

SO ORDERED.



Dated: October 28, 2009



CHARLES G. CASE, II
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re

EUROFRESH, INC. *et al.*

Debtors.

Case No. 2:-09-bk-07970-CGC
(Jointly Administered)

Chapter 11

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
DEBTORS' FIRST AMENDED JOINT
PLAN OF REORGANIZATION AND
ORDER THEREON**

Hearing Date: October 16, 2009

Hearing Time: 1:30 p.m.

The following objections to confirmation of the *Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 379], were filed: (1) *Graham County's Limited Objection to Debtors' First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [Docket No. 430] (the "**Graham County Objection**"); (2) *State of Arizona's Objection to Confirmation of Debtors' First Amended Joint Plan of Reorganization* [Docket No. 476] (the "**AZ Objection**"); (3) *Limited Objection to*

Debtors' First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code [Docket No. 479] (the “**WFF Objection**”); and *Objection of Silver Point to Confirmation of First Amended Joint Plan of Reorganization For the Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 481] (the “**SP Objection**” and collectively, the “**Objections**”), and were based on the terms of the Plan as filed on August 14, 2009, as well as the Plan Supplement and the Second Supplement. The AZ Objection and the Graham County Objection have been consensually resolved without any modifications to the Plan.¹ The SP Objection and the WFF Objection have also been resolved with nonmaterial modifications to the Plan pursuant to 11 U.S.C. § 1127(a), as set forth in detail in the Third Supplement, the Confirmation Order and the exhibits thereto.

Upon the *Debtors' Brief in Support of Confirmation of Joint Plan of Reorganization* dated October 7, 2009 (the “**Confirmation Brief**”) [Docket No. 515], filed by EUROFRESH, INC. and EUROFRESH PRODUCE, LTD., debtors and debtors-in-possession in the above-captioned Chapter 11 cases (the “**Debtors**”), seeking entry of an order (the “**Confirmation Order**”) under Section 1129 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) confirming the Plan, which along with the *Plan Supplement* (the “**Plan Supplement**”) filed before this Court on September 4, 2009 [Docket No. 434], the *Second Plan Supplement* (the “**Second Supplement**”) filed before this Court on October 7, 2009 [Docket No. 514] and the *Third Plan Supplement* (the “**Third Supplement**” and together with the Plan Supplement and the Second Supplement, the “**Supplements**”) filed contemporaneously herewith and incorporated herein by reference, and based upon the Court’s review of: (i) the Confirmation Brief; (ii) *Amended Order: (A) Approving Disclosure Statement; (B) Authorizing Solicitation of*

¹ The “**Plan**” shall mean the *Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, as amended in accordance with the Settlement Notice (defined in the Confirmation Order) and the modifications set forth in the Confirmation Order, including, but not limited to, paragraphs 29 through 33 thereof.

Votes on the Plan; (C) Approving Solicitation Procedures; (D) Scheduling Hearing on Confirmation of the Plan; and (E) Approving Form, Manner and Sufficiency of Notice [Docket No. 378] (the “**Solicitation Order**”); (iii) the *First Amended Disclosure Statement in Support of Debtors’ First Amended Joint Plan of Reorganization* (the “**Disclosure Statement**”) [Docket No. 380]; (iv) the *Declaration Of Emmett Bergman In Support Of Confirmation Of Debtors’ First Amended Joint Plan Of Reorganization under Chapter 11 of the Bankruptcy Code* filed concurrently herewith (the “**Bergman Declaration**”) [Docket No. 517]; (v) the *Trial Declaration of Edward McDonough* (the “**McDonough Declaration**”) [Docket No. 516]; (vi) the *Declaration of Marc Liebman in Support of Debtors’ First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* (the “**Liebman Declaration**”) [Docket No. 518]; (vii) the *Ballot Report for Debtors’ First Amended Joint Plan of Reorganization* (the “**Amended Ballot Report**”) and the *Amended and Restated Declaration of Voting Agent Regarding Tabulation of Votes in Connection with Debtors’ First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [Docket No. 526]; (viii) the *Notice of Settlement of Confirmation Objections of Silver Point Finance, LLC and Wells Fargo Foothill, LLC and Summary of Non-Material Plan Modifications and Implementation Procedures* (the “**Settlement Notice**”) filed before this Court on October 14, 2009 [Docket No. 538]; (ix) all of the evidence offered or adduced at, objections filed in connection with, and arguments of counsel made at, the Confirmation Hearing (as defined below); and (x) the entire record in these Chapter 11 Cases; and after due deliberation thereon and good and sufficient cause appearing therefor, the Court hereby makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”):

THE COURT FINDS AND CONCLUDES THAT:

1. Confirmation Hearing. On October 16, 2009 the Court, pursuant to Bankruptcy Code § 1128 and Bankruptcy Rule 3020(b)(2), conducted a hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”).

2. Defined Terms. All capitalized terms used in these findings of fact and conclusions of law that are not defined herein shall have the same meaning ascribed to them in the Plan or the Confirmation Order.

3. Solicitation Order. On August 13, 2009, the Court entered the Solicitation Order, which, among other things, approved the Disclosure Statement. The Debtors used the Disclosure Statement to solicit votes to accept or reject the Plan from those creditors who are impaired and entitled to vote under the Plan—(i) Class 1A Existing Credit Agreement Claims; (ii) Class 1B Capital Lease Claims; (iii) Class 3 General Unsecured Claims; and (iv) Class 4 Senior Noteholder Claims. The Solicitation Order: (i) set September 24, 2009 as the deadline for submission of Ballots to accept or reject the Plan (the “**Voting Deadline**”); (ii) approved the form and method of notice of the Confirmation Hearing (the “**Confirmation Hearing Notice**”); (iii) set September 24, 2009 as the deadline for submitting objections to confirmation of the Plan (the “**Confirmation Objection Deadline**”); and (iv) established certain procedures for soliciting and tabulating votes with respect to the Plan.

4. Transmittal of Solicitation Packages. The Debtors mailed Solicitation Packages, which included, among other things: 1) copies of the Disclosure Statement and Plan; 2) notice of the final, evidentiary confirmation hearing to be held on October 14, 2009; 3) the Solicitation Order; and 4) appropriate class ballots (the “**Ballots**”) in the form approved in the Solicitation Order. Additionally, the *Notice to Non-Voting Parties of Hearing on Confirmation of First*

Amended Chapter 11 Joint Plan of Reorganization (the “**Nonvoting Party Notice**”) only was transmitted to holders of claims and interests not entitled to vote under the Plan. Solicitation Order also provided that the Debtors were not required to transmit a Solicitation Package to the holders of claims and interests not entitled to vote on the Plan. The transmittal of the foregoing materials was conducted in accordance with Bankruptcy Rule 3017(d) and the Solicitation Order.

5. Ballot Report. The Debtors filed the Ballot Report on September 28, 2009, which certifies the method and results of the ballot tabulation for each Class entitled to vote to accept or reject the Plan. An Amended Ballot Report was filed on October 9, 2009. Of the four Classes entitled to vote under the Plan, two Classes, Class 3 General Unsecured Claims and Class 4 Senior Noteholder Claims, voted to accept the Plan. Class 1A Existing Credit Agreement Claims voted to reject the Plan, and WFF as Holder of the Class 1B Capital Lease Claims, on October 7, 2009, withdrew its acceptance of the Plan. As a result of the resolution of the WFF Objection and the SP Objection, however, both Classes 1A and 1B are now deemed to accept the Plan.

6. Jurisdiction and Venue. The Court has jurisdiction over these Chapter 11 Cases under 18 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

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

8. Oral Findings of Fact Incorporated. All oral findings of fact and conclusions of law entered by the Court at the Confirmation Hearing are incorporated herein by this reference, in accordance with Bankruptcy Rule 7052(a).

9. Declarants Available for Examination. Marc Liebman, Emmett Bergman and Edward McDonough, as declarants in the Liebman Declaration, the Bergman Declaration and the McDonough Declaration, were present in the courtroom during the Confirmation Hearing.

10. Transmittal and Mailing of Materials; Notice. In accordance with Bankruptcy Rule 2002, the Court finds and concludes that adequate and sufficient notice of the time for filing objections to the Disclosure Statement and Plan was provided to the holders of claims and equity interests in accordance with the procedures set forth in the Solicitation Order. The Disclosure Statement, Plan, Ballots, Solicitation Order, Confirmation Hearing Notice, and Nonvoting Party Notice were transmitted and served in substantial compliance with the Solicitation Order and the Bankruptcy Rules, and such transmittal and service were adequate and sufficient. Adequate and sufficient notice of the Confirmation Hearing, the Voting Deadline, and the Confirmation Objection Deadline was given in compliance with the Solicitation Order and the Bankruptcy Rules, and no other or further notice is required.

11. Solicitation. In accordance with Bankruptcy Code § 1126(b), the Court finds and concludes that: (a) the solicitation of votes to accept or reject the Plan complied with all applicable non-bankruptcy law, rules and regulations governing the adequacy of disclosure in connection with the solicitation; and (b) the solicitation was conducted after disclosure of adequate information, as defined in Bankruptcy Code § 1125(a).

12. Ballots. All procedures used to distribute Solicitation Packages to the holders of claims and to tabulate Ballots were fair and conducted in accordance with the Solicitation Order,

the Bankruptcy Code, the Bankruptcy Rules, the local rules of the Bankruptcy Court for the District of Arizona, and all other applicable laws, rules, and regulations.

13. Senior Noteholders. Senior Noteholders that executed the Joinder Agreement based on the *Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* have been excused from any obligations pursuant to such Joinder Agreement and will be offered an opportunity to execute a new Joinder Agreement based on the Plan during a resolicitation phase.² Senior Noteholders shall receive, upon entry of the Confirmation Order, a Resolicitation Package, which includes the following: (1) cover letter (with instructions), (2) Summary of Settlement Terms and Supplemental Information, (3) Amendment to Amended and Restated Investment and Plan Support Agreement (with a copy of the IPISA), (4) Amended and Restated Joinder Agreement (with redline to last version), and (5) Accredited Investor Questionnaire.

14. Impaired Classes under the Plan. As set forth more fully in the Solicitation Order, Classes 1A, 1B, 3, 4, 5, 6 and 7 (collectively, the “**Impaired Classes**”) are impaired under the Plan as that term is defined in Bankruptcy Code § 1124. Classes 1A, 1B, 3 and 4 are entitled to submit votes to accept or reject the Plan; Classes 5, 6 and 7 are not entitled to vote on the Plan and are deemed to reject the Plan because Classes 5, 6 and 7 shall not receive or retain any rights, property or distributions under the Plan.

15. Unimpaired Classes under the Plan. As set forth more fully in the Solicitation Order, Classes 1C and 2 (collectively, the “**Unimpaired Classes**”) are unimpaired under the Plan as that term is defined in Bankruptcy Code § 1124. Accordingly, the Unimpaired Classes are deemed to accept the Plan, and are not entitled to vote on the Plan.

² This resolicitation opportunity for Senior Noteholders refers only to the opportunity of Senior Noteholders to determine anew whether they wish to execute the Joinder Agreement.

16. Impaired Classes That Have Voted to Accept the Plan. The Amended Ballot Report indicates that Classes 3 and 4 voted to accept the Plan, and Class 1A and Class 1B are now deemed to accept the Plan through the consensual resolution of their Objections. Thus, at least one impaired class of claims, determined without including any acceptance by an insider of any of the Debtors, has voted to accept the Plan.

17. Impaired Class That Voted to Reject the Plan. Classes 5, 6 and 7 are impaired and deemed to reject the Plan, therefore the Court finds that the provisions of Bankruptcy Code § 1129(b) must be satisfied to confirm the Plan.

18. Burden of Proof. The Debtors, as proponents of the Plan, have met their burden of proving all elements of Bankruptcy Code § 1129(b). First, as set forth below, the Plan complies with the provisions of Bankruptcy Code § 1129(a) other than the provisions of § 1129(a)(8).

19. The Plan Complies with the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As detailed below, the Plan complies with all applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code § 1129(a)(1).

a. Proper Classification (11 U.S.C. §§ 1122, 1123(a)(1)). In addition to Administrative Claims, Priority Tax Claims, Other Priority Claims, 503(b)(9) Claims and Professional Claims (which are not required to be classified), Section 3 of the Plan designates eight Classes of Claims and one Class of Interests in the Debtors. The Claims and Interests placed in each Class are substantially similar to other Claims or Interests in such Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Interests created under the Plan, and such Classes do not unfairly discriminate between holders of Claims or Interests. Accordingly, the Plan satisfies Bankruptcy Code § 1122 and 1123(a)(1).

b. Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Section 4 of the Plan specifies the Classes of Claims and Interests that are Unimpaired under the Plan. Accordingly, the Plan satisfies Bankruptcy Code § 1123(a)(2).

c. Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Section 4 of the Plan specifies the Classes of Claims that are Impaired under the

Plan, as well as the treatment of Claims in all such Classes. Accordingly, the Plan satisfies Bankruptcy Code § 1123(a)(3).

d. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim and Interest in each respective Class unless the holder of a particular Claim or Interest has agreed to less favorable treatment with respect to such Claim or Interest. Accordingly, the Plan satisfies Bankruptcy Code § 1123(a)(4).

e. Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan provides adequate and proper means for implementation of the Plan, including, without limitation: (a) sources of consideration for Plan Distributions; (b) the continued corporate existence of the Debtors; (c) reorganization of the Debtors; (d) cancellation of securities, instruments and agreements; (e) effectiveness of new securities, instruments, agreements and documents; (f) the officers and directors of the Reorganized Debtors; (g) the MIP; and (h) the preservation of Causes of Action. Accordingly, the Plan satisfies Bankruptcy Code § 1123(a)(5).

f. Prohibition Against Issuance of Non-Voting Equity Securities and Provisions for Voting Power of Classes of Securities (11 U.S.C. § 1123(a)(6)). Section 5.I of the Plan prohibits the issuance of non-voting equity securities as of the Effective Date. After the Effective Date, each of the Reorganized Debtors may amend their respective organizational documents as permitted by applicable law. Accordingly, the Plan satisfies Bankruptcy Code § 1123(a)(6).

g. Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). The Plan Supplement and Second Supplement properly and adequately discloses the identity and affiliations of all individuals proposed to serve on or after the Effective Date as Officers and Directors of the Reorganized Debtors. The appointment of such Officers and Directors are consistent with the interests of the holders of Claims against and Interests in the Debtors, and with public policy. Accordingly, the Plan satisfies Bankruptcy Code § 1123(a)(7).

h. Additional Plan Provisions (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate and consistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for: (a) distributions to holders of Claims; (b) the disposition of executory contracts and unexpired non-residential real property leases; (c) the retention and/or transfer of, and right to enforce, sue on, settle, or compromise (or refuse to do any of the foregoing) certain claims or causes of action against third parties, to the extent not waived or released under the Plan; (d) resolution of Disputed Claims; (e) resolution of indemnification obligations; and (f) certain releases by the Debtors and holders of certain Claims.

i. Bankruptcy Rule 3016(a). The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a).

20. Debtors' Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code § 1129(a)(2). The Debtors have complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Order in transmitting the Plan, the Disclosure Statement, the Ballots, and related documents and notices, and in soliciting and tabulating votes on the Plan.

21. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying Bankruptcy Code § 1129(a)(3). In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases and the formulation of the Plan. The Plan was proposed, with the legitimate and honest purpose of maximizing the value of each of the Debtors and the recovery to Claim holders under the circumstances of these Chapter 11 Cases.

22. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Any payment made or to be made by the Debtors for services or for costs and expenses in connection with these Chapter 11 Cases, including all administrative expense claims under Bankruptcy Code § 503, or in connection with the Plan and incident to these Chapter 11 Cases, has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying Bankruptcy Code § 1129(a)(4).

23. Directors and Officers (11 U.S.C. § 1129(a)(5)). The Debtors, as proponent of the Plan, have complied with Bankruptcy Code § 1129(a)(5) by disclosing in the Plan Supplement the identity and affiliations of all individuals and entities proposed to serve, after confirmation of the Plan, as the Officers and Directors of Reorganized Debtors. Such appointment is consistent

with the interests of the creditors and with public policy, thereby satisfying Bankruptcy Code § 1129(a)(5).

24. No Government Regulation of Rates (11 U.S.C. § 1129(a)(6)). Bankruptcy Code § 1129(a)(6) is satisfied because the business of the Debtors is not subject to governmental regulation of rates.

25. Best Interests Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies Bankruptcy Code § 1129(a)(7). The Disclosure Statement, the Bergman Declaration, the Liebman Declaration, the McDonough Declaration and evidence adduced at the Confirmation Hearing: (a) are persuasive, credible and accurate as of the dates they were prepared, presented, or proffered; (b) either have not been controverted by other persuasive evidence or have not been challenged; (c) are based upon reasonable and sound assumptions; and (d) establish that each holder of a Claim in an Impaired Class that has not accepted the Plan will receive or retain under the Plan, on account of such Claim, property of a value, as of the Effective Date, that is not less than the amount that it would receive if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code on such date.

26. Bankruptcy Code § 1129(a)(8) Need Not Be Satisfied under § 1129(b). Because the Plan is being confirmed under Bankruptcy Code § 1129(b), the requirements of § 1129(a)(8) need not be satisfied.

27. Treatment of Administrative and Priority Tax Claims and Other Priority Claims (11 U.S.C. § 1129(a)(9)). The treatment of Administrative Claims and Other Priority Claims under the Plan satisfies the requirements of Bankruptcy Code §§ 1129(a)(9)(A) and (B), and the treatment of Priority Tax Claims under the Plan satisfies Bankruptcy Code § 1129(a)(9)(C).

28. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). Classes 1A, 1B, 3, 4, 5, 6 and 7 are Impaired Classes. As described with particularity in the Ballot Report and in this Findings of Fact, Classes 3 and 4 voted to accept the Plan and Classes 1A and 1B are now deemed to accept the Plan. Classes 5, 6 and 7 are deemed to reject the Plan in accordance with Bankruptcy Code § 1126(e) because Classes 5, 6 and 7 shall not receive or retain any property under the Plan. The Impaired Classes do not contain “insiders” of any significant magnitude and each of Classes 1A, 1B, 3 and 4 accepted the Plan without including any acceptance of the Plan by any insider. Accordingly, the Plan satisfies Bankruptcy Code § 1129(a)(10).

29. Feasibility (11 U.S.C. § 1129(a)(11)). The Plan satisfies Bankruptcy Code § 1129(a)(11). The Plan implements a reorganization of the Debtors. The Disclosure Statement, the Bergman Declaration, and evidence adduced or proffered at the Confirmation Hearing: (a) are persuasive, credible and accurate as of the dates they were prepared, presented, or proffered; (b) either have not been controverted by other persuasive evidence or have not been challenged; (c) are based upon reasonable and sound assumptions; and (d) establish that the Plan is feasible and that confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Reorganized Debtors or Eurofresh Holdings.

30. Payment of Fees (11 U.S.C. § 1129(a)(12)). The Debtors complied with Section 1129(a)(12) of the Bankruptcy Code by providing in Section 14.D of the Plan that the appropriate sum in fees shall be paid to the United States Trustee. Accordingly, the Plan satisfies Bankruptcy Code § 1129(a)(12).

31. Retiree Benefits (11 U.S.C. § 1129(a)(13)). No retiree benefits, as that term is defined in Bankruptcy Code § 1114, exist in these Chapter 11 Cases, making Bankruptcy Code § 1129(a)(13) inapplicable. The Plan thus satisfies Bankruptcy Code § 1129(a)(13).

32. Domestic Support Obligation (11 U.S.C. § 1129(a)(14)). The Debtors are not subject to any judicial or administrative order, or by statute, to pay any domestic support obligation. The Plan thus satisfies Bankruptcy Code § 1129(a)(14).

33. Individual Debtors (11 U.S.C. § 1129(a)(15)). None of the Debtors is an individual. The Plan thus satisfies Bankruptcy Code § 1129(a)(15).

34. Transfers Under Nonbankruptcy Law (11 U.S.C. § 1129(a)(16)). There are no provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust that apply to any of the Debtors since the Debtors are commercial businesses. The Plan thus satisfies Bankruptcy Code § 1129(a)(16).

35. Fair and Equitable (11 U.S.C. § 1129(b)(2)). The Plan provides “fair and equitable” treatment to Classes 5, 6 and 7 which are deemed to reject and does not discriminate unfairly against any such Classes.

36. Under Bankruptcy Code § 1129(b)(2)(B), a plan is fair and equitable if it provides that the holder of an unsecured claim receive or retain property of a value, as of the Effective Date, equal to the allowed amount of such claim or that the holder of a junior claim or interest will not receive or retain any property on account of such junior claim or interest. Under the Plan, there will be no recovery to any holder of a claim junior to Classes 5 and 6. Therefore, the Court finds Classes 5 and 6 are treated fairly and equitably under Bankruptcy Code § 1129(b)(2).

37. Under Bankruptcy Code § 1129(b)(2)(C), a plan is fair and equitable to a class of class of equity interests who did not vote to accept the plan if the plan provides that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on any property on account of such junior interest. Under the Plan, there will be no recovery to any

interest or claim junior to Class 7 Interests. Therefore, the Court finds Class 7 is treated fairly and equitably under Bankruptcy Code § 1129(b)(2).

38. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, and there has been no objection filed by any governmental unit asserting such avoidance. Accordingly, the Plan complies with Bankruptcy Code § 1129(d).

39. Good Faith Solicitation (11 U.S.C. § 1125(e)). The Debtors and their respective attorneys, accountants and advisers have solicited votes to accept or reject the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Solicitation Order, and are, therefore, entitled to the protections afforded by Bankruptcy Code § 1125(e) of the Bankruptcy Code.

40. Executory Contracts. The Debtors have exercised reasonable business judgment in determining whether to assume or reject each of their executory contracts and unexpired non-residential real property leases as set forth in the Plan Supplement and the Second Supplement. No objections to the assumption or proposed cures were interposed and accordingly, all non-debtor contract counterparties are forever barred from disputing assumption or cure.

41. Releases. All of the releases in Section 9 of the Plan (the “**Releases**”) are in the best interests of the Debtors, Reorganized Debtors and their estates, and are fair, equitable and reasonable. The Releases are essential to the reorganization, as these parties agreed to compromise these claims in exchange for receiving the releases and the Distributions to be received under the Plan. All of the Releases described in SECTION 9 of the Plan: (a) are within the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 1134(a), (b), and (d); (b) are important to the overall objectives of the Plan to finally resolve all Claims among or against

parties in interest in these Chapter 11 Cases with respect to the Debtors; and (c) are consistent with Bankruptcy Code §§ 105, 524, 1123, and 1129.

42. Conditions to Confirmation. The conditions to confirmation set forth in SECTION 11.A of the Plan have been satisfied, waived, or will be satisfied by entry of the Confirmation Order, provided, however, that the occurrence of the Effective Date is subject to satisfaction or waiver, as applicable, of the conditions to the Effective Date set forth in the Plan and the Confirmation Order.

43. Conditions to Effectiveness. Each of the conditions to the Effective Date, as set forth in SECTION 11.B of the Plan, is reasonably likely to be satisfied, and the Reorganized Debtors shall file a notice when substantial consummation of the Plan (within the meaning of Bankruptcy Code § 1127) has occurred.

44. Retention of Jurisdiction. The Court's retention of jurisdiction as set forth in Article 13 of the Plan comports with the parameters contained in 28 U.S.C. § 157.

45. Agreements and other Documents. The Debtors have made adequate and sufficient disclosure of: (a) the Distributions to be made under the Plan; (b) the issuance of the Securities and the New Credit Facility documentation, in accordance with the terms of the Plan; (c) all documents to be executed in accordance with the Plan and the Confirmation Order; and (d) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, indentures, releases, and other agreements or documents related to the any of the foregoing.

46. Preservation of Causes of Action. It is in the best interests of Claim holders and Interest holders that causes of action not expressly released under the Plan be retained by the Reorganized Debtors pursuant to Article 13 of the Plan, in order to maximize the value of the Debtors' estates.

47. Election Pursuant to 11 U.S.C. § 1111(b). No secured creditor has elected the treatment provided by Bankruptcy Code § 1111(b).

48. New Securities under 11 U.S.C. § 1145. In accordance with Bankruptcy Code § 1145, the issuances of the Securities are exempt from the registration requirements of Section 5 of the Securities Act and any state or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of or broker dealer in such securities. Further, the respective articles of incorporation of Reorganized Eurofresh and Reorganized EPL include provisions prohibiting the issuance of nonvoting equity securities.

49. Status of Objections. As set forth below, and described more fully in the Confirmation Order, the objections filed to the Plan have either been resolved or otherwise overruled.

50. Tax Objections. The following taxing authorities filed similar objections (collectively, the “**Tax Objections**”) addressing the treatment of their Claims under the Plan: (i) *Graham County’s Limited Objection to Debtors’ First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [Docket No. 430] (the “**Graham County Objection**”); and (2) *State of Arizona’s Objection to Confirmation of Debtors’ First Amended Joint Plan of Reorganization* [Docket No. 476] (the “**AZ Objection**”). The Tax Objections have been resolved by way of incorporating certain agreed language regarding treatment of such Claims into the Confirmation Order.

51. Silver Point Objection. Silver Point filed its *Objection of Silver Point to Confirmation of First Amended Joint Plan of Reorganization For the Debtors Under Chapter 11 of the Bankruptcy Code* [Docket No. 481] (the “**Silver Point Objection**”), alleging that the Debtors failed to satisfy certain requirements for achieving confirmation of the Plan, including

the Debtors' alleged failure to comply with: (a) the feasibility requirements set forth in 11 U.S.C. § 1129(a)(11), (b) the "best interests of creditors" test in 11 U.S.C. § 1129(a)(7); (c) the "cram down" requirements set forth in 11 U.S.C. § 1129(b)(1); and (d) the "good faith" standard of 11 U.S.C. § 1129(a)(3). The Silver Point Objection has been resolved by the non-material modifications to the Plan described by and incorporated into the Confirmation Order.

52. WFF Objection. WFF filed its *Limited Objection to Debtors' First Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code* [Docket No. 479] (the "**WFF Objection**"), requesting that the Court condition approval of the Plan on the loan documents being reasonably acceptable loan documents evidencing the distribution under Class 1B and express that all payments and distributions made to Class 1A be delivered to WFF under the AAL under WFF is paid in full. The WFF Objection has been resolved by the non-material modifications to the Plan described by and incorporated into the Confirmation Order.

53. Non-Material Modifications. All of the modifications to the Plan and the related documentation, as well as the implementation procedures described in the Confirmation Order and in the Notice of Settlement are non-material in nature, as the modifications do not have an adverse impact on the treatment of any Class, and no further vote solicitation is required.

SIGNED AND DATED ABOVE