whether or not such Holders shall receive or retain any property or interest in property under the Combined Plan and Disclosure Statement, and their respective successors and assigns, including, but not limited to, the Liquidating Trust and all other parties in interest in the Chapter 11 Case.

G. Notices

All notices, requests and demands to or upon the Debtor, the Liquidating Trustee or the Liquidating Trust to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by electronic mail, when received and electronically confirmed, addressed as shall be set forth in the Confirmation Order.

H. Governing Law

Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, or to the extent an Exhibit to the Combined Plan and Disclosure Statement provides otherwise, the rights and obligations arising under the Combined Plan and Disclosure Statement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

I. Headings

Headings are used in the Combined Plan and Disclosure Statement for convenience and reference only, and shall not constitute a part of the Combined Plan and Disclosure Statement for any other purpose.

J. Exhibits/Schedules

The Plan Supplement(s) are an integral part of the Combined Plan and Disclosure Statement, and are hereby incorporated by reference and made a part hereof.

K. Filing of Additional Documents

On or before substantial consummation of the Plan, the Debtor shall file with the Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement; provided that the Plan Supplement shall be Filed at least ten (10) days prior to the Voting Deadline.

L. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed as an admission by any Entity with respect to any matter set forth herein.

M. Successors and Assigns

The rights, benefits and obligations of any Person or Entity named or referred to in the Combined Plan and Disclosure Statement shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign of such Person or Entity.

N. Reservation of Rights

Except as expressly set forth herein, the Plan shall have no force or effect unless the Court shall enter the Confirmation Order. Neither the filing of the Combined Plan and Disclosure Statement, any statement or provision contained herein, or the taking of any action by the Debtor with respect to the Combined Plan and Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor, Holders of Claims or Equity Interest before the Effective Date.

O. Implementation

The Debtor shall take all steps, and execute all documents, including appropriate releases, necessary to effectuate the provisions contained in this Combined Plan and Disclosure Statement.

P. Inconsistency

In the event of any inconsistency among the Combined Plan and Disclosure Statement, the Liquidating Trust Agreement or any other instrument or document created or executed pursuant to the Combined Plan and Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall govern.

Q. Compromise and Settlement of Claims and Controversies

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the classification, Distributions, releases and other benefits provided pursuant to the Plan, on the Effective Date, the provisions of the Plan will constitute a good faith compromise and settlement of all Claims, Equity Interests and controversies resolved pursuant to the Plan or relating to the contractual, legal and subordination rights that a Holder of a Claim or Interest may have with respect to any Claim or Interest, or any Distribution to be made on account of such Claim or Interest. The entry of the Confirmation Order will constitute the Court's approval of the compromise or settlement of all such Claims, Equity Interests and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtor, its Estate and Holders of Claims and Interests and is fair, equitable and reasonable.

R. Dissolution of the Committee

Upon the occurrence of the Effective Date, the Committee shall dissolve automatically, whereupon their members, professionals and agents shall be released from any duties and responsibilities in the Chapter 11 Case and under the Bankruptcy Code (except with respect to (i) obligations arising under confidentiality agreements, which shall remain in full force and effect, (ii) applications for payment of fees and reimbursement of expenses of Professionals, and (iii) any pending motions or motions for other actions seeking enforcement of implementation of the provisions of the Combined Plan and Disclosure Statement).

Dated: April 25, 2017

FRESH & EASY, LLC

By: /s/ Amir Agam

AMIR AGAM

CHIEF RESTRUCTURING OFFICER

**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF FRESH & EASY, LLC**

By: /s/ Michael Mandell

MICHAEL MANDELL

Ryder Integrated Logistics,

solely in his capacity as Chair of the Committee
and not his individual capacity

EXHIBIT A
TO COMBINED PLAN AND DISCLOSURE STATEMENT

SETTLEMENT AND RELEASE AGREEMENT

**Redacted Pursuant to
Order Authorizing the Filing Under Seal of a Provision of Settlement Agreement,
entered February 21, 2017 [Docket No. 1899]**

SETTLEMENT AND RELEASE AGREEMENT

This SETTLEMENT AND RELEASE AGREEMENT (the "**Agreement**") is made and entered into as of December 23, 2016, by and between the following parties (collectively, the "**Parties**," and each separately, a "**Party**"): (a) Fresh & Easy, LLC (the "**Debtor**"); (b) the Official Committee of Unsecured Creditors of Fresh & Easy, LLC (the "**Committee**"); (c) YFE Holdings, Inc. ("**YFE**"); Fresh Foods, LLC ("**Fresh Foods**"); FEFOS, LLC ("**FEFOS**"); Ronald W. Burkle, Ira L. Tochner, Robert P. Bermingham, and James W. Keyes (collectively with YFE, Fresh Foods, and FEFOS, the "**YFE Parties**"); and (d) The Yucaipa Companies, LLC ("**Yucaipa**").

WHEREAS, on October 30, 2015, the Debtor filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), which case is captioned as *In re Fresh & Easy, LLC*, Case No. 15-12220 (BLS) (Bankr. D. Del.) (the "**Bankruptcy Case**");

WHEREAS, the Debtor is authorized to operate its business and manage its assets as a debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108;

WHEREAS, on November 10, 2015, the Office of the United States Trustee appointed the Committee in the Bankruptcy Case pursuant to 11 U.S.C. § 1102;

WHEREAS, on May 31, 2016, the Committee filed an adversary proceeding against the YFE Parties in the Bankruptcy Court, which adversary proceeding is captioned as *The Official Committee of Unsecured Creditors of Fresh & Easy, LLC v. YFE Holdings, Inc., et al.*, Adv. No. 16-50993 (BLS) (the "**Adversary Proceeding**");

WHEREAS, on May 31, 2016, the Committee filed a motion in the Bankruptcy Case seeking derivative standing to pursue the Debtor's claims asserted in the Adversary Proceeding, which motion was subsequently granted by the Bankruptcy Court;

WHEREAS, the YFE Parties have denied and continue to deny all allegations of wrongdoing asserted by the Debtor, Committee and related entities associated with the Bankruptcy Case and Adversary Proceeding in all forms;

WHEREAS, the Parties participated in a voluntary and in-person mediation with mediator Jed Melnick on August 11, 2016. Following that mediation, numerous communications governed by the mediation privilege were exchanged in the ensuing weeks that eventually resulted in the Agreement, all under the auspices of mediator Jed Melnick;

WHEREAS, the Parties are entering into this Agreement solely for the purpose of resolving this matter and avoiding the time, expense, inconvenience, uncertainty and delay incident to protracted litigation, and thus the Agreement is not to be construed or interpreted as an admission of liability by any Party, person, or entity in any court or other adjudicative tribunal; and

WHEREAS, the Debtor and the Committee each represents that, in the exercise of its respective business judgment and given the uncertainty of the results of litigation, each believes

that the settlement provided herein is in the best interest of the Debtor's estates and its creditors and falls well within the range of reasonableness in the circumstances.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and promises contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby expressly acknowledged, the Parties agree as follows:

1. **Court Approval.** Subject to Paragraph 1(f) hereof, this Agreement shall be subject to approval by the Bankruptcy Court pursuant to Federal Rule of Bankruptcy Procedure 9019 in connection and concurrently with confirmation of a plan of liquidation in the Bankruptcy Case (the "**Approval Order**").

- a. The Parties agree that this Agreement and the releases contained herein are not effective unless and until the Bankruptcy Court enters a final and non-appealable order approving the Agreement as defined below ("**Final Order**").
- b. For purposes of this Agreement, a Final Order as referenced in (a) above shall mean a final order of the Bankruptcy Court (x) (i) as to which the time to appeal shall have expired and as to which no appeal shall then be pending, or (ii) if a timely appeal has been filed or sought, any appellate court having jurisdiction to hear such appeal or motion (or any subsequent appeal or motion to seek review, rehearing, or certiorari) shall have affirmed the district court's (or lower appellate court's) order affirming the order of the Bankruptcy Court or the appeal otherwise shall have been dismissed, and the time allowed to appeal from such affirmance or to seek review, rehearing, or certiorari thereof shall have expired, and the taking or granting of any further hearing, appeal or petition for certiorari shall not be permissible and (y) as to which the time to file a motion for stay or modification of such order shall have expired and as to which no stay or modification of such order shall then be pending or otherwise in effect.
- c. Each of the Parties shall use reasonable, good-faith efforts to prepare, finalize, and support the settlement reflected herein and implement it as part of consummation of the Plan, provided that the Plan is consistent with the terms of this Agreement. In addition to the obligations of law that good faith imposes on the Parties, it also means that the Parties shall not support any proposed plan or disclosure statement that is inconsistent with the terms of this Agreement. The Approval Order shall be in a form reasonably acceptable to the YFE Parties; provided, however, that if the terms of the Approval Order are part of the order confirming the Chapter 11 Plan (the "**Confirmation Order**"), the Confirmation Order must be reasonably acceptable to the YFE Parties to the extent it impacts, implements or describes the terms of this Agreement.
- d. The Committee shall request that the Approval Order contain a provision (the "**Bar Provision**") barring any person or entity (a "**Barred Person**") from commencing, prosecuting, asserting, or maintaining: (i) claims against any of

the YFE Released Parties as that term is defined in Paragraph 7 of this Agreement where the claims are the property of the Debtor's bankruptcy estate, were or could have been asserted by the Debtor, the Committee, or the bankruptcy estate, or are derivative claims of the Debtor, the Committee, or the bankruptcy estate, including those claims that arise from or relate to the claims asserted or that could have been asserted in the Adversary Proceeding; and (ii) any claims for indemnity or contribution brought against any of the YFE Released Parties and relating to the claims and allegations set forth in the Committee's complaint filed in the Adversary Proceeding. With respect to claims for indemnity or contribution, it shall not matter whether such claims are explicitly characterized as claims for indemnity or contribution, but rather the Barred Person must look to the underlying nature of the claim, including where the injury to the Barred Person is the liability of the Barred Person to another person or entity arising out of or relating to the claims or allegations released pursuant to this Agreement, whether arising under state, federal, or foreign laws as claims, cross-claims, counterclaims, or third-party claims ("Barred Third Party Claim"). Any joint tortfeasor barred pursuant to this Bar Provision shall be entitled to a judgment reduction (*i.e.*, setoff) to the extent provided for by applicable law. *See, e.g.*, Cal. Code Civ. Proc. § 877. The proposed Bar Provision shall be in a form reasonably acceptable to the Parties.

- e. On or before February 1, 2017, the Committee and the Debtor shall (i) prepare and file a proposed Chapter 11 plan and disclosure statement (collectively, the "Chapter 11 Plan") in Bankruptcy Court, which will seek as part of the Chapter 11 Plan confirmation process approval of the terms of this Agreement; and (ii) request that the Bankruptcy Court set a confirmation hearing date for the Chapter 11 Plan on the same date as the hearing on the Settlement Motion. The Parties shall not propose and shall not support any proposed plan or disclosure statement that is inconsistent with the terms of this Agreement, and this Agreement shall be attached to the Chapter 11 Plan and shall be incorporated by reference and constitute a material part of the Chapter 11 Plan. The terms and conditions of the proposed Chapter 11 Plan and confirmation order with respect to the YFE Parties shall be consistent with the terms of this Agreement and otherwise acceptable to the YFE Parties. The Parties shall use reasonable, good-faith efforts to prepare, finalize and support the Chapter 11 Plan. In addition to the obligations of law that good faith imposes on the Parties, the Parties shall not support any aspect of the Chapter 11 Plan that is inconsistent with the terms of this Agreement. Moreover, the Chapter 11 Plan shall provide that the YFE Released Parties will be released from any claims held by any holder of a claim against or interest in the Debtor in such holder's individual capacity (an "Individual Claim"), to the same extent as the YFE Released Parties would be released under Section 7 of this Agreement, unless such holder affirmatively opts out from granting the YFE Released Parties a release of an Individual Claim (collectively, the "Chapter 11 Individual Releases").

f. For the avoidance of doubt, this Agreement and the settlement reflected herein are not contingent on the approval or effectiveness of a Chapter 11 Plan. The Debtor, the Committee and the YFE Parties shall (i) provide in the Chapter 11 Plan and related motions/pleadings that such motions/pleadings constitute notice of approval of the Agreement in the event the Chapter 11 Plan is not confirmed or does not become effective by May 30, 2017; and (ii) promptly seek approval of the Agreement in the event the Chapter 11 Plan is not confirmed or does not become effective by May 30, 2017. Notwithstanding the foregoing, the Parties shall use their commercially reasonable efforts to obtain entry of the Confirmation Order and cause the Chapter 11 Plan to become effective by May 30, 2017. Notwithstanding the foregoing, if the Debtor and Committee determine in their reasonable discretion, after consulting with the YFE Parties, or if YFE determines in its reasonable discretion, after consulting with the Debtor and Committee, that the Chapter 11 Plan will not be confirmed and become effective by May 30, 2017, the Parties may seek approval of the Agreement outside of the confirmation process.

2. **Settlement Effective Date.** This Agreement shall be effective (the "**Settlement Effective Date**") upon the date that the Approval Order becomes a Final Order. In the event the Chapter 11 Plan is confirmed on the terms and conditions described herein and includes the provisions of this Agreement, the Confirmation Order shall be the Approval Order and the Settlement Effective Date shall be the date the Confirmation Order becomes a Final Order. In the event the Bankruptcy Court enters an order approving the Agreement outside of the Chapter 11 Plan pursuant to Paragraph 1(f) herein, that order shall be the Approval Order for purposes of this Agreement. Within twenty-four (24) hours of the Effective Date, the YFE Parties shall notify their Insurers of such Effective Date.

3. **No Admission of Liability.** By entering into this Agreement, none of the Parties admits the allegations or contentions of any other Party, and each Party is entering into this Agreement for the sole purpose of resolving this matter and avoiding the time, expense, inconvenience and delay incident to protracted litigation. All Parties agree that there is no assurance of any favorable outcome to any pending or threatened litigation or defenses. By entering into this Agreement, none of the Parties is agreeing that the YFE Released Parties acted wrongfully in any way.

4. **Settlement Payment.** No later than fifteen (15) business days after the Committee provides YFE with written notice of the Settlement Effective Date, the YFE Parties (and/or their insurers) shall make payment in the total amount of \$21,500,000 in consideration of this Agreement and the Chapter 11 Individual Releases (the "**Settlement Payment**") by wire transfer to the Debtor, using the following wire instructions:

Beneficiary Bank Name:	Wells Fargo Bank, N.A.
Beneficiary Account Name:	Fresh & Easy, LLC
Beneficiary Account Number:	4941768954
Beneficiary Routing Number:	121000248
Beneficiary Bank Contact Person:	Charlene Cortez

Beneficiary Bank Contact No.: 415-243-7592
Beneficiary Bank Address: 420 Montgomery Street
San Francisco, CA 94104

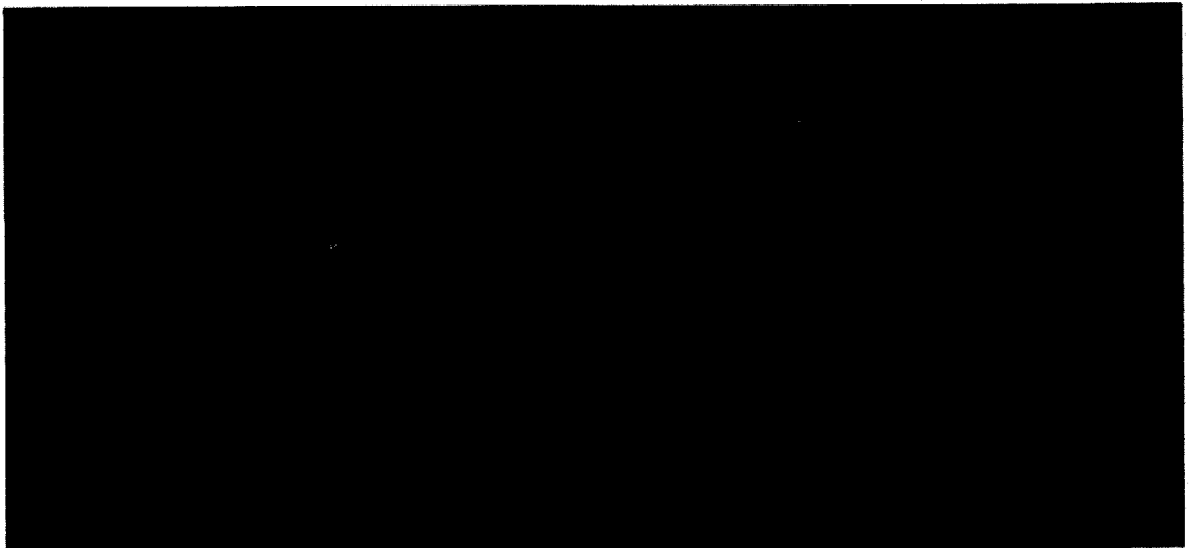
Alternatively, the Settlement Payment may be made by check payable to the Debtor and sent to:

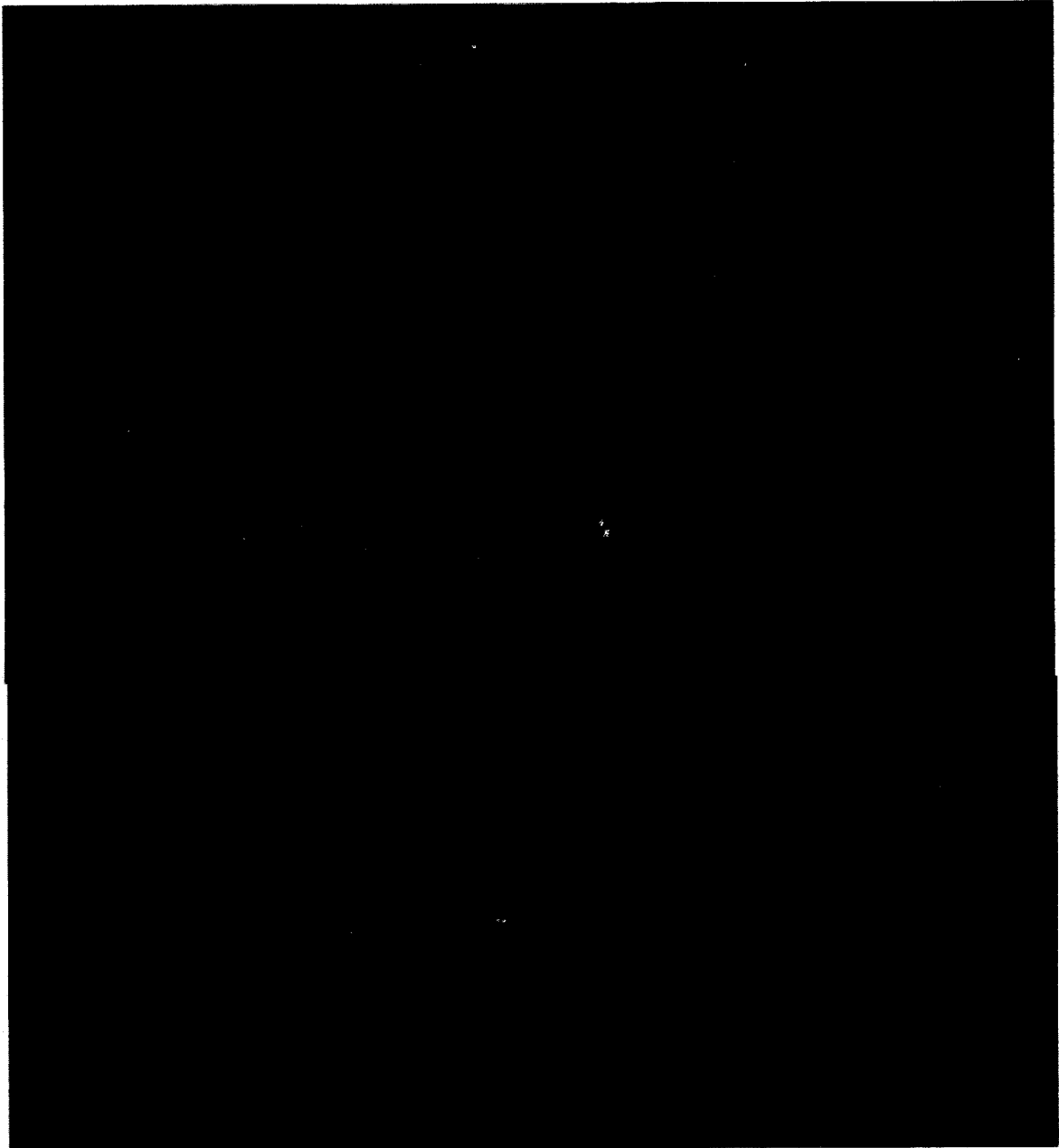
Fresh & Easy LLC
Howard Hughes Center
6080 Center Drive, 6th Floor
Los Angeles, 90045, USA

Upon execution of this Agreement, the Debtor shall provide the YFE Parties with a completed Form W-9. Upon receipt of the Settlement Payment, the Debtor shall promptly provide written notice to the Committee and the YFE Parties. However, the YFE Parties' obligation to make the Settlement Payment shall be expressly subject to and conditional upon the Insurers' Payment of the amounts due under their "Respective Contributions" as set forth in the separate settlement agreement (the "YFE/Insurers Agreement") with the YFE Parties' Insurers. YFE has provided a copy of the YFE/Insurers Agreement to Jed Melnick, subject to the mediation privilege. Mr. Melnick will retain a copy of the YFE/Insurers Agreement until the Settlement Payment has been made to the Debtor.

To the extent that any portion of the Settlement Payment is funded with proceeds of insurance policies under which the Debtor is also an Insured, such payments shall reduce the Limits of Liability under such policies in like amount and the Approval Order shall contain a provision to this effect.

The Chapter 11 Plan shall provide that \$2,500,000 (the "Release Consideration") of the Settlement Payment shall be expressly earmarked solely for those general unsecured creditors who do not opt-out (the "Releasing Creditors") of the Chapter 11 Individual Releases provided herein and to be incorporated into the Chapter 11 Plan, which Release Consideration shall be distributed on a pro-rata basis to such Releasing Creditors.





6. PACA/PASA Liability. YFE and the Debtor shall equally divide and be responsible for any claims, damages, or other liability arising from or relating to any actual or alleged violations involving the Debtor of the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a *et seq.* and/or the Packers and Stockyards Act, 7 U.S.C. § 181 *et seq.*, (“PACA/PASA Liability”) as long as the total sum of the PACA/PASA does not exceed \$200,000. That sum shall be exclusive of attorneys’ fees and costs. If the PACA/PASA Liability exceeds \$200,000, the Parties shall agree to meet and conduct a good faith negotiation to discuss the appropriate allocation between the Parties of that liability in excess of \$200,000. If the Parties cannot agree on such allocation after a good faith negotiation, the Parties agree to equally divide any PACA/PASA Liability in excess of \$200,000 in equal shares between the Debtor and YFE. The

Parties recognize that the total sum of the PACA/PASA Liability may not be determined until the conclusion of litigation or dispute resolution regarding those claims. Further, regardless of whether the PACA/PASA Liability exceeds \$200,000 or not, the Parties agree to exercise best efforts to cooperate with each other in the defense of all claims, issues and matters that relate to the PACA/PASA Liability, including settlement and the filing motions and pleadings that are reasonably acceptable to the Parties. With respect to such cooperation, the Parties agree to exercise a common interest and/or joint defense agreement to protect all applicable privileges to the greatest extent that the law permits. With respect to cooperation in any settlement of the PACA/PASA Liability claims, if the Parties cannot agree on a reasonable settlement amount after reasonable negotiations, then the Parties shall select the settlement amount that is the midpoint between YFE's proposed settlement amount and the Debtor's proposed settlement amount. In the defense of PACA/PASA Liability claims, the Parties will each bear their own respective attorneys' fees, costs and related expenses.

7. Releases by the Debtor and the Committee. Upon the Debtor's receipt of the Settlement Payment, the Debtor, the Committee, and the Debtor's bankruptcy estate on behalf of themselves, and each of their predecessors, successors, affiliates, each and every member of the Committee, current and former members, partners, shareholders, officers, directors, managers, agents, employees, consultants, attorneys, and representatives, fully release and forever discharge the YFE Parties and Yucaipa, together with each of their predecessors, successors, and current and former affiliates, members, partners, shareholders, officers, directors, managers, agents, employees, attorneys (including Gibson, Dunn & Crutcher, LLP), insurers, reinsurers, and representatives, including, but not limited to, Peter McPhee, Stephanie Bond, Steve Mortensen, Derex Walker, Henry Orren, Mary Kasper, Mark Orr, Tom Dahlen, Terrence Wallock, and Catherine Schneider (collectively, the "YFE Released Parties"), from any and all claims, causes of action, damages, debts, liabilities, obligations, promises, and agreements, of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or derivative, that are related to the Debtor, the Committee, or the Bankruptcy Case, including, but not limited to, all claims asserted in or that could have been asserted in, and those that are related to, or contingent upon, the Adversary Proceeding and any claims in any way related to the operation of the Debtor's business and related entities, including Fresh Foods and FEFOS, and any claims or assertions made by the Committee in correspondence to the YFE Released Parties or its insurers, including, but not limited to, that correspondence sent by Eric Madden of Reid Collins & Tsai LLP dated March 24, 2016, and April 8, 2016. For the absence of doubt, each and every member of the Committee agrees it shall not "opt-out" of the Agreement, and shall be bound by the release provision set forth in Section 7, herein. As a material provision and covenant of this Agreement, the Committee warrants and represents that it has the authority, consent and ability to bind each and every member of the Committee to the Agreement, and in particular, the release provisions contained in Section 7, herein. Moreover, nothing in this Agreement releases: (a) any Party from its obligations under this Agreement or its liability for breach of any term, warranty, or representation in this Agreement; or (b) any claims that the Committee or its members may have against the Debtor or its estate, so long as such claim does not give rise to any claim against the YFE Released Parties or their insurers. No later than three (3) business days after the Debtor's receipt of the Settlement Payment, the Committee shall dismiss with prejudice the Adversary Proceeding.

8. Releases by the YFE Parties and Yucaipa. Upon the Debtor's receipt of the Settlement Payment and the Committee's dismissal with prejudice of the Adversary Proceeding, the YFE Parties and Yucaipa on behalf of themselves, and each of their predecessors, successors, and current and former affiliates, members, partners, shareholders, officers, directors, managers, agents, employees, consultants, attorneys (including Gibson, Dunn & Crutcher, LLP), and representatives, including, but not limited to, the YFE Released Parties, with the exception of their insurers and reinsurers (collectively, the "YFE Releasing Parties"), fully release and forever discharge the Debtor, the Committee, and the Debtor's bankruptcy estate, together with each of their predecessors, successors, affiliates, and current and former members, partners, shareholders, officers, directors, managers, agents, employees, attorneys, and representatives, from any and all claims, causes of action, damages, debts, liabilities, obligations, promises, and agreements, of any nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or derivative, related to the Debtor, the Committee, or the Bankruptcy Case, including, but not limited to, all claims asserted in or that could have been asserted in, and those that are related to, or contingent upon, the Adversary Proceeding and any claims in any way related to the operation of the Debtor's business and related entities, including Fresh Foods and FEFOS (the "Estate Released Parties"). The releases in this paragraph include, but are not limited to, the following:

- a. Any claims in the Bankruptcy Case filed by or scheduled on behalf of any of the YFE Parties, including: (i) the nonpriority unsecured claim in the amount of \$89,462,027.00 (plus any accrued interest or fees) scheduled on behalf of YFE; (ii) the nonpriority unsecured claim in the amount of \$9,415,096.00 (plus any accrued interest or fees) scheduled on behalf of Fresh Foods; (iii) the nonpriority unsecured claim in the amount of \$4,902,183.00 (plus any accrued interest or fees) scheduled on behalf of FEFOS; (iv) the priority unsecured claim in an unknown amount (plus any accrued interest or fees) scheduled on behalf of James W. Keyes; (v) the nonpriority unsecured claim in the amount of \$438,065.39 (plus any accrued interest or fees) scheduled on behalf of Fresh & Easy Campus Produce Cut Fruit, to the extent that such entity is owned or controlled by any of the YFE Parties; and (vi) the nonpriority unsecured claim in the amount of \$596,057.02 (plus any accrued interest or fees) scheduled on behalf of Fresh & Easy Kitchen-Kitchen SC, to the extent that such entity is owned or controlled by any of the YFE Parties;
- b. Any claims in the Bankruptcy Case filed by or scheduled on behalf of Yucaipa;
- c. Any claims arising from or relating to any fees or expenses incurred by the YFE Parties in connection with the Bankruptcy Case, including in connection with any debtor-in-possession financing for the Debtor (the "DIP Financing"), and including any legal fees incurred by Gibson, Dunn & Crutcher, LLP, and other counsel; provided that upon entry of the Approval Order, any obligations of the YFE Parties in connection with the DIP Financing shall be terminated;
- d. Any claims by any of the YFE Parties relating to their employment by the Debtor, including any claims for unpaid wages, severance, indemnity, or expense reimbursement;

- e. Any claims or liability by the YFE Parties, including based on contribution or indemnity, arising from or relating to any of the following agreements: (i) the Secured Promissory Note dated November 25, 2013, and as subsequently amended and restated, made by Fresh Foods in favor of Tesco Treasury Services, PLC; (ii) the Guaranty dated November 25, 2013, and as subsequently reaffirmed, made by the Debtor to guarantee the obligations under the foregoing promissory note; and (iii) the Transitional Services Agreement dated November 13, 2013, and as subsequently amended and modified, entered into between YFE and Tesco Stores Limited;
- f. Any claims or liability by the YFE Parties, including based on contribution or indemnity, arising from or relating to any of the following: (i) the Consulting Services Agreement dated November 25, 2013, entered into between YFE and FAEMF, LLC; (ii) any services provided by FAEMF, LLC to YFE or the Debtor; and (iii) any services provided by Yucaipa to YFE or the Debtor;
- g. Any claims or liability by the YFE Parties, including based on contribution or indemnity, arising from or relating to any of the following: (i) any guaranties of store leases entered into by YFE or the Debtor; and (ii) the Debtor's use of any property owned or leased by YFE, FEFOS, or Fresh Foods;
- h. Any claims arising from or relating to any of the accounts receivable listed in the schedule attached to this Agreement as Exhibit A;
- i. Any claims arising from or relating to any of the deposits, tax payments, insurance refunds, letters of credit, or retainers listed on the schedule attached to this Agreement as Exhibit B;
- j. Any claims or liability, including based on contribution or indemnity, arising from or relating to the Trademark License Agreement dated April 3, 2014, entered into between Yucaipa and the Debtor; and
- k. Any claims or liability by the YFE Parties, including based on contribution or indemnity, arising from or relating to any actual or alleged violations involving the Debtor of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* and/or California Labor Code § 1400 *et seq.*, subject to the Debtor's obligations under Paragraph 5 of this Agreement.

Nothing in this Agreement, however, releases any Party from its obligations under this Agreement or its liability for breach of any term, warranty, or representation in this Agreement. To the extent that any YFE Releasing Party, other than any of the YFE Parties or Yucaipa, asserts a claim against the Debtor in derogation of this Agreement and does not withdraw such claim within ten days of receipt of written request by the Debtor or the Committee, such YFE Releasing Party shall thereafter be excluded from the definition of YFE Released Parties set forth herein. For avoidance

of doubt, nothing about the foregoing provision allows any of the YFE Parties or Yucaipa to assert any claims against the Estate Released Parties that have been released pursuant to this Agreement.

9. Waiver of Unknown Claims and California Civil Code § 1542. The Parties acknowledge and agree that the foregoing releases are intended to and do operate as a full and final release of all such claims that: (a) the Debtor, the Committee, or the Debtor's bankruptcy estate may have against the YFE Parties, Yucaipa, or the YFE Released Parties; and (b) the YFE Parties, Yucaipa, or the YFE Released Parties may have against the Debtor, the Committee, or the Debtor's bankruptcy estate. Each of the Parties waives its rights under Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each of the Parties hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses that are presently unknown, unanticipated and unsuspected, and each of the Parties further agrees, represents and warrants that this Agreement has been negotiated and agreed upon in light of that realization and that, except as expressly limited above, each of the Parties nevertheless hereby intends to release and discharge the other Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses arising from or relating to any and all claims, disputes and other issues related to the subject matter of this Agreement.

10. Antitrust Claims. YFE, Fresh Foods, and FEFOS represent and warrant that they have no reason to believe that any claims or causes of action against third parties based on state or federal antitrust law (the "Antitrust Claims") related to the Debtor, its stores, or its operations, including related to the time period prior to the Debtor's acquisition of such stores and operations, have been assigned or otherwise transferred by the Debtor to any other person or entity since November 26, 2013.

11. Additional Representations and Warranties. Each of the Parties represents and warrants that: (a) it negotiated this Agreement at arm's length; (b) it participated in jointly drafting this Agreement and that any rule which construes ambiguities against the drafter is of no force or effect here; (c) it is represented by competent counsel who have had the opportunity to review this Agreement; (d) it enters into this Agreement knowingly and voluntarily; (e) the person executing this Agreement on its behalf is legally competent and able to execute this Agreement; (f) the person executing this Agreement on its behalf has the power and authority to enter into this Agreement, subject to the approval of this Agreement by the Bankruptcy Court; and (g) this Agreement is binding on their successors and assigns, including any trustee.

12. Governing Law and Venue. The Parties agree that this Agreement shall be governed by, interpreted under, and enforced in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of laws. Any disputes related to or arising out of this

Agreement, including any action to enforce this Agreement, shall be brought only in the Bankruptcy Court. The Parties hereby consent to jurisdiction and venue in the Bankruptcy Court for any such action.

13. Attorney's Fees and Expenses. Each of the Parties shall bear its own attorney's fees and expenses arising prior to the execution of this Agreement, provided that the Committee shall be entitled to seek payment of its attorney's fees and expenses from the Debtor's estate pursuant to 11 U.S.C. §§ 327 and 328. In the event that a Party takes action to enforce any provision of this Agreement, the prevailing Party in such an action shall be entitled to recover its reasonable attorney's fees and expenses from the opposing Party in the action.

14. Notices. Any notices in connection with this Agreement shall be delivered to the Parties by first-class mail and email to each of the persons listed below:

For the Debtor:

Michael R. Nestor
Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, DE 19801
mnestor@ycst.com

Norman L. Pernick
Cole Schotz P.C.
500 Delaware Avenue, Suite 1410
Wilmington, DE 19801
npernick@coleschotz.com

For the Committee:

Mette H. Kurth
Fox Rothschild LLP
1800 Century Park East, Suite 300
Los Angeles, CA 90067
mkurth@foxrothschild.com

Eric D. Madden
J. Benjamin King
Reid Collins & Tsai LLP
1601 Elm Street, 42nd Floor
Dallas, TX 75201
emadden@rctlegal.com
bking@rctlegal.com

For the YFE Parties and Yucaipa:

Robert A. Klyman
Maurice M. Suh
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
rklyman@gibsondunn.com
msuh@gibsondunn.com

15. **Complete Agreement.** Each of the Parties agrees that: (a) this Agreement constitutes the full and complete agreement among the Parties regarding the subject matter of this Agreement; (b) this Agreement supersedes any prior oral or written agreements, representations, or understandings among the Parties regarding the subject matter of this Agreement; and (c) there are no oral or written agreements, representations, or understandings among the Parties regarding the subject matter of this Agreement, except as expressly stated in this Agreement. This Agreement can be amended or modified only in a writing executed by all of the Parties.


16. **Cooperation.** The Parties agree to cooperate fully, to execute and deliver any and all supplementary documents, and to take all additional actions, which reasonably may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement without the receipt of further consideration.

17. **Agreement Inadmissible.** This Agreement shall not be admissible in any action, suit, or proceeding as evidence or as an admission of any claim or liability; provided, however, that any Party to this Agreement may use all or part of this Agreement in a proceeding between or among all of the Parties, or any of them, to the extent necessary to enforce any right conferred on that Party by this Agreement and to obtain the Approval Order from the Bankruptcy Court, and that the YFE Parties may use all or any part of this Agreement to the extent necessary in an action, suit, or proceeding related to insurance coverage.

18. **Execution.** The Parties agree that: (a) this Agreement may be executed in multiple counterparts, each of which shall be deemed to be and have the same force and effect of an original, and all of which taken together shall constitute and be construed as a single, binding agreement; and (b) a photocopied or PDF-scanned signature on this Agreement shall be deemed to be and have the same force and effect of an original signature.

IN WITNESS WHEREOF, and intending to be legally bound, each of the Parties has caused this Agreement to be executed as of the date set forth above.

FRESH & EASY, LLC



Amir Agam
Chief Restructuring Officer

RONALD W. BURKLE




Ronald W. Burkle

**THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS**



Michael S. Mandell
Committee Chairman

IRA L. TOCHNER



Ira L. Tochner

YFE HOLDINGS, INC.



Robert P. Bermingham
Vice President and Secretary

ROBERT P. BERMINGHAM




Robert P. Bermingham

FRESH FOODS, LLC



Robert P. Bermingham
Vice President and Secretary

JAMES W. KEYES



James W. Keyes

FEPOS, LLC



Robert P. Bermingham
Vice President and Secretary

THE YUCAIPA COMPANIES, LLC



Robert P. Bermingham
Vice President and Secretary

**EXHIBIT A
TO SETTLEMENT AND RELEASE AGREEMENT**

Fresh & Easy, LLC - AR Summary of 9/14/16

CUSTOMER NAME	OUTSTANDING AMOUNT
Amazon	\$23,477.56
Arotin	15,000.00
ARYZTA LLC	837.73
B & B PLASTICS RECYCLERS INC	4,024.80
CITISTAFF SOLUTIONS INC	884.00
CLIF BAR	12,474.90
COCA COLA NORTH AMERICA	279.49
COMMONWEALTH DAIRY LLC	4,800.90
CONAGRA	810.00
CONAGRA FOR REFRIGERATION	1,488.68
DBI PARTNERS LLC	51,220.40
DPI SPECIALTY FOODS	(0.60)
DPI WEST	80,973.75
EHRMANN USA LLC	2,094.40
FERRARA PAN CANDY COMPANY	336.92
FORAGER PROJECT	3,412.80
FRENCHIES KITCHEN LLC	14,594.88
FRITO LAY	4,392.90
GENERAL MILLS	3,207.68
GOLDEN STATE FC LLC	3,579.00
HARVEST MEAT COMPANY INC	1,302.00
HIDDEN VILLA RANCH	25,245.75
INTERNATIONAL COFFEE & TEA LLC	2,399.25
JANA NORTH AMERICA INC	2,114.64
JBS USA LLC	32,559.50
JBS USA LLC	956.04
JOHNSON & JOHNSON CONSUMER INC	5,246.92
KIND LLC	6,203.60
KINGS HAWAIIAN BAKERY WEST INC	3,983.51
KRAFT FOODS GROUP INC	83.17
LA Foods	24,180.57
LIVE BETTER BRANDS LLC	636.30
MACKNIGHT SMOKEHOUSE INC THE	1,740.00
MADDIEBRIT PRODUCTS LLC	7,478.67
MAVERICK BRANDS LLC	1,348.80
Michael Levin	12,011.08
MILLERS BAKERY INC	2,103.20
MJM VALLEJO MINI MART INC	0.02
MONINI NORTH AMERICA INC	15,648.75
PEPSI COLA	34,625.99
PINNACLE FOODS GROUP LLC	5,714.70
PLUMROSE USA	2,357.40
POPCHIPS INC	1,050.48
PROMAX NUTRITION CORPORATION	4,032.16
QUAKER SALES & DISTRIBUTION	0.10
REPURPOSE INC	3,416.90
REVOLUTION FOODS INC	285.00
S&C Resale Company	11,126.85
SHAMROCK FOODS INC	3,639.98
SHASTA BEVERAGES INC	1,073.40
SLINGSHOT FOODS LLC	1,033.80
SNOQUALMIE GOURMET ICE CREAM INC	473.10
SOMERSAULT LIFE COMPANY LLC	2,300.55
SPECIALTY CELLARS	5,360.00
Swift Beef Company	10,502.28
TARGET CORPORATION	18,446.13
THE CLOROX SALES COMPANY	1,626.00
THE HYGENIC CORPORATION	29.00
THE NEW FRENCH BAKERY	0.26
TROPICANA CHILLED DSD	7,210.41
Uncle Matts Organic Inc.'	54,058.97
UNIFIED GROCERS INC	5,857.03
UNILEVER	11,501.34
UNITED NATURAL FOOD WEST INC	224,820.21
USA NANFANG FOOD INDUSTRY INC	861.60
Total	\$784,535.60

EXHIBIT B
TO SETTLEMENT AND RELEASE AGREEMENT

Fresh & Easy, LLC - Deposit Summary as of 9/14/16		
Supplier	Description	Amount
CREST BEVERAGE LLC	Alcohol Vendor Deposit	\$30,000.00
DBI BEVERAGE NAPA	Alcohol Vendor Deposit	10,000.00
DBI BEVERAGE SACRAMENTO	Alcohol Vendor Deposit	10,000.00
DBI BEVERAGE SAN FRANCISCO	Alcohol Vendor Deposit	7,200.00
HARBOR DIST	Alcohol Vendor Deposit	90,000.00
LOCKTON INSURANCE BROKERS	Insurance Escrow	200,000.00
Noble Americas	Utility Deposit	250,000.00
San Luis Obispo Environmental Escrow	Environmental Escrow	20,000.00
WIRTZ BEVERAGE NEVADA BEER INC	Alcohol Vendor Deposit	50,000.00
SAN DIEGO GAS & ELECTRIC	Utility Deposit	65,721.61
Southern California Edison	Utility Deposit	62,000.00
SAVVIS	Utility Deposit	5,000.00
Total		\$799,921.61

EXHIBIT B
TO COMBINED PLAN AND DISCLOSURE STATEMENT

LIQUIDATING TRUST AGREEMENT

DRAFT

LIQUIDATING TRUST AGREEMENT

AND

DECLARATION OF TRUST

By and Among

FRESH AND EASY, LLC,

Debtor

and

Peter S. Kravitz of Province, Inc.

As Liquidating Trustee

Dated

_____, 2017

This Liquidating Trust Agreement and Declaration of Trust (the “Agreement” or the “Liquidating Trust Agreement”) is entered into as of _____, effective as of the Plan’s Effective Date, by and among: (a) Fresh & Easy, LLC, as debtor and debtor in possession in the Chapter 11 Case and on behalf of the Estate (“Fresh & Easy” or “Settlor”), as transferor; and (b) Peter S. Kravitz of Province, Inc., solely in his capacity as trustee under this Agreement (the “Trustee”).¹

RECITALS

WHEREAS, on the Petition Date, Fresh & Easy filed a voluntary petition under chapter 11 of the Bankruptcy Code, and Fresh & Easy has continued in possession of its property and has continued to manage its affairs and wind down its business as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108;

WHEREAS, on November 10, 2015, the UST appointed DPI Specialty Foods, Inc., United Natural Foods West, Inc., Ignited, LLC, JBS USA, and Ryder Integrated Logistics to serve on the Committee in the Chapter 11 Case, and on November 18, 2016, the UST also appointed Empress Group and MJL Capital Partners, LLC to the Committee;

WHEREAS, on February 1, 2017, the *Combined Disclosure Statement* (the “Disclosure Statement”) and *Joint Chapter 11 Plan of Liquidation for Fresh & Easy, LLC* (the “Plan”), as it may be amended, supplemented, or modified from time to time, the “Combined Plan and Disclosure Statement”) [Docket No. 1831], proposed by the Debtor and the Official Committee of Unsecured Creditors (the “Committee”), was filed with the Bankruptcy Court;

WHEREAS, on _____, the Bankruptcy Court entered its Order confirming the Plan pursuant to Bankruptcy Code section 1129 [Docket No. _____] (the “Confirmation Order”);

WHEREAS, the Plan provides for the creation of this Trust and the transfer of all Liquidating Trust Assets to the Trust as of the Plan’s Effective Date or as soon as reasonably practicable thereafter;

WHEREAS, the Trust is created for the sole benefit of the Holders of Allowed General Unsecured Claims under the Plan (the “Beneficiaries”);

WHEREAS, the Trust is established for the purpose of collecting, liquidating, and distributing the Assets for the Beneficiaries’ benefit in accordance with the Liquidating Trust Agreement and the Plan and with no objective to continue or engage in the conduct of a trade or business;

WHEREAS, the Trust is intended to be treated and qualify as a “grantor trust” for federal income tax purposes, and the Trustee will operate and maintain the Trust in compliance with the guidelines for obtaining a classification ruling as a liquidating trust as set forth in

¹ Any capitalized term not otherwise defined herein shall have the meaning set forth in the Plan.

Internal Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Section 1.671-4(a) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service (“IRS”);

WHEREAS, for all federal income tax purposes the Plan requires the Settlor, the Trustee, and the Beneficiaries to treat the transfer of the Initial Trust Assets to the Trust as a transfer by the Settlor to the Beneficiaries in satisfaction of their Allowed General Unsecured Claims, followed by a transfer of the Initial Trust Assets by the Beneficiaries to the Trust in exchange for the beneficial interests therein, and to treat the Beneficiaries as the grantors and owners of the Trust in accordance with Treasury Regulation § 301.7701-4; and

WHEREAS, pursuant to the Plan, the Trustee will be deemed to be the Estate’s representative in accordance with Bankruptcy Code section 1123 and will have all the rights and powers set forth in the Plan and in this Agreement, including the powers of a trustee under Bankruptcy Code sections 704 and 1106 and Bankruptcy Rule 2004;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein and in the Plan, the Settlor and the Trustee agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.1 The following definitions apply to the capitalized terms used in this Agreement. Any capitalized term not otherwise defined herein shall have the meaning set forth in the Plan. Terms defined in the Bankruptcy Code, and not otherwise defined in this Agreement or the Plan have the meanings set forth in the Bankruptcy Code.

1.1.1 “Assets” shall mean the Initial Trust Assets and any proceeds, revenue, or income therefrom.

(a) “Available Trust Cash” shall mean the aggregate of the Assets after paying, reserving for, or satisfying: (a) fees due to the U.S. Trustee pursuant to 28 U.S.C. § 1930; (b) the Trust’s operating and administrative expenses, including all costs, expenses, and obligations incurred by the Trustee (or professionals who the Trustee may employ in administering the Trust) in carrying out their responsibilities under the Agreement, or in any manner connected, incidental, or related thereto; (c) the Disputed Claims Reserve; (d) the Professional Fee Reserve (as provided in Article XIII.K.1 of the Plan); (e) the Administrative Claim Reserve (as provided in Article XIII.K.2 of the Plan); (f) the WARN Reserve (as provided in Article XIII.K.3 of the Plan); and (g) the Release Consideration which shall be segregated in a separate account and earmarked solely for Releasing Creditors (as provided in the Settlement and Release Agreement).

1.1.2 “Beneficiaries” shall mean, collectively, the Holders of Allowed General Unsecured Claims under the Plan, or any successors to such Holders’ Allowed General Unsecured Claims or interests in the Trust.

1.1.3 “Initial Trust Assets” shall mean the Liquidating Trust Assets; as such term is defined in the Plan.

1.1.4 “Permitted Investments” shall include: (a) short-term direct obligations of, or obligations guaranteed by, the United States of America; (b) short-term obligations of any agency or corporation which is or may hereafter be created by or pursuant to an act of the Congress of the United States as an agency or instrumentality thereof; (c) such other investments as the Court may approve from time to time; or (d) demand deposits or certificates of deposit at any bank or trust company; *provided, however*, that the scope of any Permitted Investments will be limited to include only those investments that a liquidating trust, within the meaning of Treas. Reg. § 301.7701-4(d), may be permitted to hold, pursuant to Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise.

1.1.5 “Trust” shall mean the Liquidating Trust established pursuant to the terms of this Agreement and the Plan.

1.1.6 “Trustee” shall mean: (i) initially, Peter S. Kravitz of Province, Inc.; and (ii) any successors or replacements duly appointed under the terms of this Agreement.

1.2 Interpretation. The headings in this Agreement are for convenience only and do not affect the meaning or understanding of the Agreement or any provision hereof. Words defined, denoted, or stated in the singular form also include the plural form and vice versa, and words defined, denoted, or stated in the masculine, feminine, or neuter form include each of the masculine, feminine, and neuter forms. The word “including” means “including but not limited to.” The word “or” is not exclusive.

1.3 Particular Words. Reference in this Agreement to any Section or Article is, unless otherwise specified, to that Section or Article in this Agreement. The words “hereof,” “herein,” “hereto,” and similar terms refer to this Agreement and not to any particular Section or Article of this Agreement.

ARTICLE II

DECLARATION OF TRUST

2.1 Creation and Name. There is hereby created the Trust, which shall be known as the “Fresh & Easy Liquidating Trust” and which is the Trust referred to as the Liquidating Trust in the Plan. The Trustee may conduct the Trust’s affairs under the name of the “Fresh & Easy Liquidating Trust.”

2.2 Purpose of the Trust. The Settlor and the Trustee, pursuant to the Plan and in accordance with the Bankruptcy Code, hereby create the Trust for the purpose of collecting, distributing, and liquidating the Assets for the benefit of the Beneficiaries in accordance with the terms of the Agreement and the Plan. The Trust’s activities will be limited to those activities set forth in this Agreement and otherwise contemplated by the Plan. The Trustee will make

continuing efforts to dispose of the Assets, make timely Distributions, and not unduly prolong the Trust's duration.

2.3 **Treatment of the Trust.** This Agreement is intended to create a trust and a trust relationship and to be governed and construed in all respects as a trust. The Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association. The relationship of the Beneficiaries to the Trustee will be solely that of beneficiaries of a trust and will not be deemed a principal or agency relationship, and their rights will be limited to those conferred upon them by this Agreement.

2.4 **Transfer of Initial Trust Assets.**

(a) The Settlor hereby grants, releases, assigns, conveys, transfers, and delivers, on behalf of the Beneficiaries, all of the Settlor's right, title, and interest in the Initial Trust Assets to the Trust as of the Effective Date to be held in trust for the benefit of the Beneficiaries, pursuant to Bankruptcy Code sections 1123(a)(5)(B) and 1123(b)(3)(B) and in accordance with the Plan and Confirmation Order and free and clear of any and all liens, claims, encumbrances, and interests (legal, beneficial, or otherwise) of all other Persons and Entities to the maximum extent contemplated by and permissible under Bankruptcy Code section 1141(c) for the uses and purposes as specified in the Agreement and the Plan, but subject to the following liabilities: (i) all fees payable pursuant to 28 U.S.C. § 1930 until such time as the Court enters a final decree closing the Debtor's Chapter 11 Case; and (ii) the Trust's expenses. The Trust will have such incidents of ownership in the Initial Trust Assets as are necessary to undertake the actions and transactions authorized under the Plan. The transfer of the Initial Trust Assets will be exempt from any stamp, real estate transfer, mortgage recording, sales, use, or other similar tax pursuant to Bankruptcy Code section 1146. Upon the transfer of the Initial Trust Assets to the Trust, such assets shall become Assets of the Trust.

(b) Notwithstanding the foregoing, if on the Effective Date any of the Initial Trust Assets cannot be transferred to the Trust, or it is deemed impractical or inadvisable to do so by the Trustee for any reason—for example, because the Trust has not yet established accounts for the purpose of holding Cash or because of a restriction on their transferability under applicable non-bankruptcy law that is not superseded by Bankruptcy Code section 1123 or any other Bankruptcy Code provision—the Debtor will continue to hold such Initial Trust Assets as bailee for the Trust's account until the Trust informs the Debtor that the Trust may receive such Initial Trust Assets, whereupon the Debtor will promptly transfer such assets to the Trust and they will become Assets; *provided, however*, that the proceeds of the sale or other disposition of any such assets retained by the Debtor (or any successors thereto) will nevertheless be deemed to constitute Initial Trust Assets and to likewise be held by the Debtor as bailee as provided herein. The Trustee may commence an action in the Bankruptcy Court to resolve any dispute regarding the allocation of the proceeds of any Initial Trust Assets retained by the Debtor (or any successors thereto) pursuant to the Plan.

(c) On or before the Effective Date, the Debtor will deliver or cause to be delivered to the Trust any and all books and records that relate to or that may be reasonably

required in connection with the Initial Trust Assets, whether held by the Debtor, its agents, representatives, advisors, attorneys, accountants or any other professionals hired by the Debtor, and the Debtor will provide access (to the extent it has the power to do so) to such employees, agents, advisors, attorneys, accountants, or any other professionals hired by the Debtor and with knowledge of matters relevant to the Initial Trust Assets. The Debtor's professionals may charge the Trust their standard hourly rates for any services provided.

(d) On or before the Effective Date, the Debtor will deliver, or cause to be delivered, to the Trust a complete list of all Claims reflected on the claims registry as of the Effective Date. For administrative, secured, and priority claims, the Debtor shall indicate whether the claim has been paid or is in dispute. In the case of disputed claims, the Debtor shall indicate the basis for the dispute, or issues open for analysis. The list will include the names and addresses of the Holders of such Claims, the amounts thereof, the amounts filed, and the estimated amounts thereof.

(e) The Trust, as successor in interest to the Estate, may: (i) execute and deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), and (ii) take, or cause to be taken, all such further action to evidence, vest, perfect, or effectuate the transfer of all of the Initial Trust Assets to the Trust and consummate transactions contemplated by and to otherwise carry out the Plan's intent. In addition, the Trust, as successor in interest to the Estate, will be entitled to receive and collect all tax refunds to which the Debtor or the Estate would otherwise be entitled, and all such tax refunds shall be deemed to be Assets of the Trust.

2.5 **Title to Assets.** Upon the transfer of the Initial Trust Assets, the Trust will succeed to all of the Debtor's right, title, and interest in the Initial Trust Assets and the Debtor will have no further rights or interest in or with respect to the Initial Trust Assets nor will the Debtor have any rights or interests in the Assets or the Trust. From and after the Effective Date, legal title to the Initial Trust Asset and the Assets will be vested at all times in the Trust as a separate legal entity except where applicable law in any jurisdiction in which the Trust property may be located requires title to any part of the Assets to be vested in a trustee, in which case title will be deemed vested in the Trustee. No Beneficiary will have legal title to any part of the Assets. For the avoidance of doubt, and to facilitate the sale and/or transfer of liquor licenses, all of the Debtor's rights, title and interests in liquor licenses shall be retained by Fresh & Easy, LLC.

2.6 **Situs of the Trust.** The Trust shall be located in the State of Delaware.

2.7 **Securities Law.** Under Bankruptcy Code section 1145 the issuance of beneficial interests in the Trust to the Holders of Allowed General Unsecured Claims under the Plan will be exempt from registration under the Securities Act of 1933, as amended, and all applicable state and local laws requiring registration of securities.

2.8 **Appointment and Acceptance of Trustee.** The Trustee shall be deemed to be appointed pursuant to Bankruptcy Code section 1123(b)(3)(B). The Trustee accepts the Trust created by the Agreement and the grant, assignment, transfer, conveyance, and delivery to the

Trustee, on behalf and for the benefit of the Beneficiaries, by the Debtor of all of its respective rights, title and interests in the Initial Trust Assets, upon and subject to the terms and conditions set forth in the Agreement, the Plan, and the Confirmation Order.

2.9 **Status of Trustee.** The Trustee shall be a “representative of the estate” as that phrase is used in Bankruptcy Code section 1123(b)(3)(B) with respect to the rights and powers granted in the Agreement, the Plan, and the Confirmation Order. Except as otherwise set forth in the Plan, the Trustee shall be the Debtor’s successor-in-interest solely with respect to: (A) the Initial Trust Assets, including any Liquidating Trust Claims that were or could have been commenced by the Debtor, including any actions commenced by the Committee, and shall be deemed substituted for the same as the party in such action; and (B) any objections, setoffs, defenses, or counterclaims that have been or could have been raised by the Debtor with respect to any Claim. All actions, claims, rights or interests constituting Assets are preserved and retained and may be enforced by the Trustee as the representative of the Debtor’s Estate pursuant to Bankruptcy Code section 1123(b)(3)(B).

2.10 **No Reversion to Debtor.** In no event shall any part of the Assets revert to or be distributed to or for the benefit of the Debtor.

ARTICLE III

ADMINISTRATION OF THE TRUST

3.1 **Rights, Powers, and Privileges.** The Trustee will have only the rights, powers, and privileges expressly provided in the Agreement, the Plan, and the Confirmation Order. Subject to the terms of this Agreement, including Sections 3.4 and 11.4, the Trustee will have the power to take the actions granted in this Section 3.1 and any powers reasonably incidental thereto which the Trustee reasonably determines to be necessary or appropriate to fulfill the Trust’s purpose, including:

(a) Prosecuting, settling, assigning, or otherwise compromising or abandoning for the Trust’s benefit any and all Liquidating Trust Claims or claims or causes of action arising in favor of the Trust, including, without limitation, taking any action with respect to appeals, counterclaims, and defenses of or with respect to such claims and causes of action, including retaining counsel to pursue the Liquidating Trust Claims;

(b) Exercising all powers provided to the Trustee or the Trust under the Plan or Confirmation Order, including, without limitation, the right to allow, object to, or reconcile Claims asserted against the Debtor’s Estate;

(c) Liquidating, selling, or abandoning the Assets or any portion thereof;

(d) Executing any documents and taking any other actions related to, or in connection with, the liquidation of the Assets and the exercise of the Trustee’s powers granted in the Agreement, the Plan, and the Confirmation Order;

- (e) Holding legal title to any and all rights of the Beneficiaries in, to, or arising from the Assets;
- (f) Establishing the Disputed Claims Reserve, the Administrative Claims Reserve, WARN Reserve, and any supplement to the Professional Fee Reserve as may be required by Article XIII.K.1 of the Plan, as well as any other required reserves as may be necessary and appropriate for the proper operation of matters incident to the Trust;
- (g) Protecting and enforcing the rights to the Assets vested in the Trustee by the Agreement by any method reasonably determined by the Trustee to be appropriate, including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;
- (h) Distributing the Assets to or on behalf of the Beneficiaries in accordance with the Agreement, the Plan, and the Confirmation Order;
- (i) Making Distributions to Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims from the Administrative Claims Reserve in accordance with the Agreement, the Plan, and the Confirmation Order;
- (j) Making Distributions from the WARN Reserve for the payment of any Allowed WARN Act Liability in accordance with the Plan, and any order of the Court granting such allowance;
- (k) Disbursing the Release Consideration expressly earmarked solely for the Releasing Creditors (as defined in the Settlement Agreement), which Release Consideration shall be distributed on a Pro Rata basis to such Releasing Creditors in accordance with the Plan, Settlement Agreement and Confirmation Order;
- (l) Filing any and all tax returns on behalf of the Debtor and the Trust and paying taxes properly payable by the Debtor and Trust, if any;
- (m) Making all necessary filings in accordance with any applicable law, statute, or regulation, including, but not limited to, any filings on behalf of the Debtor in order to comply with corporate governance and reporting;
- (n) Determining and satisfying from the Available Trust Cash any and all taxes and ordinary course liabilities, including reasonable professional fees and expenses, incurred by or on behalf of the Trust;
- (o) Investing the Assets in accordance with Section 3.5 of this Agreement;
- (p) If the Trustee determines that the Beneficiaries or the Trust may, will, or have become subject to different tax consequences than those described in this

Agreement, taking such actions as will, or are intended to, address such different tax consequences;

(q) Withholding from the amount allocable, payable or distributable to any Entity such amount as may be sufficient or required to pay any tax or other charge which the Trustee has determined, in his reasonable discretion, is required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof, and to pay or deposit such withheld tax with the appropriate governmental authority. In the exercise of his discretion and judgment, the Trustee may enter into agreements with taxing or other governmental authorities for the payment of such amounts as may be withheld in accordance with the provisions hereof;

(r) Creating sub-trusts or title vehicles of which the Trust or the Beneficiaries hold the beneficial or ownership interests, as applicable;

(s) Sending annually to each Beneficiary a separate statement stating the Beneficiary's share of income, gain, loss, deduction, or credit and instructing all such Beneficiaries to report such items on their federal tax returns;

(t) Opening and maintaining bank accounts on behalf of or in the name of the Trust;

(u) Purchasing customary insurance coverage in accordance with Section 3.6 of the Agreement on behalf of the Trust or the Trustee, including errors and omissions policies, to the extent the Trustee deems necessary;

(v) In reliance upon the official claims register maintained in the Chapter 11 Case and any applicable court order, maintaining on the Trustee's books and records a register evidencing the beneficial interest in the Trust held by each Beneficiary;

(w) Satisfying any remaining obligations related to the terminated Fresh & Easy 401(k), including, but not limited to, filing all applicable forms required by the IRS, ERISA, the 401(k), and/or applicable nonbankruptcy law, and providing all applicable notices to plan participants;

(x) Cooperating with the purchasers of liquor licenses (and the designated escrow holder) with whom the Debtor sold, assigned, transferred, conveyed Debtor's rights, title and interests in and to certain liquor licenses, for the transfer of said liquor license, and, if necessary, maintaining corporate formalities and bank account(s) to facilitate such transactions;

(y) Performing such functions and taking such actions as are provided for or permitted in this Agreement, the Plan, the Confirmation Order, or any other agreement executed pursuant to this Agreement, the Plan, or the Confirmation Order;

(z) Taking any all actions or refraining from taking any actions the Trustee reasonably deems necessary for the liquidation of the Debtor, and the maximization of

the Liquidating Trust Assets consistent with the purpose of this Agreement, the Plan and Confirmation Order

(aa) Taking all actions necessary to effect the dissolution of the Debtor, without the need for any further Bankruptcy Court action or approval; and

(bb) Terminating this Trust and seeking to close the Debtor's Chapter 11 Case pursuant to Bankruptcy Code section 350(a).

3.2 **Agents and Professionals.** The Trustee may, but shall not be required to, consult with and retain attorneys, financial advisors, accountants, or other professionals and employees as the Trustee deems appropriate in the reasonable exercise of his discretion, and who the Trustee reasonably determines to have qualifications necessary to assist the Trustee in the Trust's proper administration. Subject to Section 8.8 of the Agreement, the Trustee may pay the reasonable fees, costs, and expenses of such persons (including himself) out of the Available Trust Cash in the ordinary course of business pursuant to the Plan and Confirmation Order. Subject to this Section 3.2 and the other terms and conditions of this Agreement, the Plan, and the Confirmation Order, the Trustee may retain professionals who previously were employed by the Committee and/or Debtor.

3.3 **Safekeeping of Assets.** All Assets will, until distributed or paid over as provided herein or in the Plan, be held in trust for the benefit of the Beneficiaries in accordance with the Plan and the Agreement. The Trustee will be under no liability for interest or producing income on any moneys received by the Trust under this Agreement and held for distribution or payment to the Beneficiaries, except to the extent such interest or income is actually received by the Trust.

3.4 **Limitations on Trustee.** The Trustee will not at any time, on behalf of the Trust or Beneficiaries, enter into or engage in any trade or business, and no part of the Assets will be used or disposed of by the Trust in furtherance of any trade or business.

3.5 **Investment.** The Trustee may only invest funds held in the Trust in Permitted Investments in a manner consistent with the requirements of the Bankruptcy Code or any Court order modifying such requirements and, if the Trustee does so, it shall have no liability in the event of insolvency of any institution in which it has invested any of the Assets.

3.6 **Insurance.** The Trustee may use Available Trust Cash in the Trustee's reasonable business judgment to maintain customary insurance coverage, if available, for the protection of the Assets.

3.7 **Liquidating Trust Budget.** The Liquidating Trustee will prepare a reasonably detailed budget for the Liquidating Trust for each calendar year setting forth in reasonable detail the assumptions underlying the projected recoveries and expenses associated with the Trust's administration and anticipated Distributions to Beneficiaries. Not less than 30 days after the Effective Date, and 30 days before the beginning of each calendar year thereafter, the Trustee will submit the proposed budget to the Liquidating Trust Committee for approval. Amendments to the budget will not become effective unless and until approved by the Liquidating Trust

Committee. Except as otherwise approved by the Liquidating Trust Committee, the amount expended in any year will not exceed by more than 15% the budgeted amount set forth in the budget for that year.

3.8 **Trustee Action.** The Trustee will hold, collect, conserve, protect, and administer the Trust in accordance with the provisions of this Agreement, the Plan, and the Confirmation Order, and will pay and distribute amounts as set forth herein for the purposes set forth in the Agreement, the Plan, and the Confirmation Order. Except to the extent that approval or consent of the Liquidating Trust Committee is required under this Agreement, any good faith determination by the Trustee as to what actions are in the best interests of the Trust will be determinative.

3.9 **Court Approval of Trustee Actions.** The Trustee will exercise his business judgment for the benefit of the Beneficiaries in order to maximize the value of the Assets and Distributions, giving due regard to the cost, risk, and delay of any course of action. Except as provided in the Plan or otherwise specified in this Agreement, the Trustee need not: (a) obtain an order from, or approval of, the Court to exercise any power, rights, or discretion conferred hereunder; or (b) account to the Court, including regarding the sale of assets or settlement of controversies; *provided, however,* that nothing in this Agreement precludes the Trustee from seeking Court approval regarding a proposed course of action in connection with the Assets, the Trust, the Agreement, the Plan, or the Debtor, including the administration and Distribution of the Assets, that does not violate Section 3.4 of this Agreement. The Court will retain jurisdiction for such purposes and will approve or disapprove any such proposed action upon motion. In addition, subject to Section 3.4 of the Agreement, the Trustee will have the authority, but not the obligation, to seek Court approval to sell any Asset free and clear of any and all liens, claims, and encumbrances.

3.10 **Confidentiality.** The Trustee will, during the period that he serves as Trustee under the Agreement and following the termination of the Agreement or his removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Assets relates or which he has become aware of in his capacity as Trustee.

ARTICLE IV

DISTRIBUTIONS TO TRUST BENEFICIARIES

4.1 **Timing and Amount of Distributions.** The Trustee will cause a Distribution of Available Trust Cash to be made to Beneficiaries as reasonably practicable after the Effective Date. The Liquidating Trust Committee will establish Periodic Distribution Dates from time to time; *provided, however,* that the Liquidating Trust will not be required to make a Distribution if doing so would leave the Trust without sufficient Available Trust Cash to maintain the value of the Assets or to meet Trust liabilities, or if the Trustee decides such Distribution would be administratively burdensome. The Trustee will not make any Distributions of Assets to the Trust Beneficiaries without retaining and reserving in the Disputed Claims Reserve such amounts as are required under Article XIV.R. of the Plan.

4.2 **Distributions.** Holders of Allowed General Unsecured Claims against the Debtor will receive, in full and final satisfaction of their Allowed General Unsecured Claims, a Pro Rata share of the Available Trust Cash after the Trustee maintains appropriate reserves for Disputed General Unsecured Claims and the costs of Trust administration. The Trustee will require any Beneficiary to furnish to the Trustee in writing with his or its Employer or Taxpayer Identification Number as assigned by the IRS, and the Trustee may condition any Distribution upon receipt of such identification number. If a Beneficiary does not timely provide the Trustee with its taxpayer identification number in the manner and by the deadline established by the Trustee, then the Distribution to such Beneficiary shall be administered as an Unclaimed Distribution as set forth in Article XIV.K of the Plan.

4.3 **Distributions After Allowance or Disallowance of a Disputed Claim.** Upon a Disputed General Unsecured Claim becoming an Allowed General Unsecured Claim, the Trustee will distribute to the Holder thereof, from the Disputed Claims Reserve at the time of the next scheduled Distribution, such amount of Available Trust Cash as would have been distributed to such Holder if its Claim had been an Allowed General Unsecured Claim on the Effective Date. The Trustee will no longer reserve for and will distribute to the Beneficiaries, pursuant to this Agreement, their Pro Rata share of the funds held in the Disputed Claims Reserve on account of any Disputed General Unsecured Claim that becomes a Disallowed Claim.

4.4 **Payments Limited to Assets.** All payments to be made by the Trustee to or for the benefit of any Beneficiary on behalf of the Trust will be made only from Available Trust Cash.

4.5 **United States Trustee Fees and Reports.** After the Effective Date, the Trustee will pay as a Trust expense all fees incurred under 28 U.S.C. § 1930 by reason of the Trust's disbursements as required under the Plan and Confirmation Order until the Debtor's Chapter 11 Case is closed. After the Confirmation Date, the Trust will prepare and serve on the Office of the U.S. Trustee such quarterly disbursement reports for the Trust as are required by the U.S. Trustee for as long as the Chapter 11 Case remains open.

4.6 **No Interest or Accruals.** Except as otherwise may be expressly provided in the Plan, Holders of Claims will not be entitled to interest on the distributions provided for in this Agreement, regardless of whether such distributions are deliverable on or at any specified time after the Effective Date.

ARTICLE V

DISTRIBUTIONS TO HOLDERS OF ADMINISTRATIVE AND PRIORITY CLAIMS

5.1 **The Professional Fee Reserve.** On or before the Effective Date, the Debtor will transfer Cash to Young Conaway Stargatt & Taylor, LLP for the benefit of Holders of Allowed Professional Fee Claims in an amount equal to the Professional Fee Estimate. After all Professional Fee Claims are Allowed or Disallowed and the Allowed amounts of such Claims are paid by Young Conaway Stargatt & Taylor, LLP, any remaining Cash in the Professional Fee

Reserve will become Available Trust Cash. Notwithstanding any other provision in the Plan, in the event the Cash held in the Professional Fee Reserve is insufficient to satisfy the Allowed Professional Fee Claims, the Liquidating Trust shall fund the Cash necessary to satisfy any shortfall. Only Professionals employed in the Chapter 11 Case by the Debtor or the Committee will be entitled to payment from the Professional Fee Reserve.

5.2 **The Administrative Claims Reserve.** On or before the Effective Date, the Debtor will transfer to the Trust Cash in the amount of the Administrative, Priority, and Secured Claims Estimate, which Cash will be used by the Trustee to fund the Administrative Claims Reserve. The Cash so transferred will not be used for any purpose other than to pay Allowed Administrative Claims (excluding Professional Fee Claims, which will be paid from the Professional Fee Reserve, and WARN Act Liability, which will be paid from the WARN Reserve), Priority Tax Claims, Priority Non-Tax Claims, and Secured Claims. The Trustee: (i) will segregate and will not commingle the Cash held in the Administrative Claims Reserve; and (ii) subject to the terms and conditions of the Plan and the Agreement, will pay each Administrative Claim (excluding Professional Fee Claims, which will be paid from the Professional Fee Reserve), Priority Tax Claim, Priority Non-Tax Claim, and Secured Claims on or as soon as reasonably practicable after the date such Claim becomes an Allowed Claim. After an Administrative Claim (excluding Professional Fee Claims), Priority Tax Claim, Priority Non-Tax Claim or Secured Claim is Allowed or Disallowed and the Allowed amount of any such Claim is paid by the Trust, any remaining Cash, which was allocated in the Administrative Claims Reserve for such Claim that has been satisfied, will become Available Trust Cash. Only Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, and Allowed Secured Claims will be paid from the Administrative Claims Reserve.

5.3 **Distributions on the Distribution Date.** On or as soon as reasonably practicable after the Effective Date, the Trustee will make Distributions from the Administrative Claims Reserve to Holders of Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims and Secured Claims that were Allowed Claims as of the Distribution Record Date, in accordance with Article XIII.I of the Plan.

5.4 **Distributions After Allowance or Disallowance of a Disputed Claim.** On or as soon as reasonably practicable after a Disputed Administrative Claim, Disputed Priority Tax Claim, Disputed Priority Non-Tax Claim or Disputed Secured Claim becomes an Allowed Claim, the Trustee will distribute to the Holder thereof, from the Administrative Claims Reserve, such amount as would have been distributed to such Holder if its Claim had been an Allowed Claim on the Effective Date, in accordance with Article XIII of the Plan. The Trustee will require any Claim Holder entitled to receive a Distribution to furnish to the Trustee in writing his or its Employer or Taxpayer Identification Number as assigned by the IRS, and the Trustee may condition any Distribution upon receipt of such identification number. Failing to provide such tax identification may result in forfeiture of the Claim Holder's Distribution pursuant to Article XIV.O of the Plan.

5.5 **Distributions After Allowance or Disallowance of WARN Claims.** If, as of the Effective Date, funds remain in the WARN Reserve, the Debtor shall transfer to the Liquidating Trust the WARN Reserve for the purposes of satisfying any and all remaining WARN Act

Liability in accordance with an order of the Court granting the allowance of WARN Claims. The Trustee will require any Claim Holder entitled to receive a Distribution from the WARN Reserve to furnish to the Trustee in writing his or its Employer or Taxpayer Identification Number as assigned by the IRS, and the Trustee may condition any Distribution upon receipt of such identification number. Failing to provide such tax identification may result in forfeiture of the Claim Holder's Distribution pursuant to Article XIV.O of the Plan. The Liquidating Trustee (i) shall segregate and shall not commingle the WARN Reserve; and (ii) the WARN Reserve shall be subject to the terms and conditions of the Plan and Settlement Agreement. Any remaining Cash in the WARN Reserve after all Allowed WARN Claims are satisfied shall become a Liquidating Trust Asset.

5.6 **Minimum Distributions; Other Limitations.** No Cash payment of less than fifty dollars \$50 will be made by the Trust, as Disbursing Agent, to a Holder of an Allowed Claim on account of such Allowed Claim. If a Holder of an Allowed Claim would be entitled to receive less than fifty dollars (\$50) as of the time of a particular distribution, but would be entitled to receive more than fifty dollars (\$50) in combination with later distributions, the Trust, as Disbursing Agent, will combine such distribution with later distributions so that the Holder may eventually be entitled to a distribution of at least fifty dollars (\$50) in value. Whenever any payment of Cash of a fraction of a dollar would otherwise be required, the actual payment may be rounded to the nearest whole dollar (up or down), with half dollars or less being rounded down.

5.7 **Abandonment; Donation.** If, in the Trustee's reasonable judgment, any Assets cannot be sold or distributed in a commercially reasonable manner or the Trustee believes in good faith that such property has inconsequential value to the Trust or its Beneficiaries or is insufficient to render a further distribution practicable, the Trustee will have the right to cause the Trust to abandon or otherwise dispose of such property, including by donating such remaining Assets to a charitable institution qualified as a not-for-profit corporation under applicable federal and state laws, as selected by the Trustee.

ARTICLE VI

BENEFICIARIES

6.1 **Incidents of Ownership.** The Beneficiaries will be the sole beneficiaries of the Trust and the Assets, and the Trustee will retain only such incidents of ownership as are necessary to undertake the actions and transactions authorized in the Agreement, the Plan, and the Confirmation Order.

6.2 **Interest Beneficial Only.** The ownership of a beneficial interest in the Trust will not entitle any Beneficiary or the Settlor to any title in or to the Assets or to any right to call for a partition or division of such assets or to require an accounting, except as specifically provided herein or in the Plan.

6.3 **Evidence of Beneficial Interest.** Ownership of a beneficial interest in the Assets will not be evidenced by any certificate, security, or receipt, or in any other form or manner whatsoever, except as maintained on the books and records of the Trust by the Trustee.

6.4 **Notice of Transfer of Beneficial Interest.** Any notice of a change of beneficial interest ownership as described in Section 13.2 of this Agreement must be forwarded to the Trustee by registered or certified mail as set forth herein. The notice must be executed by both the transferee and the transferor, and the signatures of the parties must be acknowledged before a notary public. The notice must clearly describe the interest to be transferred. The Trustee may rely upon such signatures and acknowledgments as evidence of such transfer without any further investigation.

ARTICLE VII

THIRD PARTY RIGHTS AND LIMITATION OF LIABILITY

7.1 **Reliance.** Except as otherwise provided in the Agreement, the Plan, or the Confirmation Order, the Trustee may rely and will be protected in acting upon any resolution, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document that he reasonably believes to be genuine and to have been signed or presented by an authorized party.

7.2 **Parties Dealing With the Trustee.** In the absence of actual knowledge to the contrary, any person dealing with the Trust or the Trustee will be entitled to rely on the authority of the Trustee or any of the Trustee's agents to act in connection with the Assets. There is no obligation on any Person dealing with the Trustee to inquire into the validity, expediency, or propriety of any transaction by the Trustee or any agent of the Trustee.

7.3 **Limited Recourse.** Except as otherwise provided in the Agreement, the Plan, or the Confirmation Order, Persons (including any professionals retained by the Trustee in accordance with the Agreement) engaged in transactions with the Trust or the Trustee will look only to the Available Trust Cash to satisfy any liability incurred in connection with carrying out the terms of the Agreement, the Plan, or the Confirmation Order.

7.4 **Limitation of Liability.** The Trustee, the Liquidating Trust Committee and their agents, employees, officers, directors, professionals, attorneys, accountants, advisors, and representatives will not be subject to any personal liability whatsoever, in tort, contract or otherwise, to any Person in connection with the Assets or the affairs of the Trust, except for their own gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty. Other than as set forth in the Plan or Confirmation Order, nothing in the Agreement will be deemed to release any Beneficiary from any actions or omissions occurring prior to the Effective Date.

7.5 **Non-Liability for Acts of Others.** Except as expressly provided in this Agreement, the Plan, or the Confirmation Order, neither the Trust nor the Trustee will assume any of the liabilities, obligations, or duties of the Debtor or the Beneficiaries. Any successor

Trustee may accept and rely upon any accounting made by or on behalf of any predecessor Trustee hereunder, and any statement or representation made by a predecessor Trustee or its agents as to the assets comprising the Assets or as to any other fact bearing upon the prior administration of the Trust, so long as it has a good faith basis to do so. A Trustee will not be liable for having accepted and relied in good faith upon any such accounting, statement, or representation if it is later proved to be incomplete, inaccurate, or untrue. A Trustee or successor Trustee will not be liable for any act or omission of any predecessor Trustee, nor have a duty to enforce any claims against any predecessor Trustee on account of any such act or omission.

7.6 **Indemnification**. The Trustee, the Liquidating Trust Committee, and each of their members, agents, employees, officers, directors, professionals, attorneys, accountants, advisors, and representatives (collectively, the “**Indemnified Parties**”) shall be indemnified and held harmless by the Trust, to the fullest extent permitted by law, solely from the Available Trust Cash for any losses, claims, damages, liabilities, and expenses, including, without limitation, reasonable attorneys’ fees, disbursements and related expenses which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding, or investigation brought or threatened against one or more of the Indemnified Parties on account of the acts or omissions of an Indemnified Party solely in its capacity as such; *provided, however*, that the Trust will not be liable to indemnify any Indemnified Party for any act or omission constituting gross negligence, willful misconduct, fraud, bad faith, self-dealing or breach of the duty of loyalty by such Indemnified Party. Notwithstanding any provision in this Agreement to the contrary, the Indemnified Parties shall be entitled to request advances from the Trust to cover reasonable fees and necessary expenses incurred in connection with defending themselves in any action brought against them as a result of the acts or omissions, actual or alleged, of an Indemnified Party in its capacity as such; *provided, however*, that the Trustee is not required to make any such advances; *provided further, however*, that any Indemnified Parties receiving such advances must repay the amounts so advanced to the Trust upon the entry of an order of a court of competent jurisdiction finding that such Indemnified Parties were not entitled to any indemnity under the provisions of this Section 7.6. This indemnification will survive the death, dissolution, resignation, or removal, as may be applicable, of the Indemnified Parties, or the termination of the Trust, and inures to the benefit of the Indemnified Parties’ heirs and assigns.

ARTICLE VIII

SELECTION, REMOVAL AND COMPENSATION OF TRUSTEE

8.1 **Initial Trustee**. The initial Trustee will be Peter S. Kravitz of Province, Inc. or such other person as mutually acceptable to the Committee and Debtor.

8.2 **Term of Service**. The Trustee will serve until: (a) the completion of all of the Trustee’s duties, responsibilities, and obligations under this Agreement and the Plan; (b) termination of the Trust in accordance with this Agreement; or (c) the Trustee’s death or dissolution, incapacitation, resignation, or removal.

8.3 **Removal of a Trustee.** Any Person serving as Trustee may be removed at any time by affirmative vote of the Liquidating Trust Committee pursuant to the procedures set forth in Section 11.2 of this Agreement or upon the determination of the Court on a motion for cause shown. Any Trustee so removed is entitled to payment of reasonable fees and necessary expenses accrued prior to removal subject to the terms of this Agreement.

8.4 **Resignation of Trustee.** The Trustee may resign at any time by giving the Liquidating Trust Committee at least 30 days' written notice of his intention to do so. In the event of a resignation, the resigning Trustee must render to the Liquidating Trust Committee a full and complete accounting of monies and assets received, disbursed, and held during his term of office. The resignation will be effective on the later of: (i) the date specified in the notice; (ii) the date that is 30 days after the date the notice is delivered; or (iii) the date the accounting described in the preceding sentence is delivered.

8.5 **Appointment of Successor Trustee.** Upon the resignation, death, incapacity, or removal of a Trustee, the Liquidating Trust Committee shall, by a majority vote of those members voting, appoint a successor Trustee to fill the vacancy so created. Any successor Trustee must consent to and accept in writing the terms of this Agreement and agree that the provisions of this Agreement will be binding upon and inure to the benefit of the successor Trustee and all of the successor Trustee's heirs and legal and personal representatives, successors, or assigns. Notwithstanding anything in this Agreement to the contrary, if a successor Trustee is not appointed within 60 days of the occurrence or effectiveness, as applicable, of the prior Trustee's resignation, death, incapacity, or removal, any member of the Liquidating Trust Committee may move the Court for the appointment of a successor Trustee.

8.6 **Powers and Duties of Successor Trustee.** A successor Trustee will have all the rights, privileges, powers, and duties of the predecessor Trustee under this Agreement and the Plan.

8.7 **Trust Continuance.** The death, incapacity, resignation, or removal of the Trustee will not terminate the Trust or revoke any existing agency created pursuant to the Agreement or invalidate any action theretofore taken by the Trustee.

8.8 **Compensation and Costs of Administration.**

(a) The Trustee may retain and compensate professionals (including himself) as provided for in Section 3.2 of this Agreement. The terms of the Trustee's compensation are set forth on **Exhibit 1** hereto, which compensation may be subject to periodic increase in the discretion of the Liquidating Trust Committee.

(b) The reasonable fees and actual and necessary expenses of such professionals and the Trustee will be paid by the Trustee upon each monthly submission of a fee statement to the Trustee and/or the Liquidating Trust Committee, as applicable, in accordance with the procedures described in this Section. The Trustee must deliver his invoices or fee statements to the Liquidating Trust Committee for approval before any payment from the Available Trust Cash is allowed. Any professionals retained by the Trustee pursuant to this

Agreement must deliver their invoices or fee statements to the Trustee for approval before payment from the Available Trust Cash will be allowed. The Trustee and Liquidating Trust Committee, as applicable, shall have 10 days from the delivery of any invoice or fee statement to give notice of an objection to the party seeking compensation or reimbursement. For an objection to be valid, it must be in writing and set forth in detail the specific fees objected to and the basis for the objection. Any objection that remains unresolved 15 days after it is made may be submitted to the Court for resolution.

8.9 **Reporting and Filing Requirements**

8.9.1 **Annual Reports.** The Trust will mail or otherwise make available to all Beneficiaries an annual report of all Assets received by the Trust, all Available Trust Cash disbursed to Beneficiaries, all Assets held by the Trust, and all fees, income, and expenses related to the Trust during the preceding calendar year.

8.9.2 **Additional Reports.** The Trustee will also timely prepare, file, and distribute such additional statements, reports, and submissions as may be necessary to cause the Trust and the Trustee to be in compliance with applicable law.

ARTICLE IX

TRUST OBLIGATIONS

9.1 **Tax Returns.** The Trustee will file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) and any other applicable laws or regulations. The Trustee may, in the Trustee's sole discretion, determine the best way to report for tax purposes with respect to any reserve for Disputed General Unsecured Claims, including (i) filing a tax election to treat any and all reserves for Disputed General Unsecured Claims as a Disputed Ownership Fund ("DOF") within the meaning of Treasury Income Tax Regulation Section 1.468B-9 for federal income tax purposes rather than to tax such reserve as a part of the Trust or (ii) electing to report as a separate trust or sub-trust or other entity. If an election is made to report any reserve for disputed claims as a DOF, the Trust shall comply with all federal and state tax reporting and tax compliance requirements of the DOF, including but not limited to the filing of a separate federal tax return for the DOF and the payment of federal and/or state income tax due.

9.2 **Beneficiary Statements.** The Trustee will send each Beneficiary an annual statement setting forth the Beneficiary's share or items of income, gain, loss, deduction, or credit and will instruct all such Holders to report such items on their federal income tax returns. Such a statement will also be sent to each Beneficiary after the Trust's dissolution. The Trust's taxable income, gain, loss, deduction, or credit will be allocated (subject to provisions of the Plan and Confirmation Order relating to Disputed Claims) to the Beneficiaries in accordance with their relative beneficial interests in the Trust, as determined pursuant to this Agreement.

9.3 **Valuation.** As soon as practicable after the Effective Date, the Trustee (to the extent that he deems it necessary or appropriate in the reasonable exercise of his discretion) will,

in good faith, value the Assets, and shall apprise the Beneficiaries of such valuation. The Trustee will make the valuation available to any party with a need for that information for tax purposes. The valuation will be used consistently by all parties (including the Debtor, the Trustee, and the Trust Beneficiaries) for all federal income tax purposes. The Court will resolve any dispute regarding the valuation of the Assets.

ARTICLE X

MAINTENANCE OF RECORDS

10.1 **Maintenance of Records.** The Trustee will maintain books and records containing a description of all property from time to time constituting the Assets and an accounting of all receipts and disbursements as well as the conduct of the affairs of the Trust and rights and treatment of the Beneficiaries in such detail and for such periods of time as may be necessary to enable the Trust to make full and proper accounting regarding Trust affairs and to comply with applicable provisions of law. The books and records will be open to reasonable inspection by any Beneficiary upon written request to the Trustee. Upon written request, the Trustee will furnish to any Beneficiary an annual statement of receipts and disbursements, including a summary of all income and expenses of the Trust.

ARTICLE XI

LIQUIDATING TRUST COMMITTEE

11.1 **Liquidating Trust Committee.** As of the Effective Date, the Liquidating Trust Committee will be comprised of: (i) Michael Rodgers (DPI Specialty Foods, Inc.); (b) Jeff Fontaine (United Natural Foods West, Inc.); and (c) Michael Mandell (Ryder Integrated Logistics) (each a "**Member**" and, collectively, the "**Members**"). Should any of the Members resign from or otherwise cease to serve on the Liquidating Trust Committee, replacements, if any, may be selected by the remaining Members acting by majority vote.

11.2 **Liquidating Trust Committee Approval.** Except as otherwise expressly provided herein, a majority vote of the Members will constitute an act or decision of the Liquidating Trust Committee. In the event of a tie vote, the Trustee will be deemed a voting Member for the sole purpose of breaking any such tie vote of the Liquidating Trust Committee. The Trustee may make recommendations for the action or inaction of the Liquidating Trust Committee via electronic mail on seven (7) days' notice (the "**Voting Period**"), and in the absence of a majority of the Members rejecting the recommendation within the Voting Period, the recommendation will be deemed to have been approved by a majority of the Members.

11.3 **Reports to Liquidating Trust Committee.** Notwithstanding any other provision of the Agreement, the Trustee will report to the Liquidating Trust Committee as may be requested by the Liquidating Trust Committee, but not less than quarterly, and such reports will include such matters and information as reasonably requested by the Liquidating Trust Committee. The Liquidating Trust Committee will keep all such information strictly

confidential, except to the extent the Liquidating Trust Committee deems it reasonably necessary to disclose such information to the Court (in which case a good faith effort will be made to file such information under seal).

11.4 Actions Requiring Approval of the Liquidating Trust Committee.

Notwithstanding anything to the contrary herein, the Trustee will obtain the approval of the Liquidating Trust Committee before taking any of the following actions, which approval may be by affirmative vote of the Liquidating Trust Committee or upon notice pursuant to the procedures set forth in Section 11.2 above:

- (a) The commencement of any Cause of Action against any third parties, other than claim objections;
- (b) The settlement, compromise, withdrawal, dismissal, or other resolution of: (i) any Claims or objections to Claims by the Trust where such resolution would result in an Allowed Claim in excess of \$250,000; and (ii) any Cause of Action by the Trust where the amount sought to be recovered in the complaint or other document initiating such Cause of Action exceeds \$150,000;
- (c) The sale, transfer, assignment or other disposition of any Assets having a valuation in excess of \$100,000;
- (d) The abandonment of any Assets having a valuation in excess of \$25,000;
- (e) The borrowing of any funds by the Trust or pledge of any portion of the Assets;
- (f) The exercise of any right or action set forth in the Agreement that expressly requires approval of the Liquidating Trust Committee;
- (g) The amount and timing of Distributions from Available Trust Cash;
- (h) The establishment or setting of the Disputed Claims Reserve or any other reserves in aid of distribution; or
- (i) The payment of the Trustee's invoices.

11.5 Liquidating Trust Committee Action in Event of Trustee Conflict of Interest.

In the event that the Trustee cannot take any action, including, without limitation, the prosecution of any Causes of Action or the objection to any Claim, by reason of an actual or potential conflict of interest, the Liquidating Trust Committee acting by a majority vote will be authorized to take any such action(s) in his place and stead, including without limitation, the retention of professionals (which may include professionals retained by the Trustee) for the purpose of taking such actions.

11.6 **Investments.** The Liquidating Trust Committee may authorize the Trust to invest the Assets in prudent investments other than those described in Bankruptcy Code section 345.

11.7 **Compensation of Liquidating Trust Committee.** The Liquidating Trust Committee Members will each receive a flat fee of \$2,500 as compensation for their service, and will be entitled to reimbursement of reasonable out-of-pocket expenses incurred in the performance of their duties on behalf of the Liquidating Trust Committee.

11.8 **Standing of the Liquidating Trust Committee.** The Liquidating Trust Committee shall have independent standing to appear and be heard in the Court as to any matter relating to the Plan, the Liquidating Trust Agreement or the Estate, including any matter as to which the Court has retained jurisdiction pursuant to Article XX of the Plan.

11.9 **Function and Duration of the Liquidating Trust Committee.** The Liquidating Trust Committee shall have the rights and responsibilities set forth in the Plan and the Liquidating Trust Agreement, including instructing and supervising the Liquidating Trustee with respect to its responsibilities under the Plan and the Liquidating Trust Agreement. The Liquidating Trust Committee shall remain in existence until such time as the final Distributions under the Liquidating Trust Agreement have been made.

11.10 **Recusal of Liquidating Trust Committee Members.** A Liquidating Trust Committee member shall recuse itself from any decisions or deliberations regarding actions taken or proposed to be taken by the Liquidating Trustee with respect to the Claims, Causes of Action or rights of such Liquidating Trust Committee member, the entity appointing such Liquidating Trust Committee member, or any affiliate of the foregoing.

ARTICLE XII

DURATION OF TRUST

12.1 **Duration.** The Trust will become effective upon the Plan's Effective Date, and the Trust and its provisions will remain and continue in full force and effect until the Trust is terminated.

12.2 **Termination.** The Trust will terminate upon the occurrence of the earlier of: (a) the full liquidation, administration, and Distribution of the Assets in accordance with the Agreement and the full performance of all other duties and functions of the Trustee set forth in the Agreement, the Plan, and the Confirmation Order; and (b) the fifth anniversary of the Effective Date. Notwithstanding the foregoing, on or before a date not less than six months prior to such termination, the Court, upon motion by a party in interest, may extend the term of the Trust for one or more finite terms based upon the particular facts and circumstances present at that time, if an extension is necessary to the liquidating purpose of the Trust.

12.3 **Continuance of Trust for Winding Up.** After the termination of the Trust and for the purpose of liquidating and winding up the Trust's affairs, the Trustee will continue to act as Trustee until his duties have been fully performed, including, without limitation, performing

such post-distribution tasks as necessary to windup the affairs of the Trust at the Trust's expense. After the termination of the Trust, the Trustee will retain for a period of six months the books, records, Beneficiary lists, and other documents and files that shall have been delivered to or created by the Trustee. At the Trustee's discretion, all such records and documents may, but need not, be destroyed at any time after six months from the completion and winding up of the affairs of the Trust. Except as otherwise specifically provided herein, upon the discharge of all liabilities of the Trust and final Distribution of the Trust, the Trustee will have no further duties or obligations hereunder. For the avoidance of doubt, the limitations on liability contained in Sections 7.3, 7.4, 7.5 and 7.6 hereof will apply to any actions taken by the Trustee during the course of winding up the affairs of the Trust.

ARTICLE XIII

MISCELLANEOUS

13.1 **Jurisdiction.** The Court will have exclusive jurisdiction over: (i) the Trust and the Trustee, with respect to the administration of and activities relating to the Trust; and (ii) any issues or disputes arising out of the Agreement; *provided, however*, that notwithstanding the foregoing, the Trustee will have the power and authority to bring any action in any court of competent jurisdiction to prosecute the Liquidating Trust Claims.

13.2 **Limitation on Transferability.** A beneficial interest in the Trust will be non-assignable and non-transferable except by operation of law. An assignment or transfer will not be effective until appropriate notification and proof thereof is submitted to the Trustee, and the Trustee may continue to pay all amounts to or for the benefit of the assigning or transferring Beneficiary until receipt of proper notification and proof of assignment or transfer. The Trustee may rely upon such proof without the requirement of any further investigation.

13.3 **Notices.** All notices to be given to Beneficiaries may be given by ordinary mail to the Holders at the addresses appearing on the books kept by the Trustee. Any notice or other communication which may be or is required to be given, served or sent to the Trustee must be in writing and must be sent by registered or certified United States mail, return receipt requested, postage prepaid, or transmitted by hand delivery or facsimile (if receipt is confirmed) addressed as follows:

If to the Trust/Trustee:

Peter S. Kravitz
Province, Inc.
2360 Corporate Circle, Ste 330
Las Vegas, NV 89074

With a copy to:

Mette H. Kurth, Esquire
Fox Rothschild, LLP
1800 Century Park East, 3rd Floor
Century City, CA 90067

or to such other address as may from time to time be provided in written notice by the Trustee.

13.4 **No Bond.** Notwithstanding any state law to the contrary, the Trustee (including any successor) will be exempt from giving any bond or other security in any jurisdiction.

13.5 **Governing Law.** This Agreement is made in the State of Delaware, and the Trust and this Agreement, and the rights and obligations of the Trustee and the Liquidating Trust Committee are to be governed by and construed and administered according to the laws of the State of Delaware; *provided, however*, that, except as expressly provided in this Agreement, there will not be applicable to the Trust, the Trustee, the Liquidating Trust Committee or its Members, or the Agreement: (a) the provisions of Section 3540 of Title 12 of the Delaware Code; or (b) any provisions of the laws (statutory or common) of the State of Delaware pertaining to trusts which relate to or regulate: (i) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges; (ii) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust; (iii) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property; (iv) fees or other sums payable to trustees, officers, agents or employees of a trust; (v) the allocation of receipts and expenditures to income or principal; (vi) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of Assets; or (vii) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees, which are inconsistent with the limitations or liabilities or authorities and powers of the Trustee set forth or referenced in the Agreement.

13.6 **Successors and Assigns.** The Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

13.7 **No Execution.** All funds in the Trust shall be deemed *in custodia legis* until such times as the funds have actually been paid to or for the benefit of a Beneficiary, and no Beneficiary or any other Person can bind, pledge, encumber, execute upon, garnish, or attach the Assets or the Trustee in any manner or compel payment from the Trust except by Final Order of the Court. Payment will be governed solely by the Plan and the Agreement.

13.8 **Delaware.** To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Plan, then the terms of the Plan will govern and control. To the extent that the terms of this Agreement are inconsistent with the terms set forth in the Confirmation Order, then the terms of the Confirmation Order will govern and control.

13.9 **Intention of Parties to Establish Grantor Trust.** This Agreement is intended to create a grantor trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a grantor trust, and any ambiguity herein shall be construed consistent herewith, and if necessary, the Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

13.10 **Amendment.** The Trustee may, with the approval of a majority of the Members of the Liquidating Trust Committee, modify, supplement, or amend the Agreement, but only to clarify any ambiguity or inconsistency, or render the Agreement in compliance with its stated tax purposes, and only if such amendment: (i) does not materially and adversely affect the interests, rights, treatment, or Distributions of any Beneficiaries; and (ii) is not inconsistent with the Plan or the Confirmation Order. If majority (as described above) of the Members of the Liquidating Trust Committee is unable to reach a consensus regarding a proposed modification, supplement, or amendment, the Trustee may seek Court approval of any such modification, supplement, or amendment.

13.11 **Severability.** If any term, provision, covenant, or restriction contained in this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions contained in this Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated.

13.12 **Integration.** The Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by and among the parties thereto, and there are no representations, warranties, covenants, or obligations, except as set forth herein, in the Plan and in the Confirmation Order. This Agreement, together with the Plan and the Confirmation Order, supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in the Agreement, the Plan, or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the Beneficiaries any rights or remedies under or by reason of the Agreement.

13.13 **Third Party Beneficiary.** Nothing in this Agreement is intended to benefit or create any right or cause of action in or on behalf of any person other than the parties hereto unless expressly set forth herein.

13.14 **Counterparts.** This Agreement may be signed by the parties hereto in counterparts, which, when taken together, will constitute one and the same document.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties have executed the Agreement (or are deemed to have so executed the Agreement) as of the day and year first written above.

TRUSTEE

FRESH & EASY, LLC

By: _____
Peter S. Kravitz of Province, Inc.

By: _____
Amir Agam
Chief Restructuring Officer

EXHIBIT 1**Trustee Compensation**

Pursuant to Section 8.8 of this Agreement, this Exhibit sets forth the terms of the Trustee's compensation.

The Trustee shall be compensated for his services as Liquidating Trustee as follows:

- i. A monthly fixed fee as outlined below:

Period	Fixed Fee for Liquidating Trustee
Month 1 -12	\$7,500
Months 13-18	\$5,000
Each Additional Month	\$2,500

- ii. 5% of non-preference related recoveries

The Trustee will also be entitled to reimbursement of actual and necessary expenses incurred. In addition, the Trustee may retain and compensate analysts from his firm to assist him with certain financial advisory related tasks as provided for in Section 3.2 of this Agreement.

EXHIBIT C
TO COMBINED PLAN AND DISCLOSURE STATEMENT

RETAINED CAUSES OF ACTION

RETAINED CAUSES OF ACTION

The Liquidating Trustee reserves his rights to pursue additional causes of action not explicitly cited herein.

1. Potential Avoidance Actions

This list of potential avoidance claims retained by the estate is comprised of vendor names as they appear in the Debtor's books and records, and is not intended to exclude potential avoidance action defendants based on inadvertent spelling errors, differences between trade names and legal identity, parent-subsidary issues, or any other technical defects. Accordingly, this list is intended to include the identified transferee as well as any successors, assigns, affiliates, subsidiaries, representatives, agents, and parents, affiliates or related entity of a named transferee, as well as any variation in the transferee's identity or use of a trade name. It also includes the initial transferee of the transfers or any entity for whose benefit a transfer was made, and any immediate or mediate transferee of the initial transferee.

[Remainder of Page Intentionally Left Blank]

15630 Ventura Haskell Holdings, LLC	Butterball Farms, Inc.
72AndSunny Partners	Califia Farms LLC
A Flus Homes, Inc.	California Dairies, Inc.
A&J Refrigeration	California's Department of Resources Recycling and Recovery dba CalRecycle
Advance Beverage Co., Inc.	Campbell Soup Company
Advance Capital, Inc.	Carl's Donuts, Inc.
Alliance Beverage Distributing Co., LLC dba Alliance Beverages	Cedarlane Natural Foods, Inc.
Allied Barton Security Service LLC	Centrescapes, Inc.
Alta-Dena Certified Dairy, LLC	Chelten House Products, Inc.
Amsted Residuals, LLC	Chocolat Frey AG
Amys Kitchen, Inc.	CitiStaff Solutions Inc.
Applied Industrial Technologies CA, LLC	City of Anaheim
Aptean, Inc.	City of Burbank
Aramark Uniform Services	City of Henderson
Arizona Wide Electric Inc.	City of Riverside
Arlington Square LP	Classic Distributing and Beverage Group, Inc.
Arthur Schuman West, LLC	Clay White & Associates, Inc.
Arthur Schuman, Inc.	Clougherty Packing, LLC dba Farm John Meats
Aryzta LLC dba Great Kitchens, Inc.	Coast Citrus Distributors dba Coast Tropical
AT & T, Inc.	Colgate-Palmolive Company
AT&T, Inc. dba AT&T WI FI Services	Commercial Facilities, Inc. and College/Oceanside Southwest, LLC
Bagnoli Original Organic Mozzarella S.R.I.	Commonwealth Dairy, LLC
Bake-N-Joy Foods, Inc.	ConAgra Foods, Inc. and any successors in interest
Bell-Carter Foods, Inc.	ConAgra Foods, Inc. dba Lovin' Oven, LLC and any successors in interest
Berber Food Manufacturing Inc. dba MI Rancho Tortilla Factory	Consolidated Electrical Distributors, Inc.
Bernstein-Rein Advertising, Inc.	Craft Beer Guild Distributing of California LLC
BFG Canada Ltd.	Crescent Crown Distributing, L.L.C.
Bimbo Bakeries USA, Inc.	Criterion Automation, Inc.
BioMerieux, Inc.	CSI-Environmental
Bridges Filter Service, Inc.	CytoSport, Inc.
Brierley & Partners, Inc.	
Busseto Foods, Inc.	

Czak Restaurant Corp. dba The Pizza Company	Garda CL West, Inc.
Daily Arcade, LLC	Gary Poppins LLC
Dancing Deer Baking Company LLC	General Mills, Inc.
DBI Beverage Inc. dba DBI Beverage Napa	Genmert, Inc.
DBI Beverage Inc. dba DBI Beverage San Francisco	George Amaral Ranches, Inc.
DFA Global Certifications, LLC	GFF, Inc.
Dial Corporation	Ghiradelli Chocolate Company
Divine Pasta Company	Ghossain & Truelock Enterprises, Inc. dba Custom Service Systems
Dolce Dolci, LLC	Gilster - Mary Lee Corporation
Dole Packaged Foods, LLC	Global Cash Card, Inc.
Donsuemor, Inc.	Global Force Security Inc. dba Global Force Protective Services Inc.
Dr. Bronner's Magic Soap 2014, Inc.	Gold Coast Baking Company, Inc.
E. & J. Gallo Winery dba Gallo Wine Company	Gothic Landscaping, Inc.
Ecolab USA Inc. dba Kay Chemical Company	Granite Telecommunications, LLC
Eggology, Inc.	Great Lakes Cheese Co., Inc.
Electronic Scrip Incorporated	Green Valley Shopping Center, Limited
Elite Flower Services, Inc.	Gruma Corporation dba Mission Foods
Environmental Contracting Corporation	Guayaki Sustainable Rainforest Products, Inc.
Ethanson Investments LLC	Haralambos Beverage Co.
Euro Classic Imports Inc.	Hartman and Associates, LLC
Evolution Fresh, Inc.	Harvest Meat Company, Inc.
Fal Foods USA Inc. dba Fal Foods Worldwide	Highlander Center, LLC
Fastenal Company dba Fastenal Industrial and Construction Supplies	Hinds Investments, L.P.
Ferrara Candy Company fdba Ferrara Pan Candy Co., Inc.	Hollandia Produce, L.P.
FGF Brands Inc.	Honeyville, Inc. dba Honeyville Foods
First Data Corporation dba ValueLink, LLC	Hormel Foods Sales, LLC
Flax4Life	Hyde & Hyde, Inc.
Forager Project	
Foster Poultry Farms	
Frito-Lay, Inc.	
Furst Enterprises Group B LLC	
Fusion Floral LLC	

Industry Public Utility Commission dba IPUC; and Enco Utility Services	Lassonde Pappas and Company, Inc. fdba Clement Pappas and Company, Inc.
Innovation Ventures, LLC	Los Angeles Department of Water and Power
Insight Direct USA, Inc.	Macquarie Countrywide-Regency II LLC
International Paper Company	Manzana Products Co., Inc.
Iris Partners, LLC	Markstein Beverage Co. dba Markstein Beverage San Marcos
Island Pacific Enterprises, Inc.	Marquez Brothers International, Inc.
Itek Services Inc	Mars Petcare US Inc.
ITO EN (North America) Inc.	Mary Bartsas 15, LLC
J & J Processing, Inc. dba Custom Foods	Massimo Zanetti Beverage USA, Inc.
Jayne Foods, Inc.	Maverick Brands, LLC
JBS USA LLC	McMillan Water Treatment, Inc.
Jennie-O Turkey Store, Inc.	Me Gusta Gourmet Foods, Inc.
Johanna Beverage Company LLC	Mead Johnson Nutrition Company
John Timothy Scott	Mericle Mechanical, Inc.
Johnson & Johnson	Merrill Communications LLC
Jones Lang LaSalle Americas, Inc.	Miller's Bakery, Inc..
JYC Enterprise, Inc.	Minsley, Inc.
K-C Maintenance, Inc.	Mission Beverage Co.
Kellogg Sales Company dba Kellogg Snacks	Mizkan America, Inc.
Kimberly-Clark Corporation	Monument Security, Inc.
KLUC-FM	Moreno Valley Utility
KMXB-FM	Morrow-Meadows Corporation
KPLV-FM	Nardella & Taylor, LLP
KSNE-FM	National Steak Processors, LLC dba National Steak and Poultry
KM Packaging Services Ltd.	Nature's Bounty, Inc.
KOR Company, Inc. dba KOR Fire & Security, Inc.	NCR Corporation
Koros Family Investments LLC dba Angelo Koroa and Parry Koros TTEES of Koros Trust	NCR Corporation dba Retalix
Kraft Heinz Foods Company fdba Kraft Foods Global Inc.	Nestle Purina Petcare Company
Kraft Heinz Foods Company fdba Kraft Foods Group, Inc.	Nestle USA, Inc.
La Alameda, LLC	
La Aloe, LLC	
Lakeview Farms, LLC	
Las Vegas Valley Water District	

Nestle USA, Inc. dba Nestle DSD Company	Pro Source Employment Services, Inc.; and Prosperity Funding, Inc.
Nestle USA, Inc. dba Nestle USA Chl Bev	Pulmuone Foods USA, Inc.
Nestle USA, Inc. dba Nestle USA RCD	Quaker Sales & Distribution, Inc.
Nestle Waters North America Inc.	Quaker Sales & Distribution, Inc. dba Tropicana Chilled DSD
NeXstep Beverages, LLC	Quality International Consulting, LLC
Noble Americas Energy Solution	R. Faerch Plast A/S
North American Food Group Ltd.	Ralcorp Frozen Bakery Products, Inc.
Nuckles Oil Company, Inc. dba Merit Oil Company	Raymond Handling Solutions, Inc.
NV Energy, Inc.	RD America, LLC
OfficeMax Incorporated	Reddy Ice Corporation
On Assignment, Inc. dba Lab Support	Republic Services, Inc. dba Republic Services of NV
Orange Bakery, Inc.	Revolution Foods, Inc.
Orange County Modular Installation LLC	Reynolds Presto Products Inc.
Overhill Farms, Inc.	Richgrove Packers dba Richgrove Company
Overseas Food Trading Ltd.	Riviana Foods Inc.
P G & E	Robert Half International Inc. dba Office Team
P&P International, Inc.	Rogers Family Company, Inc.
Pacific American Fish Co., Inc.	Romero's Food Products, Incorporated
Pacific Foods of Oregon, Inc.	Royal Paper Converting, Inc.
Pacific Resources International, Inc.	RSVC Company dba Reliable Services Company
Packaging Automation Limited	Ruiz Foods Exports, Inc.
PepsiCo, Inc. dba Pepsi Cola	S. C. Johnson & Son, Inc.
Pfizer Inc. dba Wyeth LLC	S.A.L.T. Payroll Consultants, Inc.
Pillsbury Winthrop Shaw Pittman LLP	Saag's Products, LLC
Plumrose USA, Inc.	Sagent Advisors
PMC Refrigeration & Electrical Contracting Corporation	Salvador S. Sanchez 2008 Trust
Polymer Logistics, Inc. dba Polymer Logistics United States	San Diego Personnel & Employment Agency, Inc. dba Good People Employment Services
Ponder LLC	Santa Monica Seafood Company
Potandon Produce L.L.C.	Savory Creations International
Premier Plumbing Maintenance, Inc.	
Primary Color Systems Corporation	
PRJL-Corona, LLC	

Scattaglia Enterprises, Inc. dba Bruin Express Trucking	The Hillshire Brands Company
Seneca Foods Corporation	The Miller Packing Company
Shaft's Cheese Company, LLC	The Perfect Bite Company
Shamrock Foods Company	The Procter & Gamble Company
Shasta Beverages, Inc.	The Procter & Gamble Company dba Procter & Gamble Respiratory
Shivers, Inc.	The Santa Barbara Smokehouse, Inc.
SimplexGrinnell LP	The Steritech Group, Inc.
Sioux Honey Association, Cooperative	The WhiteWave Foods Company
Smithfield Packing	The WhiteWave Foods Company dba Earthbound Farm
Smucker Retail Foods, Inc.	TNG GP
Source Refrigeration & HVAC, Inc.	Total Sweeteners, Inc. dba Batory Foods
Southern California Edison	TreeHouse Private Brands, Inc. dba American Italian Pasta Company
Southwest Refrigeration, Inc.	Triangle Distributing Co.
Specialty Cellars	Tri-Union Seafoods, LLC dba Chicken of the Sea International
Square H Brands, Inc.	Trojan Development Associates III, LLC
St. Moritz Bakery dba Mahler's Bakery	Trustmark Voluntary Benefit Solutions, Inc.
Starbucks Corporation dba Starbucks Coffee Company	Turtle Mountain, LLC
Stephanie D. Lasker	Unified Grocers, Inc.
Stockdale Plaza LLC	Unilever United States, Inc.
Stone Brewing Co., LLC	Unilever United States, Inc. dba Unilever Ice Cream
Stumptown Coffee Corp. dba Stumptown Coffee Roasters	United Service Technologies, Inc.
Summerland Foods Inc.	Universal Protection Service, LP
Super Store Industries, Inc.	Universal Waste Systems, Inc.
Superior Boiler Repairs, Inc.	Urban Produce, LLC
Surplus Asset Management, Inc.	USA Nanfang Food Industry, Inc.
TALX UCM Services, Inc. Db a TALKX UC Express	Valley Fine Foods Company, Inc.
TH Foods, Inc.	Van's International Foods, Inc.
The Coca-Cola Company	Ventura Coastal, LLC
The Coca-Cola Company dba Coca-Cola North America	Verisae, Inc.
The Creative Pack LLC	
The Dannon Company, Inc.	
The Hain Celestial Group, Inc.	
The Hershey Company	

Viabella Holdings, LLC dba Marian Heath Greeting Cards	
Videojet Technologies Inc.	
W. W. Grainger, Inc.	
Walgreen Co.	
Waste Control Associates, Inc.	
Wendy-Veto, LLC	
West Coast Casters & Wheels, Inc.	
Western Harvesting, LLC	
Wheat Valley Bakery	
Wholesome Sweeteners, Incorporated	
Whyte's Food Corp.	
WLP Regency Park Plaza, LLC	
Worldwide Beverage Imports, LLC	
Wyndeham Kestrel, Ltd.	
Viabella Holdings, LLC dba Marian Heath Greeting Cards	
Videojet Technologies Inc.	
W. W. Grainger, Inc.	
Walgreen Co.	
Waste Control Associates, Inc.	
Wendy-Veto, LLC	
West Coast Casters & Wheels, Inc.	
Western Harvesting, LLC	
Wheat Valley Bakery	
Wholesome Sweeteners, Incorporated	
Whyte's Food Corp.	
WLP Regency Park Plaza, LLC	
Worldwide Beverage Imports, LLC	
Wyndeham Kestrel, Ltd.	

2. Potential Turnover of Property

AIG and/or certain affiliates	Savvis Inc
Argonaut Insurance Company	National Union Fire Insurance Company of Pittsburgh, PA

3. Tax refunds

Any and all federal and state tax actions and appeals including, but not limited to, appeals pending with Alameda County, California; Contra Costa County, California; Los Angeles County, California; Riverside County, California; San Bernardino County, California; San Francisco County, California; San Luis Obispo County, California; Santa Barbara County, California; and Ventura County, California.

4. Price-fixing (antitrust) litigation

a. *In re Payment Card Interchange Fee And Merchant Discount Antitrust Litigation*, 1:05-MD-1720, United States District Court for the Eastern District of New York

MasterCard International Incorporated and issuing/acquiring banks	Visa U.S.A. Inc. and issuing/acquiring banks
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b. *American Express Anti-Steering Rules Antitrust Litigation*, arbitration

American Express Company	American Express Travel Related Services Company, Inc.
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c. *In re: Packaged Seafood Products Antitrust Litigation*, 3: 15-MD-2670 JLS (MDD), United States District Court of the Southern District of California

Bumble Bee Foods, LLC	StarKist Co.
Dongwon Enterprise Co., Ltd.	Tri-Union Seafoods, LLC
Del Monte Foods Company	Thai Union Group PCL

d. *In re: Broiler Chicken Antitrust Litigation*, 1:16-cv-08637, United

States District Court for the Northern District of Illinois

Fieldale Farms Corporation	Peco Foods, Inc.
Foster Farms, LLC	Perdue Farms, Inc. and affiliates
George's, Inc. and affiliates	Pilgrim's Pride Corporation and affiliates
House of Raeford Farms, Inc.	Sanderson Farms, Inc. and affiliates
Koch Foods, Inc. and affiliates	Simmons Foods, Inc.
Mountaire Farms, Inc. and affiliates	Tyson Foods, Inc. and affiliates
O.K. Foods, Inc. and affiliates	Wayne Farms, LLC

e. *In re: Processed Egg Products Antitrust Litigation*, 2: 08-MD-

02002, United States District Court for the Eastern District of Pennsylvania

Cal-Maine Foods, Inc.	Norco Ranch, LLC
Daybreak Foods, Inc.	NuCal Foods, Inc.
Hillandale Farms of Pa, Inc.	Ohio Fresh Eggs, LLC
Hillandale-Gettysburg, L.P.	R.W. Saunder, Inc.
Land O'Lakes, Inc.	Rose Acre Farms, Inc.
Michael Foods, Inc.	Sparboe Farms Inc.
Midwest Poultry Services, LP	United Egg Producers
Moark, LLC	United States Egg Marketers
National Food Corporation	Norco Ranch, LLC

5. Class Action Litigation (Los Angeles Department of Water and Power)

a. *Jones v. City of Los Angeles*, Case No. BC577267

EXHIBIT D
TO COMBINED PLAN AND DISCLOSURE STATEMENT

CONTRACTS TO BE ASSUMED

Schedule of Contracts and Leases be Assumed¹

Scheduled Party Name	Contract Title	Contract Date	Cure Amount
ADP Corporation	Service Agreement between ADP Corporation and Fresh & Easy, LLC	January 1 2016	\$0.0
Alcoholic Beverage Consulting Service	Professional Agreement between Alcoholic Beverage Consulting Service and Fresh & Easy, LLC	December 3, 2015	\$0.0
Andrew Taylor	Consulting Agreement between Andrew Taylor and Fresh & Easy, LLC	January 1, 2016	\$0.0
Anthony Tsai	Consulting Agreement between Anthony Tsai and Fresh & Easy, LLC	April 1, 2016	\$0.0
Barracuda Networks	IT Services Agreement between Barracuda Networks and Fresh & Easy, LLC (Contract #BMA950a-e0)	May 21, 2016	\$0.0
Beverly Mausbach	Consulting Agreement between Beverly Mausbach and Fresh & Easy, LLC	April 1, 2016	\$0.0
CenturyLink	Master Services Agreement between CenturyLink and Fresh & Easy, LLC (Contract #MSA1475815)	April 28, 2016	\$0.0
Cynthia Martinica	Consulting Agreement between Cynthia Martinica and Fresh & Easy, LLC	December 3, 2015	\$0.0
David Lukac	Consulting Agreement between David Lukac and Fresh & Easy, LLC	June 1, 2016	\$0.0
Essex Insurance Company	Vacant Property Insurance Agreement between Essex Insurance Company and Fresh & Easy, LLC (Policy #IMW16436)	April 15, 2016	\$0.0
Grant Thornton LLP	Tax Services Agreement between Grant Thornton LLP and Fresh & Easy LLC	March 3, 2017	\$0.0
Iron Mountain	Storage Agreement between Iron Mountain and Fresh & Easy, LLC (Contract #22KZP/FRESH & EASY LLC)	December 29, 2015	\$0.0
ITS ackciova spolecnost (TIMS)	Service Agreement between ITS ackciova spolecnost (TIMS) and Fresh & Easy, LLC	August 6, 2007	\$0.0
JLT Specialty Insurance Services Inc.	Insurance Broker Agreement between JLT Specialty Insurance Services Inc and Fresh & Easy, LLC	October 4, 2016	\$0.0
Keri Herczeg	Consulting Agreement between Keri Herczeg and Fresh & Easy, LLC	April 1, 2016	\$0.0
Lisa Novajosky	Consulting Agreement between Lisa Novajosky and Fresh & Easy, LLC	April 1, 2016	\$0.0
Microsoft Office 365	Email Subscription Agreement between Microsoft Office 365 and Fresh & Easy, LLC (Contract #f33bd577-2fb9-4a21-b5b8-d732d580deaa)	March 24, 2015	\$0.0
MindTree Limited	Master Services Agreement between MindTree Limited and Fresh & Easy, LLC	April 1, 2016	\$0.0
Oracle Corporation	Service Agreement between Oracle Corporation and Fresh & Easy, LLC (Amendment 1)	April 1, 2016	\$0.0
Regus	Lease Agreement between Regus and Fresh & Easy, LLC (Contract #R-216676)	April 1, 2016	\$0.0
Sivakumar Depur	Consulting Agreement between Sivakumar Depur and Fresh & Easy, LLC	April 13, 2016	\$0.0
State Compensation Insurance Fund	Workers' Compensation Policy Agreement between State Compensation Insurance Fund and Fresh & Easy, LLC (Policy #9147422-16)	November 26, 2016	\$0.0
Tesco Stores Limited	Letter Agreement between Tesco Stores Limited and Fresh & Easy, LLC	August 1, 2016	\$0.0
Versatax Consulting	Property Tax Consulting Agreement between Versatax Consulting, Inc. and Fresh & Easy, LLC	October 9, 2014	\$0.0
Wassim Fadlallah	Consulting Agreement between Wassim Fadlallah and Fresh & Easy, LLC	April 6, 2016	\$0.0

¹ The listing of a contract or lease herein shall not constitute an admission by the Debtor, Liquidating Trust, or Liquidating Trustee that such contract or lease is an executory contract or unexpired lease or that the Debtor, Liquidating Trust, or Liquidating Trustee has any liability thereunder. Notwithstanding, the Debtor intends to assign the agreements entered into postpetition by the estate and listed herein to the Liquidating Trust. In addition, notwithstanding the Executory Contracts listed herein, any contract of insurance in favor of the Debtor or rights of the Estate thereunder or to the proceeds thereto that is not expressly listed herein will be preserved from and after the Effective Date.

EXHIBIT 2

FORM NOTICE OF EFFECTIVE DATE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
FRESH & EASY, LLC, ¹	:	Case No. 15-12220 (BLS)
Debtor.	:	Related to Docket No. [●]

**NOTICE OF (A) ENTRY OF ORDER CONFIRMING COMBINED
DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF LIQUIDATION FOR
FRESH & EASY, LLC; (B) EFFECTIVE DATE OF THE PLAN; (C) SUBSTANTIAL
CONSUMMATION OF THE PLAN; AND (D) BAR DATES FOR CERTAIN CLAIMS**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Confirmation of the Plan. On [●], 2017, the Honorable Brendan L. Shannon, Chief United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Delaware (the “Court”), entered the Findings of Fact, Conclusions of Law, and Order (the “Confirmation Order”) Confirming Amended Combined Disclosure Statement (the “Disclosure Statement”) and Joint Chapter 11 Plan of Liquidation (the “Plan”) for Fresh & Easy, LLC (collectively the “Combined Plan and Disclosure Statement”) [Docket No. [●]].² The Combined Plan and Disclosure Statement is attached to the Confirmation Order as Exhibit 1.

2. Effective Date. Pursuant to the Confirmation Order, the Plan became effective in accordance with its terms, as set forth in Article XIX of the Plan, on [●], 2017 (the “Effective Date”).

3. Substantial Consummation. Pursuant to section 1101(2) of the Bankruptcy Code, the Plan has been substantially consummated.

4. Releases, Exculpation, Injunctions and Bar Provision. The Plan contains release, exculpation, injunction and bar provisions. The injunctions in the Plan include a permanent injunction of the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any Claim or Interest, including any right, claim or Cause of Action released pursuant to the Plan.

5. Bar Date for Professional Fee Claims. All final requests for payment of Professional Fee Claims (the “Final Fee Applications”) must be filed no later than [●], 2017 (*i.e.*, forty-five (45) days after the Effective Date). The procedures for processing Final Fee Applications are set forth in the Plan. If a Professional does not timely submit a Final Fee Application, such Professional shall be forever barred from seeking payment of such Professional Fee Claim from the Debtor, its Estate or the Liquidating Trust.

¹ The last four digits of the Debtor’s federal taxpayer identification number are 8906. The Debtor’s mailing address is Howard Hughes Center, 6080 Center Drive, 6th Floor, Los Angeles, CA 90045.

² Unless otherwise defined in this Notice, capitalized terms used herein have the meanings set forth in the Combined Plan and Disclosure Statement.

6. Supplemental Administrative Expense Bar Date. Requests for payment of Administrative Claims against the Debtor that arose, accrued or otherwise became due and payable at any time subsequent to December 31, 2015 but on or before the Effective Date (the “Supplemental Administrative Claims Period”), other than 503(b)(9) Claims and Professional Fee Claims, must be filed with the Court and served on the Debtor or Liquidating Trustee, as applicable, no later than the Supplemental Administrative Claims Bar Date, [●], 2017 (*i.e.*, the thirtieth (30th) day following the Effective Date). Holders of Administrative Claims that arose, accrued or otherwise become due during the Supplemental Administrative Claims Period that do not file requests for the allowance and payment thereof on or before the Supplemental Administrative Claims Bar Date shall forever be barred from asserting such Administrative Claims against the Debtor or its Estate. Unless the Debtor or the Liquidating Trust, as applicable, or any other party in interest objects to an Administrative Claim by the Administrative Claims Objection Deadline, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Debtor or the Liquidating Trust, as applicable, or any other party in interest objects to an Administrative Claim, and the Administrative Claim is not otherwise resolved, the Court shall determine the Allowed amount of such Administrative Claim.

7. Bar Date for Rejection Damages Claims. Except as set forth in Article XVII of the Plan, all Executory Contracts and Unexpired Leases of the Debtor have been rejected as of the Effective Date. If the rejection by the Debtor, pursuant to the Plan, of an Executory Contract or Unexpired Leases gives rise to a Claim, a proof of Claim must be filed with the Claims Agent, at the following address: (i) if by mail, Fresh & Easy, LLC Claims Processing Center c/o Epiq Bankruptcy Solutions, LLC, P.O. Box 4421, Beaverton, OR 97076-4421; and (ii) if by messenger or overnight courier, Fresh & Easy, LLC Claims Processing Center, c/o Epiq Bankruptcy Solutions, LLC, 10300 SW Allen Blvd, Beaverton, OR 97005, by no later than thirty (30) days after the later of (i) the Effective Date, or (ii) other notice that the Executory Contract or Unexpired Leases has been rejected. Any proofs of claim not filed and served within such time periods will be forever barred from assertion against the Debtor and its Estate.

8. Renewed Request for Post-Effective Date Notice Pursuant to Bankruptcy Rule 2002. After the Effective Date, to continue to receive notice of documents pursuant to Bankruptcy Rule 2002, all Creditors and other parties in interest must file a renewed notice of appearance with the Court requesting receipt of documents pursuant to Bankruptcy Rule 2002.

9. Copies of Combined Plan and Disclosure Statement and Confirmation Order. The Combined Plan and Disclosure Statement and the Confirmation Order may be examined by any party in interest: (i) between the hours of 8:00 a.m. and 4:00 p.m. (prevailing Eastern Time), Monday through Friday, excluding federal holidays, at the Office of the Clerk, United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801; (ii) at the Debtor’s case website and downloaded free of charge (<http://dm.epiq11.com/fre>); (iii) at the Bankruptcy Court’s website (<http://www.deb.uscourts.gov>) (a PACER account is required); or (iv) may be obtained by written request to Epiq Bankruptcy Solutions, LLC, at tabulation@epiqsystems.com (reference “Fresh & Easy” in the subject line).

Dated:

[COUNSEL FOR LIQUIDATING TRUSTEE]