IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
LUCKY'S MARKET PARENT COMPANY, LLC, *et al.*,[1]	Case No. 20-10166 (JTD)
	(Jointly Administered)
Debtors.	**Re: Docket No. 1397**

DECLARATION OF ANDREW T. PILLARI, CHIEF FINANCIAL OFFICER OF DEBTORS, IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED JOINT CHAPTER 11 PLAN OF LIQUIDATION OF LUCKY'S MARKET PARENT COMPANY, LLC AND ITS DEBTOR AFFILIATES

Pursuant to section 1746 of title 28 of the United States Code, Andrew T. Pillari declares under the penalty of perjury:

1. I am the Chief Financial Officer ("**CFO**") of Lucky's Market Parent Company, LLC ("**LMPC**"), along with its owned direct and indirect subsidiaries (collectively, the "**Debtors**" or the "**Company**"), as debtors and debtors in possession in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**").

2. I joined the Company as CFO in October 2014 and have been in that role continuously since that time.

3. I am authorized to submit this declaration (the "**Confirmation Declaration**") on behalf of the Debtors in support of the *Confirmation of the Second Amended Joint Chapter 11*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Lucky's Market Parent Company, LLC (2055), Lucky's Farmers Market Holding Company, LLC (5480), Lucky's Market Operating Company, LLC (7064), LFM Stores LLC (3114), Lucky's Farmers Market, LP (0828), Lucky's Farmers Market Resource Center, LLC (7711), Lucky's Market Holding Company 2, LLC (0607), Lucky's Market GP 2, LLC (9335), Lucky's Market 2, LP (8384), Lucky's Market of Longmont, LLC (9789), Lucky's Farmers Market of Billings, LLC (8088), Lucky's Farmers Markets of Columbus, LLC (3379), Lucky's Farmers Market of Rock Hill, LLC (3386), LFM Jackson, LLC (8300), Lucky's Farmers Market of Ann Arbor, LLC (4067), Lucky's Market of Gainesville, LLC (7877), Lucky's Market of Bloomington, LLC (3944), Lucky's Market of Plantation, LLC (4356), Lucky's Market of Savannah, GA, LLC (1097), Lucky's Market of Traverse, City, LLC (2033), Lucky's Market of Naples, FL, LLC (8700), Sinoc, Inc. (0723), Lucky's Farmers Market of Ellisville, LLC (2875), and Lucky's Farmers Market of Lexington, KY, LLC (3446).

Plan of Liquidation of Lucky's Market Parent Company, LLC and its Debtor Affiliates (the "**Plan**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

4. Based on my analysis of public and non-public documents, and my discussions with, and information provided by, other members of the Debtors' management team, employees, agents, investment bankers and advisors, I am generally familiar with the Debtors' business, financial condition, policies and procedures, day-to-day operations, and books and records. Except as otherwise noted, I have personal knowledge of the matters set forth herein or have gained knowledge of such matters from other members of the Debtors' management team or from the Debtors' employees, agents, attorneys, investment bankers and advisors, the accuracy and completeness of which information I relied upon to provide this Confirmation Declaration.

5. Except as otherwise indicated, all of the facts set forth in this Confirmation Declaration are based upon my personal knowledge, my discussions with members of the Debtors' management team and the Debtors' other advisors, my review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives, or my opinions based upon my experience and knowledge. If called as a witness, I could and would testify competently to the facts set forth in this Confirmation Declaration.

6. Contemporaneously herewith, the Debtors also filed the *Debtors' Memorandum of Law in Support of Entry of an Order Confirming the Second Amended Joint Chapter 11 Plan of Liquidation of Lucky's Market Parent Company, LLC and its Debtor Affiliates* (the "**Confirmation Brief**"), which set forth factual and legal basis for confirmation of the Plan. I hereby incorporate by reference the Confirmation Brief as set forth fully herein.

BACKGROUND

A. Pre-Petition Business Operations and Debt Structure

7. Before the Petition Date, the Debtors operated small format grocery stores that offered affordable organic and locally-grown fruits and vegetables, top-quality, naturally raised meats and seafood, and fresh, daily prepared foods, as set forth more fully in the First Day Declaration, Plan, and Disclosure Statement. The Debtors' emphasized carrying the highest-quality products at the lowest prices, with the mission of providing "Organic for the 99%". Their stores offered a broad range of grocery items through the Debtors' "L" private label at great value, which had no artificial colors, flavors or preservatives.

8. As described in greater detail within the First Day Declaration, The Kroger Co., an Ohio corporation ("**Kroger**" or the "**Prepetition Secured Lender**") acquired a membership interest in the Debtors in April 2016, and beginning in September 2016, extended credit on secured basis to the Debtors. The Prepetition Secured Lender is owed over $300,000,000.00 in these Chapter 11 Cases.

9. By the end of 2019, the Debtors expanded to thirty-nine (39) stores across ten states (each, a "**Store**", and collectively, the "**Stores**"). As of the Petition Date, the Debtors owned two (2) Stores and leased thirty-seven (37) Stores; of those, Kroger entered into various guaranties of the Debtors' liabilities under thirty-one (31) store leases. In addition to operating thirty-nine (39) Stores, as of the Petition Date, the Debtors (a) operated a warehouse in Orlando, Florida, which supplied nearly all produce for the Company's Stores located in Florida and Georgia, and (b) had seventeen (17) additional property leases and owned one (1) property; the Debtors intended open eighteen (18) additional stores.

10. In July 2019, the Debtors engaged PJ Solomon, as their investment banker, to conduct a prepetition marketing process for substantially all of the Debtors' assets. Additionally, the Debtors retained A&M and Polsinelli on or about December 27, 2019 and September 4, 2019, respectively, to assist in evaluating all available restructuring options. The Debtors subsequently retained Great American Group ("**Great American**") to assist with the liquidation of certain assets located in certain of the Stores. Specifically, Great American successfully liquidated all furniture, fixtures, and equipment at twenty-one (21) stores. In addition, the Debtors ran a going out of business process to liquidate its existing inventory at thirty-three (33) of the Stores, leaving six (6) operating Stores to be sold through a separate process.

11. Recently, through January 4, 2020, the Debtors experienced approximately $22 million in operating losses and a net loss of approximately $100 million. Additionally, through the week ended January 18, 2020, the Debtors had a 10.6% reduction in comparable Store sales versus the prior year-to-date period. Based on performance of the Debtors' business, the Debtors' management determined that it would require approximately $100 million in incremental funding to continue operations until the Debtors would be cash flow positive. Management determined that it would be unable to secure new sources of sufficient funding outside of these Chapter 11 Cases.

12. The Debtors' goal has always been to confirm a chapter 11 liquidating plan in these Chapter 11 Cases by the end of the calendar year. To accomplish this feat, the Debtors cooperated with the Prepetition Secured Lender and the Committee on a liquidating chapter 11 plan, which allows for a distribution to creditor constituencies.

B. General Background

13. On January 27, 2020 (the "**Petition Date**"), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") and on March 3, 2020, Lucky's Farmers Market of Ellisville, LLC and Lucky's Farmers Market of Lexington, KY, LLC each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**").

14. On February 4, 2020, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed the Official Committee of Unsecured Creditors (the "**Committee**") in the Chapter 11 Cases [Docket No. 94].

C. Post-Petition Business Operations

(i) Store Leases, Inventory, and Furniture, Fixtures and Equipment, and Accounts Receivable

15. After the Petition Date, the Debtors liquidated substantially their entire store lease portfolio and all their inventory caches.

16. The Debtors sold twenty (20) store leases, including the six (6) operating store leases, pursuant to the Sale Motions and Sale Orders. The sales conducted pursuant to the Sale Orders generated at least $23,540,000.

17. The Debtors' sale of the Panama City Assets generated an additional $3,700,000 in proceeds.

18. The Debtors ran a Court approved going out of business process to liquidate its existing inventory at thirty-three (33) of the Stores, while six (6) Stores remained open and operating pending sale through separate processes. The Debtors successfully liquidated all furniture, fixtures, and equipment located at twenty-one (21) stores. The going out of business and liquidation of furniture fixture and equipment efforts generated $23,113,272.

19. In total during the Chapter 11 Cases, the Debtors' liquidation efforts generated asset sale proceeds of $50,383,272.

20. After the Petition Date, the Debtors attempted to collect all outstanding accounts receivables. During the Debtors' efforts to collect the receivables, they kept track of whose receivables were collected.

21. The Debtors negotiated with the Prepetition Secured Lender to obtain the consensual use of cash collateral required for the Debtors to liquidate certain of the Stores, consummate the sales, operate the open Stores, fund the administration of these Chapter 11 Cases through the Confirmation of the Plan.

(iii) Substantive Consolidation

22. The Plan contemplates the substantive consolidation of each of the Debtors' entities. I understand substantive consolidation is a remedy that a Bankruptcy Court may apply in Chapter 11 cases comprised of affiliated debtors. The Debtors believe that substantive consolidation is appropriate and necessary to assure recoveries to their creditors.

23. The Debtors cannot distinguish between the various entities at this point. Although the affiliated Debtors are separate legal entities, they are being liquidated as a single entity and are now fully intertwined (with the exception of Debtors Lucky's Farmers Market, LP and Lucky's Market 2, LP).

24. I believe substantive consolidation of all assets and liabilities will not prejudice any party because each debtor entity is subject to, and fully encumbered by, the lien of the Prepetition Secured Lender and after the contributions and concessions made by the Prepetition Secured Lender to support the Plan (including, but not limited to, the release of its liens, its deficiency claims, and its subrogation claims, and the funding of the Wind-Down Reserve), no

creditor other than the Prepetition Secured Lender would be entitled to a distribution under the Plan.

25. Further, I believe the Plan and the Global Settlement represent the only mechanism to provide for recoveries to Holders of General Unsecured Claims.

26. In addition, I believe substantive consolidation is appropriate because the Plan has the support of the Committee and the overwhelming support of creditors through the voting as set forth in the Balloting Declaration, and as demonstrated by their votes, such creditors have not relied on the corporate separateness of the Debtors.

27. The Debtors owe the Prepetition Secured Lender approximately $300 Million and the Prepetition Secured Lender has a lien on substantially all of the Debtors' Assets. Before the Petition Date the Debtors provided the Prepetition Secured Lender with combined financial reports.

28. After the Petition Date, the Debtors have not allocated professional fees and the cost of administering the Chapter 11 Cases amongst all of the Debtors. These costs have been booked on a consolidated basis.

29. I believe it would not be possible to recreate records needed to determine as of the Petition Date asset allocation, where all of the commingled assets were sold, and how much the commingled inventory generated in net sales proceeds. The proceeds generated from the post-petition sale of the commingled inventory are tens of millions of dollars. It would require a significant amount of time and effort to unscramble the egg and the Debtors would incur substantial fees, both to vendors and professionals, to try to recreate the financial records, to review those records, and then try to distinguish between receipts and determine how to allocate costs. It is my opinion that any attempt to disentangle the Debtors' assets would be a fruitless,

expensive, and risky enterprise that by definition would cost more than any potential recovery that could be gained by the process. In addition to the expenses related to the project itself, the Debtors would incur additional operating and professional fees, incur additional expense in connection with the re-solicitation of a plan, and believe any plan could be impossible as the Debtors have not received a commitment from the Prepetition Secured Lender to fund this process and the Plan. Finally, the debtor entities will still be fully encumbered by the Prepetition Secured Lender's liens.

D. Procedural Posture

30. The Procedural Posture of the Chapter 11 Cases is set forth in full in the Confirmation Brief and is hereby incorporated by reference as if set forth in full herein.

E. The Plan and Disclosure Statement Process

31. After extensive negotiations between the Debtors, the Prepetition Secured Lender, and the Committee, the Plan and Disclosure Statement were each filed on October 29, 2020.[2] It is my understanding that substantial concessions were made by all parties in order for this to occur.

32. Contemporaneously therewith, the Debtors filed the *Motion for an Order (A) Approving Disclosure Statement; (B) Establishing Voting Record Date, Voting Deadline, and Other Dates; (C) Approving Procedures for Soliciting, Receiving, and Tabulating Votes on Plan and for Filing Objections to Plan; (D) Approving Manner and Forms of Notice and Other Related Documents; and (E) Granting Related Relief* [Docket No. 1156] (the "**Disclosure Statement Approval Motion**"). The Disclosure Statement Approval Motion sought approval of

[2] *See* Docket Nos. 1154 and 1155. Following comments from the U.S. Trustee, Committee, and the Prepetition Secured Lender, a First Amended Joint Plan of Liquidation and a First Amended Disclosure Statement were filed on November 24, 2020. *See* Docket Nos. 1260 and 1261. Then, contemporaneously herewith, a Second Amended Joint Plan of Liquidation was filed on December 22, 2020.

the Disclosure Statement, approval of the Solicitation Procedures, scheduling of the Disclosure Statement Hearing Notice, approval of the forms of ballots to be distributed to Holders of Claims and Interests entitled to vote to accept or reject the Plan, approval of the forms of notice applicable to Holders of Claims and Interests that are subject to a pending objection by the Debtors and who are not entitled to vote the disputed portion of such Claim or Interest, approval of the Solicitation Packages, scheduling of the Confirmation Hearing, approval of the Plan Supplement Notice, approval of the Plan Objection Procedures, and approval of the Confirmation Timeline.

33. The Debtors received informal comments from the U.S. Trustee regarding the Disclosure Statement. On November 20, 2020, Patrick Gilliland, Michael Gilliland, and Lucky's Founders Holdings, LLC (together, the "**Founders**") filed an *Objection to (I) the Debtors' Disclosure Statement for Joint Chapter 11 Plan of Liquidation of Lucky's Market Parent Company, LLC and its Debtor Affiliates and (II) The Debtors' Solicitation Procedures Motion* [Docket No. 1244].

34. On November 24, 2020, the Court entered an *Order (A) Approving Disclosure Statement; (B) Establishing Voting Record Date, Voting Deadline, and Other Dates; (C) Approving Procedures for Soliciting, Receiving, and Tabulating Votes on Plan and for Filing Objections to Plan; (D) Approving Manner and Forms of Notice and Other Related Documents; and (E) Granting Related Relief* [Docket No. 1272] (the "**Disclosure Statement Order**"). The Disclosure Statement Order, among other things, approved the adequacy of the information contained in the Disclosure Statement, approved various solicitation procedures (the "**Solicitation Procedures**"), and set dates related to approval of the Plan, including the Confirmation Hearing to consider confirmation and approved various solicitation procedures.

The deadline for receipt of votes and opt-outs was set as 4:00 p.m. (prevailing Eastern Time) on December 18, 2020 (the "**Voting Deadline and Opt-Out Deadline**").

35. Following entry of the Disclosure Statement Order, the Debtors' claims and balloting agent, Omni Agent Solutions ("**Omni**") commenced solicitation of the Plan by sending copies of the Disclosure Statement, the Plan, the Disclosure Statement Order, Confirmation Hearing Notice, the letter in support of the Plan from the Committee, and form of ballot with voting instructions (the "**Ballot**" and, collectively, the "**Solicitation Packages**") to each holder of a claim in Class 1 (Prepetition Secured Claims), Class 4 (General Unsecured Claims Class A), Class 5 (General Unsecured Claims Class B), Class 6 (General Unsecured Claims Class C), and Class 9 (EB-5 Investors) (together, the "**Voting Classes**"). Omni sent the Confirmation Hearing Notice to each holder of a PACA and PASA Claim, Administrative Expense Claim, Priority Tax Claim, Professional Fee Claim, and Statutory Fee Claim (collectively, the "**Unclassified Claims**"). Furthermore, the Debtors caused Omni to publish the Confirmation Hearing Notice in the national edition of the *New York Times* on November 30, 2020. *See* Publication Affidavit, Docket No. 1289.

36. After the Disclosure Statement hearing, the Debtors, the Prepetition Secured Lenders, and Founders engaged in good faith, arm's length settlement discussions regarding the issues raised in the Founders' Disclosure Statement Objection. As a result of these discussions, the Debtors, Founders, and Kroger entered into a global settlement between such parties, which accounts for a complete walk away from any potential litigation and global mutual releases between the Debtors, the Founders, and the Prepetition Secured Lender (the "**Founders Settlement**"). Approval of the Founders Settlement is subject to a separate 9019 motion, but is directly tied to approval of the Plan.

37. On December 11, 2020, the Debtors filed a *Notice of Filing of Plan Supplement* [Docket No. 1349] (as may be modified, amended, or supplemented, the "**Plan Supplement**"). The Plan Supplement included the Liquidating Trust Agreement, the List of Executory Contracts and Leases to be Assumed, and the Claims Reserve. Contemporaneously herewith, the Debtors filed a *Notice of Filing of Amended Plan Supplement*, which updated certain portions of the original Plan Supplement.

38. The deadline to vote on the Plan was December 18, 2020 at 4:00 p.m. prevailing Eastern Time. As set forth in the Balloting Declaration, the Holders of Claims and Interests in Classes 4, 5, 6, and 9 voted to accept the Plan.

39. Contemporaneously herewith, on December 22, 2020, the Debtors filed a *Second Amended Joint Chapter 11 Plan of Liquidation of Lucky's Market Parent Company, LLC and Its Debtor Affiliates* (as may be modified, amended or supplemented from time to time, the "**Plan**").

COMPLIANCE WITH THE BANKRUPTCY CODE

40. Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(1). I believe that the Plan complies with the following requirements of the Bankruptcy Code:

41. Proper Classification (11 U.S.C. § 1122, 1123(a)(1)). I am familiar with the classification of Claims and Interests in the Plan and believe such classifications are based upon the legal nature and relative rights of such Claims and Interests, and is not proposed for any improper purposes. Each Class contains only Claims and Equity Interests which are substantially similar to other Claims and Equity Interests. For example, the Plan classifies the Class 4 Claims (General Unsecured Claims Class A) separately from the Class 5 Claims (General Unsecured Claims Class B) and the Class 6 Claims (General Unsecured Claims Class C). Class 4 contains conventional general unsecured claims. Class 5 contains general unsecured claims, which

involve a Kroger guarantee. Class 6 claims includes all of Kroger's general unsecured claims, which amount to at least $300 Million. Class 9 (EB-5 Investors) includes the Holders of Interests in Lucky's Farmers Market, LP and Lucky's Market 2, LP.

42. In addition to the Classes, Article III of the Plan designates, but does not classify Claims of other types including PACA Claims, PASA Claims, Administrative Expense Claims, Professional Fee Claims, Priority Tax Claims, Class Action Claims, and Statutory Fees.

43. Specified Treatment of Unimpaired and Impaired Claims (11 U.S.C. § 1123(a)(2); (a)(3)). The Plan specifies whether Classes of Claims are impaired or unimpaired. Each class contains substantially similar claims for purposes of voting and treatment.

44. No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for equal treatment within each Class. Further, within each class, the plan provides the same treatment for each claim or interest within a class. Holders of Claims in Class 1 (Prepetition Secured Claims), Claims in Class 4 (General Unsecured Claims Class A), Claims in Class 5 (General Unsecured Claims Class B), Claims in Class (General Unsecured Claims Class C), and Holders of Interests in Class 9 (EB-5 Investors) are impaired under the Plan. The disparate treatment of Classes 4, 5 and 6 is appropriate as their respective members are not Holders of similarly situated Claims or Interests.

45. Under the Plan, to the extent Class 9 votes to accept the Plan, each Holder of a Class 9 Interest shall retain its EB-5 Limited Partnership Interests and shall receive such Holder's Pro Rata Share of the equity interest in the EB-5 Designated Entity; then, as soon as practicable after the Effective Date, the Liquidating Debtor or Liquidating Trust shall transfer to the EB-5 Designated Entity all Equity Interests in the EB-5GPs. *See* Article IV.C.9. It is the Debtors' position that the EB-5 Limited Partnership Interests and the Equity Interests in the EB-

5GPs that are being transferred under the Plan have no monetary value to the Debtors' Estates and the only person that the EB-5 Limited Partnership Interests and Equity Interests in the EB-5GPs have non-monetary value to are the EB-5 Investors.

46. Furthermore, Holders of Claims in Class 7 (Intercompany Claims) and Claims in Class 8 (Equity Interests) are also impaired, they are not receiving any distribution under the Plan, and they are deemed to reject the Plan.

47. Adequate Means of Implementation (11 U.S.C. § 1123(a)(5)). The Plan provides for adequate means for implementation including: (i) the Global Settlement; (ii) the establishment of the Liquidating Debtor; (iii) the transfer of the Assets to the Liquidating Debtor; (iv) the establishment of the Liquidating Trust and appointment of the Liquidating Trustee; (v) the transfer of the Liquidating Trust Assets to the Liquidating Trust, at the appropriate time; (vi) the appointment of a Creditor Representative; (vii) mechanism to resolve all outstanding claims and litigation; and (viii) the procedures for distributions to Holders of Allowed Claims.

48. Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan calls for the liquidation of the Debtors and, as such, the Debtors are not issuing any new equity securities.

49. Selection of Liquidating Trustee (11 U.S.C. § 1123(a)(7)). The Plan and Plan Supplement provide my appointment to serve as the sole officer and director of the Liquidating Debtor, the successor-in-interest to the Debtors, and then, at the appropriate time, for me to serve as the Liquidating Trustee, who shall establish the Liquidating Trust. The Liquidating Trust will be administered and controlled by the Liquidating Trustee for the benefit of the Liquidating Trust Beneficiaries. I believe my appointment to serve as the sole officer and director of the Liquidating Debtor and as the Liquidating Trustee is consistent with the interests of creditors, holders of equity interests, and public policy.

50. Impairment of Classes (11 U.S.C. § 1123(b)(1)). The Plan provides for the classification and impairment or unimpairment of certain Classes. *See* Article III, Article IV; Article V. Again, the Class 7 (Intercompany Claims) and Class 8 (Equity Interests) are impaired and deemed to reject the Plan. The Plan contains procedures for distributions and the allowance or disallowance of Claims. *See* Article V.D. The Global Settlement embodied in Article VIII.A represents a fair compromise and settlement of claims among the Debtors, the Committee, and the Prepetition Secured Lender. The Plan contains certain release and exculpation provisions consistent with applicable provisions of the Bankruptcy Code and Third Circuit law, provides for the substantive consolidation of the Debtors' estates, as described in greater detail below, and provides the Court will retain jurisdiction over all matters arising in and related to these chapter 11 cases. *See* Article XIII; Article XI. The Plan provides for a release of Claims and Causes of Action owned by the Debtors' estates. *See* Article VIII.A.; Article VIII.D

51. Executory Contracts (11 U.S.C. § 1123(b)(2)). Article VI. of the Plan contains provisions governing the further assumption or rejection of executory contracts and unexpired leases.

52. Other Permissible Provisions (11 U.S.C. § 1123) – Global Settlement. The Plan contains provisions governing the further assumption or rejection of executory contracts and unexpired leases. *See* Article VI. The Plan and Global Settlement are the result of intense, good-faith, arm's-length negotiations with parties in interest and economic stakeholders. The Global Settlement is the cornerstone of the Plan.

53. Before the Petition Date, the Board appointed an Independent Director and formed the Special Committee of the Board of Managers of the Debtors. The Board authorized the Special Committee to address certain issues that could potentially confront the Debtors.

Among other things, the Special Committee conducted an independent investigation ("**Independent Investigation**") of certain potential claims or causes of action that may belong to the Debtors' Estates. I understand that as a result of the Independent Investigation, the Special Committee determined the Debtors' Estates did not have any valuable claims or causes of action that warranted pursuing, and to the extent that such claims or cause of action did exist, the Debtors' Estates were receiving adequate consideration in the Global Settlement.

54. I understand that upon its formation, the Committee determined it would need to conduct its own separate investigation into potential claims and causes of action belonging to the Debtors' Estates arising from, related to, or in connection with any transactions between Kroger and the Debtors and their affiliates, including, without limitation, Kroger's purported loans to the Debtors, Kroger's guarantees of any of the Debtors' liabilities, and Kroger's role in the Debtors' financial affairs. I understand the Committee's determination was in large part swayed by its belief that before the Petition Date, the Debtors and Kroger had a complicated financial and operational relationship. Among other things, Kroger was the Debtors' largest creditor and principal equity holder. Moreover, Kroger guaranteed certain significant liabilities of the Debtors. Consequently, the Committee retained Norton Rose Fulbright US LLP to lead that investigation.

55. I understand, the Committee, aided by its professionals, conducted an investigation into the dealings between Kroger and the Debtors. After, the Committee reviewed the documents and information publicly available as well as a substantial amount of documents voluntarily produced by the Debtors and Kroger, I understand the Committee determined the Debtors' Estates may be able to allege certain claims or causes of action against Kroger that could potentially yield significant recoveries in a litigation. However, in light of the limited

resources available to the Estates, the Committee and its professionals engaged the Debtors and Kroger in settlement discussions shortly after the review of the various transactions between Kroger and the Debtors and the related documents, rather than adopting a full litigation posture and potentially exhausting significant Estates' resources. Ultimately, these discussions led to the Global Settlement pursuant to which the Estates and their creditors will receive considerable consideration in exchange for a release of the Estates' claims against Kroger without the risk and expense associated with litigation.

56. I believe the probability of success in litigation is low. The Debtors' Independent Director conducted an exhaustive investigation into any potential claims and causes of action that could be asserted against the LMPC Board, the LMPC Officers and LMOC Officers who were serving in such capacity as of the Petition Date, Founders, and the Prepetition Secured Lender. I understand the Special Committee and the Committee conducted investigations and determined the consideration provided to the Debtors' Estates under the Global Settlement outweighed the alternative, the pursuit of extended and expensive litigation with no certainty of recovery.

57. Similarly, the difficulty in collection is high and any speculative recovery would take years to achieve. I believe litigating these claims would involve lengthy discovery, trials, and appeals, all at the expense and delay of creditor recoveries. I understand the Committee and its professionals, after their investigation and review, also concluded the risk and expense associated with litigation were outweighed by the consideration Kroger will provide the Estates as part of the Global Settlement. In contrast to lengthy and speculative litigation, the Global Settlement, provides a source of funds, which are available on the Effective Date.

58. I understand the litigation in question is very complex. Lengthy litigation would delay recoveries to the Debtors' creditors, without providing any assurance of generating eventual collection on the potential claims. I believe in part due to the complexity of the potential litigation, after the conclusion of the respective Special Committee and Committee investigations, the Debtors, Special Committee, Committee, and Kroger opted to engage in settlement negotiations.

59. I believe the Global Settlement is in the best interests of the Debtors' creditors because it maximizes creditors' recoveries under the Plan and resolves significant issues without litigation. The Global Settlement resulted from the culmination of arm's length and good faith negotiations and represents the best path forward to avoid protracted and costly litigation to the detriment of all creditors and parties in interest. There would be no distribution available to General Unsecured Creditors on the Effective Date without the Global Settlement. Alternatively, the Global Settlement provides the only means of providing recovery to General Unsecured Creditors without engaging in litigation, which would be costly and time consuming and could never generate any value for distribution to any Estate stakeholder.

60. Other Permissible Provisions (11 U.S.C. § 1123(b)(6)). The Plan contains release, injunction, and exculpation provisions. These are integral components of the Plan and I believe such provisions are fair and equitable, are given for valuable consideration, and are in the best interests of the Debtors and the Estates in these Chapter 11 Cases. The releases are appropriate because they are the product of extensive good faith and arm's length negotiation, are in exchange for good, valuable, and reasonably equivalent consideration, and are supported by the Debtors and other various parties in interest. Each of the Released Parties played an important and active role in negotiating and formulating the Plan, has significantly contributed to the Plan

and these Chapter 11 Cases, and the cooperation of each party is necessary to implement the provisions of the Plan. The Debtors are concerned that absent the protection from liability, the Prepetition Secured Lender would not have been unwilling to cooperate in connection with the formulation of the Plan, including, without limitation, funding the plan confirmation process and all professional fees, waiving the deficiency claims and subrogation claims, and funding the recoveries for general unsecured creditors.

61. It is my understanding that the Plan is the result of extensive negotiations among the Debtors and the released parties. Based on my involvement in aspects of these negotiations, I believe that there is an identity of interest between the Debtors and the released parties arising out the shared common goal of confirming and implementing the Plan. The Debtors believe that the released parties made substantial contributions to these Chapter 11 Cases. The released parties have made substantial contributions to the Chapter 11 Cases and have provided direct benefits to these Chapter 11 Cases under the Plan. The amount of the lien of the Prepetition Secured Lender far exceeds the value of the Debtors Assets. Virtually all of the projected recoveries for the impaired Class 4 (General Unsecured Claims Class A) and Class 5 (General Unsecured Claims Class B) derive from the Prepetition Secured Lender's waiver of its liens and claims, its agreement with the Committee to share in its recoveries, and fund the Liquidating Debtor under the Plan.

62. The only reason any recovery is available for Holders of General Unsecured Claims is the contribution of the Prepetition Secured Lender. Its contributions and material concessions allowed these Chapter 11 Cases to move expeditiously towards confirmation and the releases set forth in the Plan were a material inducement to and a condition of the concessions by, and substantial contributions from, the Prepetition Secured Lender. The contribution of the

Prepetition Secured Lender to these Chapter 11 Cases include, but are not limited to, (i) the consensual use of a considerable amount of cash collateral to fund the administration of the Chapter 11 Cases, (ii) the payment in full of Administrative Expense Claims, PACA Claims, PASA Claims, Professional Fee Claims, Secured Tax Claims, Tax Claims, and Priority Claims, (iii) the funding of the Wind-Down Reserve, and (iv) the vesting of Assets in the Liquidating Debtor and/or Liquidating Trust. Without these releases, exculpation, and injunctions, the Prepetition Secured Lender, would not have contributed to the process of negotiating a confirmable plan, which is the only means that there may be a distribution to general unsecured creditors. Finally, creditors have overwhelmingly accepted the Plan with the releases it includes. The Debtors believe the Plan presents the only opportunity for a recovery by creditors of the Debtors.

63. It is my understanding the injunction provisions are necessary to effectuate the Plan because they implement the Debtor Releases, Third Party Release, and the exculpation provision embodied in the Plan.

64. I believe each Exculpated Party participated in the Chapter 11 Cases in good faith and without the support of the Exculpated Parties, the Debtors would not have been able to execute their chapter 11 strategy, commence the Chapter 11 Cases, and propose a plan supported by virtually all creditors.

65. Compliance With the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). To the best of my knowledge, the Debtors, have complied with the Bankruptcy Code and Solicitation Procedures Order in proposing the Plan and in transmitting the Solicitation Packages and related notices and in soliciting and tabulating votes on the Plan.

66. Good Faith Solicitation (11 U.S.C. § 1129(a)(3)). To the best of my knowledge, the Plan has been proposed in good faith and not in any means forbidden by law. The Plan seeks to achieve a result that is consistent with the objectives of the Bankruptcy Code. The proponents expect that the Plan will go effective and they have demonstrated fundamental fairness in dealing with creditors. In the absence of the Plan, general unsecured creditors would receive no recovery because the Prepetition Secured Lender is under secured. For avoidance of doubt, the asset values of the Debtors' estates are far less than the remaining amount of the secured claim held by the Prepetition Secured Lender. As a result of substantial negotiations, the Debtors, the Committee, and the Prepetition Secured Lender developed the Plan, which provides funding to a Liquidating Debtor to administer the assets of the estates, monetize those assets, and then oversee disbursements to general unsecured creditors. The overwhelming voting support also demonstrates the fairness of the Plan. The goal of the Plan is to maximize distributions to creditors, a legitimate and honest purpose.

67. Payment for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). All payments made or promised by the Debtors for services rendered in connection with these Chapter 11 Cases will be subject to review by the Court and other parties in interest. The Debtors' estates will be able to pay all allowed administrative expenses.

68. Proper Disclosures (11 U.S.C. § 1129(a)(5)). The identity of the Liquidating Trustee has been identified in the Plan Supplement and is consistent with the interests of Holders of Claims and Interests in the Debtors and public policy. I, Andrew T. Pillari, will serve as the Liquidating Trustee. The selection of the Liquidating Trustee is consistent with the best interests of Holders of Claims and Interests in the Debtors and public policy.

69. No Rate Changes (11 U.S.C. § 1129(a)(6)). Based upon advice from Debtors' counsel and because the Plan does not provide for any rate changes over which a governmental regulatory commission has jurisdiction, I understand Bankruptcy Code section 1129(a)(6) is inapplicable.

70. Best Interests of Creditors (11 U.S.C. § 1129(a)(7)). I worked with Michael Leto, along with other members of Alvarez and Marsal, prepared the liquidation analysis attached as Exhibit C to the Disclosure Statement (the "**Liquidation Analysis**"). The Liquidation Analysis compared potential creditor recoveries under the Plan with recovers under a hypothetical liquidation of the Debtors under chapter 7 of the Bankruptcy Code, based on asset values and liabilities.

71. The best interests test does not apply to holders of Claims in Class 2 (Other Secured Claims) and Class 3 (Priority Claims) because each holder in these Classes is unimpaired under the Plan, presumed to accept the Plan and will receive payment in full, in Cash. Accordingly, the holders of such Claims and Interests are receiving the maximum recovery to which they are entitled under the Plan, and as a result, could not receive greater recovery under chapter 7. Therefore, they are not worse off under the Combined Plan and Disclosure Statement.

72. Acceptance by Impaired Voting Classes (11 U.S.C. § 1129(a)(8)). As detailed in the Balloting Declaration: (a) Holders of Claims in Class 2 (Other Secured Claims) and Class 3 (Priority Claims) are unimpaired and deemed to accept the Plan; (b) Holders of Claims in Class 1 (Prepetition Secured Claims) did not vote to accept or reject the Plan; (c) Holders of Claims in Class 4 (General Unsecured Claims Class A) voted to accept the Plan; (d) Holders of Claims in Class 5 (General Unsecured Claims Class B) voted to accept the Plan; (e) Holders of Claims in

Class 6 (General Unsecured Claims Class C) voted to accept the Plan; and (f) Holders of Interests in Class 9 (EB-5 Investors) voted to accept the Plan. I understand Holders of Claims in Class 7 (Intercompany Claims) and Holders of Interests in Class 8 (Equity Interests) are deemed to reject the Plan. I understand that the Debtors have requested that the Court confirm the Plan pursuant to Bankruptcy Code section 1129(b).

73. Treatment of Administrative and Tax Claims (11 U.S.C. § 1129(a)(9)). The Plan provides for the payment of Allowed Administrative Expense Claims, Professional Fee Claims, and Priority Tax Claims.

74. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(10)). As set forth in the Balloting Declaration, Plan was accepted by Class 4, Class 5, Class 6, and Class 9 who is each an impaired class under the Plan and is not composed of insiders.

75. Feasibility (11 U.S.C. § 1129(a)(11)). I understand that to satisfy the feasibility requirement, the Debtors must demonstrate that the confirmation of the Plan will not be followed by a liquidation. However, the Plan contemplates the liquidation of the Debtors' assets in accordance with the Plan and Liquidating Trust Agreement. Thus, confirmation of the Plan will not be followed by a liquidation.

76. Statutory Fees (11 U.S.C. § 1129(a)(12)). The Plan provides that all statutory fees will be paid by the Debtors before the Effective Date. Following the Effective Date, statutory fees will be paid from the Assets.

77. Inapplicable Provisions (11 U.S.C. § 1129(a)(13)-(16)). With regard to these provisions of the Bankruptcy Code, (a) the Debtors do not provide retiree benefits, (b) are not subject to any domestic support obligations, and (c) are moneyed, business, or commercial corporations.

78. Cram Down (11 U.S.C. § 1129(b)). Holders of Claims and Interests in Class 7 (Intercompany Claims) and Class 8 (Equity Interests) are not receiving any distribution under the Plan and are deemed to reject the Plan pursuant to Bankruptcy Code section 1126(g). Holders of Claims in Class 2 (Other Secured Claims) and Class 3 (Priority Claims) are unimpaired, and thus, deemed to accept the Plan. Holders of Claims in Class 1 (Prepetition Secured Claims), Class 4 (General Unsecured Claims Class A), Class 5 (General Unsecured Claims Class B), Class 6 (General Unsecured Claims Class C) and Class 9 (EB-5 Investors) are impaired under the Plan. Holders of Claims in Class 4, Class 5, and Class 6 are sharing in the distributions from the Liquidating Debtor.

79. The Plan is fair and equitable. The treatment of Classes 4, 5, and 6 is appropriate as there are no similarly situated class of Claims or Interests. Holders of Claims in Class 4 are general unsecured creditors. Holders of Claims in Class 4 will share in disbursements from the General Unsecured Claims Class A Recovery Pool. Holders of Claims in Class 5 will share in disbursements from the General Unsecured Claims Class B Recovery Pool. Holders of Claims in Class 6 will share in disbursements from the General Unsecured Claims Class C Recovery Pool. Further, the Plan satisfies the absolute priority rule as no junior Holder of a Claim or Interest will receive any distribution, unless the Holders of higher priority Claims receive the full value of their Claims or the Holders of such higher priority Claims have consented to such treatment. Here, the Prepetition Secured Lender, the Holder of Claims in Class 1 (Prepetition Secured Claims), consents to permitting junior creditors to receive distributions even though it will not receive the full value of its Prepetition Secured Claims.

80. Again, it is the Debtors' position that the distribution – the EB-5 Limited Partnership Interests and the Equity Interests in the EB-5GPs that are being transferred under the

Plan – to Holders of Interests in Class 9 have no monetary value to the Debtors' Estates and the only person that the EB-5 Limited Partnership Interests and Equity Interests in the EB-5GPs have non-monetary value to are the EB-5 Investors.

81. Other Requirements (11 U.S.C. § 1129(c)-(e)). With regard to these provisions: (a) no other plan has been submitted in these Chapter 11 Cases, (b) the principal purpose of the Plan is not the avoidance of taxes or application of section 5 of the Security Act of 1933, and (c) none of these Chapter 11 Cases are "small business cases."

82. Waiver of Stay. Waiver of the 14-day stay imposed by Bankruptcy Rule 3020(e) is appropriate in these circumstances because it allows for the expeditious transfer of assets to the Liquidating Debtor on the Effective Date. Expedited consummation of the Plan will not prejudice any party in interest. The Committee and creditors will benefit from the transfer of the Assets, which will lead to more expeditious recoveries.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 22, 2020

By: */s/ Andrew T. Pillari*
Andrew T. Pillari
Chief Financial Officer
Lucky's Market Parent Company, LLC