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11  
12 **UNITED STATES BANKRUPTCY COURT**  
13 **EASTERN DISTRICT OF WASHINGTON**  
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15  
16 IN RE:

17  
18 SNOKIST GROWERS,

19 Debtor.  
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21  
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Case No. 11-05868- FLK11

**DISCLOSURE STATEMENT IN  
SUPPORT OF DEBTOR'S  
PLAN OF LIQUIDATION**

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28 **SNOKIST GROWERS**  
29 **DISCLOSURE STATEMENT**  
30 **DATED APRIL 18, 2013**  
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**DISCLOSURE STATEMENT**

**-1-**

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## I. INTRODUCTION

This is the disclosure statement (the “**Disclosure Statement**”) in the chapter 11 case of Snokist Growers (the “**Debtor**” or “**Snokist**”). This Disclosure Statement contains information about the Debtor and describes the Plan of Reorganization (the “**Plan**”) filed by the Debtor on April 18, 2013. A full copy of the Plan is attached to this Disclosure Statement as Exhibit 1.

*Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.*

### A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “**Court**”) will consider when deciding whether to confirm the Plan,
- Why the Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan



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1 compares to what you would receive on your claim or equity  
2 interest in liquidation, and

- 3  
4 - The effect of confirmation of the Plan.

5 **Be sure to read the Plan as well as the Disclosure Statement. This**  
6  
7 **Disclosure Statement describes the Plan, but it is the Plan itself that will,**  
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9 **if confirmed, establish your rights.**

10  
11 11 U.S.C. §1125(b) PROHIBITS SOLICITATION OF AN ACCEPTANCE  
12 OR REJECTION OF A PLAN OF REORGANIZATION UNLESS A COPY  
13 OF THE PLAN OF REORGANIZATION OR A SUMMARY THEREOF IS  
14 ACCOMPANIED OR PRECEDED BY A COPY OF A DISCLOSURE  
15 STATEMENT APPROVED BY THE BANKRUPTCY COURT. A COPY  
16 OF THE PROPOSED PLAN OF REORGANIZATION IS ATTACHED  
17 AS EXHIBIT 1.

18 THIS DISCLOSURE STATEMENT HAS BEEN APPROVED AS  
19 CONTAINING ADEQUATE INFORMATION BY AN ORDER OF THE  
20 UNITED STATES BANKRUPTCY COURT ENTERED ON \_\_\_\_\_ ,  
21 2013, AND ITS DISTRIBUTION TO THE HOLDERS OF CLAIMS AND  
22 EQUITY SECURITY INTERESTS IS AUTHORIZED BY THAT ORDER.  
23 THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE  
24 STATEMENT, HOWEVER, DOES NOT CONSTITUTE A  
25 RECOMMENDATION OR ENDORSEMENT OF THE PLAN OF  
26 REORGANIZATION BY THE BANKRUPTCY COURT.

27 IN ORDER TO BE COUNTED FOR PURPOSES OF SATISFYING THE  
28 BANKRUPTCY CODE REQUIREMENTS YOUR BALLOT OF  
29 ACCEPTANCE OR REJECTION MUST BE RECEIVED AT THE  
30 ADDRESS INDICATED ON THE BALLOT NO LATER THAN \_\_\_\_\_  
31 P.M. ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2013.



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1 **II. DEBTOR'S OPERATIONS, ASSETS & CLAIMS**

2 **A. Description and History of the Debtor's Business**

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4 1. Snokist was formed in 1967 as a result of the merger of Yakima  
5 Fruit Growers and Yakima County Horticultural Union. Snokist's past  
6 operations included the storing, packing and sale of fresh fruit as well as  
7 processing and canning of apple, pear and other fruit products. Several years  
8 ago, Snokist elected to exit the fresh market segment of its business. As a  
9 result, during the last several years Snokist has focused on its cannery business  
10 under which it purchases fresh fruit from both member and non-member  
11 growers and processes that fruit into a variety of different products, including  
12 applesauce and canned pears. Snokist's primary operations were conducted at  
13 its cannery facility in Terrace Heights (**"Cannery"**).  
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22 2. Snokist is a non-profit cooperative association organized under  
23 the laws of the State of Washington. Snokist is governed by a Board of  
24 Directors who are elected by Snokist's members (**"Members"**). The Board  
25 delegated the authority to conduct day to day operations to Snokist's  
26 management.  
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1           3.     Membership in the cooperative is governed by Snokist’s bylaws  
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3 and articles of incorporation. In general terms a Member is a party who has  
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5 signed Snokist’s fruit purchase agreement, paid their membership dues, agreed  
6  
7 to abide by the terms of the by-laws and articles of incorporation and whose  
8  
9 membership has been accepted by the Board of Directors. During 2011  
10  
11 Snokist had approximately 140 members. Snokist did not purchase or take  
12  
13 delivery of any fruit in 2012 and 2013.

14           4.     In 2008, Snokist eliminated its marketing and sales division and  
15  
16 elected to enter into a marketing agreement (“**Marketing Agreement**”) with  
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18 Pacific Coast Producers (“**PCP**”). Under the PCP Marketing Agreement, PCP  
19  
20 arranged for substantially all sales of Snokist’s inventory and remitted the  
21  
22 sales proceeds to Snokist (less PCP’s brokerage commission, direct selling  
23  
24 expenses and certain other allowed charges).

25           5.     Snokist obtained financing from three (3) primary sources.

26           5.1    Snokist had a revolving line of credit with Rabo  
27  
28 Agrifinance (“**Rabo**”) and KeyBank National Association (“**Key**”)  
29  
30 (collectively “**Operating Lenders**”). The operating line was a \$27 million  
31  
32 revolving line of credit which had a balance, at the time the bankruptcy was  
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34



1 filed, of approximately \$26,500,000. The revolving line of credit was secured  
2  
3 by substantially all of Snokist's operating assets, including raw product,  
4  
5 inventory, equipment and accounts receivable.

6 5.2 Snokist conducted the majority of its operations at its  
7  
8 cannery facility located in Terrace Heights ("**Cannery**"), but also owned a  
9  
10 storage facility in Sawyer ("**Sawyer Property**"). The Cannery was  
11  
12 encumbered by a first priority deed of trust in favor of Community Bank  
13 ("**Community**"). The approximate balance owing to Community, at the time  
14  
15 of the bankruptcy filing, was \$9.5 million. The Sawyer Property was  
16  
17 encumbered by a first priority deed of trust in favor of Key. The approximate  
18  
19 balance owing to Key, at the time of the bankruptcy filing, was \$1.3 million.

20 5.3 A significant portion of the equipment and machinery used  
21  
22 in Snokist's operations had been leased, either under financing leases or true  
23  
24 leases (collectively "**Leases**"). In general terms, the Leases required monthly  
25  
26 payments. Some of the Leases granted Snokist an option to purchase at the  
27  
28 end of the lease term.



1           6.     Over the years, Snokist’s Members and former members provided  
2  
3 funding for its operations in two primary ways: deposit of funds into grower  
4 ledger accounts and establishment of revolving funds.  
5

6           6.1    Members sold their fruit to Snokist under a pooling  
7  
8 arrangement. Under the pooling arrangement, Members’ fruit was included in  
9  
10 a pool with the fruit of other Members with the ultimate returns dependent  
11  
12 upon the price Snokist received for the product. Snokist historically made  
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14 advances, according to a schedule established by the Board, to Members  
15  
16 participating in the pooling arrangement. Snokist has historically elected to  
17  
18 pay Members participating in their pools no less than the cash price received  
19  
20 by other parties delivering fruit to the cooperative.  
21

22           6.2    When Snokist paid or made advances to its Members under  
23  
24 the pooling arrangement or closes pools, Snokist credited the Members’ ledger  
25  
26 account which was held at Snokist (“**Ledger Account**”). The Company never  
27  
28 maintained dedicated funds or reserves with respect to its Ledger Accounts.  
29  
30 Each Member had the right to request disbursements from their Ledger  
31  
32 Account on demand. Historically, if a party requested a disbursement on their  
33  
34 Ledger Account, Snokist would write that party a check on the same day. The



1 funds to pay for requested Ledger Account withdrawals were paid from the  
2 Company's operating account. Members who maintained a balance in their  
3 Ledger Account were historically paid interest at a rate established from time  
4 to time by the Company. Ledger Accounts were maintained not only by  
5 parties who are current Members of the Company but also by parties who  
6 were Members in the past. As of the date of filing, there were approximately  
7 300 Members and former members holding Ledger Accounts with the  
8 Company. Prior to filing for bankruptcy protection Snokist closed all of its  
9 open pools, including 2011 pools. As a result, the amounts Snokist owed to  
10 Members who delivered fruit in 2011 (under a pooling arrangement) are  
11 reflected on the Members' Ledger Account balances. As of the date of the  
12 bankruptcy filing, the Ledger Accounts had a total balance of approximately  
13 \$5.5 million.  
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24           6.3 Another way that Members provided capital for Snokist's  
25 operations was through the use of revolving funds. Each Member who  
26 delivered fruit to Snokist under a pooling arrangement had a portion of the  
27 payment that would otherwise be due to that Member withheld and retained by  
28 the Company. The amount withheld from the Member was booked as equity  
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1 in the Company. So long as Snokist was profitable, the goal was to pay the  
2 Members the funds that had been withheld on a revolving basis. Such  
3 payments were made in the discretion of the Board of Directors. In recent  
4 years, Snokist was unable to make any payments to Members on account of  
5 their revolving funds. The company currently has booked approximately  
6 \$23.9 million in equity to its Members.  
7

11 7. Snokist purchased fruit each year from its Members, as well as  
12 from non-member growers, either directly or through independent brokers  
13 (“**Outside Growers**”). As described above, Members sold their fruit through  
14 the pooling arrangement. Outside Growers sold their fruit to Snokist only on a  
15 cash basis.  
16

17 8. Snokist purchased goods and services on an unsecured basis from  
18 a variety of vendors (“**Vendors**”). Snokist owed the Vendors approximately  
19 \$2,400.000 as of the date of the bankruptcy filing.  
20

21 9. In 2011, Snokist employed approximately 610 workers.  
22 Snokist’s workforce was divided primarily into three categories:  
23 administrative personnel, warehouse personnel and production personnel. A  
24 significant amount of the work performed by employees, particularly the  
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1 production personnel, is seasonal. In a typical year, Snokist packed pears  
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3 between August and November and apples as needed between December and  
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5 March. Sales related activities, including filling of orders procured by PCP,  
6  
7 which primarily involved administrative and warehouse personnel, were  
8  
9 conducted on a year round basis.

10 10. Snokist entered into a collective bargaining agreement (“CBA”)  
11  
12 with the Carpenters Industrial Council and United Brotherhood of Carpenters  
13  
14 and Joiners of America (“Union”). The CBA governs the employment  
15  
16 relationship for a significant portion of Snokist’s warehouse and production  
17  
18 personnel. Snokist’s administrative personnel were at-will employees not  
19  
20 covered by the CBA.

21 11. In the years prior to filing, Snokist was forced to discontinue the  
22  
23 majority of its employee benefits both to its union and non-union employees.  
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25 However, Snokist continued to provide vacation benefits, including the ability  
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27 to accrue vacation, to its employees. With respect to union employees,  
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29 vacation policy is governed by the CBA. With respect to administrative and  
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31 other non-union employees, the vacation policy is governed by Snokist’s  
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33 company handbook.  
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1           12. On December 7, 2011 Snokist provided all of its employees with  
2 notices pursuant to the Worker Adjustment and Retraining Notification Act  
3 (“WARN”). Certain employers who are subject to WARN must give  
4 employees sixty (60) days’ notice (“**WARN Notice Period**”) prior to a plant  
5 closure or mass layoff. Snokist, while not admitting that it is subject to the  
6 WARN Act, elected to give its employees the WARN Act notices because it  
7 anticipated terminating the majority of its workforce in the spring of 2012.  
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10           13. Rather than pay worker’s compensation premiums to the State of  
11 Washington, Snokist elected, pursuant to state law, to self-insure its worker’s  
12 compensation program. As a result, Snokist established a plan under which  
13 Eberle Vivian Incorporated (“**Administrator**”) administers the worker’s  
14 compensation program. Any amounts that are due under the self-insurance  
15 plan are then paid directly by Snokist, although the actual checks are written  
16 by the Administrator.  
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26 **B. Events Leading to Bankruptcy Filing.**

27           14. In March, 2011 Snokist entered into a lending relationship with  
28 the Operating Lenders. The amount Snokist could borrow from the Operating  
29 Lenders was dependent upon a borrowing base formula that allowed Snokist  
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1 to borrow a certain percentage of the value of its eligible raw product,  
2 supplies, finished good and accounts receivable. In no event could the  
3 outstanding balance owed to the Operating Lenders exceed \$27.0 million,  
4 even if the borrowing base formula would justify a greater loan. The result of  
5 the borrowing cap is that when Snokist attempted to process greater amounts  
6 of product through the Cannery it had insufficient room under its line of credit  
7 to pay the costs associated with processing that product. The result was that  
8 Snokist could not operate profitably because it did not have sufficient capital  
9 to be able to process enough product.  
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17 15. Snokist and the Operating Lenders were aware that there was  
18 very little room for error in Snokist's 2011 projections. If Snokist was able to  
19 meet its projections it could operate at a moderate profit. If there was any  
20 substantial variation in sales or in costs, it would be difficult for Snokist to  
21 meet its obligations under the Operating Lenders' loan documents.  
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26 16. Unfortunately in May, 2011, Snokist received a report that its  
27 applesauce product was one of the items on a school lunch menu where  
28 eighteen (18) kids came down with upset stomachs. Despite the fact that none  
29 of the students suffered any significant adverse health effects, the school  
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1 district conducted an investigation and found some of Snokist's product that  
2 had not been properly sealed.  
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4 17. As a result of the discovery at the school, the U.S. Food & Drug  
5 Administration ("FDA") came to Snokist's plant and conducted testing of  
6 Snokist's product. The FDA found nothing wrong with Snokist's product.  
7  
8 However, while at the plant the FDA conducted a wide ranging investigation  
9 which resulted in the FDA sending Snokist notice of certain claimed  
10 deficiencies at the plant. The FDA report made its way into the hands of two  
11 of Snokist's biggest customers, the United States Department of Agriculture  
12 and U.S. Food Service. As a result of the FDA report, the USDA and USFS  
13 suspended any further orders of Snokist's product, until such time as Snokist  
14 could reach a positive resolution with the FDA. In addition, the USDA  
15 required Snokist to recall certain product that had already been delivered  
16 pursuant to USDA contracts.  
17  
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19 18. Snokist attempted to be proactive and respond to the FDA as  
20 quickly as commercially reasonable. Unfortunately, after receiving Snokist's  
21 response, the FDA waited nearly five (5) months prior to giving Snokist any  
22 significant feedback as to whether the FDA considered the alleged problems to  
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1 be remedied. The delay by the FDA in responding to Snokist has cost Snokist  
2 millions of dollars in sales.  
3

4 19. The reduced sales caused by the issues with the FDA turned what  
5 was already a tight cash situation into an unworkable financial crisis for  
6 Snokist. Snokist pursued negotiations with the Operating Lenders in hopes  
7 that the Operating Lenders would lend Snokist additional funds or modify the  
8 loan documents. Shortly before the bankruptcy proceeding was filed, the  
9 Operating Lenders made clear that they would not advance Snokist additional  
10 funds. Further, the Operating Lenders informed Snokist that it could not make  
11 any payments to: (a) its real estate lenders; (b) the lessors under any of  
12 Snokist's operating or capital leases; (c) Snokist's Member and non-member  
13 growers; or (d) Members seeking to withdraw funds from the Grower Ledger  
14 Accounts.  
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17 20. Snokist's inability to make payments to its growers, Members,  
18 vendors and other lenders caused Snokist not to be able to operate in its  
19 ordinary course of business. Rather than devoting significant time and effort  
20 defending what would have been a cascade of lawsuits and other collection  
21 action, Snokist sought protection under the Bankruptcy Code.  
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1 **C. Sale of the Debtor’s Assets.**

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3 21. From the outset of the bankruptcy proceedings Snokist indicated  
4 that it intended these proceedings to provide an opportunity to conduct an  
5 organized liquidation of its assets. Snokist believed that such an organized  
6 liquidation would maximize the value of its assets and provide creditors with  
7 the highest and best return.  
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10  
11 22. Snokist negotiated a series of cash collateral agreements with the  
12 Operating Lenders which allowed Snokist to continue selling its inventory in  
13 the ordinary course of business. At the same time, Snokist was looking for  
14 opportunities to sell substantially all of its assets as a going concern.  
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18  
19 23. During December, 2011 and January, 2012, the Debtor received  
20 expressions of interest from a number of different parties who were interested  
21 in purchasing some or all of Snokist’s assets. The Debtor spent significant  
22 time in providing due diligence materials to interested parties in hopes that it  
23 would receive one or more purchase offers.  
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28 24. Towards the end of January, the Debtor received two significant  
29 expressions of interest from Truitt Brothers (“TBI”) and Del Monte  
30 Corporation. The transaction proposed by Del Monte was for purchase of  
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1 substantially all of the assets of the Debtor *except* finished goods inventory,  
2 cash and accounts receivable. Del Monte proposed to pay cash of \$11.5  
3 million for the assets. Acceptance of the Del Monte offer would have allowed  
4 the Debtor to pay Community and Key on their term debt obligations and left  
5 the Debtor with approximately \$700,000 in cash (prior to payment of closing  
6 and other related costs) to distribute to creditors.  
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11 25. The Truitt Brothers offer was for substantially all of the assets of  
12 the Debtor. Snokist's analysis of the TBI transaction was that it would leave  
13 Snokist, at closing, with approximately \$12.5 million in cash with which to  
14 pay: (a) Snokist's costs of closing; (b) Snokist's bankruptcy administrative  
15 costs; and (c) the secured and unsecured claims against Snokist, other than  
16 those assumed by TBI. Snokist's analysis was that the transaction would  
17 likely pay substantially all of Snokist's creditors (excluding equity holders) in  
18 full.  
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25 26. The TBI offer was subject to a number of contingencies,  
26 including the requirement that TBI obtain sufficient financing to fund the  
27 acquisition of Snokist's assets. Snokist's Board voted to accept the TBI offer,  
28 subject to bankruptcy court approval. The original TBI transaction was  
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1 scheduled to close on or before March 15, 2012. Unfortunately, TBI was  
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3 unable to obtain the financing necessary to waive the contingencies in its  
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5 purchase agreement on or before March 15, 2012.

6 27. Snokist moved to hold an auction sale of substantially all of its  
7  
8 assets in May, 2012. The Board believed that given a little more time, TBI  
9  
10 would be able to put together the necessary financing to complete the purchase  
11  
12 of Snokist's assets. However, if TBI was unable to obtain the necessary  
13  
14 financing, Snokist was hopeful that it would receive other offers for its assets.

15 28. As things ultimately worked out, TBI was unable to obtain the  
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17 financing necessary to consummate its offer to purchase the assets. Snokist  
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19 received a number of other offers to purchase portions of its assets. However,  
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21 the only offer for substantially all of Snokist's assets was made by Del Monte  
22  
23 Corporation and PCP.

24 29. On May 18, 2012, the Court entered an order approving the sale  
25  
26 of substantially all of the Debtor's assets to Del Monte and PCP ("**Sale**  
27  
28 **Order**"). The purchase price to be paid by Del Monte and PCP was  
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1 approximately \$26,500,000.<sup>1</sup> In addition, the sale allowed the Debtor to retain  
2 the cash it had received from sale of its inventory during the pendency of the  
3 bankruptcy proceedings (approximately \$16,000,000).  
4

5  
6 30. The Sale Order provided the Debtor would use its retained cash  
7 plus the proceeds from the sale to Del Monte/PCP to pay the Operating  
8 Lenders in full, pay Community Bank, establish a reserve for the payment of  
9 certain PACA and processor lien claims which had been asserted against the  
10 Debtor and pay closing costs and taxes related to the sale of the Debtor's  
11 assets.  
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17 31. The sale of assets to Del Monte/PCP occurred on or about June 6,  
18 2012. Copies of the closing statements related to the Del Monte/PCP Sale  
19 and the payoff of the Operating Lenders and other creditors are attached hereto  
20 as Exhibit 2 and Exhibit 3.<sup>2</sup>  
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29 \_\_\_\_\_  
30 <sup>1</sup> The actual purchase price was dependent, in part, upon the value of the Debtor's inventory at  
31 Closing.

32 <sup>2</sup> In addition to the amounts paid out of closing, the Debtor paid attorneys' fees to the KeyBank,  
33 Rabo and Community Bank in the combined amount of (\$458,428.42) pursuant to the Court's  
34 order approving the settlement between the Debtor and the Secured Lenders [Docket No. 857].



1 **D. PACA and Processor Lien Claims.**

2  
3 32. As indicated above, the Debtor purchased significant amounts of  
4 fruit from non-members growers in 2011. The terms of the Debtor's purchase  
5 contracts were typically that half of the payment was due to the non-member  
6 growers on October 15, 2011 and the remaining half was due either December  
7  
8 15, 2011 or in January, 2012. The Debtor recognized that its relationship  
9 with non-member growers ("**Lien Claimants**") could give rise to rights under  
10 the Perishable Agricultural Commodities Act (7 U.S.C. §499e), the  
11 Washington State Processor Lien Statute (RCW 60.13) or other similar laws.  
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17 33. On December 21, 2011, the Debtor filed a motion to provide  
18 adequate protection to Lien Claimants as well as establish procedures for  
19 proving and paying lien claims. Over the course of the next several months,  
20 the Debtor and counsel for numerous Lien Claimants refined the procedures  
21 which would be applicable to maintaining and paying lien claims. On  
22 February 10, 2012, the Court entered an order establishing procedures relative  
23 to such lien claims ("**Lien Procedures Order**").  
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29 34. Pursuant to the Lien Procedures Order, numerous parties filed  
30 processor lien and PACA claims ("**Lien Claims**"). These claims totaled  
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1 approximately \$4.2 million plus attorneys' fees and interest. Under the Lien  
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3 Procedures Order, the Debtor was required to segregate sufficient funds to pay  
4  
5 the Lien Claimants in full plus a reserve of thirty percent (30%) (“**Lien Set**  
6 **Aside**”).<sup>3</sup> As a result, the Debtor segregated \$4,856,904.80.

7  
8 35. Under the Lien Procedures Order, the Debtor paid \$385,086.56 to  
9  
10 Lien Claimants whose claims were not disputed or objected to, thus reducing  
11  
12 the Lien Set Aside to \$4,471,818.24.

13  
14 36. The Court then entered a subsequent procedures order governing  
15  
16 the resolution of Lien Claims which authorized the Debtor and the Creditor's  
17  
18 Committee to negotiate settlements with the Lien Claimants.<sup>4</sup>

19  
20 37. Over the next five (5) months, the Debtor and the Creditor's  
21  
22 Committee resolved all of the outstanding Lien Claims. The total payments  
23  
24 on the disputed Lien Claims totaled \$2,131,957.92.<sup>5</sup> When coupled with the  
25  
26 payments on the undisputed Lien Claims, total payments to the Lien Claimants  
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30 <sup>3</sup> This 30% holdback was modified with respect to the PACA claim of Excel Fruit Brokerage by  
31  
32 Court Order dated May 16, 2012 [Docket No. 819].

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32 <sup>4</sup> See Docket No. 825.

33  
34 <sup>5</sup> For a summary of the resolution of all of the Lien Claims see Exhibit 4 attached hereto.



1 were \$2,517,044.48, thus leaving \$2,339,860.32 in the Lien Set Aside. The  
2 Debtor does not believe that any of the Lien Claims remain outstanding.  
3

4 **E. Lease Rejection Administrative Claims:**

5  
6 38. The sale of the Debtor's assets to Del Monte/PCP resulted in the  
7 rejection of the majority of the Debtor's leases and executory contracts. The  
8 Debtor had been using a significant amount of the leased equipment after the  
9 bankruptcy filing. As a result, the rejection of the leases and executory  
10 contracts gave rise to significant potential administrative claims.  
11  
12

13  
14  
15 39. The Debtor attempted to negotiate the potential administrative  
16 claims, which resulted in a number of stipulations between the Debtor, the  
17 Creditor's Committee and the potential claimants, providing for the following  
18 administrative claims:  
19  
20  
21

22

<u>Name of Lessor</u>	<u>Agreed Administrative Claim</u>
U.S. Bank	\$ -
Toyota Motor Credit	\$ -
GE Capital	\$ -
Design Space Modular	\$ -
TCF Equipment Finance	\$ -
Atlas Pacific Leasing	\$ 6,329.96
Bank of the West	\$ 31,721.96
Roy Farms	\$ 95,325.00
Pacific CA	\$ 16,724.52
<b>Total</b>	<b>\$ 150,101.44</b>

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1           40. The administrative claimants, described above, have moved for  
2 approval of their administrative claims and the Debtor intends to treat these  
3 claims as administrative expenses given that the Court has approved the  
4 stipulations between the various claimants, the Debtor and the Creditor's  
5 Committee.  
6  
7  
8

9  
10 **F. The Debtor's Remaining Assets.**

11           41. As described above, the Debtor sold the substantial majority of its  
12 assets to Del Monte/PCP. However, under the Del Monte/PCP agreement the  
13 Debtor retained a number of assets ("**Remaining Assets**"), which are  
14 summarized as follows:  
15  
16  
17

18           41.1 Cash: Between the Debtor's general account and the Lien  
19 Set-Aside funds, the Debtor currently has approximately \$3.3 million in cash.  
20  
21

22           41.2 Co-Bank Equity: The Debtor expects to receive  
23 \$53,400.00 in proceeds related to its equity interests in CoBank for the year  
24 2013.<sup>6</sup> In addition, the Debtor sought and the Court approved of a sale of its  
25 remaining CoBank equity interests to ASM Capital for the sum of  
26 \$111,500.00. The sale to ASM Capital is in the process of closing.  
27  
28  
29  
30

31  
32 \_\_\_\_\_  
33 <sup>6</sup> The Debtor's equity interests in CoBank stem from loans Snokist had with CoBank a number  
34 of years prior to the bankruptcy filing.

1                   41.3 Insurance Proceeds:       Snokist has made an insurance  
2  
3 claim to reimburse it for certain expenses related to the recall of product from  
4 numerous schools. Snokist believes that the amount of the insurance claim  
5 will be approximately \$100,000.  
6

7  
8                   41.4 Retainer Funds Held by Bailey & Busey:     Bailey        &  
9  
10 Busey PLLC is currently holding the sum of \$110,533.94 in its trust account.  
11  
12 As of March 31, 2013, Bailey & Busey has unpaid attorneys' fees and costs of  
13 \$18,579.80.  
14

15                   41.5 Utility Deposits:   The Debtor has unpaid utility deposits  
16  
17 with All American Propane (\$4,500.00) and Cost Management Systems  
18 (\$20,000.00).  
19

20                   41.6 Letter of Credit Rights:   Part of the Debtor's Loan with  
21  
22 the Operating Lenders included the Operating Lenders providing a \$300,000  
23  
24 letter of credit to the Debtor. The letter of credit was given to the State of  
25  
26 Washington in order to support the Debtor's self-funded worker's  
27  
28 compensation plan. After the Debtor ceased operating its business, the Debtor  
29  
30 was forced to terminate its self-funded worker's compensation plan. This  
31  
32 caused the State of Washington to draw on the letter of credit. The  
33  
34



1 administrator for Snokist's worker's compensation plan has estimated that  
2 future expenses to be incurred under the plan are approximately \$75,000. The  
3 State of Washington has indicated that it will retain the letter of credit funds  
4 for ten (10) years after the last claim has been made against the plan.  
5  
6

7  
8 41.7 Bankruptcy & Avoidance Rights: The Debtor may  
9 have the right to recover certain preferential transfers or avoid certain other  
10 transfers pursuant to §544 - §552 of the Bankruptcy Code. These potential  
11 recoveries are discussed below.  
12  
13

14  
15 The Plan provides that Remaining Assets will be converted to cash as  
16 expeditiously as possible, so that the value of the Remaining Assets can be  
17 distributed to creditors in accordance with the Plan.  
18  
19

20 **G. Claims Against Snokist.**  
21

22 42. Snokist's Bankruptcy schedules, filed with the Court on  
23 December 7, 2011, disclosed the following obligations:  
24  
25  
26  
27  
28  
29  
30  
31  
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34





<u>Class of Claimants</u>	<u>Amount Due</u>
Operating Lenders	\$ 26,500,000.00
KeyBank	\$ 1,322,281.00
Community Bank	\$ 9,502,860.00
Lien Claimants	\$ 3,441,597.00
Priority Wage Claimants	\$ 315,381.00
Unsecured Claims	\$ 8,420,974.77
Equity Claims	\$ 23,889,012.23
Total	\$ 73,392,106.00

43. The Court established April 11, 2012 as the deadline for filing proofs of claim against the Debtor. Attached as Exhibit 5 hereto is a spreadsheet detailing the claims that were reflected in the Debtor's bankruptcy schedules as well as the proofs of claim filed against the Debtors.

44. In addition to the claims reflected on Exhibit 5, the Debtor has agreed to administrative claims in the amount of \$150,101.44 arising out of the rejection of certain leases and executory contracts. The rejection by the Debtor of the leases and executory contracts gave rise to certain rejection claims. The rejection claims made to date are reflected on Exhibit 5, although the Debtor has not agreed to the amounts of the rejection claims.

45. The Debtor has incurred administrative claims to the Debtor's legal counsel, Bailey & Busey PLLC and legal counsel for the Unsecured



1 Creditor's Committee, Kimel Law Offices, during the course of the case. The  
2  
3 Court has approved the following attorneys' fees and costs:

Bailey & Busey	\$	242,516.06
Kimel Law Offices	\$	26,131.14
Total	\$	268,647.20

4  
5  
6  
7  
8 These approved attorneys' fees and costs have been paid by the Debtor,  
9  
10 however, additional attorneys' fees and costs have been incurred. Through  
11  
12 March 31, 2013, the Debtor has incurred unpaid attorneys' fees and costs to  
13  
14 Bailey & Busey PLLC in the amount of \$18,579.80 and unpaid attorneys' fees  
15  
16 and costs to Kimel Law Offices in the amount of \$1,642.60.

17 46. The Debtor has paid all wages incurred both pre-petition and  
18  
19 post-petition by the Debtor. When it was operating the Debtor had both union  
20  
21 and non-union employees. The Debtor's relationship with its union  
22  
23 employees was governed by the CBA. The CBA provided union employees  
24  
25 with certain rights to vacation pay. The Debtor's relationship with its non-  
26  
27 union employees was governed by policies established by the Company. The  
28  
29 Company had a vacation policy with respect to its non-union employees. At  
30  
31 the time the bankruptcy was filed, both union and non-union employees had  
32  
33 accrued the right to vacation pay for 2011. The Debtor attempted to list the  
34



1 amount of these vacation claims in Schedule E of its bankruptcy schedules.  
2  
3 Schedule E listed approximately \$315,000 in employee claims based upon  
4  
5 accrued but unused vacation for 2011.

6 47. After the bankruptcy filing, the Debtor did not employ any  
7  
8 production workers and did not process any fruit. The Debtor did continue to  
9  
10 employ certain of its warehouse and administrative personnel up through the  
11  
12 sale of its assets to Del Monte/PCP (approximately May 31, 2012).

13 48. A number of employees who worked in 2012 as well as those  
14  
15 who ceased employment in 2011 filed proofs of claim against the Debtor  
16  
17 asserting the right to both 2011 and 2012 vacation pay. The Debtor believes  
18  
19 that employees who had accrued but unpaid vacation time when their  
20  
21 employment was terminated are entitled to a claim against the Debtor for such  
22  
23 unpaid vacation. However, the Debtor believes that substantial questions exist  
24  
25 as to whether these employees are entitled to any 2011 or 2012 vacation pay as  
26  
27 a priority or administrative claim. The Debtor intends to challenge many of  
28  
29 these vacation pay claims as allowed under the Plan.

30 49. As indicated above, the Debtor has paid certain secured claims  
31  
32 and lien claims in the context of the sale of the Debtor's assets as well as the  
33  
34



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1 settlement of the Lien Claims. The payments made are detailed in Exhibit 5.  
2  
3 The payments to secured creditors and Lien Claimants during the case have  
4 been approximately \$40,576,239.15.  
5

6 50. After the case was filed, creditors and parties in interest filed  
7 approximately five hundred ten (510) claims against the Debtor. These claims  
8 are detailed on Exhibit 5.  
9

10 51. After payment of claims to secured creditors and the Lien  
11 Claimants, the Debtor believes that the remaining claims against the Debtor<sup>7</sup>  
12 are summarized as follows:  
13  
14  
15  
16

<b>Nature of Claims</b>	<b>Amount of Claims</b>
Secured Claims	\$ 5,073.43
Priority Claims	\$ 639,817.76
Unsecured Claims	\$ 10,607,406.15
Equity Claims	\$ 24,120,433.57
Total	\$ 35,372,730.91

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23 **H. Insider Claims.**

24 Pursuant to 11 U.S.C. §101(31)(B) both the officers and directors of the  
25 Debtor are insiders (collectively “**Insiders**”). The members of the Board are  
26  
27  
28  
29

30 <sup>7</sup> These numbers exclude the administrative claims described above. These claims have been  
31 listed at the values scheduled by the Debtor unless the claimant filed a proof of claim, in which  
32 case the claim amount has been used. Certain of the claims listed have been paid. In addition,  
33 the Debtor disputes certain of the claims and does not intend to waive its right to challenge  
34 these claims.



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1 also Members of the Debtor who delivered fruit in 2011 and had funds  
 2 deposited in the Ledger Accounts. The contracts between the Debtor and the  
 3 members of the Board were substantially similar to contracts with the Debtors  
 4 other members. The Board members were treated the same as other members  
 5 with regard to payment of their fruit and ability to take advances from the  
 6 Ledger Accounts. The Plan proposes to treat the Board members the same as  
 7 other unsecured creditors or equity holders in Class 6 or Class 7. By way of  
 8 summary, the claims of the Board members are as follows:

<u>Name of Board Member</u>	<u>Amount of Unsecured Claim</u>	<u>Amount of Equity Claim</u>
Dave Olsen	\$ 275,213.02	\$ 653,445.99
Gary Fendell	\$ 107,902.35	\$ 115,382.29
Scott Leach	\$ 2,465.75	\$ 67,484.48
Mark Hauck	\$ 42,156.83	\$ 88,292.65
Ben Kern	\$ 291,391.86	\$ 28,615.68
Eric Olson	\$ 136,869.90	\$ 57,053.90
Kailan Dunn	\$ 25,891.63	\$ 17,183.97
Total	\$ 881,891.34	\$ 1,027,458.96

24 In addition to the Board members, both Jimmie Davis (the President of  
 25 Snokist) and Belinda Cole (the former Vice-President of Snokist) filed claims.  
 26 Ms. Cole's amended claim (See Claim Docket No. 316) is for vacation pay for  
 27 2011 and 2012 in the amount of \$13,486.36. The claim is filed as a priority



1 claim under 11 U.S.C. §507(a)(4) for \$11,725, the remainder of the claim is  
2 unsecured.  
3

4 Mr. Davis filed a claim in the amount of \$221,484.62 (See Claim  
5 Docket No. 249). The claim is based upon vacation pay for 2011 and 2012 in  
6 the amount of \$22,341.44 and claims under Mr. Davis' employment contract  
7 (a copy of which is attached to his claim) in the amount of \$199,143.18. The  
8 claim is filed as a priority claim for \$11,725, with the remainder of the claim  
9 being unsecured.  
10  
11  
12  
13  
14

15 The Plan proposes that an analysis of Insider claims be undertaken by  
16 the Unsecured Creditor's Committee, who is empowered under the Plan to file  
17 objections to the Insider Claims to the same extent and within the same time  
18 periods, that the Debtor could do so if such claims were not Insider Claims.  
19  
20  
21

### 22 **III. THE DEBTOR'S PLAN**

#### 23 **A. Summary of Plan.**

24 The Debtor's Plan involves liquidating its remaining assets and  
25 distributing funds to the Debtor's creditors in accordance with the priorities  
26 established by the Bankruptcy Code. The Debtor's Plan establishes seven (7)  
27 classes of creditors, which are generally as follows:  
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- Class 1: Administrative Claims – Lease Rejection Claims
- Class 2: Administrative Claims – Professionals
- Class 3: Administrative Claims – U.S. Trustee Fees
- Class 4: Priority Wage Claims
- Class 5: Secured Claims
- Class 6: Unsecured Claims
- Class 7: Equity Claims

Based upon the Debtor’s projections (see Exhibit 6), the Debtor believes that creditors in Classes, 1, 2, 3, 4 and 5 will receive payment of one hundred percent (100%) of their allowed claims if the Debtor’s Plan is confirmed. Creditors in Class 6 will receive a pro-rata distribution based upon the amount their claim bears to the total claims in Class 6. Based upon the information now available, the Debtor believes the Initial Distribution to Class 6 claimants will be approximately twenty percent (20%). No distribution will be made to creditors holding Class 7 Claims.

**B. Proposed Plan Treatment of Each Class of Claims.**

*Class 1. Administrative Claims – Lease Rejection Claims*



1 The Debtor and the Unsecured Creditor’s Committee have stipulated to  
2 the allowance of certain administrative claims (“**Lease Administrative**  
3 **Claims**”) resulting from the Debtor’s use of leased equipment or property  
4 post-petition. The Debtor believes the stipulated administrative claims are  
5 approximately \$150,101.44 as described in ¶39. The Plan proposes to pay the  
6 Lease Administrative Claims in full, in cash, within ten (10) days after the  
7 Effective Date of the Plan.<sup>8</sup>

13 *Class 2. Administrative Claims – Professionals*

15 The Debtor has retained Bailey & Busey PLLC as its legal counsel. As  
16 disclosed in ¶45, above, the Debtor has incurred post-petition attorneys’ fees  
17 in the approximate amount of \$276,292.50 in attorneys’ fees. Of that amount,  
18 the Debtor has paid the sum of \$257,712.71, leaving an unpaid balance in the  
19 approximate amount of \$18,579.80. The Debtor is expected to incur  
20 additional attorneys’ fees and costs throughout the confirmation process.

26 The Unsecured Creditor’s Committee has retained Kimel Law Offices  
27 as its legal counsel. As disclosed in ¶45, the Unsecured Creditor’s Committee  
28 has incurred post-petition attorneys’ fees in the approximate amount of

32 <sup>8</sup> The Effective Date is the date that is fifteen (15) days after the entry of an order confirming  
33 the Debtor’s Plan of Liquidation.





1 \$27,875.49. Of that amount, the Debtor has paid the sum of \$26,232.89  
2  
3 leaving an unpaid balance in the approximate amount of \$1,642.60. The  
4  
5 Unsecured Creditor's Committee is expected to incur additional attorneys'  
6  
7 fees and costs throughout the confirmation process.

8 The Plan proposes to pay Bailey & Busey PLLC, Kimel Law Offices  
9  
10 and any other professionals retained by the Debtor (and approved by the  
11  
12 Court) the full amount of their allowed claims upon the later of: (a) ten (10)  
13  
14 days after the Effective Date of the Plan; or (b) ten (10) days after the Court  
15  
16 has entered an order approving such fees and costs in accordance with  
17  
18 applicable national and local bankruptcy rules.

19 *Class 3. Administrative Claims – U.S. Trustee Fees*

20 The Class 3 Claim constitutes the claims of the U.S. Trustee for U.S.  
21  
22 Trustee Quarterly Fees. As of the date of this Disclosure Statement, the  
23  
24 Debtor is current in the payment of U.S. Trustee Fees. The Debtor will  
25  
26 continue to pay U.S. Trustee Fees as they become due under the Plan.

27 *Class 4. Priority Wage Claims*

28 To the extent that claimants have asserted a priority wage claim under  
29  
30 11 U.S.C. §507, the Plan provides for payment of such claims, in full, in cash:  
31  
32  
33  
34



1 (a) in the case of claims which the Debtor has not objected on or  
2 before the forty-fifth (45<sup>th</sup>) day following the Effective Date;  
3

4 (b) in the case of claims which the Debtor has objected to, within ten  
5 (10) days of the entry of a Court order allowing such claims.  
6

7  
8 *Class 5. Secured Claims*  
9

10 The Debtor believes the only unpaid secured claim against the Debtor is  
11 the secured claim of Central Washington Refrigeration in the amount of  
12 \$5,073.43. The Central Washington Refrigeration claim arises from the filing  
13 of a claim of lien against the Debtor based upon certain work performed by  
14 Central Washington Refrigeration prior to the filing of the bankruptcy. The  
15 Plan proposes to pay the claim of Central Washington Refrigeration, in full, in  
16 cash, within ten (10) days following the Effective Date.  
17  
18  
19  
20  
21

22 *Class 6. Unsecured Claims*  
23

24 Unsecured claims against the Debtor fall into three (3) main categories,  
25 all of which are included within Class 6 under the Plan. First, are claims of  
26 trade creditors, including claims filed on account of lease rejection claims.  
27  
28 Second, are claims of members and former members based upon the funds  
29 held in their Ledger Accounts. Third, are claims of various school districts  
30  
31  
32  
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34



1 based upon product that was returned pursuant to the Debtor's voluntary  
2 recall. The Debtor believes that these recall claims have been paid by Pacific  
3 Coast Producers (and withheld from Snokist) during the course of these  
4 bankruptcy proceedings and no longer constitute claims against the Debtor.  
5  
6

7  
8 The Plan provides for the distribution of any remaining funds after  
9 payment to Class 1 – Class 5 creditors, to Class 6 claimants on a pro rata basis.  
10 The distribution will take place in several stages, as described in the Plan. To  
11 summarize, the Plan provides for the following distribution scheme:  
12

13  
14  
15 1. From funds it is holding, the Debtor shall pay creditors with  
16 allowed claims in Classes 1 – 5, as described above.  
17

18  
19 2. With respect to any claims the Debtor has disputed in Classes 1 -  
20 5, the Debtor shall set aside funds equal to one hundred percent (100%) of  
21 such claims pending resolution of such disputed claims.  
22

23  
24 3. The Debtor shall set aside the sum of \$250,000 (“**Administrative**  
25 **Set Aside**”) in order to pay future administrative costs associated with  
26 administration of the Plan.  
27

28  
29 4. After deduction of the amounts described in ¶A-C, the Debtor  
30 shall distribute the remaining funds (“**Initial Distribution**”) pro rata to  
31  
32  
33  
34



1 creditors having Allowed Unsecured Claims. The Initial Distribution shall  
2 occur no later than the sixtieth (60<sup>th</sup>) day following the Effective Date. In the  
3 event the Debtor has objected to an unsecured claim, the Debtor, at the time of  
4 the Initial Distribution shall set aside funds sufficient to pay such disputed  
5 claimant the same pro rata percentage of its claim that is being received by  
6 Class 6 creditors whose claims have been allowed.  
7  
8  
9  
10

11 *Class 7. Equity Claims*  
12

13 Class 7 consists of claimants whose claims are based upon revolving  
14 funds that have been retained by the Debtor. A schedule of these equity  
15 claims is included in the schedule attached hereto as Exhibit 5.  
16  
17  
18

19 Snokist's Articles of Incorporation provide for the distribution scheme  
20 of its assets in the event of liquidation. The Articles of Incorporation provide  
21 that members or former members whose claims are based upon retainage shall  
22 only receive distributions from the Company after payment of all the  
23 Company's debts, including the amounts due on Ledger Accounts, have been  
24 paid in full. For convenience, in the Disclosure Statement and Plan, these  
25 claims based upon retainage of funds, are referred to as equity interests  
26 because they have a lower priority in payment than general unsecured claims.  
27  
28  
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1 The Plan does not provide for any distribution or payment of funds to  
2 Class 7 claimants. In the unlikely event that the Debtor fully pays claims in  
3 Classes 1 – 6, any remaining funds would be distributed to Class 7 Claimants,  
4 pro rata.  
5  
6

7  
8 **C. Claims Objections.**  
9

10 The Plan provides that the Debtor:

11 1. Will have thirty (30) days from the Effective Date in order to  
12 object to Class 4 Claims.  
13

14 2. Will have thirty (30) days from the Effective Date in order to  
15 object to Class 6 Claims.  
16

17 3. Will retain its right to object to Class 7 Claims until two (2) years  
18 after the Effective Date.  
19

20 To the extent the Debtor does not object to a Class 4, Class 6 or Class 7  
21 claim within the time frames described above, the claim shall be an Allowed  
22 Claim in the amount: (a) of the proof of claim as filed by the Claimant; or (b)  
23  
24  
25  
26  
27  
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34



1 in the case that no proof of claim was filed, in the amount scheduled by the  
2 Debtor.<sup>9</sup>  
3

4 In the event the Debtor objects to a claim, the Court will establish  
5 procedures for resolving such objections. To the extent the Debtor objects to  
6 your claim, you will receive notice of such objection.  
7  
8

9  
10 **D. Preference and Avoidance Actions.**

11 Under the sale agreement with Del Monte/PCP, Snokist retained all of  
12 its rights to preference recoveries and avoidance actions under Section V of  
13 the Bankruptcy Code. Snokist has generally analyzed the possibility for  
14 preference recoveries and believes that it will bring a number of preference  
15 actions, within the time frames authorized by the Bankruptcy Code.  
16  
17  
18  
19

20 The Plan provides will have until November 1, 2013 in order to file any  
21 Bankruptcy Claims which the Debtor feels are appropriate. After November 1,  
22 2013, the Unsecured Creditor's Committee shall have the right to bring any  
23 Bankruptcy Claims not previously brought by the Debtor. In addition, at any  
24 time after the Effective Date, the Unsecured Creditor's Committee shall have  
25 the right to request, in writing, the Debtor bring one or more Bankruptcy  
26  
27  
28  
29  
30

31 \_\_\_\_\_  
32 <sup>9</sup> As discussed above, the right to object to Insider Claims shall be held by the Creditor's  
33 Committee, who shall have the right to object to the Insider Claims within the same time  
34 frames as the Debtor has to object to claims of the same Class.



1 Claims. If the Unsecured Creditor's Committee requests the Debtor bring  
2 such Bankruptcy Claim, the Debtor shall have thirty (30) days to evaluate such  
3 request. If the Debtor fails to bring the requested Bankruptcy Claim within  
4 thirty (30) days of receiving notice, the Unsecured Creditors Committee will  
5 have the right to bring such Bankruptcy Claims in the Debtor's name. With  
6 respect to any such Bankruptcy Claims brought in accordance with this  
7 Section VII, the Unsecured Creditor's Committee shall have all of the  
8 avoidance powers and rights of the Debtor-in-Possession.  
9  
10  
11  
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14

15 In general terms, there are five (5) categories of payments that were  
16 made within the ninety (90) day period preceding the bankruptcy filing: (a)  
17 payments to trade creditors; (b) payments to secured creditors; (c) payments to  
18 growers on account of 2011 fruit deliveries; (d) payments to members and  
19 former members from their Ledger Accounts; and (e) payments to claimants  
20 under the Debtor's Worker's Compensation Plan.  
21  
22  
23  
24  
25

26 Of these five (5) categories the Debtor's initial analysis is that the only  
27 preference claims that will be pursued are related to category (a), payments to  
28 trade creditors. However, under the Plan, the Debtor reserves all of its rights  
29 to bring preference actions.  
30  
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34



1 11 USC §547 provides that Snokist may avoid any transfer: (a) to or for  
2 the benefit of a creditor; (b) for or on account of an antecedent debt owed by  
3 the debtor before such transfer was made; (c) made while the debtor was  
4 insolvent; (d) made within 90 days before the date of the filing of the petition;  
5 and (e) that enables such creditor to receive more than such creditor would  
6 receive if the case were a case under chapter 7.  
7  
8  
9  
10

11 11 U.S.C. §547(c) limits Snokist's avoidance powers:

12 (a) to the extent that such transfer was in payment of a debt incurred  
13 by the debtor in the ordinary course of business or financial affairs of the  
14 debtor and the transferee, and such transfer was; (1) made in the ordinary  
15 course of business or financial affairs of the debtor and the transferee; or (2)  
16 made according to ordinary business terms;  
17  
18  
19  
20  
21

22 (b) that is the fixing of a statutory lien that is not avoidable under 11  
23 U.S.C. §545;  
24  
25

26 **1. *Payments Made to Growers Within 90 days of Petition.***

27 One of the major classes of potential preferential transfers are payments  
28 that were made to growers (both members and non-members) within 90 days  
29  
30  
31  
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34



1 of the bankruptcy petition.<sup>10</sup> The analysis of whether payments made in the 90  
2 day period differs depending on whether the recipient was a “member” or a  
3 “non-member” grower. This distinction is important because “non-members”  
4 “non-members” grower. This distinction is important because “non-members”  
5 qualify for statutory processor lien rights under RCW 60.13 et. seq. while  
6 “non-members” do not receive this statutory protection. RCW 60.13.020.  
7  
8

9  
10 **2. *Application to Processor Lien Claimants – Non-Members.***

11 It is generally accepted that payment to a fully secured creditor during  
12 the 90 day look back period is not avoidable as a preference under 11 USC  
13 547. The reason for this is that the fifth element of 11 USC 547(b) cannot be  
14 satisfied. Since a fully secured creditor would receive full payment under a  
15 Chapter 7 liquidation, the payment of the claim prior to the bankruptcy does  
16 has no practical effect on the distributions in the bankruptcy to the remaining  
17 creditors.  
18  
19  
20  
21  
22  
23

24 Because Snokist’s non-member growers generally held valid processor  
25 lien claims, their claims were fully secured with a statutory lien on all of  
26 Snokist’s receivables. RCW 60.13 et. seq. If Snokist would have filed a  
27  
28  
29

30 \_\_\_\_\_  
31 <sup>10</sup> There is also the issue of whether a portion of the payment recipients qualify as “insiders”  
32 thus extending the look back period to 1 year, but based on the Debtor’s analysis, this should  
33 not be an issue since none of the grower payments are preferential.  
34

1 Chapter 7 instead of a liquidating Chapter 11, adequate receivables and cash  
2 would have existed to pay off the processor lien claimants in full. As such, the  
3 Debtor believes any payments to non-member growers that held processor lien  
4 rights do not qualify as preferences under Section 547.  
5  
6

7  
8 **3. *Application to Members Payees.***  
9

10 The preference analysis with respect to members or former members  
11 that received payments (either for sale of their 2011 fruit or from their Ledger  
12 Accounts) is different, since these members and former members were  
13 unsecured creditors. However, Snokist does not believe any of the payments  
14 to members or former members were preferences because they were made in  
15 the ordinary course of Snokist's business and according to ordinary business  
16 terms.  
17  
18  
19  
20  
21

22 Snokist historically paid its members one-half of the cash price for their  
23 fruit on October 15 and the remainder in several additional payments. In this  
24 case, Snokist made its October 15 payments to all of its growers (both  
25 members and non-members) in a timely manner, in accordance with its usual  
26 business practices and those applicable to the industry. The fruit payments  
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1 were made in Snokist's ordinary course of business i.e. Snokist was in the  
2  
3 business of purchasing fruit from its members.

4 With respect to payments from Ledger Accounts, Snokist believes the  
5  
6 analysis is the same. Any of Snokist's members or former members who had  
7  
8 money in their Ledger Accounts were eligible at any time to request and  
9  
10 receive those funds. This was Snokist's historical practice, which was not  
11  
12 deviated from until the Operating Lenders informed Snokist that they could  
13  
14 not make payments on the Ledger Accounts.

15 **E. Means of Implementing the Plan**

16  
17 Snokist has approximately \$3.2 million in cash ("**Cash**") with which to  
18  
19 fund payments under the Plan. In addition to the Cash, the Debtor has the  
20  
21 Remaining Assets, described above.

22 Under the Plan, the Debtor shall retain Jim Davis, the Debtor's former  
23  
24 President, as the Plan Administrative Agent ("**Administrative Agent**"). The  
25  
26 Plan Administrative Agent shall be paid on an hourly basis, at the rate of  
27  
28 \$125/hour and shall have the following powers and duties:

29 (a) To liquidate the Remaining Assets in a commercially reasonable  
30  
31 manner;  
32  
33  
34



1 (b) To work with counsel for the Debtor in deciding whether to file  
2 Claims Objections and to work with counsel in resolving such Claims  
3 Objections;  
4

5  
6 (c) To work with counsel for the Debtor in distributing funds in  
7  
8 accordance with the terms of this Plan;  
9

10 (d) To work with counsel for the Debtor in deciding whether to file  
11 Bankruptcy Claims and to work with counsel in resolving such Bankruptcy  
12 Claims;  
13

14  
15 (e) To arrange for any post-petition tax returns to be prepared and  
16  
17 filed; and  
18

19 (f) To provide such other services as are reasonably necessary to  
20  
21 facilitate or implement the Plan.  
22

23 Snokist has historically been governed by its board of directors.  
24 However, confirmation of the Plan would immediately work to terminate and  
25  
26 dissolve the board of directors of the Debtor. Upon Confirmation, all  
27  
28 decisions to be made by the Debtor shall be made by the Administrative  
29  
30 Agent, subject to the Bankruptcy Court's right to review any such actions.  
31  
32  
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34

1 Under the Plan, the Administrative Agent would have the right to and  
2 power, on behalf of the Debtor, to: (a) settle Claims Objections; (b) settle  
3 Bankruptcy Claims; (c) employ and direct legal counsel for the Debtor; (d)  
4 employ accountants or other consultants on behalf of the Debtor; (e) to act as  
5 signatory on the Company's bank accounts; (f) to sign checks on behalf of the  
6 Debtor; and (g) to make any necessary management decisions on behalf of the  
7 Debtor.  
8  
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12

13 The Administrative Agent will file a quarterly status report ("**Quarterly**  
14 **Report**") within thirty (30) days following the end of each calendar quarter  
15 after the Effective Date which: (a) details the major activities of the Debtor  
16 during the previous quarter; (b) provides redacted copies of any bank account  
17 statements for any bank accounts maintained by the Debtor; and (c) provides a  
18 balance sheet detailing the assets and liabilities of the Debtor.  
19  
20  
21  
22  
23

24 **F. Payments to Creditors Under the Plan.**

25 The Administrative Agent will attempt to convert the Remaining Assets  
26 to cash in a commercially reasonable manner. However, the Debtor intends to  
27 use the Cash to make payments to Class 1 – Class 5 Claimants and the Initial  
28 Distribution to Class 6 Claimants. The amount of any Subsequent  
29  
30  
31  
32  
33  
34



1 Distributions and the Final Distribution will be largely dependent upon the  
2  
3 Administrative Agent's success in converting the Remaining Assets to cash.

4 **G. Executory Contracts and Unexpired Leases**

5  
6 After the sale of substantially all of its assets to Del Monte/PCP, the  
7  
8 Debtor has not conducted any business. As a result, the Debtor filed a number  
9  
10 of motions seeking to reject certain executory contracts and leases.<sup>11</sup> Under  
11  
12 the Plan, any leases or executory contracts which have not been previously  
13  
14 assumed or rejected, will be rejected. Any party who suffers damages as a  
15  
16 result of the rejection would have thirty (30) days following the Effective Date  
17  
18 to file a proof of claim based upon said rejection.

19 **H. Tax Consequences of Plan**

20  
21 *Creditors and Equity Interest Holders Concerned with How the Plan*  
22  
23 *May Affect Their Tax Liability Should Consult with Their Own*  
24  
25 *Accountants, Attorneys, And/Or Advisors.*  
26  
27  
28  
29

30  
31 \_\_\_\_\_  
32 <sup>11</sup> Docket No. 1014 (Pacific CA Systems); Docket No. 980 (Roy Farms, Inc.); Docket No. 971  
33 (Bank of the West); Docket No. 895 (TCF Equipment); Docket No. 870 (GE Capital and Design  
34 Space Modular); Docket No. 841 (Toyota Motor Credit, Atlas Pacific and U.S. Bancorp  
Equipment Finance).



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1 The Debtor sold substantially all of its assets to Del Monte/PCP, as  
2 described above. The Debtor's preliminary analysis is that the sale to Del  
3 Monte/PCP will not result in any capital gains or other tax to the Debtor.  
4

5  
6 Del Monte purchased the land and equipment owned by the Debtor,  
7 while PCP purchased the inventory. The purchase price of the land and  
8 equipment was \$12,000,000. Thus, even if the land and equipment had been  
9 fully depreciated (which they had not as of the time of the sale), the maximum  
10 gain to be realized by Snokist would have been \$12,000,000. Before 2011, the  
11 Debtor had net operating loss carry-forward of approximately \$11.0 million.  
12 Pursuant to applicable tax law, the net operating loss carry-forward can be  
13 offset against capital gains. The net operating loss should increase based  
14 upon 2011 and 2012 operations, neither of which years was profitable.  
15 Snokist believes it is very unlikely that it will owe any income or capital gains  
16 tax for 2011 or 2012.  
17  
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25

26 **THE FOREGOING DESCRIPTION OF FEDERAL TAX**  
27 **CONSEQUENCES IS INTENDED MERELY AS AN AID FOR**  
28 **CREDITORS, AND NEITHER THE DEBTORS NOR THEIR**  
29 **COUNSEL ASSUME ANY RESPONSIBILITY IN CONNECTION**  
30 **WITH THE INCOME TAX LIABILITY OF ANY SUCH CREDITORS.**  
31 **CREDITORS ARE URGED TO OBTAIN ADVICE FROM THEIR**  
32 **OWN ACCOUNTANTS OR ATTORNEYS REGARDING THE TAX**  
33 **CONSEQUENCES OF THE PLAN.**  
34

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1  
2 **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

3  
4 To be confirmable, the Plan must meet the requirements listed in  
5 §1129(a) or (b) of the Code. These include the requirements that: the Plan  
6  
7 must be proposed in good faith; at least one impaired class of claims must  
8  
9 accept the plan, without counting votes of insiders; the Plan must distribute to  
10  
11 each creditor and equity interest holder at least as much as the creditor or  
12  
13 equity interest holder would receive in a chapter 7 liquidation case, unless the  
14  
15 creditor or equity interest holder votes to accept the Plan; and the Plan must be  
16  
17 feasible. These requirements are not the only requirements listed in § 1129,  
18  
19 and they are not the only requirements for confirmation.

20 **A. Who May Vote or Object**

21  
22 Any party in interest may object to the confirmation of the Plan if the  
23  
24 party believes that the requirements for confirmation are not met. Many parties  
25  
26 in interest, however, are not entitled to vote to accept or reject the Plan. A  
27  
28 creditor or equity interest holder has a right to vote for or against the Plan only  
29  
30 if that creditor or equity interest holder has a claim or equity interest that is  
31  
32 both (1) allowed or allowed for voting purposes and (2) impaired.  
33  
34



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1 In this case, the Debtor believes that the following classes are impaired  
2 and that holders of claims in each of these classes are therefore entitled to vote  
3 to accept or reject the Plan.  
4

5 **Class 4 – Priority Wage Claims**  
6

7 **Class 5 – Secured Claim of Central Wash. Refrigeration**  
8

9 **Class 6 – Unsecured Claims**  
10

11 **Class 7 – Equity Claims**  
12

13 The Debtor believes that the following classes are unimpaired and that  
14 holders of claims in each of these classes, therefore, do not have the right to  
15 vote to accept or reject the Plan.  
16

17 **Class 1 – Administrative Claims – Lease Claims**  
18

19 **Class 2 - Administrative Claims – Professionals**  
20

21 **Class 3 – Administrative Claims – U.S. Trustee Fees**  
22

23  
24  
25 1. *What Is an Allowed Claim or an Allowed Equity Interest?*  
26

27 Only a creditor or equity interest holder with an allowed claim or an  
28 allowed equity interest has the right to vote on the Plan. Generally, a claim or  
29 equity interest is allowed if either (1) the Debtor has scheduled the claim on  
30 the Debtor's schedules, unless the claim has been scheduled as disputed,  
31  
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1 contingent, or un-liquidated, or (2) the creditor has filed a proof of claim or  
2 equity interest, unless an objection has been filed to such proof of claim or  
3 equity interest. When a claim or equity interest is not allowed, the creditor or  
4 equity interest holder holding the claim or equity interest cannot vote unless  
5 the Court, after notice and hearing, either overrules the objection or allows the  
6 claim or equity interest for voting purposes pursuant to Rule 3018(a) of the  
7 Federal Rules of Bankruptcy Procedure.  
8  
9  
10  
11  
12

13 2. *What Is an Impaired Claim or Impaired Equity Interest?*  
14

15 As noted above, the holder of an allowed claim or equity interest has the  
16 right to vote only if it is in a class that is *impaired* under the Plan. As provided  
17 in § 1124 of the Code, a class is considered impaired if the Plan alters the  
18 legal, equitable, or contractual rights of the members of that class.  
19  
20  
21

22 3. *Who is Not Entitled to Vote*  
23

24 The holders of the following five types of claims and equity interests are  
25 *not* entitled to vote:  
26

- 27 • holders of claims and equity interests that have been  
28 disallowed by an order of the Court;
- 29 • holders of other claims or equity interests that are not  
30 “allowed claims” or “allowed equity interests” (as  
31  
32  
33  
34



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1 discussed above), unless they have been “allowed” for  
2 voting purposes.

- 3 • holders of claims or equity interests in unimpaired classes;
- 4
- 5 • holders of claims entitled to priority pursuant to §§  
6 507(a)(2), (a)(3), and (a)(8) of the Code; and
- 7
- 8 • holders of claims or equity interests in classes that do not  
9 receive or retain any value under the Plan;
- 10
- 11 • administrative expenses.

12 ***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to***  
13 ***Object to the Confirmation of the Plan and to the Adequacy of the***  
14 ***Disclosure Statement.***  
15

16  
17  
18 4. *Who Can Vote in More Than One Class*

19  
20 A creditor whose claim has been allowed in part as a secured claim and  
21 in part as an unsecured claim, or who otherwise hold claims in multiple  
22 classes, is entitled to accept or reject a Plan in each capacity, and should cast  
23 one ballot for each claim.  
24  
25

26  
27 **B. Votes Necessary to Confirm the Plan**

28  
29 If impaired classes exist, the Court cannot confirm the Plan unless (1) at  
30 least one impaired class of creditors has accepted the Plan without counting  
31 the votes of any insiders within that class, and (2) all impaired classes have  
32  
33  
34



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1 voted to accept the Plan, unless the Plan is eligible to be confirmed by a cram  
2  
3 down on non-accepting classes, as discussed later in Section.

4 1. *Votes Necessary for a Class to Accept the Plan*

5  
6 A class of claims accepts the Plan if both of the following occur: (1) the  
7  
8 holders of more than one-half (1/2) of the allowed claims in the class, who  
9  
10 vote, cast their votes to accept the Plan, and (2) the holders of at least two-  
11  
12 thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast  
13  
14 their votes to accept the Plan.

15 A class of equity interests accepts the Plan if the holders of at least two-  
16  
17 thirds (2/3) in amount of the allowed equity interests in the class, who vote,  
18  
19 cast their votes to accept the Plan.

20 2. *Treatment of Non-Accepting Classes*

21  
22 Even if one or more impaired classes reject the Plan, the Court may  
23  
24 nonetheless confirm the Plan if the non-accepting classes are treated in the  
25  
26 manner prescribed by § 1129(b) of the Code. A plan that binds non-accepting  
27  
28 classes is commonly referred to as a cram down plan. The Code allows the  
29  
30 Plan to bind non-accepting classes of claims or equity interests if it meets all  
31  
32 the requirements for consensual confirmation except the voting requirements  
33  
34



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1 of § 1129(a)(8) of the Code, does not discriminate unfairly, and is fair and  
2 equitable toward each impaired class that has not voted to accept the Plan.  
3

4 *You should consult your own attorney if a cramdown confirmation will*  
5 *affect your claim or equity interest, as the variations on this general rule are*  
6 *numerous and complex.*  
7  
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**C. Liquidation Analysis**

The Plan proposes to liquidate all of the Debtor's assets and distribute those assets to creditors as described above. To that extent, the recovery to be received by creditors under the Plan is at least as much as would be recovered if this case were converted to chapter 7.

Dated this 17<sup>th</sup> day of April, 2013

Snokist Growers

By: Jim Davis  
Jim Davis  
Its: President

Presented By:

/s/ Roger W. Bailey  
Roger W. Bailey (WSBA 26121)  
Bailey & Busey PLLC  
Counsel for the Debtor in Possession

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